



An
Bord
Pleanála

Inspector's Report ABP-305099-19

Development	Retention of existing timber dwelling with services and all ancillary site works.
Location	3 Ballygannon, Rathdrum, Co. Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	19571
Applicant(s)	Caroline Byrne
Type of Application	Permission for Retention
Planning Authority Decision	Refusal
Type of Appeal	First Party v. Decision
Appellant(s)	Caroline Byrne
Observer(s)	Noeleen Byrne
Date of Site Inspection	10 th October, 2019
Inspector	Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located within the mature housing estate of Ballygannon, approximately 1.2km west-northwest of Rathdrum town centre, where it occupies a backland position to the rear of No. 3 Ballygannon which in turn fronts onto the Ballinderry Road (Local Road No. L6123) to the northeast. The surrounding pattern of development is predominantly characterised by two-storey, semi-detached dwelling houses on generous plots with many of these sites having been subdivided to accommodate the construction of new housing in a somewhat uncoordinated and piecemeal manner. In this respect it is notable that the adjacent site to the northwest has been developed to provide for an additional dwelling house whilst permission has also been granted for a further dwelling within the rear garden area of that property to the immediate southwest (through which the subject site is accessible).
- 1.2. The site itself has a stated site of 0.07 hectares, is rectangular in shape, and would appear to have formed part of the rear garden / yard area of No. 3 Ballygannon. It is presently occupied by a prefabricated, single storey, timber chalet-type dwelling house and a series of domestic sheds / outbuildings. Vehicular access to the property is obtained via an existing laneway / driveway which extends from a minor estate roadway to the southwest through the curtilage of No. 17 Centre Road, Ballygannon.

2.0 Proposed Development

- 2.1. The proposed development consists of the retention of a single storey, timber chalet-type dwelling house with a stated floor area of 55m² and an overall ridge height of 3.4m, the design of which is based on a simple rectangular plan with a conventional pitched roof construction. Vehicular access is obtained via a right of way over an existing private access roadway which extends from the public road to the southwest between Nos. 16 & 17 Centre Road, Ballygannon. Water and sewerage services are available via connection to the public mains (through the curtilage of No. 3 Ballygannon).

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On 12th July, 2019 the Planning Authority issued a notification of a decision to refuse permission for the retention of the proposed development for the following reasons:

- Having regard to the location and infill backland setting of the site, the design and nature of the structure, its intended use as a place of residence, the poor aesthetic value of the structure and the likelihood of it deteriorating over time by virtue of the materials used in its construction, and the prevailing pattern of development of the area, it is considered that the proposal:
 - a) would be contrary to Objective HD16 as contained in Section 4.4 of the County Development Plan, 2016-2022 which states that ‘temporary residential structures (e.g. mobile homes, caravans, cabins, portacabins etc) form a haphazard and substandard form of residential accommodation and generally have poor aesthetic value and can detract from the overall appearance of an area’ and that ‘permission will generally not be granted for such structures’;
 - b) would fail to accord with the ‘Development and Design Standards’ for residential structures as set out in Section 1 of Appendix 1 of the County Development Plan, 2016-2022, which states that that ‘by reason of the overall design and construction of such temporary structures, they are normally seriously substandard as regards attainable amenity as a place of residence’ and that ‘permission will generally not be granted for such structures’;
 - c) would be contrary to the zoning objectives for the site which seek ‘to protect, provide and improve residential amenities of existing residential areas’;
 - d) would seriously injure the amenities and depreciate the value of property in the vicinity;
 - e) would result in a substandard residential development which would have a detrimental impact on the visual amenities of the area; and

- f) would set an undesirable precedent for similar type proposals in the area.

The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

- The proposed development would endanger public safety by reason of serious traffic hazard because the development is reliant on an entrance and access roadway permitted under a separate application (PRR 16/532) and which has not been constructed in accordance with that permission, therefore to permit this development which is reliant on works outside of this planning application would be unacceptable and in its current form would be prejudicial to the development of a safe access to the dwelling permitted under PRR16/532.

3.2. Planning Authority Reports

3.2.1. Planning Reports

States that notwithstanding the report submitted with the application which aims to justify the proposal for a period for 5 No. years, the retention of the development in question is considered to be contrary to Objective HD16 and Appendix 1 of the Wicklow County Development Plan, 2016 which prohibits the use of temporary cabin / chalet-type structures for use as permanent dwellings. It is further considered that the proposal would be contrary to the applicable land use zoning objective which seeks *'to protect, provide and improve [the] residential amenities of existing residential areas'*. It is also stated that the traffic safety issues previously raised have not been satisfactorily addressed as the access roadway is outside of the application site and permission has not been granted for its construction or use. The report thus concludes by recommending a refusal of permission for the reasons stated.

3.2.2. Other Technical Reports

Arklow Area Engineer: No objection from a roads or drainage perspective.

3.3. Prescribed Bodies

- 3.3.1. *Irish Water:* No objection, subject to conditions.

3.4. Third Party Observations

None.

4.0 Planning History

4.1. On Site:

PA Ref. No. 17291. Was refused on 8th May, 2017 refusing James Byrne permission for the retention of an existing timber dwelling with services and all ancillary site works.

PA Ref. No. 171472. Was refused on 6th February, 2018 refusing Caroline Byrne permission for the retention of an existing timber dwelling with services and all ancillary site works.

PA Ref. No. 181367. Was refused on 6th February, 2019 refusing Caroline Byrne permission for the retention of a timber dwelling with services and all ancillary site works.

- Having regard to the:
 - infill nature of the development
 - the design of the proposed development
 - the RE 'Existing Residential' zoning objective for the lands as set out in the Rathdrum Local Area Plan 2017
 - the Objectives / Standards set out in the Wicklow County Development Plan 2016 – 2022, in particular, The Development and Design Standards, Section 1, Temporary Residential Structures,

it is considered that the development would not accord with the zoning objective of the site or the Wicklow County Council, Development and Design Standards, would not represent an appropriate infill residential development, would impact detrimentally on the amenities of the area, would set an undesirable precedent for similar forms of inappropriate and haphazard development and would be contrary to the proper planning and sustainable development of the area.

- The proposed development would endanger public safety by reason of serious traffic hazard because,
 - a) It has not been demonstrated to the satisfaction of the Planning Authority that adequate sight distances can be achieved at the junction of the proposed site entrance with the public road to serve this development.
 - b) It is not evident from the documentation submitted that the applicant has sufficient control of the necessary lands to execute the proposals to achieve the adequate sightlines.
 - c) The development is reliant on an entrance and access roadway permitted under a separate application (PRR 16/532) and which has not been constructed in accordance with that permission, therefore to permit this development reliant on works outside of this planning application would be unacceptable.

4.2. *On Adjacent Sites:*

4.2.1. *(To the immediate southwest):*

PA Ref. No. 041326. Was granted on 16th June, 2019 permitting Noeleen Byrne permission for a bungalow at the rear of 17 Ballygannon, Rathdrum, Co. Wicklow.

PA Ref. No. 16532. Was granted on 9th August, 2016 permitting Noeleen Byrne permission for a bungalow and associated site works at the rear of 17 Centre Road, Ballygannon, Rathdrum, Co. Wicklow.

PA Ref. No. 19964. On 18th October, 2019 the Planning Authority issued Noeleen Byrne with a notification of a decision to refuse permission for the retention and completion of a driveway leading from the public road (as permitted under Planning Register Reference 16/532) but extending to the rear boundary of the site together with all ancillary site works at the rear of 17 Centre Road, Ballygannon, Rathdrum, Co. Wicklow:

- The proposed development would represent consolidation of unauthorised development on this site, having regard to the fact that the extended driveway serves the existing timber dwelling on the site to the rear for which no permission exists, the provision of such a form of development unduly impacts on the amenities of the area, the amenities of adjoining properties,

undermines the objectives of the County Development Plan and planning regulations, and would be contrary to proper planning and sustainable development.

- In the absence of any identified need for the proposed new driveway, the proposed new driveway represents unnecessary development that results in reduced surface water infiltration and loss of private amenity space and to permit such development would be contrary to proper planning and sustainable development.

4.2.2. *(To the immediate northwest):*

PA Ref. No. 014873. Was granted on 6th December, 2001 permitting Avril McDonald permission for a bungalow at the rear of 4 Ballygannon, Rathdrum, Co. Wicklow.

4.2.3. *(To the immediate southeast):*

PA Ref. No. 065656. Was granted on 9th November, 2006 permitting John & Elizabeth O'Toole permission for the construction of a dormer type dwelling & connection to existing services at Centre Road, Ballygannon, Rathdrum, Co. Wicklow.

4.3. *Other Relevant Files:*

PA Ref. No. 16288. Was granted on 21st July, 2016 permitting Jean Kelly Doyle permission for the construction of an eco-style dwelling with shared vehicular access with the existing property, connecting to mains services & all ancillary site works at Lower Street, Rathdrum, Co. Wicklow.

5.0 **Policy and Context**

5.1. **Development Plan**

5.1.1. ***Wicklow County Development Plan, 2016-2022:***

Chapter 3: Settlement Strategy:

Section 3.2: County Wicklow Settlement Strategy:

Level 5 – Small Growth Towns: Rathdrum

Chapter 4: Housing:

Section 4.3.6: *Design of New Developments*

Section 4.4: *Housing Objectives*

HD2: New housing development, above all other criteria, shall enhance and improve the residential amenity of any location, shall provide for the highest possible standard of living for occupants and in particular, shall not reduce to an unacceptable degree the level of amenity enjoyed by existing residents in the area.

HD3: All new housing developments (including single and rural houses) shall achieve the highest quality of layout and design, in accordance with the standards set out in the Development and Design Standards document appended to this plan, which includes a Wicklow Single Rural Houses Design Guide.

HD9: In areas zoned / designated 'existing residential', house improvements, alterations and extensions and appropriate infill residential development in accordance with principles of good design and protection of existing residential amenity will normally be permitted (other than on lands permitted or designated as open space, see Objective HD11 below). While new developments shall have regard to the protection of the residential and architectural amenities of houses in the immediate environs, alternative and contemporary designs shall be encouraged (including alternative materials, heights and building forms), to provide for visual diversity.

HD16: Temporary residential structures (e.g. mobile homes, caravans, cabins, portacabins etc) form a haphazard and substandard form of residential accommodation and generally have poor aesthetic value and can detract from the overall appearance of an area. Therefore, permission will generally not be granted for such structures.

Chapter 9: Infrastructure:

Section 9.1: Roads and Transportation

Appendix 1: Development and Design Standards:

Section 1: Mixed Use and Housing Developments in Urban Areas: Temporary residential structures:

Temporary residential structures (e.g. mobile homes, cabins, caravans, portacabins etc) form a haphazard form of residential accommodation and generally have poor aesthetic value and can detract from the overall appearance of an area.

Furthermore, by reason of the overall design and construction of such structures, they are normally are seriously substandard as regards attainable amenity as a place of residence with reference to:

- the recommendations in the DoEHLG Best Practice Guidelines “Delivering Homes for Sustainable Communities” (Durability)
- the criteria set out under Section 66 of the Housing Act 1966 (fitness of a dwelling i.e. stability, resistance to dampness, pest control etc.)
- compliance with the Building Regulations.

Therefore, permission will generally not be granted for such structures.

Section 7: Roads and Transportation

5.1.2. Rathdrum Local Area Plan, 2017-2023:

Land Use Zoning:

The proposed development site is located in an area zoned as ‘*RE: Existing Residential*’ with the stated land use zoning objective ‘*To protect, provide and improve residential amenities of existing residential areas*’.

Description:

To provide for house improvements, alterations and extensions and appropriate infill residential development in accordance with principles of good design and protection of existing residential amenity. In existing residential areas, the areas of open space permitted, designated or dedicated solely to the use of the residents will normally be zoned ‘RE’ as they form an intrinsic part of the overall residential development; however new housing or other non-community related uses will not normally be permitted.

Other Relevant Sections / Policies:

Section 3.3: Residential Development:

Residential development is particularly encouraged on lands zoned 'town centre', 'village centre' and 'existing residential' (where infill opportunities arise) and to a lesser extent lands zoned 'Mixed Use.

5.2. Natural Heritage Designations

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

- The Vale of Clare (Rathdrum Wood) Special Area of Conservation (Site Code: 000733), approximately 600m north of the site.
- The Deputy's Pass Nature Reserve Special Area of Conservation (Site Code: 000717), approximately 5.4km northeast of the site.

5.3. EIA Screening

5.3.1. Having regard to the minor nature and scale of the development proposed for retention, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, 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 decision of the Planning Authority to refuse permission is not based on any particularly scientific analysis of the development and, therefore, the applicant is at a loss in terms of identifying the exact environmental harm which would arise from the retention of the existing building for a period of c. 60 months.

- The Board is advised that the Planning Authority has completed enforcement action as regards the development and, as confirmed in an e-mail from Augustus Cullen Law to the applicant's agent:

' . . . our mutual client Caroline Byrne and her daughter gave formal undertaking to Judge Quinn at the Circuit Court that they would make application for retention of Caroline Byrne's home at 3 Ballygannon, Rathdrum, Co. Wicklow, and acknowledged to the Court that should the Board deny consent, there will be no further applications and appeals and that Ms. Byrne will voluntarily remove the dwelling from the lands. The effect of this is that they would be homeless'.

- Notwithstanding the reference to the infill nature and backland setting of the application site, the principle of a dwelling house on these lands has been accepted by the Planning Authority.
- The applicant is amenable to a condition that the dwelling house be used for a period of 5 No. years only until alternative arrangements can be put in place for her daughter and grand-daughter and in this respect the Board is referred to Section 7.5: '*Temporary Permissions*' of the '*Development Management, Guidelines for Planning Authorities*'.

To the degree that the Planning Authority's objection to the proposed development stems from maintenance-related concerns, the Board is requested to acknowledge the temporary nature of the permission sought whilst the Council should be required to identify the precise planning harm that would result from the structure remaining *in situ* for a period of c. 60 months. Given that the case planner has sought to refuse permission by reference to certain Development Plan provisions without actually explaining the basis for the concern that the structure would become dilapidated in a short period of time, the foregoing request is considered reasonable.

- The appearance of a development is as much to do with the degree of maintenance by the property owner as the materials from which it is constructed, and it is unfair for the Planning Authority to refuse permission on this basis without having actually assessed the proposal.

- The Wicklow County Development Plan, 2016 is inconsistent in its approach to the assessment of different types of temporary structures (e.g. certain exemptions are permissible with regard to temporary classroom accommodation) and, therefore, it is not unreasonable for the applicant to have expected an independent analysis of the subject development rather than its outright rejection on the basis that the Development Plan does not favour buildings of the nature proposed.
- *'Rebuilding Ireland'* repeatedly refers to *'providing rapid housing delivery'*, *'support those at risk of losing their homes . . . by delivering additional housing solutions including through an expanded Rapid-Build Housing programme'* and *'temporary accommodation'*, however, there would appear to be a disconnect between national and local planning policy in this instance.
- The Board is invited to confirm that the structure to be retained is acceptable as a temporary feature in an area which is characterised by a variety of architectural styles / building types. Alternatively, it should identify the particular elements of the design which are of difficulty as this would be of critical importance in allowing the formulation of revised proposals to address the concerns raised.
- The Board is invited to compare the subject proposal with the development previously found to be acceptable by the Planning Authority under PA Ref. No. 16/288. Furthermore, cognisance should be taken of the Board's determination of ABP Ref. No. PL09.242565 wherein it approved a timber structure in a residential area which is not materially different to the subject development.
- The applicant is amenable to plastering and painting the dwelling to ensure that it blends into the surrounding area.
- Due to the setback of the structure from the public road, it is not a conspicuous addition to the area and will be even less noticeable from the street once it has been painted and / or plastered.
- Given the site context, it is not accepted that the proposed development would have an adverse impact on visual amenity or the wider streetscape.

- The Planning Authority does not suggest that the proposal constitutes an overdevelopment of the site.
- The second reason for refusal states that the proposed development would constitute a '*serious traffic hazard*' because it is reliant on '*an entrance and access roadway permitted under a separate application (PRR 16/532) and which has not been constructed in accordance with that permission*'. In response, it is submitted that the fact that the driveway serving the dwelling house is located outside of the site area (as outlined in red) does not, in itself, imply that accidents will occur. In this respect the Board is referred to *Wicklow County Council v. Fortune No. 2* which highlights the need for a reasonably scientific approach to be adopted as regards issues of road safety.
- In contrast to PA Ref. No. 18/1367, permission was not refused on the basis of inadequate sightlines or that the entrance arrangement had not been constructed in accordance with PA Ref. No. 16/532.
- A new planning application has been lodged under PA Ref. No. 19/865 for permission for the driveway between the proposed development site and the public road.
- The provision of temporary accommodation to fulfil a *bona fide* need is acceptable.

6.2. Planning Authority Response

None.

6.3. Observations

6.3.1. Noeleen Byrne:

- States that the planning application lodged under PA Ref. No. 19/865 (as referenced in the grounds of appeal) was invalidated by the Council and that a new application has since been submitted under PA Ref. No. 19/964.

6.4. Further Responses

None.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Overall design and layout
- Impact on residential amenity
- Traffic implications
- Appropriate assessment

These are assessed as follows:

7.2. The Principle of the Proposed Development:

7.2.1. With regard to the overall principle of the proposed development, it is of relevance in the first instance to note that the subject site is located within the identified settlement boundary for the town of Rathdrum on lands zoned as *'RE: Existing Residential'* with the stated land use zoning objective *'To protect, provide and improve residential amenities of existing residential areas'* where the development of housing / residential uses would generally be considered appropriate. Furthermore, it should be noted that the surrounding area is primarily residential in character and that the prevailing pattern of development in the immediate vicinity of the application site is characterised by semi-detached dwelling houses on generous plots with many of these sites having already been subdivided in a manner comparable to that presently proposed to accommodate the construction of an additional dwelling in a backland location.

7.2.2. Accordingly, I would suggest that the proposed development site can be considered to comprise a potential infill site situated within an established residential area where public services are available and that the development of appropriately designed infill housing would typically be encouraged in such areas provided it integrates successfully with the existing pattern of development and adequate consideration is given to the need to protect the amenities of existing properties. Indeed, the *'Sustainable Residential Development in Urban Areas, Guidelines for Planning*

Authorities, 2009 acknowledge the potential for infill development within established residential areas provided that a balance is struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.

- 7.2.3. Therefore, having considered the available information, including the site context and land use zoning, and noting that comparable infill development has already been approved and / or completed in the immediate site surrounds, I am satisfied that the overall principle of the proposed development is acceptable, subject to the consideration of all other relevant planning issues, including the impact, if any, of the proposal on the amenities of neighbouring properties and the overall character of the wider area.

7.3. **Overall Design and Layout:**

- 7.3.1. The principle concern with regard to the overall design and layout of the dwelling house proposed for retention stems from the temporary nature and durability of its construction having regard to the provisions of Objective HD16 of the County Development Plan as supplemented by Section 1: *'Mixed Use and Housing Developments in Urban Areas: Temporary residential structures'* of Appendix 1: *'Development and Design Standards'* of that same Plan. By way of summation, Objective HD16 states that in general permission will not be granted for temporary residential structures, such as mobile homes, caravans, cabins, portacabins and other similar formats of construction, on that the basis that they constitute a haphazard and substandard form of residential accommodation which is generally of a poor aesthetic value and can detract from the overall appearance of an area. Appendix 1 further elaborates on the foregoing by asserting that such structures are *'seriously substandard as regards attainable amenity as a place of residence'* by reference to the DoEHLG Best Practice Guidelines *"Delivering Homes for Sustainable Communities"* (Durability), the criteria set out under Section 66 of the Housing Act, 1966 (fitness of a dwelling i.e. stability, resistance to dampness, pest control etc.), and compliance with the requirements of the Building Regulations.
- 7.3.2. In support of the subject proposal, the applicant has sought to emphasise that the dwelling in question was initially constructed in response to the inadequacy of the family home to accommodate the needs of her daughter and grand-daughter,

although it would appear that changes in the applicant's own personal circumstances (as a result of her legal separation and eviction from the family home) have since necessitated her residency in the subject property. It has also been submitted that she is amenable to accepting a temporary grant of permission for a duration of 5 No. years pending the making of alternative arrangements whilst she is also willing to plaster and / or paint the existing construction in the interests of visual amenity.

- 7.3.3. Further credence has been lent to the proposal by reference to the site context and the surrounding pattern of development, the overall suitability of the subject site for the construction of a dwelling house, and those instances when both the Planning Authority and the Board have approved comparable formats of development, with particular reference being made to PA Ref. No. 16/288 when Wicklow County Council approved the construction of an 'eco-style dwelling' at Lower Street, Rathdrum, Co. Wicklow (although it should be noted that said property was to be finished in a plaster render as opposed to timber cladding).
- 7.3.4. Having conducted a site inspection, and following a review of the available information, I would suggest that the given the site context, with particular reference to its backland location, its recessed position relative to the public road, and the level of screening offered by adjacent properties, the overall visibility of the existing dwelling house is very limited and has a minimal impact on the visual amenity of the surrounding area. It is of further relevance to note the variety of building types and architectural styles prevalent in the area as a result of the somewhat uncoordinated and piecemeal approach to the wider development of those backlands within the Ballygannon estate. Accordingly, I am inclined to conclude that the proposed development does not adversely impact on the overall appearance of the surrounding area, however, should the Board disagree with this conclusion, consideration should be given to the applicant's offer to render the structure in a plaster finish in order to be more consistent with neighbouring properties.
- 7.3.5. With regard to the temporary nature of the proposed development and the provisions of Objective HD16 of the Development Plan, at the outset I would suggest that the use of the term 'in general' would seem to provide for some degree of flexibility in the interpretation of this objective. In this respect, the case could be made that the structure under consideration is more comparable in terms of its physical construction and appearance to a conventional dwelling house than those other

'temporary residential structures' listed i.e. mobile homes, caravans, cabins & portacabins. Indeed, the use of such prefabricated chalet-type units / 'log' cabins as permanent accommodation has become increasingly commonplace in recent years. In addition to the foregoing, it is unclear how the subject application would have been assessed by the Planning Authority had the applicant not expressly indicated that the dwelling house would be removed after a temporary period of c. 60 months.

- 7.3.6. On balance, whilst I would acknowledge the Planning Authority's concerns as regards the long-term suitability and durability of the accommodation proposed as a place of permanent residence, given the site location on zoned and serviced lands where the provision of a dwelling house would typically be permitted, I would be amenable to acceding to the applicant's request for a temporary grant of permission pending the availability of alternative accommodation arrangements (e.g. including the possible construction of a more conventional and permanent dwelling house on site at a future date).

7.4. Impact on Residential Amenity:

- 7.4.1. Having reviewed the available information, in light of the site context, including its location within a built-up urban area, it is my opinion that the design, positioning and orientation of the proposed development, with particular reference to its single storey construction and separation from adjacent dwelling houses, will not give rise to any significant detrimental impact on the residential amenity of neighbouring property by reason of overlooking or overshadowing / loss of daylight / sunlight. Moreover, I am satisfied that both the proposed development and the existing dwelling house at No. 3 Ballygannon will be provided within an adequate level of residential amenity and private open space.

7.5. Traffic Implications:

- 7.5.1. Vehicular access to the development proposed for retention is obtained via a right of way over an existing laneway / driveway which extends through the curtilage of No. 17 Centre Road from an established entrance arrangement onto the minor estate roadway to the southwest located between Nos. 16 & 17 Centre Road, Ballygannon. In this regard, and by way of clarity, I would advise the Board that unlike comparable developments in the surrounding area whereby vehicular access to the new dwelling house to the rear of those properties which have been subdivided to accommodate

the construction of same is obtained through the curtilage of the original residence, it is not possible to provide independent vehicular access to the proposed development site through the grounds of No. 3 Ballygannon due to the fact that an extension has already been constructed to the gable end of that dwelling house thereby limiting the available space between it and the shared property boundary. Accordingly, in response to the foregoing constraints, the applicant has obtained the consent of the neighbouring property owner (Ms. Noeleen Byrne) to the immediate southwest to access the subject site through those lands via an entrance arrangement already approved under PA Ref. No. 16532 (which also involved the subdivision of the plot occupied by No. 17 Centre Road, Ballygannon, to accommodate the provision of a new dwelling house).

7.5.2. In principle, there would appear to be no outright objection to the applicant's proposal to access the proposed development by way of the entrance arrangement approved under PA Ref. No. 16532, however, it is at this point that difficulties arise as regards the planning status of the existing access road / driveway. In the first instance, although the case could be made that the southernmost section of the existing access road was permitted under PA Ref. No. 16532, that grant of permission has not been implemented in full and relates to lands over the applicant has no control with the result that the existing access roadway & entrance have not been completed in accordance with the approved particulars. Secondly, the Planning Authority has recently refused the neighbouring property owner permission for the retention and completion of the extension constructed to the access road approved under PA Ref. No. 16532 which provides vehicular access to the subject site over the intervening lands (please refer to PA Ref. No. 19964). Accordingly, whilst the applicant retains a right of way over those lands to the southwest in order to access the public road, the physical road construction is either incomplete or does not have the benefit of planning permission.

7.5.3. In effect, vehicular access to the subject site as proposed is reliant on the implementation (and completion) of a grant of permission on lands over which the applicant has no control and is further dependent on the retention of an extended section of roadway which has already been refused permission by the Planning Authority. In this regard, whilst I note the various submissions on file which assert that both the neighbouring property owner (Ms. Noleen Byrne) and others (Mr. John

Byrne) are amenable to the accommodating the proposed access arrangements, I would serious reservations as regards the practicality of the submitted proposals and the ability of the Planning Authority to enforce same should the necessary works not be completed.

7.5.4. Therefore, on the basis of the foregoing, it is my opinion that the subject proposal is reliant on works on lands outside of the applicant's control, is dependent on existing unauthorised development, and that the completion of a satisfactory means of vehicular access to the subject site and associated off-street car parking provision (as per the requirements of the Development Plan) cannot be assured as part of the subject application. In the absence of a suitable means of safe vehicular access to the subject site, the proposal fails to satisfy the requirements of the Development Plan, could interfere with the free flow of traffic, and could endanger public safety by reason of traffic hazard.

7.6. Appropriate Assessment:

7.6.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be refused for the retention of the proposed development for the reasons and considerations set out below:

9.0 Reasons and Considerations

1. On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the development proposed for retention is safely accessible from the public road by vehicular

traffic given its reliance on works which do not have the benefit of planning permission or which are required to be carried out on lands outside of the applicant's control. In the absence of a suitable means of vehicular access to the site and associated off-street car parking, it is considered the development proposed to be retained would fail to satisfy the requirements of the Wicklow County Development Plan, 2016-2022, would interfere with the free flow of traffic, would endanger public safety by reason of traffic hazard, and would be contrary to the proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

14th November, 2019