



An  
Bord  
Pleanála

## Inspector's Report ABP-313626-22

### Development

Split level extension to the rear of existing dwelling along with retention of existing vehicular entrance to the rear of existing dwelling and all associated site works.

### Location

Johnstown, Hollywood, Blessington, Co. Wicklow.

### Planning Authority

Wicklow County Council

### Planning Authority Reg. Ref.

21/1464

### Applicant(s)

Gemma Lanigan

### Type of Application

Permission & Permission for Retention

### Planning Authority Decision

Grant subject to conditions

### Type of Appeal

Third Party v. Decision

### Appellant(s)

James Wilson

### Observer(s)

None.

### Date of Site Inspection

14<sup>th</sup> September, 2022

### Inspector

Robert Speer

## 1.0 Site Location and Description

- 1.1. The proposed development site is located in the rural townland of Johnstown, Co. Wicklow, approximately 2.5km east of the village of Hollywood and c. 600m west of the southernmost extent of Poulaphouca Reservoir, where it occupies an elevated hillside position overlooking the lower-lying lands to the east / northeast where the prevailing topography falls towards the lake beyond. It forms part of a larger grouping / cluster of rural dwellings and associated outbuildings (including several vernacular cottages and more contemporary / conventional housing construction) and is situated close to the junction of Local Road No. L8347 with a private laneway.
- 1.2. The site itself has a stated site area of 0.28 hectares, is irregularly shaped, and is presently occupied by a traditional single-storey cottage with a series of stone outbuildings to the south of same. Although the wider property falls away from the public road to the west, levelling works have been carried out to accommodate the access arrangement proposed for retention (with the eastern site boundary currently defined by a retaining construction supplemented by a timber post and rail fence).

## 2.0 Proposed Development

- 2.1. The proposed development consists of the following:
  - **Permission** for the construction of a single-storey, split-level extension (floor area: 66m<sup>2</sup>) to the rear of the existing dwelling house. The overall design encompasses a contemporary interpretation of the traditional vernacular and includes a flat-roofed, timber-clad central segment which will link the existing cottage with the more conventional pitched roofed element of the extension. External finishes include stone, timber cladding, and roof slates to match the existing.
  - **Permission for the Retention** of an existing vehicular entrance to the rear of the existing dwelling onto Local Road No. L8347 and all associated site works.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Following the receipt of a response to a request for further information, on 26<sup>th</sup> April, 2022 the Planning Authority issued a notification of a decision to grant permission & permission for retention for the proposed development, subject to 4 No. conditions which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

Condition No. 2 – Requires the existing dwelling and the proposed extension to be occupied as a single housing unit.

Condition No. 3 – Refers to surface water drainage.

Condition No. 4 – Refers to external finishes.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports:*

An initial report details the site context (including its location within the Poulaphouca Reservoir Area of Outstanding Natural Beauty), planning history, and the applicable policy considerations. It proceeds to determine that the overall design of the proposal is in keeping with the established character of the area and would not give rise to any detrimental impact on the visual amenity of this highly sensitive landscape. With respect to the third-party observations alleging that the proposed development has interfered with an established right of way, it is stated that this is considered to be a civil matter beyond the remit of the Planning Authority. The report subsequently concludes by recommending that further information be sought in relation to the regrading works carried out on site and the setting back of the roadside boundary in order to achieve adequate sightlines from the new entrance.

Following the receipt of a response to a request for further information, a final report was prepared which recommended a grant of permission, subject to conditions.

### 3.2.2. *Other Technical Reports:*

*Area Engineer:* An initial report recommended that the applicant be required to submit revised proposals showing the sightlines from the proposed entrance in accordance with the requirements of Transport Infrastructure Ireland.

Following the receipt of a response to a request for further information, a final report was prepared which recommended that the existing roadside boundary be set back in accordance with the revised site plan so as to achieve sightlines of 60m.

### 3.3. **Prescribed Bodies**

*Environmental Health Officer:* No objection.

### 3.4. **Third Party Observations**

3.4.1. A total of 3 No. submissions were received from interested third parties and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The obstruction of an established / prescribed right of way and the associated impediment caused to the day-to-day farming activities of third parties.
- Concerns as regards the undesirable precedent which could be set for the denial of access to prescribed rights of way across the county and beyond.
- The overlooking of neighbouring property and an associated loss of privacy.

## 4.0 **Planning History**

### 4.1. **On Site:**

4.1.1. PA Ref. No. 18/265. Was granted on 8<sup>th</sup> June, 2018 permitting Richard Mulcahy permission to upgrade the existing effluent disposal system to current EPA standards along with all associated site development works.

## 5.0 **Policy and Context**

### 5.1. **Wicklow County Development Plan, 2016-2022:**

*Chapter 10: Heritage:*

*Sectio 10.2.3: Architectural Heritage:*

*BH15:* To seek (through the development management process), the retention, conservation, appropriate repair and reuse of vernacular buildings and features such as milestones, stonewalls, traditional & historic shopfronts and pub fronts, thatched roofs and other historic elements. The demolition of vernacular buildings will be discouraged.

*BH16:* Development proposals affecting vernacular buildings and structures will be required to submit a detailed, true measured survey, photographic records and written analysis as part of the planning application process.

Section 10.3.8: *Public Rights of Way*

Section 10.3.9: *Wicklow's Landscape:*

*1. The Mountain and Lakeshore Area of Outstanding Natural Beauty:*

*1(b) - The Poulaphuca Reservoir:*

This category generally relates to the area around Blessington known locally as the 'Blessington Lakes' and extends into Sorrell Hill. The lakes area is dominated by the lake, views onto and from the lake. To the east and south, land is more mountainous with attractive views and vegetation.

*NH49:* All development proposals shall have regard to the County landscape classification hierarchy in particular the key landscape features and characteristics identified in the Wicklow Landscape Assessment (set in Volume 3 of this plan) and the 'Key Development Considerations' set out for each landscape area set out in Section 5 of the Wicklow Landscape Assessment

*NH50:* Any application for permission in the AONB which may have the potential to significantly adversely impact the landscape area shall be accompanied by a Landscape / Visual Impact Assessment, which shall include, inter alia, an evaluation of visibility and prominence of the proposed development in its immediate environs and in the wider landscape, a series of photos or photomontages of the site / development from clearly identified vantage points, an evaluation of impacts on any listed views / prospects and an assessment of vegetation / land cover type in the area (with particular regard to commercial forestry plantations which may be

felled thus altering character / visibility). The Assessment shall demonstrate that landscape impacts have been anticipated and avoided to a level consistent with the sensitivity of the landscape and the nature of the designation.

*Section 10.3.10: Views and Prospects*

*NH52:* To protect listed views and prospects from development that would either obstruct the view / prospect from the identified vantage point or form an obtrusive or incongruous feature in that view / prospect. Due regard will be paid in assessing development applications to the span and scope of the view / prospect and the location of the development within that view / prospect.

*Schedule 10.15: Prospects of Special Amenity Value or Special Interest:*

*No. 22 – Origin: L8347 Ballintober*

*Feature: Prospect eastwards of Lakes and Moanbane mountain*

*Appendix 1: Development and Design Standards:*

*Appendix 2: Single Rural House Design Guidelines: Section 4: Ancillaries:  
Extensions to Existing Rural Houses*

*Appendix 5: Landscape Assessment:*

*Section 5.3.3: The Poulaphuca Reservoir KDC:*

1. To protect listed views / prospects and to resist development proposals that would negatively impact on the skyline and other key vantage points in the area, in particular views from the Lake Drive down to and across the reservoir and to the west towards the mountains.
2. Development proposals within this area should aim to locate within existing clusters of structures / tree stands and avoid locating new development in open fields.
3. Development proposals surrounding the reservoir should respect the more traditional and vernacular building patterns and materials of the area. A particular emphasis on the more traditional built and vernacular form will be

applied within the Ballyknockan and Lackan area where developments should be of a design which assimilates easily into the existing landscape.

4. To support and facilitate the provision of amenity routes around the Phoulaphuca reservoir in a manner which does not detract from the scenic nature of the area and ensure that new development is sited in such a manner that would not interfere with existing or potential amenity routes.
5. To maintain the favourable conservation status of existing natural habitats within or surrounding the Poulaphuca Reservoir.

## 5.2. Wicklow County Development Plan, 2022-2028:

*N.B.* The Board is advised that the Wicklow County Development Plan, 2022-2028 was adopted by the elected members of Wicklow County Council at a special council meeting held on 12<sup>th</sup> September, 2022 and is due to come into full effect on 23<sup>rd</sup> October, 2022 (unless a draft Ministerial direction is received in relation to any aspect of the Plan).

### *Chapter 8: Built Heritage:*

#### *Section 8.3.2: Vernacular Heritage & Other Structures / Items of Heritage Value:*

The Council seeks to safeguard vernacular heritage, and encourages the rehabilitation and appropriate reuse of the vernacular building stock in recognition of the vital role it plays in the sustainable development of the County.

*CPO 8.18:* To seek (through the development management process) the retention, conservation, appropriate repair and reuse of vernacular buildings and features such as traditional dwellings and outbuildings, historic shopfronts, thatched roofs and historic features such as stonewalls and milestones. The demolition of vernacular buildings will be discouraged.

*CPO 8.19:* Development proposals affecting vernacular buildings and structures will be required to submit a detailed, true measured survey, photographic records and written analysis as part of the planning application process.

### *Chapter 17: Natural Heritage and Biodiversity:*

#### *Section 17.3: Landscape:*

*1. The Mountain and Lakeshore Area of Outstanding Natural Beauty:*

*1(b) - The Blessington Lakes Area:*

This category generally relates to the area around Blessington known locally as the 'Blessington Lakes' and extends into Sorrell Hill. The lakes area is dominated by the lake, views onto and from the lake. To the east and south, land is more mountainous with attractive views and vegetation.

*Views & Prospects:*

The views and prospects listed in this plan for protection are those views / prospects that are considered to be of the highest amenity value in the County. Some views / prospects will form a cohesive set, such as coastal or lake drives, while some appear suddenly and provide the viewer with a new and interesting angle on a natural feature or place. Some views / prospects are intermittent in nature and appear through gaps in vegetation or buildings. Where listed views / prospect occur in settlements, it is not the intention that all lands in the view / prospect will be 'sterilised' from development. Any application for development in such locations will be required to provide an assessment of the view / prospect and an evaluation of how the development would change or interfere with that view / prospect. Views and prospects listed for the towns of Bray, Wicklow, Arklow and Greystones-Delgany are listed and mapped in each individual Town Development Plan / Local Area Plan. The policies and objectives set out in this Plan shall apply to all views/prospects listed for preservation in these local plans. Views and prospects listed in this plan for County are set out in Schedules 17.14 & 17.15 and Maps 17.14 & 17.15 of this plan.

*Section 17.4: Natural Heritage & Biodiversity Objectives:*

*CPO 17.35:* All development proposals shall have regard to the County landscape classification hierarchy in particular the key landscape features and characteristics identified in the Wicklow Landscape Assessment (set in Volume 3 of the 2016 County Development Plan) and the 'Key Development Considerations' set out for each landscape area set out in Section 5 of the Wicklow Landscape Assessment.

*CPO 17.36:* Any application for permission in the AONB which may have the potential to significantly adversely impact the landscape area shall be accompanied by a Landscape / Visual Impact Assessment, which shall



include, inter alia, an evaluation of visibility and prominence of the proposed development in its immediate environs and in the wider landscape, a series of photos or photomontages of the site / development from clearly identified vantage points, an evaluation of impacts on any listed views / prospects and an assessment of vegetation / land cover type in the area (with particular regard to commercial forestry plantations which may be felled thus altering character / visibility). The Assessment shall demonstrate that landscape impacts have been anticipated and avoided to a level consistent with the sensitivity of the landscape and the nature of the designation.

*CPO 17.38:* To protect listed views and prospects from development that would either obstruct the view / prospect from the identified vantage point or form an obtrusive or incongruous feature in that view / prospect. Due regard will be paid in assessing development applications to the span and scope of the view / prospect and the location of the development within that view / prospect

*Schedule 17.12 Prospects of Special Amenity Value or Special Interest:*

*No. 22 – Origin:* L8347 Ballintober

*Feature:* Prospect eastwards of Lakes and Moanbane mountain

*Appendix 1: Development and Design Standards:*

*Appendix 2: Single Rural House Design Guidelines: Section 4: Ancillaries:  
Extensions to Existing Rural Houses*

### **5.3. Natural Heritage Designations**

5.3.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Poulaphouca Reservoir Proposed Natural Heritage Area (Site Code: 000731), approximately 500m east of the site.
- The Poulaphouca Reservoir Special Protection Area (Site Code: 004063), approximately 600m east of the site.

- The Newtown Marshes Proposed Natural Heritage Area (Site Code: 001759), approximately 3.3km west of the site.
- The Hollywood Glen Proposed Natural Heritage Area (Site Code: 002053), approximately 3.5km southwest of the site.
- The Wicklow Mountains Special Area of Conservation (Site Code: 002122), approximately 4.4km east of the site.
- The Wicklow Mountains Special Protection Area (Site Code: 004040), approximately 4.4km east of the site.

#### **5.4. EIA Screening**

- 5.4.1. Having regard to the minor nature and scale of the development proposed, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, and the separation distance from 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**

- The applicant has fenced in, recontoured, and raised ground levels thereby denying access to a long-established and prescribed right of way which has been used by local farmers (including the appellant) for vehicular access and the movement of livestock for generations.
- The proposed development will set an undesirable precedent as regards the denial of access to prescribed rights of way across the county and beyond.

## 6.2. Applicant's Response

- During the course of the applicant's purchase of the subject site in 2018, the vendor confirmed that there was no registered right of way through the property (as confirmed by the accompanying solicitor's correspondence).
- It is considered that the subject matter of the appeal amounts to a civil issue which is beyond the remit of the Planning Authority and the Board.

## 6.3. Planning Authority Response

None.

## 6.4. Observations

None.

## 6.5. Further Responses

None.

## 7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues raised by the appeal are:

- Procedural issues
- Alleged interference with an established right of way
- Appropriate assessment

These are assessed as follows:

### 7.2. Procedural Issues:

7.2.1. This assessment has been undertaken in the context of the current Wicklow County Development Plan, 2016-2022, however, I would advise the Board that this Plan is due to be superseded by the Wicklow County Development Plan, 2022-2028 which was adopted by the elected members of Wicklow County Council at a special council meeting held on 12<sup>th</sup> September, 2022 and is to come into full effect on 23<sup>rd</sup> October,

2022 (unless a draft Ministerial direction is received in relation to any aspect of the Plan).

- 7.2.2. For the purposes of clarity, I am satisfied that the development as proposed complies with all the applicable policy provisions of both the Wicklow County Development Plan, 2016-2022 and the Wicklow County Development Plan, 2022-2028.

**7.3. Alleged Interference with an Established Right of Way:**

- 7.3.1. It has been alleged in the grounds of appeal that certain works, including the raising and recontouring of ground levels, have been carried out which serve to interfere with a long established and 'prescribed' right of way through the proposed development site. This right of way is described as having been historically enjoyed by a number of third parties / local farmers (including the appellant) for the purposes of moving vehicles and livestock over an unspecified timeframe. It has been further submitted that any grant of permission for the subject development would set an undesirable precedent as regards the denial of access to prescribed rights of way across the county and beyond.
- 7.3.2. At the outset, I would advise the Board that the subject appeal would appear to primarily concern the impact of works that have already been carried out on site and were likely largely associated with the installation of the wastewater treatment system approved under PA Ref. No. 18/265. Nevertheless, the Planning Authority did seek clarity by way of a request for further information in relation to the regrading / recontouring works with the applicant responding by stating that only minor levelling / grading works within an allowance of 1.2m had been carried out. While the Council was not entirely satisfied with the applicant's explanation, it was accepted that the works at the site entrance were minimal and that the description of the proposed development as set out in the public notices was satisfactory in this regard.
- 7.3.3. With respect to the alleged interference with a right of way through the development site, it is of relevance in the first instance to note that this would not appear to involve a public right of way and thus amounts to a private matter between the parties concerned. Secondly, with the exception of some imagery obtained from the internet ('Google Earth Streetview') which shows a set of tyre-tread marks / tracks passing through the site, no other information such as legal documentation or land registry /

folio details has been submitted to support the existence of any privately agreed or established right of way through the site. This is in contrast to the applicant's response to the grounds of appeal wherein correspondence from her legal representative has stated that during her purchase of the subject site, the then vendor confirmed that there were no rights of way affecting the property (it has also been indicated that no rights of way have been registered against the applicant's title).

- 7.3.4. While it is possible that third parties may have traversed the subject lands historically (possibly as a means of avoiding the acute turn at the junction of the laneway bounding the application site with Local Road No. L8347), I am inclined to suggest that this would involve a degree of speculation. Accordingly, on the basis of the information provided, and in the absence of any more definitive evidence pertaining to the presence of a legally established right of way through the property in question, I am not satisfied that a refusal of permission could be sustained in this instance.
- 7.3.5. Notwithstanding the foregoing, in my opinion, it is not the function of the Board to adjudicate on property disputes and, therefore, any alleged interference with a right of way would essentially amount to a civil matter for resolution between the parties concerned. In this respect, I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that *'A person shall not be entitled solely by reason of a permission under this section to carry out any development'* and, therefore, any grant of permission for the subject proposal would not in itself confer or diminish any right over private property.

#### **7.4. Appropriate Assessment:**

- 7.4.1. Having regard to the minor nature and scale of the development under consideration, the site location outside of any protected site, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

### **8.0 Recommendation**

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission & permission for retention be

granted for the proposed development for the reasons and considerations, and subject to the conditions, set out below:

## 9.0 Reasons and Considerations

9.1. Having regard to the provisions of the current Development Plan for the area, the planning history of the site, the existing pattern of development in the area, and the nature and scale of the development proposed, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 8<sup>th</sup> day of April, 2022, 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.

**Reason:** In the interest of clarity.

2. 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 and no surface water from the proposed development shall be allowed to discharge onto adjoining properties or the public road.

**Reason:** In the interest of public health.

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Robert Speer  
Planning Inspector

16<sup>th</sup> September, 2022

