



An  
Bord  
Pleanála

## Inspector's Report PL27.247049.

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<b>Development</b>	Retention of changes made to elevations and location of dwelling & completion of effluent treatment plant.
<b>Location</b>	Scalp, Hollywood, Co. Wicklow
<b>Planning Authority</b>	Wicklow Co. Council.
<b>Planning Authority Reg. Ref.</b>	Reg. Ref. 15/1082
<b>Applicant</b>	Leo Rooney
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First party against conditions
<b>Appellant</b>	Leo Rooney
<b>Observers</b>	None
<b>Date of Site Inspection</b>	2/11/16.
<b>Inspector</b>	Siobhan Carroll

## **1.0 Site Location and Description**

- 1.1. The appeal site is located in an upland area in the west of county Wicklow. The site is served by a narrow local road which lies 2km to the south-west of the R756 which connects Hollywood and Glendalough villages.
- 1.2. The site is of stated area of 0.2032 hectares. The site contains a single storey detached dwelling. The property is T-shaped with an area of 184.13sq m. The single storey garage has an area of circa 30sq m and situated to the west of the dwelling.

## **2.0 Proposed Development**

- 2.1. Retention of changes made to elevations and the location of the dwelling and garage is sought and permission for the completion of the on-site effluent treatment system.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission was granted subject to 8 no. conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- Following the submission of a response to further information the Planning Authority were satisfied that the issues concerning the on-site effluent treatment system and the sightlines at the vehicular entrance had been addressed.

#### **3.2.2. Other Technical Reports**

E.H.O – No objections subject to conditions

### 3.3. **Third Party Observations**

None received

## 4.0 **Planning History**

Reg. Ref. 06/6463 – Permission was granted for amendments to the extension and refurbishment of existing cottage and associated site works under Planning Register Reference 04/161.

Reg. Ref. 04/161 – Permission was granted for a 169.1sq m extension to an existing 40sq m cottage.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

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

- Rural Housing Policy is set down under Chapter 6

### 5.2. Wicklow County Council Development Contribution Scheme 2015

### 5.3. **Natural Heritage Designations**

- The Poulaphouca Reservoir SPA Site Code 004063 is located circa 3.2km to the north-east.
- The site is located approximately 5km to the west of the Wicklow Mountains SAC Site Code 002122 and the Wicklow Mountains SPA Site Code 004040.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A first party appeal has been lodged with the Board on the 8<sup>th</sup> of August 2016. The applicant Mr Leo Rooney is appealing against four conditions attached to the permission granted under Reg. Ref. 15/1082.

- Condition no. 2 requires the payment of €8,746.92 development contribution. The appellant states that the development contribution has not been calculated correctly and that the contribution should be at least half that amount.
- Condition no. 4 refers to the effluent treatment system and requires that the soil polishing filter be installed as per the documents lodged with Wicklow County Council. There is a dispute regarding the location of the boundary and also a stated old entrance and right of way through the site with the adjoining land owner. If this is proven then it would run directly through the location of the polishing filter.
- Condition no. 4 requires that the soil polishing filter be installed within six months of the date of the final grant of permission. The appellant states that this will cost in excess of €14,000.00 to carry out and that he does not have the finances to carry out the necessary works within the required timeframe.
- Condition no. 6 states that the garage shall be used for private domestic use only and shall not be used for human habitation or for any commercial purpose. The appellant states that he wishes to use the garage as a home office for his personal use. The dwelling has three bedrooms and is unsuitable for his current needs.
- Condition no. 8 refers to the requirement to retain the existing shrub and tree vegetation on site particularly along the entire roadside boundary. The appellant wishes to remove the trees to aid visibility from the house.

## 6.2. Planning Authority Response

- The basis for the calculation of the development contribution for condition no. 2 is set out in the planning report. It is in accordance with the current Development Contribution Scheme. Section 4.12 of the scheme states that the contribution applicable for the retention of works to a residential unit substantially carried out will be computed on the basis of the contributions sought in the permission under which the units were commenced. The contribution is calculated as per the calculation made under Reg. Ref. 06/6463, using the revised floor areas.
- Condition no. 4 refers to the effluent disposal system. It is imperative that the public health matter is dealt with as soon as possible having regard to the fact that the development is already occupied. The six months which is provided in this condition is considered generous and it does not adequately protect against pollution.
- Condition no. 6 refers to the use of the garage. It is noted that the use of the garage as a home office was not applied for and therefore irrespective of the standard condition attached to the permission the applicant should not use the garage for unauthorised uses.

## 7.0 Assessment

- 7.1. The subject appeal is a first party appeal against four conditions of the grant of permission under Reg. Ref. 15/1082. I consider, having regard to the nature of the conditions, that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted and the appeal should be determined under the provisions of Section 139 of the Planning & Development Act, 2000, as amended.
- 7.2. Condition no. 2 requires the payment of a development contribution of €8,746.92 in respect of public infrastructure and facilities benefiting the development of the area. The appellant contends that the amount levied has not been calculated correctly and

that the contribution should be at least half that amount. In response to the matter the Planning Authority have stated that the amount has been levied in accordance with the current Development Contribution Scheme. They refer to Section 4.12 of the scheme states,

*“where permission is granted for development after the date of adoption of this Scheme, and the subject development includes for retention and/or completion of residential units or industrial/commercial buildings. Where substantial works have been carried out to the individual residential units or industrial/commercial buildings, in the opinion of the Planning Authority, on foot of a previous permission, the contributions required for these incomplete residential units, or industrial/commercial buildings, will be computed on the basis of the contributions sought in the permission under which those units were commenced.”*

- 7.3. The Planning Authority calculated the contribution on the basis of the calculations used under the permission Reg. Ref. 06/6463, using the revised floor areas currently proposed for retention. Section 4.12 provides that in the opinion of the Planning Authority where substantial works have been carried out on foot of a previous permission and where retention is sought that it is appropriate to compute the contributions on the rate sought when the unit commenced.
- 7.4. Under Reg. Ref. 06/6463 permission was granted for an extended dwelling with a total floor area of 138sq m. The dwelling as constructed and which retention permission is sought has a total area of 184.13 sq m. The original cottage had a floor area of 40sq m. Section 4.3 of the Contribution Scheme sets out that a waiver will be given for the first 40sq m of an extension. With the deduction of the original floor area and the further waived 40sq m this results in the area of extension liable for a contribution to be 104.13sq m. The rate charged per square metre is €84 this is the rate per square metre which was also levied for the extensions granted under Reg. Ref. 06/6463. Therefore the contribution of €8,746.92 as levied by the Planning Authority is in accordance with the provisions of the Development Contribution Scheme in respect of residential extensions. Furthermore, I note that condition no. 2 states that;

“Note: Monies already paid in respect of Condition 2 of planning register reference 06/6463 may be offset against the contribution required by this condition.”

7.5. Therefore, if a development contribution has been paid in full or in part in respect Reg. Ref. 06/6463 then that amount will be offset against the €8,746.92.

7.6. Condition no. 4 refers to the effluent treatment system. It states;

“4. **Within six (6) months from the date of the final grant** of planning permission the effluent disposal system shall be laid out as proposed and constructed to the specification of *Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10), Code of Practice, published by E.P.A 2000.*

*Photographic evidence of the installation of the septic tank/secondary treatment unit, distribution chamber, and percolation trenches/polishing filter and pipes shall be submitted on completion of the system. Before the development is occupied, a certificate from a Chartered Engineer, Environmental Health Officer, or Hydrogeologist, (with professional indemnity insurance) stating that the effluent disposal system has been installed in accordance with this condition, shall be submitted to the Planning Authority.”*

7.7. The appellant states that condition no. 4 requires that the soil polishing filter be installed as per the documents lodged with Wicklow County Council, however he notes that there is a dispute regarding the location of the boundary and the location of an old entrance and right of way through the site with the adjoining land owner. The appellant therefore has concerns that should it be proven then it would run directly through the location of the polishing filter. In relation to this matter, I would note that this is a private legal matter between the landowners. The Planning and Development Act 2000, as amended, requires that the applicants have sufficient legal interests in the lands to carry out the development. Furthermore, I note that it is not within the remit of the Board to determine legal interests and/or obligations held by the applicant, in relation to such lands. Section 34(13) of the Planning and Development Act, 2000, as amended, relates as follows: “A person shall not be entitled solely by reason of a permission or approval under this section to carry out a

development.” This subsection makes it clear that the grant of permission does not relieve the grantee of the necessity of obtaining any other permits or licences which statutes or regulations or common law may necessitate.” Accordingly, I do not consider that these matters are substantive grounds to revise condition no. 4.

7.8. The appellant also states that condition no. 4 requires that the soil polishing filter be installed within six months of the date of the final grant of permission. He states that the cost would be in excess of €14,000.00 and that he does not have the finances to carry out the necessary works with the required timeframe. In response to this matter the Planning Authority have stated that it is necessary that the public health matter is dealt with as soon as possible because the development is already occupied. They consider that the six months which is provided in the condition is generous. In relation to this issue I would concur with the Planning Authority. Having regard to the fact that the development of the extensions has been carried out and the dwelling is occupied the installation of the on-site effluent treatment system including the soil polishing filter within six months of the grant of permission is imperative to ensure the adequate and appropriate treatment of sewerage in the interest of public health and to protect water sources.

7.9. Condition no. 6 states;

*“This garage shall be used for private domestic use only and shall not be used for human habitation or for any commercial purpose.*

*Reason: In the interest of public health.”*

7.10. The appellant states that he wishes to use the garage as a home office. This use was not included in the current application and the Planning Authority attached condition no. 6 as a standard condition to ensure that the garage is used for domestic purposes ancillary to the main house. Any change of use of the garage from domestic purposes ancillary to the main house would require permission. Having regard to the rural location of the property and the fact that it is served by a narrow local road, the suitability of the location for the operation of a business should be properly assessed, therefore, I do not consider it appropriate to omit condition no. 6.



7.11. Condition no. 8 states;

*“Existing shrub and tree vegetation on site shall be retained, particularly along the entire roadside boundary, except those strictly required to be removed to carry out the development. Where any tree fails it may be removed subject to the written agreement of the Planning Authority, and shall be replaced with a tree of a similar species.*

*Reason: In the interests of visual amenity and integrating the development into the landscape.”*

7.12. The appellant requests that condition no. 8 be omitted in order that he can removed the trees along the roadside boundary to provide visibility from the house. Condition no. 8 has been attached by the Planning Authority in order to ensure that existing trees and planting on site are retained to integrate the development into the landscape and protect the visual amenity of the area. Having regard to the fact that the site is located in an Area of Outstanding Natural Beauty I do not consider it would be appropriate to omit condition no. 8.

## **8.0 Recommendation**

8.1. Having regard to the nature of the conditions which are the subject of the appeal and based on the reasons and considerations set out below, I am satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and recommend that the said Council be directed under subsection (1) of section 139 of the Planning and Development Act, 2000 to ATTACH Condition Numbers 2, 4, 6 & 8.

## 9.0 Reasons and Consideration

Having regard to the provisions of the Wicklow County Development Plan 2010-2016, it is considered that, subject to the attachment of conditions 2, 4, 6 & 8, the proposed development would not seriously injure the amenities of the area or of property in the vicinity of the site, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

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Siobhan Carroll  
Planning Inspector

29<sup>th</sup> November 2016