



An  
Bord  
Pleanála

## Inspector's Report ABP-306008-19

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<b>Development</b>	Retention of house as constructed, retention of separate dwelling unit and domestic garage/store/workshop, permission for wastewater treatment system and ancillary site works.
<b>Location</b>	Coolroe , Tinahely , Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	19998
<b>Applicant(s)</b>	Patrick O'Keefe
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Split Decision
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Patrick O'Keefe
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	30 <sup>th</sup> April 2020
<b>Inspector</b>	Mary Crowley

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## 1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.373 ha is located c.3km south east of Tinahely. The site is located on un-zoned lands and is part of a cluster of one off dwellings. The site is accessed via the Local Road L7775, which adjoins the Regional Road R748 to the north of the site. The site itself consists of a dormer style dwelling, a separate single storey unit to the side of the dwelling and a large shed to the side/ rear of the site (north elevation). A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

## 2.0 Proposed Development

2.1. Permission is sought for the retention of an existing dwelling house (196 sqm) as constructed, retention of existing separate dwelling unit (93 sqm) and existing domestic garage / store / workshop (133 sqm). Permission also sought for new wastewater treatment system on site to current EPA standards and to carry out associated ancillary site works (Planning Register Reference 97/6417 refers). The application was accompanied by Site Suitability Assessment for Wastewater Treatment.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Wicklow County Council issued a split decision as follows:

- **Grant** retention permission for the retention of an existing dwelling house as constructed and permission for a new wastewater treatment system on site to current EPA standards and to carry out associated ancillary site works subject to 3 no generally standard conditions summarised as follows:
  - 1) Permission refers to the retention of the dwelling permission under 97/9417
  - 2) Effluent disposal system shall be constructed in accordance with EPA Code of Practise (2009)

- 3) Existing septic tank shall be removed
- **Refuse** retention permission for the separate dwelling unit and existing domestic garage / store / workshop for the following 4 no reasons summarised as follows:
  - 1) The scheme is contrary to the provisions of the Development Plan that are required to conserve the attractiveness of the County for the development of tourism and tourist related employment.
  - 2) The separate dwelling unit represents an overdevelopment of the site that is out of character with the prevailing pattern of development in this rural area.
  - 3) The proposed development would be prejudicial to public health.
  - 4) The garage by virtue of its size and scale is excessive and not ancillary to the main dwelling.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

- The Case Planner recommended that permission be granted for the retention of the dwelling house and the new WWTS and that permission be refused for the retention of the separate dwelling unit and garage / store / workshop. The notification of split decision issued by Wicklow County Council reflects this recommendation.

### 3.2.2. Other Technical Reports

- **Area Engineer** – Sight lines meet the minimum requirements for class of road. No roads issues.
- **EHO** – Submitted trial hole and percolation test results indicate that the trial hole was 2.1m deep and dry and the percolation T-value = 39 and the P-value = 25 on the 7<sup>th</sup> July 2019. It is not recommended to have two dwellings on a single site with the same effluent treatment system. The EPA COP 2009 is for disposal systems serving single houses.

## 3.3. Prescribed Bodies

- 3.3.1. There are no reports recorded on the planning file.

### 3.4. Third Party Observations

3.4.1. There are no third parties recorded on the planning file.

## 4.0 Planning History

4.1. No planning history has been provided with the appeal. The following history is provided in the Case Planners report as follows:

- **Reg Ref 97/6417** - Planning permission granted to Patrick Rawson for dormer bungalow & garage with services.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The operative plan for the area is the Wicklow County Development Plan 2016 – 2022. The Settlement Strategy locates the site within a Level 10 Rural Area. Objectives relevant to this appeal are as follows:

**Objective HD23 – Housing in the Open Countryside**

*Residential development will be considered in the open countryside only when it is for those with a definable social or economic need to live in the open countryside.*

*Residential development will be considered in the countryside in the following circumstances:*

- 1) *A permanent native resident seeking to build a house for his / her own family and not as speculation. A permanent native resident shall be a person who has resided in a rural area in County Wicklow for at least 10 years in total (including permanent native residents of levels 8 and 9), or resided in the rural area for at least 10 years in total prior to the application for planning permission.*
- 2) *A son or daughter, or niece/nephew considered to merit the same position as a son/daughter within the law (i.e. when the uncle/aunt has no children of his/her own), of a permanent native resident of a rural area, who can demonstrate a definable social or economic need to live in the area in which the proposal relates and not as speculation.*

- 3) *A son or daughter, or niece/nephew considered to merit the same position as a son/daughter within the law (i.e. when the uncle/aunt has no children of his/her own), of a permanent native resident of a rural area, whose place of employment is outside of the immediate environs of the local rural area to which the application relates and who can demonstrate a definable social or economic need to live in the area to which the proposal relates and not as speculation.*
- 4) *Replacing a farm dwelling for the needs of a farming family, not as speculation. If suitable the old dwelling may be let for short term tourist letting and this shall be tied to the existing owner of the new farm dwelling were it is considered appropriate and subject to the proper planning and development of the area.*
- 5) *A person whose principal occupation is in agriculture and can demonstrate that the nature of the agricultural employment is sufficient to support full time or significant part time occupation.*
- 6) *An immediate family member (i.e. son or daughter) of a person described in 5, who is occupied in agriculture and can demonstrate that the nature of the agricultural employment is sufficient to support full time or significant part time occupation.*
- 7) *A person whose principal occupation is in a rural resource based activity (i.e. agriculture, forestry, mariculture, agri-tourism etc.) can demonstrate a need to live in a rural area in order to carry out their occupation. The Planning Authority will strictly require any applicant to show that there is a particular aspect or characteristic of their employment that requires them to live in that rural area, as opposed to a local settlement.*
- 8) *A close relative who has inherited, either as a gift or on death, an agricultural holding or site for his/her own purposes and not for speculation and who can demonstrate a definable social and / or economic need to live in the area to which the proposal relates.*
- 9) *The son or daughter of a landowner who has inherited a site for the purpose of building a one off rural house and where the land has been in family ownership as at 11th October 2004 for at least 10 years prior to the application for planning permission and not as speculation.*

- 10) *An emigrant who qualifies a permanent native resident, returning to a rural area in County Wicklow, seeking to build a house for his/her own use not as speculation.*
- 11) *Persons whose work is intrinsically linked to the rural area and who can prove a definable social or economic need to live in the rural area*
- 12) *A permanent native resident that previously owned a home and is no longer in possession of that home (for example their previous home having been disposed of following legal separation / divorce / repossession, the transfer of a home attached to a farm to a family member or the past sale of a home following emigration) and can demonstrate a social or economic need for a new home in the rural area.*
- 13) *Permanent native residents of moderate and small growth towns, seeking to build a house in their native town or village within the 60kph / 40mph speed limit on the non national radial roads, for their own use and not as speculation as of 11th October 2004.*
- 14) *A person whose business requires them to reside in the rural area and who can demonstrate the adequacy of the business proposals and the capacity of the business to support them full time.*
- 15) *Permanent native residents of the rural area who require a new purpose built specially adapted house due to a verified medical condition and who can show that their existing home cannot be adapted to meet their particular needs.*
- 16) *Persons who were permanent native residents of a rural area but due to the expansion of an adjacent town / village, the family home place is now located within the development boundary of the town / village.*

*In the event of conflict of any other settlement strategy objective / Landscape Zones and categories, a person who qualifies under policy HD23 their needs shall be supreme, except where the proposed development would be a likely traffic hazard or public health hazard.*

*With regard to the preservation of views and prospects, due consideration shall be given to those listed within the area of the National Park; and with respect to all other areas, to generally regard the amenity matters, but not to the exclusion of social and economic matters. The protection and conservation of views and prospects should*

*not give rise to the prohibition of development, but development should be designed and located to minimise impact.*

## 5.2. Natural Heritage Designations

5.2.1. The site is not located within a designated Natura 2000 site. It is noted that the appeal site is located c2.5 km to the east of the Slaney River Valley SAC.

## 5.3. EIA Screening

5.3.1. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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

6.1.1. The first party appeal against the decision to refuse permission for the separate dwelling unit and existing domestic garage / store / workshop was prepared and submitted by EMK Design Ltd and may be summarised as follows:

- The Board is requested to consider the detached separate dwelling unit as ancillary to the dwelling house. The Planning Authority and the Environmental Health Officer would appear to have considered this unit as a separate dwelling.

6.1.2. Grant of Permission

- **Condition No 1** – The sole reason for the new wastewater plant on site was to cater for the additional loading generated by the additional bedroom of the “granny flat”. As retention permission has been refused the posed soil polishing filter piping is over designed and the system cannot function to its designed standards. Compliance with this condition is not possible.
- **Condition No 2** – It is not possible to comply with this condition as details of the wastewater treatment system submitted are designed for an additional bedroom



- **Condition No 3** – As permission for the “granny flat” was not granted the applicant has no reason to provide a new wastewater treatment systems or to act on the grant of permission for same.

### 6.1.3. Refusal

- **Refusal Reason No 1** – The unit complies with the County Development Plan requirements for a “Granny Flat” as follows:
  - 1) This building was existing as a garage before it was converted to a separate dwelling unit which is in close proximity to the dwelling house. It is not a dwelling house and is clearly ancillary to the dwelling house.
  - 2) The original garage was permitted under Reg Ref 97/6417 and there was no issue with the scale of the development raised in the grant of permission.
  - 3) It is not proposed to let the building as an independent living unit or the subdivide the existing site and garden.
  - 4) The building can be re-integrated into the dwelling house and be used as ancillary to the main house (hobby room) unless any new owner receives a grant of permission for use as a “granny flat”.
  - 5) The separate dwelling unit is ancillary to the dwelling house and permission should be granted subject to a condition requiring compliance with the use being restricted to a close family relative.
- **Refusal Reason No 2** – It is noted that although the Planning Report states that the County Development Plan does not permit private wastewater treatment plants for multi purpose developments, the report does not assess the unit under the Rural Housing Policy. The rural housing policy is not applicable to “Independent Living Units (Granny Flats)” which is a separate living unit on an existing site. The applicant is in the unfair position whereby has obtained a decision granting permission for a wastewater treatment for the “granny flat” but not for the “granny flat” itself.
- **Refusal Reason No 3** – The shed / garage is quite large in area but given the need it was constructed for (housing vintage machinery and plant) its location it is not incompatible with similar structures in this rural area. It is also noted that it was constructed before the floor area restrictions of the current CDP came into force.

## 6.2. **Planning Authority Response**

6.2.1. There is no response recorded on the appeal file.

## 6.3. **Observations**

6.3.1. There are no observations recorded on the appeal file.

## 6.4. **Further Responses**

6.4.1. There are no further responses recorded on the appeal file.

## 7.0 **Assessment**

7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Retention of Existing Dwelling
- Retention of Existing Separate Dwelling
- Retention of Domestic Garage / Store / Workshop
- Wastewater Treatment System

## 7.2. **Retention of Existing Dwelling**

7.2.1. No planning history has been made available with the appeal file. However, I note from the Case Planners report that the proposed dwelling for which retention is sought *is very similar to that originally permitted under Reg Ref 97/6417 and that the dwelling and the entrance have been constructed generally in the location permitted.* It is however noted that the permitted dwelling had a stated area of 173.7 sqm and that the dwelling to be retained has a stated area of 196 sqm. Having regard to the nature of the site, the mature landscaping and the absence of any investigations or formal procedures relating to the non-compliance with conditions in relation to the permitted scheme, I consider the retention of the dwelling as constructed to be acceptable. Recommended that retention permission be granted.

## 7.3. **Retention of Existing Separate Dwelling**

- 7.3.1. It is noted from both the Case Planners report and the appeal that a domestic garage with a stated area of c48sqm was permitted to the side / rear of the dwelling under Reg Ref 97/6417. The applicant has now applied to retain a 93sqm (ground floor 51.6 sqm and first floor 41.40 sqm) separate dwelling unit which it is stated has been constructed in a similar location to the permitted garage. The separate dwelling comprises a kitchen / living room, bedroom, utility and shower room at ground floor with attic storage and bathroom at first floor.
- 7.3.2. I refer to Objective HD23 of the Development Plan as set out in full in Section 5.1 above where it is stated that *residential development will be considered in the open country side only where it is for those with a definable social or economic need to live in the country side*. This objective sets out a list of criteria against which residential development will be considered. I have considered this criteria and having regard to the information on file there is no planning justification for a separate dwelling unit at this location.
- 7.3.3. Notwithstanding the requirements to comply with Objective HD23 I am also concerned that when this separate dwelling unit is considered in conjunction with the existing dwelling that there is an excessive density of residential development on this site and encroachment of random rural development in this rural area. To permit such a scheme would be contrary to the policy of the planning authority, as expressed in the current Development Plan where it is an objective to direct residential development to serviced centres. Refusal is recommended.

#### **7.4. Retention of Domestic Garage / Store / Workshop**

- 7.4.1. The domestic garage / store / workshop for which retention permission is sought is a large agricultural type structure located to the side/rear of the dwelling on the north end of the site. I agree with the Case Planner that in terms of location and design the unit is not considered to create any visual dis-amenity to the area. I note that WCC refused planning permission for this unit by reason of its size and scale and that it was excessive for the needs of the existing dwelling. However, I consider that the use of the unit can be dealt with by way of suitably worded condition requiring that the unit is used solely for a purpose that is incidental to the enjoyment of the dwelling on the site and shall not be used as a self-contained dwelling unit, or for any business, trade,

commercial activity or other non-domestic use. Grant of retention permission is recommended.

#### **7.5. Wastewater Treatment System**

- 7.5.1. Planning permission is also sought for a new wastewater treatment system. The new Euro-Tank Treatment system will replace existing septic tank, with new 105sqm soil polishing filter located on south-east side of site.
- 7.5.2. I note the appellants concerns that the sole reason for the new wastewater plant on site was to cater for the additional loading generated by the additional bedroom of the “granny flat” and that the applicant is in the unfair position whereby having obtained a decision granting permission for a wastewater treatment for the “granny flat” but not for the “granny flat” itself. While I note the appellants position no information has been provided with regard to existing treatment unit on site and its compliance with the EPA standards. To this end I consider it appropriate that consideration be given to the scheme now before the Board.
- 7.5.3. The EHO in their report stated that it is not recommended to have two dwellings on a single site with the same effluent treatment system. Accordingly, I agree with the approach of WCC that the effluent disposal be laid out to the specification of Wastewater Treatment and Disposal System Single Houses EP 2009. Recommended that permission be granted.

#### **7.6. Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the proposed development and its distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

#### **7.7. Other Issues**

- 7.7.1. **Development Contributions** – Wicklow County Council has adopted a Development Contribution Scheme under Section 48 of the Planning and Development Act 2000 (as amended) and is in place since October 2015. I refer to Section 5 of the scheme where it states that no exemptions/reductions will be allowed for retention permissions. As the proposed development does not fall under the exemptions listed in the scheme it is therefore recommended that should the Board be minded to grant permission that

a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

## 8.0 Recommendation

8.1. Having considered the contents of the application, the provision of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that a **SPLIT DECISION** be issued granting retention permission for the house and garage / store / workshop as constructed and permission for the wastewater treatment system subject to conditions and that retention permission be refused for the separate dwelling unit for the reasons and consideration set out below.

### 8.2. Refusal

1) It is the policy of the planning authority as set out in Objective HD23 of the current development Plan to control housing in the countryside. This policy is considered to be reasonable. The development to be retained, comprising a separate dwelling unit would be in conflict with this policy because, when taken in conjunction with existing dwelling on the site would give rise to an excessive density of development and the encroachment of random rural development in a rural area lacking certain public services and community facilities and would contravene Objective HD23 and the policy of the planning authority, as expressed in the current Development Plan, to direct residential development to serviced centres (which policy is considered to be reasonable). The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

### 8.3. Grant

8.3.1. Having regard to the site's location and the policy and objective provisions in the Wicklow County Development Plan 2016-2022 together with the permission granted for dwelling and services (Reg Ref 97/6417) and to the nature, scale and design of the dwelling and garage / store / workshop to retained, it is considered that, subject to compliance with the conditions set out below, the proposed development including the development of a new wastewater treatment plant would not seriously injure the

residential or visual amenities of the area or of property in the vicinity and would be acceptable in terms of public health and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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><b>Reason:</b> In the interest of clarity</p>
2.	<p>(a) The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009.</p> <p><b>Reason:</b> In the interest of public health</p>
3.	<p>The garage / store / workshop development shall be used solely for a purpose that is incidental to the enjoyment of the dwelling on the site and shall not be used as a self-contained dwelling unit, or for any business, trade, commercial activity or other non-domestic use.</p> <p><b>Reason:</b> To regulate the use of the building and to protect residential amenities in the interest of the proper planning and sustainable development of the area.</p>
4.	<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 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</p>

	<p>the 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><b>Reason:</b> 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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**Mary Crowley**

**Senior Planning Inspector**

**21<sup>st</sup> May 2020**