



An
Bord
Pleanála

Inspector's Report ABP-318336-23

Development	<i>Construction of a dwelling and all associated site works</i>		
Location	<i>15 Eagle Valley, Enniskerry, Co. Wicklow</i>		
Planning Authority Ref.	<i>23113</i>		
Applicant(s)	<i>Marcus & Pam Maginer</i>		
Type of Application	<i>Permission</i>	PA Decision	<i>Refuse Permission.</i>
Type of Appeal	<i>First</i>	Appellant	<i>Marcus & Pam Maginer</i>
Observer(s)	<i>Alan Jackson</i> <i>P. O'Flanagan & P Fitzpatrick</i> <i>Lily Hennegan</i> <i>Siobhan O'Keeffe</i> <i>Margaret Ryan</i> <i>Antoininn Ni Dhuinn</i> <i>Daniel Kenny</i> <i>Elizabeth Davitt O'Connell</i>		
Date of Site Inspection	<i>25/01/2024</i>	Inspector	<i>Andrew Hersey</i>

Context

1. Site Location/ and Description. The site is located in the suburban estate located to the north east of Powerscourt Demense and to the south west of

Enniskerry Village. The site comprises of a parcel of land which forms part of the rear garden of a two storey detached dwelling (No 15 Eagle Valley) The site which has a stated site area of 0.038ha. is part of the rear garden space associated the house and fronts onto the public road to the west. There is a high wall delineating the site from the adjacent footpath. There is a detached house to the north No. 36 Eagle Valley and to the east 14 Eagle Valley.

2. Description of development. The proposed development comprises of Permission is sought for:

- A detached two storey dwelling with a floorspace of 177sq.m.
- Ancillary site works

3. Planning History.

- None on site

4. National/Regional/Local Planning Policy

The Wicklow County Development Plan 2022- 2028

- The Wicklow County Development Plan 2022- 2028 is the statutory plan in force at present and came into effect on the 23rd October 2022
- CPO 6.21: "In areas zoned '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 (PO 6.25 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"
- Appendix 1 Section 3.1.6 Infill / backland development in existing housing areas sets out the required standards with respect of infill residential development. It states that: *Many older housing areas were built at densities and in such formats that resulted in particularly large plot sizes. Where opportunities arise for infill or backland type development, the following standards shall apply:*

- *The site / plot must be capable of being developed in accordance with the density parameters set out for that area in the local area or town plan, or in any case in keeping with the prevailing density of the immediate area. Where no density limit is set (for example, in areas zoned 'existing residential'), the quantum of development that will be permissible will flow as a result of adherence to best development standards;*
- *The design of a new house should complement the area. Where an area has an established unique or valuable character worthy of preservation, particular care should be taken to match the style and materials of the area; however, where an area is a 'mixed-bag' of styles and periods, more flexibility can be applied;*
- *Particular attention will be required to be paid to the design and location of new windows, in order to ensure that the privacy of either the existing house on the plot or adjacent houses is not diminished;*
- *Gable walls abutting public areas (e.g. footpaths, car parking areas and open spaces) will not be permitted and a minimum separation of 0.9m will be required between the house gable and the side wall of the plot;*
- *Where the access route to a proposed development site is proposed to run alongside the external walls of the existing dwelling on the development plot or the external walls of a dwelling on an adjoining plot, there must be adequate separation available to facilitate the required driveway (normally 3m) and allow a 0.5m 'buffer' area alongside any existing dwelling. Any deviation from this standard must be evaluated on traffic safety and residential amenity grounds;*
- *The re-design of access and car parking arrangements for the existing dwelling on the plot must be clearly detailed, and permission included for same where required; developments accessed from a long narrow • driveway must provide for the turning of vehicles within the site;*

- *Cognisance will be required to be taken of the potential of adjacent rear / side plots to be developed in a similar manner and separation between site boundaries, location of windows etc must not prejudice development options on the adjacent plot;*

Bray Municipal District Local Area Plan 2018

The site is zoned 'RE Existing Residential' To protect, provide and improve residential amenities of existing residential areas

5. Natural Heritage Designations

- The nearest designated site is the Knocksink Wood SAC (Site Code 000725) which is located 700 metres to the north of the site
- The site is located within the Powerscourt Woodland pNHA Site Code 001768

Development, Decision and Grounds of Appeal

6. PA Decision. Permission was refused for the following reason:

Having regard to

(a) the location of the development on a restricted site,

(b) the existing pattern of development in the area which is characterised by dwellings on large plots,

(c) the design/ layout of private open space/ boundaries, access arrangements and,

(d) the proximity and overall length of the proposed dwelling to the adjoining private amenity space of the dwelling to the north east which would appear visually intrusive,

It is considered that the proposal would be out of character with the existing pattern of development within this area, would result in overdevelopment of the site and would injure the amenities of properties in the vicinity in particular the dwelling to the northeast. The development would therefore materially contravene the

zoning objective for the area as set out in the Bray Municipal District Local Area Plan 2018, which seeks "To protect, provide and improve residential amenities of existing residential areas", would set an undesirable precedent for similar type development, would be contrary to Objective CO 6.21 of the 2022-2028 Wicklow County Development Plan which seeks that house improvements, alterations and extensions and appropriate infill residential development in existing residential areas shall have regard to the protection of the residential amenities of houses in the immediate environs. The development would therefore be contrary to the proper planning and sustainable development of the area.

7. Internal Reports

None received

8. Prescribed Bodies

Uisce Eireann (21st March 2023) – no objection

9. Submissions

- There are three submissions on file as follows:

Brian O'Flangan & Paula Fitzpatrick (69 Eagle Valley) received 14th March 2023

Eagle Valley Consolidated Management Limited received 14th March 2023

Mrs. Lily Hennigan (90 Eagle Valley) received 14th March 2023

These can be summarised as follows:

- The applicant does not have consent to interfere with the grass verge at the front of the subject site and no consent from Management company has been granted for same.
- That the applicants are in breach of their contract with Eagle Valley Consolidated Management Ltd, the management company for this estate.
- overdevelopment of the site and provides a substandard level of private open space.

- That the dwelling is out of character with the area.
- The proposal would set an undesirable precedent for similar type development.
- Contrary to zoning objective

10. Grounds of Appeal

A first party appeal c/o McCabe Durney Barnes Planning Consultants was received by on the 26th October 2023 In summary the appeal states that

- The proposed development would not result in the over development of the site and would not injure the amenities or be visually intrusive of properties in the vicinity in particular the dwelling to the northeast.
- The proposed development would be fully in accordance with the RE zoning objective for the area and Objective PO 6.21 of the Wicklow County Development Plan 2022-28
- The proposed development presents a bespoke architectural design for a unique site in Eagle Valley estate and would not set an undesirable precedent for similar type development in the area.
- The proposal complies with national policy which seeks to deliver at least 40% of all new homes nationally, within the built up footprint of existing settlements
- Section 2.2 of the Bray Municipal District Local Area Plan 2018 states: In recognition of the above this plan has aimed to consolidate the existing built pattern in Enniskerry by maximising the potential of large sites close to the settlement core and any infill sites along the main roads within the settlement.
- CGI's of the proposed house as it sits into the streetscape have been included in the appeal which show that it respects the design of other houses in the area and is in no way overbearing.
- A personnel letter from the applicants is also included which in summary states that they need to downsize but at the same time continue to reside in

the area. This property is one of the very few properties in Eagle View where there is an opportunity to build.

- I note that revised proposals have been submitted which include for amended material finishes, revised roof profile and details with respect of vehicular access to the proposed house.

11. PA Response

None received

12. Observations

There are 8 observations on file as follows :

Alan Jackson

P. O'Flanagan & P Fitzpatrick

Lily Hennegan

Siobhan O'Keeffe

A2Z Property Management c/o Margaret Ryan

Antonina Ni Dhuinn

Daniel Kenny

Elizabeth Davitt O'Connell

In summary they raise the following issues:

- That Eagle Valley are all part of a legal covenant which stipulates one dwelling per plot
- That the houses referred to in the appeal 42a and 80a Eagle Valley were not granted as infill houses on corner sites by the owners of numbers 42 and 80 respectively. These were granted to the developers of the estate after the parent permission was initially granted and then houses were of the same style as other houses in the estate. These sites were always independent sites and were never part of existing sites within the estate.
- That if anyone wishes to downsize, there are 3 bedroomed properties being built 500 metres from the proposed development site

- That the proposal would set a precedent for other such development within the estate which would erode the ambience of the estate
- The proposal would put further pressure on services.
- The proposal would have a negative impact upon the design style of Eagle Valley
- Traffic Safety as a consequence of cars reversing out onto the road from the proposed development site
- Loss of residential amenity
- Loss of trees, hedges and other vegetation.
- That the size of the proposed house and garden does not integrate with other houses in the estate
- That the applicant does not have any consents in place to interfere with the grass margin or any walls that would require to be demolished to facilitate vehicular access both of which are outside of the red line boundary.

Environmental Screening

13. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, 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.

14. AA Screening

Having regard to the modest nature and scale of development, location in an urban area, connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 Assessment

2.1. Introduction

2.1.1. I have examined the application details and all other documentation on file and I have inspected the site and have had regard to relevant local development plan policies and guidance.

2.1.2. I am satisfied the substantive issues arising from the grounds of this third party Appeal relate to the following matters-

- Principle of Development/Density
- Residential Amenities
- Visual Amenity
- Traffic Safety
- Precedent
- Other Issues

2.2. Principle of Development

2.2.1. The proposed development is located on lands zoned as RE in the Bray Municipal District Local Area Plan 2018 where it is the policy of the council under RES5 that *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..... consideration will be given to densities above the prevailing density, (up to 10 / ha, depending on local circumstances), subject to adherence to normal siting and design criteria'.*

2.2.2. The proposed development is located to the rear garden of an existing detached dwelling on a stated site area of 0.038ha. This results in a density of 25 units/ha. This is well in excess of the prevailing density in the area which are between 0.08 ha and 0.09ha which is circa 10 units/ha. The density proposal therefore is nearly 2.5 times more dense than the prevailing density of the area

- 2.2.3. However, regard must be had to National Planning Policy which seeks that that 40% all new residential development is constructed with the footprint of existing built up footprint of settlements. The proposed development is part of the rear garden of an existing detached house on a corner plot and which therefore has direct frontage onto a public road. With respect of the same and having regard to national policy with respect of increasing density in settlements, I am of the opinion the site constitutes an infill site and should be considered acceptable subject to residential standards being met and subject to residential amenities of adjacent properties being protected.
- 2.2.4. With respect of the same, I consider that the construction of dwelling at this location to be acceptable in principle and I do not consider the proposal constitutes overdevelopment.

2.3. Residential Amenities

- 2.3.1. I note that revised plans were submitted with the appeal which show for an altered roof profile and for revised material finishes. I would consider that such amendments are not material and on this basis, I propose to assess this application on the basis of the plans submitted with the first party appeal.
- 2.3.2. I note two properties adjoining the stie No 35 to the north and No 14 to the east.
- 2.3.3. I note that a shadow study was submitted by the applicants which shows that there will not be an undue impact with respect of overshadowing on these properties.
- 2.3.4. There are windows on the ground floor of the elevation which face east to No. 14 – these will face towards the party boundary which I note is proposed to be replaced with a block wall 2.0 metres in height. There will be no impact in terms of overlooking from these windows. There are no windows proposed at first floor from this elevation.
- 2.3.5. There are windows on both the ground and first floor facing north towards No 35. There is a detached garage on the southern side of this property. Ground floor windows face towards the boundary. There is a large window facing north from a first floor bedroom, but I am of the opinion that the same faces towards the front garden of No. 35 and as such I am of the opinion that there will be no impact as a consequence of the same. The en-suite bathroom window on the same elevation can be of opaque glass and as such there will be no overlooking impact as a consequence of the same.

- 2.3.6. With respect of the provision of private open space, I note that there is 92 sq.m. of enclosed space provided in the south west corner of the property. In addition there is a strip of open space provided on the southern boundary. I am of the opinion that this is sufficient and is surplus to development plan standards with respect of private open space (the minimum which is 60-75sq.m. as per Appendix A of the statutory plan)
- 2.3.7. With respect of the above, I consider that there will be no impact upon the residential amenities of adjacent properties.

2.4. Visual Amenities

- 2.4.1. The proposed dwelling comprises of 177sq.m. of floorspace over two floors. While the design of the said house is modern in form and appearance, the materials, render, brick and slate roof used complement those used on the surrounding houses. I note that the said house is smaller in scale to that of surrounding houses.
- 2.4.2. There is a backdrop of mature trees to the rear east elevation of the house.
- 2.4.3. I note the photomontages of the said house submitted with the appeal which show that it is not out of context with the surrounding area.
- 2.4.4. On the basis of the above, I do not consider that the proposed house will appear out of context with the surrounding houses and as such in terms of visual amenity I consider the same acceptable.

2.5. Traffic Safety

- 2.5.1. Access to the site is to be via a new entrance from the adjacent road which I note is a public road. I note that the proposals include for amendments to the stone wall boundary along the roadside to allow for visibility splays to be achieved.
- 2.5.2. The proposals show for parking on site for 2 cars and sufficient space for turning the car on site. This is therefore compliant with Appendix 1 Section 3.1.6 Infill / backland development (of the Wicklow County Development Plan 2022-2028)
- 2.5.3. I note that the proposal will result in part of the roadside grass verge being removed to facilitate the access. In planning terms I am of the opinion there is no issue with this. A submission on the file from the management company of the estate states that the roads and footpaths are in charge of Wicklow County Council. The status of ownership

of the verge is unclear. In any rate, I consider that this is an issue that is outside of the Boards remit to resolve and that the principal of the access here is acceptable and it is between the applicants and the owners of the verge to resolve the issue of access over the same.

2.6. Precedent

- 2.6.1. I note the appellants use of developments at 42a and 80a Eagle Valley as precedent for Infill developments allowed within the estate and I further note from the observations received that this is not the case and that they should not be classified as Infill Development. I have examined the files with respect of the two developments. Planning Reg. Ref. 08/2119 and Planning Reg. Ref. 08/2122 and I am of the opinion that they do not constitute infill sites.
- 2.6.2. With respect to precedent that this development may result in, I note that there are very few opportunities within the estate where such development could occur and as such I am of the opinion that the granting of this development will not result in the proliferation of similar type developments. In any rate this is a very low density suburb and national and local planning policy would support the densification of the same and that similar corner and infill development sites be allowed to develop.

2.7. Other Issues

- 2.7.1. I refer to a number of observations on the file which refer to a legal covenant that is in place with the management company which restricts the use of the site for a single dwelling house and their ascertain that the proposed development is in breach of this covenant. The same is noted, however, I do not consider that this is an issue for the Board to get involved in and that it is more appropriate that this is a legal issue be resolved outside of planning.

3.0 Recommendation

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

4.0 Reasons & Considerations

Having regard to the information submitted with the application and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would comply with the zoning objective for the site and the policies with respect of residential development as set out in the Wicklow County Development Plan 2022 – 2028, would not be injurious to the visual or residential amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

5.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further information received on the 23/02/23, 27/07/23 and as further amended by way of revised drawings submitted on appeal to the Board on the 26/10/23 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>Details, including samples, of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
3.	<p>Boundary details to the rear, front and side boundaries shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of proper planning and orderly development.</p>

4.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health</p>
5.	<p>The developer shall ensure that the site is appropriately maintained and that the public road remains free of any dirt and debris during the construction phase of development.</p> <p>Reason: In the interest of proper planning and orderly development.</p>
6.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Monday to Fridays, between 0800 and 1400 hours on Saturday 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: To safeguard the residential amenities of adjoining property in the vicinity</p>
7.	<p>Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
8	<p>All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.</p> <p>Reason: In the interest of visual amenity.</p>
9	<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>
10.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by</p>

	<p>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>
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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.

Andrew Hersey

Planning Inspector

20th February 2024