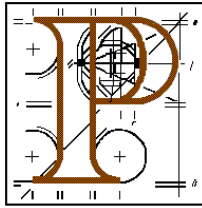


An Bord Pleanála



Inspector's Report

PL27.245873

DEVELOPMENT:- 3 no. two-storey houses and site works at the rear of 'Keale', Friars Hill, Wicklow Town.

PLANNING APPLICATION

Planning Authority: Wicklow County Council
Planning Authority Reg. No: 15/627
Applicant: Ciara, Aideen & Dara Broe.
Application Type: Permission
Planning Authority Decision: Grant

APPEAL

Appellant: Seamus Walker & Others
Type of Appeal: 3rd-v-Grant
DATE OF SITE INSPECTION: 17th February 2016
Inspector: **Colin McBride**

1. SITE DESCRIPTION

- 1.1 The appeal site, which has a stated area of 0.1305 hectares, is located in the western outskirts of Wicklow town in a residential area. Friar's Hill is a mature residential area with primarily low density housing fronting both sides of the main road broken up by a number of housing estates. 'Keale' is a large single storey dwelling accessed off Friar's Hill with ample private open space within its curtilage. There is a front garden, a rear garden, a tennis court and a vacant portion of land at the northern extremity of the dwelling's curtilage. The appeal site is this portion of land to the rear of 'Keale'. The site slopes from south to north. It is bounded to the south by the tennis court of 'Keale', to the west by Fernhill, a new residential infill development of 8No. houses located and accessed from within the Glebemount housing estate.
- 1.2 The northern site boundary is a cul-de-sac turning area with a number of dwelling fronting onto the turning area from the Glebemount estate. It consists of a tall band of leylandii trees with a retaining wall and a sloping road verge. The Glebemount houses abutting the site are dormer bungalows and below the estate road resulting in a number of steep sloping driveways, with consequent on-street parking in the area. The eastern site boundary Friarshill housing estate which is a low density scheme of bungalow and dormer bungalows positioned at a lower level than the appeal site.

2. PROPOSED DEVELOPMENT

- 2.1 Permission is sought to construct 3 no. two-storey dwellings and associated site works. It is proposed to construct the dwellings to the rear of an existing detached dwelling that fronts onto Friarshill. The dwellings are to be accessed from the existing residential development of Glebemount and the existing residential distributor road that runs along the northern boundary of the site. Each of the dwellings has a floor area of 162.5sqm and a ridge height of 7.5m. It is proposed to open an entrance off the distributor road serving Glebemount and provide an internal access road running parallel to the northern boundary with an individual driveway and off-street car parking for each dwelling. The dwellings feature a pitched roof and an external finish that is a mixture of brick and a plaster/render finish. In response to further information the proposal was revised to provide for three individual entrances onto Glebemount with this layout the approved one.

3. LOCAL AND EXTERNAL AUTHORITY REPORTS

3.1

- (a) Senior Executive Engineer (17/07/15): The same traffic issues arise as with the previous application ref no. 04/622843 and subsequent appeal.
- (b) Irish Water (16/07/15): Further information required in relation to connection to the sewer.
- (c) Water Services (17/07/15) As per report of Irish Water.
- (d) Planning Report (06/08/15): Further information required including clarification of ridge height and ground levels, details of the retaining wall proposed along the rear boundary, details of the entrance gradient, submission of a contiguous elevation with existing dwellings, details regarding the sewer connection. It was requested that alternative boundary treatment be submitted along the eastern and western boundary.
- (e) Planning report (23/09/15): Clarification of further information including justification for the gradient/cross fall on the access road serving the dwellings as well as justification for the proposal for a single entrance rather than 3 no. individual entrances.
- (f) Senior Executive Engineer (14/10/15): No comments to add.
- (g) Engineers Report (16/10/15): A condition should be imposed requiring the provision of 3 no. individual entrances with provision of off-street car parking for two spaces.
- (h) Planning Report (15/11/15): The proposal was considered to be acceptable in regards design scale, impact on adjoining amenities and traffic safety. A grant of permission was recommended subject to the conditions outlined below.

4. DECISION OF THE PLANNING AUTHORITY

- 4.1 Permission granted subject to 14 conditions. Of note are the following conditions...

Condition no. 3: Contribution in respect of the Wicklow Port Access and Town Relief road.

5. PLANNING HISTORY

- 5.1 PL86.212417: Permission refused for 4 no. houses. Refused based on one reason...

1. Having regard to the layout of the site and the existing pattern of development in the vicinity, it is considered that the proposed development would constitute a visually obtrusive and substandard over-development of

the site, which would seriously injure the amenities of the area and of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

6. PLANNING POLICY

- 6.1 The relevant plan is the Wicklow Town-Rathnew Development Plan 2013-2019. The site is zoned RE, Existing residential with a stated objective 'to protect and preserve existing residential uses and provide for infill residential development'.

7. GROUNDS OF APPEAL

- 7.1 A third party appeal has been lodged by the following...

Clare & Seamus Walker 24A Glebemount
Stephanie McQueen, 24 Glebemount
Marian & Charles Hadden, 23 Gledemount
Kathryn & Dave Corcoran, 22 Glebemount
Mary & Liam Devlin 21 Glebemount
Margaret & Maurice Cuffe, 19 Glebemount
Gail & Shane Fingleton, 25A Glebemount

The grounds of appeal are as follows...

- The application is invalid as the applicants are unable to demonstrate sufficient legal interest in the land between the existing Glebemount estate road and the northern boundary of the site. The appellants note a number factors to demonstrate this point.
- The appellants raise the issue of traffic safety and notes the internal report of the Council's Engineer and the Planning Inspectors report in relation to ref no. PL86.212417.
- The appellants note there is no provision of public open space.
- The appellants are critical of the assessment of the proposal highlighting errors in the conditions and speculating that their objection may not have been fully considered.
- The appellants note the issue of the difference in levels between the road and the dwellings and raise concerns about the adequacy of the foul and surface water sewers.
- It is noted that the proposed dwellings due to their elevation will result in direct intrusion from the ground and first floor windows on the front elevation in regards to the first floor windows serving the bedrooms in no.s 24 A, 25A and 25.

8. RESPONSES

8.1 Response by Ciara Broe on behalf of the applicants, Ciara, Aideen & Dara Broe

- The applicants note that the appellants are using a letter from the developer of Glebemount (Jimmy Esmonde) to state their case and in particular their objection on the grounds of land ownership. It is noted that this letter should not be taken into account and that the individual in question has not objected or made a submission in regards to the current proposal. The applicants have submitted a copy of a letter to the Local Authority that clarifies the land ownership issues in regards the proposal.
- The applicants noted that Condition no. 3 requires payment of a development levy in regard to the Port Access Road. It is noted that such a level should not apply to the proposal.
- The applicants note that condition no. 6 requiring a construction management plan is unnecessary. The appellants also note that there has been no significant traffic issues in regarding the existing cul-de-sac.
- It is noted that condition no. 8(b) requiring provision of hardwood windows is excessive and has not been applied to other similar developments.
- The applicants also query the need for a landscaping plan given proposals to construct walls along the boundaries of the site as required under condition no. 11.
- The applicants note that condition no. 12 does not make sense and it is not clear what is required. It is noted that the applicants proposal for the front boundary wall is more in keeping with existing front boundary wall treatment on adjoining sites.
- The applicants note that condition no. 12 would potentially reduce amenity to the rear of the proposed dwellings due to excessive height of the wall required and that the proposal as submitted are sufficient in regards to boundary treatment.

8.2 Response by Ciara Broe on behalf of the applicants, Ciara, Aideen & Dara Broe

- Submission of a letter from the parents of the applicants giving written permission to apply for planning permission on the site.

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
Development control objectives
Visual/residential amenity/pattern of development
Traffic safety
Other issues

9.2 Principle of the proposed development/development plan policy:

9.2.1 The relevant plan is the Wicklow Town-Rathnew Development Plan 2013-2019. The site is zoned RE, Existing residential with a stated objective 'to protect and preserve existing residential uses and provide for infill residential development'. The use proposed is residential and is a permitted use within this zoning objective. The development of an infill residential development at this location would therefore be acceptable in principle, subject to compliance with other relevant Development Plan criteria.

9.3 Development Control Objectives:

9.3.1 In relation to the provision of private open space the requirement under the Development Plan is 60-75sqm for 3/4/5 bed dwellings. The level of private open space provided is in excess of such requirements in the case of all dwellings proposed. Despite being raised by the appellants I would consider the lack of public open space to be satisfactory. I would consider that the proposal is a small infill development and that the requirement for public open space would compromise the design rather than enhance it. In regards to car parking the requirement of the Development Plan is 1 car space per dwelling unit. In the case of the proposed development it is proposed to provide for off-street car parking for two cars in the case of each dwelling. This standard would be in compliance with the requirements of the Development Plan. The proposal is compliant with the general development standards in the Development Plan and provides for a development of a satisfactory standard.

9.4 Visual/residential Amenity/pattern of development:

9.4.1 The proposal is for 3 no. two-storey detached dwellings to be accessed from and fronting onto the distributor road serving Glebemount residential development. The overall scale and type of development proposed would not be out of character in an established residential area such as this with the existing dwellings in Glebemount being dormer style dwellings and an adjoining development of two-storey dwellings in the form of Fernhill Court. The proposal replicates the pattern of development in Glebemount with each dwelling fronting onto the residential distributor road and featuring a front and rear garden. In regards to overall impact on visual amenity, the design and scale of development would not be out of character at this location and would neither be a prominent or intrusive development given the ground levels of the site in regards lands to the north and existing dwellings immediately adjacent (Fernhill Court), which have a higher finished floor level and ridge height.

9.4.2 The appellants raise concerns regarding impact on residential amenity and in particular note that the level of the proposed dwellings relative to the appellants dwellings on to the opposite side of the distributor road would result in overlooking/loss of privacy to first floor windows. The siting, layout, design and scale of the development is such that it would have no significant or adverse impact on the amenities of adjoining properties. In relation to the existing dwelling to the south 'Keale', the appeal site is already separate from the curtilage of the existing dwelling and is located at a much lower level. The proposal for the new dwellings would not compromise the amenities of the existing dwelling (level of open space parking etc) while providing an appropriate standard of amenity for the new dwellings. The change in levels would also ensure no adverse impact on privacy with an adequate degree of separation between the proposed development and the existing dwelling. In regards to the dwellings in Fernhill Court such are located at much higher ground level and have a higher ridge height than the proposed dwellings. This means that the proposal would have no impact on the amenities of these existing properties. I am satisfied that there is also sufficient separation between the proposed dwellings and the existing dwelling to the east in the Friarshill residential development with the pattern of development and relationship between the proposed and existing dwelling being not out of character in a suburban built up area such as this. I would recommend a condition be attached requiring the provision of obscure glazing in the first floor window serving an ensuite bathroom on the eastern elevation of the dwelling adjacent the boundary with Friarshill.

9.4.3 In regards to the appellants property the proposed dwellings front onto the distributor road and face the front elevation of existing dwellings on the opposite side of the road. The proposed dwelling are higher than the level of distributor road while the appellants dwelling are at a lower level that the distributor road. In terms of actual separation between the dwellings on the opposite side of the road, such is 29m. I would consider such separation to be sufficient to protect amenities and would note that such is quite a way in excess of the commonly applied 22m standard between back to back dwellings in the case of first floor windows. The proposal provides for a fairly standard and common pattern of development with dwellings each side of the distributor road and in this case the proposal would have no adverse impact on the residential amenities of the existing dwellings on the opposite side of the road.

9.5 Traffic:

9.5.1 The issue of traffic safety was raised and it appears that the due to the design of the dwellings in Glebemount with steep sloped driveways a significant

amount of on-street car parking occurs along the distributor road and at the end of the turning area. It would appear the concerns area regarding this arrangement taken in conjunction with additional turning movements to be generated as well as possible more on-street car parking and increased congestion. The approved development provides for three separate access points for the dwellings and the overall design and layout of such is satisfactory and is not an out of character layout for a distributor road such as this. The position of the entrance would also not interfere with use of the turning area. In addition I would note that the proposal is satisfactory in that it provides for off-street car parking for two cars for each dwelling and sufficient turning space within the site for cars to exit the site forward rather than reversing (in excess of Development Plan standards). Despite the high degree of on-street car parking at this location, I am satisfied based on the fact that the proposal is for a residential development of appropriate scale and design accessed off an established residential distributor road and where sufficient off-street car parking is provided, that the proposal would not result in the generation of traffic movements that would constitute a traffic hazard or worsen congestion at this location.

9.6. Other Issues:

9.6.1 One of the main issues raised in the appeal concerns landownership. The appellants note that the application was invalid as the applicants had failed to demonstrate sufficient legal interest in the strip of land between the residential distributor road and the northern boundary of the site. In their submission and their appeal the appellants submitted a letter from a Jimmy Esmonde who was the original developer of Glebemount stating that he was the owner of this land and had not given consent for its inclusion in the application site for the purposes of development. The issue of land ownership arose in the previous case on site under ref no. PL86.212417 and I have attached the inspectors report in this case.

9.6.2 The issue of land ownership focuses on the strip of land along the northern boundary of the site and there was a previous court case, Circuit Court Record, No. 63/90E, dated the 18th of March 1997. The case was between Andrew and Mary Broe (Plaintiffs) and Thomas Meyler, James Esmonde and Polerro Properties Limited (Defendants) defining the title of lands along the northern site boundary of 'Keale' and the Glebemount estate. The decision of the court case was that the plaintiffs have title over a 6ft strip to the north of the existing concrete block boundary wall along the northern boundary of the site. Based on such it is clear that the applicants have title over lands along the northern boundary however it is not clear if this is the full extent of the lands in question. What is notable from the site location maps and site layout maps submitted is that the site boundaries do not actually include the full extent of lands subject to the development. I would particularly refer to the site

layout submitted on the 14th day of October 2015 in which all of the individual entrance requires land outside of the site boundary. It appears based on the drawings that the applicants are not laying claim to ownership of the full extent of the lands located between the northern boundary and the distributor road. In this regard I would note that there is a possibility that the development may not be able to be implemented or access to be provided due to the fact that some of the development is outside of the site boundary. The issue of disputes regarding landownership are beyond the remit of the board, I would however note that in this case based on the drawings submitted the applicants are not claiming to own the full extents of lands subject to the development. In terms of the proper planning and sustainable development of the area the proposal is satisfactory as outlined in the earlier sections of this report.

- 9.6.3 The applicants in their response noted that the development contribution in respect of the Wicklow Port Access and Town Relief Road under condition no. 3 should not apply in this case. There is a supplementary Development Contribution Scheme (Section 49) in respect of the provision of Wicklow Port Access and Town Relief Road and all development within the town boundary are subject to such with all residential development incurring a contribution of €5,500 per unit (€2,500 per one off unit below 130sqm). In this case the terms of the Development Contribution scheme have been properly applied and condition should be attached in this respect.
- 9.6.4 The applicants question the conditions and requirements regarding boundary treatment. The applicant have outlined details of boundary treatment for all boundaries including a 1m high wall on the northern boundary, a 1.5m concrete wall with planting along the western boundary, a 1.5m high timber fence and tree planting along the eastern boundary, and retention of the existing steel mesh fencing and new planting along the southern boundary. I am satisfied that the boundary treatment proposed would be sufficient and acceptable. In regards to the front boundary I am satisfied that a proposal for a 1m high wall would be acceptable.
- 9.6.5 The applicants note the requirement for a construction management plan and to install hardwood windows are onerous conditions. In this regard I would consider that the provision of a construction management plan is an acceptable condition and necessary in the interests of orderly development. In the case of the windows I would consider that such is an onerous requirement and unlikely to have significant material effect in regards to the overall impact of the dwelling. I would advocate attaching a general condition requiring external finishes to be agreed prior to the commencement of development in this case.

9.6.6 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 a grant of permission subject to the following conditions.

REASONS AND CONSIDERATIONS

Having regard to the current land use zoning objective for the site, as set out in the Wicklow Town-Rathnew Development Plan 2013-2019, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of traffic safety and convenience, would not seriously injure the amenities of the area or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and as amended by the revised plans submitted on the 14th day of September 2015 and 14th day of October 2015 , except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. The window at first level on the eastern gable of the dwelling adjacent the eastern site boundary shall be fitted with obscure glazing and such shall be permanently retained.

Reason: In the interests of residential amenity and orderly development.

4. Water supply and drainage arrangements, including attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interests of public health.

5. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

6. Site development and building works shall be carried only out between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

7. A plan containing details for the management of waste and recyclable materials within the development, including the provision of facilities for the storage, separation and collection of the waste and recyclable materials and for the ongoing operation of these facilities within each house plot shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and recyclable materials, in the interest of protecting the environment.

8. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

9. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

10. All boundary walls shall be suitably capped and rendered (on both sides in the case of the northern boundary) in a finish that matches the external finish of the dwellings.

Reason: In the interests of visual amenity.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the

authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

12. The developer shall pay to the planning authority a financial contribution in respect of the Wicklow Port Access and Town Relief Road in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Colin McBride
29th February 2016