



An
Bord
Pleanála

Inspector's Report

ABP-307124-20

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| Development | Change of use (removal of condition 2 of Planning Register Reference 14/1561, ABP PL27.243838) from restricted use as a dwelling to use by all classes of persons |
| Location | Ballintесkin , Old Hill , Kilmacanogue, Co Wicklow |
| Planning Authority | Wicklow County Council |
| Planning Authority Reg. Ref. | 20140 |
| Applicant(s) | Thomas & Samantha Redden |
| Type of Application | Permission |
| Planning Authority Decision | Refuse |
| Type of Appeal | First Party |
| Appellant(s) | Thomas & Samantha Redden |
| Observer(s) | None |
| Date of Site Inspection | 18 th June 2020 |
| Inspector | Mary Crowley |

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1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.4ha is located on elevated lands on the lower east side of a minor county road, to the south east of Kilmacanogue at Old Hill in Co Wicklow. There is an existing an existing 4-bedroom single storey pitched roof dwelling on the appeal site. The immediate area is characterised by agricultural lands and associated farmyard together with a number of dwellings located along either side of the road. Access to the site is via a right of way over an existing residential entrance. From the elevated site location there is a downward slope in a north easterly direction from which there are panoramic views towards the Sugar Loaf and Bray Head to the north. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. Planning permission is sought for a change of use comprising the removal of Condition No 2 of Reg Ref 14/1561 ABP PL27.243838) from restricted use as a dwelling to use by all classes of persons at Ballintekin, Old Hill, Kilmacanogue, Co. Wicklow.
- 2.2. The application was accompanied by a cover letter stating that due to medical reasons the applicant wishes to have Condition No 2 removed. Medical letter attached. The application was also accompanied by a copy of a letter issued by Wicklow County Council in January 2017 stating that occupancy burden was registered with Land Registry on the 10th August 2015 and that his burden is due to expire on the 9th August 2022.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Wicklow County Council issued notification of decision to refuse permission for the following reason:

The proposed change of use of the dwelling permitted under ABP PL27.243838 Planning Register 14/1561 from restricted use as a dwelling to use by all

classes of persons would undermine the provisions of the Planning Authority's housing and settlement strategies as set out in the current Development Plan for the area and would also be contrary to the "Sustainable Rural Housing Guidelines for Planning Authorities", issued by the Department of the Environment, Heritage and Local Government in April, 2005, wherein the site is located within an "Area Under Strong Urban Influence". The proposed change of use would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** notes the occupancy condition and states that the applicant commenced occupation of the dwelling on the 18th March 2018 and has therefore resided in the property for a period of approx. 4years. The Case Planner notes the information / documentation submitted in support of the application. However the change of occupancy is not recommended *as it would undermine the provision of the Planning Authority's Housing and Settlement Strategies as set out in the current Development Plan for the area and would also be contrary to the "Sustainable Rural Housing Guidelines.* It is further stated that the occupancy condition would facilitate the scale of this property to persons belonging to the same category of housing need as the applicant. The Case Planner recommended that permission be refused. The notification of decision to refuse permission issued by Wicklow County Council reflects this recommendation.

3.2.2. Other Technical Reports

- There are no other technical reports recorded on the planning file.

3.3. Prescribed Bodies

3.3.1. There are no reports from any prescribed bodies recorded on the planning file.

3.4. Third Party Observations

3.4.1. There are no observations recorded on the planning file.

4.0 Planning History

4.1.1. There was a previous planning appeal on this site as referenced in the site notice, that may be summarised as follows:

PL27.243838 (Reg Ref 14/1561) – In August 2014 Wicklow County Council issued a split decision to Thomas Redden granting permission for a house, garage, effluent treatment system, access over the public right of way and associated site works subject to conditions and refusal of permission for the retention permission for a log cabin for a period of two years for two reasons relating to (1) haphazard and substandard form of residential accommodation and (2) substandard effluent disposal. The decision was appealed by a third party. In February 2015 the Board also issued a split decision granting permission for the dwelling subject to conditions and refusing permission for the retention of the log cabin for similar reasons to that of Wicklow County Council. **Condition No 2** is relevant to this appeal and set out the following:

- a) *The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicants immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under Section 47 of the Plannign and Development Act, 2000 to this effect.*
- b) *Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.*

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title form such a sale.

Reason: *To ensure that the proposed house is used to meet the applicants stated housing needs and that development in this rural area is appropriately*

restricted (to meeting essential local need) in the interest of the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

5.1.1. The operative plan for the area is the Wicklow County Council 2016-2022. Objectives relevant to the appeal are set out as follows:

- **HD23** - Residential development will be considered in the open countryside only when it is for those with a definable social or economic need to live in the open countryside.
- **HD24** - Where permission is granted for a single rural house, the applicant will be required to lodge with the Land Registry a burden on the property, in the form of a Section 47 agreement, restricting the use of the dwelling for a period of 7 years to the applicant, or to those persons who fulfil the criteria set out in Objective HD23 or to other such persons as the Planning Authority may agree to in writing.

5.1.2. **Section 4.3 Assessing Housing Circumstances** of the **Sustainable Rural Housing Guidelines** sets out the following:

In its deliberations on a planning application for a housing proposal in a rural area, particularly those rural areas closest to cities and large towns experiencing substantial pressure for development, balanced assessments will need to be made regarding the circumstances and merits of the application. In this regard, it will be important to have access to all relevant information and where such information is lacking or imperfect, to assemble such information. At all times however, in making such assessments, while it will be necessary to support the spirit of the development plan policies, planning authorities must be sensitive in the treatment of applicants.

In particular, planning authorities should recognise that exceptional health circumstances – supported by relevant documentation from a registered medical practitioner and a disability organisation – may require a person to live in a particular environment or close to family support. In such cases, and in the absence of any strong environmental, access or traffic reasons for refusal, a

planning authority should consider granting permission, subject (where appropriate) to conditions regarding occupancy (see paragraph 4.6 below).

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within a designated Natura 2000 site. It is noted that the Special Protection Areas: Wicklow Mountains SPA and Special Area of Conservation: Wicklow Mountains SAC is c1.9km from the appeal site to the west.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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

- 6.1.1. The first party appeal against the decision to refuse permission has been prepared and submitted by *plan8 architects* and may be summarised as follows:
- The solitary reason for the application and the appeal is “medical well-being”, the details of which are outlined in the appeal together with an impact statement, letter from the National Maternity Hospital and Jennifer Whitmore, Social Democrats TD. Reference is made to Section 4.3 Assessing Housing Circumstances of the Sustainable Rural Housing Guidelines. I have noted the contents of these submissions all of which are available to view on the appeal file.
 - The applicant registered the burden and commenced occupation of the dwelling on the 18th March 2016. Compliance with Condition No 2 was acknowledged by Wicklow County Council in January 2017. The burden is due to expire on the 9th August 2022. Stated that all other conditions were complied with.
 - The applicant had not foreseen the circumstances they now find themselves in, and were simply requesting that the Planning Authority agree to lifting the burden

early. Given the fact that the burden has been in place for, in excess of 90% of its prescribed period and taking the applicants medical history into consideration it is considered reasonable to lift the burden early.

6.2. **Planning Authority Response**

6.2.1. There is no response from Wicklow County Council recorded on the appeal file.

6.3. **Observations**

6.3.1. There are no observations recorded on the appeal file.

6.4. **Further Responses**

6.4.1. There are no further responses recorded on the appeal file.

7.0 **Assessment**

7.1. As documented in the foregoing, the Board granted permission to Thomas Redden in February 2015 for a house, garage, effluent treatment system, access over the public right of way and associated site works (PL27.243838 (Reg Ref 14/1561) refers). Condition No 2 and set out the following seven-year occupancy restriction;

- a) *The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicants immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under Section 47 of the Planning and Development Act, 2000 to this effect.*
- b) *Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.*

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: *To ensure that the proposed house is used to meet the applicants stated housing needs and that development in this rural area is appropriately restricted (to meeting essential local need) in the interest of the proper planning and sustainable development of the area.*

- 7.2. The current applicants Thomas & Samantha Redden are now seeking a change of use comprising the removal of Condition No 2 from restricted use as a dwelling to use by all classes of persons. Wicklow County Council refused permission as the change of use would undermine the provisions of the Planning Authority's housing and settlement strategies and would also be contrary to the "Sustainable Rural Housing Guidelines for Planning Authorities", wherein the site is located within an "Area Under Strong Urban Influence".
- 7.3. In their appeal the applicant states that the reason for the application and the appeal is "medical well-being", the details of which are outlined in their appeal. I have considered the contents of all the submissions on the file pertaining to the applicant's appeal all of which are available to view on the appeal file.
- 7.4. Objective HD23 of the Development Plan sets out strict criteria for the consideration of residential development in the open countryside. In the previous appeal the Board was satisfied that the applicant met the relevant criteria at that time and granted permission subject to conditions including a seven-year occupancy condition. This was a reasonable approach. The difficulty now arises in that the applicant wishes to remove this occupancy condition in order to sell the property. While I note the applicants reference to the Section 4.3 Assessing Housing Circumstances of the Sustainable Rural Housing Guidelines in support of their appeal I am satisfied that this section was written from the position of facilitating development in exceptional circumstances and not from the position of setting aside housing policy in retrospect.
- 7.5. Having regard to the information on the appeal file it is noted that the applicant commenced occupation of the dwelling on the 18th March 2016. Compliance with Condition No 2 was acknowledged by Wicklow County Council in January 2017 who

stated that the burden was registered with Land Registry on the 10th August 2015 and that *this burden is due to expire on the 9th August 2022.*

- 7.6. While I note the discrepancy in the dates of when occupancy commenced there is no such ambiguity in the wording of Condition No 2 where it states that the dwelling when complete, *shall be first occupied as a place of permanent residence by the applicant, members of the applicants immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter.* In this case the house was first occupied on the 18th March 2016 and therefore the occupancy burden is due to expire on the 17th March 2023. At the time of writing there is approx. 2 years and 7 months remaining in the 7-year occupancy term. While the applicant has occupied the dwelling for over four and half years there is still a significant period of time to run and therefore the question arises if there are exceptional circumstances whereby serious consideration would be given to setting aside this condition.
- 7.7. Save from the clause as set out in the condition whereby the occupancy burden does not affect the sale of the dwelling by a mortgagee there is no guidance or policy set out in the Development Plan or the Sustainable Rural Housing Guidelines indicating any other special circumstances where such a condition could be set aside in advance of its expiration. Therefore, the consideration of same is on a case by case basis.
- 7.8. Having regard to the applicants detailed information on the file pertaining to the reasons for wanting to sell the house together with the date of grant of permission by An Bord Pleanála, the fact it would appear the applicant commenced building work almost immediately after receiving planning permission supporting their genuine need in the first instance to live at this location and the length of time they have occupied the house to date I am inclined to recommend, on balance, that the condition be removed in this particular instance.
- 7.9. For completeness I would add that having regard to the nature and scale of the development and its 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** for the removal of Condition No 2 subject to the reasons and considerations set out below

9.0 Reasons and Considerations

- 9.1. Having regard to the policies and objectives as set out in the Wicklow County Development Plan 2016 - 2022, the existing house on site, the length of time the applicants have occupied the house to date and the applicants particular circumstances, it is considered that, subject to compliance with the conditions set out below, the proposed development would not undermine the provisions of the Planning Authority's housing and settlement strategies as set out in the current Development Plan for the area and would not therefore, be contrary to the proper planning and sustainable development of the area.

10.0 Conditions

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| 1. | Save for amendments granted on foot of this permission, the development shall otherwise be carried out in strict accordance with the terms and conditions of An Bord Pleanála decision ABP PL27.243838 (Reg Ref 14/1561). Reason: In the interest of the proper planning and sustainable development of the area. |
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Mary Crowley

Senior Planning Inspector

19th August 2020