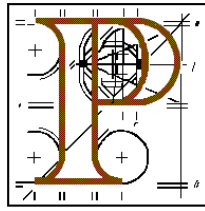


# An Bord Pleanála



## Inspector's Report

**PL27.246531**

**DEVELOPMENT:-** Permission sought for house, garage, treatment system and new driveway at Windgate, Greystones, Co. Wicklow.

### **PLANNING APPLICATION**

**Planning Authority:** Wicklow County Council  
**Planning Authority Reg. No:** 16/156  
**Applicant:** Christopher & Deidre Shepard  
**Application Type:** Permission  
**Planning Authority Decision:** Refuse

### **APPEAL**

**Appellant:** Christopher & Deidre Shepard  
**Type of Appeal:** 1<sup>st</sup>-V-Refusal

**DATE OF SITE INSPECTION:** 29th June 2016

**Inspector:** Colin McBride

## 1. SITE DESCRIPTION

- 1.1 The appeal site, which has a stated area of 0.407 hectares, is located south of Bray and north of Greystones in a rural area. The site is located to the west of the R761 and off a local road which joins the R761 north of the site. The public road is approximately 4m wide. The appeal site is an existing field that is accessed from an existing lane that is 65m long and current serves an existing dwelling to the south. A significant portion of the site is overgrown with bushes (location of the dwelling). Levels on site increase in a gradual manner moving west to east away from the public road. Existing boundaries consist of trees and hedgerows. Adjoining development includes an existing dwelling to the west of the main body of the site between the site and the public road and three dwellings to the south including one that uses the laneway for access. To the north and east of the site are agricultural lands.

## 2. PROPOSED DEVELOPMENT

- 2.1 Permission sought to construct a split level dwelling, detached garage and wastewater treatment system. The dwelling is part single-storey and part two-storey and has a floor area of 330 sqm. The dwelling features a pitched roof and has external finishes of render and natural slate. The garage has floor area of 29 sqm and is similar in regards to external finishes to the dwelling. It is proposed to install a proprietary wastewater treatment system. The site is to be accessed using an existing laneway from the public road that serves two existing dwellings. Water supply is to be from the public mains.

## 3. LOCAL AND EXTERNAL AUTHORITY REPORTS

### 3.1

(a) Irish Water (29/02/16): No objection.

(b) Environmental Health Officer (26/02/16): Further information required including re-opening of trial holes for inspection.

(c) Roads Engineer (30/03/16): Refusal recommended on the basis that sightlines are inadequate.

(d) Planning report (05/04/16): It is noted that the applicants have failed to demonstrate they are permanent native residents of this rural area in compliance with Objective RH14. It is considered that the proposal would lead set an undesirable precedent for suburbanistaion of the area. Concern is also expressed regarding the level of excavation and such would be contrary the provision of the Development Plan policy in regards to siting. It is noted that sightlines are restricted with no demonstration that adequate sightlines can be achieved. Refusal was recommended based on the reasons outlined below.

#### 4. DECISION OF THE PLANNING AUTHORITY

##### 4.1 Permission refused based on the following reason.

1. *The proposed development would not represent a necessary dwelling in this Landscape designated Access Corridor Area contrary to the provisions of Section 6.3.2 of the County Development Plan 2010-2016. These provisions are required to maintain scenic amenities, recreational utility, existing character, and to preserve views of special amenity value and special interest and to conserve the attractiveness of the county for the development of tourism and tourist related employment.*

*The Council's settlement strategy is to encourage further growth of existing settlements and to restrict rural housing development to cases where there is a bona fide necessity to live in the rural area instead of in existing settlements. It is considered that the applicant does not come within the scope of the housing need criteria as set out under Objective RH14 of the County Development Plan as the applicant has not demonstrated that they are a permanent native resident, with an economic and proven need to reside in this particular rural area. The proliferation of non-essential housing in rural landscape areas erodes the landscape value of these areas and seriously detracts from views of special amenity value.*

2. *Having regard to the existing pattern of development in the vicinity and the location of the subject site removed from the public road, it is considered that the proposed development would give rise to urban sprawl, excessive suburbanisation and extension of inappropriate development, would open additional lands to further development and would erode the rural and scenic qualities of the area contrary to the provisions of the current County Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*
3. *Section 6.4.3 Chapter 5 of the Wicklow County Development Plan sets out the guidelines for the siting of dwellings in the rural areas of County Wicklow. In this regard, new dwellings should "be nestled into the landscape and not be located above a ridgeline or in an elevated position on a site. New houses should be located sympathetically within their surroundings" and should "make use of local contours, avoid skylines where development interrupts the flow of the landform. Avoid open field or exposed locations that prevent the development being integrated with its surroundings". Having regard to:*
  - a) *The sloping topography of the site;*
  - b) *The elevation of the site above the local road and position of the proposed dwelling at the most elevated point;*

- c) *The lack of a site specific design and cognisance to the topography of the site;*

*It is considered that the proposed development would form a highly intrusive feature on this site and would adversely impact on the character and setting of this rural landscape. The proposed development would therefore be contrary to the siting and design guidelines of the County Development Plan 2010 and to the proper planning and sustainable development of the area.*

4. *The proposed development would endanger public safety by reason of serious traffic hazard because it has not been demonstrated that adequate sightlines can be achieved in accordance with the requirements of the Design Manual for Roads and Bridges, NRA, 2011.*

## 5. PLANNING HISTORY

- 5.1 98/8271: Outline permission refused to Ben Shepard for a dwelling and associated site works, refused on the basis of impact on landscape/rural area and failure to demonstrate it was necessary dwelling in the context of rural housing policy.
- 5.2 94/956: Outline permission for three dwellings refused to Ralph Shepard. Refused on the basis of impact on landscape/rural area, non-compliance with rural housing policy, traffic hazard, excessive concentration of septic tanks and inadequate water supply.

## 6. PLANNING POLICY

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

Chapter 6: Rural Housing and Development: Section 6.3.3

Objective RH14: Residential development will be considered in the countryside only when it is for the provision of a necessary dwelling in a number of listed circumstances (attached).

- 6.2 Chapter 17: Natural Environment:  
Section 17.8.1 Landscape Characterisation:  
Landscape Hierarchy: eastern Corridor: Vulnerability: Medium;  
Objective LA1: All developments and activities shall have regard to the County Landscape Classification hierarchy.

- 6.3 Volume 3: Town and District Plans: Rathdown No. 2:

Zoning Objective GB: To protect and enhance the open nature of lands between settlements;

Section 4.2 Rural development objectives: Residential development will generally not be permitted in the A/GB zones other than the provision of a dwelling in special circumstances as provided for in Chapter 6 of the County Development Plan 2010-2016. Other rural development will be considered in light of the relevant policies of the County Development Plan.

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

## 7. GROUNDS OF APPEAL

7.1 A first party appeal has been lodged by Frank O'Gallachoir & Associates Ltd on behalf of Christopher & Deidre Shepard, Ballyreddin, Bennettsbridge, Co. Kilkenny. The grounds of appeal are as follows...

- The appellants note that Christopher Shepard qualifies under Objective RH14 as a permanent native resident with a number of documents submitted to demonstrate this fact. It is also noted that the appellants are willing to enter into a Section 47 agreement (occupancy condition).
- It is noted that the dwelling is necessary on the basis that the appellants existing house in Kilkenny is no longer appropriate because of exceptional health circumstances concerning Deidre Shepard.
- It is noted that exceptional health circumstances are a relevant consideration for consideration of permission under the Sustainable Rural Housing Guidelines. The appellants outline the nature of the medical condition and consider it to be type of situation referred to under the Sustainable Rural Housing Guidelines.
- The appellants do not consider the proposal would have an adverse impact in regards to urban sprawl and that there is no intention to develop further housing at this location.
- The design and siting of the dwelling would be acceptable in the context of the visual amenities of the area with excavation and landscaping designed to assimilate the dwelling at this location without having an adverse visual impact.
- In regards to traffic safety an alternative proposal has been submitted relocating the entrance further north (15m). It is noted that sightlines in accordance with DRMB of 90m in each direction can be achieved. An appropriate replacement boundary treatment is to be implemented to replace existing roadside screening.

- In regards to an observation by adjoining residents it is noted that the intensification of use of the existing laneway would not be unacceptable. The revised entrance proposals would also address such concerns.

## 8. RESPONSES

8.1 No responses.

## 9. ASSESSMENT

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

Principle of the proposed development/development plan policy

Design/siting/visual amenity

Traffic impact

Wastewater Treatment

Other issues

### 9.2 **Principle of the proposed development/development plan policy:**

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

9.2.2 Chapter 6 of the Plan sets out Rural Housing Policy. Under Objective RH14 it is noted that "residential development will be considered in the countryside only when it is for the provision of a necessary dwelling" in a number of circumstances (attached). It was deemed that the applicants did not comply with the criteria set down under Objective RH14. Based on the information on file, the appeal site is part of lands owned by the Christopher Shepard's parents and associated with their existing dwelling located to the south of the site. Based on the information on file Christopher Shepard previously resided and grew up at this location in the family home. The applicants/appellants

currently reside in a dwelling they constructed in 2004 at Ballyreddin, Bennettsbridge, Co. Kilkenny. They wish relocate beside Christopher Shepard's parents with the primary reason due to the medical condition of Deidre Shepard and the need to be beside family for support and closer to Dublin for the purposes of medical treatment.

9.2.3 In assessing the proposal the Planning Authority did not consider that Deidre Shepard's medical condition was of relevance as she is not a permanent native resident of Wicklow and that the assessment of compliance with rural housing policy would be on the basis of Christopher Shepard. It was considered that he had failed to demonstrate that he is a permanent native resident of the rural area in question. As noted above Objective RH14 states that "residential development will be considered in the countryside only when it is for the provision of a necessary dwelling" with 16 circumstances outlined. In regards to Christopher Shepard's status in relation to such circumstances, I would consider that the evidence submitted is that the applicant was resident at this location and grew up at this location. Although the applicant does have a connection to the area, the applicant has not been resident in the area for significant period of time having constructed and resided in a dwelling in Kilkenny since 2004. The motivation for the move is purely noted as being on the grounds of Deidre Shepard's medical conditions. I would consider that such does not provide sufficient justification to establish a legitimate housing need at this location and that the proposal could not be considered as the provision of a necessary dwellings as required under Development Plan policy.

9.2.4 I would consider that having regard to the location of the site within an 'Area under Strong Urban Influence' as identified in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April, 2005, and outside lands identified for residential development and having regard to the policies of the planning authority as set out in the Wicklow County Development Plan 2010–2016 relating to rural housing particularly Objective RH14, it is considered that the applicant does not come within the scope of the housing need criteria for a rural dwelling at this location and that the proposed development would be contrary to the said Ministerial Guidelines. The proposed development would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and result in an undesirable precedent for further such development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

### **9.3 Design/siting/visual amenity:**

- 9.3.1 The proposal was refused based on impact on the rural character of the area, considered to be visually intrusive due to the elevated location of the site relative to the public road. The dwelling is located away from the public road and behind the site of an existing dwelling (east). The levels on the site do increase in gradual manner moving west to east away from the public road. The proposal does entail a cut fill approach to the site to facilitate the proposal as well as excavation to lower levels to facilitate a split level two-storey portion, whose ridge height does not exceed the ridge height of the single-storey portion of the dwelling. Although the proposal does entail significant level of excavation the location of the site is not prominent or highly visible location and is quite well sheltered site in terms of existing trees and hedgerow. The site itself is not visible over a wider area and the overall scale of the dwelling despite having a two-storey portion is low profile. I would consider that despite the level of excavation that the overall design and scale of the dwelling would be acceptable having regards to its overall visual impact in the surrounding area. In addition I would note that the proposal is not located in a landscape that is described as being especially vulnerable in regards to landscape character. I would also note that the proposal would not impact adversely on any designated views or prospects or be visible from any designated scenic route. I am satisfied subject to retention of existing trees and hedgerow and a landscaping scheme the proposal would be acceptable in the context of visual impact and landscape character.
- 9.3.2 The design, orientation and a level of separation distances are such that the proposed dwelling would have no adverse impact on the amenities of adjoining properties. I would also consider that use of the existing laneway would not be detrimental to the amenities of existing dwellings currently using the laneway given the nature of the use (residential) and traffic levels likely to be generated.

### **9.4 Traffic Impact:**

- 9.4.1 The proposal uses an existing access laneway that currently serves as access to the field, which forms the site and two existing dwellings to the south. The public road at this location is approximately 4m wide. The drawings submitted indicate a sightline of 60m in each direction. The assessment of the proposal was by the Planning Authority required the provision of sightlines of 90m with refusal recommended by the roads engineer on the basis of inadequate sightlines. To achieve 90m sightlines in each direction would require modification of the boundaries on each side with the applicants only having control over the boundaries to the north. The applicants/appellants have submitted revised proposals that relocate the entrance 15m to the north with a new direct access proposed and the provision of 90m sightlines. It is proposed to replace the front boundary lost to



facilitate sightlines by appropriate boundary treatment including native planting. The applicant can facilitate access to the site with adequate sightlines available at the relocated access. I would consider that in the event of grant being considered that some of sort of condition requiring replanting of the hedgerow within the line of visibility be applied.

## **9.5 Wastewater Treatment:**

9.5.1 The proposal entails installation of a proprietary wastewater treatment system. Site characterisation was carried out including trial hole and percolation tests. The trial hole test notes that the water table level was not encountered in the depth of the trial hole (2m), bedrock was encountered 0.3m. The percolation tests results for T tests carried out by the standard method and for deep subsoils and/or water table, and P test carried out by the standard method and for shallow soil/subsoils and or water table indicate percolation values that are within the standards that would be considered acceptable for operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The drawing submitted do not indicate the location of wastewater treatment systems on adjoining sites or private well so it is not clear whether the proposal meets the required separation distances set down under the EPA Code of Practice. Notwithstanding the results of site suitability tests submitted there is a significant level of existing residential development on adjoining sites and the proposal would give rise to an over-proliferation of wastewater treatment systems at this location taken in conjunction with existing residential development on adjoining sites. In this regard the proposal would be prejudicial to public health and, therefore, be contrary to the proper planning and sustainable development of the area.

## **9.6 Other issues:**

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

## **RECOMMENDATION**

I recommend a refusal of permission based on the following reasons.

1. Having regard to the location of the site within an 'Area under Strong Urban Influence' as identified in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April, 2005, and outside lands identified for residential development and having regard to the policies of the planning authority as set out in the Wicklow County Development Plan 2010–2016 relating to rural housing particularly Objective

RH14, it is considered that the applicant does not come within the scope of the housing need criteria for a rural dwelling at this location and that the proposed development would be contrary to the said Ministerial Guidelines. The proposed development would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and result in an undesirable precedent for further such development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the significant level of existing residential development on adjoining sites and associated wastewater treatment systems, the proposal would give rise to an over-proliferation of wastewater treatment systems at this location. In this regard the proposal would be prejudicial to public health and, therefore, be contrary to the proper planning and sustainable development of the area.

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Colin McBride  
29th July 2016