

# An Bord Pleanála



## Inspector's Report

**Appeal Reference No:** PL27.245850

**Development:** Change of use (to remove cond. 6 of previous permission 01/4344 as amended by the permission granted under Planning Reg. Ref. 08/645) from permitted use (enurement clause) and retain house, entrance, garage and sheds to be used for domestic purposes and for a new sewerage treatment system and percolation area and site works at Whitestown Upper, Stratford on Slaney, County Wicklow.

### Planning Application

Planning Authority: Wicklow County Council  
Planning Authority Reg. Ref.: 15/1004  
Applicant: Raymond Brophy  
Planning Authority Decision: Refuse permission

### Planning Appeal

Appellant: Raymond Brophy  
Type of Appeal: First party  
Date of Site Inspection: 7<sup>th</sup> April 2016

**Inspector:** Mairead Kenny

## **1.0 SITE LOCATION AND DESCRIPTION**

The appeal site is located off a minor road and at an elevated site close to the Blessington to Tullow Road (N81) in west Wicklow. Dunlavin village is nearby and is the nearest settlement. The site is in a rural area which is contained within the western edge of the Wicklow Mountains. The site is at an elevation of about 620m OD and the existing dwellinghouse is visible from the N81 particularly from the north-east. The hill to the rear peaks at 724mOD. There are expansive views to the mountain landscape from the site. The two sites to the south of the site are developed for residential use. The closest house, which is to the south appears to be unoccupied and may be incomplete.

The subject site is of stated area of 0.41 hectares. On site is a house of stated area of 290 square metres and sheds and a garage which are in total 162 square metres in area. At the time of my inspection I noted that the garage and sheds were all in use for purposes which I considered were in association with the residential use of the house. There was no evidence of any commercial activity.

The dwellinghouse has an existing septic tank. The surface water flows freely from the site and there is evidence of possible related damage to the public road adjacent the site. I did not gain access to the interior of the house at the time of inspection but noted that it is occupied. The attic space has been developed and is presently lit by velux windows which are located to the rear.

Photographs of the site and surrounding area which were taken by me at the time of my inspection are attached.

## **2.0 PROPOSED DEVELOPMENT**

Permission is sought for the following:

- change of use to remove the enurement condition which attached to the previous permission
- to retain the house as constructed
- to retain sheds and garage for domestic purposes only
- to install a new sewerage treatment system and percolation area.

Following a direction by the Board revised notices were sought and received to indicate the development as described above, particularly with reference to the occupancy condition.

The site notice was in place at the time of my inspection.

### **3.0 PLANNING HISTORY**

Reg. Ref. 15/586 – permission refused for three reasons – details of application and decision are similar to the existing.

Reg. Ref. 08/645 permission was granted to Natasha Eston for the retention of a partly constructed bungalow and septic tank as granted under previous permission 01/4344 and permission granted for completion of the dwellinghouse and construction of a percolation area to EPA recommendations and ancillary works.

Permission was refused for a change of design from that permitted under Planning Reg. Ref. 01/4344 and for permission for a domestic garage. The three reasons for refusal related to settlement policy, suitability for septic tank and consolidation of unauthorised development.

Under Planning Reg. Ref. 01/4344 permission was granted by for a dwellinghouse for a dwellinghouse for Natasha Eston. This decision was stated to be following a resolution of the Council members under ‘section 4’.

### **4.0 PLANNING AUTHORITY DECISION**

#### **4.1 Planning and technical reports**

Planner’s report: Recommended that permission be refused for three reasons related to settlement policy, design and scale of shed and location of well not shown.

District Engineer: Recommended refusal for reason related to surface water disposal.

Principal E.H.O. Recommended that applicant show the well location.

#### **4.2 Submissions**

The Planning Authority did not receive any submissions in relation to the application.

#### **4.3 Planning Authority Decision**

The Planning Authority refused permission for the following reasons.

1. The existing dwelling is located within an Access Corridor Area, a landscape area which is subject to pressure for development, and where policy is to restrict rural housing development to cases where there is a bona fide necessity to live in the rural area instead of in an existing settlement. The applicant has not proven that he would fulfil the criteria under RH14 given that he already owned and occupied a dwellinghouse in the rural area.

2. Design, materials, scale and size of garage and sheds excessive and could not be considered ancillary and would contribute to the commercialisation of the rural area.
3. As the location of the well is not shown it cannot be confirmed that the development would not be prejudicial to public health.

## **5.0 GROUNDS OF APPEAL**

The first party appeal is summarised as follows:

- Mr Brophy purchased a site in Winetavern, Stratford on Slaney in 2003 which had permission for a house and he constructed and lived in this house until 2009-2010 at which time he sold the house due to financial difficulties and with the agreement of the Planning Authority
- Mr Brophy then purchased a partially built house (to wall-plate level) at Whitestown Upper and built and completed the house to a high standard
- The sheds for his business as an Electrical Contractor were needed
- He was unable to get information regarding the septic tank in situ
- As noted in the planner's report some of the evidence submitted was deemed acceptable under Planning Reg. Ref. 03/8797 under RH14 and should also be considered acceptable now as the applicant has lived in the area for over 12 years and all three children attend school locally
- the applicant is now employed in Dublin Products in Dunlavin and the stores will be used for domestic purposes only
- the well is as permitted under Planning Reg. Ref. 03/8797
- the Planning Authority never advised when consenting to the sale of the former home that this would be used in consideration of future applications and the Planning Authority has already accepted that the applicant complies with RH14.

## **6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL**

### **6.1 Planning Authority response**

The essence of the reasons for refusal are re-iterated.

## **6.2 Observations**

None.

## **7.0 POLICY CONTEXT**

7.1 The plan for the area is the Wicklow County Council Development Plan 2010 - 2016.

Objective RH14 refers to residential development in the rural area and the criteria under which applicants will be assessed.

Policy RH4 requires the highest standards of house design and siting.

## **7.2 National Policy**

### **The Sustainable Rural Housing Guidelines for Planning Authorities, April 2005**

The site would be considered to fall within a Stronger Rural Area based on the indicative map which accompanied the Guidelines. The site is very close to the area indicated as being Under Strong Urban Influence.

## **8.0 ASSESSMENT**

Following my inspection of the site and review of all documents on file and the prevailing policy context, I consider that the relevant issues in this appeal are:

- Principle of development and removal of occupancy condition
- Design of house and sheds
- Surface water and wastewater
- Appropriate Assessment.

### **8.1 Principle of development and removal of occupancy condition**

The principle of the development of a house is established but the issue relates to the occupancy. The permitted house was deemed to be acceptable only in the context of its use to provide for the necessary needs of a person who was considered to have a need to reside in this rural area, where a restrictive policy of control generally applies. The permission for this site included a standard condition to the effect that the use be restricted to the applicant 'or to other person primarily employed or engaged in agriculture in the vicinity or to other such class of persons as the Planning Authority may agree to'.

The information presented indicates that the applicant purchased the house while it was still at wall plate level.

Regarding the occupancy of the dwellinghouse I submit that the question now is whether the applicant would also be considered to comply with the relevant policy, which is RH14.

The applicant has indicated willingness to enter into an agreement under section 47 of the Act. His claim effectively when taken in conjunction with the matters noted by the Planning Authority is:

- he was deemed to comply with the relevant criteria when he was granted permission for a house in nearby Winetown (600m from the site according to the report of the Council's planner) under Planning Reg. Ref. 03/8797
- is employed locally
- has children in school
- had to sell his former home for financial reasons due to decline in his employment as an electrical contractor
- is from nearby Dunlavin originally.

I consider it reasonable to conclude that the applicant is a 'permanent native resident' as defined under the plan and the Planning Authority does not appear to disagree with this conclusion. The planner's report notes also that 'the applicants already had a dwelling to meet his needs ... the sale of same for financial reasons does not entitle him to another rural dwelling'.

There are 16 no. criteria under which persons may be deemed to comply with RH14 none strictly refer to financial circumstances. In this respect I agree with the Planning Authority's literal interpretation of the policy set out under section RH14. I consider that while the applicant's case has merit and might be deemed to comply with elements of the policy provision, it does not comply strictly with the policy as written.

The Board may wish to consider whether the intention of criteria no. 13 of RH14, which relates to disposal following legal separation or divorce is a provision based essentially in similar grounds, namely financial circumstances. The Board may wish to consider whether it would be appropriate in the circumstances to grant permission. My conclusion is that there is no policy provision for a grant of permission in circumstances following financial difficulties. The pressure for development in this area and the precedent which a grant of permission would set, together with the policy context require me to recommend to the Board that the decision of the Planning Authority be upheld.

## 8.2 Design of House and Sheds

Policy RH4 requires the highest standards of siting and design of houses. I have referred earlier to the fact that the development is prominent in views including from the nearby national secondary road. The ridge height of the proposed house is 6120mm, while the house shown on the earlier permission was 5300mm<sup>1</sup>. Spot heights on site are inaccurately shown on the application drawings. The development as constructed is therefore in excess of the height of the permitted development. In addition requirements regarding the colour of the house have not been adhered to – there is a requirement for an off-white colour.

The Planning Authority in its enforcement action has referenced a requirement to carry out all necessary works / alterations to the design and layout of the development to comply with the development as detailed in the documents of Planning Reg. Ref. 08/645. This would require substantial alteration to the house involving alterations at roof level and probably omitting the attic level. However, the changes would materially and positively alter the design of the house, which breaches the skyline. No proposals are submitted to mitigate the visual impact of the development undertaken. The development as proposed would be visually intrusive.

The Planning Authority has not refused permission for reason related to the design of the house. I do not consider that this would constitute a new issue in this case in my opinion. In view of the prominent nature of the site and the height and mass of the development about ground I consider that a refusal of permission is warranted for this reason. Though it may not be clear from the submitted photographs the house is far more dominant and obtrusive when viewed from the national road than is the adjacent house. The substantive difference between the two houses is the roof profile and external finishes.

Notwithstanding the former use of the sheds for purposes associated with the applicant's trade, I am not convinced by the assertions of the Planning Authority in relation to the scale of the sheds. While the sheds are as large as many residential dwellinghouses it is also noted that they are sub-divided. As far as I could determine at the time of my inspection the garage and sheds were all in use associated with the dwellinghouse. Regarding the design of the sheds I

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<sup>1</sup> Planning Reg. Ref. 08/645

note their location to the rear of the main building line established by the two dwellinghouses. I consider that screening by small planted berms planted with hawthorn or similar species would significantly mitigate the visual impacts. Such measure could be required by condition.

### **8.3 Wastewater treatment and surface water disposal**

As the site has been previously deemed to be suitable for wastewater disposal to ground and a new unit and percolation area are proposed under the current application, I do not consider that reason 3 of the decision of the Planning Authority should be re-iterated. The requirement of the relevant official was to have the location of the well identified. This issue remains outstanding and in the event that the Board is minded to grant permission I consider that it should be addressed by way of a request for revised proposals.

The matter of surface water drainage from the site could be addressed by way of condition.

### **8.4 Appropriate Assessment**

The site is located about 500m from the River Slaney cSAC to the east. I consider that in view of the established nature of the use of the site and the completed nature of the scheme, together with the separation distance from the 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.

## **9.0 RECOMMENDATION**

I recommended that the Board uphold the decision of the Planning Authority and that permission be refused for the following reasons and considerations.

### **REASONS AND CONSIDERATIONS**

1. Having regard to the provisions of Rural Housing Policy RH14 of the Wicklow County Development Plan 2010-2016 and the previous ownership by the applicant of a dwellinghouse in this rural area, the Board is not satisfied that, on the basis of the submissions made in connection with the planning application and the appeal, the applicant has demonstrated a need to reside in this rural. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the height and detailed design of the proposed dwelling and its location on an elevated site, the Board considered that the development



which it is proposed to retain would fail to integrate successfully within the site. The development would therefore seriously injure the visual amenities of the area and be contrary to the objectives as set out in Policy RH4 of the Wicklow County Development Plan 2010 – 2016 regarding rural house design. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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**Mairead Kenny**  
**Inspectorate**  
**8<sup>th</sup> April 2016**