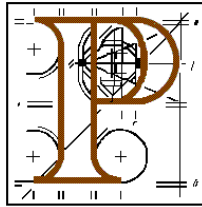


An Bord Pleanála



Inspector's Report

Development: Change of use/removal of occupancy clause re: condition 2 of planning Reg. Ref. (03/9484)

Planning Application

Planning Authority: Wicklow County Council
Planning Authority Reg. Ref.: 15/884
Applicant: Michael & Margaret Downey
Type of Application: Permission
Planning Authority Decision: Grant Permission + Conditions

Planning Appeal

Type of Appeal: First Party
Appellant: Michael & Margaret Downey
Observers: None
Date of Site Inspection: 5th April 2016

Senior Inspector: **Fiona Tynan**

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1.0 SITE DESCRIPTION AND LOCATION

- 1.1 The appeal site is located off the local road from Ballynabarney to Glenealy Road. The site is situated to the east of this road and has a splayed entrance which is bounded by a 1.8m high stone wall. The remainder of the western boundary to the site is made up of a raised grassed mound. On the appeal site is a two storey detached dwelling which is positioned in the southeastern corner of the site. A long marginally winding driveway connects the dwelling to the entrance gates.
- 1.2 Also located on the site is a horse paddock, and horse stables for approximately 3 horses. Abutting road side is a horse paddock. Other paraphernalia present on site were two horse boxes, 2 sheds and a larger storage structure on site. Two horses were grazing in a field abutting the driveway when present. The stated area of the site is 2.58ha.
- 1.3 Attached to this report are photographs taken on the day of the site visit.

2.0 PROPOSAL

- 2.1 The proposal is to remove condition no. 2 of a previous grant of permission, Reg. Ref. 03/9484. Reg. Ref. 03/9484 concerns the grant of permission to Sean & Mandy Kavanagh for a dwelling and wastewater system on the subject site. Condition no. 2 of that permission restricted the use of the proposed dwelling to the applicant, a person engaged in working on the farm of which the site forms a part or to other persons primarily employed or engaged in agriculture in the vicinity or to other such class of persons as the Planning Authority may agree to in writing.
- 2.2 The background to this application is provided in the appeal documentation. Briefly, the applicants, Michael & Margaret Dawney purchased the property on the appeal site in 2010, but the Council subsequently informed them that they were not eligible to reside at the property due to the stipulation of restricted occupancy by virtue of Condition no. 2.

3.0 PLANNING CONTEXT

- 3.1 The Planning Officer's Report outlines the planning history pertaining to the site including an application made by Michael Dawney for a domestic garage/storey and an application by Alan Dawney for commercial dog boarding kennels, both of which were refused permission. An application by Sean Kavanagh and Mandy Hunter is also referred to wherein the original benefactors of the permission sought to have condition no.2 removed. The Planning Officer cites Section 6.3.2 of the County Development Plan where restrictions are outlined for the consideration of residential development in the open countryside. An extract of this section is appended to this report.
- 3.2 The Planning Officer outlines that the dwelling, the subject of the application, was constructed circa 2004. The Council received letters from the original occupants in September 2007 which indicated that the house needed to be sold due to marriage breakdown and they sought clarification on the position regarding the Section 38 restriction as per

condition no. 2 of that permission. The occupants were advised that they would have to sell the house to persons who complied with the Policy SS9 (rural housing policy) or apply for retention of the dwelling with removal of condition no. 2. The original occupants subsequently sought to have the condition removed, but were refused permission. The Planning Officer states that the present applicants, Michael and Margaret Dawnay, purchased the dwelling without seeking approval by the Planning Authority to take over the Section 38 occupancy condition. This application then sought the removal of the Section 38 occupancy condition.

- 3.3 The Planning Officer states that the removal of Condition no. 2 can only be permitted where it can be shown that the dwelling has been occupied in accordance with the rural settlement strategy of the County Development Plan. Otherwise the settlement strategy of the Development Plan is undermined and the rural landscape of the County of Wicklow cannot be protected from haphazard development.
- 3.4 The Report by the Planning Officer outlines that the occupancy burden was registered on the dwelling on site in October 2008 and therefore the current applicants/purchasers of the dwelling would have therefore required to be persons who would qualify under the CDP rural settlement strategy. It is argued by the Planning Officer that there is no information on file that the Applicants, Michael and Margaret Dawnay, complied with the occupancy condition. From details pertaining to history files on the subject applicants, it is indicated that Mr. Dawnay previously owned a dwelling, Tír Na Nog, Virginia Road, Newcastle, which was sold in October 2005. It is also stated that Mr. and Mrs Dawnay owned a farm house and land at Newcastle and were selling this property to downgrade. The Planning Officer concludes that as the applicants already owned a dwelling, they would not have qualified for another dwelling in the rural area.

3.5 Decision of Planning Authority

On the 4th of December, 2015, Wicklow County Council issued a decision to refuse permission for the proposal for 1 no. reason as follows:

“The existing dwelling is located within an Access Corridor Area, this is a landscape which is subject to pressure for development, and where development is restricted to avoid a serious deterioration in the landscape quality. Accordingly to ensure the protection of this landscape it is the Council’s settlement strategy policy 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 an existing settlement. It is considered that the applicants have not proven that they would fulfil the housing need criteria as set out under Objective RH14 of the County Development Plan 2010-2016 given that they already owned a dwelling. Thus to allow the removal of the occupancy restriction set out under PRR03/9484 in the absence of evidence that the dwelling was occupied in accordance with the settlement strategy of the County Development Plan would be contrary to this strategy, would set a precedent for other similar applications, would lead to the erosion of the landscapes of Wicklow and

would be contrary to the proper planning and sustainable development of the area”.

3.6 Planning History

3.6.1 Subject site:

03/9484: Refers to an application by Sean and Mandy Kavanagh for planning permission for a dwelling and wastewater system on site. Permission was subject to 26 conditions. Condition no. 2 of that permission stated:

- (a) *“The use of the proposed dwelling shall be restricted to the applicant <a person engaged in working on the farm of which the site forms a part> or to other persons primarily employed or engaged in agriculture in the vicinity or to other such class of persons as the Planning Authority may agree to in writing. This requirement shall be embodied by a legal undertaking that shall be registered as a burden against the title of the land in the Land Registry or Registry of Deeds and shall be of ten years duration from the date of this registration. Evidence of this registration shall be submitted to the Planning Authority within twelve months of the commencement of development on the site.*
- (b) *The Planning Authority will consent to any sale of the completed dwelling by a lending institution in exercise of its powers as Mortgager in possession of this property and likewise consent to any sale by any person deriving title from the lending institution.*

(nominate FARM for provision for farm dwelling)

REASON: To ensure that development in this area of high amenity is appropriately restricted in the interests of proper planning and development and visual amenity”.

09/522: Refers to an application by Sean Kavanagh & Mandy Hunter which sought to remove Condition no. 2. Permission was refused for the following reason:

1. *“The Councils 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 existing settlements. The applicants have not provided sufficient planning reason to warrant the removal of the Section 47 agreement. The removal of the Section 47 agreement would undermine the Council’s rural settlement strategy, would lead to the proliferation of non essential housing in rural areas, would further erode the visual amenities of the area and would be contrary to proper planning and sustainable development”.*

12/6563: Permission was sought by Alan Dawnay for a domestic garage/store and commercial dog boarding kennels for 4 reasons. The first reason cites that the applicant does not comply with the requirements of Condition 2 of Planning Permission Reference 03/9484 and therefore the use of the dwelling on site is unauthorised and it is considered that to permit the proposed development would consolidate unauthorised development on site, would set an undesirable precedent, would undermine the planning legislation and would be contrary to the proper planning and sustainable development of the area.

13/8498: The Applicant, Michael Dawney sought permission for a domestic garage, store. Permission was refused for 2 reasons as follows:

1. *Having regard to the planning history with respect to the dwelling on this site, in particular that permission was granted for this dwelling as it represented a necessary dwelling in a rural area having regard to the provisions of the settlement strategy of the County Development Plan, and given that the proposed garage would reinforce the residential usage of this dwelling, it is considered that as the current applicant would not come within the provisions of those persons who would qualify under the rural settlement strategy that to allow this development would consolidate this unauthorised development on site, would undermine the rural settlement strategy of the County Development Plan, would set an undesirable precedent for similar haphazard development, contrary to proper planning and sustainable development.*
2. *The proposed garage/store by virtue of its size and scale and lack of justification for such size and scale is considered excessive, over and above the needs of the existing dwelling and could not be considered ancillary to the main dwelling. To allow this structure would set an undesirable precedent for similar large scale development in the absence of a genuine need and would be contrary to the amenities of the area and to the proper planning and sustainable development of the area.*

3.7 Planning Policy

3.7.1 The operative Development Plan is the Wicklow County Development Plan 2010-2016.

3.7.2 Rural Housing Policy is outlined within Chapter 6 of the Development Plan. I note that the appeal site is located in a Corridor Area as per Map no. 17.09 of the Plan. The development plan outlines the pressure the entire county is under for residential development due to its proximity to Dublin. As outlined in the National Spatial Strategy, development driven by cities and towns should generally take place within their built up areas or in areas identified for new development under the planning process. With this in mind the Planning Authority has identified settlement boundaries to a number of villages/towns within the county. In this context Policy RH1 and RH4 refer:

“urban generated development including housing, shall not be permitted in the rural areas of the County, other than in rural settlements that have been deemed suitable to absorb an element of urban generated development”.

RH4: To accommodate necessary rural development, including rural housing, where the need for same can be demonstrated and justified, subject to the highest standards of siting and design.

The policy of most relevance to this proposal is Policy RH14 which is appended in full to this report. However, the following extracts are provided.

Objective RH14

Residential development will be considered in the countryside only when it is for the provision of a necessary dwelling in the following circumstances:

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.
4. Replacing a farm dwelling for the needs of a farming family, not as speculation. If suitable the old dwelling may be let for short term tourist letting and this shall be tied to the existing owner of the new farm dwelling were it is considered appropriate and subject to the proper planning and development of the area.
6. A person whose principle occupation is in agriculture and who owns and farms substantial lands in the immediate vicinity of the site.
8. A person whose principle occupation is in a rural resource based activity (i.e.: agriculture, forestry, mariculture, agri-tourism etc.) and who can demonstrate a need to live in the immediate vicinity of this activity.
13. Persons whose work is intrinsically linked to the rural area and who can prove a definable social and economic need to live in the rural area and who has resided in the immediate area for at least 10 consecutive years prior to the application.
14. A permanent native resident who has to dispose of their dwelling, following divorce or a legal separation.
15. Permanent native residents of moderate and small growth towns, seeking to build a house in their native town or village within the 50kmph / 30 mph speed limit on the non national radial roads, for their own use and not as speculation as of 11th October 2004.
16. A person whose business requires them to reside in the rural area and who can demonstrate the adequacy of the business proposals and the capacity of the business to support them full time.
17. Permanent native residents of the rural area who require a new purpose built specially adapted house due to a verified medical condition and who can show that their existing home cannot be adapted to meet their particular needs.

4.0 GROUNDS OF FIRST PARTY APPEAL

4.1 A first party appeal has been lodged by BPS Planning Consultants on behalf of the Applicants, Michael & Margaret Dawnay. Their lengthy submission seeks to address the Planning Authority's decision to refuse permission:

- It is outlined that the Applicants are an older couple aged 59 and 81 respectively. They married in 2009 and resided in a house referred to as The Lodge in Newcastle. It is stated that this house is located in a rural area and was Mrs. Dawnay's family home. The property

was not in good condition and plans to renovate it established it to be outside of their budget. They purchased the dwelling on the subject site which is approximately 10km from The Lodge as it met their needs. The subsequently sold The Lodge in 2011.

- The Applicants sought legal advice regarding the subject property and it is stated they were advised to proceed with the purchase as their Solicitor considered the applicants to comply with Condition no. 2 pertaining to the site.
- Only after the purchase of the property, did the solicitor receive notification from Wicklow County Council that they disagreed that the Applicant's satisfied the terms of condition no. 2.
- It is subsequently argued that a 5-7 year occupancy condition is more typical nationally, rather than the 10 year rule as applied by Wicklow County Council.
- The planning permission was granted in 2004 and it is now 2016.
- Condition no. 2 provides that the house could be used by any such class of persons as the Planning Authority may agree to in writing. The applicants are elderly rural people who needed to move away from the old unsuitable derelict home in which they lived.
- Applicants comply with the recommendations of the Sustainable Rural Housing Guidelines with respect to facilitating rural persons who continue to live in rural areas even after retirement.
- National guidance appears not only to have been misinterpreted but actually misapplied by the Council insofar as in this case it is claiming that it requires all those who seek to comply with occupancy conditions to be first time property owners.
- Argues under the Equal Status Act, which prohibits indirect discrimination on the ground of age whether the applicants have been treated fairly.
- Reg. Ref. 03/9484 was granted on 21st January 2004 and the dwelling occupied in 2004. Therefore the 10 year occupancy condition should have lapsed in 2014. In 2013, it is stated that it came to the Council's attention that persons other than the Kavanagh's were residing in the property. A warning letter was issued to Mr. Dawnay on 25th June 2013 and an Enforcement Notice issued on the 17th September 2013. Legal proceedings commenced on 26th May 2014.
- It is questioned why after 10 years have lapsed as to why the Applicants are in the state that they are in.
- It is argued that marriage breakdown by the previous occupants of the house should be a sufficient planning reason to allow Condition no. 2 to be removed. The previous occupants made an application to the Council on four separate occasions (12/9/2007, 18/9/2007, 18/10/2007 and 18/9/2008).
- Argues that there is no policy within the Dev Plan which determines that if you own or have previously owned a house that you will not generally be considered eligible for a rural dwelling. Rather it appears to have emerged from planning practice within the planning authority.
- The objective of Condition No. 2 of the 2003 permission was "To ensure that development in this area of high amenity is appropriately restricted, in the interests of proper planning and

development and visual amenity". The site was developed and the house built years before the Applicants purchased the property. What impact on visual amenity took place predates the applicants' occupation of the property.

- Condition no. 2 no longer complies with the Development Management Guidelines in that the condition is no longer necessary, not relevant to planning, is not enforceable, should be precise and reasonable.
- The continued retention of Condition no. 2 on this 2004 planning permission means that the planning authority is continuing to try to impose the terms of a 10 year occupancy condition almost 12 years later.
- Reference is made to the Sustainable Rural Housing Guidelines, which it is argued provides for the movement of rural people to other rural areas. It is postulated that the Council have not disputed the rural origins of the applicants. It is stated that the rigidity of the planning authority, which the Guidelines seeks to avoid, of not permitting the rural older persons like the applicants to move from one rural house to another rural house that meets their needs seems unnecessary. Reference is made to section 3.2.2 of the Guidelines in this respect.
- Argues that the Guidelines do not support the statement that the said house must be purchased by a 1st time buyer.
- Reference is made to the Law Society's Report' on Discriminatory Conditions, made some years ago which recommended that the planning authorities consider the personal circumstances of the applicant. The Agent argues that this has not been applied in this instance.
- Privileged persons are defined as those that are approved for planning permission or for occupancy subject to planning conditions. The Applicants could be considered to be "Agricultural worker condition" as they are owners of farm and forestry lands (70 acres) which are in active use.
- The Law Society Report is cited where it recommends that where the planning authority is seeking some reassurance that the proposed occupant of a house satisfies or would satisfy a particular discriminatory condition, they should accept a statutory declaration to this effect from the proposed occupant. It is stated by the Agent that such a declaration is provided and an Affidavit is provided with the appeal documentation.
- Argues that the process for compliance with Condition no. 2 as processed by the Planning Authority is short of due process. It is stated that this compliance should be by way of certification rather than the adhoc method of email.
- The Applicant's solicitor is now the subject of a Law Society investigation and court proceedings for negligence.
- Solicitors in Wicklow no longer assess compliance with occupancy condition rather the Planning Authority carries out this assessment. This may have been misunderstood by the Applicant's solicitor.
- Wicklow's occupancy condition is a condition of sale rather than occupancy.

- This appeal represents the last chance for this matter to be resolved through the planning system and not the courts. The Board's decision on this case could have wide ranging ramifications for the future of older people living in rural areas as occupancy conditions are applied to more and more rural housing.

4.1 Submitted with the appeal documentation is an Affidavit of Michael Dawnay provided to the Circuit Court in relation to the Court case between Wicklow County Council (Applicant) and Michael Dawnay and Margaret Dawnay (respondents) dated 4th November 2015. Also submitted is an Affidavit of Solomon Aroboto, an Executive Planner with Wicklow County Council. In this Affidavit, Mr. Aroboto refers to an application by the previous occupants to remove Condition no. 2 of that permission due to a marriage breakdown. Mr. Aroboto's recommendation was that the separation of the applicants was not a planning reason to remove an occupancy condition. *"The reasons for refusing the removal of the condition related to the Council's policy to encourage growth of existing settlements; to restrict rural housing to cases where there is a bona fide need to live in the rural area; insufficient planning reasons to warrant the removal of the restriction; the undermining of the Council's rural settlement strategy; the proliferation of non essential housing in rural areas; the erosion of visual amenities and the interests of proper planning and sustainable development"*. It is stated in the Affidavit that *"Mr. Dawnay was previously refused planning permission for a rural dwelling in Newcastle Upper, County Wicklow, on foot of planning application 09/744"*. A subsequent application under 10/2090 was later withdrawn.

5.0 PLANNING AUTHORITY'S SUBMISSION

5.1 A submission on behalf of the Council was made by Benville & Robinson Solicitors. B & R Solicitors act for the Council in Section 160 proceedings taken against Mr. Dawnay and his wife Margaret Dawnay, regarding non-compliance with condition no. 2 of PRR 03/9484. The following issues are raised in the submission:

- The Council are concerned that there are a number of matters contained and detailed in this appeal which are not planning related and which the Council are obliged to respond to.
- The Order made against the Appellant on 11th November 2015, restrains Mr. Dawnay and all other persons having notice of the Order from using the dwelling house, the subject matter of this appeal, arising from non-compliance with condition no. 2. This Circuit Court Order has been appealed by Mr. Dawnay to the High Court and is awaiting a date.
- Reason and policy considerations behind occupancy clauses and similar conditions are expressly permitted by Statute and are well known to the Board and do not require elaboration.
- Courts and others have lauded the Council for its pro-active role in their enforcement actions over the years.
- Condition no. 2 was not inserted at whim.
- As the former President of the High Court said in *Wicklow County Council v. Kinsella* [2015] IEHC 229, *"without effective planning*

laws and adequate enforcement procedures to ensure compliance with them, anarchy would rule the roost with regard to all sorts of developments". He went on to say that *"It is the responsibility of the individual to conform, to obtain planning permission when required to do so and to comply with conditions attaching to any permission".* Similarly, it is up to an individual purchasing a house to which an occupancy condition applies, to ensure that they comply with that condition and its terms.

- This is not a test case as suggested by the Applicant's Agent. Rather it is a planning decision to be based on planning considerations.
- Up to now, the position has been that the Appellant has not shown to the satisfaction of the Local Authority that he complies with the condition and the rural housing policies of the Council. Hence the need for the Section 160 proceedings. It is now being suggested by the Appellant that the sole reason for this refusal is because he previously owned a house in County Wicklow. This is not correct. Previously, insufficient information had been supplied by the Appellant to enable a decision to be made. The present proposal is different as it does not seek confirmation that the Appellant complies with the policies and the condition, but rather seeks to remove the condition so that effectively anyone could live in the house.
- There are matters contained in the Appeal which are not strictly relevant to the Planning merits of the Appellant's appeal. These include, allegations of negligence against the Dawnay's former Solicitor, allegations of inflexibility, unfairness and lack of subjectivity on the part of the Council; discrimination, an allegation of forcing the Dawnays out of rural Wicklow and evicting them from their home, together with good faith from the Dawnays.
- The Applicant's Agent only acts on behalf of Mr. Michael Dawnay and refers to his clients in the plural.
- The Agent refers to a letter from the Council sent by Mr. Aroboto, which is stated to acknowledge that the Dawnays had not deliberately ignored the Council's advice that they did not comply with Condition no. 2 of the permission. This letter does not exist. There is an FI request dated the 28th November 2012 but no letter of the 27th November 2012. Neither the Planning Report of 12/6563 nor the FI request acknowledge that the Dawnays did not deliberately ignore the advices of the Council.
- Dispute the inflexibility of the Council.
- It is being suggested that the Board is now in a position to decide whether or not the Dawnays can continue to live in the property or not. This is misleadingly incorrect. The Circuit Court has already decided that Mr. Dawnay cannot use the house, albeit this Order is under appeal to the High Court as aforesaid. The Board is to decide whether or not, in the interests of proper planning and development it is appropriate to remove the use condition from the initial Planning Permission granted.
- Considers the submission of the Affidavit of Mr. Michael Dawnay and Mr. Solomon Aroboto to be irrelevant.

- The main points contained in the judgement in the Circuit Court are provided.

6.0 ASSESSMENT

6.1 I have read all documentation on file. I have reviewed all plans and particulars and have read the appellants' grounds of appeal and 2nd parties' responses to the same. I have read the relevant provisions of the statutory development plan for the area I have carried out a site inspection. In my opinion, the main issues to be addressed in this appeal are as indicated hereunder.

- Principle of Condition no. 2
- Planning History/Reference Cases
- Enforcement

6.3 The original planning permission pertaining to the site under Reg. Ref. 03/9484 sought to restrict the use of the dwelling to the applicants who had been duly assessed against the criteria of Wicklow's County Development Plan set out under RH14. This condition also required the Applicants to register the burden of the occupancy condition for a period of 10 years upon its occupation. It would appear that the said dwelling was completed in 2004, but that the burden was not registered until October 2008 and therefore will not lapse until 2018.

6.4 The current Appellants, Michael & Margaret Dawnay purchased the dwelling in 2010. As an aside, I would note that the Application/Appeal has been made also in Margaret Dawnay's name despite documentation on file stating that she is a ward of court and residing in a nursing home since 2014. Mr. Dawnay's Agent has gone into great detail regarding the Solicitor acting on the Dawnay's behalf during the process of the purchase of the dwelling and therefore in communication with the Council. I do not consider that these issues are relevant to the appeal at hand and do not propose to refer to them further as part of this assessment. The argument has been made that in the event that the burden was registered in 2004 as required, by the time of the purchase in 2010, there was only 4 years remaining. Furthermore, it is argued that Ms. Dawnay has been a resident of the area for over 75 years and fulfils the criteria as required under RH14 and Condition No. 2. I would highlight to the Board that no documentary evidence has been provided to support this argument.

6.5 The Appellant's Agent has sought to argue that the decision by the Planning Authority to refuse permission is a case of discrimination against Older Persons, as the Planning Authority's practice has been to refuse permission for a dwelling house in a restricted zone where the Applicants have previously owned a home. I consider this argument to be outside of the remit of the Board and of this appeal. The focus of this appeal is whether condition no. 2 which was applied in early 2004 should be removed. Clearly, in 2016, had the burden been applied to

the Registry Land maps as demanded by Condition no. 2, the burden would now be lifted. Nonetheless, the facts before us are that the burden was applied in October 2008. The requirement of Condition No. 2 (a) is that the “of the proposed dwelling shall be restricted to the applicant, a person engaged in working on the farm of which the site forms a part or to other persons primarily employed or engaged in agriculture in the vicinity or to other such class of persons as the Planning Authority may agree to in writing”. In this instance, the Agent for Mr. Dawnay has argued that the Applicant has links with the area and that his wife, Ms. Dawnay resided in the rural area of Newcastle for a period of 75 years. Furthermore, that Mr. Dawnay owns forestry lands in Wicklow. I would bring the Board’s attention to the fact that no documentary evidence was supplied to support these statements. Therefore, based on the foregoing there is no evidence to suggest that the appellants comply with the restrictions on “persons” as demanded by Condition no. 2(a).

- 6.6 The Appellant’s Agent has made lengthy reference to a report by the Law’s Society’s Law Reform Committee entitled “Discriminatory Planning Conditions: The Case for Reform”. I have duly considered the appeal submission and had due regard to the aforementioned Report. Nonetheless, the fact remains that the burden was not registered until 2007 and therefore the previous applicants complied with that permission for a duration of 3 years. Therefore, since 2010, when the property was purchased, the restrictions as per the burden and condition no. 2 have not been complied with. Whilst it is accepted that the dwelling house has been in-situ since 2004, I would argue that Condition no. 2 cannot be retrospectively removed.
- 6.7 In reaching my conclusion I have had regard to appeals on similar issues considered by the Board. In particular, PL27.243068 where the applicants sought the removal of condition no. 2 (a) and (b) of a grant of permission to a dwelling in Arklow, County Wicklow. That condition similarly restricted the use of the dwelling to the applicant or other persons primarily employed or engaged in agriculture and that a legal undertaking be registered as a burden against the title of the land in the Land Registry for 10 years in duration. In this instance, the Appellants failed to register the burden and had not appealed the respective condition. Whilst the house was built for 10 years, it was considered that the failure to comply with the condition at the time of construction was an error by the Appellants. It was considered that the removal of Condition no. 2 would undermine the Development Plan policy which seeks to restrict rural housing development to necessary dwellings and discourage sporadic development in such areas. Permission was subsequently refused on 26th June 2014. I would highlight to the Board that in that appeal, there was no discussion as to whether the appellants satisfied the “privileged” persons criteria, as the Appellants were those who had benefited from the original permission.
- 6.8 Another appeal I wish to refer to is PL17.241465 which sought the removal of Condition no. 2 as it pertained to a dwelling in Hollywood, Co. Wicklow. In that instance the grant of permission was issued in

2001 but the burden on the land in respect of Condition no. 2 (restriction of use and duration of burden 10 years) was not registered until 2011. The Board decided to grant permission in this instance stating that the house in question had been in existence for 10 years and that the County Development Plan requirement relating to local need had been substantially complied with having regard to the documentation submitted by the owner.

- 6.9 Having regard to the above and the documentation on file, it is my opinion that the condition as inserted by the Planning Authority is reasonable in an effort to control development in an area recognised as being under severe pressure (due to its designation as a corridor area) due to its proximity to the M11. Therefore, I consider that to remove Condition no. 2 retrospectively would undermine Development Plan policy in relation to rural housing and settlement strategy. The previous occupants of the dwelling registered the burden in 2007 and therefore only satisfied Condition no. 2 for a period of 3 years before its sale in 2010 to the Appellants. No documentation was provided by the Appellants to support their argument that they do satisfy the terms of “privileged persons” as specified in Condition no. 2. Therefore, I do not consider that the requirements of Condition no. 2 have been complied with. Whilst it is acknowledged that the said dwelling is in existence for 12 years, the failure of the original occupants and benefactors of the permission to register the burden was in non-compliance with the specifications of condition no. 2.
- 6.10 Having visited the subject site, there is evidence to suggest that there are horse boxes on site, a paddock and associated equine facilities, which do not appear to accord with the permission granted on the subject site. Whilst the Board did not receive copies of the previous planning histories as they apply to the site, (despite a request), this Inspector did however have regard to the Planning Authority’s website where the said plans were available for viewing. However, enforcement proceedings are outside of the remit of the Board and therefore I do not propose to comment any further on this issue.

7.0 CONCLUSION

- 7.1 In conclusion, it is considered that the application of Condition no. 2 to a grant of permission for a dwelling house in an area identified as an “Access Corridor” arising from its severe development pressures due to the proximity of the site to the M11 is reasonable. The failure of the previous occupants of the dwelling to register the burden on the title of the land in a timely manner upon the occupation of the dwelling is not a fault of the Planning Authority. The subsequent purchase and occupation of the dwelling by the Applicant and his wife, have failed to provide documentation that demonstrates their compliance with the criteria of “privileged persons” as demanded by Condition no. 2. The removal of condition no. 2 as it relates to the subject site would undermine Development Plan policy which seeks to restrict rural

housing development to necessary dwellings and to discourage sporadic developments in such areas.

8.0 RECOMMENDATION

- 8.1 I have read the submissions on file, visited the site and paid due regard to the provisions of the Wicklow County Development Plan 2010-2016. I recommend that planning permission be **REFUSED** for the development based on the reasons and considerations hereunder

REASONS AND CONSIDERATIONS

1. Having regard to the planning history of the site and its location within a rural area in which rural housing is restricted to specific categories of persons as outlined in the settlement strategy of the County Development Plan, who can demonstrate compliance with the criteria under Objective RH14, it is considered that the removal of conditions 2 (a) and 2 (b) of planning permission reg. ref. 03/9484 would set an undesirable precedent and would undermine existing rural settlement policy. The Appellants failed to provide documentary evidence that they complied with the specific categories of persons as outlined in RH14. The removal of condition 2(a) and 2(b), in isolation from the overall development authorised by the parent permission, would therefore be contrary to the proper planning and sustainable development of the area.

Fiona Tynan
Senior Planning Inspector
18/04/16