



An
Bord
Pleanála

Inspector's Report ABP 304029-19

Development	Retention of existing flat roofed garden building with outdoor seating area (30.20sq.m) in garden and increase in height of existing chimney flue to same.
Location	Tyners Rest, Ballinahinch, Ashford, Co. Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	18617.
Applicants	Maurizio & Caroline Bruno.
Type of Application	Permission for retention.
Planning Authority Decision	Refuse.
Type of Appeal	First Party v. Decision.
Appellants	Maurizio & Caroline Bruno.
Observers	1. George Tripp. 2. Emma Wilkinson. 3. Vincent Heagney.

Date of Site Inspection

13th June 2019.

Inspector

Dáire McDevitt.

1.0 Site Location and Description

1.1 The site is part of a cluster of four houses in what was the original curtilage of a house (known now as 'Tyners Rest') which originally included a house, outhouses, stables and a derelict cottage. All of which have been refurbished and altered and include 'Orchard Cottage', 'Bramble Cottage' and 'The Stables'. The site is located at Ballinahinch on the northwestern edge of Ashford a rural town in west county Wicklow, west of the M11 accessed via junction 15 and is c.6km northwest of Wicklow town. Adjoining the site to the south and west is a residential scheme under construction and a new road. This part of the town retains its rural character, despite the construction of a large residential estate. The site is located within the development boundaries of the town but is c.1km from the town centre off the R764.

1.2 The site, with a stated area of c. 0.12 hectares, is screened from all approaches due to the high boundary walls which enclose it. The site also contains a detached single house (Tyners Rest) and a garden structure which is the subject of this application.

2.0 Proposed Development

Proposal is for retention of existing flat roofed garden building with outdoor seating area (30.20sq.m) in garden and increase in height of existing chimney flue to same.

3.0 Planning Authority Decision

3.1 Decision

Refuse permission for the following reason:

Having regard to the proximity of the structure and chimney flue to the adjoining properties and inadequate evidence to demonstrate that smoke from the chimney flue would be effectively dispersed away from neighbouring properties, it is considered that the proposed development would impact negatively on the

residential amenity of the residents of the adjoining properties and would therefore be contrary to the proper planning and sustainable development of the area.

3.2 Planning Authority Reports

3.2.1 Planning Report (16th July 2018 & 18th February 2019)

This Report forms the basis for the Planning Authority's decision and the main concern is reflected in the reason for refusal.

3.2.2 Other Technical Reports

None.

3.2.3 Third Party Observations

Two of the current observers lodged submissions with the planning authority. The issues raised are broadly in line with those raised in the observations and shall be dealt with in more detail in the relevant section of this report.

4.0 Planning History

Planning Authority Reference No. 14/1847 refers to a grant of permission for retention of a single storey link to the rear of the existing c.212sq.m building, new boundary walls and locations, new road entrance from that previously granted under PRR 06/7033 (ABP PL.27.222526).

Planning Authority Reference No. 03/3232 refers to a grant of permission to Peter Tyner for a sunroom.

Planning Authority Reference No. 06/7033 (ABP 27.222526) refers to a grant of permission for 4 no. detached bungalows

EX5017 refers to section 5 referral relating to whether or not the construction of outdoor garden terrace to the rear of the dwelling is or is not exempted

development. This was considered Development and not exempted development.

5.0 Policy & Context

5.1 Wicklow County Development Plan 2016-2022

Volume 2 Town Plans & Village Settlements:

Ashford Town Plan 2016-2022

Ashford is identified as a Small Growth Town (Level 5).

Site is zoned under Land Use Objective **RE**, Existing Residential *To protect, provide and improve residential amenities of existing residential areas.*

Appendix 1 Development & Design standards shall apply.

5.2 Natural Heritage Designations

None of relevance.

5.3 EIA Screening

Having regard to the nature and scale the development which consists of the retention of a flat roofed garden building on serviced lands, 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

The first party appeal seeks to address the reasons for refusal of permission and is summarised as follows:

- The site, 'Tyners Rest', is bounded by 2.4m high boundary walls, the structure to be retained has a height of c.2.3m and abuts the boundary with 'Orchard Cottage' and 'The Stables'.
- Prior to its construction the applicants had been advised that the structure would be exempted development. The area of the structure, which is open on one side, of c. 30.2sq.m is marginally above the 25q.m permitted under exempted development.
- The structure is an outdoor covered sun terrace for private use and not a habitable structure or commercial.
- The smoke emanating from the pizza oven would be the same as any outdoor pizza oven or bbq. Planning permission is not required for these.
- The adjoining house has installed rooflights without the benefit of planning permission and it is these windows which are the subject of their complaint. It is also noted that the smoke from adjoining chimneys blows across these windows.
- The covered terrace and pizza oven were in place in 2016 when the adjoining property installed their rooflights. The layout of the 4 houses has resulted in the converted outhouses (Bramble Cottage and The Stables) having no rear gardens with all their amenity space to the front. The layout of these houses should not limit the applicant's enjoyment of their garden

area as the houses in question were purchased in the full knowledge that they had no rear amenity spaces.

- The flue which is the source of complaints complies with Part J of the building regulations. Notwithstanding the applicants are willing to move the flue a further 1m eastwards to increase the separation distance if required by the Board, this would remove any need for a precautionary increase in the height of the flue.

6.2 Planning Authority Response

None.

6.3 Observations

Three Observations have been received from the adjoining property owners:

1. George Tripp, Bramble Cottage, Ashford, Co. Wicklow.
2. Emma Wilkinson, The Stables, Ashford, Co. Wicklow.
3. Vincent Heagney, Orchard Cottage, Ashford, Co. Wicklow.

There is overlap reiteration of issues raised in the observations and are summarised below.

- Nuisance and pollution from the flue which serves a pizza oven.
- The flue is too close to adjoining properties and the smoke from the flue has a detrimental impact on the residential amenities and health of the occupiers of the adjoining properties.
- The development presents a fire hazard.
- Class 2(a) exempted development allows 'the provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure' However as the flue serves a pizza oven and not an oil fired condensing boiler it is development and not exempted development. Therefore a pizza oven would require planning permission regardless of its location within the curtilage of a house.

- Incorrect details submitted with the further information response and query the qualifications of the persons whom carried out the assessments.
- The development would constitute a fire hazard.

The observations include the following documentation:

- Aerial images of the four properties to illustrate the context and relationships with each other.
- Copy of plans to illustrate inaccuracies in the information submitted.
- Photographs from the adjoining properties of the flue, some images include smoke emanating from a flue.
- A copy of the EPA Submission on the revision of Part J of the Building Regulations.

7.0 Assessment

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

- Residential Amenity
- Appropriate Assessment

7.1 Residential Amenity

7.1.1 The Planning Authority refused permission on the premise that having regard to the proximity of the structure and chimney flue to the adjoining properties that applicants had not clearly demonstrated that smoke from the chimney flue would be effectively dispersed away from neighbouring properties.

7.1.2 The observers have raised concerns that the use of the outdoor terrace and in particular the installation of a pizza oven and its ancillary flue have a serious

detrimental impact on the residential amenities of the adjoining properties, in particular The Stables and Orchard Cottage which has roof lights to the rear roof slope c.3.2m and c.6.2m respectively from the flue. I note that the application proposed to increase the height of the flue to address these concerns.

- 7.1.3 The development was the subject of a section 5 referral and the Planning Authority deemed it not be exempted development as it exceeded the 25sq.m limit under class 2 Schedule 2 of the Planning and Development Regulations 2001 (as amended). The flue was not considered in the assessment which referred solely to the garden structure.
- 7.1.4 I was unable to access the rear of the adjoining properties, However, I note that the photographs submitted by the observers clearly illustrate the impact of the structure and the flue on The Stables and Orchard Cottage.
- 7.1.5 The application before the Board is for the retention of a flat roofed garden building and an increase in the height of a flue that is linked to a pizza oven. I note that the flue and smoke associated with the pizza oven appears to be the main source of contention.
- 7.1.6 The observers noted that Class 2(a) exempted development allows 'the provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure' However as the flue serves a pizza oven, which is not part of a heating system of a house, in their opinion it is development and not exempted development.
- 7.1.7 The flue forms part of the current application for permission for retention therefore the issue of exempted development does not arise.
- 7.1.8 I consider the impact from the pizza oven and the flue on the roof of the structure, which has been stated to be used intermittently by the applicants, would be akin to that of an outdoor chimnea, an outdoor pizza oven or a traditional BBQ. The difference in this instance is that applicants have installed the pizza oven in a covered area and therefore require a flue. The observers have not submitted

independent evidence that the smoke generated creates an unacceptable level of nuisance above that which would normally be associated with domestic bbq or outdoor oven.

7.1.9 The corner area where the structure is located is within the private amenity area associated with Tyners Rest and is bounded by party walls with The Stables and Orchard Cottage. The use of this area as a covered terrace would not significantly increase the potential impact from noise from that of a non covered terrace, if anything it would reduce the impact.

7.1.10 The provision of small scale structures which are ancillary to the main house are common place in residential areas. I am satisfied that the location of the site and its relationship to adjoining houses can absorb the structure to be retained. In my view the structure is subservient in terms of design, scale and height to the main house on site and does not amount to the over development of the site. Private open space complies with the Development Plan standards.

7.1.11 The structure which is the subject of this application is located to the rear of the house with no vehicular access. Its location does not lend itself to any use other than one which is ancillary to the main residential use of the site. I am satisfied that the use of the structure can be dealt with by condition if the Board is of a mind to grant permission.

7.2 Appropriate Assessment

7.2.1 There are no direct links to the nearby European designated sites and having regard to the location of the site in a fully serviced rural town area and the nature and scale of the proposal, no Appropriate Assessment issues arise and it is not considered that the development to be retained would be likely to have a significant effect individually or in combination with other plans or projects on a European site

7.0 Recommendation

I recommend therefore that permission for retention be granted for the reasons and considerations set out below Reasons and Considerations

8.0 Reasons and Considerations

Having regard to the provisions of the current Wicklow County Development Plan 2016-2022, to the pattern of development in the area and to the nature, and scale of the development to be retained, it is considered that, subject to compliance with the conditions set out below, the development to be retained would not seriously injure the residential or visual amenities of adjoining properties and would be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application except as otherwise may 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 re-commencement of development and the development shall be carried out, completed and retained in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The structure shall be used solely for purposes incidental to the enjoyment of the house and shall not be used for human habitation or for commercial purposes, sold, leased or otherwise transferred or conveyed, save as part of the dwelling.

Reason: To protect the amenities of property in the vicinity.

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.

Dáire McDevitt
Planning Inspector

14th June 2019