



An
Bord
Pleanála

Inspector's Report ABP-303123-18

Development	Change of house type, relocation of houses and access drives, development previously granted permission under file No. 08/1496 and PL27.231988
Location	Killacloran, Aughrim , Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	181064
Applicant(s)	Avoca Building Co.
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Fergus Holt
Observer(s)	No observers
Date of Site Inspection	29.01.2019
Inspector	Erika Casey

1.0 Site Location and Description

1.1. The subject site with an area of 2.27ha is located on the southern outskirts of Aughrim Village. It is a greenfield site that is accessed via an existing residential estate known as Millwood which comprises primarily detached two storey dwellings. The site has the benefit of planning permission for four residential units. The access roads and pavements within the development have been constructed.

2.0 Proposed Development

2.1. The proposed development provides for amendments to the permitted development. Whilst the number of units proposed remains the same (4 no.) the overall gross floor area of the development is to be reduced from 1,116 sq. metres to 760 sq. metres. The floor area of the individual residential units is to decrease from 279 sq. metres to 190 sq. metres. It is also proposed to amend the house type from the previously permitted detached dormer bungalow to a 2 storey detached design. Minor modifications to the detached garages are also proposed. Other minor amendments proposed include the relocation of the houses and access drives on the site and revised boundary treatment to the north east of the site.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 To Grant Permission subject to 3 conditions. All conditions standard in nature.

3.2. Planning Authority Reports

3.2.1. Planning Report (12.11.2018)

- Note that the issue of a right of way via the Millwood Estate is essentially a legal matter between the applicant and the relevant land owner. Note that the roads in Millwood have been taken in charge by Wicklow County Council as far as the site boundary.
- The design and finishes of the proposed dwellings are similar to those within the adjoining Millwood development and are, therefore, considered acceptable.

- The proposed alterations to the access driveways serving the 4 no. dwellings is a minor alteration that should not result in any new impact or safety concern.
- It is considered that the proposed boundary fence would provide an adequate screen between the application site and adjoining development and, therefore, this aspect of the proposed development is considered acceptable.

3.2.2. **Other Technical Reports**

- No further reports.

3.3. **Prescribed Bodies**

- No reports submitted.

3.4. **Third Party Observations**

Fergus Holt, 161 Edwin Street North, Croyden, Sydney

3.4.1 There is one third party submission whose company Holt Development Ltd. were the applicant for the parent permission pertaining to the site granted under Planning Authority Reference 08/1498/Appeal Reference PL27.231988.

3.4.2 Object to the development on the basis that the development is reliant on access through an existing housing development (Millwood as permitted under Planning Authority Reference PRR99/269) over which the applicants have not demonstrated they have a right of way/access.

4.0 **Planning History**

Planning Application Reference 08/1496/Appeal Reference PL27.231988

4.1 Permission was granted by the Board in May 2009 for the construction of four dormer bungalows with detached garages, connection to services and ancillary site works and refused permission for the provision of a temporary access road for construction purposes, to service the proposed four dormer bungalows. The reasons for refusal for the temporary access road stated:

“Having regard to the location of the entrance of the proposed temporary access road for construction purposes off the public road R747 through a mature treeline on

the immediate approach towards Aughrim Bridge and to the public road R753 junction, it is considered that the proposed access road across elevated lands would create a significant and adverse visual impact in the landscape and would seriously injure the visual amenities of the area. The proposed access road would, therefore, be contrary to the proper planning and sustainable development of the area.”

- 4.2 An extension of duration permission was granted for this development under Planning Authority Reference PRR14/1086. It will expire on the 26th of August 2019.
- 4.3 There were a number of earlier applications on the site. Applications reference 04/1968, 05/2672, 05/3603 relate to a larger development of 48 dwellings which was ultimately refused by the Board in 2006 on grounds relating mainly to inadequate road capacity through Millwood Estate and adverse effects of proposed temporary access road.

06/5796: Application for 18 dwellings withdrawn. Planner's report recommended refusal.

07/2746: Application for dwelling and garage withdrawn. Planner's report recommended refusal.

08/513: Application for dwelling withdrawn. Planner's report recommended refusal.

5.0 Policy Context

5.1. Development Plan

- 5.1.1 The subject site is located within the administrative boundary of the Aughrim Town Plan 2016-2022. Aughrim is designated a Level 5 Small Growth Town. The site is identified as Killacloran (south Millwood) (2.3ha) and subject to the zoning objective R Special (AUG1) to provide for residential development for a maximum of 4 additional units.

5.2. Natural Heritage Designations

- 5.2.1 There are no Natura 2000 sites in the immediate vicinity of the site.

5.3 EIAR Screening

5.3.1 Having regard to nature of the development comprising modifications to a previously permitted development and the urban location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

Fergus Holt, 161 Edwin Street North, Croyden, Sydney

- Objects to the proposed development on the basis that the applicant has not demonstrated sufficient legal interest to access the subject site via the Millwood Estate.
- Notes that the Planner's Report from Wicklow County Council states that the roads have been taken in charge as far as the site boundary. The appellant contests this and states that whilst the turn bay areas, roadways and common areas within the Millwood Estate have been taken in charge, there is a small area of land between the turning circle and the subject site that is not in the ownership of the applicant. State that the applicant has not demonstrated or confirmed that they have the right to access across this land.

6.2. Applicant Response

- Notes that the Millwood Estate has been completed and taken in charge by Wicklow Co. Co. The appeal refers to a very small strip of land c. 17m in width and 1.5m in depth. It is located between the existing cul de sac head and the site boundary of Millwood Estate. The strip of land is entirely within Millwood housing estate. It is insinuated by the appellant that as this land is not in Wicklow Co. Co. ownership or in the applicant's ownership that Wicklow Co. Co. is not legally entitled to grant permission and that the applicant is not legally entitled to make the planning application.

- State that the Millwood housing estate was taken in charge in December 2016. A “Taking in Charge” drawing is submitted with the response which shows that all common areas including the contested strip of land were subject to the taking in charge. It is submitted that it is clear that Wicklow Co. Co. has taken in charge all common areas, including ancillary lands, adjacent to roads and footpaths.
- State that the applicant has not asserted any ownership of lands within the boundary of the Millwood housing estate. The applicant is, therefore, entitled to make the application on lands in his ownership.
- The Development Management Guidelines state *“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.”* It is only where it is clear that the applicant does not have sufficient legal interest, should permission be refused on that basis. Regard must be had to provisions of Section 34(13) of the Planning Act, which states that a person is not entitled solely by reason of a permission to carry out any development. It is not a matter for the Planning Authority to decide questions of ownership. If the Third Party feels aggrieved, there is the option of taking the matter to the Courts.
- Note that Condition 2(b) ties the duration of the permission to the parent permission (08/1496). Section 40 of the Planning and Development Act provides for a normal duration of five years. The existing permission as extended under Planning Register Reference 14/1086 will expire on the 26th of August 2019. The applicant did not request an approval permission consequent to the parent permission (08/1496). Full planning permission for the change of house type and the other modifications proposed. It is submitted, therefore, that Wicklow County Council should have granted planning permission for the normal duration of five years instead of restricting the duration of the planning permission to the appropriate period of Planning Register 08/1496. The extremely restricted duration negates the value of this planning permission.

6.3. Planning Authority Response

- No response received.

6.4. Observations

- No observations.

7.0 Assessment

7.1 Introduction

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

- Principle of Development
- Appropriate Assessment.

7.2 Principle of Development

7.2.1 The proposed development comprises modifications to a previously permitted development granted by the Board in 2009 comprising 4 residential dwellings. The modifications primarily relate to a change of house type from the permitted dormer bungalows to two storey detached dwellings. Minor amendments are also proposed to the internal access road, driveways and positioning of the dwellings. It is also proposed to amend the boundary treatment to the north east of the site to comprise a 1.8 metre high timber fence. Having reviewed the proposed amendments, I have no objection in principle to the development. The two storey design proposed is consistent with the prevailing character of development in the Millwood Estate to the north. The other amendments proposed are non-material in nature.

7.2.2 Under the parent permission pertaining to the site (Planning Authority Reference 08/1496), access to the 4 dwellings was provided via the existing Millwood Estate to the north. It was proposed to provide a new access road to the development site connecting into an existing turning circle within this existing estate. No amendments to this access arrangement are proposed under the current application.

7.2.3 The appellant's principal objection is that the applicant does not have the necessary legal entitlement to access the subject site via the existing Millwood Estate Road. Legal maps have been submitted indicating that there is a narrow strip of land located between the turning circle head and the internal access road serving the

development. It is this 'ransom strip' that it being contested by the appellant and it is asserted that in this regard, access to the subject development cannot be provided. Wicklow County Council have stated that roads within the Millwood Estate have been taken in charge. It is stated by the applicant however, that the strip of land between the turning head and the access road to the site has not been taken in charge.

7.2.4 In response to the submission by the appellant, the applicant has stated that all roads within the Millwood Estate including the contested strip of land have been taken in charge. Documentary evidence regarding the "Taking in Charge", including a map is submitted with the appeal response. This indicates that the strip of land has been taken in charge by Wicklow County Council.

7.2.5 In considering the issue of access to the subject site, I note that the principle of access to the subject site via the Millwood Estate was agreed in principle under the parent permission. No objections were raised at this time regarding access to the site from the Millwood Estate. The current application proposes no amendments to this arrangement with permission being sought solely for a change of house type.

7.2.6 It is apparent in the interim time, some legal dispute has arisen between the appellant and the current owners of the site. I consider this to be a legal matter and the Board are not arbitrators on such issues. As highlighted by the applicant the Development Management Guidelines 2007 explicitly state 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"*. In considering this matter, the Board should have regard to section 34(13) of the Planning and Development Act 2000 (as amended) which states *'A person shall not be entitled solely by reason of a permission under section 37(g) to carry out any development'*. This subsection makes it clear that the grant of permission does not relieve the applicant of the necessity of obtaining other permits or licences which statutes or regulations or common law may necessitate.

7.2.7 In this regard, I am satisfied that any disagreement regarding the legal entitlement to access the development is a legal matter between the applicant and other third parties and is outside the scope of this assessment. Conflicting evidence has been submitted by both parties regarding the ownership of the subject strip of land.

However, there is no definitive evidence that the applicant does not have sufficient legal interest to make the application. Accordingly, I do not consider that this matter is a reasonable and substantive ground for refusal of the proposed development.

- 7.2.8 I am satisfied that having regard to the planning history of the site and the fact that the current application proposes no material alterations to the previously proposed access arrangements, that the development which solely relates to a change of house type and other minor amendments is appropriate and in accordance with the proper planning and sustainable development of the area.
- 7.2.9 As part of their appeal response, the Applicant states that the Board in their 'de novo' consideration of the appeal should omit the condition imposed by the Planning Authority which ties the duration of the permission to the parent permission. It is stated that the applicant did not request an approval permission or a permission consequent to the parent permission. Rather, full permission for the change of house type was applied for and in this context, permission for the normal duration of five years is applicable.
- 7.2.10 I have reviewed the statutory notices submitted with the application. I note that permission has clearly been sought for a change of house type for a development previously granted under Planning Authority Reference 08/1496 and Appeal Reference PL27.231988. The change of house type could not be implemented without the roads and infrastructure as permitted under the parent permission. The applicant has not sought a new permission for 4 dwellings. I am satisfied that the subject development is intrinsically linked to the parent permission and as it solely relates to a change of house type, it is correct that the conditions pertaining to the parent permission, including the duration of permission should apply.

7.3 **Appropriate Assessment**

- 7.3.1 Having regard to the nature and scale of the proposed development, modifications to a previously approved development within an established urban area, and the distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1 It is recommended that permission be granted subject to conditions for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the current Aughtim Town Plan 2016-2022, the planning history of the site, the residential zoning of the site and the nature of the proposed modifications to the previously permitted development, it is considered that, subject to compliance with the conditions set out below, the proposed development 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 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. The applicant shall comply with all conditions of the previous parent permission granted under Reg. Ref. 08/1496/An Bord Pleanála Reference PL27.231988 and Reg. Ref. 14/1086 unless required to do so otherwise by any condition attached to this permission.

Reason: In the interest of clarity.

3. 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.

Erika Casey

Senior Planning Inspector

29th January 2019