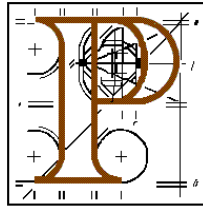


## An Bord Pleanála



## Inspector's Report

**Development:** Retention permission for house and ancillary works at Newtown Saunders, Baltinglass. Co. Wicklow.

### Planning Application

Planning Authority : Wicklow County Council  
Planning Authority Register Reference : 15/1031  
Type of Application : Retention permission  
Applicant : John Wall  
Planning Authority Decision : Refuse Permission

### Planning Appeal

Appellants : John Wall  
Type of Appeal : First Party  
Observer(s) : None

**Inspector** : Emer Doyle

**Date of Site Inspection** : 5<sup>th</sup> of October 2016

## **SITE LOCATION AND DESCRIPTION**

The subject site, with a stated area of 0.33 hectares is located in the townland of Newtownsaunders in the rural outskirts of Baltinglass, Co. Wicklow. There is an existing dormer dwelling and a large garage on the site. There are a considerable number of one off rural houses to the north, south and east of the site with agricultural lands to the west of the site.

## **PROPOSED DEVELOPMENT**

The proposed development comprises the retention of an existing dormer bungalow as constructed, the single domestic entrance as constructed, the retention of boundary walls as constructed and the demolition of part of the existing garage. A revised notice was submitted in response to the Further Information Request regarding the retention of the boundary wall and the demolition of part of the garage.

## **PLANNING HISTORY**

### **PA Reg. Ref. 02/ 6008 (Sites Nos. 1 and 2)**

Planning permission granted for two single storey houses with combined entrance. The occupancy of the dwellings was indicated to be for Shane Wall and Derek Wall.

### **PA Reg. Ref.10/2708 (Sites Nos. 1 and 2)**

Permission sought for retention of alterations to both houses. Application withdrawn.

### **PA Reg. Ref. 13/8319 (Site No. 2)**

Permission granted to Derek Wall for the retention of alterations to existing dwelling (house No. 2) as approved under Planning Register 02/6008 to include separate vehicular entrance, bay window to the front elevation, increase in floor area of dining room to rear and revised roof.

## **PLANNING AUTHORITY REPORTS**

### **Planning Report**

The planner's report required further information in relation to ownership of the dwelling, evidence of occupation by Shane Wall, size of garage, treatment plant, boundary wall, and landscaping.

The second report noted that the dwelling had been constructed and was occupied by Mr. John Wall and as Mr. John Wall already owned a house, he would not have qualified under Development Plan policy dating to either the current or the 1999 Development Plans.

### **Area Engineer**

No Objection.

### **Environmental Health Officer**

This report required the applicant to uncover the distribution chamber and expose ends of the percolation trenches and pipes to ascertain that the percolation area has been constructed in accordance with the EPA Manual 2000 and for photographs of same together with certification as required by Condition No. 13 of the original planning permission.

### **PLANNING AUTHORITY DECISION**

Permission refused for two reasons in relation to the rural housing policy and public health.

### **GROUNDS OF APPEAL**

A first party appeal has been submitted on behalf of the applicants. The grounds of appeal can be summarised as follows:

- The applicant is willing to enter into a legal agreement as required under condition No. 2 of 02/6008.
- The applicant has been forced to sell his family home due to financial considerations.
- The permission was granted in the name of John Wall and there appears to be a level of confusion relating to the person's name on the planning permission.
- Documentation from pura-flo in relation to the on-site wastewater treatment system cannot be obtained as they are no longer in operation. Such documentation was obtained from pura-flo for the adjoining house which was constructed at the same time. If An Bord Pleanála deem it fit to incorporate conditions to protect the concerns as raised by Wicklow County Council, the applicant is more than willing to abide with such conditions.

## **RESPONSES**

None submitted.

## **POLICY CONTEXT**

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

Rural Housing Policy is outlined under RH14.

## **ASSESSMENT**

I consider the key issues in this case are the following:

- Principle of Development and Occupancy Condition
- Public Health
- Other Matters

### **Principle of Development and Occupancy Condition**

It appears from the information on the file that permission was granted to Mr. John Wall for two dwellings at this location under PL02/6008. It was raised as an issue at Further Information stage of the history file that Mr. John Wall was a home owner and permission was granted for his two sons, Mr. Shane Wall and Mr. Derek Wall.

Condition No. 2 of the original grant required the proposed dwellings to be restricted to the applicants or to other persons primarily employed or engaged in agriculture or to other such classes of persons as the planning authority may agree to in writing.

Condition No. 2 required Mr. Wall to enter into a legal undertaking to this effect to be registered as a burden on the property. This legal undertaking was never entered into but there is a solicitors letter on file stating that the applicant is now willing to enter into the agreement.

The response to the Further Information states that Mr. John Wall constructed the dwelling and is the legal owner of the dwelling and has been in occupation of the property from its construction in 2002/2003.

The appeal response includes a letter from the applicant stating that he originally lived in the house next door which the bank wants to repossess. It is stated that if this appeal fails, he will be homeless. A letter from a bank is also included in the appeal for a property at Newtownsaunders which includes a number of options open to the applicant including voluntary sale, trading down, voluntary surrender and mortgage to rent.

The appeal response states that upon obtaining the original planning permission it was the applicant's intention to construct same for his son. However, his financial position is compromised and he has been forced into selling his own home. Since these procedures have been put in place, the applicant and his wife have lived in the offending property. It is stated that 'my client as a result of financial institution actions,

has been forced to sell his family home and has now relocated to the above mentioned property as the only property available for him to live in with his wife.'

The site is in an area where Objective RH14 now applies under the current development plan. Residential development is considered in the countryside only when it is for the provision of a necessary dwelling to various classes of applicants. Where permission is granted, the applicant will be required to lodge with the Land Registry a burden on the property, in the form of a Section 47 agreement, restricting the use of the dwelling for a period of 7 years to the applicant, or to persons who fulfil the criteria set out in Objective RH14 or to other such persons as the Planning Authority may agree in writing.

The 'Sustainable Rural Housing Guidelines for the Planning Authorities' issued by the Department of the Environment, Heritage and Local Government (2005), provide for the attachment of an occupancy condition to require that the dwelling shall be occupied by the applicant, members of the applicant's immediate family or by any other person who has similar links'. Appendix 1 of that document indicates that seven years would be an appropriate period for such an occupancy condition.

The subject house was constructed in 2002/3 and has been occupied by the applicant since then according to the information submitted in the Further Information Response. I note that there may be some discrepancy in the appeal response in that it is stated that the applicant has lived in the 'offending property' since the procedures have been put in place by the financial institution. The letter on file from the financial institution is dated 2015 but I would presume that proceedings would go on for a considerable length of time before the steps outlined in the letter would take place.

Having regard to the significant period of occupancy by the applicant and the housing need and long term links with the area demonstrated in the appeal documentation, I am of the view that the general intention of condition 2 has been satisfied.

## **Public Health**

The dwelling granted in 2002 was for a single storey four bedroom dwelling as required by condition 12 for the dormer to be reduced to single storey with an additional increase of 40 square metres to be permitted on the ground floors to allow for loss of space from the original dormer proposed.

This condition was not complied with and the dwelling was built as a dormer with a total of 7 No. bedrooms. I have no objection to same in terms of visual impact in that the dwelling is similar to the dwelling on the adjacent site and does not detract from the rural character of the area.

I have concerns in relation to public health as there is no information on file in terms of the capacity of the treatment plant or if the percolation area has been constructed in accordance with the permission granted. I note that in accordance with current requirements, the design capacity would have to cater for population equivalent of 9 for a 7 No. bedroom house whereas the design capacity for a 4 bedroom house would be a population equivalent of 6. Condition 13 of the original permission required that the effluent disposal system shall be laid out as proposed and constructed to the specifications of Waste Water Treatment Manuals- Treatment for Single Houses together with photographic evidence of the installation of the septic tank, distribution chambers, and percolation trenches and pipes and certification from a chartered engineer in relation to same.

The Environmental Health Officer required the applicant to uncover the distribution chamber and expose ends of the percolation trenches and pipes to ascertain that the percolation area has been constructed in accordance with the EPA Manual 2000 together with photographs to show compliance along with certification as required by Condition as required by Condition 13. This request was not issued to the applicant and the application was refused by the Planning Authority.

The appeal response stated that no documentation can be obtained from Pura-flo as they are no longer in operation. It is pointed out however that certification was obtained for the adjoining dwelling which was constructed at the same time. I note that the response to the Further Information Request states that no photographs were taken at the time of installation.

I am of the view that the approach taken by the EHO is the only way to ascertain that the percolation area has been constructed in accordance with the EPA Manual 2000 and that the treatment plant is operating correctly and has been designed with adequate capacity to cater for the 7 bedroom house on the site. The applicant did not provide such documentation either with the application initially or with the appeal documentation in relation to the reason for refusal. In the absence of such information I am of the view that the retention of the development would be prejudicial to public health.

## **Other Matters**

### **Inaccuracies in drawings**

I note that there are a number of inaccuracies in the retention drawings as submitted for example- there is a window to the front of the dining room not shown on the floor plan but shown on elevation, there are windows either side of the patio doors shown on the side elevation and on the plans but not constructed in the house, there is an additional window in the ensuite bedroom shown on the side elevation which has not been built in accordance with the plans, a door shown on the plans of the the family room is built as a window, and a kitchen window is shown on the floor plans but not in the elevation. I consider that the dwelling as it is built does not detract from the visual amenities of the area and that these inaccuracies are not significant. However, if the Board is minded to grant permission for retention, it would be appropriate to require the application to submit accurate plans by condition in my view.

### **Size of garage and boundary treatment**

The existing garage has a stated area of 112 square metres. The Planning Authority raised concerns in relation to the size of same and the response to further information provided for revised plans to reduce the size of the garage by 50% to demolish the rear part of the garage and reduce it to an acceptable size. I consider that the reduced size is appropriate and have no objection to same.

Condition 15 of the original permission required the front boundary to be a sod and stone bank with locally growing hedges, thorn or hazel. I note that a stone wall is in

place at this location which is in character with existing boundary treatment at this location and I have no objection to same.

I note that a revised notice was submitted in relation to the retention of the boundary walls as constructed with permission sought to demolish part of the garage and retention permission sought for the remaining portion.

### **Appropriate Assessment**

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.

### **CONCLUSIONS AND RECOMMENDATIONS**

Arising from my assessment, I recommend refusal for the following reason:

The Board is not satisfied, on the basis of submissions made in connection with the planning application and appeal that effluent can satisfactorily be disposed of on site, notwithstanding the existing proprietary wastewater treatment system. The development would therefore be prejudicial to public health.

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Emer Doyle

Inspector

25<sup>th</sup> October 2016