



An
Bord
Pleanála

Inspector's Report

ABP-312989-22

Development	Construction of a new house, boundary walls, vehicular/pedestrian access, upgrade existing laneway and all associated site works
Location	Rear of No. 50, Ballybeg, Rathnew, Co. Wicklow, A67 CD66
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	211507
Applicant(s)	Anthony Franey
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Christy Kearny
Observer(s)	None
Date of Site Inspection	25 th May 2022
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The appeal site is to the rear (southeast) of No. 50, Ballybeg, Rathnew, Co. Wicklow, A67 CD66. It is located within an existing residential estate, roughly 200m south of Rathnew village centre. Wicklow town is approximately 3km to the east.
- 1.2. The site is on a corner and currently overgrown with scrub and thick undergrowth. It has a conventional rectangular shape and a stated area of 0.4ha. It is adjoined to the north, east and west by existing residential development and there is an expansive open space directly south.
- 1.3. The site is currently accessed by shared laneway to the east, which in turns leads through residential areas where it connects to the L51231 east and, ultimately, the R750. The laneway is narrow and in poor condition and mainly used only by pedestrians via the surrounding residential areas and by two houses at its southern end. There is an existing dwelling (No. 50) northwest. The house is semi-detached and adjoins No. 48, which is to the west.
- 1.4. There is evidence of several infill houses in the area, including No. 46a, which is directly west of the appeal site, and the surrounding vicinity is characterised by a mix of dormer, detached and semi-detached housing types. Building styles are varied and wide-ranging, and houses are mainly one and two storeys in height.
- 1.5. There is a playground, church, school, and community hall within a short walking distance of the site.

2.0 Proposed Development

- 2.1. The proposed development is for an infill bungalow and associated site works. The bungalow would be roughly 91.5sqm and connected to existing public services.
- 2.2. It is also proposed to upgrade the existing shared laneway to the east by way of resurfacing it with tarmacadam.
- 2.3. The proposed development would be served by 2 no. car parking spaces located in the northeast corner of the site.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a notification of decision to grant permission on 14th February 2022, subject to 7 no. conditions, which were standard in nature.

3.2. Planning Authority Reports

3.2.1. Planning Report

- Satisfied that the letters received from the Applicant's solicitor and agent confirms that the Applicant has sufficient legal interest to make the application.
- The site is zoned for residential development and the provision of infill housing that reflects the established character of the area.
- The proposed dwelling is modest and considered acceptable. It would not have a negative impact on the established character of the surrounding area. The scale of the house is similar to that of the adjoining houses and would not be incongruous.
- The proposed development would be unlikely to cause significant overlooking, overbearing, or overshadowing given it is single storey and surrounded by existing boundary walls to the north and west.
- The proposed to resurface the shared laneway to the east and provide 2 no. car parking spaces is 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

The Planning Authority received 1 no. observation, which was from a resident in the area (46A Ballybeg, Rathnew).

The main issues raised are as follows:

- The appeal site has increased in size since the 2016 application and now includes the southeast corner of the site that was previously missing from other applications. However, whilst the solicitor's letter accompanying the applications states that the Applicant has a right-of-way (RoW) over the laneway to the east of the site, this was not included in the application documentation. Therefore, it is unclear whether the Applicant has the requisite consent / legal right to gain access to the site or carry out works to upgrade the laneway.
- The current proposal is fundamentally the same as the 2009 application, which was refused permission by the Board, and the one in 2016, which was deemed to be withdrawn.
- The proposed layout is dysfunctional and there is a lack of safe pedestrian access or any proposal for public lighting.
- It is unclear if the Applicant has a legal right to complete the proposed works on the property to the north (No. 50, Ballybeg) and this area is outside of his legal ownership. Therefore, the application is contrary to planning law and should have been declared invalid.
- The proposed development is not in accordance with the Rathnew Development Plan 2013-2019.

4.0 Planning History

Subject Site

Reg. Ref. 16/478: In April 2017, an application for a proposed new bungalow, new vehicular and pedestrian entrance and boundary walls, upgrades to existing laneway, and ancillary site works, was deemed withdrawn after the Applicant failed to respond with further information within the required statutory period. The further

information had requested details regarding land ownership and a request to increase the number of car parking spaces from 1 no. space to 2 no. spaces.

ABP Ref. PL27.234982 (Reg. Ref. 09/596): In February 2010, the Board refused permission for the construction of a bungalow (91.5sqm) with new boundary walls and vehicular access. The reason for refusal was that the proposed development was considered to represent an inappropriate form of backland development that failed to respect the pattern of development in the area and failed to provide a comprehensive proposal to satisfactorily address the poor standard of the laneway.

Reg. Ref. 05/3772: In March 2006, an application for a dwelling, upgraded access road, footpath, and ancillary works was deemed withdrawn.

Reg. Ref. 04/157: In May 2004, an application for a bungalow and ancillary works was deemed withdrawn.

Reg. Ref. 03/8458: In September 2003, an application for a bungalow and ancillary works was deemed withdrawn.

Surrounding Area (Site Adjoining to the West)

Reg. Ref. 07/360: In July 2007, the Planning Authority granted permission for a bungalow at the rear of No. 48, The Bank, Ballybeg, Rathnew.

Reg. Ref. 07/1828: In December 2007, the Planning Authority granted permission for a dwelling extension at No. 46a, The Bank, Ballybeg, Rathnew.

Reg. Ref. 98/8619: In December 1998, the Planning Authority granted permission for a dwelling at the rear of No. 46, Ballybeg, Rathnew.

5.0 Policy Context

5.1. Wicklow Town – Rathnew Development Plan, 2013-2019

Zoning

The appeal site is zoned 'RE – Existing Residential' under the *Wicklow Town – Rathnew Development Plan, 2013-2019* ('Development Plan'), which seeks 'to protect and preserve existing residential uses and provide for infill residential development'.

The zoning objective also seeks 'to protect, provide and improve residential amenities of existing properties and areas while allowing for infill residential development that reflects the established character of the area in which it is located and with minimal impact on the existing residential amenity'.

Settlement Strategy

Rathnew is identified as a Level 4 'Local Centre / Small Town' under the Development Plan.

Other Policies and Objectives

TC3

All new residential developments in the town and village centres shall comply with the development standards set out in this plan, unless otherwise agreed by the Planning Authority.

RE1

In the RE zone, house improvements, alterations and extensions and appropriate infill / new residential development in accordance with principles of good design and protection of existing residential amenity will be permitted. While new developments shall have regard to the protection of the residential and architectural amenities of houses / buildings in the immediate environs, alternative and contemporary designs shall be encouraged (including alternative materials, heights and building forms), to provide for visual diversity.

Section 3.6.6 Design Quality

Section 3.6.6 of the Development Plan under sets out the requirements with respect to design quality for small and medium sized housing and Section (8) addresses infill/backland development in existing areas.

5.2. Wicklow County Development Plan 2016-2022

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.

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.

5.3. **National Planning Policy**

- Design Manual for Urban Roads and Streets, 2019
- Development Management Guidelines for Planning Authorities, 2007

5.4. **Natural Heritage Designations**

No natural heritage designations apply to the subject site.

5.5. **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. 46a Ballybeg), which is the property to the west of the appeal site.

The grounds of appeal reiterate the concerns raised in the Appellant's original observation lodged with the Planning Authority.

6.2. **Applicant Response**

The main issues raised are as follows:

- The 2016 application was deemed withdrawn as the Applicant, erroneously, thought that the request was for a Property Registration Authority (PRA) map and there was delay in getting this information.

- It is unclear why the Appellant submitted various PRA registration maps as the PRA map submitted with the application matches the planning application / red line boundary shown on the Proposed Site Layout Plan.
- The Applicant has a RoW over the existing lane and this has been certified by his solicitor.
- Any person with a RoW is entitled to maintain or upgrade it to be fit for purpose.
- It is proposed to keep the front of the site open with 1.2m high walls only.
- The Applicant has permission to connect to the sewer in No. 50 (adjoining property to the north), and the requisite letter of consent is attached.
- The proposed dwelling is appropriate from a design perspective. It is a small bungalow with a double hipped roof to further minimise the impact of height. There is no overlooking, and a 1.8m high wall had already been erected along the Applicant's shared boundary.
- The lane forms part of an established pedestrian RoW that is used regularly by residents and it is intended to upgrade this as part of the development proposed to be in accordance with DMURS standards, which requires a minimum 4.8m wide road. This will benefit the proposed development, but also other houses on the laneway.
- Any public lighting that is required could be addressed by requiring a financial condition.
- The current proposal has taken into account the previous refusal by the Board in 2009 by way of reorientating the house to face towards the lane and to provide passive surveillance. There are also low walls proposed along this boundary.
- The proposal also has considered the 2016 further information request by the Planning Authority by moving the house further south to avoid overlooking the house opposite north.
- The proposed development is fully consistent with Section 3.6.6 'Design Quality' of the Wicklow Town – Rathnew Development Plan, 2013-2019.

6.3. Planning Authority Response

- None.

7.0 Assessment

The main planning considerations relevant to this appeal case are:

- Access and Sufficient Legal Interest
- Layout and Design
- Appropriate Assessment

7.1. Access and Sufficient Legal Interest

- 7.1.1. The proposed development seeks to achieve access from the laneway running along the site's eastern boundary. A new vehicular entrance / egress would be created at the northeast corner of the site in roughly the same location of where the 2 no. car parking spaces are proposed.
- 7.1.2. The Appellant submits that insufficient documentary evidence has been provided by the Applicant in order to demonstrate that they have sufficient legal entitlement to make the planning application and that the application should have been invalidated by the Planning Authority as a result. The third party also questions whether the proposed upgrade works to the laneway should be permitted without a legal agreement, or letter of consent, from the registered owners of the laneway.
- 7.1.3. Conversely, the Applicant states in their response that sufficient legal entitlement is available to them in the form of a certified RoW across the laneway, that this does not need to be registered to be extant / effective, and that the RoW can be subject to maintenance or upgrade works at any stage so that it can be fit for purpose.
- 7.1.4. It is clear to me there is an ongoing issue in relation to the ownership of the lane and the Applicant's entitlement to carry out works to it dating back several years. In this regard, I would note the provisions of Section 34(13) of *Planning and Development Act, 2000 (as amended)* relating to 'Permission for Development', which states that "a person shall not be entitled solely by reason of a permission under this section to carry out any development".

- 7.1.5. Therefore, in the event permission is granted, there may be other legal considerations that apply, which the landowner may need to address outside of the planning system. I do not consider that a refusal decision should necessarily follow based on the Applicant's legal right, or lack thereof, to carry out works that would make the laneway fit for purpose in terms of it providing safe and adequate vehicular access to the appeal site. In this regard, I would reference Section 5.13 of the 'Development Management Guidelines' which states 'where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter... Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis'.
- 7.1.6. I would note, however, that the Applicant has provided limited details regarding the proposed upgrade of the laneway to function safely. No technical information has been provided in the form of a specific drawing, report, or otherwise, and there is only a single notation on the Proposed Site Layout, stating 'new tarmac finish to structural engineers' specification'. The Applicant's appeal response also includes limited details in this regard and states that works are intended to be in accordance with DMURS standards, but no further information is included. This concern is further exacerbated in the absence of any interdepartmental report by the Planning Authority's roads or engineering department, and I note that whilst the Area Planner requested such a report to be completed, none appears to have been received.
- 7.1.7. From my site inspection, and reviewing the various plans and drawings submitted with the application, it would appear the proposed, upgraded accessway would wrap closely around the property adjoining north (No. 5), and that no footpath or street lighting is proposed. The surface is in very poor condition with loose gravel, chippings, and deep ruts; there is no footpath; and one does not appear to be intended to be provided. Furthermore, there is no turning head, existing or proposed, and the proposed car parking arrangement would likely require vehicles to reverse out onto the road, directly opposite the residential properties on the far side of the street.
- 7.1.8. Given its condition, further traffic movements along the access laneway would likely create a traffic hazard, in my opinion, and would potentially obstruct other road

users. It is likely that significant works would be required to the accessway in order to adequately facilitate the proposed development, and there is an absence of any detailed proposal showing how such a potentially hazardous situation might be addressed. I acknowledge the Applicant's proposal to resurface the laneway, but I do not consider this would be sufficient for the reasons outline above, and consider that the road would require significantly more works than applying a surface layer of tarmacadam.

- 7.1.9. In relation to the Appellant's query whether the Applicant has a legal right to access the public sewer on the property to the north (No. 50 Ballybeg), I note that a letter of consent has been provided by the owner and occupier of this property that gives permission to the Applicant to connect to the public sewer system in this location. This is considered acceptable.

7.2. Layout and Design

- 7.2.1. The appeal site is zoned 'RE – Existing Residential' under the Development Plan, which seeks to protect and preserve existing residential uses and provide for infill residential development. I further note that Objective RE1 states that in the RE zone, house improvements, alterations and extensions and appropriate infill / new residential development that are in accordance with principles of good design and protection of existing residential amenity will be permitted. The objective also states that while new developments shall have regard to the protection of the residential and architectural amenities of houses / buildings in the immediate environs, alternative and contemporary designs shall be encouraged (including alternative materials, heights and building forms), to provide for visual diversity.
- 7.2.2. Therefore, a balance is needed between the protection of amenities, privacy, the established character of the area and new infill residential development, such as that proposed. It follows that a key planning consideration is whether the proposed development positively addresses its receiving context and if it adequately protects and preserves existing residential uses in the surrounding vicinity.
- 7.2.3. The subject site is an infill site situated within an established residential area. It is a short walking distance to Rathnew village centre. The wider vicinity consists of a mix of housing styles and there is no single dominant building type or design. The

overall style, appearance, and scale of the proposed bungalow dwelling is comparable to houses within its immediate receiving environment, including No. 50 (north), No. 46a (west) and No. 48 (northwest).

- 7.2.4. The proposed dwelling design has a hipped roof and an overall height of 4.6m to top of its ridgeline. It has a similar size, scale, and layout as the other houses on the street, but has been designed in such a manner so as to address potential impacts relating to visual impact, overbearing, overlooking and overshadowing. The overall floorspace of the house is 91.5sqm.
- 7.2.5. The information on the drawings (Proposed Front Elevation, Drwg. No. P.002) indicates that painted render will be the primary façade treatment at the front of the house and the roof is to be tiled. I consider the proposed materials and finishes to be appropriate in this case.
- 7.2.6. The proposed garden is approximately 89sqm, which exceeds the minimum private open space standard (60-75sqm) as per the Development Plan (Appendix 1).
- 7.2.7. There is space for two off-street car parking spaces within the northeast corner of the site, which is also in accordance with the standards set out under Appendix 1 of the Development Plan.
- 7.2.8. The house is orientated to face the front (east) part of the site and avoids having any gable walls facing onto the public laneway. It is proposed to have a low-lying 1.2m high boundary wall running along part of the eastern boundary, which would not impede views inwards or outwards from the property. I consider this to be an appropriate form of boundary treatment that is respectful of the character and general pattern of development in the area.
- 7.2.9. The bungalow would have a separation distance of approximately 19m from the house positioned north. There would be no opposing windows above ground level, given the proposal is for a bungalow, and only one window (from the kitchen), is facing northwards. The rear (west) kitchen window is proposed to be high-level and the bathroom window is fitted with obscure glazing. In my opinion, the design and placement of windows is appropriate and ensures that the privacy of the other adjoining residential properties would not be compromised or diminished.

7.2.10. In my view, the proposed development has taken into account the reason for refusal issued by the Board in 2009 (ABP Ref. PL27.234982) with regards to scale, layout, design and appearance, and I have no concerns in this regard.

7.2.11. In summary, and in my view, the proposed development respects the legibility of existing houses on the street, and of the surrounding area, and I consider that its design and layout is appropriate and in keeping with its context. I also consider that the proposal would not be seriously injurious to the residential amenities of adjacent properties and be acceptable from a visual amenity perspective.

7.3. 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 refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

9.1. The proposed development is located along an unsurfaced minor laneway, which is inadequate in condition, finish, and structural condition and lacking any pedestrian facilities, and would, therefore, endanger public safety by reason of being seriously deficient and inadequate to cater for the proposed development, thereby leading to conditions which would be prejudicial to public safety by reason of traffic hazard. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

9.2. Having regard to the paucity of information on the file in relation to the proposed upgrade and improvement works of the access lane, the Board could not be satisfied

that the proposed development would not endanger public safety by reason of traffic hazard and would not lead to conflict between road users.

Ian Boyle
Planning Inspector

26th May 2022