



## Inspector's Report

**Development:** Detached part single storey, part two storey dwelling with septic tank and proprietary wastewater management system, new driveway entrance, new groundwater well and ancillary works.  
Studfield South, Donard, Co. Wicklow.

### Planning Application

Planning Authority:	Wicklow County Council
Planning Authority Reg. Ref.:	10/2452
Applicant:	Patrick Gibbons
Type of Application:	Permission
Planning Authority Decision:	Refuse permission

### Planning Appeal

Appellant(s):	Patrick Gibbons
Type of Appeal:	1 <sup>st</sup> v Refusal
Observers:	None on file
Date of Site Inspection:	23 <sup>rd</sup> October, 2010.

**Inspector:** Sarah Moran

## **1.0 SITE DESCRIPTION AND LOCATION**

- 1.1 The site is located in a rural area close to village of Donard in the western side of Co. Wicklow. It is accessed via a narrow, poorly surfaced and steeply sloping local road. The road serves several other dwellings and ends in a cul-de-sac some distance to the east of the site. This is an elevated location close to the 250 m contour line and there are views to the north and east. The site is bound by the road frontage to the south, by Donard Demesne to the west and by agricultural lands to the north and east. A stream (named on the O.S. map as 'Brown Beck Brook') lies close to the northern site boundary.
- 1.2 The site has a stated area of 3.04 ha and is comprised of a small cottage with associated outbuildings and cottage garden and several small fields or paddocks, subdivided by fences and hedgerows. Aside from the cottage grounds, the site is in agricultural use. The cottage is located on the south eastern side of the site and is uninhabited. It has a stated area of c. 60 sq.m. Within the site, levels fall from east to west. There is a significant amount of trees on the site, particularly around the existing cottage and on the western site boundary. There is an existing agricultural gateway to the west of the cottage.

## **2.0 PROPOSED DEVELOPMENT**

- 2.1 The development involves the retention of the existing cottage and outbuilding. A new vehicular entrance would be constructed to the east of the cottage, with a driveway leading to a new house on the northern side of the site. Details of sight distances at the new entrance are provided. The proposed house has a stated area of 224 sq.m. It has a modern design. It is part single, part two storey and has an inverted 'U' layout around an east facing courtyard. The house would be served by a proprietary wastewater treatment plant with a percolation area. Surface water would drain to a soakaway. Water supply would be from a new well. The existing vegetation on the site is to be retained. A report on the condition of the existing cottage was submitted with the application. Details of the applicant's connections to area are provided.

## **3.0 PLANNING HISTORY**

- 3.1 There are no details on file of any planning applications relating to the site.

## **4.0 DECISION OF PLANNING AUTHORITY**

- 4.1 The planning authority refused permission for 4 no. reasons relating to:
- Contravention of housing need policy SS9 of the County Development Plan 2004-2010.
  - Site unsuitable for discharge of effluent to ground as per Environmental Protection Agency (EPA) Code of Practice 2009.
  - Traffic hazard at vehicular entrance.
  - Adverse impact on Donard Brook/Carrigower River which forms part of the Slaney River candidate Special Area of Conservation (cSAC).

## **5.0 FIRST PARTY APPEAL**

5.1 The main points made may be summarised as follows:

- The house would be for the applicant's own use. Details of the applicant's local connections and housing need are provided.
- The applicant wishes to replace the existing house, which is inadequate to meet modern living standards and is uninhabitable. The applicant does not intend to live in the existing farmhouse and is willing to sign a Section 47 occupancy agreement.
- While the proposed house is 250 m from the existing cottage, this location is suitable as it would have no visual impact from the road, right of way, listed view or public vantage points. This location was chosen as a secluded and screened site. The development enables the structure of the vernacular farmhouse to be retained in the interests of visual amenity, local history and heritage.
- A new Site Characterisation Form is submitted for a relocated effluent treatment system. The new location is at a higher level with better soil characteristics, a lower water table and better percolation.
- A detailed proposal for vehicular access is submitted. Sight distances of 65 m can be provided in both directions, which is acceptable at this location. The vehicular accesses to the existing cottage would be closed up.
- It is submitted that Appropriate Assessment screening is not necessary with regard to distance from the cSAC (map and aerial photo submitted) and the adequacy of the proposed new wastewater treatment system.

## **6.0 EASTERN REGIONAL FISHERIES BOARD (ERFB) SUBMISSION**

6.1 The ERFB made a submission to the Planning Authority on foot of the application. The main points made may be summarised as follows:

- The watercourse bordering the site is an important salmonid tributary of the Donard Brook and the Slaney River.
- Request that the wastewater treatment system and percolation area comply with the EPA Waste Water Treatment Manual for Single Houses, have adequate capacity for the development and a maintenance contract.
- Request for an undeveloped buffer zone of 5 m from the river bank is maintained.
- No discharge of suspended solids or any other deleterious matter to watercourses during construction or landscaping works. Particular care with regard to concrete and cement washings.
- Need for grease traps and fuel and oil bunds.

## **7.0 AN TAISCE SUBMISSION**

7.1 An Taisce made a submission to the Board in response to the appeal. The main points made are:

- The applicant's work as a psychiatrist does not require building a house in an unserviced rural area affecting the Slaney River cSAC.

- The 8.4 acre land unit already has a farm dwelling. The applicant acquired the land unit in the knowledge that it was not zoned for housing development and was outside the Donard village boundary.
- The appeal does not properly justify the need for the new house or the site suitability.

## **8.0 POLICY PROVISIONS**

### **8.1 DEHLG Sustainable Rural Housing Guidelines for Planning Authorities (2005)**

8.1.1 The site is located within an *Area Under Strong Urban Influence* as identified in *Map 1: Indicative Outline of NSS Rural Area Types in the Guidelines*. The Guidelines note that these areas show evidence of considerable pressure for development of housing due to proximity to urban area or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network.

8.1.2 Section 3.2.3 considers the distinction between urban and rural generated housing need. It states the following with regard to people working in rural areas;

*“Such circumstances will normally encompass persons involved in full-time farming, forestry, inland waterway or marine related occupations, as well as part time occupations where the predominant occupation is farming/natural resource related. Such circumstances could also encompass persons whose work is intrinsically linked to rural areas such as teachers in rural schools or other persons whose work predominantly takes place within rural areas.”*

8.1.3 Section 4.4 deals with accesses to non-national roads. It emphasises the importance of the avoidance of traffic hazard. It recommends that new entrances are located in such a manner as to provide effective visibility for both users of the entrance and users of the public roads so that opportunities for conflicting movements are avoided. The removal of existing roadside boundaries should be avoided where at all possible except where required for traffic safety purposes.

8.1.4 Section 4.5 relates to protecting water quality. It states;

*“The key to protecting water quality in the context of providing new dwellings in un-sewered rural areas is to ensure that new development is guided towards sites where acceptable wastewater treatment and disposal facilities can be provided, avoiding sites where it is inherently difficult to provide and maintain such facilities, for example sites prone to extremely high water tables and flooding or where groundwater is particularly vulnerable to contamination.”*

8.1.5 Appendix 2 of the Guidelines provides guidance on Biodiversity impacts and the consideration for individual planning applications.

## **8.2 Wicklow County Development Plan 2004-2010**

8.2.1 The previous County Development Plan was still in force when the planning authority issued a decision on the subject application. The following policies are relevant.

8.2.2 The site is outside the development boundary of Donard village and is in the Western Corridor Area as per Map 3C *Landscape Designations*. This zone covers low lying and accessible tracts around the main access routes in the County, in this case the N81, ref. Section 6.1.1. These corridors are under intense pressure from residential and other sporadic development. Policy HL1 states;

*“The Council will ensure that the development of Wicklow takes full account of the Designated Landscape categories and the protection of their amenities and assets.”*

8.2.3 Rural housing policy is set out in Variation No. 3 of the plan, the County Settlement Strategy. Policy SS8 states that all new single house developments shall be restricted to those persons that qualify for rural housing under Section 4.3 of the Plan. Policy SS9 sets out specific categories of circumstances under which residential development will be considered in the Corridor Zone (see enclosed copy of Variation No. 3). Category 12 specifies;

*“Persons whose work is intrinsically linked to the rural area and who can prove a definable social and economic need to live in the rural area and who has resided in the immediate area for at least 10 consecutive years prior to the application.”*

Policy SS 11 refers to the replacement of an existing house in a rural area. It states that where permission is granted for a dwelling in the countryside, it will be practice for the planning authority to seek agreement of the applicant to enter into an agreement under Section 47 of the Local Government (Planning and Development) Act, 2000, restricting occupation of the dwelling to the applicant, his or her heirs or other specific classes of persons. Where an existing dwelling is renovated or extended, no Section 47 will be imposed on such work, where an existing dwelling is replaced, a Section 47 will be applied.

8.2.4 Chapter 5 sets out development guidelines for rural residential development including road access, siting and design, landscaping and wastewater treatment.

## **8.3 Wicklow County Development Plan 2010-2016**

8.3.1 Wicklow County Council made a new County Development Plan on the 6<sup>th</sup> September 2010, to have effect from the 4<sup>th</sup> October 2010

8.3.2 Chapter 6 sets out rural housing policy. Policy RH1 states;

*“Urban generated development, including housing, shall not be permitted in the rural areas of the County, other than in rural settlements that have been deemed suitable to absorb an element of urban generated development.”*

Objective RH 14 sets out circumstances where permission will be granted for a house in the countryside. Category 12 is the same as in the previous plan. Category 4 provides for the replacement of a farm dwelling for the use of a farming family, not as speculation. Category 8 provides for the renovation or conversion of existing farm buildings. There is no specific policy in relation to occupancy conditions for replacement houses in the countryside.

8.3.3 All applications for one-off housing development in rural areas are to be subject to normal planning considerations including traffic safety, sanitation, heritage, design and siting. Section 6.4.3 sets out rural housing design standards. Section 11.7 sets out development standards for road accesses, including entrances and sightlines, ref. Section 11.7.4.

8.3.4 The site is again located in a landscape Corridor Area as per Map 17.09A. This area has the same description as under the previous plan. Map No. 17.01 indicates the location of the Slaney River cSAC. Section 17.5 deals with water systems. Objective WT1 states;

*“To implement the EU Water Framework Directive and associated River Basin and Sub-Basin Management Plans and the EU Groundwater Directive to ensure the protection, improvement and sustainable use of all waters in the County, including rivers, lakes, ground water, coastal and estuarine waters, and to restrict development likely to lead to a deterioration in water quality.”*

Section 17.9, *Landscape Characterisation*, describes the Western Corridor area and classifies it as having medium vulnerability.

8.3.5 Relevant extracts from the current plan are enclosed.

## **9.0 ASSESSMENT**

9.1 In my judgement, the principle factors for consideration in this appeal are:

- Compliance with County Development Plan rural housing policy.
- Drainage issues.
- Potential impacts on Slaney River cSAC.
- Vehicular access.

These issues may each be considered separately as follows.

### **9.2 Rural Housing Policy**

9.2.1 The site is located in an unzoned rural area known as the Western Corridor Area that is under significant pressure for development. Under the previous County Development Plan, which was in force when the decision was issued, Policy SS9 specified that permission could be granted for a house in such areas to persons whose work is intrinsically linked to the area and who can

prove a definable social and economic need to live in the area and who have resided in the immediate area for at least 10 consecutive years prior to the application. In the current plan, Objective RH14 specifies exactly the same requirements.

9.2.2 The documentation on file indicates the following in relation to the applicant's local housing need:

- The applicant has an address in Dublin and has resided at this location for 15 years.
- The applicant is a permanent, full time Consultant with the West Wicklow/Kildare Community Mental Health Service, which provides a range of home-based treatments to the population of the West Wicklow area including Donard, Blessington and Baltinglass. The place of employment is stated as Naas Hospital. The applicant has occupied this post since 2002. A letter from the Acting Clinical Director of the Mental Health Service is submitted in support of this contention.
- The applicant owns the site (copies of utility bills are submitted). The existing cottage is in very poor condition and is uninhabitable. The proposed development is a replacement dwelling.
- The applicant is willing to agree to a Section 47 occupancy condition.

9.2.3 It is considered that the applicant does not have a genuine local housing need with regard to County Development Plan Objective RH14 as set out above. The applicant has not lived in the local area. The applicant's current place of occupation is Naas Hospital and covers the West Wicklow and Kildare areas. It is not considered that this work predominantly takes place in the rural area as per Section 3.2.3 of the DEHLG Rural Housing Guidelines. It is not considered that the applicant has work that is "*intrinsically linked to the local area*" or has proved a "*definable social and economic need to live in the area*" as per Category 12 of Objective RH14. The development would therefore contravene the rural housing policy of the County Development Plan 2010-2016.

9.2.4 It is submitted that the development involves the construction of a replacement house as there is an existing uninhabited dwelling on the site. Category 8 of Objective RH14 provides for the renovation or conversion of existing dilapidated buildings. However, given that (i) the existing house would be retained and renovated and (ii) the proposed house would be remote from the existing house, with a separate vehicular entrance, it is considered that the development does not constitute the construction of a replacement dwelling.

### **9.3 Drainage Issues**

9.3.1 The site is unserviced and a wastewater treatment system with percolation area is proposed. On site inspection, it was noted that parts of the site appeared waterlogged. The Site Characterisation Form submitted with the application indicates a poorly draining site with rushes intermittently present (may indicate a fluctuating groundwater level), the water table encountered at 1.1 m below ground level, a clay soil type, a 'T' test result of 140.55 and a 'P' test

result of 81.83. Ponding is highly likely in such conditions. The proposed treatment system comprises a raised percolation area followed by a reed bed and willow tree plantation. It is noted that the EPA *Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses* (2009) states;

*“In situations where the T-test is in excess of 90 then, irrespective of the P-test result, the site is unsuitable for discharge to treated effluent to ground as outlined in this code, as it is likely ultimately to result in ponding due to the impervious nature of the underlying subsoil (or bedrock).”*

The planning authority considered the proposed wastewater treatment arrangement to be unacceptable. A report on file by the Environmental Health Officer of the planning authority recommends refusal.

- 9.3.2 A revised proposal is submitted with the appeal. The treatment system is relocated with a percolation area further to the south east of the house, at a higher level and away from the stream to the north of the site. The Site Characterisation Report for the new location indicates that the water table was not encountered, the soil has better percolation characteristics and a ‘T’ value of 16.39. While it may be possible that ground conditions vary within a large site such as this, it is difficult to reconcile this result with the previous Site Characterisation Report and with the poorly drained appearance of the site on the day of inspection. It is noted on this regard that the second Site Characterisation Report was carried out during the summer months. The revised proposal for a wastewater treatment system is considered unsatisfactory on this basis. It is also considered that the development would contravene Section 4.5 of the DEHLG Rural Housing Guidelines, which recommend the avoidance of sites prone to extremely high water tables where it is inherently difficult to provide and maintain acceptable wastewater treatment systems.

#### **9.4 Potential Impacts on the Slaney River cSAC**

- 9.4.1 The adjacent stream is a tributary of the Donard Brook and the Slaney River, which is a Candidate Special Area of Conservation (cSAC). The appeal submits that Appropriate Assessment is not necessary as the wastewater treatment system is now 250 m away from the stream and it complies with the EPA 2009 code, also that the stream is over 3.5 km from the nearest part of the cSAC. SACs are part of the Natura 2000 network of European sites, a network of sites of highest biodiversity importance for rare and threatened habitats and species across the EU. The DEHLG *Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities* (2009) states;

*“Article 6(3) of the EU Habitats Directive requires that any plan or project that is not directly connected with or necessary to the management of the Natura 2000 site concerned but is likely to have a significant effect on it on its own or in combination with other plans and projects, is to be authorised only if it will not adversely affect the integrity of that site. Screening for AA and, if screening indicates the need, AA itself, must be carried out and the assessment*

*and conclusions recorded to ensure that existing and future plans or projects are not authorised if they are likely to adversely affect the integrity of a site. These safeguards are designed to ensure the conservation of Natura 2000 sites.*

*The requirements of the Habitats Directive in respect of plans and projects are similar in many respects to Environmental Impact Assessment (EIA) of projects, and Strategic Environmental Assessment (SEA) of plans and programmes. However, the focus of AA is targeted specifically on Natura 2000 sites and their conservation objectives. Article 6(3) and 6(4) of the Habitats Directive place strict legal obligations on Member States, **with the outcomes of AA fundamentally affecting the decisions that may lawfully be made.***

***It is a basic responsibility of all agencies of the state, including planning authorities, to act diligently to ensure that their decisions in the exercise of their functions, as well as their actions, comply fully with the obligations of the Habitats Directive.”***

- 9.4.2 Section 2.3 of the DEHLG guidance document advocates the precautionary principle, stating that where doubt exists about the risk of a significant effect, an AA must be carried out. If a project is likely to undermine any of the site’s conservation objectives (i.e. objectives that relate to the Birds or Habitats Directives), it must be considered likely to have a significant effect on that site. The Site Synopsis for the Slaney River Valley cSAC states;

*“The site is a candidate SAC selected for alluvial wet woodlands, a priority habitat on Annex I of the E.U. Habitats Directive. The site is also selected as a candidate SAC for floating river vegetation, estuaries, tidal mudflats and old oak woodlands, all habitats listed on Annex I of the E.U. Habitats Directive. The site is further selected for the following species listed on Annex II of the same directive - Sea Lamprey, River Lamprey, Brook Lamprey, Freshwater Pearl Mussel, Twaite Shad, Atlantic Salmon and Otter.”*

The submission of the Eastern Regional Fisheries Board (EFRB) also notes that the stream to the immediate north of the site is an important salmonid tributary of the Donard River, which is an important salmon spawning tributary of the Slaney system.

- 9.4.3 Appendix 2 of the DEHLG Rural Housing Guidelines provides guidance on the consideration of biodiversity impacts in planning applications for individual houses in the countryside. It distinguishes between site scale and area wide impacts and states;

*“Planning authorities should have full regard to biodiversity considerations in determining individual applications for rural housing. Planning authorities must ensure that a proposal which is likely to have a significant effect on an SAC or other designated area, is authorised only to the extent that the planning authority is satisfied will not adversely affect the integrity of the area. Such a proposal must be subjected to an appropriate assessment of its implications for the area, if it is clear, on the basis of a preliminary*

*examination, that the project could have a significant effect on the area. All aspects of the proposal which could, in themselves, or in combination with other proposals, affect the area's conservation objectives should be identified."*

- 9.4.4 It is accepted that the stream to the north of the site is located some distance from the boundary of the cSAC. In addition, the poor drainage characteristics of the site reduce the likelihood of the pollution of streams or groundwater by drainage effluent. However, as noted by the ERFB, the stream is a tributary of the Slaney system. With regard to the above considerations, it is considered that screening for Appropriate Assessment of potential impacts on the cSAC should have been carried out and that the application is deficient in this respect.

## **9.5 Vehicular Access**

- 9.5.1 The site is located on a narrow cul-de-sac. There is an existing disused vehicular access to the cottage and an agricultural access to the east of the cottage. There is poor visibility in both directions due to the narrow width of the road, to the presence of a bend to the immediate west and to roadside vegetation. The development involves a new vehicular entrance roughly at the location of the existing agricultural entrance to the east of the cottage. The entrance would involve the removal of c. 50m of the existing roadside boundary (mostly hedgerow) and would achieve sight distances of 65m in both directions from a setback of 2.75 m from the nearside edge of the road. The planning authority considered this proposal to be unacceptable and refusal reason No. 3 relates to serious traffic hazard at the entrance. The appeal submission contends that the proposed sight distances are acceptable at this location. A revised entrance layout submitted with the appeal indicates the closure of the existing disused entrance to the cottage and some new planting along the roadside boundary. Sight distances are unchanged at 65 m in both directions.

- 9.5.2 It is accepted that visibility would be extremely limited at the proposed entrance. However, it is noted that the existing road is very lightly trafficked as it is a cul-de-sac that serves only a small number of residential properties. It is noted that Section 11.7 of the County Development Plan 2010-2016 states that the design of new means of access to rural local roads;

*"... shall be tailored to the conditions of the locality with regard to width, design speed, horizontal and vertical alignment and sightlines. Specific regard shall be paid to the protection of the natural environment, in particular mature trees and hedgerows ..."*

The proposed access is considered acceptable notwithstanding the limited visibility given that (i) the road is so lightly trafficked and (ii) there is an existing agricultural entrance and the development would not generate significant traffic volumes. The revised layout submitted with the appeal, indicating additional roadside planting, is considered preferable to the original

proposal and a condition requiring its implementation should be imposed if the Board is minded to grant permission.

## **10.0 CONCLUSION AND RECOMMENDATION**

- 10.1 The development would contravene rural housing Policy RH1 of the County Development Plan 2010-2016 as the applicant does not have a local housing need in accordance with the provisions of Objective RH14 of the plan. The proposed wastewater treatment system is unsatisfactory with regard to the poor drainage characteristics of the site. The application is deficient with regard to the need for Appropriate Assessment of likely impacts on the Slaney River Valley cSAC. Accordingly, refusal is recommended for the reasons set out below.

## **REASONS AND CONSIDERATIONS**

1. The site of the proposed development is located in an area designated as a landscape Corridor Area as per Map 17.09A of the Wicklow County Development Plan 2010-2016. Policy RH1 of the Plan states that urban generated development, including housing, shall not be permitted in the rural areas of the County, other than in rural settlements that have been deemed suitable to absorb an element of urban generated development. This objective is considered reasonable. It is considered that the development would not come within the scope of the provisions of Objective RH14, which specify circumstances under which permission may be granted for residential development in the countryside. The proposed development would contravene materially the objective of the planning authority and would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the soil conditions and high water table, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the site can be drained satisfactorily by means of a septic tank, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

3. The watercourse to the rear of the site is a tributary of the Donard Brook/Carrigower River which forms part of the Slaney River Valley candidate Special Area of Conservation. The proposed development has the potential to significantly alter the conservation objectives of this designated area. An Appropriate Assessment to meet the requirements of Article 6 of the Habitats Directive has not been submitted to ascertain the likely effects of the development on this designated area, to determine the application in the absence of same would be contrary to the conservation objectives of the candidate Special Area of Conservation and the proper planning and sustainable development of the area.

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**Sarah Moran**  
**Senior Planning Inspector**  
**10<sup>th</sup> November, 2010**