



An  
Bord  
Pleanála

## Inspector's Report PL27.248441

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<b>Development</b>	Retention of potable water supply well, balcony, car park entrance, well building, treatment plant building at pub and associated ancillary works.
<b>Location</b>	The Tap, Ballard, Lower Kilbride, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority Reg. Ref.</b>	16/1355
<b>Applicant(s)</b>	Tony Cronin
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third-v-Grant
<b>Appellant(s).</b>	Kevin Lande
<b>Date of Site Inspection</b>	20 <sup>th</sup> July 2017
<b>Inspector</b>	Colin McBride

## 1.0 Site Location and Description

The appeal site, which has a stated area of 0.4 hectares, is located at Kilbride, Co Wicklow. The appeal site is located at the junction of the R772 (formerly the N11) and the L1157. The appeal site is occupied by an existing public house, which is a two-storey structure set around an external courtyard. At the time of the site visit there is a vehicular entrance on the northern side of the building with a gravelled area to the north west of the existing structure on site. Adjoining uses include agricultural lands to the north west. The nearest dwelling is a two-storey dwelling located to the south on the opposite side of the L1157.

## 2.0 Proposed Development

- 2.1. Permission is sought for retention of potable water supply well and associated ancillary works, retention of first floor balcony to rear courtyard area, retention of entrance serving existing car park and associated ancillary works, retention of well building and retention of treatment plant building serving the treatment plant.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission granted subject to 4 conditions. Of note are the following condition...

Condition no. 2: Use of the first floor balcony to be restricted to private use and not commercial use.

Condition no. 3: Details of the proposed entrance to the car park to be submitted and agreed in writing.

### 3.2. Local Authority and External reports

- 3.2.1. Area Engineer (03/01/17): No objection.

- 3.2.2. Planning report (06/02/17): Further information required including details of applicants interests in lands/right of access to the proposed car park, submission of a revised layout showing adequate parking on site, details of the treatment process to provide the water supply and test results confirming adequate water quality and detailed drawings of the car park and vehicular entrance.
- 3.2.3. Planning report (12/04/17): The response to further information was noted. It was considered that the proposal was acceptable having regard a number of conditions. A grant of permission was recommended subject to the conditions outlined above.

## 4.0 Planning History

- 4.1 07/1619: Permission granted for the demolition of toilets, kitchen, stores and the construction of a two-storey extension to existing residence, new site entrance, septic tank and percolation area.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1 The relevant Development Plan is the Wicklow County Development Plan 2016-2022.

## 6.0 The Appeal

### 6.1 Grounds of appeal

- 6.1.1 A third party appeal has been lodged by Kevin Lande, Blackthorn, Sandyford Road, Dundrum, Dublin 16. The grounds of appeal are as follows...
- The appellant has submitted land registry details showing the extent of lands under his ownership adjacent the site and notes that access to the car park requires crossing such lands meaning that the applicant has no lawful means

of access to the vehicular entrance and associated car park. The applicant has not demonstrated a right of way or legal right to access through the appellant's lands and the Planning Authority have erred in granting permission in this case.

- The appellant noted that there is an existing access off the southern boundary of the site and such is a viable entrance for the development on site.
- The appellant notes that he does not consent to the applicant crossing his lands to access the site and that to do so would have an adverse impact on the amenity, future potential use and value of his property.
- It is noted that the Council's interest in old slip road (N11) was relinquished in 2007 and that there is no slip road in existence since that time.
- It is noted that condition no. 4 of the grant of permission requires compliance with the condition set down under 07/1619 which include a condition referring to car park access through the courtyard. It is noted that it is acknowledged in the documents associated with 07/1619 that no right of way existing to access the site as proposed.
- The appellant requests that the Board refuse permission in this regard.

## **6.2 Responses**

6.2.1 No responses.

## **6.3 Submissions**

6.3.1 A submission was received from Kevin Lande.

- The submission raises concerns regarding rights of way, lack of consent to cross his property to access the site, the fact the stairs obstruct access to the overflow car park permitted previously, lack of information regarding loading on the wastewater treatment system and issues regarding intensification of commercial activity on site.

## 7.0 Assessment

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

Design, visual/adjoining amenity

Traffic

Wastewater treatment system

Appropriate Assessment

Other Issues

### 7.2 **Design, scale, adjoining impact:**

7.2.1 There are a number of elements for retention and I will assess each element in turn. Firstly, the proposal entails retention of a balcony area. The structure in question is a wooden structure located within the courtyard area that is surrounded by existing two-storey structures on all sides. It provides external space at first floor level with a staircase linking it to the courtyard area. In terms of overall impact, the structure is not visible from outside the existing structure on site and has no significant visual impact. I would consider that the structure would be acceptable in the context of the proper planning and development of the area.

7.2.2 The proposal entails retention of a treatment plant building, a well and a building associated with the water supply on site. Having regard to fact there is an existing commercial development on site, I would be satisfied that the principle of both are acceptable. In terms of structures on site, the treatment plant building is small in size (4sqm) and has no significant physical or visual impact. The building in association

with the water supply is also small in size and located adjacent the existing structure on site and is subordinate in scale and has no significant or adverse visual impact.

7.2.3 In regards to adjoining amenity, the site is adjoining by agricultural lands to the north west with the nearest dwelling located to the south and on the opposite side of the L1157. I am satisfied the proposal is for alteration of an existing commercial premises and does not entail any significant intensification of activity over and above the established use on site. In this regard I am satisfied the proposal would be acceptable in the context of the amenities of adjoining properties.

### **7.3 Traffic:**

7.3.1 The proposal entails retention of a vehicular entrance and provision of a new car parking layout to the north west of the existing structure on site. The vehicular entrance is located to the north of the existing structure and is to link into the existing layby that runs parallel to the public road. In addition to parking along the front elevation (east) and to the east of the structure on site (17) spaces, 37 spaces are to be provided in the car park to the north west of the structure on site. Having regard to the fact the proposal entails no increase in floor space or significant intensification of the existing use, the level of parking provided is not necessarily a requirement and its provision would be acceptable. In terms of the issue of traffic safety, I would consider that the design, layout and location of the access would be acceptable in regard to traffic safety and would not generate any turning movements that would obstruct other road users or result in a traffic hazard. I am satisfied that the retention of the vehicular access and provision of additional parking is acceptable in regards to traffic safety.

#### **7.4 Wastewater Treatment:**

7.4.1 It appears that the retention relates to the well and the treatment plant building and does not relate to the entire wastewater treatment system. It is reasonable to assume that the existing commercial premises has been served by an on-site wastewater treatment system for some time. I am satisfied that the separation distances between the water supply and wastewater treatment system is in accordance with EPA guidelines for wastewater treatment systems.

#### **7.5 Appropriate Assessment:**

7.5.1 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.

#### **7.6 Other Issues:**

7.6.1 The main issues raised in the appeal submission relates to landownership, with the appellant noting that he is registered owner of the land in front of the vehicular entrance that was formerly part of the public road, which had been realigned further north east. The appellant has submitted the relevant land registry documents. The appellant notes the applicant has no control over the area in question, which needs to be traversed to access the vehicular entrance and car park and that no right of way exists or was granted to the applicant. The applicant's response to further information request concerning such is that the area in question is in still in the charge of Wicklow County Council.

7.6.2 Disputes regarding land ownership and rights of access is a not matter that the Board can determine or has the remit or function to decide on. It is civil matter and not a planning consideration. The proposal is being assessed in regards to its acceptability in the context of the proper planning and sustainable development of the area. In this regard the design, scale and layout of the proposal would be acceptable in this regard. In addition to such I would note under Section 34(13 that “a person shall not be entitled solely by reason of a permission under this section to carry out any development”.

## **8.0 Recommendation**

8.1. I recommend a grant of permission subject to the following conditions.

## **9.0 Reasons and Considerations**

9.1 Having regard to the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable having regard to design and would not seriously injure the visual amenities of the area or the amenity of adjoining properties. The proposed development would also be satisfactory in regards to traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the plans submitted on the 21<sup>st</sup> day of March 2017, 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 prior to commencement of development



and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. No amplified music shall be permitted in the external courtyard area.

Reason: In the interests of the amenities of property in the vicinity.

3. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

4. 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.

5. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste and a construction stage traffic management plan.

Reason: In the interest of public safety and residential amenity.

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Colin McBride  
Planning Inspector

28<sup>th</sup> July 2017