



An
Bord
Pleanála

Inspector's Report ABP-306207-19

Development	Demolition of sheds and construction of house, garage, entrance and associated site works.
Location	Newcastle Middle, Newcastle, Co. Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	19/1088
Applicant	Noel Prendergast
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Noel Prendergast
Date of Site Inspection	3 rd March 2020
Inspector	Paul O'Brien

1.0 Site Location and Description

- 1.1. The subject site with a stated area of 0.1 hectares, comprises an almost rectangular shaped area of land located to the south west of the R761 Newcastle to Kilcoole Road, in Newcastle, Co. Wicklow. The site and the immediate surrounding area is relatively flat.
- 1.2. There are two small sheds/ structures on site in addition to construction material/ equipment and the surface comprises of hardstanding mostly in the form of gravel. The front boundary along the public road consists of a stone clad wall with timber fence over. A vehicular entrance is provided to the front of the site though access is prevented by means of a temporary/ Harris type fence. The other site boundaries consist of a mix of block walls, timber fencing and hedgerows.
- 1.3. Detached single storey houses are located to the north and south of the subject site. Similar detached single-storey houses are the predominant form of development in the immediate area though it is noted that there is a two-storey detached house on the opposite/ eastern side of the public road.

2.0 Proposed Development

- 2.1. The proposed development consists of:
 - The demolition of existing sheds on site – stated floor area of 36 sq m.
 - The construction of a two-storey house with a detached garage – total floor area of the house to be 227 sq m and the garage is to be 23 sq m. The proposed house to be provided with five bedrooms.
 - New wastewater treatment system and percolation to serve the new house and to also replace an existing septic tank and soak pit.
 - New site entrance, north of the existing entrance, and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for one reason as follows:

'Objective WI7 of the County Development Plan 2016 - 2022 provides that permission will be considered for private wastewater treatment plants for single houses where the proposed method of treatment and disposal complies with Wicklow County Council's Policy for Wastewater Treatment & Disposal Systems for Single Houses (PE< 10). Having regard to the details submitted, it is considered that the proposal would be contrary to Wicklow County Council's Policy for Wastewater Treatment & Disposal Systems for Single Houses (PE< 10) which requires that a minimum site size of 1,500m² be provided where the dwelling is connected to a mains water supply. Due to the site location and inadequate size of the site, the proposed development would result in an excessive density of development served by septic tanks in the area, would be contrary to Objective WI7 of County Development Plan, would be prejudicial to public health and would be contrary to proper planning and sustainable development'.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report reflects the decision to refuse permission subject to a single reason. The Planning Authority Case Officer reported that the proposed density and design of house were acceptable, no negative impact on existing residential amenity was foreseen, adequate sight lines at the new entrance were achievable and water can be supplied to the house/ site. The applicant has demonstrated that they have worked in the area for the required minimum of three years. No details that the applicant is willing to enter into a Section 47 agreement have been provided though the Planning Authority Case Officer considers that it may be possible to condition this.

The Case Officer noted that an existing septic tank served an outdoor toilet that was shared by three houses which now have their own wastewater treatment systems and the septic tank has not been in use for some time. The provision of a new

wastewater treatment plant would not be acceptable on a site of inadequate size and would give rise to potential public health hazard.

3.2.2. **Other Technical Reports**

Environmental Health Officer – The site size is not sufficient to meet the minimum requirements of NSAI: SR6 of 1991: Septic Tank Systems, Appendix B which requires a minimum area of 0.15 hectares and the site is only 0.1 hectares.

Roads Section – No issue with the proposed development.

3.2.3. **Prescribed Bodies Reports**

Irish Water – No objection subject to conditions.

3.3. **Objections/ Observations**

None received.

4.0 **Planning History**

P.A. Ref. 18/305 refers to a November 2018 decision to refuse permission for a two-storey detached house, garage and associated site works including the demolition of existing sheds on site; the site and applicant were the same as that in the subject appeal. The reason for refusal was similar to that in the current appeal and included that the site size was not sufficient, there was an excessive density of septic tanks in the area and the development would therefore be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

5.0 **Policy and Context**

5.1. **Development Plan**

- 5.1.1. Under the **Wicklow County Development Plan 2016 – 2022**, the site is located within Newcastle which is defined as a Level 6 Settlement – Rural Town. These are settlements with a good range of infrastructural services and have ‘the potential to consolidate rural development needs’ such as schools, shops etc. The following is relevant to this application/ appeal:

‘Single house development

Applicant / purchaser of any new home must be either a resident for at least 3 years duration in County Wicklow or in permanent employment for at least 3 years duration in County Wicklow prior to making of application / purchase of new house’.

- 5.1.2. Objective WI7 of Chapter 9 – Infrastructure, is relevant to this development and states:

Permission will be considered for private wastewater treatment plants for single rural houses where:

- *the specific ground conditions have been shown to be suitable for the construction of a treatment plant and any associated percolation area;*
- *the system will not give rise to unacceptable adverse impacts on ground waters / aquifers and the type of treatment proposed has been drawn up in accordance with the appropriate groundwater protection response set out in the Wicklow Groundwater Protection Scheme (2003);*
- *the proposed method of treatment and disposal complies with Wicklow County Council’s Policy for Wastewater Treatment & Disposal Systems for Single Houses (PE ≤ 10) and the Environmental Protection Agency “Waste Water Treatment Manuals”; and*
- *in all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitively demonstrate that the proposed development will not have an adverse impact on water quality standards and requirements set out in EU and national legislation and guidance documents.*

- 5.2. **Newcastle Settlement Plan 2016 – 2022** forms part of the Wicklow County Development Plan. The subject site is located within a ‘Secondary Development Area’.

The Secondary Zone Vision is ‘To provide for the sustainable development of a mix of uses including residential, employment, community and recreational uses that

provide for the needs of the existing settlement and that allows for the future growth of the settlement'. Relevant Objectives are:

- Allow for the limited extension or 'spill-over' of the primary lands onto the secondary lands which immediately adjoin the boundary of the primary lands. New development of this type should be compatible with or reinforce the function of the primary lands and shall be visually and physically linked with the primary core. No development will be permitted that prejudices the viability and function of the primary lands.
- In existing residential areas, it shall be an objective of the Council to protect existing residential amenity and to provide for infill residential development at a density and design that reflects the established character of the area in which it is located.
- Allow for new residential developments, including a mix of residential options within an attractive and accessible setting, at appropriate locations which have safe access to the public road network, which have pedestrian links to the primary lands, and which are served by appropriate water and sewerage infrastructure, and which, if possible are in proximity to community and public services.
- Promote densities in the order of 15 dwelling units per hectare. A higher or lower density may be considered appropriate, having regard to the context of the site and the prevailing density in the vicinity of the site.

The following Specific Local Objective is considered to be relevant:

4. 'Development proposals on secondary and tertiary lands that front onto a public road shall provide a green buffer area between the road edge and any boundary / planting of at least 6m deep along the public road'.

5.3. National Guidance

- 5.3.1. ***The Sustainable Rural Housing – Guidelines for Planning Authorities*** (April 2005) is relevant to this proposal as they set out the need for rural housing in appropriate/ sustainable locations.

5.3.2. **National Planning Framework – Project Ireland 2040** recognises the importance of rural Ireland. National Policy Objective 19 is noted as relevant to this development:

Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- *In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;*
- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.*

5.4. **Natural Heritage Designations**

The subject site is not located within any Natural Heritage designated lands. The site is located approximately 1.56 km to the west of the Murrough Wetlands SAC and 1.35 km from the Murrough SPA. There is no direct hydrological connections from the site to these designated areas.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The first party appeal can be summarised as follows:

- The proposed development complies with the ‘Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)’ published by the Environmental Protection Agency (EPA).
- The site is considered to be a brownfield site within the Newcastle Village boundary and existing development here includes sheds, toilet, yards and a septic tank. The site is also within the Secondary Zone of Newcastle.

- The proposed wastewater treatment system will be a significant upgrade from the existing septic tank on site.
- Wicklow County Council Departments and prescribed bodies have no objection to the development.

7.0 **Assessment**

7.1. The main issues that arise for consideration in relation to this appeal can be addressed under the following headings:

- Wastewater Treatment
- Compliance with Requirements for a Rural House
- Design and Impact on the Character of the Area
- Impact on Residential Amenity
- Appropriate Assessment Screening

7.2. **Wastewater Treatment**

7.2.1. The primary reason for refusal issued by the Planning Authority was that the proposed wastewater treatment system did not demonstrate compliance with Wicklow County Council's policy for wastewater treatment systems and in particular the site area at circa 0.1 hectares is significantly smaller than the required 0.15 hectares.

7.2.2. It is proposed to install a wastewater treatment system and secondary treatment system (TPW Eurotank BAF) to serve the proposed house. The treatment system is located approx. 14 m to the south west of the proposed house. Table 6.1 of the 'EPA Code of Practice for Waste Water Treatment and Disposal Systems Serving Single Houses' sets out minimum separation distances and the proposed development is compliant.

7.2.3. The site is located in an area identified with a "Moderate" vulnerability classification in the GSI Groundwater maps and is located within area defined "Poor" Aquifer category, representing a Groundwater Protection Response of R1 under the EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009) (Annex B - Table B2). There was no indication of ponding on the day of the site visit.

- 7.2.4. The trial hole had a depth of 1.9 m (0.2 m less than the expected minimum) and the assessment submitted by the applicant indicates that bedrock and the water table were not encountered at this depth. The submitted report indicates that soil consists of a mix of loose shale, sand and stone with a mix of light/ mid brown and grey brown coloured soil. The submitted site characterisation records a T-test value (standard method) of 7.47 min/25mm indicating very good site drainage. A P-test was also undertaken, and this found a similar result of good drainage. The submitted report indicates that three separate trial holes were provided. The report has found that the site is suitable for treatment by way of a secondary treatment system. All required separation distances to houses, structures and other treatment systems are complied with.
- 7.2.5. I note the report of the Environmental Health Officer and their comment that the site does not meet the requirements of NSAI: SR6 of 1991. This is true, however the applicant has demonstrated that they can comply with the requirements of the 2009 EPA Code of Practice for wastewater treatment, which is a more relevant document. The other important consideration is that there is an existing toilet and septic tank on site which may have served up to three cottages, it is unknown what population equivalent it served. The system to serve this development will be a significant improvement on this septic tank.
- 7.2.6. I note the reason for refusal included the insufficient site area and excessive density of treatment systems in this area. As the applicant has demonstrated compliance with the Code of Practice and the proposed treatment system effectively replaces an existing system, I do not foresee that the development will give rise to public health concerns especially where houses are served by a public water supply rather than on-site wells. In the event that permission is granted, the existing toilet and septic tank to be removed by way of condition.

7.3. Compliance with Requirements for a Rural House

- 7.3.1. I have had full regard to the planning history of this site and the documentation submitted in support of the application. Objective HD21 of the current Wicklow County Development Plan 2016 – 2022 sets out requirements for housing in the rural areas (Level 6 to 10) of the county. Newcastle is designated as a Level 6 Settlement – Rural Town and an applicant for a house shall demonstrate that they have lived or worked in the County for a minimum of three years.

7.3.2. Documentation has been provided that demonstrates that the applicant has resided in the County for over three years. The applicant has therefore demonstrated compliance with Objective HD21 of the Wicklow County Development Plan 2016 – 2022.

7.4. Design and Impact on the Character of the Area

7.4.1. The proposed contemporary house design is considered to be visually acceptable in this location. The house is set back approximately 18 m from the roadside edge and although it is a two-storey unit, its height at 6.75 m will ensure that it does not visually dominate the surrounding area. A mix of rendered blockwork and cedar cladding will be used for the external finish of the house.

7.4.2. The proposed detached garage is also considered to be visually acceptable. This is unusual in having a monopitch roof, however the overall design will ensure integration with the house.

7.4.3. A 6 m set back/ buffer zone is provided to the front of the site/ along the roadside edge in accordance with Specific Local Objective No. 4 of the Newcastle Settlement Plan 2016 – 2022.

7.5. Impact on Residential Amenity

7.5.1. The proposed house is considered to be acceptable in terms of adequate room sizes and storage provision. Adequate private amenity space is available to the rear of the proposed house.

7.5.2. The north western elevation of the house has been carefully considered to ensure that overlooking leading to a loss of privacy does not occur. A single window fitted with opaque glazing at first floor level/ north facing is proposed and which serves a corridor/ landing area. Windows serving the south eastern facing bedrooms, are fitted with deflected windows to ensure that overlooking of the adjacent property cannot occur.

7.5.3. The orientation of the house on a south west to north east axis and the setback of circa 2 m to the north western boundary, ensures that overshadowing giving rise to a loss of daylight does not occur.

7.6. Appropriate Assessment Screening

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

8.0 Recommendation

- 8.1. I recommend that permission be granted subject to the following conditions and reasons.

9.0 Reasons and Considerations

- 9.1. Having regard to the nature, extent and design of the proposed development and the provisions of the Wicklow County Development Plan 2016 – 2022 and the Newcastle Settlement Plan 2016 - 2022, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area and subject to the provision of a wastewater treatment system as proposed in addition to the removal of an existing septic tank treatment system; the development will not will give rise to any public health concerns. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 9 th of July 2019, and as amended by the further plans and particulars submitted on the 7 th of October 2019, 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.
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	<p>Reason: In the interest of clarity.</p>
2.	<p>(a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 as amended, to this effect.</p> <p>(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.</p> <p>This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.</p> <p>Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted [to meeting essential local need] in the interest of the proper planning and sustainable development of the area.</p>
3.	<p>(a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 7th day of October, 2019, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.</p>

	<p>(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.</p> <p>(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.</p> <p>(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.</p> <p>(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health.</p>
4.	<p>The existing sheds, toilet and septic tank shall be demolished and removed prior to the commencement of the development of the house/ garage and treatment system. All generated construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition</p>

	<p>Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.</p> <p>Reason: In the interest of sustainable waste management.</p>
5.	<p>The applicant or developer shall enter into water connection agreement with Irish Water, prior to commencement of development.</p> <p>Reason: In the interest of public health.</p>
6.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Any existing over ground cables shall be relocated underground as part of the site development works.</p> <p>Reason: In the interests of visual and residential amenity.</p>
7.	<p>Details 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. Roof colour shall be blue-black, black, dark brown or dark grey in colour only.</p> <p>Reason: In the interest of visual amenity.</p>
8.	<p>The following requirements shall be adhered to in full:</p> <ul style="list-style-type: none"> i) The vehicular access, serving the proposed development, shall comply with the requirements of the Planning Authority for such road works. ii) Any gate to be installed shall be inwards opening only and shall not open across the public footpath. <p>Reason: In the interest of traffic and pedestrian safety.</p>

9.	<p>The proposed garage shall not be used for human habitation or for the keeping of livestock, poultry, pigs, horses or ponies and shall not be used for any purpose other than a purpose incidental to the enjoyment of the house. The finishing of the garage shall match that of the dwelling house.</p> <p>Reason: In the interest of clarity and in the interest of the proper planning and sustainable development of the area.</p>
10.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:</p> <p>(a) A plan to scale of not less than 1:500 showing –</p> <p>(i) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder and which shall not include prunus species</p> <p>(ii) Details of roadside/street planting which shall not include prunus species</p> <p>(b) A timescale for implementation</p> <p>All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of two years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>Reason: In the interest of residential and visual amenity.</p>
11.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between the hours of 0800 to 1400 hours on Saturdays 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: In order to safeguard the amenities of property in the vicinity.</p>
12.	<p>That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.</p> <p>Reason: To protect the amenities of the area.</p>
13.	<p>(a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.</p> <p>(b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.</p> <p>Reason: In the interest of traffic safety and to prevent pollution.</p>
14.	<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 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</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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Paul O'Brien
Planning Inspector

4th March 2020