



An
Bord
Pleanála

Inspector's Report ABP 301379-18.

Development	House and effluent treatment system
Location	Templescoby, Enniscorthy, Co. Wexford.
Planning Authority	Wexford Co. Council.
Planning Authority Reg. Ref.	
Applicants	Norman & Jnana Cashe
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellants	Patrick and Catherine O'Donoghue
Observers	None
Date of Site Inspection	26/7/18
Inspector	Siobhan Carroll

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.41 hectares, is located in the townland of Templescoby, Co. Wexford. It is situated circa 4km to the west of Enniscorthy and 1km to the north of the closest junction of the N30.
- 1.2. The site comprises the eastern section of a landholding in the ownership of the applicant's father and where the family home is located. The site boundaries are defined by mature hedging. The site level gently falls towards the south-east. The gradient is 1:16.
- 1.3. There are a number of existing dwellings located adjacent the site including the appellants property to the south-east and two detached dwellings to the south and south-west.

2.0 Proposed Development

- 2.1. Permission is sought for a dormer dwelling with a floor area of 248sq m, 45sq m domestic garage, new vehicular entrance onto the local road and an on-site effluent treatment system.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 11 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Report dated 31/1/18 - Further information was requested in relation to the proposed sightlines at the vehicular entrance to clarify that a distance of 65m

can be achieved and that the applicant had sufficient interest in the lands to provide the sight distance.

- Report dated 9/3/18 – Following the submission of further information in relation to the proposed vehicular entrance the Planning Authority were satisfied that the applicant had submitted land registry details and folio maps which appear to show ownership of the disputed lands. The report also cites the provisions of Section 34(13) of the Planning and Development Act 2000 (as amended), whereby any grant of permission does not in any way infer rights regarding land ownership and the right to implement a permission.

3.2.2. Other Technical Reports

Senior Executive Scientist- Environment Department: Grant of permission recommended.

3.3. **Third Party Observations**

- 3.3.1. The Planning Authority received one submission/observation in relation to the application. The main issues raised are similar to those set out in the appeal.

4.0 **Planning History**

PA Reg. Ref. 20170219 – Permission was refused for a dwelling with services and a domestic garage for the following reasons;

1. Based on the extreme rapid percolation rate and bedrock recorded at 1.7 metres below ground level in conjunction with a high proliferation of private wells in the immediate vicinity it is the opinion of Wexford County Council Environment Section that the public health risk posed by the proposed development is extreme.
2. The plans show an existing gate access located some distance from where the site notice was erected (which was on an existing gate, located directly adjacent to an existing lane). Insufficient information has been provided to allow the Planning Authority to assess the proposal.

5.0 Policy Context

5.1. Wexford County Development Plan 2013-2019

General Development Management Standards

Section 18.12.2 refers to siting and design requirements for single rural houses, these include criteria in relation to site size, siting, access, effluent treatment, landscaping etc, that should apply. In general the siting of the house should reflect the position of adjoining developments and should avoid adverse impacts on neighbouring properties from overlooking and undue overshadowing and visual impacts.

Section 18.29.3 refers to the siting and design of access/egress points and sets out, amongst other things that:

- An assessment whether there would be an undue proliferation of access/egress points in the locality giving rise to conflicting traffic movements and consequent public safety hazards.
- Sightlines of a minimum of 65m are required for county/local roads outside the 50kph or 60kph speed limit.
- The Council will not permit proposed access/egress points where the position of the access/egress and the achievement of the necessary sightlines entail the undue loss of existing roadside boundary hedgerow or trees where there is an alternative access point possible and where such natural features cannot be replaced.

5.2. Natural Heritage Designations

The following Natura 2000 sites are located in the vicinity of the proposed development site:

- The Slaney River Valley Special Area of Conservation (Site Code: 000781), approximately 4.5km east of the site.
- The Wexford Harbour and Slobbs Special Protection Area (Site Code: 004076), approximately 4.5km east of the site.
- Blackstairs Mountains SAC (Site Code: 000770) approximately 12km west of the site.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal was submitted by Patrick and Catherine O'Donoghue. The main issues raised concern the following;

- The appellants raised the matter of the proposed new vehicular entrance to serve the dwelling.
- The appellants property adjoins the site to the south. The boundary between the appellants property and the applicant's site is defined by a concrete post and rail fence.
- The appellants contend that the location of the proposed vehicular entrance is on land in their ownership. They state that the application site has 9m of frontage and not 17m of frontage. The anomaly in the extend of road frontage which forms part of the lands within the applicants ownership/control will impact the ability to achieve 65m sightlines at the proposed entrance.
- A map was included with the appeal which indicates the location of the boundary of lands which the appellants state is in their ownership. They highlight that there is an on-going legal dispute between them and the applicant's father in relation to a portion of land at the location of the proposed vehicular entrance.
- The siting and orientation of the proposed dwelling is raised. The appellants note that the proposed dwelling is not in line with the applicant's family home and that it is setback much further from the link road than both neighbouring houses. It is also noted that the dwelling would be positioned at an angle to

the link road and that the proposed bay windows to the front of the dwelling would impact upon their privacy and residential amenities.

6.2. Applicant Response

A response to the third party appeal was submitted by BPS Planning on behalf of the applicants Norman & Jnana Cashe. The main issues raised are as follows;

- The appellants have raised issues concerning the proposed vehicular entrance. They specifically refer to landownership issues in relation to the site, disputed area of lands between the two properties and sightlines at the proposed entrance.
- As set out in Section 5.13 of the Development Management Guidelines (2007) the planning system is not designed to resolve disputes about title to land.
- The Guidelines also advise where there is a question regarding the legal title of the applicant, even when further information is sought the Planning Authority may decide to grant permission.
- It is noted that a grant of permission is subject to Section 34(13) of the Planning and Development Act 2000 (as amended), which states that “*a person shall not be entitled solely by reason of permission under this section to carry out any development*”.
- The legal case *Frascati Estates v. Walker* is cited in relation to the requirement of an applicant to have sufficient legal interest to enable them to carry out a proposed development.
- The applicant must be a person who is able to assert sufficient legal estate or interest to enable them to carry out the proposed development.
- It is set out in the appeal response that the applicants are the legal owners of the property at Templescoby, Enniscorthy, Co. Wexford. This is confirmed by the Land Registry.
- Notwithstanding that the ownership is disputed by the appellants, it is submitted that the documentation from the Land Registry provides the basis

for the applicants having “sufficient legal estate and interest to able them to carry out the proposed development.”

- The legal case Keane v. An Bord Pleanála is also cited. The Supreme Court concluded that a Planning Authority or An Bord Pleanála is not precluded from granting a planning permission, notwithstanding the need for other permissions or consents before the development may lawfully commence.
- It is noted that it is common for An Bord Pleanála to include an advisory note on a grant of planning permission which refers to Section 34(13) of the Planning and Development Act, 2000 (as amended).
- The appellants claim ownership of an area of the applicants site. However, they have not submitted Land Registry Maps of Folio to confirm this. Also, the appellants have submitted no further Land Registry details with the appeal.
- It is alleged in the rebuttal of the appeal that the appellants incorrectly located the boundary fence and that it is located on lands owned by the applicant’s father Mr. Edward Cashe. They state that they are aware that the boundary fence is incorrectly positioned. The subject application seeks to address the anomaly by ensuring all shared boundaries are positioned in accordance with the site title documentation.
- Regarding the matter of sightlines at the proposed vehicular entrance the submitted drawings of the entrance prepared by the project Architects are accurately based on the Land Registry details, the Ordnance Survey Map of the site and the site levels.
- The achievable sightlines are indicated on the Site Layout. As stated in the Planning Officer’s report “65m sightlines are required for this development and can be achieved with works to the roadside boundary”.
- Following the submission of further information the Planning Officer was satisfied that “the sightlines can be achieved within the lands to which the applicant has legal interest.”
- The appellants also raised issues concerning the orientation and location of the proposed dwelling.

- It is noted in the appeal that the proposed dwelling would not follow the building line of the applicant's fathers house to the west or the appellants house to the east and that it is set further back from the link road than either neighbouring property.
- The Planning Authority in their assessment noted that the site is essentially an infill site between two dwellings. They consider that the proposed dwelling will not extend the linear pattern of development as there is no further area to develop along that stretch of road.
- It is considered that the proposed dwelling would have a minimal impact on the adjoining properties due to the site size and set back between building and windows.
- It is stated in the appeal that the proposed dwelling is at an angle to the link road. Taking in account the proposed siting of the dwelling as indicated on the submitted plans, this is not considered the case.
- Under PA Reg. Ref. 20171624 permission was refused for a dwelling on the site. The proposed orientation of the dwelling and access onto an alternative road was not favoured by the Planning Authority. The previous proposal had windows to the front facing the appellants property. However, under the current proposal the front of the dwelling faces north and not south-east.
- The revised orientation ensures that the proposed dwelling would not impact on the residential amenity of the appellant's property. Furthermore, the setback between the proposed dwelling and the appellant's property is sufficiently great to mitigate any possible overlooking.
- The proposed bay windows are not orientated towards the appellant's dwelling and given the separation distance provided there would be no undue overlooking of the appellants property.
- It is requested that the Board uphold the decision of the Planning Authority to grant permission.

6.3. Planning Authority Response

- None received

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and it is considered that no other substantive issues arise. The issue of appropriate assessment screening also needs to be addressed. The issues can be dealt with under the following headings:

- Siting and design of dwelling
- Vehicular access
- Appropriate Assessment

7.1. Siting and design of dwelling

- 7.1.1. The appellants have raised concern at the design and orientation of the proposed dwelling. The proposed dwelling has a floor area of 248sq m. The house design is dormer with a proposed ridge height of 7.4m. At first floor and to the front of the dwelling a tower design dormer is proposed. The apex of the roof of this feature has a height of 8.7m. Two other smaller dormer windows are proposed within the front roof plane. A projecting gable feature to the front elevation is also proposed. The surrounding houses are predominately dormer in design and of a similar size.
- 7.1.2. As indicated on the Site Layout the dwelling is orientated to directly face the public road to the north-west. Therefore, the dwelling would be orientated in a similar manner to applicant's fathers house, which is located 17m to the west. It is proposed to locate the dwelling a minimum distance of 31m from the public road. While, I note that it would be setback circa 8m more than the dwelling to the east, the appellant's dwelling to the east is set forward closer to the road. Therefore, there is no rigid building line along the road.
- 7.1.3. The appellant's dwelling to the east is situated circa 49m from the proposed dwelling. While the neighbouring property to the west is approximately 49m from the corner of the proposed dwelling. The site is screened by the existing mature hedgerow which it is proposed to retain. The boundary between the site and appellant's site is formed by a roughly 3m high evergreen hedgerow. The proposed first floor dormer windows of the dwelling directly address the front of the site and having regard to the

separation distance between the proposed dwelling to the appellants property circa 49m I do not consider that the proposed dwelling would cause overlooking or unduly impact upon the residential amenities of that dwelling. Given the separation distances between the subject dwelling and other neighbouring properties and the existing boundary screen planting I am satisfied that the proposal would not unduly impact upon the residential amenities of those properties.

7.2. Vehicular Access

- 7.2.1. It is proposed to develop a new site entrance onto the existing road which adjoins the site to the north. The appellant's have expressed their concern that a satisfactory sightline distance cannot be achieved at the proposed entrance as a section of the entrance lies on lands not within the control of the applicant.
- 7.2.2. As detailed in the third appeal and the first party response to the appeal there is a dispute over a small portion of land adjoining the road at the boundary between the appellant's property and the appeal site. In the course of assessing the application the Planning Authority sought further information in relation to the proposed sightlines at the entrance to clarify that a distance of 65m can be achieved in both directions and that the applicant had sufficient interest in the lands to provide the sight distance.
- 7.2.3. In response to the matter the applicant furnished a copy of folio maps from the Land Registry which appear to provide documentary evidence that the subject lands are in the ownership of Mr Edward Cashe who is the father of the applicant Mr Norman Cashe. Accordingly, these details indicate that the location of the proposed site entrance would be within lands which are in the control of the applicant's family.
- 7.2.4. Furthermore, in relation to the matter of the issues relating to title to land, Section 5.13 of the Development Management Guidelines for Planning Authorities, (2007) advises that *"the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts."* The Planning and Development Act 2000, as amended, requires that applicants have sufficient legal interests in the lands to carry out the development. 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. Having regard to the documentary evidence provided by the applicants in relation to the ownership of the subject site, I conclude this is a civil legal issue between the parties, therefore, I do not consider that issue of the disputed lands are reasonable and substantive grounds for refusal of the proposed development.

- 7.2.5. Section 18.29.3 of the Wexford County Development Plan 2013-2019 sets out that a minimum of 65m sightlines is required for new vehicular entrances off county roads. It is indicated on the Site Layout Drawing No. 170001, submitted in response to further information request, that sightlines of 65m can be provided to the north-west and south-east. Having inspected the site and viewed the location of the proposed entrance I am satisfied that an adequate sightline distance is available in both directions. Accordingly, I consider the proposed scheme is acceptable in terms of access and traffic considerations.

7.3. Appropriate Assessment

- 7.3.1. Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on a European Site.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the provisions of the Wexford County Development Plan 2013-2019 and to the nature, form, scale and design of the proposed development, it is

considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in the context of the visual amenity of the area, the amenities of adjoining properties, traffic safety and convenience, and satisfactory in regards to public health. 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 further plans and particulars submitted on the 23rd day of February 2018, 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.
 - (a) 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]. Prior to commencement of development, 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.
 - (b) 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 the occupation of the dwelling 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 water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.

4.
 - (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 11th day of December, 2017, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

5.

(a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

(b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interest of traffic safety and to prevent pollution.

6. The site shall be landscaped, using only indigenous deciduous plants and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

7. The garage shall not be used for human habitation or for the keeping of pigs, poultry or pigeons, ponies or horses or for any other purpose other than a purpose incidental to the enjoyment of the house.

Reason: In the interest of protecting the residential amenities of neighbouring property.

8. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Siobhan Carroll
Planning Inspector

22nd of August 2018