



An  
Bord  
Pleanála

## Inspector's Report PL27.247391

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<b>Development</b>	Retention of dwelling and new wastewater treatment system.
<b>Location</b>	Brittas, Brittas Bay, Co. Wicklow
<b>Planning Authority</b>	Wicklow Co. Council
<b>Planning Authority Reg. Ref.</b>	16/850
<b>Applicant</b>	Sarah Staunton
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Sarah Staunton
<b>Observers</b>	none
<b>Date of Site Inspection</b>	26/1/17
<b>Inspector</b>	Siobhan Carroll

## **1.0 Site Location and Description**

- 1.1. The appeal site situated on the western side of the R750 the coastal route between Wicklow town and Arklow, and to the south of Brittas Bay. This area is characterised by its flat coastal location and there are a range of house types and land uses including tourism and recreational uses associate with this seaside location.
- 1.2. The stated area of the appeal site is 0.31 hectares. The property on site is a single storey detached timber dwelling with a floor area of 73sq and a ridge height of 4.058m. To the south of the property there is a farm yard and dwelling. That dwelling is served by a separate vehicular entrance. The farm yard and another single storey dwelling 25m to the east of the subject property are all served by the same vehicular entrance. There is a caravan park to the north of the site.

## **2.0 Proposed Development**

- 2.1. Retention of dwelling as constructed and new wastewater treatment system.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority refused permission for 4 no. reasons. The first reason refers to the applicant not coming within the scope of the housing need criteria as set out under Objective RH14 of the County Development Plan. The second reason refers to the proposed on-site effluent treatment and states that the applicant failed to demonstrate that the proposed wastewater treatment system is adequate to treat effluent arising from the proposed development. The third reason refers to the development resulting in an excessive density of development served by on-site effluent treatment. The forth reason refers to the proximity of the site to Buckroneys-Brittas Dunes and Fen SAC and that the Planning Authority considered that the proposed development has potential to affect the conservation objectives of the Natura 2000 site.

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planning Reports

- It was concluded in the Planning Report that the applicant failed to demonstrate a housing need in accordance with the Development Plan settlement strategy. In relation to the proposed new wastewater treatment system it was concluded that the applicant failed to adequately demonstrate that the proposal would not give rise to the risk of pollution of surface and ground water. In relation to the proximity of the site to Buckronev-Brittis Dunes and Fen SAC the Planning Authority were not satisfied that the proposed development would not be likely to have a significant effect on Buckronev-Brittis Dunes and Fen SAC.

#### 3.2.2. Other Technical Reports

E.H.O: Refusal recommended

### 3.3. **Third Party Observations**

The Planning Authority did not receive any submissions/observations in relation to the proposed development.

## 4.0 **Planning History**

There is an extensive planning history relating to the site as set out in the Planner's report. The most recent relevant planning history refers to the following;

Reg. Ref. 16/1018 - Permission was granted to Alison Staunton for a wastewater treatment system to EPA 2009 standards to serve existing dwelling 'Cois Farrage'.

Reg. Ref. 16/1026 - Permission was sought by Finola Staunton for a wastewater treatment system to EPA 2009 standards to serve existing dwelling. The Planning Authority requested further information and a response was submitted by the applicant on the 20<sup>th</sup> of January 2017.

Reg. Ref. 15/670 & PL27.245465 - Permission was refused by the Board to Oliver Staunton for the retention of the house, new wastewater treatment system, improvements to existing driveway. Permission was refused for two reasons;

1. 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 wastewater treatment systems in the vicinity of the site, the Board is not satisfied, on the basis of the submissions made in connection with this application and appeal, that the proprietary effluent treatment system and raised polishing filter proposed to serve the house proposed to be retained 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 and the development proposed to be retained would, therefore, be prejudicial to public health and be contrary to the proper planning and sustainable development of the area.
2. 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.

## 5.0 Policy Context

### 5.1. Development Plan

The relevant plan is the Wicklow County Development Plan 2016-2022

- The appeal site is within a rural area outside of any listed settlement development boundary.

- Objective HD23 refers to Housing in the Open Countryside

## 5.2. Natural Heritage Designations

- Buckronev-Brittis Dunes and Fen SAC Site Code 000729 is situated on the seaward side of the Regional Road R750 and approximately 3m from the appeal site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A first party appeal was submitted by Vincent JP Farry and Co Ltd. Planning Consultants on behalf of the applicant Sarah Staunton on the 10<sup>th</sup> of October 2016. The main issues raised are as follows;

- The Planning Authority has refused permission for four reasons. The first refers to rural housing policy. In relation to the previous application and appeal on site (Reg. Ref. 15/670 & PL27.245465) made by Mr Oliver Staunton, the Inspector in determining the case concluded that the applicant complied with the rural housing policy. The Board disagreed with the Inspector. On foot of that decision Mr Staunton explored the option of his daughter returning from France to live at the subject dwelling.
- The applicant Ms. Sarah Staunton agreed to return to Ireland and live at the property at Brittis Bay. She was born in 1980 and her family home is 'Rose Lodge', Brittis Bay, Co. Wicklow. She attended primary school at Scoil Mhuire Realt Na Mara from 1984-1992 and her address was Brittis Bay, Co. Wicklow. She attended secondary school at Dominican College, Wicklow and records from Dominican College, Wicklow confirm her address was 'Rose Cottage' Brittis Bay. Co. Wicklow.
- In 2001 Ms. Staunton emigrated to France following graduation from NUI Maynooth. She has lived in France since 2001. The Planning Authority

concluded that the applicant failed to demonstrate that she has returned to the rural area of Brittas Bay.

- It is requested that the Board consider that Ms. Staunton would qualify under the eleventh test in policy RH12 of the Development Plan. The eleventh test in policy RH12 does not require an applicant to show that he/she intends to settle permanently in the area. The applicant has indicated that she will be returning to live with her father and that she will be working in the family business.
- In relation to the proposed effluent treatment, firstly under the current application it is proposed to provide a treatment system to serve the subject dwelling it is proposed to retain. Secondly, it is proposed to improve the existing sewage treatment at '*Rose Cottage*' and '*Cois Farraige*' under separate applications.
- The appellant states that the proposed effluent treatment system complies with the EPA requirements. The objections to the proposal from the Planning Authority appear to relate to the sewage treatment arrangements serving the two adjacent houses.
- Two concurrent applications have been made to the Council under Reg. Ref. 16/1018 and 16/1026 to provide independent effluent treatment systems for the two properties. It is requested that should the Board decide to grant permission that a condition could be attached requiring that the sewage treatment upgrade of the two properties '*Rose Cottage*' and '*Cois Farraige*' must be completed in three months.
- Regarding the second reason for refusal, while it refers to 'the risk of pollution' from 'the house to be retained', the EHO states that the system which is proposed to serve the subject dwelling is satisfactory.
- In relation to the density of treatment systems and the reference to 'the proliferation of wastewater treatment systems' in the previous Board Order, the appellant requests that the Board have regard to the environmental benefits of the installation of a new treatment system as well as the proposed upgrade for the two adjacent dwellings.

- Regarding the proximity of the site to the Special Area of Conservation a report prepared by Dr Tom Curtis, Ecological Consultant entitled '*Appropriate Assessment and Natura Impact Statement for proposed installation and upgrade of three separate effluent treatment areas for discharge at Brittas Bay, Co. Wicklow*' was included with the appeal.
- It was concluded in the report that '*the effects of upgrading the two waste water facilities at and the addition of a new one are essentially enhanced mitigation measures to prevent any impacts on the groundwater from contaminants and especially nitrates. The flow of water is towards those areas of dune and fen protected by SAC designation but it is clear that there will be no negative effects accruing due to the improved filtration provided by the upgraded facilities together with the depth of the soil and subsoil sufficient to filter out any likely contaminant before they reached the groundwater. It is therefore concluded that there will be no negative impacts of any habitat or species within the Buckronee-Brittas Dunes and Fen SAC.*'
- In conclusion, it is submitted that the applicant Ms Sarah Staunton has demonstrated compliance with rural housing policy, that the proposals will improve groundwater protection and enhance the degree of protection for the area.

## 6.2. Planning Authority Response

- None received

## 7.0 Assessment

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

- Rural Housing Policy
- Effluent treatment

- Appropriate Assessment

## 7.1. Rural Housing Policy

- 7.1.1. 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 current Development Plan the Wicklow County Development Plan 2016 – 2022, 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.
- 7.1.2. Objective 23 of the Wicklow County Development Plan 2016 – 2022 refers to housing in the open countryside and it states that 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. There are sixteen categories set out under Objective 23, whereby residential development will be considered in the countryside. As set out in the appeal, it is requested that the Bord consider the applicant Ms. Sarah Staunton an emigrant who qualifies as 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.
- 7.1.3. The applicant Ms. Sarah Staunton is the daughter of the landowner Mr Oliver Staunton. It is stated in the appeal that she has been living in France since 2001 and now intends to return, settle in the area permanently and work in the family business. It is noted from the planning application form that the applicant does not own a house in Co. Wicklow nor has she previously owned a house in the county. As detailed in the appeal submission, the applicant lived at 'Rose Lodge' Brittas Bay from her birth in 1980. That dwelling is situated 16m to the south of the subject property. Ms. Staunton attending primary school at Scoil Mhuire Realt Na Mara, Brittas Bay and secondary school at Dominican College, Wicklow. Her home address while attending Dominican College is stated as 'Rose Cottage' Brittas Bay.
- 7.1.4. On the basis of the information submitted with the application and the appeal I would consider that the applicant meets the qualification criteria to build a rural dwelling at



this location in accordance with the provisions of the Development Plan and the provisions contained in the Rural Housing Guidelines.

## 7.2. Effluent treatment

- 7.2.1. It is proposed to install a new packaged wastewater treatment system and polishing filter and decommission the existing septic tank serving the property. It is proposed to locate the treatment plant circa 7m to the north and the percolation area is located on the layout plan 15m to the north-east of the dwelling. Regarding water supply, the property is connected to the well which serves the applicant's fathers caravan park adjoining the site. 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 a percolation area is stated as 4m. There is a watercourse within 500m up gradient of the site.
- 7.2.2. The site suitability assessment indicates that a T value of 0.44 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. The recorded T value indicates a very fast rate of infiltration due to the nature of the existing soil conditions i.e. marine and Aeolian sands. P tests were also carried out and a P value of 4.28 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.
- 7.2.3. It is proposed to construct a raised polishing filter of 45sq m from imported permeable soil. It is proposed to discharge the treated effluent to ground water. No water table or rock was encountered up to a depth of 3m below ground level during the site testing. The Environmental Protection Agency Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses 2010 provides guidance on the provision of wastewater treatment and disposal systems for new single houses. Annex B of the publication refers to Groundwater Protection Response. It is stated that when choosing a site consideration should be had to any nearby groundwater sources and the vulnerability of the underlying groundwater. The Code of Practice sets out that the risk from onsite wastewater treatment systems is mainly influenced

by its proximity to a groundwater source, the value of the groundwater resource and the depth of the water table. In relation to proposed site, it lies on a locally important groundwater aquifer and the vulnerability rating of the aquifer is high.

- 7.2.4. The Environmental Health Officer in their report dated the 10<sup>th</sup> of August 2016 recommended that permission be refused on the basis that insufficient information had been submitted in relation to the site sizes and boundaries of the other two dwellings left on the original site and that there was a lack of information in relation to the EPA site characterisation reports in relation to new effluent treatment systems to serve those properties. In response to the matter, the applicant stated that it is proposed to improve the existing sewage treatment at 'Rose Cottage' and 'Cois Farraiige' under separate planning applications. In relation to this matter, I note that under Reg. Ref. 16/1018 permission was granted to Alison Staunton for a wastewater treatment system to EPA 2009 standards to serve existing dwelling 'Cois Farraiige'. There is a current application made by Finola Staunton under Reg. Ref. 16/1026 for a wastewater treatment system to EPA 2009 standards to serve existing dwelling 'Rose Cottage'. The Planning Authority requested further information in relation to the status of the existing shared septic tank and also required revised layout indicating the site boundaries of the three properties which shared the existing septic tank.
- 7.2.5. The site layout plan submitted with the application does not clearly indicate the site boundaries of the three properties which are currently connected to the existing septic tank located to the east of the dwelling under the current appeal. This information has also not been provided with the appeal. In the absence of such detail which is necessary to determine the suitability of a site for on-site effluent, I would concur with the assessment of the Environmental Health Officer.
- 7.2.6. Furthermore, having regard to the T-test result of 0.44 and the requirement to provide a constructed soil polishing filter and the proximity of several properties in the vicinity of the site reliant on septic tanks/wastewater treatment systems which discharge to groundwater and having regard to the sensitivity of the groundwater resource in the absence of an assessment of the cumulative impact of the proposed discharge on the groundwater quality in the area, I am not satisfied that the proposed development would not pose an unacceptable risk of pollution of groundwater and surface water resources.

### 7.3. Appropriate Assessment

- 7.3.1. The site is adjacent to Buckroney-Brittis Dunes and Fen SAC (Site Code 00729). In relation to determining the effects of a development on a European site are likely and whether or not the effects are significant this is done in light of the Conservation Objectives for the site. It should also be determined if there are cumulative effects with other projects. The Planning Authority in their assessment of the application determined that they could not 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 Buckroney-Brittis Bay Dunes and Fen SAC.
- 7.3.2. In response to the matter the applicant employed the services of Dr Tom Curtis, Ecological Consultant to provide an Appropriate Assessment and Natura Impact Statement. The information contained in the NIS is considered sufficient for the Board to carry out an Appropriate Assessment.
- 7.3.3. The conservation objective for Buckroney-Brittis Bay Dunes and Fen SAC is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected. The habitats listed 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*, dunes with *Salix repens* ssp. *Argentea*, humid dune slacks, alkaline fens, fixed coastal dunes with herbaceous vegetation which is a priority habitat and Atlantic decalcified fixed dunes which is a priority habitat. The Little Tern a species listed on Annex I of the E.U. Birds Directive, has a habitat at Buckroney strand within the SAC. Potter's River located within the SAC contains lamprey which are listed on Annex II of the European Union Habitats Directive (92/43/EEC).
- 7.3.4. The potential impacts set out in the NIS are during the construction phase and operational phase. It is stated that during the construction phase there would be minimal impacts and no negative impacts on biodiversity. In relation to the operational phase potential impacts are possible as a result of discharge of treated effluent to groundwater and the proximity to Buckroney-Brittis Bay Dunes and Fen SAC. It is concluded in the Natura Impact Statement prepared by Dr Tom Curtis that the provision of new and upgraded effluent treatment systems at the site at

Brittas Bay would provide an improvement in the level of nitrate getting into the groundwater due to the nature of the substrate through which the effluent would pass and that there will be no negative impacts to any habitats or species within the Buckroneys-Brittas Dunes and Fen SAC and therefore no implications for the European site in view of the Conservation Objectives for the site.

7.3.5. Notwithstanding the content of the submitted NIS, I would have strong concerns regarding the overall impact upon water quality due to the existing soil conditions, the location of the site on a locally important groundwater aquifer which has a high vulnerability rating, the requirement to provide a constructed polishing filter and particularly having regard to the proliferation of wastewater treatment systems in the vicinity of the site including that serving the caravan park to the north and the existing surrounding residential development. On that basis I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of Buckroneys-Brittas Dunes and Fen SAC.

7.3.6. Having regard to the nature of the proposed development, the proximity of the proposed effluent treatment system to the European Site and on the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European site No. 00729, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

## **8.0 Recommendation**

8.1. 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.

## 9.0 Reasons and Considerations

1. 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 wastewater treatment systems in the vicinity of the site, the Board is not satisfied, on the basis of the submissions made in connection with this application and appeal, that the proprietary effluent treatment system and raised polishing filter proposed to serve the house proposed to be retained 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 and the development proposed to be retained would, therefore, be prejudicial to public health and be contrary to the proper planning and sustainable development of the area.

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Siobhan Carroll  
Planning Inspector

6<sup>th</sup> February 2017