



An
Bord
Pleanála

Inspector's Report ABP.301768-18

Development	Dwelling, wastewater treatment system and all ancillary site works and services.
Location	Newcastle Upper, Newcastle, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	17/937
Applicant(s)	Sara Winkworth
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Emma Balmaine
Observer(s)	None
Date of Site Inspection	29 th August 2018
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The subject site is located on the edge of Newcastle, Co. Wicklow, and access to the appeal site is off Church Lane, which is a public road situated to the south of Newcastle village.
- 1.2. The entrance onto Church Lane is a shared entrance with a neighbouring property and the access is onto a bend on Church Lane.
- 1.3. A narrow unsurfaced lane provides access to the site from Church Lane. This narrow unsurfaced lane rises in level from the public road.
- 1.4. The appeal site is rural in appearance however there are newly constructed houses located to the immediate north of the appeal site. There is an existing house located to the east and south of the appeal site.
- 1.5. The overall size of the appeal site is 0.66 ha (1.6 acres) and the shape of the appeal site is irregular.
- 1.6. A significant feature of the appeal site is the topography. The gradient of the site falls steeply in a north-south direction.

2.0 Proposed Development

- 2.1. Planning permission is sought for a house and waste water treatment system.
- 2.2. Retention permission is sought for the continuation of an access track to serve the proposed dwelling and existing barn.
- 2.3. The proposed house is single storey in height with an attic conversion.
- 2.4. The overall floor area of the proposed house is 376 sq. metres and the floor plan comprising of living space and 2 no. bedrooms at ground floor level and 3 no. bedrooms at attic level.
- 2.5. The proposal includes a balcony at first floor level on the eastern (side) elevation of the proposed house.
- 2.6. The maximum height of the proposed house is approximately 8.2 metres above ground level.

Additional information was sought for the following (a) demonstrate compliance with planning policy objective HD21, (b) full details required demonstrating height and footprint of the proposed development, (c) contextual longitudinal sections, (d) justify the access chosen, (e) clarification of the existing shed on the site, (f) ownership details, and (g) sightline provision.

3.0 Planning Authority Decision

3.1. Wicklow County Council decided to **grant** planning permission subject to 12 no. conditions. The conditions are standard for the nature of the development proposed.

3.2. Planning Authority Reports

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

Area Planner

- Having regard to planning history it appears that planning permission has been granted for 6 no. houses and outline permission for no. 1 dwelling within NC5 area.
- There is therefore capacity on the NC5 lands for a further house.
- The applicant is required to demonstrate compliance with Policy Objective HD22.
- A contextual longitudinal section is required to demonstrate visual / design impact. Also having regard to local contours, a visual impact assessment is required.
- The applicant is required to justify the access proposed.
- No impacts on any Natura 2000 sites.

3.3. Third Party Observations

There are two third party submissions and the issues have been noted and considered.

4.0 Planning History

- L.A. 07/986 – Wicklow County Council granted permission for the retention of existing stables and barn. The permission was subject to conditions.

Enforcement

- This is an enforcement case relating to the site. The enforcement issue relates to the creation of a vehicular entrance and access track without planning permission.

5.0 Policy Context

5.1. Development Plan

The operational Development Plan is the Wicklow County Development Plan, 2016 - 2022.

- The appeal site is located within the settlement boundary of Newcastle.
- The appeal site is zoned within Tertiary Development Area and the subject site is located within an area designated NC5.

The Newcastle Specific Local Objectives no. 9 states '*the lands identified as NC5 on Map 1 shall be limited to the development of eight residential units*'.

6.0 The Appeal

6.1. The following is the summary of a third-party appeal submitted by Emma Balmaine of River House.

- Newcastle Specific Local Objective number 9 provides that the appeal site is located within NC5 on Map no. 1. The planning objective requires that the number of houses in this zone shall be a maximum of 8.

- It is submitted that the planning records of Wicklow County Council confirm that permission has been granted for 7 no. sites and permission has been granted for outline permission for 1 no. site.
- NC5 does not provide for 9 no. sites.
- It is contended that access for all 8 no. sites within NC5 is envisaged onto the Glebe Lane. Therefore, the current proposal should provide access onto the Glebe Lane.
- The proposed access onto Church Lane is dangerous and unsafe for pedestrians including school children.
- There are no footpaths, no street lights on Church Lane and the Lane is narrow.
- The granting of permission for an access onto Church Lane is unnecessary as Glebe Lane can accommodate access for up to 8 houses
- The Senior Engineer concludes that the re existence of a laneway does not justify its acceptability.
- There is a precedent for refusing permission for access onto Church Lane. This includes L.A. Ref. 17/1009. An Bord Pleanala have also refused permission for access onto Church Lane, i.e., appeal ref. 245762.
- The proposed development is contrary to Wicklow County Development Plan, 2016 – 2022, Appendix 1 Development Design Standards 'Entrance and Sight Lines'.
- It is submitted that vehicles turning right into the proposed access will create a traffic hazard for traffic travelling northbound on Church Lane.
- The proposed development will create three entrances beside one another onto Church Lane.
- It is submitted that the applicant has an option to use an access onto Glebe Lane. However, this option is not used as it requires the applicant to pay a fee to the Church body. A financial reason is not sufficient grounds from a planning perspective. The applicant failed to address the further information request in this regard.

- The proposal will result in light pollution and this is therefore inconsistent with Section 9.3.6 and WE16 of the County Development Plan.
- Light pollution such as light trespass / light glow will have an adverse impact on the appellant's property.
- It is contended that the proposal will result in overlooking of the appellant's property.

6.2. Planning Authority's Response

- None

6.3. Applicant's Response

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

Item no. 1

- In the previous plan the site was zoned residential.
- It is claimed that there is only permission for 7 no. houses within NC5. (L.A. 10/2799 relates to a change in house type and relates to L.A. Ref. 09/1127).
- It is submitted that L.A. 09/1127 was originally considered on lands zoned agriculture / greenbelt in the Newcastle Town Plan, 2016 – 2022.
- It is submitted that L.A. Ref. 17/257 is located outside the NC5 area.
- The current proposal would be the 8 no. house to receive permission within NC5.

Item no. 2

- It is submitted that the entrance onto Church Lane has been in place for 80 years.
- The lane has been owned by the applicant since 2001.

- It is submitted that there is no reference to Glebe Lane in the County Development Plan as providing access solely to NC5. The appellant's claim in this regard should be dismissed.

Item no. 3

- It is contended that due to the alignment of Church Lane high speeds will not be encountered.
- There was one minor collision on Church Lane between 2005 – 2014.
- It is submitted that traffic is forced to slow down approximately 5km/ per hr due to the right-angle bend.
- The owner of the neighbouring property, i.e. Cornerways, has no objection to the proposed development.
- The Senior Engineer of the Local Authority has no objection to the proposed development.
- In relation to L.A. Ref. 17/1009 & 15/437 both these applications are located further down Church Lane, relative to the appeal site where the road is poor and used for agriculture and not residential.
- The road from the appeal site to Newcastle is not in a poor condition.

Item no. 5

- Section 9.3.6 of the County Development Plan relates to light pollution. However, this section of the County Development Plan is not considered relevant to residential development.

Item no. 6

- All sites in NC5 are elevated and this elevation would have been considered prior to zoning the site.
- There are 6 no. houses constructed in NC5.

- These sites are elevated in relation to the appeal site and this is therefore not a valid reason to refuse permission.

7.0 **Assessment**

- Principle of Development
- Vehicular Access
- Impact on Residential Amenities
- Drainage
- EIAR
- Appropriate Assessment

7.1. **Principle of Development**

- 7.1.1. The appeal site is located within the settlement boundary of Newcastle, Co. Wicklow, and the subject site is zoned 'tertiary development area' in accordance with the provisions of the County Development Plan. An objective of this zoning is to '*restrict the residential development in this area to low density single house developments*'.
- 7.1.2. In accordance with the Newcastle Settlement Plan as per the Wicklow County Development Plan, 2016 – 2022, the appeal site is located within lands identified as NC5. It is a specific local objective that NC5 shall be limited to the development of 8 no. houses.
- 7.1.3. I would note that the Local Authority planner's report concludes that permission has been granted for 7 no. houses in NC5. On the contrary the appellant argues that permission has already been granted for 8 no. dwelling and the proposed development would be inconsistent with the County Development Plan Specific Local Objective no. 9.

- 7.1.4. In relation to the planning history I have reviewed the planner's report, the appeal submission, the first party response submission and the planning register online (www.wicklow.ie). I acknowledge planner's report submits that there are currently 7 no. permissions within the NC5 lands for houses and that the current proposal would amount 8 no. houses on the subject lands should permission be granted.
- 7.1.5. I also note that the applicant's response submission argues that there are currently 6 no. permissions within NC5 lands and that the current application would amount to the 7th application for a house. The difference between the Local Authority planner's report and the applicant's submission is L.A. 17/257 as the applicant concludes that this application site is located outside the NC5 lands. The appellant argues that the NC5 lands has exceeded the 8 no. houses and the current application would amount to the 9th application for a house on the NC5 lands.
- 7.1.6. I have reviewed the planning register online and according to this register the number of approved housing applications within NC5 is 6 and the current application would amount to 7 planning applications for houses within the NC5 lands. The planning register is consistent with the views of the applicant's response submission and I would concur with this view, on the basis of the information available.
- 7.1.7. Overall, I would consider that there is capacity for the proposed house within the NC5 lands and in my view, based on the zoning objective, for the appeal site the principle of the proposed development is acceptable provided that the proposed development protects established amenities.

7.2. **Vehicular Access**

- 7.2.1. There is an established vehicular access onto Church Lane from the appeal site. This existing vehicular access also serves an existing property, i.e. Cornerways, and the subject vehicular access is located to the side of an established vehicular access serving a neighbouring house, i.e. River House.

- 7.2.2. Church Lane is a narrow rural class road and the vehicular access proposed to serve the proposal is located on a severe bend on the public road. The sightline provision to the south is generally good. The submitted drawing, 'Sight Lines' (drawing no. 16/116/013) illustrates a sightline provision of 120m to the south. I noted that the sightline provision to the east is restricted due to the second bend on the public road. The submitted 'Sight Lines' drawing demonstrates a sightline provision of 52 metres to the east.
- 7.2.3. I would acknowledge that a sightline provision of generally 60m to the east would be acceptable having regard to the class of the road. Notwithstanding the relatively short sightline provision I would also accept that traffic speeds along Church Lane would be restricted having regard to the proximity of the two-severe bends on the public road.
- 7.2.4. The appellant submits that Church Lane is unsafe for pedestrians as there is no footpath or street lights.
- 7.2.5. The Local Authority planner considered the sightline provision adequate based on the response to the additional information request. The Local Authority planner concluded that having regard to the traffic volumes on Church Lane, the width and alignment of the public road and having regard to the sightlines available at the existing entrance it is considered that the entrance is acceptable. I noted from my site inspection that there is no speed limit signage on Church Lane during my site inspection.
- 7.2.6. Overall, I would concur with the views of the planning authority that having regard to the level of traffic on Church Lane, which is a local rural class of road, also given the alignment of the public road proximate to the proposed entrance that speed limits would be low approaching the proposed entrance. I would conclude that the sightline provision to serve the proposed development is adequate and the proposal would not result in a traffic hazard.

7.3. **Impact on Residential Amenities**

- 7.3.1. The proposed house is set back approximately 62 metres from the appellant's house, i.e. River House. There is a significant difference in levels between the proposed house and River House. In accordance with the submitted 'Site Plan' the finished floor levels immediately adjoining the proposed house is 38.10M OD. I would estimate, based on the same submitted site plan, that the contour line adjacent to River House is approximately 25m OD.
- 7.3.2. At the time of my site inspection there was a significant number of mature trees along the site boundary of the appeal site with the site boundary of River House. However much of these mature trees are deciduous in nature. I would note that there are some houses located further to the south of River House.
- 7.3.3. The southern elevation of the proposed house includes a significant amount of glazing at ground floor level and 3 no. dormer windows at attic level.
- 7.3.4. I would consider that having regard to the lie of the land that the proposed development would have a visual impact on River House, particularly during winter months when established screening would not be as protective. However, I would conclude that a private view is not legally protected in planning law and with the provision of evergreen planting any adverse visual impact of the proposed development would be mitigated on River House.
- 7.3.5. In terms of overlooking concerns I would consider that 62m would be an adequate set-back distance to prevent any undue overlooking of established residential amenities. The proposed development includes a first floor balcony. I would recommend to the Board, should they favour granting permission, that the balcony shall be omitted by condition in the interest of protecting residential amenities.

7.3.6. In relation to light pollution caused by the proposed house I would not consider that any domestic light emissions from the proposed house would adversely impact on any established residential amenities.

7.4. **Drainage**

7.4.1. In relation to waste water treatment I would note from the submitted Site Characteristic Form that the recorded T-value is 8.28. The E.P.A. publication, Code of Practice, Wastewater Treatment and Disposal Systems Serving Single Houses, 2009, advises that T value between 3 and 50 that the site is suitable for development of a septic tank or a secondary treatment system. The Site Characteristic Form recommends an advanced sewage treatment plant with a subsurface soil percolation area be used. I would consider this as an acceptable means to facilitate the proposed domestic waste water.

7.5. **EIAR**

7.5.1. Based on the information on the file, which I consider adequate to issue a screening determination, it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development and an environmental impact assessment is not required.

7.6. **Appropriate Assessment**

7.6.1. The Murrough Wetlands SAC (site code 002249) and the Murrough SPA (site code 004168) are both located approximately 1.5 – 2km east of the appeal site.

7.6.2. Having regard to the nature and scale of the development proposed, to the nature of the receiving environment and the likely effluents arising from the proposed development I recommend that no appropriate assessment issues arise.

8.0 Recommendation

- 8.1. 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.

9.0 Reasons and Considerations

Having regard to the zoning objective of the appeal site in the Wicklow County Development Plan, 2016 – 2015, and the extent of the proposed development, it is considered that subject to compliance with conditions set out below, the proposed development would not seriously injure the amenities of the area and would 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, and as amended by plans and particulars submitted to Wicklow County Council on 23rd March 2018 and 18th April 2018 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 development shall be modified as follows:
 - a. The proposed first floor balcony shall be omitted.

Revised drawings showing compliance with the above requirements shall be submitted to the planning authority for written agreement prior to the commencement of development.

Reason: In the interest of protecting established residential amenities.

3. 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.

4. The proposed vehicular entrance and driveway 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.

5. Prior to 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.

6. The house to be used as a single dwelling unit.

Reason: In the interest of clarity.

7. Details for all boundary treatment to serve the proposed development

shall be submitted for the written agreement of the Planning Authority prior to the commencement of development.

Reason: In the interests of amenity and the proper planning and sustainable development of the area.

8. The site shall be landscaped with suitable trees, shrubs or hedging which shall mainly be of indigenous species. Details shall be agreed with the planning authority before development commences.

Reason: In the interest of visual amenities.

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 course of the works.

Reason: To protect the amenities of the area.

10. 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.

11. 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.

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

Reason: In the interest of traffic safety.

13. 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
3rd October 2018