



An  
Bord  
Pleanála

## Inspector's Report ABP-300412-17

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<b>Development</b>	House, detached garage with dual access entrance, driveway, wastewater treatment unit and percolation area and ancillary works.
<b>Location</b>	The Scalp Road, Killegar, Enniskerry, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	17/608
<b>Applicant(s)</b>	Dominick Taheny
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	To Refuse Permission
<b>Type of Appeal</b>	First Party v. Decision
<b>Appellant(s)</b>	Dominick Taheny
<b>Observer(s)</b>	No observers
<b>Date of Site Inspection</b>	20 <sup>th</sup> March 2018
<b>Inspector</b>	Erika Casey

## **1.0 Site Location and Description**

- 1.1. The subject site has an area of c. 0.424 hectares and is located in the townland of Killegar, approximately 2 km north west of Enniskerry Town in Co. Wicklow. The site is bound to the north and south by existing residential properties, to the east, by the County Brook watercourse and to the west, by the R117 regional road. There is extensive ribbon development along the western side of the R117.
- 1.2. There are large detached houses to the north and south of the site and it is proposed to share the existing access with these dwellings to the R117. There is a significant level difference across the site sloping downwards from west to east.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises the construction of a linear single storey dwelling with a gross floor area of 295 sq. metres and a maximum height of 7.35 metres. The form of the dwelling comprises 2 separate elements with hipped roofs connected by a flat roofed element. The finished floor level of the dwelling is 118.25 m OD which is at a lower level than the adjacent road which is at a level of 125 m OD. The dwelling accommodates 4 bedrooms, family room, kitchen and dining area as well as ancillary accommodation. Materials comprise blue black slates and a cement render finish.
- 2.2. There is a separate detached garage located to the north of the dwelling. This has an area of 49 sq. metres and a height of 5.39 metres. Access to the site is via a shared entrance with two other dwellings to the R117, located to the south west of the proposed dwelling. Water supply is proposed by way of a private well. An on site treatment system is proposed and surface water disposal will be by soakpit.

## 3.0 Planning Authority Decision

### 3.1. Decision

1. *The proposed development would not represent a necessary dwelling in this landscape designated Area of Outstanding Natural Beauty' contrary to the provisions of Section 10.3.9 of the County Development Plan 2016-2022. These provisions are required to maintain scenic amenities, recreational utility, existing character, and to preserve views of special amenity value and special interest and to conserve the attractiveness of the county for the development of tourism and tourist related employment.*

*The Council's settlement strategy is 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. It is considered that the applicant does not come within the scope of the housing need criteria set out under Objective HD23 of the County Development Plan. The proliferation of non-essential housing in rural landscape areas erodes the landscape value of these areas and seriously detracts from views of special amenity value.*

2. *The proposed development would endanger public safety by reasons of serious traffic hazard because the traffic turning movements generated by the proposed development would in the absence of a genuine need; unnecessarily interfere with the free flow and safety of traffic on the regional road (R117).*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report (11.07.2017 and 09.11.2017)

- The applicant resided in the UK until the age of 17. No documentation submitted to verify his place of residence in the rural area of Enniskerry.
- Applicant has not demonstrated he qualifies for special consideration to build in this rural area. The applicant has submitted a sworn declaration stating that he received mortgage relief interest on a property referred to as Swiss Cottage. This tax relief payment is based on the amount of qualifying mortgage interest

paid on your principal private residence. This suggests the applicant previously declared this property to be his principal private residence.

- The applicant could seek permission to restore or replace the existing derelict Swiss Cottage noting that these lands are zoned for residential development.
- Notes that the site entrance is very steep and that there are very poor sightlines at a set back of 2.4 metres. It is a highly trafficked regional road where traffic is generally at a high speed. States that there are grave concerns regarding this junction as it stands and even more so with a further house accessing it.
- The proposed design of the dwelling is such that it would not be considered acceptable in the rural area. However, having regard to the position of the dwelling it is considered that the proposed roof of the dwelling will only be visible in glimpse views from the site entrance. In this regard, the design of the dwelling proposed is considered acceptable in this instance only.
- A site specific flood risk assessment has been submitted with this application. This concludes that the site falls within Flood Zone C and that the flood risk to the development is considered low.

### 3.2.2. Other Technical Reports

**Water and Environmental Services (11.07.2017):** No objection to Site Specific Flood Risk Assessment.

**Environmental Health Officer (16.06.2017):** Notes that trial holes were not open for inspection on the site and recommends that these be reopened on site for inspection. States that the site layout plan does not include the location of the water source for the applicant's parent's house.

**Planning and Organisational Innovation Department Dun Laoghaire Rathdown County Council (08/06/2017):** The water course along the western boundary of the site is identified as an area at risk of flooding on the Dun Laoghaire Rathdown Flood Zone Maps.

### 3.3. Prescribed Bodies

**Inland Fisheries Ireland (26.06.2017):** No objection subject to conditions.

### 3.4. Third Party Observations

- No observations.

## 4.0 Planning History

### Planning Authority Reference 16/641

Application withdrawn in December 2016 following a recommendation to refuse permission. Recommended reasons for refusal related to rural housing need, flood risk and traffic hazard.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1 The operative development plan is Wicklow County Development Plan 2016-2022.

Relevant policies include:

**Section 4.3.6:** Relates to the *Design of New Developments* and it is stated that all new housing including rural housing shall achieve the highest quality of layout and design.

**Appendix 2:** Sets out guidelines regarding single rural house design.

**Housing in the Open Countryside Policy HD23:** 16 criteria are set out which relate to the circumstances that will be considered regarding residential development in the countryside. The most relevant are:

*“1. A permanent native resident seeking to build a house for his/her own family and not as speculation. A permanent native resident shall be a person who has resided in a rural area in County Wicklow for at least 10 years in total including permanent native residents of levels 8 and 9 or resided in the rural area for at least 10 years in total prior to the application for planning permission.*

*2. A son or daughter of a permanent native resident of a rural area, who can demonstrate a definable social or economic need to live in the area in which the proposal relates and not as speculation.*

3. A son or daughter of a permanent native resident of a rural area, whose place of employment is outside of the immediate environs of the local rural area to which the application relates and who can demonstrate a definable social or economic need to live in the area to which the proposal relates and not as speculation.

The Plan sets out 10 levels of settlement and the subject site is located in Level 10 – The Rural Area. It is stated in the plan regarding Level 10 areas that:

*“Development within the rural area should be strictly limited to proposals where it is proven that there is a social or economic need to locate in the area. Protection of the environmental and ecological quality of the rural area is of paramount importance and as such particular attention should be focussed on ensuring that the scenic value, heritage value and/or environmental/ecological/conservation quality of the area is protected.”*

**Policy 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.

**Appendix 5: Landscape Assessment:** The subject site is located in an Area of Outstanding Natural Beauty Glenree/Glencullen, The North Eastern Valley/Glenree. The plan notes that the area is very scenic with attractive views and a number of tourist attractions such as Powerscourt House and Demesne, Charleville Demesne and Glenree Drive.

**Policy TR27:** New means of access onto regional roads will be strictly controlled and may be considered if one of the following circumstances applies:

- *The regional road passes through a designated settlement and a speed limit of 50km/h or less applies;*
- *where the new access is intended to replace an existing deficient one;*
- *where it is demonstrated that the entrance is essential and no other means of access is available.*

**Section 7 Roads and Transportation:** *When locating new entrances and proposing increases in traffic movements at existing entrances, it must be shown that vehicles turning right onto the entrance do not obstruct or cause a hazard to together road users. Sufficient forward sight distance must be available to (a) cars approaching an*

*entrance in case a car is waiting on the road carriageway to turn right (b) for cars to turn right at an entrance.*

## **5.2. Sustainable Rural Housing Development Guidelines**

5.2.1 The guidelines require a distinction to be made between 'Urban Generated' and 'Rural Generated' housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those with proximity to the immediate environs or close commuting catchment of large cities and towns. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply. These include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

## **5.3. Natural Heritage Designations**

5.4. The nearest Natura 2000 site is the Ballyman Glen SAC located c. 0.6 km northwest of the site.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- Notwithstanding the report from a highly qualified Traffic Safety Consultant, the Planning Authority assessment of the application came to the conclusion that the development would result in a traffic hazard. It is the applicant's position, that the report provided by Traffic Wise in conjunction with letters of consent to carry out further works on the roadside boundary provided by his family is enough to satisfy the National Road Authorities standards for such entrances.
- No consideration has been given in the planner's report to fact that letters of consent have been provided to ensure that adequate sight lines can be achieved on lands outside the control of the applicant. Note that no report was provide by the Local Authority Roads Department or Area Engineer.
- The applicant has clearly set out in the affidavits that he has no legal interest in the Swiss Cottage.

## 6.2. **Planning Authority Response**

- No response submitted.

## 6.3. **Observations**

- No observations submitted.

## 7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal and it is considered that no other substantive issues arise. Appropriate Assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Compliance with Rural Housing Policy.
- Access.
- Design and Visual Impact.
- Wastewater Treatment.
- Appropriate Assessment.

## 7.2 **Compliance with Rural Housing Policy**

7.2.1 The current settlement strategy for Co. Wicklow is clearly set out in the County Development Plan (2016-2022) and summarised in section 5.1 above. The site is located within the open countryside (Level 10) where restrictions apply to new rural housing development. The site is located within close proximity to Enniskerry Town. This is designated a Level 5 Small Growth Town in the settlement hierarchy. With regard to Level 5 towns, the plan notes that these towns should be prioritised as attractors for local indigenous growth and investment. In this context, it is considered that the subject site is located within an Area Under Strong Urban Pressure where the policy framework including that set out in the “Sustainable Rural Housing Guidelines for Planning Authorities” actively seeks to direct pressure for new residential development to the nearby established settlements.

7.2.2 The applicant has submitted a declaration (signed by a Commissioner for Oaths) and statement which notes the following key points:



- The applicant was born in the UK and lived there until he was 17. Information is set out regarding the applicant's place of residence. This notes that he lived at Monastery in Enniskerry for a period of 2 years between 1981 and 1983, the Scalp Farm, Enniskerry for 10 years between 1983 and 1993 and Glenbrook, Scalp Road, Enniskerry for 16 years between 1994 and 2010. Since 2010 however, the applicant has lived at locations in Co. Wexford and Co. Kildare.
- With regard to the address at Glenbrook, Scalp Road, Enniskerry the following documentation is submitted as proof of address:
  - Bank of Ireland statements for 2006, 2009 and 2010.
  - Canada Life Policy dated 2008.
  - BD Insurance Certificate of Insurance for the period 2007 to 2008.
  - Vodaphone Account Statement from 2005.
  - Salary Statement and Norwich Union Statement for 2003.
  - Vodaphone Statement and Norwich Union Statement dated 2002.
  - Marsh Financial Services Ltd. Statement 2001.
- States that he received mortgage interest relief regarding a derelict cottage known as Swiss Cottage. It is stated that this property was purchased with his parents and that it is his father's property. He states that the property has nothing to do with him, that it is in a derelict condition and that he has never owned a property in Wicklow.
- He is an active member of Enniskerry Community citing that he is involved in a support capacity with Enniskerry FC and was a member of Powerscourt Golf Club between 1996 and 2012.
- Attended St. Gerards Bray between 1980 and 1982.
- States that he has been involved in many fund raising campaigns and events over the years in the locality, that his family and friends are in the area and that his daughter was baptised in Enniskerry.

7.2.3 The current county plan sets out specific guidance regarding the criteria for those seeking to build in the rural area, within which the subject site is located. It specified that they just be a permanent native resident who has resided in a rural area in County Wicklow for at least 10 years in total prior to the application for planning permission. It is also stated that development within the rural area should be strictly limited to proposals where it is proven that there is a social or economic need to

locate in the area. Proven need is defined as those in need of new housing, in particular:-

- first time home owners;
- someone that previously owned a home in County and is no longer in possession of that home by reason of transfer/sale of the home following legal separation / divorce, the transfer of a home attached to a farm to a family member or the past sale of a home following emigration

7.2.4 I am not satisfied based on the information on file that that the applicant has submitted adequate evidence to show compliance with the Rural Housing Policy set out in the current Development Plan. Somewhat tenuous documentation has been submitted as proof of address in the Enniskerry area. This however, only covers a period of 9 years from 2001 to 2010. It is noted that the applicant was not born in the area, having only moved to Enniskerry when he was 17 and furthermore, has not resided in the area for several years citing addresses in Newbridge Kildare from 2015 to present and Wexford from 2010-2015.

7.2.5 The applicant states that he has strong connections with the local area, however, he has not been an active member of any local sporting or community groups since 2012 and is only involved in a cursory role with the local football team. No further evidence of the applicant's involvement with the local community or social connections with the area are provided. The applicants' daughter was baptised in Enniskerry but again no evidential documentation is submitted. There is no evidence of any economic necessity to live in this area. I consider that there is a complete paucity of information to demonstrate that the applicant has any defined economic or social need to reside in the area, other than to be in proximity to his parent's house.

7.2.6 The applicant has also provided a sworn affidavit that he has previously been the beneficiary of mortgage interest relief with regard to a derelict cottage referred to as the Swiss Cottage. It is stated that he was only involved in the purchase of this dwelling to assist his parents and that his father is the principal owner of the house. It is stated that the cottage is derelict, although it is noted that there was a previous application (planning authority reference 16/839) pertaining to this site which was withdrawn for 4 no. dormer bungalows.

7.2.7 As detailed by the Planning Authority, such mortgage interest can only be obtained on a principal private residence. No further clarity or information has been provided in the appeal submission from revenue to clarify the ownership status of this dwelling. I am not satisfied, therefore, that the subject dwelling would be the applicant's principal family residence as it appears he already owns another property in proximity to the site. In this regard, it has not been demonstrated that the applicant has a proven need to live in this area as it appears he is not a first time home owner nor is he someone that previously owned a home in County and is no longer in possession of that home by reason of transfer/sale of the home following legal separation / divorce, the transfer of a home attached to a farm to a family member or the past sale of a home following emigration. As noted by the Planning Authority, there is nothing precluding the applicant from applying permission on the Swiss Cottage site, which is zoned for residential development.

7.2.8 I do not consider that the applicant comes within the scope of the rural generated housing need criteria for an additional dwelling at this location. In light of the fact that the site is located in an Area Under Strong Urban Pressure and an AONB, wherein the policy framework seeks to strictly control single houses in the countryside, to protect the county's pristine landscapes and to direct urban generated housing to established settlements, it is considered that the proposed development would contravene the Rural Housing policies set out in the guidelines and in the current Wicklow County Development Plan.

### 7.3 Access

7.3.1 Concerns were raised by the Planning Authority regarding the adequacy of the existing access to serve the proposed development. It notes that sightlines are poor and that the regional road is heavily trafficked at this location. Grave concerns were raised regarding the further intensification of the access having regard to existing road conditions.

7.3.2 The applicant has submitted a Roads and Traffic Report in support of the application. This notes that the subject site is located within the 80km speed zone. In this regard, sightlines are required for a distance of 150 metres on either side of the entrance from a minimum set back distance of 2.4 metres, but preferably 3 metres.

- 7.3.3 The report acknowledges that the R117 has high traffic volumes with the average daily traffic flow of 2,264 vehicles per day northbound and 3,052 vehicles per day southbound. There is a pronounced evening commuter peak between 16.00 and 18.00 during which traffic flows are fourfold higher than off peak periods.
- 7.3.4 The report acknowledges that to achieve adequate sightlines, that amendments to the existing site boundaries are required. It is stated that the works include modifications in both directions of the existing site boundary with the fence needing to be set back by approximately 700mm at the site access and the end of the wing wall cut back by 700 mm on both sides. The report concludes that the site access has the capacity to meet the additional demands generated by the proposed entrance.
- 7.3.5 Notwithstanding the conclusion of the traffic report, I note that the current access is steep and will require significant modification in order to achieve the necessary sightlines. The road is heavily trafficked with high traffic speeds. Policy TR27: states that new means of access onto regional roads will be strictly controlled. The existing access already serves 2 dwellings. I would concur with the concerns of the Local Authority that the further intensification of this existing access point by virtue of the additional traffic movements generated would endanger public safety by reason of a traffic hazard.

#### 7.4 **Design and Visual Impact**

- 7.4.1 The subject dwelling has an area of over 250 sq. metres and a suburban design. Concerns were raised by the Planning Authority regarding the appropriateness of the design. It was concluded however, that it was acceptable given the level differences across the site and the fact that the dwelling would not be particularly visible from the public road.
- 7.4.2 Notwithstanding this assessment, it is noted that Section 4.3.6 of the current County Development Plan which relates to the Design of New Developments states that all new housing including rural housing shall achieve the highest quality of layout and design. This is reinforced under Policy HD3 which states:

*“HD3 All new housing developments (including single and rural houses) shall achieve the highest quality of layout and design, in accordance with the standards*

*set out in the Development and Design Standards document appended to this plan, which includes a Wicklow Single Rural Houses Design Guide.”*

7.4.3 Having reviewed the design guide, I am not satisfied that the dwelling complies with the guidance, particularly with regard to its form and I consider that it will be an obtrusive and inappropriate suburban development lacking any reference to the traditional rural dwelling in this landscape of Outstanding Natural Beauty.

## **7.5 Wastewater Treatment**

7.5.1 It is proposed to install a packaged wastewater treatment system and polishing filter with discharge to ground water. The treatment system and polishing filter is located c. 11 metres to the south of the proposed dwelling. A well is proposed to the far west of the site. The Environmental Health Officer's Report (16.06.2017) noted that the trial holes were not open for inspection when the site visit was undertaken and there was insufficient information regarding the location of the water source for the applicant's parent house located to the north of the site.

7.5.2 The Site Characterisation Report submitted with the application concluded that the T tests returned values of less than 35 which indicate that the site is suitable for discharge of effluent into the ground. In this regard, having regard to the information on file in the site characterisation form, the proposed system once installed and maintained to the required specifications in conjunction with a polishing filter is likely to be acceptable and would not give rise to public health concerns. Notwithstanding this, the Planning Authority's concerns are noted, and particularly that the Council Environmental Health Officer was not able to carry out a full on site assessment of the adequacy of the trial holes. If the Board is minded to grant permission for the development, they may wish to seek further clarification on this matter.

## **7.6 Appropriate Assessment**

7.6.1 The subject site is located c. 0.6 km northwest of the Ballyman Glen SAC (Site Code: 000713). There is a source pathway connection to the SAC with the existing watercourse running along the western boundary of the site. The site is designated as it is a habitat for Petrifying Springs and Alkaline Fens. The main conservation objective is to maintain or restore the favourable conservation condition of the Annex I Habitat(s). The local authority has carried out a screening assessment and it is

considered that the development would not necessitate the carrying out of an Appropriate Assessment in accordance with the Habitats Directive.

7.6.2 I would concur with this assessment and having regard to the nature and scale of the proposed development, a single rural house, and the distance to the nearest 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.

## **8.0 Recommendation**

8.1. It is recommended that permission be refused permission for the reasons set out below.

## **9.0 Reasons and Considerations**

1. The site is located in an Area Under Strong Urban Influence, as designated in the Sustainable Rural Housing Guidelines and in an Area of Outstanding Natural Beauty, as designated in the County Development Plan. It is the policy of both documents to restrict further housing development to that required for established housing need. On the basis of the information submitted in connection with the planning application and appeal, the Board is not satisfied that the applicant comes within the scope of the rural generated housing need criteria for an additional dwelling at this location and does not have a demonstrable social or economic need to live in the open countryside as required under Policy HD23 of the Wicklow County Development Plan 2016-2022. The proposed development would, therefore, be contrary to the policies set out in the Guidelines and the development plan and would be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the intensification of use and additional traffic turning movements the development would generate at an existing inadequate access where sightlines are restricted.
  
3. The site is located in an area which is designated in the current Wicklow County Development Plan 2016-2022 as an Area of Outstanding Natural Beauty in relation to which it is a policy of the planning authority to maintain the scenic values and existing character of the area. This designation and policy are considered reasonable. The proposed development due to its suburban design and form would detract to an undue degree from the rural character and scenic amenities of the area. It is considered, therefore, that the proposed development would be contrary to the proper planning and sustainable development of the area

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**Erika Casey**  
**Senior Planning Inspector**

**20th March 2018**