



An
Bord
Pleanála

Inspector's Report PL27.247794.

Development	Extend farm building and change of use to provide 2 no. holiday homes and upgrade previously approved site effluent disposal system and associated site works.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	16/1120
Applicant	Richard Mulcahy
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Appellant	Richard Mulcahy
Observer	None
Date of Site Inspection	12 th April 2017
Inspector	Mairead Kenny

1.0 Site Location and Description

The site is located adjacent the coast and is part of a significant agricultural land holding, which is mainly planted as a forest. The eastern end of the holding adjoins a private coastal area where there are small but very attractive beaches which are inaccessible except from the holding. The farm is at the end of a long public road which is narrow and which terminates at Kilmichael point, a place of interest for anglers and walkers. The farmyard is accessed by a long private road of over 700m, which connects with the public road at a gated entrance. I formed the impression during site inspection that the public road is little used and that the beach at Kilmichael point would not attract many visitors.

On the holding is an old farmhouse which is occupied as a residential dwellinghouse, a newly constructed walled garden area, a more established courtyard with outbuildings and a timber structure which appears to function as a studio / bird watching area. While the stated intention of the applicant is to develop a small tourist related development through the conversion of outbuildings into holiday homes and the running of bird watching and ecology related activities, the existing use of the buildings and lands are residential and agricultural. The interior of the outbuildings which are to be converted into holiday homes includes some kitchen and related fittings. On site is a private well which is located at the extreme south of the defined site. There is an existing effluent treatment system to the north-east of the outbuildings. At two locations within the lands trial holes were open.

Photographs of the site, which were taken at the time of my inspection are attached.

2.0 Proposed Development

Permission is sought for development comprising

- Extend farm outbuilding and change of use to 2no. holiday homes
- Upgrade the previously approved on site effluent disposal system
- Site works.

3.0 Planning History

The following is a brief summary of applications and appeals related to the site.

Ref.	Proposal	Comments	Decision
PL27.246288 (15/1352)	2 no. holiday homes / upgrade onsite system and decommission existing. General design same as PL27.244830 with minor revisions and increased capacity to cater for holiday home occupants (puraflo pods with direct discharge to a raised polishing filter of imported soil).	Inspector recommended grant	Refuse – site characterisation, EPA manuals (private houses and business facilities), high T value - site not suitable for discharge of treated wastewater to ground
PL27.244830 (14/1653)	Retain and upgrade existing onsite system to cater for 6PE with tertiary treatment.	Inspector referred to the long established dwellinghouse which was to be served. Permission recommended.	Split decision. Refusal for retention of existing system. Grant for upgrade of effluent disposal system to serve the existing farmhouse. To be installed within six months.
13/8936	Modify permitted system (12/6406) to include tertiary treatment and modify condition 3 of 12/6406. No change to loading proposed under 12/6406.	The relevant condition required that existing and proposed development be maintained in one ownership.	Permission granted to modify the permitted system to provide for tertiary treatment. Condition 3 retained.
12/6406	Retain extension to north of outbuilding and change to residential use, change of use of farmhouse to serve as outbuilding with farm office/storage, retain and upgrade effluent disposal system.	172 square metre two-storey extension	Grant. Holding to be in single ownership and not subdivided.
PL27.240873 (12/6364)	Retain and relocate art studio		Grant
11/4334	Similar to 12/6406		Refuse – amenity and wastewater

4.0 Planning Authority Decision

Planning and Technical Reports

Planner

The planner's report notes:

- CDP policy 2010-2016 – policy relating to outstanding natural beauty, tourism or recreational facilities and accommodation
- Permission was refused recently under PL27.246288 (15/1352) – the difference is the location of the proposed effluent disposal system
- The nature of the development being a tourist related development and the conversion into holiday homes is acceptable in principle in terms of the CDP
- Policy requires that strict legal agreements be entered into in relation to the holding of all lands and buildings in single ownership
- Development acceptable in terms of visual impacts
- The decision of the Board to grant permission to upgrade the effluent disposal system to service the existing farmhouse is noted – holiday homes result in increased biological loading - 4no. puraflo pods is designed to cater for the increased population
- The difference between the system proposed under PL27.244830(14/1653) is the location , which is 147m north of the development and 15m lower
- That location is stated to be selected due to the poor ground levels on the adjoining land under 10/2718 – the ground condition was deemed suitable by the EHO at the time – a separation distance and difference in ground levels of 89m and 5m respectively applied
- Water supply can be addressed by condition if necessary
- Site entrance and laneway are adequate
- No visual impact from the extensions which are enclosed by the courtyard
- Permission should be refused for reason of public health impacts.

Environmental Health Officer

Inspection on 18/10/16 showed that there was water in the bottom of the trial hole at 1.8m bgl. Visual inspection of the trial hole indicated that this water level could rise considerably during winter months and that the P and T test values could also be high if tested in winter months. Area is at sea level at the bottom of sloping land with very poorly permeable lands upslope. Probability is that surface water would run down the slope to where the percolation area is now proposed.

Permission not recommended due to excessive distance from polishing filter to dwelling (147m) which is greater than the maximum permissible distance of 100m specified in no. 5 of WCC Policy and because the percolation area has not been shown to comply with the EPA 2009 trial hole and percolation test requirements in the wettest part of year.

Water and Environmental Services

The proposals submitted for wastewater treatment is compliant with the COP 2009. The applicant shall submit calculations, specifications and drawings in relation to how the treated effluent from the puralfo pods will be evenly distributed to the raised polishing filter, sump volume and pump power to pressurise the raised percolation area. Other details regarding the well and water treatment.

Executive Engineer

Details of access road passing bay should be provided.

Prescribed body

Inland Fisheries Ireland

Compliance with EPA Wastewater Treatment and Disposal Systems for single houses 2009 – no contamination of surface or groundwater consequent to the site development or operation of the wastewater treatment system. Complete separation of foul and surface water systems. Annual maintenance contract.

An Taisce

Previous refusals on site noted. Evaluation required that demonstrates that all issues have been resolved which determined the site unsuitable previously.

Third party observation.

None.

Decision

The planning authority decided to refuse permission for the reason summarised as follows:

- 147m separation distance is excessive to ensure that system will be properly maintained and therefore will not give rise to pollution
- Would be contrary to requirement specified in point 5 of Wicklow County Council policy for wastewater treatment and disposal systems serving single houses which requires systems to be generally located completely within the site and percolation areas and polishing filters not to be more than 100m from the dwelling
- Absence of site tests during winter months.

5.0 Grounds of Appeal / Observations

Grounds of Appeal

The appeal includes the following comments :

- The background to the applicant's work on the farm since 2007 is outlined including the forestry plantation and related activities in relation to which he has a full time manager on the farm and a part-time staff member
- The Klargestar unit installed was certified at the time and the owner was unaware that permission was required for its installation – he has always intended to resolve all outstanding matters
- Planning history of the site is outlined
- Condition 3 of reg. ref. 12/6406 placed an unacceptable burden on the lands and as reg. ref. 13/8936 was linked neither permission could be activated

- Reg. ref. 14/1653 therefore was a fresh application to upgrade the existing effluent disposal system only for the existing farmhouse on site – split decision on appeal PL27.244830
- Appellant’s position is that installing a new effluent system on lands that the planning authority and An Bord Pleanála now deem unsuitable would be unethical and contrary to proper planning and sustainable development
- Alternative locations have been examined - trial hole (no. 2) excavated revealed ground conditions favourable to percolation and are infinitely superior to that submitted in all previous applications on the lands
- The proposed tertiary treatment system is now designed to cater for the existing house and proposed 2 no. cottages (total of 12PE)
- The proposed tertiary unit will provide better purification of effluent than that granted for the same size occupancy and loading under reg. ref. 12/6406 and due to the holding of the farmhouse and holiday homes in single ownership it cannot be deemed to be future development
- The on-site effluent disposal system is 135m from the proposed holiday homes – the local authority policy guidance refers to new single dwellings to be built on greenfield sites, not to existing sites seeking to upgrade the effluent disposal system
- The requirement in relation to the location of systems within the site and not more than 100m from the dwellinghouse allows for discretion and the application surely fall under this criteria
- The EPA 2009 standards are complied with – they do not require a maximum separation of 100m – this is a requirement of the Council
- In the adjoining county effluent disposal systems with separation distance of over 100m have been permitted and discretion has been allowed on other sites – e.g. reg. ref. 13/8755 one mile away
- Enclosed are winter test results which confirm that the site still meets all current EPA standards – rainfall in the week preceding the test was extreme –

water table rose only 100m in December compared with October testing –
photographs and site suitability assessment report enclosed

- Regarding the comment of the EHO in relation to surface water flow down the slope the comment ignores the presence of trees – to further address this matter in any event a surface water interceptor drain is now included
- Due to the decision to refuse permission the planning authority is forcing the construction of an on-site effluent disposal system on land that is not suitable for discharge of treated wastewater to ground and will be prejudicial to public health despite the current proposal offering a sustainable solution that meets all standards.

Observations

None..

6.0 Responses

Planning Authority response

No comments received.

7.0 Policy Context

The provisions of the Wicklow County Development Plan 2016-2022 apply. A range of policies refer to facilitating rural accommodation for tourist purposes and refer to requirements for legal agreements regarding operation and ownership. Policy relating to wastewater treatment includes reference to county guidance on which the current decision is based.

This plan is subject to an Ministerial order which relates to matters not relevant to this appeal – the plan is described as an interim document in the meantime.

8.0 Assessment

8.1 Overview

I refer the Board to the planning history and to the prevailing development plan policy in relation to development in this area and to the provision of tourist accommodation.

I submit that having regard to the design of the extension which is required to provide the holiday homes and to the prevailing policy, to the previous decisions of the Board and the applicant's submissions in relation to the nature of the proposed tourist accommodation, there is no objection in principle to the holiday home development. I consider that the site and the subject buildings are very suitably positioned to provide for the intended future use, including in relation to the lack of adverse visual impacts and the acceptable nature of the access and other matters.

The drinking water supply will be provided through a private well which is a modern structure enclosed in a small building to the south of the site and at a considerable distance from the position of the proposed wastewater treatment system. I accept the first party submissions in relation to the adequacy of the water supply.

Therefore, I submit that the primary concern in this appeal relates to the proposal for wastewater treatment to serve the development which has a stated population equivalent of 12 and which will be retained in single ownership and served by a single wastewater treatment system.

8.2 Wastewater treatment

The decision of the planning authority which is based on the report of the EHO indicates an objection to the proposed development on the following grounds:

- Distance between residential development and wastewater system exceeds county policy and is excessive to ensure that the system will be properly maintained and not give rise to pollution
- Failure to undertake site tests in winter months.

The position of the applicant is in essence that the county policy is in conflict with the EPA Code of Practice which does not contain any limit on the distance to the polishing filter. The application submissions also contain site suitability test results taken at the end of December following a period of extreme weather events.

My considerations on the matter are as follows.

1. I agree that the primacy of the EPA Code of Practice should apply. In this regard the appellant refers to the lack of maximum separation distance. I note that the technical reports on file attest to the fact that the system proposed would comply with the EPA requirements.
2. I submit that a very long connection between a treatment plant and the puraflo pods could give rise to concerns about the movement of treated wastewater but in this case where there is a considerable gradient I am of the opinion that there is no basis for such concerns.
3. From inspection of the trial holes at two different locations and the site suitability reports, which include a winter test scenario which is presented with the appeal, I consider that the site of the proposed puraflo units complies with the normal requirements in terms of percolation and water table levels.
4. I agree that the evidence indicates that the previously permitted location would appear to suffer from poor percolation characteristics – that site was subject of the most recent refusal of permission by the Board under PL27.246288 on the basis of high t-value.
5. Notwithstanding comments in internal reports that the site is at sea level, which it is not, there is no evidence presented or statements made which would support a refusal of permission for reason of saltwater intrusion.
6. Equally there is no specific reference in any of the technical reports to mottling which would be indicative of a high winter water table and the site suitability tests indicate that no such issues arise.
7. Regarding the comments made about the pump pressure and the volume of the sump these are technical matters which I consider would be addressed at the time of installation.

8. The potential that overland surface water flow might adversely impact on the polishing filter is addressed in the appeal submission including by the proposed installation of an interceptor drain.
9. There is adequate separation between the polishing filter and the stream to the north.

My conclusion is that the proposed wastewater treatment system is appropriate to serve the existing farmhouse and proposed holiday cottages.

In relation to the requirement that the cottages and farmhouse be retained as part of the overall farm holding, which was previously required by condition of a decision of the planning authority, I do not consider that this is necessary. It is appropriate however that a condition refer to the holding of the buildings and wastewater treatment as a separate unit.

9.3 Appropriate Assessment

The site is about 700m from the Kilpatrick Sands SAC. Conservation objectives relate to the protection of the sand dunes and associated species. The hydrological connection between the site and the European Site is by of the stream and to the coastal environment. Having regard to my conclusions in relation to the suitability of the site to accommodate the proposed wastewater treatment system, to the tertiary treatment proposed, to the recommended planning conditions below and to the nature of the marine environment which is likely to give rise to considerable dilution of any effluent which might emerge and which is also likely to be the overwhelming influence on the sand dunes, I am satisfied that the proposed development would not adversely affect the integrity of European sites in view of the site's Conservation Objectives.

8.0 Recommendation

I recommend that permission be granted for the reasons and considerations and subject to the conditions below.

REASONS AND CONSIDERATIONS

Having regard to the planning history of the site, the provisions of the current Wicklow County Development Plan, the proposal to renovate and convert the existing outbuilding to provide for holiday home accommodation within an existing farmyard and the proposal to upgrade the existing on-site effluent treatment system, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be prejudicial to public health or the environment, would not seriously injure the visual amenities of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 30th day of December 2016 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.

Reason: In the interest of clarity.

2. Prior to commencement of development, the developer shall enter into a legal agreement under Section 47 of the Planning and Development Act, 2000 with the planning authority specifying that the entire development, consisting of 2 no. holiday homes, existing farmhouse farmyard and effluent disposal system as outlined in red on the submitted drawings that this permission refers to, shall be held in single ownership and shall not be subdivided. The holiday homes

shall be available for short-term letting only and not used as permanent places of residence.

Reason: In the interest of clarity and orderly development.

3. The holiday homes shall not be occupied until the planning authority have agreed in writing that the effluent treatment system has been installed and completed to their satisfaction, together with details of future maintenance.

Reason: In the interest of public health and the proper planning and sustainable development of the area.

4. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses", Environmental Protection Agency (current edition). No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(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.

(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.

(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.

(e) Within three months of the installation of the treatment plant, 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.

Reason: In the interest of public health.

5. The external finishes of the proposed extensions shall harmonise in colour and texture with the existing finishes on the building.

Reason: In the interest of visual amenity.

6. 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. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Mairead Kenny
Senior Planning Inspector
3rd May 2017