



An
Bord
Pleanála

Inspector's Report ABP-300416-17

Development

Relocation of gates, construction of a two-storey office building, change of use of farm building for maintenance of trucks, extension of yard, ancillary site development works, retention of 4 no. portable offices, canteen, storage, buildings / containers, boundary fencing and material change of use of farmyard complex for use as a commercial vehicular depot.

Location

Drummin East & Kilpedder East,
Delgany, Co. Wicklow.

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

17/464

Applicant(s)

Kelly Drain Maintenance Services Ltd.

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

As above

Observer

None

Date of Site Inspection

28th March 2018

Inspector

Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The subject site located in a rural area west of Greystones, Co. Wicklow and is situated off the N11 adjacent to Junction 11. Junction 11 provides access to the Greystones Southern Access Road.
- 1.2. The Greystones Southern Access Road provides access from the N11 to Kilcoole and Greystones.
- 1.3. The appeal site was previously a farm house, farm yard with associated farm buildings. The subject site is now used by a Drain Maintenance business and the owners of the business live in the former farm house.
- 1.4. The property currently accommodates many associated vehicles including trucks and smaller vehicles.
- 1.5. There are 3 no. portacabins on the site used for office / admin / canteen and a container used for storage.
- 1.6. The older farm buildings located in the centre of the site are in a derelict condition. The existing farm building on the site is finished in corrugated sheeting and is used for storing and servicing vehicles associated with the drain maintenance vehicle.
- 1.7. The neighbouring use is agricultural, i.e. grazing livestock.
- 1.8. The gradient of the appeal site is generally even however the local topography to the north of the appeal site rises.
- 1.9. There is a stream partially running along the northern boundary of the appeal site.

Additional information was sought for the following;

1. Revised proposals requested to allow unblocked public access to the historic mass path route.
2. The site is located on employment zoned lands. Applicant is advised to submit details of access to the remainder of the lands.
3. Operational details required in relation to the existing business
4. The serving of a commercial development with a bored well is unsustainable. Revised details are requested.

5. Address concerns to the service of the development with an on-site treatment system.
6. Details of the upgrading of the existing access road, revised proposals for the existing farm access onto the R774, full car parking details for employees and clarification to the access details to the existing property to the north east of the appeal site.
7. The proposal is located within a 10m buffer of a stream and this is contrary to development plan policy. Justification required.
8. Details of environmental protection of the stream during construction.
9. Full details of surface water management
10. Additional information required for the Stage 1 AA Screening.

2.0 Proposed Development

2.1. The proposed development is for the following;

- Proposed relocation of gates on the northern boundary
- Construction of a 2-storey office building (446 sq. m.)
- Change of use of existing farm building for maintenance of trucks (377 sq. metres).
- Extension of existing open yard for parking of trucks (710 sq. m.)
- Truck bay wash
- Bored well
- Wastewater treatment system

2.2. The proposal also includes the retention of;

- 4 no. portable offices, canteen, storage buildings / containers,
- boundary fencing
- material change of use of farmyard complex including open yard for use as commercial vehicular

3.0 Planning Authority Decision

Wicklow County Council decided to **refuse** planning permission for three reasons;

1. Having regard to:

- the Sally Walk / Kilcoole historic mass path, which traverses the site and the objectives set out in the Wicklow County Development Plan, 2016 – 2022, to facilitate access to amenity routes and to protect existing green infrastructure resources,
- objective of EMP12 of the Wicklow County Development Plan, 2016 – 2022, which zones the overall lands within the overall ownership of the applicant for employment use,
- the failure of the applicant to provide suitable pedestrian access through the site to facilitate users of the mass path in a safe and unobstructed manner,
- the proposal for palisade fencing along the boundary of the mass path
- the proposal to access undeveloped lands through the proposed landscaping which is to provide screening, and in proximity to the proposed effluent treatment / disposal system,

the planning authority believes the applicant has failed to demonstrate that the development can be accommodated in a manner that allows for the co-ordinated and integrated development of the overall landholding so that it provides for this development, protects the mass path and provides suitable access to future development lands. To allow the proposed development would result in the haphazard and piecemeal development of the site and would be contrary to objectives to facilitate safe access to and protect the amenity of the mass path. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. Having regard to

- The proposal to install an on-site wastewater treatment system and a bored well water supply to service a commercial employment facility on an overall landholding that is zoned for employment use,
- The failure of the applicant to submit proposals to connect to the public sewer and public water supply,

It is considered that the proposed development would result in an unsustainable wastewater and water system, which would also be prejudicial to public health and environmental quality. The proposed development would therefore be contrary to proper planning and sustainable development.

- ## 3. The applicant has failed to include satisfactory proposals to prevent traffic associated with the development from using the existing farm entrance to the Greystones Southern Access Road. The intensified use of this entrance onto the Greystones Southern Access Road would result in a serious traffic hazard for users of the gate and users of the dual carriageway.

3.1. **Planning Authority Reports**

- #### 3.1.1. The main issues raised in the planner's report are as follows;

Area Planner

- The lands are zoned employment use and part of a larger land use zoning.
- The applicant would have to demonstrate the proposal would not compromise a coherent development for the rest of their lands. Applicant shall clarify how lands to east shall be accessed.
- The type of trips generated should be clarified.
- The development blocks the use of an historic mass path.

- A condition was attached to previous permission (L.A. 07/2592) requiring the maintenance of the existing right of way.
- The maintenance of amenity walking routes is supported by the County Development Plan.
- The proposal to block the path is unacceptable.
- The development will not have a significant adverse impact on visual amenities.
- It is recommended that the proposal should connect to public services.
- The stream adjoining the development has experienced flooding further downstream. Additional information required ensuring development will not result in additional surface water runoff.
- It is unclear how the existing property to the north west of the site is accessed.
- Concerns from third parties in relation to pollution.
- A Stage 1 Screening Assessment should be submitted to assess likely impact on the Nutura 2000 site network.

3.1.2. Environment Health Office; - Clarification of proposed water supply required.

3.1.3. Water and Environmental Services; - Additional information required in relation to drainage, surface water and foul

3.1.4. Greystones MD Engineer; - The existing farm access onto R774 shall be closed and the pedestrian right of way shall be protected.

3.1.5. Area Engineer; - Additional information sought in relation to the following (a) details of additional traffic movements including maximum number of employees at the facility, number of vehicles / tonnage / loads per day using the entrance and times of operation, (b) revised details of a sightline provision of 120m, (c) an auto track

drawing showing safe and sufficient turning movement for access to the site and egress to the public road, and (d) surface water details.

- 3.1.6. There was a submission from Inland Fisheries who requested additional information for a full aquatic assessment.

3.2. **Third Party Observations**

There were nineteen third party submissions to the Local Authority and the issues raised have been noted and considered. The following is a brief summary of the main issues;

- Pollution to existing stream.
- Inadequate surface water details.
- Pollution in breach of EU Water Framework Directive.
- Impact on well given proximity to stream.
- Inadequate details of toxic waste storage proposals.
- Potential Impacts on Glen of the Downs.
- EIS required.
- Concern in relation to potential pollution to local wells.
- Details of access unclear.

4.0 **Planning History**

- PA Ref. 07/2592 – Permission **granted** for the demolition of 2 no. existing farm houses and agricultural buildings and construction of 4 no. blocks comprising of 39 no. business units. Permission granted subject to conditions. **Condition no. 7** states that no development shall commence until the upgrading of the Greystones Wastewater Treatment Plant. **Condition no. 8** states that no development shall be occupied until the Sanitary Authority has confirmed the Greystones Wastewater Treatment Plant is operational. **Condition no. 27** requires that the existing mass path shall be protected.

5.0 Policy Context

5.1. Development Plan

The operational development plan is the Wicklow County Development Plan, 2016 – 2022.

The site is referred to in Policy Objective EMP 12 as the ‘Kilpedder Interchange’ and the site is designated to provide for employment uses in accordance with Policy Objective EMP 12. It is stated *‘to provide for employment uses including industrial, transport, distribution or warehouse developments of good architectural design, layout and landscaping including substantial screening from N11’*.

Policy Objective EMP5 is relevant and this states *‘to promote the development of employment generating uses at locations which comply with sustainable transportation objectives’*.

Section 10.3.8 ‘Public Rights of Way’ is also relevant and P.R.O.W.7 is relevant as it identifies ‘Sally Walk / Kilcoole Mass Path’ as a public right of way.

6.0 The Appeal

The following is a summary of the appeal submission;

Introduction

- Applicant originally started the business in Blacklion, Greystones.
- However, permission to regularise planning on this site was refused permission as the site was zoned residential.
- The applicant subsequently purchased the current appeal site.
- As part of the purchase agreement the applicant was required to erect a stock proof palisade fence.

- Wicklow County Council issued a warning letter in relation to fence and the material change of use.
- The applicant considers that refusal reasons no. 2 and no. 3 can be dealt with by condition whereas the pedestrian access issue should be dealt with as a legal issue and separated from the planning.

Refusal Reason no. 1

- There is no objective to protect the mass path in the Greystones / Delgany & Kilcoole LAP nor is the applicant's lands designated to facilitate access to amenity lands in the County Development Plan.
- An indicative green route for this area is shown in the LAP along the Southern Access Road and another along the Public Right of Way from Kilcoole to Priestown referenced within the County Development Plan.
- The applicant proposes a safer pedestrian route and details were contained in the planning application. This avoids pedestrians crossing the roundabout to cross the Greystones Southern Access Road.
- It is submitted that pedestrians walking from Drummin Lane in the Kilcoole direction are supposed to be crossing the Greystones Southern Access Road at the roundabout.
- The applicants live in one of the two residential properties on the site.
- The second residential property will be used as a rental in due course.
- It is submitted that it is important for the owners to live on the site adjoining their property for economic, business and security reasons.

Reason no. 2

- The applicant is willing to accept a condition that allows for connection to public infrastructure.
- The applicant is currently in discussions with the owners of the neighbouring business park (located on the opposite side of the Greystones Southern

Access Road) to connect to their pumping chamber. This will eventually connect to the public foul sewage network for Greystones.

- The applicant has been in contact with Irish Water regarding a new piped water connection which would appear to be place in approximately 6 – 12 months.
- Planning conditions allowing for connection to public water and foul system would be appropriate in this instance.

Reason no. 3

- The proposed development includes provision to close off the existing farm entrance onto Greystones Southern Access Road.
- A memorandum of agreement between the applicant and adjoining landowners is attached. This relates to access from the application site onto the roundabout on the Greystones Southern Access Road.
- Wicklow County Council previously granted permission (07/2592) for site access road from the roundabout of the Greystones Southern Access Road. These works commenced in 2011.

7.0 Assessment

The primary issues of consideration in this case include the following;

- Principle of Development
- Historical Walking Route
- Water and Waste Water Services
- Vehicular Access
- AA Screening

7.1. Principle of Development

- 7.1.1. The zoning objective for the appeal site is '*to provide for employment uses including industrial, transport, distribution or warehouse developments of good architectural design, layout and landscaping*'. The zoning objective also states that proposals shall include substantial screening from the N11.
- 7.1.2. The proposed development provides for a drain maintenance business. A large portion of the subject site will include vehicle and machinery storage. The proposed development also includes a two-storey office building. The overall floor area of the proposed office building is 446 sq. metres. The business is currently operational on the appeal site and I noted from my site inspection that there was no on-site manufacturing of drains. Based on my site inspection and the documentation on the file a large portion of the existing and proposed business is distribution and transportation.
- 7.1.3. The documentation submitted with the application indicates that the subject business will employ 19 persons. The former use on the appeal site was agriculture. The Local Authority is concerned that any piecemeal development of these zoned lands would compromise the overall redevelopment of these zoned lands. I would note from the relevant zoning map that the appeal site forms part of an overall land bank zoned for employment uses. However, provided that access issues have been adequately addressed, I would consider that there would be a small portion of undeveloped land to the east of the proposed development that would effectively be landlocked. However I would consider that this land which is in the applicant's ownership would allow for the expansion of the existing business, should permission be granted, or allow for a separate business that would be subject to a vehicular access agreement with the applicant and the future business owner. Therefore overall I would not consider that the proposed development would compromise the future redevelopment of the overall employment zoned lands.

7.1.4. The principle of the proposed development which is an employment use for distribution and the storage of machinery / vehicles would therefore be acceptable having regard to the zoning objective of the appeal site.

7.2. Historical Walking Route

7.2.1. There is a watercourse (stream) running along the northern boundary of the appeal site and a rural lane, i.e. Drummin Lane, is situated to the north of this watercourse. The established mass path travels along Drummin Lane towards the R744. The established mass path is situated within the red line boundary of the appeal site.

7.2.2. The applicant outlines for security reasons and health and safety reasons it is not practical to retain a public right of way through their site given the nature of the proposed development. The applicant therefore proposes an alternative route and this is indicated on the submitted site location map entitled 'suggested pedestrian route'.

7.2.3. The Local Authority has difficulties with this alternative route and the planners report outlines that a condition was attached to a previous permission in accordance with L.A. Ref. 07/2592 on the appeal site requiring the maintenance of the existing right of way. The Local Authority planner considers that the proposal to block the existing mass path is unacceptable. The Local Authority sought additional information requesting the applicant to outline proposals to allow unblocked public access to the historic mass path. The Local Authority was not satisfied with the applicant's response.

7.2.4. I would acknowledge that in accordance with Section 10.3.8 'Public Right of Way' of the Wicklow County Development Plan the Local Authority has identified seven routes that are considered to fulfil the criteria pertaining to Public Right of Ways. Reference P.R.O.W. 7 refers to '*Sally Walk / Kilcoole Mass Path from the pedestrian opening on the R761 / Main Street to the L-1042 IN Prieststown Kilquade*'. This is

the same right of way that travels along the northern bank of the stream within the appeal site and referred to above. Policy Objective NH46 of the County Development Plan states that the Council will use all its statutory powers for preserving in so far as is practical, the character of the routes of the public rights of way for amenity purposes. I would note that many of the third party submissions to the Local Authority refer to the importance, both in historical and amenity terms, of the mass path and strongly object to any interference with this public right of way.

7.2.5. I would concur with the local authority that the applicant has not adequately provided for the historical mass path as there is no demonstration that the route of the alternative walking route is within the ownership of the applicant. Although I would accept that an memorandum of agreement can be established between the applicant and the adjoining landowner to provide an alternative walking route however this would effectively replace the historical walking route for which there is a development plan policy to protect. It is an objective, i.e. Policy Objective N46, of the Wicklow County Development Plan to protect the public right of way as it is an identified public right of way which has historical significance and furthermore the historical walking route is protected in accordance with condition no. 27 of L.A. Ref. 07/2592.

7.2.6. The applicant has placed palisade fencing on the northern side of the mass path. The palisade fencing is the subject to an enforcement case and its retention is sought in this application. Therefore I would consider that the proposed development would be contrary to condition no. 27 of L.A. Ref. 07/2592 and Policy Objective N46 of the Wicklow County Development Plan, 2016 – 2022, and would therefore be contrary to the proper planning and sustainable development of the area.

7.3. **Water and Waste Water Services**

7.3.1. The local authority considered that it would not be in the interest of public health to service the proposed commercial development by a private well. As such the

applicant was requested to submit revised details which outline a connection to the public water mains which are established within the area. In response the applicant submits that a public water main connection would be excessive and would be in the region of €200,000 and that when the overall employment zoned lands are developed then a public water main connection will be sought. The applicant also submits that the proposal will include regular water quality testing. The Local Authority concludes that the proposal not to connect to the public water mains and to alternatively provide an on-site water supply system is not acceptable on public health grounds.

7.3.2. In relation to waste water services it is proposed that the proposed development will be served by an on-site waste water treatment system. The Local Authority considers this unacceptable and that a connection to the public system would be more appropriate for the overall zoned lands. Additional information was sought requesting the applicant to address their concerns. However, the applicant in response outlines that a connection to the public system would be excessive and it would require a connection over approximately 1.2km.

7.3.3. It is important to note at this point that the original application included proposals for an on-site waste water treatment system and abstraction of ground water via an on-site well. However, the appeal submission confirms that it is now the intension of the applicant to seek a connection from the proposed development site to the public water mains and the public foul sewer system. This revised proposal would effectively mitigate initial concerns expressed by Wicklow County Council. I would therefore consider that the issue can be adequately dealt with by a condition requiring a connection to the public infrastructure should the Board favour granting permission.

7.4. **Vehicular Access**

7.4.1. It is proposed that the drain maintenance business will be accessed from an existing access road to the north of the site which will connect to a recently constructed access road. The recently constructed access road will provide access onto the

Greystones Southern Access Road. It was initially proposed that the existing farm access onto the R744 would be separated from the commercial access.

7.4.2. However, this was cited as a concern by the Greystones Municipal District Engineer, in his report dated 25th May 2017, who recommends that the farm entrance should be closed off as it is considered that the intensification of the site will ensure that the access onto a busy dual carriageway would constitute a traffic hazard. Following an additional information request the applicant separated the farm entrance from the main commercial entrance. The Local Authority was not satisfied with this proposal as it considers using the existing farm entrance onto the Greystones Southern Access Road results in serious traffic hazard and interferes with free flow of dual carriageway and on this basis the Local Authority decided to refuse planning permission. On the basis of a visual observation of the local area I would concur with this view. The location of the existing farm entrance is situated along a straight stretch of road where vehicles travel at speed and any intensification of the vehicular access would, in my view, give rise to a traffic hazard.

7.4.3. However, in the first party appeal submission the applicant submitted that it is proposed to close off the farm entrance permanently. The applicant also submits legal documentation in the form of a memorandum agreement regarding access from the appeal site to the Greystones Southern Access Road via the newly constructed access road. This legal agreement sets out details in relation to the current owners of the access road who will finish the access road. The agreement outlines that the applicant will have a right of way over this access road. This agreement provides reassurance that the applicant intends to use the new access road to the immediate west of the appeal site to service the proposed development.

7.4.4. Prior to this proposed access road becoming available significant upgrade works would be required. This would include upgrading the access road along the northern boundary of the appeal site. The owners of the access road, to the immediate west of the appeal site, which serves the Greystones Southern Access Road are also

required to carry out upgrade works. Therefore, the proposed access is conditional on these upgrade works.

- 7.4.5. Overall, I would consider that the access details would be acceptable, however I would recommend to the Board, should they favour granting permission, that any grant of permission should be conditional on the completion of the access road and that the upgraded works shall be carried out in accordance with the documentation on the file and in agreement with the Planning Authority.

7.5. **Appropriate Assessment Screening**

- 7.5.1. The appeal site is not located within a designated Natura 2000 Site. The nearest Natura 2000 sites with a connectivity to the appeal site are The Murrough SPA (site code 004186) and The Murrough Wetlands SAC (site code 002249). The local watercourse to the north of the appeal site drains to these Natura 2000 sites, however the distance from the appeal site to these Natura 2000 sites is approximately 4km.
- 7.5.2. The Murrough SPA (site code 004186) has nine qualifying interests all of which are birds. The Murrough Wetlands SAC (site code 002249) has six qualifying interests.
- 7.5.3. It is important to note at this point that the original application included proposals for an on-site waste water treatment system and abstraction of ground water via an on-site well. However, the appeal submission confirms that it is now the intension of the applicant to seek a connection from the proposed development site to the public water mains and the public foul sewer system. This revised proposal would largely mitigate initial concerns expressed by Wicklow County Council.
- 7.5.4. The proposed development also includes a truck wash and truck movements near the existing watercourse (stream).

7.5.5. I note the report submitted by the applicant entitled 'Screening for AA' and the conclusions that the proposed development, either during construction or operational phase, no European sites are deemed to be at risk of likely significant effects from the construction operation of the proposed development. This conclusion is based on the following;

- The temporary nature and small scale of any discharges
- The minimal ground excavations as part of the proposed development
- The distance between the appeal site and the European sites
- The incorporation of Suds in the design of the proposed development.

7.5.6. Overall, I would consider that having regard to the revised proposals to connect to the public services, the distance of approximately 4km from the appeal site to the relevant Natura 2000 site and minor scale of the proposed development that a AA Stage 2 Assessment would not be required. Therefore I would conclude given the nature of the proposed development and having regard to the separation distance of the proposed development to the designated natura sites referred to above that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European site no. 002249 or European site no. 004186, or any other European site in view of the site's Conservation Objectives.

8.0 Reasons and Considerations

1. The development as proposed would involve the blocking of a mass path which is of historical and amenity significance to the local area. Policy Objective N46 of the Wicklow County Development Plan, 2016 – 2022, sets out to protect this historical walking route and also to maintain it as a public right of way in accordance with P.R.O.W. 7 of Table 10.3 of the County Development Plan. Furthermore Condition no. 27 of L.A. Ref. 07/2592 sets out that the public right of way through the appeal site shall be maintained. Therefore the proposed development would contravene condition no. 27 of

L.A. Ref. 07/2592 and Policy Objective N46 of the Wicklow County Development Plan, 2016 – 2022, and would therefore be contrary to the proper planning and sustainable development of the area

Kenneth Moloney
Planning Inspector

20th April 2018