



An
Bord
Pleanála

Inspector's Report ABP310735-21

Development	Remove a restrictive Section 47 condition thereby allowing use of a house by all classes of persons.
Location	Ballintесkin, Old Long Mill, Killmacanogue, County Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	21/453.
Applicant(s)	Samantha & Thomas Redden.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Samantha & Thomas Redden
Observer(s)	None
Date of Site Inspection	12 th January 2022
Inspector	Hugh Mannion

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1.0 Site Location and Description

- 1.1. The site has a stated area of 0.4ha and is located on the east side of the public road at Ballintесkin, Old Long Mill, Killmacanogue, County Wicklow. The topography drops sharply to the east in this area so that the house, as constructed, is largely below road level and well screened. The application site shares a gated entrance from the public road with another house. Agriculture is the dominant land use in the area but there is evidence one-off housing which may not be related to farming activity.

2.0 Proposed Development

- 2.1. The proposed development is advertised as the change of use (removal of condition 2) of permission granted under reference number 14/1561/PL27.243838 from restricted use as a dwelling by members of the applicant's family to use by all classes of persons at Ballintесkin, Old Long Hill, Killmacanogue, County Wicklow.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the reason.

The proposed change of use of the house permitted under reference number 14/1561/PL27.243838 from restricted use to use by all classes of persons would undermine the planning authority's housing and settlement strategy for the area in the County Development Plan and would be contrary to the Sustainable Rural Housing Guidelines for Planning Authorities where the site is located within an 'area under strong urban influence'. The proposed development 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 planner's report recommended refusal as provided in the manager's order.

3.2.2. Other Technical Reports

None.

4.0 Planning History

Permission was granted under **PL27.243838** for a house to Thomas Redden. Condition 2 of that permission limited occupation of the house to the applicant, members of his immediate family or their heirs for a period of 7 years from first occupation and required the applicant to enter into a section 47 agreement to this effect. The house was constructed, and the applicant entered into the agreement.

Permission was refused under **ABP307124-20** for the removal of condition 2 of the grant of permission because.

The Board considered that the proposed change of use of the dwelling permitted under An Bord Pleanála reference PL 27.243838, planning register reference number 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.

5.0 Policy and Context

- 5.1. The **Sustainable Rural Housing Guidelines for Planning Authorities**, issued by the Department of the Environment, Heritage and Local Government in April, 2005, require planning authorities to distinguish between urban and rural generated housing applications, to set out guidance on the location of rural housing within their administrative areas, including policies in relation to classes of persons that may be considered to fulfil local housing need criteria.
- 5.2. Section 4.3 Assessing Housing Circumstances of the Sustainable Rural Housing Guidelines sets out the following:

- 5.3. 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.
- 5.4. 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.
- 5.5. **Development Plan**
- 5.6. The Wicklow County Development Plan 2016-2022. Objectives relevant to the appeal are set out as follows:
- 5.7. **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.
- 5.8. **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.
- 5.9. **Natural Heritage Designations**
- 5.10. Not relevant.

5.11. EIA Screening

5.12. Having regard to the nature of the application as an amendment to a permitted house I conclude that it is not within a class of development to which Schedule 5 of Planning and Development Regulations 2001, as amended, apply and that the requirement for the submission of an EIAR does not arise.

6.0 The Appeal

6.1. Grounds of Appeal

- The applicants' child has special care needs which can more easily be met in an urban area. These special needs bring the application under the scope of section 4.3 of the Sustainable Rural Housing Guidelines. The restrictive condition imposed in PL27.243838 prevents the child accessing the required medical care.

6.2. Planning Authority Response

- No response.

6.3. Observations

- No observations.

7.0 Assessment

7.1. Background.

7.2. Permission was granted for the erection of this house on appeal under PL27.243838 in part because the applicant made the case that the application complied with the planning authority's rural housing policy. The Board's decision referenced the development plan criteria and required a section 47 condition in accordance with the development plan policy (attached is an extract from the County Development Plan 2010-2016).

7.3. The house was subsequently constructed and under ABP307124-20 the applicant applied for the removal of the section 47 condition for medical reasons outlined in that case that it was not suitable to the family's needs to occupy the house. The applicant had entered into an agreement with the planning authority which applied the restriction on occupation to the applicant and members of the immediate family up to 9th August 2022. The Board refused permission for the removal of the condition and stated that removal of the condition would undermine the provisions of the County Development Plan and the Sustainable Rural Housing Guidelines in relation to rural housing in areas under strong urban influence.

7.4. The Present Case.

7.5. In the present case the application is to remove the restrictive condition so as to allow the applicants' family to avail of medical treatment which is more easily accessible in an urban environment.

7.6. Having regard to the existence of a house on the site which, apart from the restrictive condition in relation to occupancy, the planning authority has not expressed any concerns with, to the short time remaining until that condition expires on the 9th August 2022, I conclude that the removal of condition 2 would not materially contravene the County Development Plan or the Sustainable Rural Housing Guidelines and would not set a precedent that would undermine rural housing policies.

8.0 Recommendation

8.1. I recommend a grant of planning permission without conditions.

9.0 Reasons and Considerations

Having regard to the permitted residential use of the site, the short period remaining before the expiry of the seven years required by condition 2 of the grant of planning permission under PL27.243838 and the particular circumstances outlined in this appeal it is considered that the proposed development would not undermine the settlement strategy set out in the Wicklow County Development Plan 2016 to 2022 or the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities (DOEHLG 2005) and would, otherwise accord with the proper planning and sustainable development of the area.

Hugh Mannion
Senior Planning Inspector

17th January 2022