



An  
Bord  
Pleanála

## Inspector's Report PL.27.247906

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<b>Development</b>	House, detached garage, private well, wastewater treatment plant and polishing filter.
<b>Location</b>	Ballykeppoge, Wicklow, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority Reg. Ref.</b>	16/1218.
<b>Applicant</b>	Michael Walshe.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party v Decision.
<b>Appellant</b>	Michael Walshe.
<b>Observers</b>	George & Suzanne Acres
<b>Date of Site Inspection</b>	30 <sup>th</sup> March 2017.
<b>Inspector</b>	Dáire McDevitt.

## **1.0 Site Location and Description**

- 1.1 The appeal site is located along the western side of the L5108 in the townland of Ballykeppoge, a rural area c.4km southwest of Wicklow town and c. 1.8km west of the N11 in Co. Wicklow.
- 1.2 The site, with a stated area of 0.3 hectares, forms part of a larger field. The northern and western site boundaries are marked out with post and wire fencing. There are no boundaries between the application site and the adjoining site to the south which has permission for a bungalow. Further south is Ballykeppoge B&B, a single storey dwelling. To the north are farm buildings/stables, owned by the Observers, Opposite the site on the eastern side of the L5108 there are three detached bungalows. The site is generally good grassland with some rushes observed in the southwestern corner.
- 1.3 Access is proposed off a straight stretch of the L5108. The roadside boundary is an embankment with a number of mature trees. The site is exposed on all approaches and visible from the public road.
- 1.4 Maps, photographs and aerial images in file pouch.

## **2.0 Proposed Development**

2.1 Permission is being sought for:

- A single storey dwelling (stated gfa of c.166sq.m with a height of c.4.75m).
- Detached garage (stated gfa of c.35 sq.m with a height of c.4.4m).
- Private well and on site Wastewater Treatment System with Sand Polishing Filter.

Documentation also includes details of the applicant's compliance with the Rural Housing criteria as set out in the Development Plan and a Site Characterisation Form

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Refuse permission for the following reason:

*Having regard to the location of the development proximate to the development boundaries of Wicklow Town and Environs, where land have been zoned for housing and its location at a distance from the family home, it is considered that the application has not submitted sufficient information to show that he would come within the scope of Objective HD23 of the County Development Plan, and neither has it been shown that his requirement could not be suitably catered for by a dwelling located within Wicklow Town. Therefore, to allow this dwelling, at this location in the absence of a genuine need would clearly set a precedence for further piecemeal development to the edges of Wicklow Town, and would undermine the Council's settlement strategy to encourage further growth of existing settlements and to restrict rural housing development to cases where there is a bona fide necessity to live in the rural area instead of in existing settlements.*

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

#### **3.2.1. Planning Reports (20<sup>th</sup> December 2016)**

This Report formed the basis of the Planning Authority's decision and the main issues considered are summarised as follows:

- Applicant does not comply with Rural Housing policy and criteria. The applicant applied for permission for a house at Ballineskin c. 2km northeast of the application site. A recommendation was made to refuse permission in the grounds of sporadic development, visual impact and traffic hazard. The file was withdrawn before a decision to refuse was issued.

- The applicant has not demonstrated social or economic ties with the Ballykeppoge area, the proposal would result in piecemeal haphazard housing on the edge of a town where there is sufficient zoned lands to cater for the housing needs of the applicant.

### **3.2.2. Other Technical Reports**

**Wicklow Municipal District Engineer** (2<sup>nd</sup> December 2016). Sightlines are adequate and no problems with surface water disposal or surface water discharge onto the public road were anticipated.

**EHO** (not dated). A t-value of 46.67 and p-value of 37.5 were noted. At the time of inspection of the adjoining site (16/392) water was observed in the trial hole at a depth of c.1.2m. The trial hole on the current application site was 2.2m deep and dry at the time of inspection. No objection to the proposal subject to the installation of a secondary effluent treatment system and a 45 sq.m raised sand polishing filter.

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

One submission was received from George & Suzanne Acres by the Planning Authority. The issues raised in the submission are largely in line with the those raised in the Observations to this appeal and shall be dealt with in more detail in the relevant section of this Report.

## **4.0 Planning History**

None attached to the application site.

Relevant Applications:

**Planning Authority Reference 16/250.** This relates to an application by the applicant for a house at Ballineskin c 2km northeast of the application site. A recommendation to refuse permission was made on the grounds of sporadic development, visual impact and traffic hazard. The file was withdrawn in August 2016 prior to the issuing of the decision.

Adjoining site to the south:

**Planning Authority Reference 16/392.** Permission granted in October 2016 for a bungalow, private well, treatment system and polishing filter. Works have not commenced.

Applications by the Observer on their lands to the north of the application site.

**Planning Authority Reference 07/2221.** Permission refused for a mobile home.

**Planning Authority Reference 07/2396, 08/1967 and 13/8204** refers to refusals of permission for a dwelling to the north of the observer's farm buildings/stables on the grounds of sporadic development and public health.

## **5.0 Policy Context**

### **5.1. Wicklow County Development Plan 2016-2022**

The Wicklow Settlement Strategy has identified a hierarchy of 10 levels of Settlement for the County, ranging from Level 1 Metropolitan Consolidation Town to Level 10 Rural Area.

The application site is located within **Level 10. Rural Area**, where the policy is that *Development within the Rural Area should be strictly limited to proposals where there is a proven social or economic need to locate in the area.*

The area is identified as a Strong Rural Area Under Urban Influence.

#### **Rural Housing Policy**

##### **Houses in the Open Countryside**

**HD23** *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.*

*Residential development will be considered in the countryside in the following circumstances: (HD23 sets out 16 criteria)*

- *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 has resided in a rural area in County Wicklow for at least 10 years in total (including permanent native residents of level 8 and 9), or resided in the area for at least 10 years in total prior to the application for planning permission.*

*In the event of conflict of any settlement strategy objective/landscape Zones and categories, a person who qualifies under Policy HD23 their needs shall be supreme, except where the proposed development would be a likely traffic or public health hazard.*

**Appendix 1** includes general Development and Design Standards.

**Appendix 2** refers to the Single Rural House Design Guidelines.

### **5.3 Sustainable Rural Housing Guidelines (2005):**

The overarching aim of the Guidelines is to ensure that people who are part of rural community should be facilitated by the planning system in all rural areas, including those under strong urban based pressures.

To ensure that the needs of rural communities are identified in the development plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities is accommodated.

The application site is in an area designated as being a strong rural area under urban influence. The guidelines advise that houses in such areas may be provided to meet the housing needs of the local rural community, but that urban generated housing should be directed to zoned and serviced land within settlements.

## **5.4 Natural Heritage Designations**

There are a number of European designated sites within 10km of the application site:

- Magherabeg Dunes SAC (site code 001766) c. 3.3km southeast of the site.
- Deputy's Pass Nature Reserve SAC (site code 000717) c. 5.5km to the west of the site.
- Wicklow Head SPA (site code 004127) c. 5km northeast of the site.

There are no European designated sites within the immediate vicinity of the site.

## **6.0 The Appeal**

### **6.1 Grounds of Appeal**

The grounds of appeal address the reason for refusal as follows:

- The applicant is from Furzeditch, Three Mile Water, a rural area c. 3.5km southeast of the application site and has submitted supporting documentation.
- The applicant and his wife reside with his parents in the family home at Furzeditch, map submitted to show the location of the house. He has stated he has no ties to Wicklow town apart from the fact that his wife is from the town.

- The applicant complies with the Objectives the County Development Plan in terms of Rural Housing policy and criteria for a rural house.

## **6.2 Planning Authority Response**

None.

## **6.3 Observations**

One observation received from George & Suzanne Acres, Ballykeppoge Farm, Ballykeppoge, Co. Wicklow and is summarised as follows:

- The observer purchased 11.5 acres in 2007 and has been refused permission for a house on his lands on a number of occasions on the grounds of sporadic residential development and public health.
- If the proposal is granted permission this will further jeopardise their chance at getting planning permission for a house as there is only room for one more house.
- The applicant has no ties to the Ballykeppoge area.
- There are sites with planning permission closer to the applicant's family home.

## **7.0 Assessment**

The main issues in this appeal are those raised in the grounds of appeal. In addition, the suitability of the site and compliance with development management standards needs to be addressed. The issue of appropriate assessment screening also needs to be addressed. The issues can be dealt with under the following headings:

- Rural Housing Policy.



- Other Issues
- Appropriate Assessment.

## **7.1 Rural Housing Policy**

7.1.1 The application site is in an area designated as a strong rural area under urban influence. The Sustainable Rural Housing Guidelines advise that houses in such areas may be provided to meet the housing needs of the local rural community, but that urban generated housing should be directed to zoned and serviced land within settlements.

7.1.2 The County Development Plan places an emphasis in the Rural Housing policy for houses in the open countryside on proving a “definable social or economic need” by reference to one of 16 criteria as set out in policy HD23. As referenced in Section 5.2 of this report the first criteria applies to the applicant. This provides that a person is considered to be a permanent native resident if they have resided in a rural area in County Wicklow or in the area in question for at least 10 years prior to the application for planning permission.

7.1.3 Documentation has been submitted, including the applicant’s birth certificate and letters of attendance at local schools supporting the applicant’s ties to Furzeditch, a rural area c.3.5km southeast of the application site, where he has stated that he resides with his parents in the family home. Based on the information on file I am satisfied that the applicant complies with the first criteria as set out in policy HD23 for a house in a rural area.

7.1.4 I, therefore, consider that the appeal should be upheld in relation to the Planning Authority's reason for refusal.

## **7.2 Other Issues**

7.2.1 The design, scale and mass of the proposed dwelling is in keeping with the established pattern of development and house type in the immediate vicinity of

the site and accords with the design guidelines for single rural houses as set out in the Development Plan.

7.2.2 Access is proposed off a straight stretch of the L5108 where sightlines can be achieved in both directions. The Municipal Engineer has no objection to the proposal subject to standard conditions.

7.2.3 The applicant proposes to install an onsite wastewater treatment system and soil polishing filter with discharge to groundwater. A well is also proposed. At the time of inspection, it was noted that the site in general is good grassland with some rushes observed in the southwestern corner and the ground was soft under foot but no ponding noted. The EHO in their Report noted that water had been observed in the trial holes for the adjoining site to the south (16/392) and that the trial holes for the current site were dry at the time of inspection. Permission was granted on the adjoining site subject to conditions and compliance with the EPA Code of Practice for Single Houses

7.2.4 The Site Characterisation report submitted with the application concluded that a Euro Bio treatment system and a raised sand polishing filter system would be suitable. A T value of 46.67 (min/25mm) is reported. Results for a P test have been included in the assessment, the result of which was a P value of 37.50. The Environmental Health Officer had no objection subject to conditions. I am satisfied based on the information on file that the proposed system once installed to the required specifications in conjunction with a sand polishing filter will be acceptable and would not give rise to public health concerns.

### 7.3 **Appropriate Assessment**

7.3.1 Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in

combination with other plans or projects would not be likely to have a significant effect on a European Site.

## 8.0 Recommendation

I recommend that permission be granted subject to the conditions as set out below

## 9.0 Reasons and Considerations

Having regard to the provisions of the Wicklow County Development Plan 2016-2022, to the nature and scale of the proposed dwelling house and to the pattern of development in the area, it is considered that subject to compliance with the following conditions, the proposed development would be in accordance with the adopted rural housing policy and would not seriously injure the amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted

by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

- (b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

**Reason:** To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The external wall so the house and garage shall be finished in neutral colour such as grey or off-white.

**Reason:** In the interest of visual amenity.

4. The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.
5. The garage shall be used for purposes incidental to the enjoyment of the main dwelling and shall not be used for commercial or habitable purposes.

**Reason:** In the interests of residential amenity.

6. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) the establishment of a hedgerow along all side and rear boundaries of the site.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

7. The existing trees along the front boundary shall be retained and the proposed front boundary treatment, its exact height and location, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

8. (a) The carriageway of the public road shall not be raised, lowered or otherwise altered at its junction with the access driveway to the proposed dwelling.  
(b) The gradient of the access driveway shall not exceed 3% for the first seven metres adjacent to the carriageway of the public road.

**Reason:** In the interest of traffic safety.

9. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

**Reason:** In the interest of visual amenity.

10. The water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning

authority prior to commencement of development.

**Reason:** To ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.

11. (a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.
- (b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

**Reason:** In the interest of traffic safety and to prevent pollution.

12. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 7<sup>th</sup> November 2016, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.
- (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 first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

**Reason:** In the interest of public health.

13. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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.

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Dáire McDevitt  
Planning Inspector

26<sup>th</sup> April 2017