



An
Bord
Pleanála

Inspector's Report ABP-312045-21

Development	House, connection to existing services and all associated site works.
Location	Rear of 55 Lower Main Street (The Brook), Arklow , Co Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	211158.
Applicant(s)	Donncha McCarthy.
Type of Application	Planning Permission.
Planning Authority Decision	Grant with Conditions.
Type of Appeal	Third Party.
Appellant(s)	Elizabeth Berningham & Others.
Observer(s)	None.
Date of Site Inspection	10 th day of March, 2022.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. I consider that the site location and description provided by the Boards Inspector for appeal case ABP Ref. No. PL27.248160 is still applicable. It reads as follows:

“The site is located to the rear of the mid-row two storey building at No. 55 Lower Main Street within the town centre of Arklow. The buildings within this row are mainly in residential uses, which are interspersed with some retail/commercial uses. To the rear of these buildings there is a mixed pattern of development, which includes ancillary outbuildings within or at the end of elongated gardens or detached one/one and a half/two storey dwelling houses sited within their own plots. Access to these outbuildings and dwelling houses is off a laneway, The Gardens, that follows a meandering alignment. At the northern end of this laneway, there are two examples of more recent three storey residential development. The Gardens itself connects to another laneway, The Brook, at its northern end, as well as to Lower Main Street. (A one-way system means that southbound traffic only can enter The Gardens from The Brook). At its southern end it connects to South Green, which runs between Lower Main Street and the South Quay.

The site itself is of rectangular shape and it extends over an area of 0.0125 hectares. Historically, this site would have formed part of the rear garden to the building at No. 55. It presently accommodates a garden shed, apart from which it is vacant. Access is via a gate in the eastern boundary. The two long northern and southern boundaries are denoted by rubble stone walls. The southern wall is overgrown with vegetation. The remaining western boundary is denoted by a timber fence, which is overgrown with vegetation, too”.

Photographs taken during my inspection of the site and setting are attached to file.

2.0 Proposed Development

- 2.1. Planning permission is sought for the construction of a 2-storey, 2-bed townhouse, connection to existing services and all associated site works. The accompanying planning application form indicates that the gross floor area of proposed works is 89.6m². The accompanying drawings show that the dwelling would have a maximum height of 6.204m with the dwelling expanding the entire width of the site which is given

as 5.05m and with a depth of c10m to 12m. The dwelling is setback from the roadside edge by 3.69m to 5.49m.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant planning permission for the proposed development subject to 5 conditions including:

Condition No. 4: Sets out surface water requirements.

Condition No. 5: Sets out the requirements for the roofing material and colour.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report is the basis of the Planning Authority's decision.

- The issues that arose under the previous application have been addressed.
- The area is characterised by long plots with dwellings to the front part of the site and other structures to the rear part including dwellings.
- No visual and/or residential amenity issues arise.
- No flooding issues arise.
- No undue overlooking would occur.
- No Appropriate Assessment issues arise.
- Concludes with a recommendation to grant planning permission.

3.2.2. Other Technical Reports

Engineer: No objection.

3.3. Prescribed Bodies

- 3.3.1. **Irish Water:** No objection.

3.4. Third Party Observations

- 3.4.1. During the course of the Planning Authority's determination, it received two third party observations both objecting to the proposed development on mainly visual and residential amenity grounds. The substantive issues raised in these observations in my view correlate with those raised by the appellant in their grounds of appeal submission to the Board which I have summarised under Section 6 of this report.

4.0 Planning History

4.1. Site

- **ABP Ref. No. PL27.248160 (P.A. Ref. No. 16/736):** On appeal to the Board planning permission was **refused** for a two-storey two-bedroom detached town house with a total floor area of 95.5m² together with all associated site works and services for the following stated reason and consideration:

"Having regard to the pattern of development in the area, the recessed siting of the proposed dwelling house in relation to the laneway, known as The Gardens, would be discordant with the existing character of the streetscape and its introduction would risk the establishment of an adverse precedent for such sitings in the future. Owing to the position of the building the rear first floor bedroom window would also result in excessive overlooking of and a loss of privacy to these adjoining residential properties. Consequently, the proposed dwelling house would be seriously injurious to the amenities of residential properties in its vicinity and so it would be contrary to the proper planning and sustainable development of the area".

Decision Date: 13.06.2017.

- **P.A. Ref. No. 08/610004:** Planning permission was **granted** subject to conditions for a development consisting of a two-storey, two-bed, detached town house.

4.2. Setting

- 4.2.1. No recent and/or relevant appeal cases in the area.

5.0 Policy & Context

5.1. Development Plan

- 5.1.1. The Wicklow County Development Plan 2016-2022 is applicable.
- 5.1.2. Arklow is designated a '*large growth town II*' in the Settlement Hierarchy set out in the plan. Towns designated as '*large growth town II*' are described as smaller in scale (that large growth towns I) but as being strong active growth towns, economically vibrant with high quality transport links to larger towns/city.
- 5.1.3. Chapter 4 of the Development Plan deals with 'Housing'.
- 5.1.4. The following housing objective is relevant:
 - HD10: *"In existing residential areas, infill development shall generally be at a density that respects the established character of the area in which it is located, subject to the protection of the residential amenity of adjoining properties. However, where previously unserved, low density housing areas become served by mains water services, consideration will be given to densities above the prevailing density, subject to adherence to normal siting and design criteria"*.
- 5.1.5. Section 4.4 of the Development Plan sets out that all lands zoned for residential development, including all lands zoned '*RE*', are considered to be lands that may be in need of new development in order to ensure there is no shortage of housing.
- 5.1.6. Volume 3 – Appendix 1 sets out the Development Design Standards.

5.2. Local Area Plan (LAP)

- 5.2.1. The site is zoned: '*Existing Residential*' in the 'Arklow and Environs LAP', 2018 to 2024. The zoning objective for such zoned lands is: "*to protect, provide and improve residential amenities of existing residential areas*".
- 5.2.2. The LAP further indicates that the '*Existing Residential*' zoning seeks 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.

- 5.2.3. The LAP identifies the site as being located within '*Flood Zone B*', thus any planning application at this site is required to be accompanied by a Justification Test.

5.3. Natural Heritage Designations

- 5.3.1. Not relevant. The nearest such site, i.e., Buckronev Brittas Dunes & Fens SAC. This Natura 2000 site is located c5.2km to the north east of the site at its nearest point.

5.4. EIA Screening

- 5.4.1. Having regard to the location of the site in an established residential area, in an area zoned for residential development and having regard to the availability of public piped services to serve the proposed development, I conclude that no significant environmental impacts will arise and the requirement for the submission of an EIAR can be discounted at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of this 3rd Party Appeal can be summarised as follows:
- The Development Plan under Section 3.3.1 states that any infill development should not detract from the present dwellings and should be of a contemporary design. This proposal is not consistent with this.
 - The required Development Plan lateral separation distance between the proposed dwelling and existing dwellings are not provided.
 - The sunlight and daylight calculations do not refer to the BRE guidance.
 - The private open space falls short of the Development Plan requirements.
 - Section 3.8.11 of the Development Plan requires a separation distance to be provided between any house gable and the side wall of the plot is not provided.
 - It is not accepted that traffic in the area is light. This is due to this road being used as short cut and is one of the areas in the town where there is free parking. This area is usually congested during the day with the double yellow lines often parked

upon. There is also commercial activity within the Brook area that gives rise to constant traffic movements and parking.

- The site has very restrictive access with sightlines only facilitating views of traffic approaching from the north. There are no sightlines to the south.
- The original proposal for this site was refused in 2016.
- The proposed development would diminish the amenity of their property.

6.2. Applicant Response

6.2.1. The First Party's response can be summarised as follows:

- The appellants issues have been previously adjudicated upon.
- The site fulfils the criteria for sustainable and compact urban development.
- The '*Housing for All*' policy identified existing, infill, serviced sites within traditional town centres as central to rejuvenation of those towns and to the supply of new homes utilising existing infrastructure.
- The site is located within an older area of the town centre south of the river and this application is accompanied by a justification test with the risk of flooding at this site low. This development would also have minimal drainage impact on other sites and floor resilient construction features will be used to manage the residual risk including the first-floor level being set 450mm above site level to give reasonable freeboard above the 1:100-year flood level as well as reinforced concrete ground floor and raft foundations all resilient to water ingress.

6.3. Planning Authority Response

6.3.1. None.

7.0 Assessment

7.1. Overview

7.1.1. The appeal site consists of a rectangular site which forms part of the rear garden area of No. 55 Lower Main Street, with frontage onto 'The Gardens' on its eastern side, with

residential property bounding its northern site boundary and with a garage/outbuilding and a rear garden area with vehicular entrance bounding its southern site boundary as well as the immediate area to the east of the redline site boundary.

- 7.1.2. This 0.0125-hectare site is unkempt and without any apparent functional use. It is located on larger block of land within the settlement of Arklow that is zoned: '*Existing Residential*' in the Arklow and Environs LAP, 2018 to 2024. The zoning objective for such zoned lands is: "*to protect, provide and improve residential amenities of existing residential areas*".
- 7.1.3. Under this land use zoning objective, and as supported by the local through to relevant national planning policy provisions and guidance, the general principle of residential development on serviced land where there appears to be no capacity issues to accommodate water and foul drainage needs of the proposed two-bedroom dwelling house is deemed to be generally acceptable, subject to safeguards.
- 7.1.4. I further note that the planning history of the site which includes a decision of the Board under appeal case ABP. PL27.248160 also raised no objection to general principle of the residential redevelopment of this subdivision plot of land also subject to safeguard.
- 7.1.5. Therefore, having inspected the site and its setting, the relevant planning provisions through to having examined in detail the contents of this appeal case file, including submissions of all parties, I consider that the substantive issues that arise are:
- Planning History
 - Traffic and Access
- 7.1.6. The matter of '*Appropriate Assessment*' also requires examination.
- 7.1.7. I am satisfied that no other substantive issues arise including in terms of flooding given the appeal site's location on Flood Zone B lands and having regard to the Justification Test provided as well as the mitigations included in the design resolution of the proposed 2-bedroom 2-storey dwelling.

7.2. *Planning History*

- 7.2.1. The most recent planning application relating to the appeal site was subject to a Third-Party appeal under ABP.PL27.248160 (P.A. Ref. No. 16/736). This planning application sought planning permission for the construction of a two storey, two-bed,

6.024m in maximum height, 95.5m² dwelling house located in a central position on the site with a setback of between 4.137m and 5.94m from the roadside edge and a lateral separation distance of 8.085m to the proposed rear boundary subdividing it from the remainder of No. 55 Lower Main Street's rear garden area and existing 2-storey dwelling.

- 7.2.2. This dwelling house would span the width of this site and it would feature gable ends to either side and to the rear. The proposed dwelling elevations would be finished in smooth white nap render and the roof would be clad in imitation slate. The front elevation included a single storey lean-to element, finished in natural stone. To the front of the dwelling house 2 off-street car parking spaces and to the rear a 29-sq.m. private amenity space is proposed.
- 7.2.3. The Planning Authority granted this planning application subject to conditions. Notwithstanding, on foot of a Third Party Appeal this proposed development was refused on one single reason and consideration (See: Section 4.1 of this report above). Essentially it was considered by the Board that the recessed siting of the proposed dwelling in relation to the laneway (The Gardens) would be out of character with its streetscape scene and, if permitted, would give rise to an adverse precedent. In addition, concern was raised with regards to the excessive overlooking of and loss of privacy that would arise to adjoining properties. It was, therefore considered, that the proposed development would be seriously injurious to the amenities of residential properties in its vicinity and would be contrary to the proper planning and sustainable development of the area.
- 7.2.4. Of concern, the proposed 2-storey 2-bedroom dwelling sought under this application has maintained the same setback from the roadside boundary as well as rear boundary of the proposed subdivision. In addition, the built form is similar to what was previously proposed at this site with the rear roof profile amended so that the first-floor elevation now reads as a sloped roof with two top hung escape type velux rooflights.
- 7.2.5. I therefore consider that the first substantive concern raised by the Board in their refusal of the previous application, in relation to the recessed siting of the proposed dwelling in relation to the laneway being out of character with the character of the streetscape has not been addressed under this current proposal. I consider that this issue remains and, if permitted, would represent a departure from other buildings on

either side of it as well as given the storey nature of the proposed development, its depth of 12m and its limited depth of rear garden at just over 8m would contribute towards giving rise to visual overbearance of adjoining and neighbouring properties within this urban setting. I therefore concur with the previous Board Inspector in their assessment for this particular appeal case that to accede to the proposed siting as proposed for the development sought would risk the establishment of an adverse precedent for similar sitings of dwelling units within this urban setting in the future.

- 7.2.6. In relation to the concern raised in the Boards reason and consideration for excessive overlooking of and loss of privacy to adjoining residential properties.
- 7.2.7. I first of all note that under this application it is proposed to amend the rear first floor level elevation and roof structure to now consist of a sloping roof with two top hung escape type velux rooflights with dimensions measuring c0.9m high and 0.8m wide serving a double bedroom with circa half of the bedroom appearing to have a maximum floor to ceiling height of 2.4m with the remainder of the room sloping down (Note: 45°) to a height of 0.8m. In terms of lateral separation distance between the first-floor level rear elevation and that of opposing first floor level adjoining and neighbouring properties to the immediate west No.s 54 to 56 Lower Main Street ranges from less than 15m to circa 17m.
- 7.2.8. While I accept that this is an urban setting and that it can be difficult to achieve lateral separation distances of the recommended minimum of 22m and that a degree of flexibility should be had so that a balanced outcome between achieving densification of serviced land and safeguarding established residential amenities. Notwithstanding, I am concerned that neighbour privacy would be adversely affected due to the recessed positioning of the proposed dwelling that gives rise to tight lateral separation distance between first floor levels. As well as due to the natural light and ventilation design resolution for the rear first floor level window positioning as well as the size of the proposed first floor level windows on the proposed 45° angled sloping rear roof in which they are positioned at a height of 0.8m above internal floor level. I am of the view that the design changes are modest, and they do not achieve a reasonable balance between the proposed development and ensuring that no undue adverse overlooking and/or perception of being overlooked arises for properties in its immediate vicinity.

- 7.2.9. As such I consider that the Boards concerns with regards to overlooking is not satisfactorily overcome by the design resolution put forward for the proposed dwelling under this planning application.
- 7.2.10. Though I note that the Boards reasons and considerations for refusal for the aforementioned appeal case does not include concerns with regards to the potential of the proposed development to give rise to undue overbearing impacts of properties in its vicinity.
- 7.2.11. Notwithstanding, I concur with the Board Inspector in their assessment of ABP.PL27.248160 that the recessed positioning of the proposed dwelling, if permitted, would give be visually obtrusive when viewed from the adjoining properties to the north and south.
- 7.2.12. In this case the design resolution puts forward a recessed positioned building with a length of 12.019m addressing immediately the rear amenity space of No. 54 Lower Main Street and c9m addressing the northern boundary of the site together with the height of 6.204m dropping to an eaves height of circa a measured 4.6m to the east and a given eaves height of 2.969 would still give rise to undue overbearance on the adjoining properties to the north and south despite the slight amendments to the rear built form.
- 7.2.13. I do not concur with the Planning Authority in this case that the applicant has sufficiently addressed the Boards reasons for refusal under appeal case ABP. PL27.248160. As such, if permitted, in the form proposed, it would in my view give rise to the same residential amenity concerns as the development refused under the aforementioned appeal case.
- 7.2.14. In relation to future residential amenities, I raise it as a concern that the Development Plan sets out that a minimum private open space of 50m² private open space for 2-bedroom houses and that: *“as a general ‘rule of thumb’, 0.64sqm of private open space shall be provided for each 1sqm of house floor area, subject to the minimum sizes”* specified.
- 7.2.15. With this being the case ideally the proposed dwelling should be served by 89.6m² of private amenity space and no less than the minimum of 50m². In this case, not only would the private amenity space be significantly overlooked due to the recessed position of the dwelling house relative to adjoining and neighbouring dwellings to the

west but also the proposed rear garden area has a stated width that varies from 5.05m alongside the rear elevation to 5.25m at its widest. In addition, a measured depth of 8m. As such the private amenity space which is provided with no independent access to the front of the dwelling with no area provided for suitable waste storage to the front or rear falls below the minimum size required by c9m².

7.2.16. Of additional concern the Development Plan sets out that rear garden boundaries shall be 2m. The drawings submitted with this application indicate that this is not proposed for the rear boundaries serving this site. With these drawings showing an average rear boundary wall height of c1.5m and with a 1.8m high 2.5m wide screen wall provided immediately alongside the rear elevation northern boundary. As such this would add to the concerns raised in relation to the quality of the modest and below quantitative standard private amenity space proposed to serve future occupants of the proposed dwelling house. This matter, however, could be dealt with by way of condition should the Board be minded to grant planning permission.

7.2.17. Based on the above considerations I consider that this proposal has not addressed the Boards reason and consideration for refusal for a very similar development proposed on this site under appeal case ABP.PL27.248160 and I therefore consider that the proposed development sought should be refused on the same basis.

7.3. Traffic and Access

7.3.1. The appellants in this case raised traffic and access concerns in relation to the proposed off-street car parking via an entrance off the laneway, The Gardens, which has no views to the south, which is congested during business hours, is used as an overspill of car parking due to the lack of pay car parking and the potential of the proposed development, if permitted, to adversely impact upon an already hazardous situation for road users.

7.3.2. The appellant on the other hand considers that the traffic generated by the proposed dwelling house would not significantly add to traffic using this laneway giving the modest nature of this proposed residential development. They also proposed to erect a mirror on the opposite the site of the laneway to the entrance to compensate for the missing southerly sightline. Though I note that no objection was raised to the erection of this mirror on any structure on the opposite side of the lane by the Planning Authority.

- 7.3.3. During my site inspection I did observe congestion in terms of on-street car parking throughout the public road in the immediate vicinity of the site. I also observed the presence of vehicular entrance to properties on either side through to that there was no rear boundary present. I did not observe any significant volume of traffic at the time of inspection which I note occurred during business hours. What traffic I did observe had their speed impacted by the hazards of *ad hoc* on-street car parking which did in itself conflict with the movement of traffic along the adjoining laneway.
- 7.3.4. I therefore consider that whilst a more innovative design should have been considered to accommodate off-street car parking whilst also positioning the proposed dwelling closer to the public roadside edge, it is likely that historically there was the potential to access and egress onto The Gardens by vehicle.
- 7.3.5. Moreover, I note that no substantive issue was raised by the Board in relation to the provision of off-street car parking at this location despite the lack of sightlines to the south. In addition, the substandard sight lines to the north as well as the entrances proximity to an enclosed garage to the north and a site access to the south was not deemed to be a significant issue to the Board in its determination of ABP PL27.248160.
- 7.3.6. Based on the above consideration I am of the view that the concerns raised by the appellant with regards to traffic and access relating to the proposed development would not warrant a refusal of planning permission.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the minor nature, scale and extent of the proposed development, the serviced urban location of the site and the lateral separation distance the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the 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. I recommend that permission be **refused**.

9.0 Reasons and Considerations

1. Having regard to the pattern of development in the area, the recessed siting of the proposed dwelling house in relation to the laneway, known as The Gardens, would be discordant with the existing character of the streetscape and its introduction would risk the establishment of an adverse precedent for such sitings in the future. Owing to the position of the building the rear first floor bedroom window would also result in excessive overlooking of and a loss of privacy to these adjoining residential properties. Consequently, the proposed dwelling house would be seriously injurious to the amenities of residential properties in its vicinity and so it would be contrary to the proper planning and sustainable development of the area.

Patricia-Marie Young
Planning Inspector

24th day of March, 2022.