



An
Bord
Pleanála

Inspector's Report

ABP-312673-22

Development	Construction of house in parcel of land east of No. 5 Kilpeddar Grove, new driveway, parking area, and ancillary works
Location	5 Kilpedder Grove, Johnstown, Killpedder, Co. Wicklow, A63 C5
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	211173
Applicant(s)	Sophie Gallagher
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Natalie Davis
Observer(s)	None
Date of Site Inspection	25 th May 2022
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The subject site is adjacent east of No. 5 Kilpeddar Grove, Johnstown, Kilpeddar, Co. Wicklow, A63 C594. It is located within an existing residential area, approximately 5km south of Delgany village centre. The N11 / R774 interchange is a short distance north.
- 1.2. The site is near the end of cul-de-sac, called Kilpeddar Grove, and has a conventional rectangular shape. It is an infill site consisting of a spacious green area / former garden space on the eastern side of an existing dwelling (No. 5 Kilpeddar Grove).
- 1.3. There is an inter-locking steel wire fence and low-lying concrete wall running along the front (north) part of the site. There is mature landscaping throughout the property, which is mainly in the form of established tree stands and bushes. This vegetation is most prevalent on the south and west site boundaries and the appeal site has become overgrown with long grass and undergrowth in recent times.
- 1.4. The site is adjoined by existing residential development on each side and the surrounding vicinity is characterised by a mix of low density detached and semi-detached housing. Building styles are varied and wide-ranging, and houses are mainly one and two storeys in height. There is a footpath on both sides of the street, north and south, and a bus stop within roughly a 150m walk from the site on the L5046.
- 1.5. The site has a stated area of approximately 300sqm.

2.0 Proposed Development

- 2.1. The proposed development is for an infill house and associated site works.
- 2.2. The Planning Authority requested further information on 5th November 2021, including details of the Applicant's ability to comply with policy in relation to local housing need (Objective HD21) (Item 1) and to submit an alternative site plan showing car parking spaces on the site (Item 2).

2.3. The Applicant responded with further information on 23rd December 2021, with various personal details to demonstrate a local housing need / compliance with Objective HD21, and a revised site layout showing 2 no. car parking spaces onsite.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission on 21st January 2022, subject to 8 no. conditions. The conditions were mainly standard and included:

- Use of the proposed dwelling to be restricted to the Applicant, or other persons who comply with the Council's Settlement Strategy for single houses in Level 7 Settlements. The requirement to be embodied by a legal undertaking and registered on title for seven years from the date of occupation (Condition 2a).
- Payment of a financial contribution (Condition 3)
- Roof finished to be blue/black slate, unless another roof finished is agreed (Condition 7)
- Restrictions on site working hours (Condition 8)

3.2. Planning Authority Reports

3.2.1. Planning Report

- The subject site is located within the development boundary of a Level 7 Settlement (Large Village) (Kilpeddar).
- The lands are not zoned. Therefore, the proposal is required to comply with the objectives / standards for infill development, particularly Objective HD10, which it does.
- Concerns relating to a recent refusal for a proposed infill dwelling at No. 8 Kilpeddar Grove do not apply as the proposed development was for a large detached dwelling on an open corner site, which was deemed to 'constitute an

incongruous form of development at this location by reason of its design, form, and layout'.

- The first floor windows to the east and west shall be conditioned to include obscured glazing in order to prevent inappropriate overlooking.
- The dwelling is suitably located so as to not block light / result in overshadowing of adjacent properties.
- The personal information submitted to demonstrate compliance with local housing need (Objective HD21) and provision of 2 no. car parking spaces on the site is considered acceptable.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

Irish Water: No objection, subject to standard conditions.

3.4. Third Party Observations

A single third party observation was received by the Planning Authority on 21st October 2021. The observation was made by the resident at No. 6 Kilpeddar Grove, which is the adjoining property to the east.

The following main concerns were raised:

- The proposal would set a negative precedent for future residential subdivisions in Kilpeddar, which would amount to speculation and alter the housing density of the area.
- A dwelling in this location would reduce the separation distance from No. 6 and significantly alter the density and layout of dwellings in the area. A narrow dwelling on the site would also be out of character with the existing pattern of development and reduce property values in Kilpeddar Grove.
- The proposed dwelling would cause overshadowing and a loss of light to the rear garden of No. 6 and block sunlight to the garden patio and seating area during the day.

- The proposal would lead to overlooking and a reduction in privacy for No. 6 as two first floor windows would look directly into the first floor bedroom and ground floor rooms of the adjacent dwelling.
- 2 no. applications have been refused for similar infill dwellings in te Kilpedder Grove (Reg. Refs. 07/2175 and 21/681). However, numerous applications for extensions have been granted, which indicates separate dwellings in gardens of Kilpedder Grove are not permitted.
- Proposal would constitute a traffic hazard by allowing more traffic on the road.
- Proposal would contravene Objectives HD9 and HD10.

4.0 Planning History

None on subject site.

5.0 Policy Context

5.1. Wicklow County Development Plan 2016-2022

Zoning

The site is unzoned. However, as the proposed development is for an infill house it is subject to the objectives and standards for infill housing development as per the Wicklow County Development Plan 2016-2022 ('the Development Plan'), including Objectives HD9 and HD10 (see below).

Settlement Strategy

Kilpeddar is identified as a 'Level 7 – Large Village' under the Development Plan.

These are larger rural villages that have a moderate level of existing infrastructural services, both physical and social, and that are of such a size as to accommodate a limited amount of urban generated housing demand. These settlements generally have a population of less than 500, with many considerably smaller.

Chapter 4 Housing

HD1

New housing development shall be required to locate on suitably zoned or designated land in settlements, and will only be considered in the open countryside when it is for the provision of a rural dwelling to those with a housing, social or economic need to live in the open countryside.

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 of occupants and in particular, shall not reduce to an unacceptable degree the level of amenity enjoyed by existing residents in the area.

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.

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.

HD21

To implement the following housing occupancy controls for each Level, as set out in the Settlement Strategy:

'Single house'

100% Applicant / purchaser of any new home must be either:

- *a resident for at least 3 years duration in County Wicklow or*
- *in permanent employment for at least 3 years duration in County Wicklow,*

of within 30km of the large village in question prior to making of application / purchase of new house.

4.3.4 Densities

It is an objective of the Council to encourage higher residential densities at suitable locations, particularly close to existing or proposed major public transport corridors and nodes, and in proximity to major centres of activity such as town and neighbourhood centres... 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.

Volume 3 – Appendix 1 – Development Design Standards

The Development Plan under 'Volume 3 - Appendix 1 – Development Design Standards' sets out the requirements with respect to development and design standards. It sets out the principal factors that should be considered in the design of new development, including residential development.

The Development Plan requires that 2 no. off-street car parking spaces will normally be required for dwellings comprising two or more bedrooms.

5.2. Natural Heritage Designations

There are no natural heritage designations in the vicinity of the site.

5.3. EIA Screening

Having regard to the nature the proposed development, which consists of a single infill residential dwelling, the nature of the receiving environment, and proximity to 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

A Third Party Appeal has been received from a resident in the area (No. 6 Kilpeddar Grove), which is the property to the east of the appeal site.

The grounds of appeal reiterate the concerns raised in the Appellant's original observation lodged with the Planning Authority. However, some new concerns are as follows:

- The appropriateness of the proposed infill development is questionable and it is noted that the garden has been sectioned off from the main house purposefully to create an 'infill site' or 'small greenfield site' for future development. It is questionable whether this is in accordance with the objectives / standards for infill development.
- If the proposed development were an 'independent living unit' it would likely have been refused permission as the Development Plan states that such units should not exceed 45sqm or have more than 1 bedroom.
- A condition requiring a legal agreement restricting the proposed dwelling to be used only by the Applicant for a period of 7 no. years should be retained by the Board, if they decide to grant permission. This should be embodied by a legal undertaking and registered on title for at least seven years from the date of occupation (Condition 2).

6.2. Applicant Response

- The Planner's Report notes that the Applicant has a proven housing need.
- The large area of the garden is noted and the intensity of the proposed development is not considered at variance with that of the existing pattern of housing development in the cul-de-sac.

- The proposed dwelling at No. 8 Kilpeddar Grove was refused permission for reasons relating to design, visual incongruity and impact on the character of the area, which do not apply to the subject proposal.
- The proposal is not for an independent living unit / granny flat. It is for an infill development that would not be attached to the existing house on the subject site.
- The nature of a self-contained site is required for the provision of independent services, vehicular access, to accommodate the house, and provision of a garden.
- The proposed development respects the character of the area having regard to design, height, and scale. It does not create any instances of overshadowing or overlooking (side windows use obscure glazing).
- The Applicant's request to restrict the use of the dwelling solely to the Applicant is totally unjustified. The Planning and Development Act, 2000 (as amended) allows for the restriction to persons (plural) of a class, not singular, and this is what the Planning Authority has done via its conditions. The Board is invited to do the same, should it be considered necessary to do so.
- The proposal provides for 2 no. car parking spaces, which is in accordance with the relevant Development Plan standard. Further, the carriageway of the street at 5.16m is adequate to accommodate the proposed development.

6.3. **Planning Authority Response**

- None.

7.0 **Assessment**

The main planning considerations relevant to this appeal case are:

- Principle of Development
- Design, Scale, and Layout; and Residential Amenity
- Appropriate Assessment

7.1. Principle of Development

- 7.1.1. The Development Plan designates Kilpeddar as a 'Level 7 – Large Village', which recognises that it has a moderate level of existing infrastructural services, both physical and social, and that it is of such a size as to accommodate a limited amount of urban generated housing demand. These settlements generally have a population of less than 500, with many considerably smaller.
- 7.1.2. Objective HD21 of the Development Plan requires that an Applicant or purchaser any new home in a Level 7 Settlement must be either:
- a resident for at least 3 years duration in County Wicklow, or
 - in permanent employment for at least 3 years duration in County Wicklow, of within 30km of the large village in question prior to making of application / purchase of new house.
- 7.1.3. I note that the Applicant provided further information in the form of various personal details, letters, bank statements, etc., which the Planning Authority considered acceptable in terms of demonstrating compliance with the relevant policy regarding local housing need (HD21).
- 7.1.4. The Appellant, however, queries the appropriateness of the proposed development as an infill site and notes that the land – which was formerly associated with the adjoining, larger residential property to the west – has been sectioned off. The Appellant specifically states that rather than applying for permission to build a house in the garden of a property, the Applicant has subdivided off this part of the former garden space and is calling it an infill site. The Appellant is questioning whether this is consistent with the provisions of the Development Plan.
- 7.1.5. In my opinion, whether the Applicant decided to create a self-contained site either before, or after, submitting the subject application is immaterial. It is not a relevant planning consideration if the appeal site has, or has not, been sectioned off from the original garden associated with No. 5. Furthermore, I note that a self-contained site is normally required for the provision of public services (water, wastewater, etc.), vehicular access and egress, provision of private open space, car parking, etc. Whilst the subdivision of an infill site typically occurs 'post-planning', there is nothing to prevent a landowner from doing this beforehand, which that might otherwise

undermine a future planning application, or have implications from planning perspective.

- 7.1.6. Therefore, having regard to the above, I consider that the proposed development can be considered as an infill site, and its status as a potential self-contained property is not a planning concern, in my opinion, which would go against any policy or objective contained within the Development Plan.
- 7.1.7. In relation to the Appellant's assertion that if the proposed development were an 'independent living unit' that it would likely be refused permission, I note that the proposed development is seeking permission for the construction of a house (and not an independent living unit). Therefore, further assessment of this issue is unwarranted.

7.2. Design, Scale, and Layout; and Residential Amenity

- 7.2.1. The proposed development is for an infill house and ancillary site works.
- 7.2.2. Objective HD10 requires that 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.
- 7.2.3. Furthermore, Section 4.3.4 'Densities' of the Development Plan states that it is an objective to encourage higher residential densities at suitable locations, particularly close to existing or proposed major public transport corridors and nodes, and in proximity to major centres of activity such as town and neighbourhood centres. It goes on to state that 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.
- 7.2.4. Therefore, a balance is required between the protection of amenities, privacy, the prevailing character of the area and new infill residential development, such as that proposed. It follows that a key planning consideration is whether the proposal would positively address its receiving context and adequately protect the existing residential amenity of its receiving environment.

- 7.2.5. Given the existing pattern of development along the street I consider that the new house and its associated works would generally be in accordance with its character, subject to consideration of its potential for residential and visual amenity impacts. I note also that there is a bus stop within roughly a 150m walk from the site, which is south along the L5046.
- 7.2.6. The appeal site is situated within an existing residential estate set amongst 2-storey dwellings, on varying plot sizes, mainly between 400sq and 800sqm. There is evidence of infill houses and residential extensions within the cul-de-sac and its surrounding vicinity, and that the area is characterised by a mix of housing types and designs. Building styles are varied and wide-ranging, and houses are mainly on large, spacious plots of land and mature garden settings.
- 7.2.7. The proposed house would be a two-storey, 3-bedroom detached dwelling that is roughly 131sqm. It is proposed to be connected to existing public services and a new access would be created to lead directly off Kilpeddar Grove at the front (northern) side of the site.
- 7.2.8. The proposed development house respects the existing building line along this part of the street and does not encroach past either Nos. 5 or 6, which are to the west and east, respectively.
- 7.2.9. The dwelling would have an overall height of roughly 9.5m at ridge level (5.8m at top of eaves), which respects the prevailing building height in the area.
- 7.2.10. The information on the drawings (Proposed Elevations, Drwg. No. G-01118-PL-300) indicates that smooth white render will be the primary façade finish at the front of the dwelling and that selected black natural slates or tiles will be used in the construction of the roof. There will be a brick cladding surrounding the front entrance and windows will be double / triple glazed upvc. I consider the proposed materials and finishes to be appropriate and in accordance with the general style and character of other houses on the street.
- 7.2.11. It would, therefore, have a similar size, scale, and appearance as the other dwellings in the vicinity, and I consider that it has been designed in such a way so as to minimise potential impacts relating to visual impact, overbearing, overlooking, or overshadowing.

- 7.2.12. The proposed rear garden is roughly 108sqm, which exceeds the minimum private open space standard (60-75sqm) as per the Development Plan (Appendix 1). There are also generous side setbacks between the house and its east and west boundaries, c. 2.1m and 1.8m, respectively, and a small green area is situated within the northwest corner of the site which would soften the interface between the parking area and street.
- 7.2.13. There is space for 2 no. off-street car parking spaces at the front of the site, which are accessed directly off Kilpeddar Avenue and I note that this is also in accordance with the standards set out under Appendix 1 of the Development Plan. Furthermore, the existing wall at the front of the site is proposed to be removed so that sufficient width for vehicles accessing / egressing the site can be attained.
- 7.2.14. There is a small window at first floor level adjacent the upstairs landing on the western elevation. For the eastern elevation, there is a long vertical window serving the master bedroom and a small window for its ensuite, which is also at first floor. I note that to mitigate against potential overlooking or a reduction of privacy, that the Planning Authority recommended a condition requiring each of these windows to be fitted with obscure glazing. I would concur and recommend that in event the Board is minded to grant permission that such a condition be inserted accordingly. Overall, however, I consider that the design and placement of windows is appropriate and would ensure that the privacy of the adjoining residential properties would not be significantly compromised or diminished in any way.
- 7.2.15. Due to the separation distances, orientation, and height of the proposed house, I am satisfied that there would be no significant overshadowing impact on any abutting residential properties. I consider that the new house would be appropriately positioned on the site and would not unnecessarily block light onto either of the adjacent dwellings to the east or west.
- 7.2.16. In summary, I consider that the scale, size, design and layout of the proposed development is appropriate and in keeping with the character and context of the street and its wider surrounding vicinity. The proposal would not seriously injure the residential amenities of adjacent properties and would be acceptable from a visual amenity perspective.

7.3. Legal Agreement

- 7.3.1. The Appellant requests that a condition be applied to any grant of permission ensuing, which requires a legal agreement to be placed on title prohibiting the proposed dwelling to be used by anyone other than the Applicant for a period of 7 no. years. The Appellant states that such a condition was applied by the Planning Authority (Condition 2a)
- 7.3.2. I have read the relevant condition attached by the Planning Authority and note that wording states that ‘the proposed dwelling shall be restricted to the applicant **or** to other persons who comply with the Settlement Strategy for Single Houses in Level 7: Large Villages as set out in the County Development Plan...’ (emphasis added).
- 7.3.3. I consider that condition is clear in that it does not require the use of the proposed dwelling to be tied exclusively to the Applicant. It allows for other people who are eligible under the Council’s Settlement Strategy to potentially occupy the house as so long as they meet the relevant criteria.
- 7.3.4. In summary, should the Board be minded to grant permission for the proposed development, I recommend that a condition should be attached, which adopts a similar wording as that applied by the Planning Authority under Condition 2 of their Notification of Decision to Grant Permission.
- 7.3.5. The Applicant states in their Appeal Response that they are accepting of such a condition.

7.4. Appropriate Assessment

Having regard to the nature and scale of the proposed development, which is for a single infill dwelling in an established urban and serviced area, the distance from the nearest European site, no Appropriate Assessment issues arise. Therefore, 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

I recommend that planning permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

9.1. Having regard to the provisions of the Wicklow County Development Plan 2016-2022 ('the Development Plan'), including Objectives HD9 and HD10, and to the nature, design and layout of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would provide an acceptable standard of amenity for future residents. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>(a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the Applicant, members of the Applicant's 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.</p> <p>(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) (above) and the date of such occupation.</p>

	<p>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.</p> <p>Reason: To ensure that the proposed house is used to meet the applicant's 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.</p>
3.	<p>The first floor windows on the eastern and western elevations of the proposed dwelling shall be glazed with obscure glass.</p> <p>Reason: To prevent overlooking of adjoining residential property.</p>
4.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
5.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
6.	<p>Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreements with Irish Water.</p> <p>Reason: In the interest of public health.</p>
7.	<p>Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
8.	<p>The developer shall pay to the planning authority a financial contribution respect of public infrastructure and facilities benefitting development in the</p>

<p>area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developers or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
--

Ian Boyle
Planning Inspector

30th May 2022