



An
Bord
Pleanála

Inspector's Report

ABP-313900-22

Development	Demolition of existing flat roof extension to rear and construction of new 74m ² split level single storey over sunken ground floor and associated site works
Location	2 Willow Grove, Old Downs Road, Delgany, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	211517
Applicant(s)	David and Edel Foster.
Type of Application	Planning Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	Third Party
Appellant(s)	Patrick Tighe.
Observer(s)	No Observers.
Date of Site Inspection	31 st of May 2023.

Inspector

Elaine Sullivan

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1.0 Site Location and Description

- 1.1. The subject site is in County Wicklow and within the settlement boundary of Kilpedder village. It has a stated area of 0.0895 ha. and forms the front part of a long narrow plot on the western side of the Old Downs Road, to the west of the N11 and approximately 1.2km to the north of the village centre.
- 1.2. Old Downs Road is a local, residential road, where the surrounding pattern of development comprises mainly single storey cottages on long narrow plots with long front and back gardens. Many of the plots also have houses to the rear with a narrow access road along the side of front garden.
- 1.3. There is currently a single storey house on the site which is set back from the public road by approximately 35m. A narrow access road along the northern side of the site provides access to another property to the rear of the house which is in separate ownership. The site slopes upwards to the west with a steeper gradient towards the rear of the site. The western site boundary is approximately 4m higher than the level of the house and the gradient continues into the adjoining site. A separation distance of c. 24m is shown on the planning drawings between the rear wall of the subject house and the western boundary which separates both sites.

2.0 Proposed Development

- 2.1. Planning permission is sought for the demolition of a flat roof extension to the rear of the existing single storey house and the construction of a split-level extension of 74m² with a sunken ground floor.
- 2.2. The extension would have a double pitched roof with a zinc finish and would match the existing roof profile and ridge height. The walls would have a stone finish and there would be a cantilevered balcony to the rear overlooking the rear garden.

3.0 Planning Authority Decision

3.1. Decision

Planning permission was granted by the Planning Authority, (PA), subject to six planning conditions which were standard in nature.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the PA was informed by two reports from the Planning Officer, (PO). The first report dated the 11th of February 2022 included the following;

- The site has the capacity to accommodate the scale of the proposed works and the proposed extension is well integrated with the existing dwelling.
- It would not result in overlooking the of adjoining properties but may impact on the shared boundary of the adjoining property at construction stage.
- In accordance with PA policy the existing septic tank should be upgraded as the site of the proposed extension is over 33% of the ground floor area of the existing dwelling.
- Further information was requested regarding how the proposal would impact on the shared boundary and the right of way to the site at the rear.
- Proof of ownership of the land within the red boundary and an updated assessment of the septic tank were also requested.

A submission was received from the applicant on the 19th of April 2022. The second report of the PO dated the 24th of May 2022 includes the following,

- The PO assessed the response by the applicant and was satisfied that the issues had been addressed. They recommended that planning permission be granted.

3.2.2. Other Technical Reports

- Environmental Health Officer – The report dated the 3rd of May 2022 recommended approval of the wastewater system proposed subject to planning conditions.

3.3. Third Party Observations

One third party observation was received by the PA and is summarised below.

- The western red line boundary is incorrect.

- The right of way along the northern boundary is not shown in yellow. Access to the water supply for the house to the rear is through this wayleave and should be retained.
- The proposed works would involve excavations. The applicant should be required to ensure that these works cause no restrictions on access to the adjoining property or damage to the property.

A second submission was received on foot of the response to further information and includes the following,

- The letter stating that the applicant has sufficient control over the necessary lands fails to address the concerns raised and does not demonstrate how access to third-party lands and property will not be impacted.

4.0 **Planning History**

- No recent planning history for the site.

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1. The Wicklow County Development Plan 2022-2028, (WCDP) is the operative Development Plan for the site. The site is within the settlement boundary Kilpedder which is designated as a 'Type-1 Village' within the Greystones Municipal District in the settlement strategy for the County.

5.1.2. The following sections of the Development Plan are relevant to the proposal:

5.1.3. **Appendix 1 – Development & Design Standards**

Section 3.1.8 – House extensions

The construction of extensions to existing houses will be encouraged. The following principles will be applied,

- The extension should be sensitive to the existing dwelling and should not adversely distort the scale or mass of the structure.
- The extension shall not provide for new overlooking.

- The new extension must not significantly increase overlooking possibilities.
- New extensions should not overshadow adjacent dwellings to the degree that a significant decrease in day or sunlight entering into the house comes about.
- While the form, size and appearance of an extension should complement the area, unless the area has an established unique or valuable character worthy of preservation, a flexible approach will be taken to the assessment of alternative design concepts.

5.2. Natural Heritage Designations

- No designations apply to the site.

5.3. EIA Screening

- 5.3.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any 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 grounds of appeal include the following,

- The appellant is the owner of the adjoining land to the west of the subject site. Both sites were originally part of the same landholding which was the appellants family home. When the site was subdivided certain easements and rights of way were retained by the appellant.
- The appellant states that he is entitled to access his property along the right of way on the northern boundary of the subject site and that he retains access to his water supply which is connected to the main on Old Downs Road.

- It is argued in the appeal that there a number of omissions and errors in the information submitted by the applicant.
- In their response to the further information query regarding sufficient interest over the lands, the applicants submitted a letter from their solicitor stating that they owned the land and that confirming the existence of a right of way. The appellant contends that this response does not demonstrate how the proposed development will not affect the right of way to access his property.
- The grounds of appeal state that the appellant does not wish to prevent the applicants from extending their property if sufficiently binding conditions were incorporated into the planning permission to ensure that his right of way, wayleave and water supply were fully protected during the course of construction and thereafter.

6.2. Applicant Response

A response was received from the applicant on the 25th of July 2022 and is summarised below.

- The applicant is of the opinion that the appeal is vexatious and frivolous.
- No objection has been made regarding the proposed extension and the objections and appeal are based on unrelated issues.
- There is an ongoing civil dispute between both parties regarding boundaries and water supply and the applicant states that consultation with the appellant is not required as all information submitted to the PA is on the public file.
- The applicant states that the appellant's rights are set out in the deeds and are fully protected by law. The additional conditions requested by the appellant are unnecessary and would be standard practice and/or legal requirements for construction works.
- It is argued by the applicant that the right of way and access to water supply has remained unimpeded since they bought their property.

- The appellant is requesting specific conditions regarding the provision of safe temporary works for excavation. The applicant states that this would be required by law for anyone undertaking such works.

6.3. **Planning Authority Response**

- No response on file from the PA.

6.4. **Observations**

- No third-party observations were received.

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, inspected the site and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal can be addressed under the following headings:

- Principle of Development
- Administrative Issues
- Impact on Residential Amenity
- Appropriate Assessment

7.2. **Principle of Development**

7.2.1. The proposed development is for an extension to an existing house within an established residential area in the settlement of Kilpedder. The house is connected to the public water supply and has onsite wastewater treatment. The principle of development is acceptable subject to the provisions of the WCDP.

7.3. Administrative Issues

- 7.3.1. The grounds of appeal raise some issues that relate to the applicant's legal interest in the land and the right of way through the site to the adjoining site. I note that the information submitted states that there is an ongoing civil dispute between the parties. This is outside the remit of the appeal and will not be addressed as part of the assessment.
- 7.3.2. I am satisfied that the applicant has demonstrated sufficient interests in the land for the purposes of lodging a planning application. The applicant was requested to address this issue by the PA. In response they submitted a letter from their solicitor with a copy of the Folio and a map of the site. It states that the location of the western site boundary is currently part of a civil dispute and to progress the planning application, the red line boundary was amended to omit the lands under dispute. The location of the amended red line encompasses the full area of the works and is within the ownership of the applicant.
- 7.3.3. The appellant has also raised concerns regarding the right of way and the wayleave over the subject site. The Folio for the property also contains a burden which allows for a right of way and easement over the site to the adjoining site to the west. This is also shown along the northern edge of the site on the Folio map and on the planning application maps. I am satisfied that the design and location of the proposed development will not impinge on the existing right of way and that the appellants legal rights are protected by the burden in the Folio.

7.4. Impact on Residential Amenity

- 7.4.1. On the occasion of the site visit, I observed that works were underway at the site. I was informed that the applicant was carrying out work under exempted development regulations.
- 7.4.2. I am satisfied that the proposed development would not result in any significant impact on the existing residential amenity of adjoining properties. The proposed extension would be stepped back beside the southern site boundary with the adjoining property at No. 1 and would match the the length of their extension. There would be no windows on the southern or northern elevation to overlook adjoining

properties. The roof profile and ridge height would match the existing house and the extension would not be visible from the front.

- 7.4.3. The topography of the site would allow for the split-level element to the rear without any overlooking of the adjoining site to the west. Due to the change in level and the existing boundary planting, the extension would not be visible from the site to the west. Overall, I am satisfied that the proposed development is in accordance with the provisions of Appendix 1, Section 3.1.8 of the WCDP and would be sensitive to the existing dwelling and would not provide for new overlooking or overshadowing of adjoining properties.

7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development within a settlement and separation distance to the nearest European site, no Appropriate Assessment issues arise, and 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**

- 8.1. I recommend that planning permission be granted for the development.

9.0 **Reasons and Considerations**

- 9.1. Having regard to the nature and scale of the proposed domestic extension, within the settlement boundary of Kilpedder, it is considered that the proposal would be in accordance with the Wicklow County Development Plan 2022-2028, and subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and 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 on the 17th day of December 2021, as amended by the further plans and particulars submitted on the 19th 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 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>
3.	<p>The site development work and construction works shall be carried out in such a manner as to ensure that the adjoining street(s) are kept clear of debris, soil and other material.</p> <p>Reason: In the interests of orderly development and to ensure that the adjoining roadways are kept in a clean and safe condition.</p>
4.	<p>(a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 19th day of April, 2022, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2021. No system other than the type proposed in the submissions shall be installed unless agreed in writing with</p>

	<p>the planning authority.</p> <p>(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.</p> <p>(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.</p> <p>(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.</p> <p>(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health.</p>
5.	<p>Water supply and drainage arrangements, including the attenuation and 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>
6.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting 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 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 developer 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>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Elaine Sullivan
Planning Inspector

21st day of June 2023