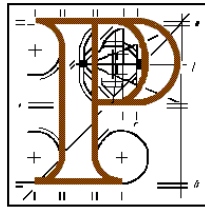


An Bord Pleanála



Inspector's Report

PL27.245823

DEVELOPMENT:- Dwelling garage, effluent disposal system, well, access and all associated site works, Ballintombay Upper, Rathdrum, Co. Wicklow.

PLANNING APPLICATION

Planning Authority: Wicklow County Council

Planning Authority Reg. No: 15/945

Applicant: John Kavanagh

Application Type: Permission

Planning Authority Decision: Refuse

APPEAL

Appellant: John Kavangh

Type of Appeal: 1st-v-Refusal

DATE OF SITE INSPECTION: 17th February 2016

Inspector: **Colin McBride**

1. SITE DESCRIPTION

- 1.1 The appeal site, which has a stated area of 0.8 hectares, is located approximately 4km to the north west of the village of Rathdrum, Co. Wicklow in the townland of Ballytombay Upper. The site is in a rural upland area and is part of a larger field in use as agricultural grazing lands. The site is located on the northern side of an existing lower category public road with a width of 4-5m. The appeal site is on the lower slope of Kirikee Mountain with the appeal site increasing in gradient moving north away from the public road. Adjoining land uses include a forested area to the north and the remainder of the field the site is part of is located to the south west. Existing boundary treatment consists of hedgerow along the roadside boundary and along the northern boundary with no established boundary along the western site boundary. The nearest dwellings are an existing dwelling on the opposite side of the road and one to the south of the site.

2. PROPOSED DEVELOPMENT

- 2.1 Permission is sought for a dwelling, garage, effluent disposal system, well, upgrading of existing access and associated site works. The proposal is for a dormer style dwelling with a floor area of 243sqm and a ridge height of 6.3m. The dwelling has what appears is to have a smooth plaster external finish and features a pitched roof with tiles of slates. It is also proposed to construct a single-storey garage with a floor area of 80sqm and a ridge height of 5.527m. It is proposed to install a proprietary wastewater treatment system. Water supply is to be from a well. It is proposed to provide a new vehicular entrance to the site.

3. LOCAL AND EXTERNAL AUTHORITY REPORTS

3.1

- (a) An Taisce (29/09/15): The proposal should be determined with regard to development plan policy, the National Spatial Strategy and Sustainable Rural Housing Guidelines. The proposal should also be assessed with regard to the impact of the effluent treatment system on both surface water and groundwater.
- (b) Environmental Health Officer (01/10/15): The applicant should submit a revised site plan showing separation distances between the proposed polishing filter and well serving the existing dwelling on the opposite side of the road.

(c) Planning report (30/10/15): The applicant was not considered to have demonstrated compliance with the criteria for Rural Housing under the County Development plan. The proposed development was considered to have an adverse visual impact in the surrounding areas. Refusal was recommended based on the reasons outlined below.

4. DECISION OF THE PLANNING AUTHORITY

4.1 Permission refused based on two reasons...

1. The proposed development would not represent a necessary dwelling in this landscape designated Area of Outstanding Natural Beauty (AONB) contrary to the provisions of Section 6.3.2 of the County Development plan 2010-2016. These provisions are required to maintain scenic amenities, recreational utility, existing character, and to preserve views of special amenity value and special interest and to conserve the attractiveness of the county for the development of tourism and tourist related employment. The Council's settlement strategy is to encourage further growth of existing settlements and to restrict rural housing development to cases where there is a bona fide necessity to live in the rural area instead of in existing settlements. It is considered that the applicant does not come within the scope of the housing need criteria as set out under Objective RH14 of the County Development Plan. The proliferation of non-essential housing in rural landscape areas erodes the landscape value of these areas and seriously detracts from views of special amenity value.

2. Having regard to the

- i. Loss of hedgerow/trees to allow for this development
- ii. Location of the development at a visually prominent point on site
- iii. The house design by virtue of its top heavy roof, varying window sizes and balcony at first floor
- iv. The excessive size of the garage

It is considered that the development is unsuitable and would be out of character with this rural setting, would impact detrimentally on the visual amenities of the area, would further add to the erosion of this rural landscape and would militate against the preservation and protection of the rural and visual amenities of the area, would be contrary to the provisions of the County Development Plan which require that "new houses should be located sympathetically within their surroundings" and should "make use of local contours, avoid skylines where development interrupts the flow of landform. Avoid open field or exposed locations that prevent the development being integrated with its surroundings". The development would therefore

undermine County Development Plan Strategy as set out in Section 17.1 which is to avoid negative impacts upon the natural environment and would be contrary to objective WH5 which seeks to encourage the preservation and enhancement of native and semi-natural woodlands groups of trees and individual trees, as part of the development control process.

5. PLANNING HISTORY

- 5.1 05/3758: Permission refused for a dwelling, wastewater treatment system and ancillary site works, refused due to non-compliance with rural housing policy, adverse visual impact and traffic hazard.

6. PLANNING POLICY

- 6.1 The relevant plan is the Wicklow County Development Plan 2010-2016.

Rural Housing Policy is set down under Chapter 6

Chapter 17 Natural Environment

Landscape hierarchy: Mountain and Lakeshore Areas of Outstanding Natural Beauty: Vulnerability: Very High.

The site location is within a rural area in which the landscape character is that of an Area of Special Amenity and which is outside settlements. It is an area in which the criteria of Policy Objective RH 14 relating to applications for residential development in rural areas would apply.

Design standards for residential development in the open countryside are set out in section 6.4.3.

There is a specific objective for protection of views and prospects from identified vantage points in which prevention of obtrusive or incongruous features is required.

LA2: Any application for permission in the AONB or CLA zones shall be accompanied by a Visual Impact Assessment, which shall include, inter alia, an evaluation of visibility and prominence of the proposed development in its immediate environs and in the wider landscape, a series of photos or photomontages of the site/development from clearly identified vantage points, and evaluation of impacts on any listed views/prospects and an assessment of vegetation/land cover type in the area (with particular regard to commercial forestry plantations which may be felled thus altering character/visibility).

6.2 Under the publication 'Sustainable Rural Housing: Guidelines for Planning Authorities', the site is located in an 'Area under strong Urban Influence'.

7. GROUNDS OF APPEAL

7.1 A first party appeal has been lodged by Ian Heffernan & Associates on behalf of the applicant, John Kavanagh. The grounds of appeal are as follows...

- The appellant qualifies under RH14, SS9 of the County Development Plan in regards to rural housing policy. The appellant outlines the full background to his qualification in this regard.
- The applicant/appellant notes a number of changes have been made to the proposal over that sought under ref no.s 14/2196 and 15/945 (both of these appear to have been withdrawn prior to decision) with it considered such revisions deal with the concerns raised under these applications. In regards to house design it is noted that the dwelling has been moved to a lower contour on site with the garage located closer to the dwelling. There was never a balcony proposed however the applicant/appellant has clarified the drawings. It is noted that the design of the dwelling has regard to the Cork Rural Design guide. It is confirmed that the external finish is to be smooth plaster and it is noted that the applicant is willing to make the garage smaller if necessary.
- The applicant has full consent of the landowner to carry out necessary works to achieve sightlines. The entrance has been relocated more central and safer location for traffic movements using the entrance.
- It is noted that a comprehensive landscape design and layout is proposed and that relocation of the dwelling to a lower contour would deal with any concerns regarding visual impact.

8. RESPONSES

8.1 No responses.

9. ASSESSMENT

9.1 Having inspected the site and examined the associated documentation, the following are the relevant issues in this appeal.

Principle of the proposed development/Development Plan policy/Rural Housing
Design/scale/visual impact/landscape character
Traffic/access

Wastewater Treatment

Other issues

9.2 Principle of the proposed development/development plan policy/rural housing:

9.2.1 The appeal site is located in a rural area of Co. Wicklow. The Sustainable Rural Housing Guidelines for Planning Authorities distinguishes between four rural area types. The application site is within an area designated as being 'under strong urban pressure'. These areas are typically close to larger urban centres, are under pressure for housing in the countryside and have road networks which are heavily trafficked. The guidelines suggest that certain classes of applicants e.g. those occupied full time or part-time in agriculture, forestry, those who are an intrinsic part of the rural community, sons/daughters of farmers and returning emigrants, may be considered for housing in the countryside. The development plan has had regard to the advice set out in the Sustainable Rural Housing Guidelines in that it has provided for consideration of housing applications from classes of applicants with links to specific rural locations and occupations.

9.2.2 Chapter 6 of the Plan sets out Rural Housing Policy. Under Objective RH14 it is noted that "residential development will be considered in the countryside only when it is for the provision of a necessary dwelling' in a number of circumstances (attached). It was deemed that the applicant did not comply with the criteria set down under Objective RH14. According to the information on file the applicant/appellant is from the rural area of county and has resided at a number of places in the county up until 1981 when he constructed a dwelling at no. 14 Ballygannon, Rathdrum with his wife. It is noted that the applicant separated from his wife in 2010 and has resided with his daughter at Ballintombay Upper, Rathdrum for the last 5 years, not far from the appeal site. It is noted that the applicant's wife has died and that he has recently sold the dwelling at no. 14 Ballygannon based on the wishes of his family (his children). The planning report notes that the applicant considered himself to qualify under the provisions of no.s 1 and 13 under Objective RH14.

1. A permanent native resident seeking to build a house for his/her own family and not as speculation. A permanent native resident shall be a person who was either born and reared in the family home in the immediate vicinity of the proposed site (including permanent native residents of levels 8 and 9 i.e. small villages and rural clusters), or resided in the immediate environs of the proposed site for at least 10 consecutive years prior to the application for planning permission.

13. A permanent native resident who has to dispose of their dwelling, following divorce or a legal separation.

In regards to no. 1 the applicant/appellant notes that when he constructed his dwelling in 1981 it was located in a rural area and only came into the town boundary in 1999. The applicant/appellant has noted that there is provision for consideration of such circumstances under Objective RH14. The Planning Authority's assessment is that the applicant is assessed on the basis of being a permanent resident of the urban area of Rathdrum with it noted in the planning report that the dwelling at no. 14 Ballygannon was located within the development boundary of Rathdrum under 1970 County Development Plan and that such is also the case under the 1989 County Development Plan. This dwelling is within the development boundary of the current Rathdrum Local Area Plan 2006-2016. It was therefore considered that the applicant was not a permanent resident of a rural area and did not qualify under RH14 (1). In the case of RH14 (13) it was noted that as the house sold as a result of divorce was not a in a rural area the provision of such did not apply.

- 9.2.3 In my assessment of the proposal is that the applicant does not meet any of criteria set down under Objective RH14. RH14 (1) clearly states that "a permanent native resident shall be a person who was either born and reared in the family home in the immediate vicinity of the proposed site (including permanent native residents of levels 8 and 9 i.e. small villages and rural clusters), or resided in the immediate environs of the proposed site for at least 10 consecutive years prior to the application for planning permission". The applicant has resided in the rural area near the site for the last five years, however previous to this the applicant has resided at a dwelling within the urban area of Rathdrum and according to information on file (the planning report) this dwelling was inside the development boundary of Rathdrum as far back as 1970 and predating the construction of the dwelling). In this regard the proposal is not a rural generated housing need. In regards to RH14 (13) although it appears that the applicants dwelling has been sold as a result of divorce, the applicant has made the choice to sell the dwelling and the dwelling as noted above is within an urban area. I would note that the applicant does not fulfil the criteria set down under RH14 no.s 1 and 13 and for that matter does not meet any of the criteria set down under the 16 circumstances in which residential development would be considered in the countryside.

9.3 Design/scale/visual impact/landscape character:

- 9.3.1 The proposal was refused on the basis of visual impact in an area designated as an Area of Outstanding Natural Beauty. The site is located within an area designated Mountain and Lakeshore Areas of Outstanding Natural Beauty

(ML-AONB) under the County Development Plan. The vulnerability of this area is identified as being 'very high'. It is development plan policy to protect such areas from inappropriate development with a requirement for a visual assessment of proposal located in such areas as outlined under Objective LA2. In regards to overall visual impact, I would note that the site is not in the most prominent location within this area and the development is unlikely to be significantly visible from the wider area despite being in an elevated location. I would also be satisfied that the location of the site is such that it would not interfere with any designated views and prospects under the County Development Plan.

9.3.2 Although the visual impact in the wider area is not significant, I would consider that the proposal would have a detrimental visual impact when viewed from the intervening area. The site is elevated relative to the public road and the gradient of the site necessitates cutting and filling across the contours of the site, which would create a significant scar on the landscape. In terms of the design of the dwelling, the proposal is lacking in any architectural merit or attempt to provide for a dwelling that would integrate well in its rural setting with the proportion of the dwelling providing for a shallow/wide pitch and a large roof profile and with a very haphazard fenestration pattern. The proposal also entails the provision of a large garage that would also necessitate alterations of the contours on site. I would consider that having regard to the location of the site within an area designated as an Area of Outstanding Natural Beauty (Mountain and Lakeshore Areas of Outstanding Natural Beauty) in the Wicklow County Development Plan 2010-2016, the inappropriate design and scale of the dwelling and the necessity for a severe cut and fill on the sloped site providing for a significant scarring of the landscape, the proposed development, by reason of its siting and design, would form an excessively prominent and obtrusive feature on the landscape and would seriously injure the visual amenities of this sensitive rural area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

9.4 Traffic/access:

9.4.1 The site is located off an existing local road, which is minor country road with a width of approximately 4-5 metres. The horizontal and vertical alignment of the public road is such that I would be satisfied that sufficient sightlines would be available in both directions at the proposed vehicular entrance. In this regard I would consider that the proposal would be satisfactory in regards to traffic safety and convenience.

9.5 Wastewater Treatment:

9.5.1 The proposal entails installation of a proprietary wastewater treatment system. Site characterisation was carried out including trial hole and percolation test.

The trial hole test notes that the water table level was not encountered in the depth of the trial hole. The percolation tests results for P and T tests carried out by the standard method indicate percolation values that are within the standards that would be considered acceptable for operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. I would consider that on the balance of information it is considered that the applicant has demonstrated adequately that the proposed wastewater treatment would be acceptable and would not compromise public health. As such I would consider that the drainage proposals would be acceptable. I would note that the Councils Environmental Health Officer was requesting clarification of the location of a well serving the existing dwelling to the south to ensure the required separation distances under the EPA manual could be met. This may require further clarification.

9.6. Other Issues:

- 9.6.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

RECOMMENDATION

I recommend refusal based on the following reasons.

REASONS AND CONSIDERATIONS

1. On the basis of the documentation submitted with the application and appeal, the Board considered that the applicant does not come within the scope of the housing need criteria for a dwelling at this location as set out in the "Sustainable Rural Housing Guidelines for planning authorities" issued by the Department of the Environment, Heritage and Local Government in April, 2005 and the current Development Plan for the area and is not satisfied that his housing need could not be satisfactorily met in an established settlement centre. Accordingly, it is considered that the proposed development would be contrary to Ministerial guidelines as set out in the Sustainable Rural Housing Guidelines and to the proper planning and sustainable development of the area.

2. Having regard to the location of the site within an area designated as an Area of Outstanding Natural Beauty (Mountain and Lakeshore Areas of Outstanding Natural Beauty) in the Wicklow County Development Plan 2010-2016, the inappropriate design and scale of the dwelling and the necessity for a severe cut and fill on the sloped site providing for a significant scarring of the landscape, it is considered that the proposed development, by reason of its siting and design, would form an

excessively prominent and obtrusive feature on the landscape and would seriously injure the visual amenities of this sensitive rural area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Colin McBride
25th February 2016