

An Bord Pleanála



Inspector's Report

Appeal Reference No: PL27.245465
Development: Retain house, DWWTS at Brittas Bay, County Wicklow.

Planning Application

Retention Permission

Planning Authority: Wicklow County Council
Planning Authority Reg. Ref.: 15/670
Applicant: Oliver Staunton
Planning Authority Decision: Refuse

Planning Appeal

Appellant(s): Oliver Staunton
Type of Appeal: Applicant vs refusal
Observers: None
Date of Site Inspection: 26th November 2015

Inspector: Hugh Mannion

1.0 SITE LOCATION AND DESCRIPTION

The site has a stated area of 0.845ha and is located on the landward side of the coastal link – regional route R760 – between Arklow and Wicklow town at Brittas Bay in County Wicklow. There is considerable screening along the road frontage and almost directly opposite the access is an access to a sea side car park. The seaward side of the regional route is characterised by grassed sand dunes. The site accommodates three houses and number of outbuildings. The house proposed for retention, a bungalow, is set furthest into the site from the public road and faces the rear of the applicant's sister's house, also a bungalow, with which it shares an entrance. Located to the right (south) of these houses is a third house occupied by the applicant's former wife with a separate entrance to the public road.

The area is generally rural although there are a number of roadside houses and immediately north of the site and adjoining is a caravan park in the ownership of the applicant. Further north are additional caravan parks both on the landward and seaward side of the road.

2.0 PROPOSED DEVELOPMENT

The proposed development comprises the retention of a single storey house, construction of a DWWTS and improvements to an existing driveway at Brittas Bay, County Wicklow.

3.0 PLANNING HISTORY

Reference number **15/37** – permission was refused for the retention of a dwelling with connection to an existing septic tank because of its location in a coastal area of natural beauty, contribution to an excessive density of septic tanks, potential for impact on the Buckroneys-Brittas Bay and Fen SAC (site code 000729), impact on traffic safety.

Reference number **14/1775** - permission was refused for retention of a single storey house with connection to an existing DWWTS because of its location in a coastal area of natural beauty, contribution to an excessive density of septic tanks, potential for impact on the Buckroneys-Brittas Bay and Fen SAC (site code 000729), impact on traffic safety.

Reference number **14/1436** - permission was refused for retention of a single storey house and construction of a new DWWTS because of its location in a coastal area of natural beauty, contribution to an excessive density of septic tanks, potential for impact on the Buckronev-Brittis Bay and Fen SAC (site code 000729), impact on traffic safety.

Reference number **89/4433** permission granted for retention of a caravan park adjoining the present application site.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and technical reports

The planner's report recommended refusal as adopted in the manager's order.

The Environmental Health Officer recommended refusal for failure to comply with the EPA code of practice.

4.2 Planning Authority Decision

The planning authority refused permission because;

- The house is located in a coastal area of outstanding natural beauty where the proposed development would contravene Objective RH 14 of the County Development Plan it is not a necessary dwelling in a rural area.
- The proposed development would contribute to an excessive density of septic tanks and would be located in area where there is insufficient space for a DWWTS in accordance with the EPA COP.

5.0 GROUNDS OF APPEAL

The grounds of appeal may be summarised as follows;

- The application complies with the National Spatial Strategy and the Sustainable Rural Housing Guidelines.
- The applicant was required to move out of another house close by due to divorce from his former wife. Another house on family land is owned and

occupied by the applicant's sister. The applicant has no right of occupancy of these houses.

- The applicant is employed in managing two nearby mobile home parks and therefore requires to live in this rural area.
- The DWWTS would comply with the EPA code of practice.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority response

The planning authority did not reply to the appeal.

6.3 Objections/Observations on Appeal

There were no observations on the appeal.

7.0 POLICY CONTEXT

The Wicklow County Development Plan 2010-2016 is the relevant development plan for the site.

Objective WW3 provides that:

“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 the Environmental Protection Agency “Waste Water Treatment Manuals”;

An annually renewed maintenance contract for the system is contracted with a reputable company / person, details of which shall be provided to the Local Authority;

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”.

Objective RH14

Residential development will be considered in the countryside only when it is for the provision of a necessary dwelling 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 was either born and reared in the family home in the immediate vicinity of the proposed site (including permanent native residents of levels 8 and 9 i.e. small villages and rural clusters), or resided in the immediate environs of the proposed site for at least 10 consecutive years 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 principle occupation is in agriculture and who owns and farms substantial lands in the immediate vicinity of the site.

6. An immediate family member (i.e. son or daughter) of a person described in 5, who is occupied in agriculture in the immediate vicinity.

7. A person whose principle occupation is in a rural resource based activity (i.e.: agriculture, forestry, mariculture, agri-tourism etc.) and who can demonstrate a need to live in the immediate vicinity of this activity.

8. Renovation or conversion of existing dilapidated buildings of substance, in a scale, density and manner appropriate to the rural area and its scenic amenities. Any such developments shall be in accordance with the Rural Design Standards set out in Section 6.4).

9. 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.

10. 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.

11. An emigrant, returning to their local area, seeking to build a house for his/her own use not as speculation.

12. 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.

13. A permanent native resident who has to dispose of their dwelling, following divorce or a legal separation.

14. Permanent native residents of moderate and small growth towns, seeking to build a house in their native town or village within the 50kmph / 30

mph speed limit on the non-national radial roads, for their own use and not as speculation as of 11th October 2004.

15. 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.

16. 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

8.0 ASSESSMENT

8.01 Rural Housing Policy

8.02 The Sustainable Rural Housing Guidelines for Planning Authorities distinguishes between four rural area types. The application site is within an area designated as being ‘under strong urban pressure’. These areas are typically close to larger urban centres, are under pressure for housing in the countryside and have road networks which are heavily trafficked. The guidelines suggest that certain classes of applicants e.g. those occupied full time or part-time in agriculture, forestry, those who are an intrinsic part of the rural community, sons/daughters of farmers and returning emigrants, may be considered for housing in the countryside. The development plan has had regard to the advice set out in the Sustainable Rural Housing Guidelines in that it has provided for consideration of housing applications from classes of applicants with links to specific rural locations and occupations.

8.03 The area is within a coastal area of ‘Outstanding Natural Beauty’ as designated in the County Development Plan and illustrated on Map 17.09 in the plan. The coastal area category covers for the most part, the area of land between the sea and the road nearest the coastline, is 41 miles long and is of landscape, habitat protection and recreational activity importance.

8.04 The application site is located in an area designated as ‘open countryside’ in the Wicklow County Development Plan. Objective RH 12 sets out the circumstances where the provision of a house is deemed necessary in such areas. These include a permanent native resident seeking to build a house for his/her own family and not as speculation, 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, a permanent native resident who has (had) to dispose of their dwelling, following divorce or a legal separation.

8.05 The applicant's landholding has benefitted from two grants of permission and two houses have been built; one is occupied by the applicant's sister the other by his former wife. He is engaged in the management of a caravan park to the north of the application site. The longevity of that caravan business (granted permission in 1989) would indicate that it is capable of supporting the applicant in the medium to long term.

8.06 I conclude therefore that the applicant is engaged in a rural based occupation and has had to vacate his former home because of a divorce and that he fulfils the exceptions to the general presumption against additional rural housing set out in the national guidelines and the County Development Plan.

8.07 Wastewater Treatment

8.08 Objective WW3 in the County Development Plan provides, *inter alia*, that new houses in the rural country side adhere to the EPA COP for DWWTS.

8.09 There is at least one caravan park adjoining the site to the northeast in the ownership of the applicant with about 35 caravan pitches. The site assessment states that this development drains to a bio-cycle WWTS 50m behind the existing house. There are three neighbours' houses between the entrance to this caravan park and the application site and three more houses on the landholding within the applicant's ownership. These neighbouring houses have wells and drain to DWWTS. The two permitted houses within the applicant's landholding and the house proposed for retention drain to a single septic tank and get potable water from a well to the north which also supplies the caravan park.

8.10 There is a drain/stream with flowing water behind the house proposed for retention generally along the line marked in orange on the site layout plan submitted to the planning authority 30th June 2015. Otherwise the site assessment appears consistent with the conditions observed on site. The site is underlain with free draining sandy soils which give an average T time of 1.33 which is outside the range of $3 \leq T \leq 50$ which would indicate that the site is capable of safely treating effluent from a conventional septic tank system.

8.11 The applicant has therefore proposed a proprietary effluent treatment system with a raised polishing filter located off to the right of the access road.

8.12 Comparing the grounds of appeal in relation to the ownership of the three houses on site (the applicants' own house proposed for retention, the applicant's estranged wife's house and the applicant's sister's house) and the landownership map submitted with the application it is somewhat opaque as to if the applicant controls the other two houses close by. Nevertheless there is a septic tank which at present serves all three houses. It is unclear if this septic tank is accompanied by a percolation area, where such a percolation area is located, and the hydraulic or biological loading it accommodates.

8.13 The proposed proprietary system requires pumping treated effluent to a polishing filter. The design pe for the system is 6 but the polishing filter appears to have been sized for a pe of 5 and used the area required ($\leq 45\text{m}^2$) as per table 10.1 of the EPA COP.

8.14 In conclusion;

- It is not possible to accurately assess the interactions of the proposed DWWTS with that currently serving the three houses now occupying the original landholding, or the three other systems which serve the nearest three houses to the north along the R750,
- Since there is a drain or stream behind the house proposed for retention but not included in the site suitability assessment it is not possible to assess the potential for surface water pollution arising from the proposed DWWTS.
- Based on the submitted information it is not possible to confirm that the polishing filter has been correctly sized to accommodate the hydraulic loading expected from the proposed development.

8.15 Therefore I recommend that permission be refused because the application has not established that effluent arising from the proposed development can be treated on site without risk of ground water pollution, surface water pollution and risk to public health.

8.16 Appropriate Assessment

8.17 The planning authority carried out an AA screening and concluded that if suitable proposals were made for effluent treatment the proposal would be unlikely to give rise to adverse impact in a European site.

8.18 The Buckroney-Brittias Dunes and Fen SAC is located on the seaward side of the public road which fronts the site – about 75m from the proposed rails polishing filter at its closest. The habitats for which this SAC has been selected are;

- Annual vegetation of drift lines
- Perennial vegetation of stony banks
- Mediterranean salt meadows (*Juncetalia maritimi*)
- Embryonic shifting dunes
- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)
- Fixed coastal dunes with herbaceous vegetation (grey dunes)
- Atlantic decalcified fixed dunes (*Calluno-Ulicetea*)
- Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*)
- Humid dune slacks
- Alkaline fens.

8.19 The conservation objective for these habitats set out by the NPWS is to maintain them at favorable conservation condition. The application provides no assessment of the likely significant effects on these qualifying interest either directly from the proposed development or in combination with other plans or projects in the area.

8.20 Having regard to;

- The density of existing wastewater treatment systems in the area including those serving domestic houses and nearby caravan parks and the potential for in-combination effects arising from these treatment systems,

- the source – pathway –receptor model which indicates, given the proximity of the proposed development to the SAC, the potential for incompletely treated effluent to reach the SAC from the proposed development,

I conclude on the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Buckronev-Brittis Dunes and Fen SAC (site No. 000729) in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

8.21 Remaining Issues

8.22 Having regard to the setback of the house proposed for retention from the public road, its modest height and scale and its location within a cluster of buildings and the screening provided by the roadside boundary planting I do not consider that the proposed development would be visually intrusive in the landscape.

8.23 It may also be observed that the proposed development comprises backland development which affords views into the private amenity space to the rear of both adjoining houses and results in considerable adverse impact on the residential amenity of these houses. However this issue has not been raised previously I do not recommend raising it as a new issue in this case.

9.0 CONCLUSIONS AND RECOMMENDATION

Having regard to the foregoing I recommend that permission should be refused for the reason set out below.

REASONS AND CONSIDERATIONS

The site is unsuitable for the safe disposal of foul domestic effluent. Having regard to the conditions pertaining on site and to the proliferation of waste water treatment systems in the vicinity of the site the Board is not satisfied on the basis of the information submitted in connection with this application and appeal that the proprietary effluent treatment system and raised polishing filter proposed to serve the house proposed for retention is adequate to treat effluent arising from the proposed development in a manner that would not give rise to the risk of pollution to surface water and/or ground water. The proposed development would, therefore, be prejudicial to public health and be contrary to the proper planning and sustainable development of the area.

Hugh Mannion
Planning Inspector
9th December 2015