



An
Bord
Pleanála

Inspector's Report ABP-314502-22

Development	Change of use of existing single storey domestic garage buildings (gfa 38sq.m.) to residential use and construction of a single storey extension of 14sq.m. and all associated site works.
Location	Union Lane, South Quay, Arklow, Co. Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	22/673.
Applicant	Conor McCarthy.
Type of Application	Permission.
Planning Authority Decision	Grant permission.
Type of Appeal	First Party (Against S.48 Condition).
Appellant	Conor McCarthy.
Observer(s)	None.
Inspector	Enda Duignan

1.0 Site Location and Description

- 1.1. The address of the appeal site is Union Lane, South Quay, Arklow, Co. Wicklow. The site is located at the western end of Union Lane, c. 30m to the west of the junction of Union Lane and South Quay. The site comprises a single storey, pitched roof structure which is currently in use as a shed/domestic garage. The structure is located on the northern side of Union Lane and is served by an existing yard area on its western side. The appeal site has a stated area of c. 0.01ha.

- 1.2. In terms of the site surrounds, an open space area associated with No. 86 Lower Main Street is located to the immediate west of the site. The site is attached to a single storey industrial building to the north and a yard area associated with a single storey industrial building located to the east of the appeal site.

2.0 Proposed Development

- 2.1. The proposed development seeks planning permission for the change of use and extension of an existing shed/domestic garage to provide a 1 no. bedroom dwelling. The proposed dwelling will comprise an open plan kitchen/living/dining room, bathroom and bedroom with storage area and will have a stated floor area of 48sq.m.

- 2.2. The proposed single storey, flat roof extension will measure c. 14sq.m. and will comprise the proposed bedroom which will be located to the west of the existing structure. The dwelling will be served by an area of open space on the southern side of the extension measuring a stated 20sq.m. The dwelling will be served by 1 no. off-street car parking space which is to be located on its eastern side.

3.0 Planning Authority Decision

3.1. Decision

Wicklow County Council granted planning permission for the proposed development subject to compliance with 4 no. conditions.

Condition No. 2 was included as follows:

Prior to the commencement of development, the developer shall pay the sum of €8,100 (eight thousand one hundred euro) to the Planning Authority as a contribution

in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

The contribution sought is in accordance with Wicklow County Council's Development Contribution Scheme for the area in which the site is located and Section 48(1) of the Planning and Development Act 2000.

Where the contribution remains unpaid the monies payable shall be updated in accordance with the Wholesale Price Index as published by the Central Statistics Office on the 1st January of each year following the date of the Final Grant.

REASON: The public infrastructure and facilities included in the Development Contribution Scheme will facilitate the development and it is considered reasonable that the developer should contribute towards the cost thereof.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Wicklow County Council Planning Report forms the basis of the decision. The report provides a description of the site and surrounds and outlines a description of the proposed development. The report provides an overview of the policy that is applicable to the development proposal and summaries the site's planning history.

In terms of the assessment of the application, the Planning Authority note that the site is zoned 'TC: Town Centre' and it was considered that the conversion and extension of the building from use for storage to a residential infill development is considered to be acceptable in principle. Whilst the Planning Authority notes that the proposed dwelling is not an apartment, the Apartment Guideline Standards have been considered to assess the quality and residential amenity of the proposal. In summary, the Planning Authority indicate that the amenity of the dwelling is acceptable, especially noting its town centre location and infill nature of the site.

In addition to the foregoing, the Planning Authority refer to the Site Specific Flood Risk Assessment which accompanied the planning application given the location of the site

within Flood Zone B and c. 55m from Flood Zone A. The proposal was deemed acceptable to the Planning Authority and a suitable condition was attached to a grant of permission.

A financial contribution for the proposed development was levied. Total contribution for this was €8,100, as per Condition No. 2.

3.2.2. Other Technical Reports

Arklow Area Engineer: Report received stating no objection.

3.2.3. Prescribed Bodies

Irish Water: Report received stating no objection subject to conditions.

3.2.4. Third Party Observations

None.

4.0 Planning History

07/610154: Planning permission granted by the Planning Authority for alterations and additions comprising the change of use of the ground floor area from residential to retail use, the construction of a new 2-bed apartment at first floor level, together with development of 2 no. 2-storey detached 2-bed townhouses including carparking and ancillary site works to the rear, with access via Union Lane, South Quay. Works pursuant to this permission have not been undertaken on site and the permission has now expired.

5.0 Policy and Context

5.1. Wicklow County Development Plan (CDP), 2022-2028.

The Wicklow Dublin County Development Plan (CDP), 2022-2028 came into effect on 23rd October 2022. I note Arklow is identified as a “Level 3 Town and/or District Centres & Sub-County Town Centres (Key Service Centres)” and the appeal site is located outside the town’s Core Retail Area as identified in Map No. 10.01b. of the current CDP.

The current CDP notes that Arklow is the main centre located in the south of the County, removed from other large centres. The centre provides for the service needs of its residents and a large geographical catchment extending to Avoca, Aughrim, Redcross, a significant rural population, and to some extent to Tinahely/Shillelagh/Carnew area. The policy notes that the town should be economically self-sustaining with a population including catchment that is able to support facilities such as a high quality secondary (and perhaps tertiary) education service, small hospital or polyclinic type facility and comparison retail centre.

5.2. Arklow and Environs Local Area Plan (LAP), 2018-2024.

Under the current LAP, the appeal site is located on lands zoned TC, the objective of which is “To provide for the development and improvement of appropriate town centre uses including retail, commercial, office and civic use, and to provide for ‘Living Over the Shop’ residential accommodation, or other ancillary residential accommodation”. The description for TC zoned lands included the current LAP is as follows:

- “To develop and consolidate the existing town centre to improve its vibrancy and vitality with the densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure, residential uses, and urban streets, while delivering a quality urban environment which will enhance the quality of life of resident, visitor and workers alike. The zone will strengthen retail provision in accordance with the County Retail Strategy, emphasise town centre conservation, ensure priority for public transport where applicable, pedestrians and cyclists while minimising the impact of private car based traffic and enhance and develop the existing centre’s fabric.”

Uses on TC zoned land typically include retail, retail services, health, restaurants, public house, public buildings, hotels, guest houses, nursing/care homes, parking, residential development, commercial, office, tourism and recreational uses, community, including provision for religious use, utility installations and ancillary developments for town centre uses in accordance with the CDP. The current LAP notes that the Planning Authority shall determine each proposal on its merits, and shall only permit the development of uses that enhance, complement, are ancillary to, or

neutral to the zoning objective. The policy notes that uses that are materially inconsistent with and detrimental to the zoning objective shall not be permitted.

5.3. The Wicklow County Council Development Contribution Scheme 2015

The Wicklow County Council Development Contribution Scheme 2015 was adopted on the 5th October 2015 and updated as of the 16th February 2021. Table 4.2 (Residential – Non Rural) of the Scheme refers to residential development not covered in Table 4.1 (Residential – Rural).

Section 4.3 of the Scheme notes that 'Residential extensions that do not increase the overall floor area of the house over 100sq.m. in urban areas, and over 150sq.m. in rural areas, will be exempt from contributions.

Section 4.10 of the Scheme notes that:

'There will be no double charging. Credit will be given for previously paid development contributions or previously authorised use or existing floor areas.

Development Contributions will not be charged on a change of use permission, where such change of use does not result in a significant intensification of demand on public infrastructure'.

5.4. Guidelines for Planning Authorities on Development Contributions (2013)

The 'Guidelines for Planning Authorities on Development Contributions (2013)' set out government policy for Planning Authorities for preparing and adopting development contribution schemes.

5.5. Natural Heritage Designations

There are no European designated sites within the immediate vicinity of the site. The nearest designated site is the Buckronev-Brittias Dunes and Fen Special Area of Conservation (SAC) (Site Code: 000729), c. 5.2km to the north-east of the site. The 'Proposed Natural Heritage Area: Arklow Town Marsh' is also located c. 50m to the north of the site.

5.6. EIA Screening

The proposed development, which is for a change of use and extension of an existing building, is not a class of development for which EIA is required.

6.0 The Appeal

6.1. Grounds of Appeal

A First Party Appeal against Condition (No. 2) has been lodged by the Applicant (Conor McCarthy). The main grounds of appeal are as follows:

- It is stated that a full contribution for a brand new house, essentially on a greenfield site, has been levied in accordance with Table 4.2, Residential Non Rural. It is contended that under Section 4.10 of the Scheme, the imposition of the contribution amounts to double charging.
- It is stated that the garage is an existing pre 1963 building (estimated date of construction c. 1910) and whilst not subject to development contributions at the time of construction, is an authorised structure/existing floor area.
- It is indicated that the application is essentially a change of use permission with a small extension. The property is already served by a foul sewer connection and Irish Water will charge for a new fresh water connection. It is noted that the property is accessed via an existing lane and no new roads or other Local Authority services will be supplied to the property.
- It is highlighted that a small infill town development such as this predicated on an existing building could not lead to a significant intensification of demand on public infrastructure.

6.2. Planning Authority Response

A response has been received from the Planning Authority dated 15th September 2022. It is stated within the response that the Planning Authority does not attach contributions to domestic garages at present. Therefore, where permission is sought for conversions of garages for residential use, the contributions as set out in the Development Contribution Scheme are applicable. It is stated that no double counting occurs. The Planning Authority refer to a number of decisions for change of use which

have included a financial contribution. These included 17/218 (PL 27.248510), 18/425 (ABP 302005-18) and 18/814 (ABP-303693-19).

6.3. Observations

None.

6.4. First Party Response

A First Party response to the Planning Authority's response was received on 29th September 2022, which noted the following:

- It is stated that there are a huge number of buildings that never paid development contributions. If this is the case, then all buildings which cannot prove payment of development contributions should be liable for new development contributions when they go in for planning regardless.
- It is contended that the development could not realistically be described as a significant intensification of demand on public infrastructure.
- The Applicant refers to various applications mentioned by the Planning Authority and it is unclear how they are relevant to the current proposal.
- The Applicant also includes references to a number of change of use applications that are applicable in this instance where no development contribution was applied. It is stated that these cases illustrate the widespread, successful application of the 'significant intensification of demand test' to justify no development contributions.

6.5. Further Responses

None sought.

7.0 Assessment

- 7.1.** The sole planning consideration relevant to this appeal case is whether the Applicant should be required to pay a development contribution in respect of the development proposed, which is for the change of use and extension of an existing shed/domestic garage to provide a 1 no. bedroom dwelling.

- 7.2.** The proposed development is in accordance with the relevant Development Plan policy and is considered acceptable. The appeal, therefore, is confined to the matters concerning the specific condition, which the Applicant has appealed, and which, in this case, can be treated under Section 48(10)(b) of the *Planning and Development Act, 2000 (as amended)*. Given the nature of the First Party appeal, I note that an inspection of the subject site was not warranted in this instance.
- 7.3.** Condition No. 2 requires the Applicant to pay a development contribution in the order of €8,100. The condition has been applied by the Planning Authority under the provisions of Section 48 of the Planning and Development Act 2000 (as amended) and the stated reason for doing so is that the public infrastructure and facilities included in the Development Contribution Scheme will facilitate the development and it is considered reasonable that the developer should contribute towards the cost thereof. As per Table 4.3 of the scheme, the levied sum of €8,100 applies to new residential units in urban areas that have floor areas of between 0-100sq.m. I note a higher sum applies to units which have a floor area in excess of 100sq.m.
- 7.4.** In their response to the First Party appeal, the Planning Authority notes that they do not attach contributions to domestic garages at present. Where permission is sought for conversions of garages for residential use, it is indicated that the contributions as set out in the Development Contribution Scheme are applicable. Whilst I do not accept the First Party appellant's claims that the inclusion of the condition amounts to double charging, I do note that Section 4.10 of the Scheme highlights that Development Contributions will not be charged on a change of use permission, where such change of use does not result in a significant intensification of demand on public infrastructure. Given the scale and urban infill location of the site, in my opinion, it is unlikely that the new use would lead to a need for new or upgraded infrastructure/services, or that a significant intensification of demand would be placed on existing infrastructure in the area. I have reviewed the documentation submitted with the application and there is nothing to suggest that this would be case given its overall scale.
- 7.5.** Whilst in this specific instance, the proposal also seeks to extend the existing structure, I note that the extension is modest in size and equates to a total additional floor area

of c. 14sq.m. In this regard, I refer to Section 4.3 of the Scheme, which notes that 'Residential extensions that do not increase the overall floor area of the house over 100sq.m. in urban areas, and over 150sq.m. in rural areas, will be exempt from contributions'. As the extended structure which will be in use as a dwelling will have a maximum floor area of 48sq.m., I consider it reasonable in this instance for the additional floor area to be exempt from contributions.

- 7.6.** Whilst the Planning Authority refer to a number of decisions for a change of use which have included a financial contribution, I note that the matter of whether a development contribution should be applied was not contested by the Applicant in any of these cases nor were they included in the grounds of appeal. In the case of the referenced decisions that were determined by the Board, I do not consider them to be directly relevant in this instance as the appeal related principally to the planning merits of the proposals. In my view, it is not reasonable, or necessary in this instance, for a contribution to be paid by the Applicant as the Scheme allows for such a change of use to be exempt under Section 4.10.
- 7.7.** In summary, I do not consider that the provisions the Wicklow County Council Development Contribution Scheme 2015, as updated on the 16th February 2021 have been properly or fairly applied in this case. The Scheme clearly allows for waivers in the case of change of use permissions and, in my opinion, the proposed new use for a 1 no. bedroom dwelling would not attract a need for new or upgraded Local Authority infrastructure, or lead to a significant intensification of demand being placed on existing infrastructure in the area. Although the proposal includes a modest extension to facilitate the change of use (i.e. 14sq.m.), I have had regard to Section 4.3 of the Scheme and I do not consider it reasonable for the application of a levy that equates to a sum that is applicable to an entirely new dwelling to be appropriate in this instance.
- 7.8.** In this regard, I consider that Condition No. 2 of the Planning Authority's Decision should be omitted.

8.0 Recommendation

- 8.1.** Having regard to the above, it is recommended that Wicklow County Council be directed that Condition No. 2 attached to the *Notification of Decision to Grant Permission* be omitted from the final Decision.

Enda Duignan

Planning Inspector

9th January 2023