

An Bord Pleanála



Inspector's Report

PL27.246146

Development: Dwelling and on site effluent treatment system, bored well & ancillary works.

Location: Ballylug, Laragh, Co. Wicklow.

Planning Application

Planning Authority: Wicklow County Council

Planning Authority Reg. Ref. No: 15/1253

Applicant: Tony Porter

Type of Application: Permission

Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant: Tony Porter

Type of Appeal: First Party

Observers: Gary O'Neill

Date of Site Inspection 29th of April 2016

Inspector: Siobhan Carroll

1.0 SITE LOCATION AND DESCRIPTION

- 1.0.1 The appeal site is located in the townland of Ballylug, Laragh, Co. Wicklow. It is situated circa 2.5km to the south of Laragh. It is accessed off the Regional Road the R755 via the L6080 and then via a private access road which serves an existing dwelling to the west of the site. The site is located on south-western slope of Trooperstown Hill at circa the 220m-240m contour levels. There are extensive views out over the valley towards Kirikee Mountain to the south.
- 1.0.2 The site has a stated area of 0.46 hectares and it comprises a section of open land which is under forestry for the production of Christmas trees. The private laneway serves a single storey detached dwelling 100m to the west along with the lands which form part of the Christmas tree farm. There is a concurrent appeal on the adjoining site to the east of the appeal site for another single storey detached dwelling.

1.1 THE PROPOSED DEVELOPMENT

Permission is sought to construct a dwelling and on site effluent treatment system. Features of the scheme include;

- Site area 0.46 hectares,
- Floor area of dwelling 240sq m,
- Dwelling ridge height of 5.5m,
- Secondary treatment wastewater system,
- Bored well

1.2 THE PLANNING AUTHORITY'S DECISION

Internal Reports:

Area Engineer: Entrance from driveway acceptable.

Environmental Health Officer: No objections subject to conditions.

Prescribed Body

An Taisce: raised concerns regarding the applicant's compliance with rural housing policy and also the cumulative impact of effluent disposal systems.

Submissions

The Planning Authority received two submissions/observations in relation to the application. The issues raised as set out in the Planner's report echo the matters in the reasons for refusal along with concerns regarding potential for pollution of existing wells

Decision

The Planning Authority refused permission for three reasons. The first reason refers to the applicant having not demonstrated compliance housing need criteria as set out in the Sustainable Rural Housing Guidelines. The second refusal reasons refers to the development forming an intrusive feature in the landscape and that it would adversely impact upon Listed Prospect No. 43. The third reason for refusal referred to the development being a traffic hazard due to inadequate sightlines at the junction of the driveway and the L6086.

1.3 PLANNING HISTORY

There is an extensive planning history pertaining to the subject site and also adjacent to the appeal site which are detailed in the report of the Planning Authority.

Reg. Ref. 15/1254 & PL27.246145 – Concurrent appeal on adjoining site to the east for a dwelling, on-site effluent treatment system and bored well for Paul Porter.

2.0 PLANNING POLICY

2.1 Development Plan

Wicklow County Development Plan 2010 - 2016

- The appeal site is within a rural area outside of any listed settlement development boundary.
- Section 6.3.2 sets out the Development Plan criteria for new houses in the open countryside. It is recognised that residential development is needed to house those who are indigenous to and/ or have a bona fide necessity to live in the rural area.
- Objective RH14 lists the circumstances where residential development will be considered in the countryside.

- In terms of Landscape Characterisation, the site is located in a 'Northern Mountain Lowland Area of Special Amenity' where vulnerability is high.
- Objective VP1 seeks 'to protect listed views and prospects from development that would either obstruct the views / prospect from the identified vantage point or form an obtrusive or incongruous feature in that view / prospect. Due regard will be paid in assessing development applications to the span and scope of the view / prospect and the location of the development within that view / prospect.'
- No.41 R755 Vale of Clara Laragh to Rathdrum Wooded valley prospect of Clara Vale on both sides of Valley.
- No.42 L6086 northern side of Clara Vale Prospect to northeast of Trooperstown Hill and Clara Vale to south west.
- No.43 L2083, L2128, L3260, Laragh (Bookey Bridge) to Mullin Crossroads, via Aghavannagh Prospect from both sides of Military Road.

2.2 National Policy

The Sustainable Rural Housing Guidelines for Planning Authorities, April 2005

The above Ministerial guidelines refer to criteria for managing rural housing requirements whilst achieving sustainable development. The subject site is located within an Area Under Strong Urban Influence as identified in Map 1: Indicative Outline of NSS Rural Area Types in the DOE Rural Housing Guidelines. The key development plan objectives in these areas should be to on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.

EPA's Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses

This policy document provides guidance on the assessment of on-site wastewater disposal systems for single house. The government considers that the implementation of the Code is a key element to ensure that the planning system is positioned to address the issue of protecting water quality in assessing development proposals for new housing in rural areas and meeting its obligations under Council Directive (75/442/EEC).

3.0 APPEAL

A first party appeal was submitted by Vincent JP Farry Planning & Development Consultants on behalf of Mr Paul Porter on the 11th of February 2016. The content of the appeal submission can be summarised as follows;

- The first reason for refusal refers the applicant being ineligible to develop a dwelling on the family land holding. It is stated that the applicant shares similar residency and occupancy characteristics as his sister Stephanie Porter.
- The applicant has lived at the family home at Trooperstown, Laragh which was granted under Reg. Ref. 98/9189 until 2008. In 2008 the applicant moved in with his sister Stephanie Porter at her home in Ballylug, Laragh.
- There is reference in the Planner's report to Mr. Porter residing in his sister's dwelling which was unauthorised until 2010. It is stated in the appeal this matter should not prejudice the duration of time the applicant is considered to have resided at this location.
- It is contended that the applicant complies with the rural housing policy as set out in the Development Plan with reference to applicant being employed in the forestry sector based at this location.
- In relation to the matter of visual impact it is contended that the proposed development would not unduly impact upon the landscape. It is argued that the proposed dwelling is low profile and stone clad and would be acceptable at this location.
- Regarding the matter of the proposed site access, the decision of the Board PL27.236953 is cited as the proposed driveway was considered acceptable in terms of traffic safety and convenience.

A further submission was received from the appellant on the 6th of April 2016 in response to the submission from the Observer.

- The content of the submission reiterates the issues raised in the appeal.
- The concerns of the observer regarding potential effect of the proposed development on his bored well is noted, however it is considered that there is no scientific basis for this.

3.1 Planning Authority response submission

- None received

3.2 Observation

An observation to the appeal was submitted to the Board on the 8th of March 2016 by Duignan Dooley Architects and Planning Consultants on behalf of Mr. Gary Neill. The main issues raised are as follows;

- It is noted that the site address is Ballylug, Rathdrum, Co. Wicklow and not Ballylug, Laragh, Co. Wicklow.
- The argument from the appellant that development should be permitted as his sister received permission at this location is not justifiable. It is noted that the dwelling was originally constructed without permission and subsequently received a retention permission.
- The proposed development would create a precedent for similar one off housing in visually sensitive locations.
- The applicant has not shown that they have considered alternative more appropriate sites which would not impact upon the Clara Vale.
- The proposal adversely impact listed prospects and views no's 41, 42 & 43 set out in the Development Plan.
- The observer's water supply is from a bored well which is supplied by a local aquifer which traverses the application site. The proposed development would pose a risk to the observer's water supply due the proximity of the proposed on-site effluent treatment system.
- In relation to the vehicular access to the site, it is considered that the sightlines available at the junction of the access road with the public road are seriously deficient.

4.0 ASSESSMENT

Having regard to the above, and having inspected the site and reviewed all documents on file, the issue to be considered in the assessment of this case is as follows:

- Rural Housing Policy
- Design and Visual amenity
- Site Access
- Effluent treatment
- Appropriate Assessment

4.1 Rural Housing Policy

- 4.1.1 With regard to compliance with rural housing policy the proposal should be in accordance with the provisions of the Sustainable Rural Housing Guidelines and the provisions of the Wicklow County Development Plan 2010 – 2016, as it relates to settlement in rural areas. The appeal site is located in an area identified as an Area Under Strong Urban Influence on Map No.1 – Indicative Outline of NSS Rural Area Types in the Sustainable Rural Housing Guidelines.
- 4.1.2 Objective RH14 of the Wicklow County Development Plan 2010 – 2016 allows for the consideration of residential development in the countryside where, inter alia, it is for the provision of a dwelling for a permanent native resident. A permanent native resident is defined as a person 'either born and reared in the family home in the immediate vicinity of the proposed site, or (who has) resided in the immediate environs of the proposed site for at least 10 consecutive years prior to the application for planning permission.'
- 4.1.3 The applicant Mr. Tony Porter is the son of the landowner Mr. Peter Porter. As detailed in the appeal submission Mr. Porter lived in his family home at Laragh East which was granted permission under Reg. Ref. 98/9189 until 2008. This dwelling is located off the R755 outside Laragh. It is situated approximately 7km from the appeal site at Ballylug, Laragh. In 2008 Mr. Porter then moved to live with his sister Ms. Stephanie Porter. Ms. Porter's home is situated to the west of the appeal site. This property received permission in 2010 under Reg. Ref. 10/2332 & PL27.236953 for the retention of a single storey replacement dwelling to replace that which formerly stood on land and a new driveway.
- 4.1.4 The Planning Authority in their assessment of the whether the applicant is considered to qualify for special consideration to live in the rural area provided further details in relation to the permission granted under Reg. Ref. 98/9189. The dwelling granted at Laragh East included tourist accommodation and the applicant's family home at the time that application was made was at No. 18 Beechwood, Laragh located within the village. As stated in the Planner's report the dwelling at Laragh East was sold in 2008 and it would appear that Mr. Tony Porter lived there from 2003 to 2008. I note that the location of that property is over 7km from the appeal site. Regarding the applicant's stated residency at the dwelling at Ballylug I note that the correspondences provided which indicate an address at Stone Haven, Ballylug date back to 2010. In respect of Objective RH14 of the Development it is required that 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 or resided in the immediate environs of the proposed site for at least 10 consecutive years prior to the application for planning permission.
- 4.1.5 Therefore based on the detail provided in the appeal submissions, with the application and also from the Planning Authority, I am of the opinion that the applicant has not demonstrated that they are a permanent native resident of the rural area of Ballylug, Laragh.

4.1.6 In relation to his employment it is stated that Mr. Porter is primarily employed in the local family business 'Porter's Christmas Tree Farms'. The applicant's agent makes the case that the applicant should be considered on the basis that he is a person whose principle occupation is forestry and that he has a definable social/economic need to live in the area. While I note that the applicant is employed in the family business some of which is located at Ballylug having regard to the fact that there is an existing dwelling occupied by a family member at this location, I do not consider that an additional dwelling is warranted and I would concur with the Planning Authority that a defined social and economic need has not been adequately demonstrated.

4.1.7 Accordingly, having regard to the details provided with the application and the appeal, I do not consider that the applicant has demonstrated a rural housing need in accordance with the provisions of the Development Plan and the provisions contained in the Rural Housing Guidelines.

4.2 Design and Visual Amenity

4.2.1 The Planning Authority in the second refusal reason stated that having regard to the elevated location of the site, its location within Listed Prospect No. 43, the design of the dwelling and lack of screening and proposal to remove existing commercial forestry to facilitated development that it would form an intrusive feature in the landscape designated an Area of Special Amenity. A number of photographs of views towards the site from the south and west were submitted with the appeal. In response to this reason for refusal, the applicant's agent states that the proposed low profile dwelling would not adversely affect amenity and that its impact would be negligible.

4.2.2 The site is located within an area designated a 'Northern Mountain Lowland Area of Special Amenity' in the Wicklow County Development Plan, 2010-2016. These landscape areas are described as under high vulnerability. The site is situated at a prominent location on the southern slope of Trooperstown hill at to roughly 220m-240m contour levels. Map 17.11 of the County Development Plan 2010-2016 indicates Prospects of Special Amenity Value or Special Interest. There are Listed Prospects along all the radial roads from Laragh. In relation to the appeal site it is situated within the Listed Prospect No. 43 which runs along both sides of Military Road (R115) from Laragh (Bookey Bridge) to Mullin Crossroads, via Aghavannagh.

4.2.3 Section 6.4.3 of the Development Plan refers to Houses in the open Countryside and advises in relation to the siting of dwellings that buildings should be nestled into the landscape and not be located in an elevated position on a site. It is also recommended that proposed buildings avoid open field or exposed locations that prevent the development being integrated within its surroundings.

- 4.2.4 The house design is single storey with a proposed ridge height of 5.5m and a floor area of 240sq m. The proposed finished floor level of the dwelling is indicated on the site layout plan as 230m OD. The dwelling would be located a minimum distance of 60m from the closest residential property to the west which is the applicant's sisters dwelling. This dwelling was granted permission on the basis that it was a replacement dwelling for an existing property. I note that it is located close a field boundary and at a lower level than the proposed dwelling.
- 4.2.5 As indicated on the site layout plan it is proposed to plant a tree and hedge boundary along the eastern, western and southern boundaries. As referred to in the second reason for refusal the proposed development would entail a significant level of removal of the existing commercial forestry. This would therefore result in the site becoming more prominent in the landscape and therefore the proposed dwelling would form a visually incongruous and obtrusive feature. The landscaping proposals would not in my opinion satisfactorily integrated the proposed dwelling into the surroundings.
- 4.2.6 Therefore notwithstanding the single storey nature of the proposed dwelling having regard to the visually sensitive nature of the site specifically its prominent location within views and prospects of special amenity along the Clara Vale, I consider that it would seriously injure the visual amenities of this sensitive rural area.

4.3 Site Access

- 4.3.1 It is proposed to access the site via the existing private driveway which serves the dwelling to the west and the surrounding tree farm. The driveway extends for circa 370m from the vehicular entrance with the local road the L6080. This driveway was permitted under Reg. Ref. 10/2332 & PL27.236953. The Senior Inspector in assessing the proposal considered that the 90m sightlines can be achieved at the site entrance and that the entrance gradient is shallow. The Board agreed with the recommendation of the Senior Inspector and granted permission for the retention of the replacement dwelling and new driveway.
- 4.3.2 The Planning Authority in their assessment of the proposal considered that the driveway had not been completed their satisfaction particularly in relation to surface water drainage. It was also stated in the Planner's report that drawings indicating the sightlines at the junction of the driveway and the local road were not submitted. In the absence of such drawings the Planning Authority considered that the proposal would result in the creation of a traffic hazard.
- 4.3.3 Having reviewed the site layout plan and section submitted with Reg. Ref. 10/2332 & PL27.236953 (Drawing No. 1154/29) which relates to the subject driveway I note that a sightline distance of 90m is indicated to the east and west. Having inspected the site and viewed the junction of the driveway the L6080 I am satisfied that an adequate sightline distance is available in both

directions. Accordingly, I consider the proposed scheme is acceptable in terms of access and traffic considerations. Furthermore, it is noted that the Area Engineer in the report dated 20th of January 2016 was satisfied with the proposed vehicular access arrangements.

4.4 Effluent treatment

- 4.4.1 It is proposed to install a packaged wastewater treatment system and polishing filter. It is proposed to locate the treatment plant circa 12m to the west and downhill of the dwelling and the polishing filter is located on the layout plan 15.62m to the west of the dwelling and also downhill. Regarding water supply a bored well is proposed on site uphill and 54.35m from the soil polishing filter. Table 6.1 of the EPA Manual – Treatment Systems for Single Houses sets out the minimum separation distances, the minimum distance from a watercourse or stream to a percolation area is stated as 10m and the minimum distance from a road to the a percolation area is stated as 4m. There are no watercourses within close proximity of the site.
- 4.4.2 The site suitability assessment indicates that a T value of 10.56 was recorded on site. A T value of greater than or equal to 3 and less than or equal to 50, means that the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater. It is proposed to discharge the treated effluent to ground water. No water table or rock was encountered up to a depth of 1.8m below ground level during the site testing. The groundwater protection response for the area is R1 which means the site is suitable for an on-site system subject to normal good practice.
- 4.4.3 P tests were also carried out and a P value of 12.56 was recorded. Table 6.3 of the EPA Manual advises that where the P value is greater than 3 and less than 75 then the site is suitable for a secondary treatment system with polishing filter at ground surface or overground. It is proposed to construct a raised polishing filter from imported permeable soil with an area of 60sq m. The proposed soil polishing filter has a thickness of circa 900mm. It is proposed to discharge the treated effluent to ground water.
- 4.4.4 The observer has raised concern regarding potential impact to his bored well. I note from the submitted site suitability assessment that the closest well is located circa 250m to the west at Stephanie Porter's dwelling. It is noted that the Environmental Health Officer had no objections to the proposals. In relation to the matter of likelihood of pollution of a water supply source having regard to the site tests results and the separation distance to the closest well, I consider that there is no likelihood of pollution risk.
- 4.4.5 Having regard to the information submitted including the site characterisation report and the proposal to install a secondary treatment system, I would concur with the assessment of the planning authority that site is suitable for the proposed on site effluent treatment system subject to the system being constructed and maintained in accordance with the details submitted.

4.5 Other issues

Appropriate Assessment

- 4.5.1 The appeal site is located in the townland of Ballylug, Laragh, Co. Wicklow. The site is located circa 1.5km to north of the Vale of Clara SAC Site Code 000733. Wicklow Mountains SAC Site Code 002122 is situated 1.9km from the site at its closest location. The Wicklow Mountains SPA Site Code 004040 is located 3.1km to the west. Having regard to the nature and scale of the proposed development and its proximity to these 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.

5.0 Recommendation

- 5.0.1 I have read the submissions on file, visited the site, and had due regard to the provisions of the Development Plan and all other matters arising. In the light of this and the assessment above, I recommend that permission be refused for this development for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

1. On the basis of the documentation submitted with the application and appeal, the Board considered that the applicant does not come within the scope of the housing need criteria for a dwelling at this location as set out in the "Sustainable Rural Housing Guidelines for planning authorities" issued by the Department of the Environment, Heritage and Local Government in April, 2005 and the current Development Plan for the area and is not satisfied that his housing need could not be satisfactorily met in an established settlement centre. Accordingly, it is considered that the proposed development would be contrary to Ministerial guidelines as set out in the Sustainable Rural Housing Guidelines and to the proper planning and sustainable development of the area.

2. The site of the proposed development is located in an area which is designated as an Area of Special Amenity in the current Wicklow County Development Plan. Furthermore, the site is located within views and prospects of special amenity along the Clara Vale. The proposed development, by reason of its siting in a prominent position on the south-western slope of the Trooperstown Hill, would form a visually incongruous and obtrusive feature and would seriously injure the visual amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

**Siobhan Carroll,
Inspectorate
17th of May 2016**