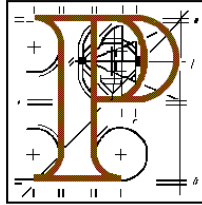


An Bord Pleanála



Inspector's Report

Development: Change of use-removal of Condition No. 2 (Occupancy) of previous grant of permission 05/3547. Retention of dwelling house as constructed and ancillary site works at 1 Timmore, Newcastle, Co. Wicklow.

Planning Application

Planning Authority: Wicklow County Council
Planning Authority Reg. Ref.: 15/1335
Applicant: Madeleine Scally
Type of Application: Permission
Planning Authority Decision: Refuse Permission

Planning Appeal

Type of Appeal: First Party
Appellant: As Above
Observers: None
Date of Site Inspection: 1st June 2016

Senior Inspector: **Fiona Tynan**

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1.0 SITE DESCRIPTION AND LOCATION

- 1.1 The appeal site is located south of Newtownmountkennedy, within a recent development of three dormer dwellings. The development site is a triangular site bounded on all sides (apart from the southern boundary) by ribbon development which front onto two local roads. The site the subject of this appeal is situated at the end of the cul-de-sac, in the northernmost corner of the site. The stated area of the site is 0.631ha. The existing dormer bungalow on the site has a stated floor area of 258.46sq.m.
- 1.2 The said dwelling is presently unoccupied. The other two dwellings are occupied within the development. I note that the laneway serving the three houses appears unfinished.
- 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. 05/3547. Reg. Ref. 05/3547 concerns a grant of permission to George and Sabine Smullen for 3 houses on the site. Condition no. 2 of that permission restricted the use of the proposed dwelling to the applicant 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. It is required that this is 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 to be of 10 years in duration. Under Reg. Ref. 08/1700 permission was granted to Sabine Smullen for the existing dwelling as constructed on site number 1, Timmore lane on the 27th April 2009. The proposal before the Board is to retain the dwelling house as constructed and its associated site works and for a change of use of the dwelling house including the removal of condition no. 2 which relates to the occupancy condition.
- 2.2 The background to this application is provided in the application documentation. Ms. Scally was awarded as part of a Court Order in the High Courts in February 2013 as part of a marital dissolution, the three houses in this cul-de-sac off Timmore Lane. One of the three houses has been sold, but the applicant now wishes to sell the remaining two to enable her to realise her financial assets for herself and her son.
- 2.3 It is further outlined that the construction of the said house commenced in early 2006 and was completed externally in mid-2006. The house was never occupied. A section 47 agreement was submitted to the Council and this agreement was registered as a burden on the title of land in September 2008.

3.0 PLANNING CONTEXT

3.1 Departmental Reports:

- 3.1.1 Environmental Health Officer: The report recommends further information seeking certification that the existing septic tank and percolation area is in compliance with the EPA Wastewater Treatment Manual, Treatment Systems for Single Houses 2000. Details of the

size and design of the septic tank and details of the design and layout and the overall length of percolation trench should be included.

3.1.2 **Planner's Report:** The Planning Officer notes that the application seeks a change of use of the dwelling to enable its use by persons of all classes. The Officer notes that the Section 47 was registered as a burden but in the name of the land owner George Smullen and not the original applicant Sabine Smullen. In this regard it is stated that the original applicant never owned the subject property, while the present applicant, (Sabine's mother) obtained ownership of the property following divorce proceedings. The Planning Officer notes that the dwelling house was never occupied. It is consequently argued that the intended use of the dwelling in accordance with the rural housing objectives and as compounded by Condition no. 2 was never fulfilled. Therefore, the Planning Officer considers the proposed change of use to be unjustified and that it would set a highly undesirable precedent while undermining the provisions of the Sustainable Rural Housing Guidelines and the rural housing policies of the Development Plan. Accordingly, refusal of permission is recommended by the Planning Officer for the proposed change of use of the dwelling house and the removal of Condition no. 2. A recommendation to grant permission is issued on the proposed retention of the dwelling house having regard to the original dwelling permitted on site, and it is considered that the alterations carried out would be compatible with this structure and would not impinge on the amenities of the area of adjoining residents.

3.2 Decision of Planning Authority

On the 17th of February 2016, Wicklow County Council issued a split decision on the proposal. Permission was granted for the proposed retention of the dwelling house as constructed on site subject to Condition No. 2 which reiterates the previously applied Condition no. 2 which restricts the use of the dwelling house to particular classes of persons. Permission was refused for the proposed change of use of the dwelling house and removal of Condition no. 2 for the following reason:

"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 existing settlements. It is noted that the dwelling has never been occupied and that the applicant never owned the property. The proposed change of use is unjustified and would set a highly undesirable precedent for the proliferation of nonessential housing in rural areas, while undermining the provisions of the Planning Authority's settlement strategy, the rural housing policy and the provisions of the Sustainable Rural Housing Guidelines, 2005. The proposed change of use would therefore be contrary to proper planning and sustainable development".

3.3 Planning History

3.3.1 Subject site:

08/1700: Refers to an application to retain the dwelling house as constructed. Permission was granted. Condition no. 4 of that permission required the Applicant to comply with the earlier stated conditions of Reg. Ref. 05/3547.

05/3547: Refers to a grant of permission issued to Sabine Smullen for a rural dwelling house, septic tank, entrance and associated site works at site no 1 Timmore Lane.

3.4 Planning Policy

3.4.1 The operative Development Plan is the Wicklow County Development Plan 2010-2016. The subject site is proximate to Newtownmountkennedy but is outside of the Local Area Plan boundary. The site is also outside of the boundary of Newcastle Local Area Plan.

3.4.2 I note that Newcastle is identified as a Rural Town in the Development Plan. 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.

4.0 GROUNDS OF FIRST PARTY APPEAL

4.1 A first party appeal has been lodged by Frank Ó'Gallachóir on behalf of the Applicant, Madeline Scally. The submission seeks to address the Planning Authority's decision to refuse permission:

- Following a divorce settlement, Ms. Scally was awarded the three houses in this cul-de-sac. Her husband, George Smullen was the developer of those houses.
- Wishes to sell the houses to finance her future
- An account of the planning history pertaining to the site is provided, wherein 05/3547 referred to a grant of permission issued to Sabine Scully for a rural dwelling house, septic tank entrance and associated site works on site number 1 on October 5th, 2005. This included Condition no. 2 which restricted the class of person that could occupy the dwelling and required that a burden be registered on the site for a duration of 10 years.
- The Council erected the houses which bound the appeal site in the 1950's. However, because this area is not zoned, it is regarded as part of the rural area of County Wicklow.
- It is clear from the Planner's Report dated 12/02/16 that there are no residential or visual impact issues arising from the development of this house. The only planning issues are stated to be that of "undesirable precedent" and the "undermining of the provisions" of the Sustainable Rural Housing Guidelines and the Wicklow County Development Plan.
- The house to be retained clearly has little impact on the visual amenities of the area because there are existing mature boundaries and roadside developments on all sides of the site.
- The subject house was competed externally in mid-2006. It was never occupied or completed internally.
- The section 47 agreement was registered as a burden on the title of land in September 2008. The house has been constructed for almost 10 years. It has been the subject of a burden on the title in the Land Registry for more than 7 years.
- Condition no. 2 sought to restrict the occupation of the house to occupants who complied with RH14 of the Development Plan for a period of 10 years. The reason for this condition has been complied with as the house has not been occupied by a person who did not

meet the rural housing need criteria set out in RH14 since the house was completed i.e. for a period of almost 10 years.

- The Sustainable Rural Housing Guidelines recommend that occupancy conditions should not exceed 7 years. Wicklow Co. Co. currently imposes 7 years.
- In accordance with the Sustainable Rural Housing Guidelines, this house could have been sold on the open market in 2013, excluding for the delay in entering into the section 47 Agreement and registering same with the Land Registry.
- Sabine Smullen who received permission did not occupy the dwelling and nor has she received permission for a house elsewhere in rural Wicklow. It is acknowledged that she has exhausted her entitlement to favourable consideration under RH14 of the Wicklow County Development Plan.
- A number of precedents are cited:
 - PL27.226114-Killiskey, Ashford, Co. Wicklow: This appeal concerns the retention of a house and the removal of an occupancy condition. In this instance, the Board had regard to the size of the site and the pattern of residential development in the vicinity. It considered that the proposed development would not seriously injure the amenities of the area and would not materially contravene the provisions of the development plan.
 - PL27.244284-Coolmore, Arklow, County Wicklow: This appeal sought to retain an existing bungalow without an occupancy condition and for permission for a new extension to the side. Having regard to the time period that had lapsed since construction and occupation of the house, exceeding 10 years, and the provision of the Sustainable Rural Housing Guidelines, the Board stated that it was not reasonable that occupancy be further restricted well beyond the time periods indicated.
 - PL27.245308-Barniskey, Arklow, County Wicklow. This appeal refers to an instance where the applicants purchased the dwelling without knowledge of an occupancy planning condition. However, because of the extended time period that the house had been occupied, the Board decided to grant planning permission for the change of use (i.e. to remove condition no. 4 of previous permission) and to retain the house as constructed.
- A grant of permission for a change of use in this appeal providing for the removal of occupancy condition no. 2, would have no negative effect on the physical environment of the area.

5.0 PLANNING AUTHORITY'S SUBMISSION

- 5.1 The Planning Authority made no submission to the Board on the appeal.

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. I have also read the relevant provisions of the statutory development plan for the area and 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
- 6.2 Condition no. 2 as applied to the permitted development on site seeks to restrict the ownership/occupation of a rural dwelling to classes of persons who have a need to reside in the area by virtue of their occupation. The current proposal before the Board seeks to remove this condition. The dwelling house on site no. 1 was originally permitted under Reg. Ref. 05/3547 and from submissions the said house was completed externally in 2006 but never occupied. The burden was registered on the lands in September 2008. Therefore, the said burden has been in place for 7.5 years. I note that the burden was registered to George Smullen, the developer of the three units on site rather than Sabine Smullen who was the benefactor of the permission.
- 6.3 The Planning Authority in their decision to refuse permission have cited that as the dwelling house was never occupied it is clear that the intended use in accordance with the rural objective and as compounded by Condition no. 2 was never fulfilled.
- 6.4 Having regard to the non-occupation of the dwelling house, it is evident that the stated housing need as put forward by the Applicant, never materialised. However, neither did any other class of person restricted by the terms of Condition no. 2 occupy the dwelling house, in accordance with the submissions made by the Applicant. Therefore, I would argue that the intention of Condition no. 2 have been largely complied with in that the dwelling house has not been occupied by persons other than those who comply with Objective RH14 (or not at all in this instance) and the burden was duly registered for a period in excess of 7 years. I would note also that the Agent on behalf of the Applicant has acknowledged that Sabine Smullen, the original benefactor of the permission has extinguished her rights to a rural dwelling in Wicklow.
- 6.5 The Sustainable Rural Housing Guidelines has recommended where section 47 agreements are to be put in place, a term of 7 years is considered an appropriate term. This term has been exceeded in this instance. I find this to be acceptable and therefore recommend to the Board that Condition no. 2 be removed.
- 6.6 A number of appeal cases were cited by the Applicant's Agent where Condition no. 2 has been removed by the Board. I have had due regard to these cases and note that the Board has removed Condition no. 2 where the applicants resided in the house for 10 years

(PL27.244284) and the lapse of time since the parent permission (PL27.245308). Both of these cases cite the Sustainable Rural Housing Guidelines and the recommendation that the Section 47 Agreements be in place for a duration of 7 years. Therefore, I recommend that Condition no. 2 be removed from the parent permission.

6.7 In relation to the proposed dwelling on site, I have visited the site and had regard to the drawings submitted with the appeal. I would bring the Board's attention to the fact that the drawings and details pertaining to the previously permitted development on the site under 05/3547 were not forwarded to the Board despite requests. Nonetheless, I find the proposed dwelling to be acceptable in terms of its scale, design and layout on site. I note that the planning authority cited no objection in this respect.

6.8 Appropriate Assessment

6.8.1 Having regard to the nature and scale of the proposed development and development to be retained and/or nature of the receiving environment and/or 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.

7.0 CONCLUSION

7.1 Arising from my assessment, having regard to the nature of the scale of the development proposed to be retained, the particular circumstances of this case, the planning history pertaining to the site, the Sustainable Rural Housing Guidelines and the pattern of development in the vicinity of the site, I recommend that permission for the above described development be **GRANTED** for the following reasons and considerations.

REASONS AND CONSIDERATIONS

The "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April, 2005 indicate in Appendix 1 that seven years would be an appropriate period for a planning condition restricting the occupancy of rural houses. The subject house was constructed in excess of 7 years and though the said house was not occupied, it specifically was not occupied by persons other than those authorised under Condition no. 2. Having regard to the time period lapsed since the permission of 05/3547 was enacted, the period of time since completion of construction and the period of time since the burden was registered on the title of the site, it is not considered reasonable that occupancy be further restricted beyond 7 years. It is, therefore,

considered that, subject to compliance with the conditions set out below, the development proposed to be retained would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, would be acceptable in terms of traffic safety and convenience, would not set a precedent for similar such development, and would not be contrary to the proper planning and sustainable development of the area

CONDITIONS

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, and by the further plans and particulars received by An Bord Pleanála with the appeal on the 11th day of March, 2016, 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 and the development shall be completed in accordance with the agreed particulars.
Reason: In the interest of clarity.
2. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.
Reason: To ensure adequate servicing of the development, and to prevent pollution.
3. In all other regards, the development shall comply with the conditions attached to planning permission granted under planning register reference number 05/3547, with the exception of condition number 2 of that permission.
Reason: In the interest of clarity.

Fiona Tynan
Senior Planning Inspector
02/06/16