



An
Bord
Pleanála

Inspector's Report ABP.300855-18

Development	Permission for a two-storey dwelling, amend an existing vehicular entrance, on-site waste water treatment system.
Location	Ballinvally, Killenagh, Gorey, Co. Wexford.
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	20171363
Applicant(s)	Niamh Lawless
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	As above
Observer(s)	None
Date of Site Inspection	20 th June 2018
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The subject site is located in a rural area situated approximately 4km south of Ballycanew, Co. Wexford. The appeal site is essentially part of an established farmland and the overall size of the site is approximately 0.68 ha (1.68 acres).
- 1.2. The subject site is currently an agricultural field used for grazing and part of the northern boundary of the subject site adjoins an established farmyard which includes farm buildings.
- 1.3. The gradient of the site slopes from west to east.
- 1.4. The appeal site also includes a laneway with an established farm access onto the regional road.

2.0 Proposed Development

- 2.1. The proposed development is for the construction of a two-storey house with car port under roof and the use of the existing agricultural entrance for a dwelling. The proposal includes amending the existing agricultural entrance to improve sightlines.
- 2.2. The proposed two-storey house has an overall floor area of 362 sq. metres. The floor plan comprises of living area at ground floor area and 4 no. bedrooms at first floor level.
- 2.3. The proposed house includes an external balcony to both the rear and front elevations at first floor level. The maximum ridge height of the proposed house is approximately 9.5 metres above ground level.
- 2.4. It is proposed to use the established farm entrance as the proposed vehicular entrance.

Additional information was sought requesting the applicant to demonstrate full legal ownership of the subject site.

3.0 **Planning Authority Decision**

3.1. Wexford County Council decided to **grant** planning permission subject to 10 no. conditions.

3.2. **Planning Authority Reports**

3.2.1. The main issues raised in the planner's report are as follows;

Area Planner

- The applicant satisfies the local rural housing need requirements.
- The distance of the house from the road makes the scale of the house acceptable.
- The proposed access arrangements overcomes the previous planning refusal on the subject site.
- There are outstanding legal issues for the applicant to address.

3.3. **Internal Reports;**

Environment; - No objections subject to conditions.

Chief Fire Officer; - No objections.

3.4. **Third Party Observations**

There is one third party submission and the issues have been noted and considered and are generally similar to the issues raised in the third party appeal.

4.0 Planning History

- L.A. 2017/0969 – Permission **refused** for a two-storey house as the proposal would result in the creation of a new vehicular entrance onto a regional road and insufficient information has been submitted to justify the creation of a new entrance and as such would be prejudicial to traffic safety.
- L.A. Ref. 2017/0564 – Permission **refused** to erect a two-storey dwelling for the following reasons, (a) proposed access prejudicial to traffic safety, (b) serious negative visual impact, and (c) applicant has failed to supply the need for the dwelling.

5.0 Policy Context

5.1. Development Plan

The operational Development Plan is the Wexford County Development Plan, 2013 – 2019.

Some relevant provisions of the CDP include;

- The site is located in a rural area designated ‘Stronger Rural Area’.
- Table 12 ‘Criteria for Individual Rural Houses’ sets out the test for applicants for rural houses.
- Guidance in relation to sightlines is set out in paragraph 18.29.3.

6.0 National Guidelines

6.1. Sustainable Rural Housing Guidelines

7.0 The subject site is located within an ‘Area under Strong Urban Influence’ as identified in Map 1: Indicative Outline of the NSS rural areas types in the DOEHLG Sustainable Rural Housing Guidelines for Planning Authorities, 2005. The Guidelines

note that in these areas the objective should be on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.

8.0 The Appeal

8.1. The following is the summary of a third-party appeal submitted by Martin Brendan Flood and Breda Flood;

- The appellants contend that they own half of the proposed access lane from the public road to the subject site.
- The applicant has no letter of consent to utilise the appellant's boundaries in their application.
- Applicant's folio WX8563 shows registration extending to the middle of the laneway only.
- The appellant submits that their roadside boundary is temporary in nature. Their boundary was removed due to storm damage and will be replaced in due course.

8.2. First Party Response

The following is the summary of a response submitted by the applicant;

- It is contended that the applicant has comprehensively dealt with any concerns of a legal nature.
- These issues have been addressed in the planner's report and the also in the additional information request by the local authority.
- It is argued that there is a wayleave over the laneway which has a width of 5.27m.
- The actual width of the laneway is 3.6m.

- The appellant has a wayleave over the laneway however the redline boundary includes the full wayleave and therefore extends 2.17m into the appellant's property.
- It is submitted that any plans to alter the front boundary that would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise would not be exempted development in accordance with Article 6 & 9 of the Planning & Development Regulations.
- It is contended that a person would not restrict sightlines to an access in which they have a right of way.
- It is contended and supported by submitted google earth maps that there was no front boundary to the neighbours (appellant's property) in 2010 or 2012 which is before the alleged storm damage in 2014.
- It is contended that the appeal should be dismissed having regard to Section 138 of the Planning and Development Act, 2000. It is contended that all the grounds of appeal have been proven to have no substance.
- There are a number of precedents that would support dismissing this appeal and this includes appeal ref. 248437 and appeal ref. 248593.
- It is submitted that should the Board not dismiss the appeal submission then the Board are advised that the applicant has several hundred metres of road frontage. The widening of the existing entrance is an option and the applicant would welcome a condition in this regard.

8.3. Third Party Response

The following is the summary of a response submitted by Martin Brendan Flood and Breda Flood.

- Paragraph 22(d) of the Planning and Development Regulations, 2001, states that should the applicant not be the owner of a site then they shall state the owner.

- The site layout drawings indicate that part of the applicant's property is included within the site boundary.
- The applicant failed to fully address question 10 of the planning application form.
- It is submitted by the respondent that the planning application includes part of their application.
- The application should be invalidated.
- The planning legislation requires that the legal interest is stated in the planning application.
- It is submitted that image 3.4 submitted by the applicant is based on maps from a website and are not the original land registry file.
- In relation to the front boundary works it is confirmed that there was a line of evergreen trees and a wall for over 30 years. It is intended to replace this boundary treatment and it is argued this will not create a traffic hazard.

9.0 **Assessment**

- Principle of Development
- Visual Impact / Scale
- Vehicular Access
- Other Issues

9.1. **Principle of Development**

- 9.1.1. A key consideration in this appeal relates to the applicant's rural housing need in this area and as such whether this housing need complies with the provisions of the Wexford County Development Plan, 2013 – 2019, and the Sustainable Rural Housing Guidelines, 2005.

- 9.1.2. In accordance with the provisions of the County Development Plan the appeal site is located in an area designated 'Stronger Rural Area'. However I would note that this rural designation differs from the national guidelines.
- 9.1.3. The applicant's family home is located in Ballycanew which is situated approximately 4km north of the appeal site. The applicant has been recently living in the townland of Coolook but has recently purchased 66 acres of farmland, which includes the appeal site, and intends to live in the proposed house with her husband and children. The applicant also intends to farm the land.
- 9.1.4. Ballycanew is a designated rural area in accordance with the provisions of the County Development Plan and its distance from the appeal site is less than 7km and as such the applicant would qualify as a local rural person in accordance with the provisions of the Table 12 'Criteria for Individual Rural Housing' of the County Development Plan. I would also note from the most recent planning history on the appeal site (20170969) that the Local Authority have previously accepted the applicant's local rural housing need.
- 9.1.5. Therefore, I would consider that the applicant would comply with the rural housing need policies and provisions of the Wexford County Development, 2013 – 2019, and as such I would recommend to the Board that the applicant complies with the local rural housing need provisions.

9.2. **Visual Impact**

- 9.2.1. In terms of considering the design of the proposed development I would consider that Policy Objective RH09 of the County Development Plan is relevant. Policy Objective RH09 states '*ensure that the rural houses are of a high quality design and well sited in the landscape*'.
- 9.2.2. The proposed two-storey house consisting of a floor area of approximately 362 sq. metres is a significant scale in this rural area.

- 9.2.3. In considering the visual impact of the proposed development I would have regard principally to Section 18.12.2 of the County Development Plan. Section 18.12.2 sets out criteria for considering scale and notably it is advised that rural houses shall not be visually prominent and shall avoid adverse impacts on neighbouring properties.
- 9.2.4. Although I would acknowledge that the scale of the proposed two-storey house is significant I would also note that the proposed house is set back approximately 110 metres from the public road. Furthermore the levels of the site for the proposed house is approximately 3 metres lower than the field adjoining the public road having regard to the local topography. Having regard to these factors I would consider that scale of the proposed house would be absorbed within the established landscape and therefore would be acceptable in visual terms.
- 9.2.5. I would note that there is a neighbouring property, i.e. the appellant's property, located to the north west of the appeal site however the separation distance is some 100 metres from the proposed house. The proposed house includes a sizable first floor balcony terrace however this is orientated to the rear of the proposed house and therefore faces away from the neighbouring property and as such no overlooking from the balcony would arise.
- 9.2.6. Having regard to the separation distances I would conclude that the proposed house would not adversely impact on any established residential amenities.

9.3. **Access**

- 9.3.1. The established farm entrance faces onto a Class 1 Regional Road and in accordance with the Section 18.29.3 of the County Development Plan the required sightline provision for this class of road is 220m in either direction.

9.3.2. The proposed development provides for a vehicular entrance with the sightline provision of 220m in either direction and therefore the proposal is consistent with the Section 18.29.3 of the County Development Plan. I would note from the previous planning history cases on the appeal site that a proposed house was refused permission due to vehicular access. However in this instance it is proposed to amend the existing farm entrance onto the regional road and I would consider that this would address refusal reasons in relation to vehicular access in the previous planning cases on the subject site.

9.3.3. I would consider that the proposed vehicular entrance is acceptable in terms of public safety.

9.4. **Other Issues**

9.4.1. It is submitted by the appellant that the applicant has insufficient legal interest to provide for the proposed vehicular access.

9.4.2. The applicant, in their response submission, includes a map indicating that they are owners of the entire laneway and that the appellant has a wayleave over the laneway and therefore in my view there is no issue.

9.4.3. I would also acknowledge the advice by the Development Management Guidelines, 2007, in relation to separate codes, i.e. the Planning and Development Act, should not be used to enforce other codes.

9.4.4. The Board will also acknowledge that Section 34(13) of the Planning and Development Act 2000, as amended, is an important consideration as this section states 'A person shall not be entitled solely by reason of permission under this section to carry out any development'. Therefore, if planning permission were obtained, the applicant must ensure that they have adequate legal interest to proceed with the proposed development.

- 9.4.5. Overall I would consider that the applicant has adequately demonstrated that they have sufficient legal interest to proceed with the proposed development should permission be granted.
- 9.4.6. It is proposed that the single storey house will be served by an on-site private effluent treatment.
- 9.4.7. In relation to waste water treatment I would note from the submitted Site Characteristic Form that the recorded T-value is 48. The E.P.A. publication, Code of Practice, Wastewater Treatment and Disposal Systems Serving Single Houses, 2009, advises that a T value between 3 and 50 that the site is suitable for development of a septic tank or a secondary treatment system.
- 9.4.8. The report from the Environment Section dated 15th November 2017, considers the proposal acceptable. I would consider that the waste water treatment proposals are acceptable.

10.0 Recommendation

- 10.1. I have read the submissions on the file, visited the site, had due regard to the County Development Plan, and all other matters arising. I recommend that planning permission be granted for the reasons set out below.

11.0 Reasons and Considerations

Having regard to the location of the site, the nature of the proposal, the rural housing policies of the Wexford County Development Plan, 2013 – 2019, and the Sustainable Rural Housing Guidelines for Planning Authorities, 2005, it is considered that, subject to compliance with conditions set out below, the proposed development would not be prejudicial to the amenities of the area and would be acceptable in terms of traffic safety. The proposal would therefore be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and as amended by plans and particulars submitted to Wexford County Council on the 22nd November 2017 and on the 15th December 2017 and, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter, unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. The applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.
 - (a) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The entire premises shall be used as a single dwelling unit only.

Reason: To prevent unauthorised development.

4. Prior to the commencement of development, details of the materials, colours and textures of all the external finishes shall be submitted to the planning authority for agreement.

Reason: In the interest of orderly development and the visual amenities of the area.

5. The proposed vehicular entrance shall be designed and constructed in accordance with the requirements of the planning authority. Details shall be agreed with the planning authority prior to the commencement of development.

Reason: In the interests of traffic safety.

6. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.

Reason: In the interest of orderly development and the visual amenities of the area.

7. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

8. Surface water from the site shall not be permitted to drain onto any public roads.

Reason: In the interest of traffic safety.

9. That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the works.

Reason: To protect the amenities of the area.

10. The site shall be landscaped in accordance with a scheme of landscaping, details of which shall be submitted to the planning authority for agreement before development commences. The scheme shall include a timescale for its implementation.

Reason: In the interest of visual amenity.

11. 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 the 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.

Reason: In the interest of amenities and public safety.

12. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Kenneth Moloney
Planning Inspector
17th July 2018