



An
Bord
Pleanála

Inspector's Report

ABP-306618-20

Development	Retention of dwelling and twin chambered septic tank
Location	Baurela, Ballyhuskard, Co. Wexford
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	20191541
Applicant(s)	Mary Doyle & Bill Wright.
Type of Application	Permission.
Planning Authority Decision	Refuse
Type of Appeal	Third Party
Appellant(s)	Aine McCabe
Observer(s)	None
Date of Site Inspection	5 th of May 2020
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The site is located in a rural part of Wexford in the townland of Baurela, Ballyhuskard, Enniscorthy. It is 0.21Ha, located on a bad bend in the road alongside an agricultural field entrance.
- 1.2. The site is accessed from a shared entrance that serves the subject site and the adjoining dwelling to the west.
- 1.3. The site itself is well screened, it includes the two storey workshop with living accommodation on the first floor (78sq.m), a portal frame shed along the western site boundary, and a polytunnel along the northern site boundary.
- 1.4. To the immediate west is a split-level dwelling on a separate site, which is orientated towards the subject site. This dwelling is owned/ occupied by the third-party appellant and it accessed from the shared entrance and a private access road running along the southern site boundary.
- 1.5. There is a horticultural farm and dwelling to the east of the site, and there is a heavy concentration of one-off dwellings in the area.

2.0 Development

- 2.1. The development consists of the Retention of :
 - i) an existing dwelling accommodation;
 - ii) Existing twin-chambered septic tank

And Permission for:

the installation of an EPA code of practice compliant percolation area.

3.0 Planning Authority Decision

3.1. Decision

Wexford Co. Co. refused the development for one reason.

The proposed percolation area would result in a proliferation of percolation areas within close proximity to the site. When taken in conjunction with the low T-Value

results and the absence of specific details demonstrating that water quality would not be affected, the proliferation of percolation areas close to the private well may pose a risk to public health. The proposed development would therefore be contrary to the proper planning and development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The assessment stated the following key points:

- The subject site and the adjoining house to the west were originally one large site twenty years ago. The original site was subdivided, and the dwelling was sold separately, with the workshop been converted into residential accommodation. There is one single entrance serving both sites which is the subject of a legal dispute.
- The site is located in an area designated as Strong Urban Influence. The supporting documents state the land is owned by the applicant's brother, and they have been paying rent to him since 2014. It is considered the applicants have demonstrated adequate linkage to the area.
- The siting of the dwelling is acceptable.
- The design and layout is acceptable.
- The sightlines are acceptable
- No evidence of right of way has been submitted and this is the subject of a legal dispute
- Environment section recommend refusal because of proximity to the private well.

3.2.2. Other Technical Reports

Senior Executive Scientist

- The soil tests revealed a T-Value of 8.58, deeming the site suitable for discharge of water.

- There are two percolation areas in the vicinity of the private well serving the development, located 30m- 50m from the well.
- The proximity of the percolation areas and the low T-value pose a risk to private well.

3.3. **Prescribed Bodies**

The case was not referred to prescribed bodies for comment.

3.4. **Third Party Observations**

The adjoining neighbour to the west, and is also the appellant in this case objected to the development with the following concerns;

- There is an unauthorised residential use on site
- The entrance to the development is via her property with no right of way.
- The plans are incorrect regarding the access
- The drawings of the residential units are inaccurate.
- The development is a health and safety risk.
- The current operations on site area residential and commercial.
- Wastewater treatment system was installed without planning permission and not fit for purpose.

4.0 **Planning History**

Planning Registration No. 20074574

Retention of a workshop, site entrance, polytunnel and permission to the erection of a dwelling was granted on 07/04/2008 to Mr. Liam Doyle (applicant's brother)

Enforcement Case – 0056/2019

Alleged change of use of workshop to residential accommodation.

5.0 Policy Context

5.1. National Policy

Sustainable Rural Housing Guidelines

5.2. Development Plan

The relevant development plan is the Wexford County Development Plan 2013-2019

Relevant sections of the Plan include:

4.3 Sustainable Rural Housing

4.3.3.2 Rural Areas Under Strong Urban Influence

It is an objective of the Council:

Objective RH01

To facilitate the development of individual houses in the open countryside in 'Areas under Strong Urban Influence' in accordance with the criteria laid down in Table No. 12 subject to compliance with normal planning and environmental criteria and the development management standards laid down in Chapter 18.

Objective RH02

To facilitate individual houses, other than those referred to in 'Areas under Strong Urban Influence' in Table No. 12, in the existing settlements including those settlements defined in the settlement hierarchy as Strong Villages, Smaller Villages and Rural Settlements, subject to complying with normal planning and environmental criteria and the development management standards laid down in Chapter 18

Table 12 is included in the Appendix of this report for reference purpose. The relevant section is :

Rural Area under Strong Urban Influence Permitted Definitions

Housing for 'local rural people' building permanent residences for their own use who have a definable 'housing need' building in their 'local rural area' Housing for people

working in rural areas building permanent residences for their own use who have a definable 'housing need'.

'Local rural people' are defined as people who were born or have lived for a minimum period of five years in that 'local rural area'. This includes people who have lived there in the past/returning emigrants. It also includes persons who were born or reared in such a 'local rural area' but that area is now within a settlement boundary/ zoned land. A local rural person also includes a person who has links by virtue of being a long term rural landowner or the son or daughter or successor of such a person.

'**Local rural area**' is defined as within a 7km radius of where the applicant has lived or was living. Where the site is of a greater distance but the applicant can demonstrate significant ties with the area for example immediate family or landownership then these applications will be considered on their merits. The 'local rural area' includes the countryside, Strong Villages, Smaller Villages and Rural settlements but excludes District towns, Larger Town, and The Hub.

18.12 Rural Housing

18.32 On site Wastewater Treatment

All relevant extracts are included in the Appendix of this report.

5.3. **Natural Heritage Designation**

The following designated Natura 2000 sites are located within 10km of the appeal site:

The River Slaney SAC (site code 000781)

5.4. **EIA Screening**

Having regard to the limited nature and scale of the development and the absence of any significant environmental sensitivity in the vicinity, 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 third-party appeal is summarised below:

The original objection does not appear to be fully considered by the planning authority. The dwelling is located front facing the side of her home located to the west of the site, which is located at a lower level with an increased risk of run off onto her property.

Retention is been sought for a workshop which is 60sq.m. which contravenes the development plan which states 80sq.m. is required. The ground floor is a workshop.

There is no laneway access to the site and the local authority has wrongfully stated that there is

The proposal will result in further linear development along the road where there is an existing concentration of linear developments.

The existing speed limit is 80kph with sightlines of 65metres required, and this is not achievable.

The additional traffic movements will cause a traffic hazard given the proximity to a bend.

Section 18.12.2 of the development plan states the siting of a dwelling house should meet with minimum separation distance from wastewater treatment and surface water drainage systems which are not evident. Section 18.12.3 refers to backland development and the proposal does not comply with the criteria because it does not meet with environmental standards.

There is a business operating on site within a shed that is not included in the application.

They have not complied with their Enforcement Notice of 28th of November 2019

The appellant purchased her dwelling in 2018, it was understood the unauthorised developments on site were temporary. Now there are two dwellings and a business using her private entrance, leading to breach of planning and a traffic hazard.

6.2. Applicant Response

Martin Sinnott Engineers has made a submission on behalf of the applicant. The following is a relevant summary of the submission (Note: I consider certain legal issues, enforcement issues and speculation regarding the sale of the adjoining properties to be not relevant to the appeal and beyond the remit of the Board, therefore are not included in the summary).

- The development was refused for a single reason only following a detailed assessment of the planning issues. The site was deemed to be suitable for septic tank and percolation system. The T-value is 8.58 which indicates good drainage properties. There was no bedrock or water table found in the trial holes. In addition, the system as installed has been proven by the local authority's own independent compliant system.
- Mr. Liam Doyle the original landowner obtained a number of planning permissions:
 - The dwelling now owned by the appellant
 - The workshop with living accommodation with poly tunnel (Planning References 2004408 and 20074470)
 - Large shed/ workshop building (Planning references 20074574)
- **Background** In 2008 Mr Doyle subdivided the land ownership into 2 No. separate folios to obtain finance on one folio now owned by Ms McCabe, and the residue lands unencumbered by financial security. He continued to live in the structure that is the subject of the retention order up until 2013. He emigrated to Australia and his sister, Ms. Mary Doyle occupied the site. The bank sold the land folio associated with the main dwelling to the appellant, relevant to planning registration No. 990397. The sale did not include the subject site or the structures on the site.

- Under planning registration 20074470, Liam Doyle applied for retention of the workshop with overhead living accommodation. It obtained permission as a workshop only. Neither properties are compliant with planning permission.
- **Road Access / Entrance** Both properties originate from the same landholding with limited road frontage. There is a single entrance which has been the subject of a legal dispute, and an injunction was awarded to the applicants against the appellant who kept blocking their entrance. There is an order dated 27/11/2019 stating the applicants have a right of way.
- **Objections** The local authority considered the sight lines to be adequate. There is no basis to refuse the development on traffic grounds. The objector is seeking to have the development refused on additional grounds than the percolation area issue.
- **Percolation Area:** There are 2No. percolation areas in relevant proximity, while a third proposed percolation area has been indicated on the adjoining property. There is no risk of run off from the percolation area onto the third party's property, the invert levels are 0.7metres below the ground surface. The percolation area is designed and will be provided in accordance with EPA Wastewater Treatment Manual.
- **Dwelling Size :** The third party appellant quotes the development plan in terms of dimensions yet does not states the relevant section of the plan. It is assumed the appellant is quoting Table No. 36 under Paragraph 18.10.17 which is in line with '*Quality Housing for Sustainable Communities*' (DEHLG 2007). The appellants house is a single storey dwelling with 3No. persons and is within the stated standards. This issue is not relevant to the appeal.
- **Backland Development** The property the subject of this appeal is located along the front development line, and the backland development is the appellants property. This is not grounds for refusal.
- **Commercial Activity** The shed and polytunnel on site are both authorised developments. The granting of the 'workshop' implies some expectation that 'work' would be done and implies some element of business/ commercial activity.

- **Percolation Area** The system installed on site has been designed and implemented and is compliant with Wexford Co. co. independent testing services. The adjoining percolation area is Ms Aine Mc Cabes is a proposed percolation area, and not an actual percolation area. If additional filtration of secondary treatment (septic tank) effluent is required, it is possible to construct a more robust filter in accordance Sections 4.5-4.11 of the EPA guidelines which can be provided for by condition. While not preferred it is possible to condition the development connect to the public water supply.

6.3. **Planning Authority Response**

None

7.0 **Assessment**

7.1 The development was refused by the planning authority for one reason relating to public health matters associated with the proliferation of percolation areas, the rapid percolative properties of the underlying soil and proximity to a private borehole. The adjoining third party resident appealed the decision to refuse to the Board on the basis that issues raised in her original objection were not fully considered by the planning authority in its decision. The Board should note there are outstanding planning enforcement and ongoing civil matters between the parties which are beyond the remit of this appeal. The relevant planning matters to be addressed in this assessment are:

- Compliance with the Development Plan Policy
- Planning History and implications for current appeal
- Design/ Layout
- Public Health Issues
- Access and Traffic
- Appropriate Assessment

7.2 Compliance with Development Plan Policy

According to the development plan for the area, **Wexford County Development Plan 2013-2109**, (which may be expired), the site is located in a Rural area under Strong Urban Influence. Accordingly, the criteria in Table 12 of the development plan must be complied with in terms of local needs. As this planning application involves the retention of a dwelling accommodation, the applicants should comply with development plan policy in this regard, i.e. they should be local rural people who by definition were born or have lived in the area for a minimum of five years.

Mary Doyle, is a sister of the original landowner, Liam Doyle, who emigrated to Australia, and according to the application documents, she has lived on the subject site since 2013, and own the subject site. Her immediate family live in the area, Mary is a native to the area.

I am satisfied based on the supporting documentation on the planning file, that Mary Doyle complies with the development plan local need criteria for a rural dwelling set out in Table 12 of the development plan.

7.3 Planning History and background current appeal

According to the details on the appeal file, the subject development/ site and the third party's appellants property to the west, were originally one single landholding owned by the applicants brother, Mr. Liam Doyle. The dwelling now occupied by the third-party appellant, Ms Ann McCabe, was originally granted planning permission under planning reference **990397**. It is not clear if this permission was carried out. The existing dwelling on the adjoining site, similar in design and layout to a later planning permission granted to Mr. Liam Doyle under Planning Reference no. **20074470**.

On the 7th of April 2008, Mr. Liam Doyle was granted planning permission under **20074470** for retention of a workshop, entrance to site, polythene tunnel, and a new dwelling, site layout appended to this report indicates the relevant structures and site boundaries. It should be noted, the applicant indicated at the time, the intended use of the first floor area of the workshop was to be an office to prepare landscaping plans as part of his landscaping business. Condition No. 14 of same permission specified the workshop was not to be used for human habitation purposes.

In addition to the workshop, polyethene tunnel and dwelling house on the site, Mr Liam Doyle was granted planning permission for the large A framed shed, located along the western site boundary under planning reference number **20074574**. I note from the documentation, the dwelling house applied for under planning reference 20074470 was not included on the submitted site layout drawings of 20074574, however of note are the site boundaries were consistent in both applications and the proposed access arrangements.

There are no other planning histories associated with the property until a Planning Enforcement file was opened under **0056/2019**, which instigated the current planning application.

According to the appeal file, Mr. Liam Doyle's fell into financial difficulties, he was living on the first floor of the workshop granted under planning reference **20074470** while the dwelling house permitted under the same permission, was under construction. He subsequently emigrated to Australia, and his sister Mary moved into the property in 2013. At some stage, the financial institution subdivided the property, and sold the dwelling house as a separate folio to the third-party appellant. The Banks did not have the power of sale over the workshop and shed.

At the present time, there are would be appear to be some outstanding legal and planning anomalies arising from the subdivision of the original site area. This appeal is to address some of the outstanding planning issues in particular the unauthorised conversion of the first floor of the workshop to domestic use, and the installation of a sewage treatment plant to service same. The issue of the subdivision of the original site and the access arrangements did not form part of the planning notice.

7.4 Design/ Layout

The submitted drawings illustrate the dwelling accommodation applied for i.e the conversion of the first floor and part ground floor of the original workshop permitted under reference **20074470**. The structure was granted planning permission as a workshop and was not designed or assessed as a residential unit. The submitted drawings do not include basic dimensions for each room, and the internal floor area,

according to the planning application file, is 78.2sq.m. I consider the development to be haphazard and a product of circumstance as opposed to planning. The siting of the residential accommodation is forward of the prevailing building line in the area, in particular, the existing dwelling to the west, whereby the privacy of the neighbouring dwelling is compromised. I acknowledge that originally the structures on both sites were originally within one planning unit, and for that reason, the uses permitted were acceptable but, a residential use of the current structure was not granted planning permission at any stage. Screen planting has been provided along the western boundary of the site between the two properties. The dwelling unit on the subject site has windows on the ground floor which overlook the property to the west. In addition, the structure does not resemble a dwelling in design terms, and includes a galvanised roof and would not meet with current Building Regulations requirements. I accept it was originally designed as a workshop, however the original layout, specification and design was a subsidiary to the main dwelling house on the overall site, and in my opinion, the current layout and house design is a substandard form of development.

Given the level of residential development along the road frontage in the general vicinity of the subject site, i.e. there are 13No. dwellings within 250metres of road frontage, I consider the subdivision of the original residential curtilage to provide an additional dwelling unit, to be an excessive density of dwellings in this rural location, and representations and excessive concentration of septic tanks and treatment plants in a confined area with fast percolative capabilities.

7.5 Public Health Issues

The planning authority issued a decision to refuse for one reason, as summarised below:

The proposed percolation area would result in a proliferation of percolation areas within close proximity of the site. When taken in conjunction with the low T-values and the absence of specific details demonstrating that water quality would not be affected, the proliferation of percolation areas close to the private well may pose risk to public health.

On appeal the applicant has indicated they will connect to the public water supply serving the area, which will overcome the reason for refusal. From the submitted

site layout drawing, I note the proposed percolation area is to be placed where the polytunnel currently exists. The polytunnel has not been included on the submitted drawings. In addition, the existing septic tank serving the dwelling has been included on the drawing, however the percolation area currently serving the dwelling on site has not been included on the drawing. I note there is an existing percolation area to the north of the proposed percolation area, and this serves a dwelling to the east. The site layout drawing does not include and should have included the existing septic tank and percolation area serving the dwelling to the west and if there is a borehole. Instead the drawing indicates the proposed percolation area which is located uphill of the existing dwelling on site. The site layout drawing does not comply with the separation distances prescribed under Table 6.1 of the *Code of Practice Wastewater Treatment and Disposal Systems serving Single Dwellings* in that, the existing and proposed percolation areas do not meet with the required 10metres separation distance and the adjoining borehole and septic tank and percolation area to the west has not been indicated on the drawings to establish if sufficient distances have been maintained.

As stated previously, there are a very high number of individual treatment plants and percolation areas serving a large cluster of one-off houses within a confined area at this junction in Baurela. The subsoil is a fast draining sandy soil, and with a number of the dwellings in the area including the development on the subject site, been served by boreholes. In the absence of clear evidence on the locations of existing wells and percolation areas in the vicinity of the subject site, the Board is unable to evaluate the potential impact of permitting another percolation system on site in accordance with the EPA Code of Practice.

7.6 Access and Traffic

From the planning file and the applicants' response to the appeal, it is evident there is an ongoing legal dispute between the parties over the shared entrance. Based on the submission documents on the planning application file, I would question whether the applicant has demonstrated sufficient legal interest in the lands at the proposed vehicular entrance to the subject site. In relation to this, I note the access serves the adjoining dwelling to the west. I also note the peculiar gating system currently in operation at the entrance.

The Planning and Development Act 2000, as amended, requires that the applicants have sufficient legal interests in the lands to carry out the development. Furthermore, I note that it is not within the remit of the Board to determine legal interests and/or obligations held by the applicant, in relation to such lands. Section 34(13) of the Planning and Development Act, 2000, as amended, relates as follows: “*A person shall not be entitled solely by reason of a permission or approval under this section to carry out a development.*” This subsection makes it clear that a grant of permission does not relieve the grantee of the necessity of obtaining any other permits or licences which statutes or regulations or common law may necessitate.” Accordingly, I do not consider that this matter is reasonable and substantive grounds for refusal of the proposed development.

Due to the layout of the entrance which was permitted to serve one site only and not two separate sites, I consider the layout of the existing splayed entrance to be substandard. The free flow of traffic into and out of the access point is restricted due to lack of width and recessed spaying, at a point along the public road where there is a ninety-degree bend. The current access arrangement into both sites are not clearly defined, including the gate entrance. This creates a complicated access system to both sites, which ultimately restricts the free flow of traffic into and out of the site and along the public road where there are visibility issues due to the bend in the road. Given the multitude of accesses in the vicinity of the site and stoppage time required due to traffic turning movements into the site, I consider the development to be a traffic hazard. The access in its current form cannot safely cater for two properties and should be refused on that basis.

7.7 Appropriate Assessment

The appeal site is not within or adjoining any Natura 2000 site. Having regard to the nature and scale of the proposed development, the location of the site in close proximity to a large urban area and the separation 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. The planning authority's decision to refuse should be upheld, however I recommend different reasons for refusal arising from the planning matters assessed upon in response to the appeal.

9.0 Reasons and Considerations

1. The site is accessed from an existing entrance which is inadequate in width, alignment and structural condition to serve two separate properties , and it is located on a minor road at a point where there is a ninety degree bend creating restricted traffic turning movements onto and out of the site. The additional traffic generated by the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users.
2. Taken in conjunction with existing and permitted development in the vicinity, the development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities and would result in an ad hoc piecemeal residential development which would militate against the preservation of the rural environment and lead to demands for the provision of further public services and community facilities. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Having regard to the design and layout of the residential accommodation, to its siting relative to the neighbouring dwelling to the west whereby the sites are physically and visually connected, and to the established pattern of development in the area, It is considered the dwelling unit would be out of

character with the residential properties in the vicinity and be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

12th of May 2020