



An
Bord
Pleanála

Inspector's Report ABP 317895-23

Development	Modifications to approved residential development under construction and Retention permission for rear boundary wall.
Location	Avonvale Manor, Ballynerrin Upper, Wicklow, Co. Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	23/520.
Applicant(s)	Liam Neville Developments Ltd.
Type of Application	Permission and Retention Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Suzanne Cullen & Ors
Observer(s)	None.
Date of Site Inspection	29 December 2023.
Inspector	L. Gough.

1.0 Site Location and Description

- 1.1. The site is situated within and forms part of the Avonvale Manor housing estate residential development which is currently under construction (L.A. Ref. 16/514 and amended under 17/445), located on the south-western outskirts of Wicklow town - about 2.1km from the town centre.
- 1.2. Avonvale Manor is accessed from the Ballyguile and Ballynerrin Road, which is a narrow poorly aligned road with low density/one-off housing. The R751, above which the housing estate is elevated, is situated to the immediate west and forms the western boundary of the estate.
- 1.3. The subject appeal site comprises the rear gardens, and the rear retaining wall to same, of 6No. 3 bedroomed dwellings, dwelling Nos 26-31, which have already been constructed. The dwellings are located to the central area of the western frontage of the estate, overlooking the R751 and surrounding countryside.
- 1.4. The rear garden areas to dwellings Nos 26-31 have a significant height difference, rising on a stepped/ terraced basis, in an easterly direction over a distance of 19m, between the rear walls of the dwellings, to the rear retaining boundary wall already constructed and to be retained.

2.0 Proposed Development

- 2.1. Permission for revisions to length of rear gardens of House Nos. 26 to 31 inclusive to a 19m depth, from a permitted depth of between 21-30m.
- 2.2. Retention permission for recently constructed retaining boundary wall at rear of Houses 26 to 31 inclusive, required to ensure a maximum 1:10 gradient to rear gardens.
- 2.3. The application thus being appealed, seeks to omit relatively small areas of irregular shape to the rear of each of the 6No dwellings, and retain the as-built rear retaining wall.

3.0 Planning Authority Decision

3.1. Decision

Wicklow County Council granted permission for the proposal, subject to 2No standard conditions which relate to the proposal being undertaken in accordance with the plans and information submitted and duration of the permission granted.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Council's Planning Report forms the basis for the decision. It provides a description of the appeal site, planning history, context and characteristics, and an overview of the relevant local policy context, in accordance with the Wicklow County Development Plan 2022-2028 and Wicklow/ Rathnew Town Development Plan 2013-2019. The following points are noted from the report of the Planning Officer:

- The planning history of the site including site area and density calculations is reviewed and in consideration of the fact that the current proposal (subject appeal proposal) does not seek to increase the number of dwellings on the site, the planning case officer noted their satisfaction that the density calculations were correct and had not been overstated.
- The rear gardens as currently permitted, are long at circa 21-30 metres, and stepped across 3 levels due to the gradient on the site.
- The hatched area to be excluded from the end of the rear gardens would not be particularly useful or useable to occupants of the dwellings in question due to rear garden site level changes.
- The dwellings will retain rear gardens at 19m in length of circa 138-300sqm, which is well above the minimum garden size of 60-75sqm for a 3-bed dwelling.

3.2.2. Other Technical Reports

None.

4.0 Planning History

- 4.1. 21/630: Permission granted to extend the appropriate period of LA Ref. 16/514.
- 4.2. 18/635: Permission granted for revisions to house types on sites 32, 33 and 34, as granted under 17/445, and minor revisions to boundaries and floor levels to dwellings on site and permission for an additional dwelling on site.
- 4.3. 17/445: Planning permission granted for revisions to house types A, B, C & D, as granted under LA Ref. 16/514.
- 4.4. 16/514: Permission granted for the construction of 34 no dwellings of a design and stylisation similar to that as granted under 06/5648 and extended under 12/6575 including garages to house numbers 1-4 on an estate layout similar to that as granted under LA Ref. 06/5648 and extended under 12/6575.

Site to the East

- 4.5. 22/633: Part 8 Permission – 10No Social housing units and all associated works for 6No 2bed, two storey housing units and 4No 3bed two storey housing units.

5.0 Policy and Context

5.1. Development Plan

- 5.1.1. Under the 2013-2019 Wicklow/ Rathnew Town Development Plan, the site has a zoning designation of R4 (New residential), with an objective to provide for new residential development at densities up to 10 units per hectare. A review of the Wicklow/ Rathnew Town Development Plan 2013-2019 was commenced in 2023, with submissions being invited to a pre-draft public consultation between 19 July to 28 September. The associated online consultation portal indicates no further progress to this review process, at present.
- 5.1.2. The Wicklow/ Rathnew Town Development Plan provisions in relation to open space, require that *“all residential units shall be provided with private open space...at a rate of 0.64sqm per 1sqm of house floor area (for the first 150sqm), with the minimum garden size allowable being 48sqm”*.

- 5.1.3. The Wicklow County Development Plan 2022 – 2028 is the current County Development Plan for the area, wherein Appendix 1 includes Development Design Standards.
- 5.1.4. Section 3.1.4 of Appendix 1 outlines the Open Space requirements for residential development, with the minimum private open space requirement for 3+ bedroomed dwelling units comprising 60-75sqm.

5.2. **5.2 Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities**

- 5.2.1. *“All houses (terraced, semi-detached and detached) should have an area of private open space behind the building line...the area of such private space will be influenced by the separation between buildings and plot widths...the design approach should be based on a recognition of the need to protect the amenities of directly adjoining neighbours and the general character of the area and its amenities, i.e. views, architectural quality, civic design etc.”*

5.3. **Draft Sustainable and Compact Settlements: Guidelines for Planning Authorities**

- 5.3.1. *It is a specific planning policy requirement of these Guidelines that proposals for new houses meet the following minimum private open space standards:*
- 3 bed house – 40 sq. metre min*

5.4. **Natural Heritage Designations**

The appeal site is not located within any Natura 2000 site. The closest Natura 2000 site is the Murrough SPA (Site Code 004186), which is over 2.18km to the north east of the site on the coastal side of Wicklow Town. Wicklow Head SPA (Site Code 004127), is also on the coast and is around 2.82km to the north-east of the site. Taking into consideration the nature, extent and scope of the proposed development, which is an amendment to a larger permitted housing estate development and to the nature of the receiving environment, with no direct hydrological or ecological pathway to any 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.

5.5. EIA Screening

Having regard to the existing development on site, the nature and scale of the proposed development, which is an amendment to a larger permitted housing estate development and the location of the site, it is considered that 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 appeal has been lodged by the residents of 2No dwellings situated approximately 101m to the east of the rear boundary of the subject appeal dwelling sites, on the opposite side of the Ballyguile/ Ballynerrin Road from the Avonvale Housing Estate and directly opposite the Part 8 Residential Development approved by Wicklow County Council.

The main issues raised in the grounds of appeal, relate to:

- The subject application being appealed arises from the over development of two adjoining residential schemes by falsely overstating the relative size of the sites on which the proposed developments will be built.
- Retention sought is necessary to provide on-road parking for social housing granted under planning reference 22/633.
- The building of consent L.A. Ref. 22/633 now results in LA Ref. 23/520 (and original grant LA Ref. 16/514), no longer being able to comply with stipulated sightlines exiting the estate onto the public road.
- The application form as lodged, is incorrect, as it relates also to part of the land now to be developed by Wicklow County Council and should refer to that application also, 22/633.

6.2. Applicant Response

- The appeal relates to the appellant's desire for consideration from Wicklow County Council to agree changes to the Council's on-road car parking arrangements (permitted under LA Ref. 22/633), proposed to be located to the front of the appellants' houses.
- The issue of on-road car parking permitted under LA Ref. 22/633 is extraneous to the subject appeal proposal, and the land situated between the Avondale Manor housing estate and the Part 8 Wicklow County Council housing development is not owned by Liam Neville Developments Ltd (the applicant).
- Density concerns are not relevant to the subject appeal development proposal.
- Public road sightline issues have been resolved under prior planning application decisions. Wicklow County Council have responded to Liam Neville Developments Ltd, "*stipulating that in a 50kph zone the visibility envelope is 2.4m x 45m*".

6.3. Planning Authority Response

No response was received from the Planning Authority.

6.4. Observations

None

6.5. Further Response

None

7.0 Assessment

- 7.1. The main issues are those raised in the grounds of appeal and the Planning Reports, and I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Zoning/ Planning History
- Density
- Residential Amenity
- Parking/ Sightlines
- Validation

7.2. Zoning/ Planning History

7.3. The proposed development is located in an area zoned for low density housing development in the Wicklow–Rathnew Town Development Plan, 2013-2019.

7.4. The previously permitted housing estate development includes the subject 6No residential sites, all of which are now constructed and the rear retaining wall to be retained, is also in situ.

7.5. The proposal for amendments to a permitted residential development and which has a history of residential permission (including modifications to same) since 2006, would therefore be acceptable in principle, subject to an assessment of the proposal under relevant Development Plan criteria.

7.6. Density

7.7. The grounds of appeal refer to false calculations of the subject Avondale housing estate development and the approved Wicklow County Council Part 8 housing scheme, to maximise site densities. I note that the County Council's planning report has set out in some detail the planning history and associated density calculations in relation to both of these developments.

7.8. As the issue raised relates to existing permitted housing estate development, this matter is also thus not one which is pertinent to the subject appeal considerations, although it is however noted that the current proposal does not seek to increase the number of dwellings proposed and that any potential associated issues relating to density would therefore be limited to those comprising qualitative aspects.

7.9. Residential Amenity

7.10. One of the ways of assessing qualitative aspects relating to density is whether the development complies with minimum standards of residential amenity for occupants of dwellings within the development.

- 7.11. Whilst the extant 'Quality Housing for Sustainable Communities' Best Practice Guidelines (2007) published by the Department of the Environment, Planning and Local Government, does not provide any prescriptive private open space requirement for residential dwelling, the as yet unadopted Draft revision of same, states that a three-bedroom house should provide a minimum of 40sqm.
- 7.12. Appendix 1: Development Design Standards of the Wicklow County Development Plan requires 60-75sqm for a three-bedroom house, whilst the Wicklow/ Rathnew Town Development Plan requires *0.64sqm per 1sqm of house floor area (for the first 150sqm), with the minimum garden size allowable being 48sqm (with a resultant requirement of c.88sqm private open space requirement)*.
- 7.13. The application information submitted illustrates the following rear garden open space provision:

3 Bed Dwgs: Site No.	Dwelling Floor Area: House Type D	Pvt Open Space Provided
26	138sqm	140sqm
27	138sqm	138sqm
28	138sqm	140sqm
29	138sqm	138sqm
30	138sqm	140sqm
31	138sqm	309sqm

Adequate private open rear garden space, in excess of all requirements, is thus provided for under all relevant development plan and national guideline provisions for each of the respective dwellinghouses.

- 7.14. Due to the sloping nature of the site, and resultant ground level variances relative to each dwellinghouse and their respective rear gardens, these rear areas would be required to be accessed by garden stairs, and having undertaken a site visit, I would view these as largely ancillary and unusable as qualitative private open space. Given that the proposed amendment to the rear garden depths of Houses Nos 26-31 will thus entail private open space area provision higher than the minimum required, I

consider the level of residential amenity for occupants is acceptable and indicates the proposed development would not be excessive in density.

7.15. Overlooking

The second qualitative issue in terms of density and impact on residential amenity, relates to the quality of private open space and in particular its usability being diminished through overlooking.

7.16. Whilst the subject appeal proposal seeks to reduce the depth of the rear gardens to houses No.26-31, the area being excised from the rear of these gardens, will nonetheless still function as open space and will not result in any residential development to the rear of these dwellings being overlooked to any greater degree.

7.17. The height of this area is also such that views from the upper excised area, are across to the other side of the valley, as opposed to below and into the rear gardens of the dwellings, with this also being mitigated by the height of the blockwork retaining wall (which will extend above the ground level of the upper site level area), which is approximately 3.3m in height, from the top of the highest part of the ground level of the rear of the gardens to the 6No dwellings, to the top of the retaining wall.

7.18. In my opinion, the proposed reduction of garden depths and retention of the as-built retaining boundary wall, will therefore not give rise to any significant increase in terms of overlooking, overshadowing or visual impacts.

7.19. Parking/ Sightlines

The grounds of appeal consider the proposed development would present an access issue to the appellants' properties and comprise a traffic hazard and puts forward the argument that the proposed subject appeal development is required in order to provide on-road parking for the Council's Part 8 housing scheme (Ref. 22/633).

7.20. As the Part 8 housing scheme has already been approved, which includes provision for on-street car parking, without the need for the subject appeal rear garden space area (subject to being excised), I do not consider this argument to have any merit nor necessarily to be applicable. In any event, the proposed development being retained will have no impact to existing sightlines/ accessibility to/ from the housing estate, nor to those of dwellings within the area, as no change to the existing housing estate access nor status quo of same, is required.

7.21. It is also noted that in regard to the matter of sightlines, Wexford County Council have resolved this matter with the first party applicants, clarifying that a visibility envelope in a 50kph zone (applicable to the Ballyguile/ Ball Road, is 2.4m x 45m.

7.22. Validation

As regards matters raised relating to the application form lodged, it is noted that validation is a matter for the local planning authority and is therefore not an issue relevant to the subject appeal considerations.

7.23. In conclusion, I consider the grounds of appeal overstate the impact that the proposed modification will have at this location. I therefore consider the proposed modified rear garden depths and requisite rear retaining wall to be retained, to be in accordance with the proper planning and sustainable development of the area.

8.0 Recommendation

8.1. I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to;

- the zoning of the site for residential development in the Wicklow/ Rathnew Town Development Plan 2013 – 2019 and the precedent and acceptability of residential development being permitted on the subject 6No appeal sites,
- the nature and scale of the proposed development and development proposed to be retained,

it is considered that, subject to compliance with conditions below, the reduction in depth of the gardens of Houses No. 26-31 would comprise reasonable modifications to the development permitted under L.A. Reg. Ref. 16/514 and amended under 17/445 and PRR 18/635, that would not seriously injure the visual or residential amenities of the dwellings or property in the area, and would comply with the relevant standards of the Development Plan for this type of development. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the plans and particulars lodged with the application submitted on the 8th day of June 2023, 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>The development shall be carried out and completed in accordance with the relevant terms and conditions of the permission granted under L.A. Reg. Ref. 16/514 and amended under 17/445, and any agreements entered into thereunder, except as amended in order to comply with the conditions attached to this permission.</p> <p>The duration of the permission granted herein shall expire with the expiration of the planning permission granted under L.A. Reg. Ref. 16/514, as extended pursuant to Section 42 of the Planning and Development Act, 2000 (as amended), by L.A. Reg. Ref. 21/630.</p> <p>Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous 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.

L. Gough
Planning Inspector

07 January 2024