



An
Bord
Pleanála

WEAFER
STREET,

Inspector's Report PL27.249361

ENNISCORTHY, CO.

WEXFORD.Castlekeely, Caragh, Naas,
Co.Kildare.

Development	House, wastewater treatment system, garage, entrance and associated site works.
Location	Tomdarragh, Roundwood, Co. Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	17/400
Applicant(s)	William Cosgrave
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third-v-Grant
Appellant(s).	Mairtin & Marion Mac Siurtain

Date of Site Inspection

09th January 2018

Inspector

Colin McBride

1.0 Site Location and Description

1.1 The appeal site, which has a stated area of 0.46 hectares, is located in the townland of Tomdarragh approximately 2km to the north east of Annamoe. The appeal site is accessed over an unsurfaced laneway (approximately 3m wide) that provides access to agricultural lands and three dwellings. The main body of the site is located approximately 440m along the laneway from the public road. The laneway has two junctions with the public road (L1076) to the east of the site. The original entrance and a short distance to the north a more recent entrance with a tarred section of laneway. The appeal site is an existing field (grazing lands) that increases in level steadily away from the laneway in a south westerly direction. The boundaries of the appeal site consist of existing hedgerow. Adjoining uses include similar agricultural lands to the south west and south east, a forestry plantation to the north west. Immediately to the south east of the site is temporary structure with a number of vehicles stored in its curtilage.

2.0 Proposed Development

2.1. Permission is sought for a dwelling, wastewater treatment system, garage, new entrance with access driveway and associated site works. The proposal is for a single-storey dwelling with a floor area of 150sqm and a ridge height of 4.551m. The dwelling has a pitched roof and an external finish of plaster walls and a slate roof. The detached garage has a floor area of 29.25sqm and a ridge height of 4.413m. The site is accessed over an existing unsurfaced laneway and requires a long access driveway that runs parallel to the existing laneway for a distance of 180m. The existing access laneway has a vehicular entrance off the L1076 to the south east of the site. The length of the driveway was reduced in response to a further information request (115m).

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 15 conditions. Of note are the following conditions.

Condition no. 4: No development shall commence on site until the original entrance onto local road L-1076-0 from the laneway serving the site has been closed off by the erection of roadside boundary at this junction.

3.1

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Local Authority
and external reports

- 3.1.1. EHO (26/04/17): No objection.
- 3.1.2. Area Engineer (08/05/17): Further information including proposals to upgrade the substandard access lane and details of surface water drainage proposals for the access lane.
- 3.1.3. Planning Report (25/05/17): Further information required including measures to address concerns regarding visual impact due to elevation location, measures to address concerns regarding the impact of the proposed 200m long driveway and revised proposals for closure of an existing entrance onto the L1076 including details of agreement with other landowners if necessary.
- 3.1.4. Area Engineer (24/07/17): Further information required including details of surface water drainage proposals for the access lane and levels and surfacing proposals for the access lane.
- 3.1.5. Planning Report (27/07/17): The access laneway was considered to be inadequate in terms of width and alignment and visibility at entrance to the public road was considered inadequate and the proposal would be a traffic hazard. The proposal by virtue of its location on an elevated site in an Area of High Amenity was considered to be contrary to the objectives of the County Development Plan. The long access driveway was considered inappropriate in terms of visual amenity and unacceptable in regards to potential traffic impact. Refusal was recommended. This recommendation was overruled with it considered that subject to a number of conditions that the proposal would be satisfactory in terms the proper planning and sustainable development of the area. A grant of permission was recommended subject to the conditions outlined above.

4.0 Planning History

- 4.1 16/892: Permission refused a dwelling, wastewater treatment system and associated site works on the appeal site. Refused due to non-compliance with rural housing policy, traffic safety, impact on landscape character and inappropriate development.

- 4.2 PL27.234094: Permission refused for a dwelling, garage and associated site works on site to. Refused based on substandard nature of road network and inadequate sightlines, adverse impact on rural character and visual impact/landscape character.

- 4.3 PL27.234093: Permission refused for a dwelling, garage and associated site works on site to. Refused based on substandard nature of road network and inadequate sightlines, adverse impact on rural character and visual impact/landscape character.

- 4.4 04/1192: Permission granted for a dwelling, septic tank and revised entrance onto the public road.

5.0 Policy Context

5.1. Development Plan

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

5.1.2 Level 10-open countryside.

Objective HD 23: residential development will be considered in the open countryside only when it is for those with definable social or economic need to live in the open countryside subject to 16 no. considerations outlined under Objective HD 23.

5.1.3 The site is located in an Area of High Amenity in regards to landscape character.

5.2 Sustainable Rural Housing Guidelines 2005

5.2.1 The Guidelines set out a number of different categories of circumstances that would lead the Planning Authority to conclude that a particular proposal for development is intended to meet a rural generated housing need. The appeal site is located within an area under '*Strong Urban Influence*'. The key development plan objectives in these areas should be to facilitate the housing requirements of the rural community while on the other hand directing urban generated development to areas zoned for new housing in cities and towns.

These Guidelines also set out on page 45 that '*the location and siting of rural housing should be informed by landscape character, quality and distinctiveness*'.

6.0 The Appeal

6.1 Grounds of appeal

6.1.1 A third party appeal has been lodged by Dr. Mairtin and Marion Mac Siurtain, Athleathan, Tomdarragh, Roundwood, Co. Wicklow. The grounds of appeal are as follows...

- The appellants object to condition no. 4 permanently closing off a section of laneway that the appellant have a right of way to the public road. The appellants have submitted land registry documents showing their right of way that has been enjoyed for a significant period of time (the appellants have submitted details regarding the previous landowner of their property and the relevant land registry document illustrating rights of way).
- The appellants do not consent to the portion of laneway and access onto the public road being closed as required by condition no. 4 set down under the grant of permission and note that the Planning Authority have no right to or authority to demand such or the applicants to implement such.
- The appellants note that there have been attempts to close off the entrance and gives a detailed accounts of such occasions and the actions that have taken place.

6.2 Responses

6.2.1 Response by Alphaplan Design on behalf of the applicant, William Cosgrave.

- The applicant notes that the grounds of appeal only relate to condition no. 4 and note the fact that dwelling has been granted permission.
- It is noted the issues raised from the appeal stem from a previous permission with the applicant's father assuming the lane entrance had to be closed off by direction of the Council. The applicant notes that they don't have a legal interest to close the entrance and never claimed to have such. This relates to permission ref no. 04/1192 (permission granted for a dwelling) under which condition no. 10 require that the existing entrance serving the laneway be closed once a new safer entrance proposal had been installed.
- The applicant notes that through enquires with the Council it was indicated that condition no. 10 of permission ref no. 04/1192 was ultra vires and is not going to be pursued. The applicant has attached correspondence from the Council that indicates that condition no. 10 had been attached in error and that closure of the existing entrance would not be pursued by way of compliance (correspondence attached).
- The applicant wishes that this case be viewed in the same manner as ref no. 04/1192 in that the applicant does not have sufficient legal interest in the entrance to have a condition of this type imposed. The applicant agrees to the removal of condition no. 4 and notes that the applicant and his family have a legal right of way over the newer entrance constructed as part of compliance with ref no. 04/1192 and that this entrance has been deemed to be of sufficient standard in regards to safety.

7.0 Assessment

7.1 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, scale, visual impact, adjoining amenity

Traffic impact

Appropriate Assessment

Unauthorised development/enforcement

7.2 Principle of the proposed development/development plan policy:

7.2.1 Permission is sought for a dwelling and associated sites works within a rural area of Co. Wicklow. As noted under the policy section above the site is an area classified as Level 10 open countryside. Within this area the applicant must comply with the criteria set down under Objective HD23 (attached). William Cosgrave's address is Ballinacorbeg, Annamoe, Co. Wicklow, which is 2km from the site. This appears to be the applicant's family home. The applicant works in Dublin. The information on file indicates that the applicant helps his father out in the small holding the site is taken from at this location. The Planning reports associated with this application indicate concerns regarding the applicant's qualification under rural housing policy and particular the links to the rural area where the site is located, however there is no definite assessment of such in the final planning report and permission was granted for the proposed development. Based on the information on file and given the applicant's connections to the area I would consider that the applicant would meet the criteria for rural housing as set down under Objective HD23 of the County Development Plan and that the principle of the proposed development is satisfactory.

7.3 Design, scale, visual impact, adjoining amenity:

7.3.1 The appeal site is located a significant distance west of the public road (L1076) and on the southern side of a narrow unsurfaced laneway. The site itself is located on a hillside with levels increasing steadily away from the laneway in a south westerly direction. The site is accessed over a long driveway (180m long) that runs parallel to the existing laneway, but was reduced in length by way of further information (to 115m). The applicant has noted that there is existing screening of the site provided by existing vegetation including the forestry plantation located to the north west of the site.

7.3.2 As noted above the site is located in an 'Area of High Amenity' for the purposes of landscape character assessment. The Sustainable Rural Housing Guidelines, specifically Section 4.8 sets out that '*in assessing the design aspects of specific rural housing proposals, planning authorities should make well balanced and informed judgements on the merits of each proposal, taking on board the degree to which a site is sensitive in visual and other terms, the character of surrounding development and the wider area and the need to encourage innovation in design and construction techniques...*' .

As set out in the SRHG '*proposals for housing in rural areas should be assessed having regard to the existing to which they:*

- *Complement the landscape and avoid unacceptable visual intrusion,*
- *Introduce incongruous landscape elements and*
- *Help maintain important landscape elements and features that contribute to local landscape character, quality and distinctiveness (e.g. topographical features, geological features, cultural features etc)*

Appendix 2 of the County Development Plan consists of the 'Design Guidelines for New Homes in Rural Wicklow'. Among the guidelines for rural housing are the avoidance of deep and extensive excavations or building up levels to facilitate the siting of new houses in a rural area.

7.3.4 The appeal site is elevated and rises steeply from site frontage. The FFL of the dwelling relative to the level of the laneway is 6m. Furthermore as the site rises steeply and existing ground levels on the site are substantially higher than the FFL the proposal will require extensive cutting and excavation into the site and building up of levels to the front of the dwelling. Give the significant footprint of the single-storey dwelling, the level of excavation into the hillside would appear intrusive on the landscape and the extent of work required to cut into the landscape would erode the character of the existing natural landscape. In addition and despite the revised proposals in response to further information, the proposal provides for a lengthy driveway running parallel to the existing laneway which in itself would be an unnatural and incongruous feature in the rural landscape at this location.

7.4 Traffic Impact:

7.4.1 The site is accessed off a narrow country lane which is substandard in terms of width, alignment and surfacing. The lane does serve a number of existing dwellings (3 dwellings), however I would consider that the laneway is not sufficient to cater for any increase in traffic and that any such increase in traffic would have a negative impact by giving rise to additional traffic movements to and from the site and also by creating more obstructions to current users of the lane as two vehicles cannot pass simultaneously. The cumulative impact of any additional dwelling at this location must be considered.

7.4.2 As noted in the site description, the laneway splits into two and has two entrances onto the public road. The sightlines at the newer entrance further to the north are adequate given the status of the road and the type of traffic likely to be generated. The sightlines at the existing entrance are more restricted, however such is a pre-existing arrangement with the applicants proposing the use of the newer section for access to the site. In any event, the proposal for a dwelling at this location due to the existing substandard nature of the lane is considered a serious traffic hazard.

7.5 Wastewater Treatment/public health.

7.5.1 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 bedrock was encountered at a depth of 1.1m in the trial hole (1.2m). The percolation tests result 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 the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. It appears based on the layout that the proposal meets the required separation distances set down under the EPA Code of Practice (based on site size and separation from site boundaries, layout of wastewater treatment system and location of the well the proposal should meet such standards). Based on the information on file and subject to appropriate conditions requiring compliance with the EPA Code Practice, I would consider that the proposal would be acceptable in the context of public health.

7.6 Appropriate Assessment:

7.6.1 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.

7.7 Condition no 4:

7.7.1 Condition no. 4 of the permission granted notes that no development shall commence on site until the original entrance onto local road L-1076-0 from the laneway serving the site has been closed off by the erection of a roadside boundary at this junction. It appears that in granting permission ref no. 04/1192 that a condition was attached requiring provision of a new access to the laneway and to close off the original access to improve sightlines. It would appear that the new access was provided and the original access to the laneway has remained in use. The laneway

serves agricultural lands and three existing dwellings. The appellants' who have a dwelling on the laneway note that they have a right of way on the laneway through the original entrance onto the public road (documents submitted to back this up) and do not have a right of way over the new section and entrance provided as a result of ref no. 04/1192. The applicant in response notes that he or his father does not have sufficient legal interest to close of the original entrance and have also submitted details of correspondence from the Council, which indicates that the condition attached to ref no. 04/1192 was attached in error due to the inability of the applicant in that case to implement such due to insufficient legal interest. I would note that issues of right of way and land ownership are not planning matters, however in this case both the applicant and the appellants have provided sufficient information to indicate that the applicant does not have sufficient legal interest to close the original entrance to the laneway and that there are other parties who have rights of way on such. I would note that in the event of a grant of permission that a similar condition to condition no. 4 should not be applied as the applicants do not have sufficient legal interest or ability to implement such and it would impact on other parties access arrangements.

8.0 Recommendation

8.1 I recommend refusal based on the following reasons.

9.0 Reason and Considerations

9.1

1. The appeal site and proposed development is located off an extremely narrow unsurfaced and poorly maintained laneway. The site is located a significant distance along the laneway away from the adjoining public roads. The existing laneway is substandard and unsuitable for the additional traffic movements generated by the proposed development when taken in conjunction with the existing traffic

movements generated by development and land uses located along the laneway. In this regard the proposed development would constitute a traffic hazard and would set an undesirable precedent for additional development along this substandard laneway. The proposed development would, therefore, endanger public safety by reason of traffic hazard and be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the site in an area of Area of High Amenity as set under the County Development Plan, to the policies of the current development plan (Design Guidelines for New Homes in Rural Wicklow) in relation to new dwellings in the landscape and to the exposed and elevated characteristics of the landscape in this location, the level of excavation and building up of material to site the dwelling, and the excessive length of driveway necessary to access the site, it is considered that the proposed development, by virtue of the topography of the site and extent of proposed excavations, would form an incongruous and intrusive feature on the landscape and would, therefore, be contrary to the Wicklow County Development Plan 2016-2022 and would be contrary to the proper planning and sustainable development of the area.

Colin McBride
Planning Inspector

19th January 2018