



An
Bord
Pleanála

Inspector's Report ABP-300689-18

Development	Single storey, 3 bed detached bungalow and detached garage with septic tank/percolation area and bored well with access through existing upgraded entrance from existing private right of way/shared avenue and all ancillary development works
Location	Ballynacarrig, Brittas Bay, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	17/892
Applicant(s)	Anne Marie Atkinson
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Anne Marie Atkinson
Observer(s)	No observers
Date of Site Inspection	26.06.2018
Inspector	Erika Casey

1.0 Site Location and Description

1.1. The subject site is located in Ballynacarrig and is accessed via a shared private laneway from the R759 route. There are a number of other dwellings clustered around the subject site. The site has an elevated topography and is covered in gorse. There is a steep slope across the site falling west to east.

2.0 Proposed Development

2.1. The proposed development comprises the construction of a single storey, 3 bedroom bungalow with an area of c. 155 sq. metres and a maximum height of 5.4 metres. A separate detached garage with a height of c. 4.8 metres is located to the west of the proposed dwelling and has a stated area of c. 31 sq. metres. The dwelling has a traditional design with materials comprising selected blue/black slate for the roof and a smooth render finish for the elevations.

2.2. The dwelling is located to the western side of the site on an existing cleared area with a vehicular access onto a shared laneway that provides access to a number of other dwellings. The eastern half of the site is overgrown and inaccessible and has a powerline passing overhead.

3.0 Planning Authority Decision

3.1. Decision

3.3.1 To Refuse Permission for 1 no. reason:

1. *The proposed development would be prejudicial to public health because: -*
 - a) *There is evidence of outcrops of rock at ground level in the proposed area of the polishing filter and a severe precipice just below the polishing filter area. Having regard to the provisions of section 6.5 of the "Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) EPA 2009, this site is deemed unsuitable for the provision of an effluent treatment system discharging to ground.*
 - b) *There is a possibility of the contamination of an existing well which is 61m downhill of the proposed polishing filter because of the possibility of effluent*

entering the bedrock rapidly coupled with the severe nature of the slope below the site.

3.2. Planning Authority Reports

3.2.1. Planning Reports (06.09.2017 and 15.12.2017)

- The site is located in a rural area, therefore, objective HD23 would apply. From the particulars submitted, it is considered that the applicant qualifies for a rural dwelling.
- It is proposed to upgrade the existing field opening entrance onto the private lane serving the houses in the area. The proposed sightline at the entrance is 10 m in each direction. Given the proposed entrance is located on a low trafficked lane before and after a bend on the lane, it is considered that any approaching vehicle would normally slow down. It is, therefore, considered that the sightlines proposed at the entrance are acceptable in this case. The laneway forms a junction with the R750 road and there are adequate sightlines at the junction.
- The area is characterised by varying house designs, therefore, the house design fits in with the existing pattern of development in the area. It is noted that the site is elevated and visible in views from the sea, but will not be visible from the public road and would be assimilated into the landscape. The proposed development will, therefore, not be visually intrusive in the landscape.

3.2.2. Other Technical Reports

Environmental Health Officer (11.08.2017-11.2017): Recommends refusal.

- There is a possibility of contamination of an existing well which is approximately 61 metres downhill of the proposed polishing filter because of the possibility of effluent entering the bedrock rapidly coupled with the severe nature of the slope below this site and, therefore, not in compliance with Note 5 of EPA COP 2009 Appendix B, Table B.3: Recommended Minimum Distance between a Receptor and a Percolation Area or Polishing Filter – Groundwater Protection Responses for On site Wastewater Systems for Single Houses.

- Site inspection on the 27.4.2016 showed that there were large outcrops of rock at ground level on this site and that there is a severe precipice just below the polishing filter area. S.6.5 of the EPA COP gives examples of sites where site improvement works will not be accepted and included in these are sites where the bare bedrock is exposed.
- Notwithstanding the further information submitted, re-inspection of the site confirmed that there is evidence of substantial rock at ground level and in the trial holes on the site and that there is a severe slope from the proposed site downhill to the existing well. I could not be certain that the downhill well would not be at risk of contamination if this development went ahead, therefore applying the precautionary principle, this proposal is not recommended.

3.3. Prescribed Bodies

An Taisce (27.97.2017)

- Application should be determined with regard to the provisions of the Wicklow County Development Plan, National Spatial Strategy and the Sustainable Rural Housing Guidelines for Planning Authorities.
- The proposed effluent treatment plant must have regard to both the individual and cumulative impact and comply with the EU Groundwater Directive.

3.4. Third Party Observations

- No third party observations.

4.0 Planning History

Planning Authority Reference 16/409

- 4.1 Application withdrawn for a development comprising the construction of a 3 bed detached bungalow and detached garage. The Planner's Report had recommended a refusal on the basis that the development would be prejudicial to public health.
- 4.2 There are also two historic permissions relating to the site including Planning Authority Reference 87/2880: outline permission for a house and Planning Authority

Reference 98/8902: permission refused for a bungalow and septic tank. One of the reasons for refusal related to the fact that the development would be prejudicial to public health.

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.

Ballynacarrig/Brittis Bay is identified as a Level 8 – small village in the County Settlement strategy. The subject site however, is located outside the identified development boundary. In this context, the application would be considered a house in the Rural Area – Level 10. 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.”

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 is no. 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.”

5.1.2 Regarding wastewater objectives **Policy W17** states:

“Permission will be considered for private wastewater treatment plants for single rural houses where:

- *the specific ground conditions have been shown to be suitable for the construction of a treatment plant and any associated percolation area;*
- *the system will not give rise to unacceptable adverse impacts on ground waters / aquifers and the type of treatment proposed has been drawn up in accordance with the appropriate groundwater protection response set out in the Wicklow Groundwater Protection Scheme (2003);*
- *the proposed method of treatment and disposal complies with Wicklow County Council’s Policy for Wastewater Treatment & Disposal Systems for Single Houses (PE ≤ 10) and the Environmental Protection Agency “Waste Water Treatment Manuals”; and*
- *in all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitively demonstrate that the proposed development will not have an adverse impact on water quality standards and requirements set out in EU and national legislation and guidance documents.”*

5.1.3 The subject site is located in the Southern Coastal Area - a Coastal Area of Outstanding Natural Beauty.

5.2. **Other Policy**

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’.

National Planning Framework – Project Ireland 2040, DoHP&LG 2018

5.2.2 National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e. the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations.

Code of Practice: Wastewater Treatment Systems for Single Houses 2009

5.2.3 Sets out guidance on the design, operation and maintenance of on site wastewater treatment systems for single houses.

5.3. Natural Heritage Designations

5.3.1 The nearest Natura 2000 site is the Magherabeg Dunes SAC located c. 0.8 km to the north east of the site and the Buckronev-Brittias Dunes and Fen SAC located c. 0.9 km to the south.

6.0 The Appeal

6.1. Grounds of Appeal

- The reason for refusal is incorrect. The site is more than capable of safely catering for the proposed wastewater treatment system and protecting the water supply from the well of the proposed dwelling and wells of adjacent properties. The applicant has engaged a number of experts to advise on this matter.
- The detail design coupled with the facts and calculations in the Site Assessment and Site Characterisation and Hydrogeological Impact Assessment Report prove the proposal exceeds the requirements of the EPA Guidelines 2009.
- The reference of the EHO report to section 6.5 of the Code of Practice does not deem that this site is unsuitable for the provision of a waste water treatment system. Section 6.5 relates to Site Improvements. No site improvement works are required to provide the wastewater treatment system including the polishing filter. The wording of Section 6.5 clearly states that the polishing filter is not

considered as a site improvement. The quoting of Section 6.5 is irrelevant and only the sites capability of dealing with the discharge from the wastewater treatment system should be considered.

- The EHO is incorrect in their assessment of the evidence of the outcrop of rock on site. There are some areas on this site in which rock is exposed. This however, is not bedrock but large boulders. The photographic information from the trial holes clearly shows that the depth of rock is 1.2 m deep. The Hydrogeological Assessment also clearly indicates that there is a minimum of 1.6 m of subsoil. The EHO's statement of evidence of outcrop of rock appears to be based solely on a visual inspection of the site and not backed up by any facts.
- Note that the slope of the site is 1/9.5. However, as there are no site improvements, the slope of the site is irrelevant. The T value of the site is 14.25 which is well within the range allowed and coupled with the natural slope of the site, this will ensure no ponding will occur.
- The polishing filter is located a minimum of 65.732 metres away from the nearest well down slope. The required separation distance has been exceeded.
- The assertion of the EHO regarding the possibility of contamination of the well down slope of the site is incorrect. There are no existing neighbouring wells identified within the 100 day pollutant time of travel. The 100 day travel time is the figure that applies to Ireland and is a conservative figure so as to err on the side of safety. This figure allows for the heterogeneous nature of Irish aquifers and to reduce the risk of bacteria and viruses, which can live in ground water for approximately 50 days.
- The Hydrogeological Impact Assessment Report states that neighbouring wells will not be impacted from the proposed effluent discharge and that that the top soil and subsoil are suitable to accept and attenuate the treated effluent. Table 3 in the EPA COP only requires 45m to a down gradient private well when the T value obtained is within the 10-20 range. This is an additional 17.6 metres above the required buffer. The existing well downhill is further protected from any possible contamination by a steel casing.

- Table B3 of the EPA COP refers to the need to further site specific evaluation. The site has been fully investigated by 4 no. separate and independent firms. Details of the various site investigations and evaluations provided. The conclusion from these qualified experts is there is no possibility of contamination of wells on lands adjacent to the application site and that the wastewater treatment system fully complies with the requirements of the EPA 2009.
- To enhance the waste water treatment system it is proposed to discharge the already highly treated effluent to a stratified tertiary sand polishing filter. The filter will be positioned as a raised bed and will be sited on top of a 60 sq. metre stone gravel bed. Water in the gravel bed will be allowed to pass to an adjacent planted willow bed. The in line sand polishing filter, gravel bed and planting will treat the small amount of contaminants remaining in the effluent. Applicant is also willing to provide an ultra violet light in the wastewater treatment if it is deemed to be required. There is no possibility of contamination of any water well on any site adjacent to or down slope of the site.
- Notes that the EHO initial assessment appears to be based on a previous application lodged on the site. The calculations for the current application should have been read in conjunction with the proper trial holes for the current application. Furthermore, the separation distance stated in the reason for refusal is incorrect as the existing well downhill is 65.732 metres from the proposed polishing filter.

6.2. Planning Authority Response

- No further response.

6.3. Observations

- No observations.

7.0 Assessment

7.1. Introduction

7.1. The main issues in this appeal are those raised in the grounds of appeal. It is also considered however, that the design and siting of the dwelling, access arrangements to the site as well as the applicants compliance with rural housing policy should be assessed. Appropriate Assessment also needs to be addressed. The issues can be dealt with under the following headings:

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

7.2 Compliance with Rural Housing Policy

7.2.1 The subject development comprises the construction of a rural dwelling. The applicant has submitted detailed documentation to provide evidence that she is a permanent native resident of the area as well as information regarding her intrinsic social and economic need to reside at this location.

7.2.2 The current County Development Plan sets out criteria regarding housing in the Rural Area and notes that this will be strictly limited to proposals where it is proven that there is a social or economic need to locate in the area. Policy HD23 further notes that a permanent native resident shall be a person who has resided in a rural area in County Wicklow for at least 10 years.

7.2.3 Whilst it is noted that documentary evidence of the applicants address for 10 consecutive years is not provided, I am generally satisfied that based on the extent of information provided for on file, that the applicant has resided in the Ballynacarrig area for 10 years. The applicant has also demonstrated social connections to Ballynacarrig and close familial ties. Social need is not defined in the Development Plan. However, the Sustainable Rural Housing Guidelines state: *“intrinsic part of the rural community examples in this regard might include sons and daughters of*

families living in rural areas who have grown up in rural area and are perhaps seeking to build their first home near their family place of residence”. It is considered that in this instance, the applicant would meet this criteria.

7.2.4 With regard to an economic need to reside in the area, I note the information submitted regarding the applicants profession in the security industry. I am however, not of the view that it has been proven that there is an intrinsic economic need to reside at this location. Notwithstanding this, I am satisfied that the applicant is a permanent native resident who has resided in a rural area in Co. Wicklow for at least 10 years and thus complies with the social need criteria defined under the Development Plan.

7.3 Design and Visual Impact

7.3.1 The proposed dwelling is located on a highly elevated position on a site located within a coastal area of outstanding natural beauty. The site is exposed with clear views towards the sea.

7.3.2 A landscape plan and visual impact assessment has been submitted in support of the application. This details that due to the low ridge height of the dwelling and existing and proposed landscaping, that the visual impact of the dwelling will be minimised and that the dwelling will not be clearly visible from the public road.

7.3.3 Whilst the assessment and photographs submitted are noted, I have concerns regarding the nature of this site, due to its highly elevated topography as a suitable location for a dwelling. It is evident that extensive screening and planting are required to facilitate the development and there has been no assessment of the visual impact of the development in more distant views. The photographs submitted are not verified views. Having regard to the sensitive location of the site and its designation as an area of outstanding natural beauty, I am not satisfied that the development would not have an adverse visual impact.

7.4 Wastewater Treatment

7.4.1 The principle reason for refusal by the Planning Authority relates to wastewater treatment.

7.4.2 It is proposed to install a packaged wastewater treatment system and polishing filter to the north of the proposed dwelling. The Site Characterisation Report submitted

with the application as part of an unsolicited further information submission concluded that a packaged wastewater treatment system and polishing filter with discharge to ground water would be suitable. A T value of 14.25 (min/25mm) is reported. As the value was less than 90 a P Test was also undertaken to determine whether the site is suitable for a secondary treatment system with polishing filter. The P test indicated a value of 11.75 (min/25). This indicates that the topsoil is suitable for the construction of a raised percolation area.

7.4.3 The Environmental Health Officer raised concerns regarding the suitability of the site for the proposed treatment system. It is noted that the initial assessment undertaken by the EHO was based on information from trial holes that were excavated as part of a previous application on the site (P.A. Ref. 16/409). One of the key concerns related to the possibility of contamination of an existing well located 61 metres downhill of the proposed polishing filter due to the severe slope and that the development was thus not in compliance with Table B3 of the EPA Code of Practice.

7.4.4 Table B3 sets out the recommended minimum distances between a receptor and a percolation area or polishing filter. Where a T or P value is between 10 and 30 and the depth of the subsoil above bedrock is 1.2 metres, it is stated that the minimum distance to a down gradient domestic well is 45 metres. As detailed, the P and T values are within this range and the trial holes indicate that the bedrock is 1.2 metres from the ground surface. The nearest existing well downhill of the proposed polishing filter to the east of the site is 65.73 metres. This is indicated on drawing AMA/17/L3. I am satisfied, therefore, that the proposed polishing filter has a sufficient separation distance from this existing downhill well in accordance with the criteria set out in Table B3.

7.4.5 The applicant has also submitted a detailed hydrological report in support of the development. The assessment indicates that there are no existing neighbouring wells identified within the 100 day pollutant time of travel of 33.3m from the intended discharge location. It states that the closest well to the site is located 66.6 metres from the proposed discharge location. The well is down gradient of the polishing filter but is off set to the south/east whereas the groundwater flow is likely to be in an east to north/east direction thereby, reducing the likelihood of any potential pollution risk. There is a further well located 122 metres to the east of the proposed percolation area. This well is located slightly down gradient but it is stated in the

report that as the groundwater flow is away from the well, it is, therefore, not at risk. The report concludes that no neighbouring well will be impacted on by the proposed effluent discharge.

- 7.4.6 The EHO also made reference to the severely sloping topography of the site and the presence of large outcrops of rock and is thus contrary to Section 6.5 of the EPA COP. Section 6.5 of the Guidelines relates to Site Improvement Works. It states that in many cases, site improvement works will not be sufficient to enable the site to be used for a system incorporating discharge to ground and it may be deemed unsuitable. A number of examples of where site works are not acceptable are cited including instances where the slope exceeds 1:8 or where there is bare bedrock exposed.
- 7.4.7 As noted by the applicant, it is not proposed under the current application to carry out any site improvement works to the site to facilitate the wastewater treatment system. The constructed soil filter is in itself not considered to constitute site improvement works. I, therefore, do not consider the guidance set out in section 6.5 of the guidelines to be relevant to the subject proposal.
- 7.4.8 With regard to the presence of exposed bedrock, it is contended by the applicant that there is no exposed bedrock on the site and that which was observed by the EHO are in fact large boulders. It is detailed that four trial holes were excavated across the site and that these clearly indicate that the depth of the granite bedrock is 1.2 metres. There were no trial holes open at the time of the site visit. One large boulder was observed on the site. However, based on the technical evidence submitted, including the detailed trial hole information, I am satisfied that there is no exposed bare bedrock on the site.
- 7.4.9 Notwithstanding the above assessment and detailed submission by the applicant regarding the adequacy of the proposed wastewater treatment system and assessment of potential impacts to adjacent wells, I have a significant concern regarding the concentration of wastewater treatment systems at this location and the consequent risks and impacts to water quality that could arise from the proposed effluent treatment system taken in conjunction with the permitted treatment systems on adjoining sites. It is evident from the aerial photography and mapping that the subject site is located within a cluster of existing rural houses, all of which are served

by wastewater treatment systems. This issue has not been adequately addressed by the applicant.

7.4.10 The Code of Practice sets out minimum separation distances between wastewater treatment systems and certain features, including separation distance from other wastewater treatment systems. The Code also allows for increase of distances where this is deemed appropriate. Whilst the proposed development would meet the standard separation distances set out in Table 6.1 of the Code of Practice, I note that the wider area comprises several houses which are serviced by single wastewater treatment systems which arguably could collectively lead to increased nitrate levels in the receiving groundwater, giving rise to potential for significant cumulative impacts on groundwater quality. In this context, I am not satisfied that there is sufficient information regarding dilution calculations and the potential cumulative impact of the proposed wastewater treatment system on groundwater quality. Accordingly, I recommend that planning permission is refused based on the basis that the proposed development has the potential to give rise to significant cumulative impacts on groundwater quality and be prejudicial to public health.

7.5 Access

7.5.1 It is proposed to access the subject site via an upgraded agricultural access from an existing shared access laneway to which the applicant has a right of way over. The sightlines from the proposed entrance onto the laneway are somewhat inhibited. However, having regard to the fact that this is a secondary laneway whose sole purpose is to provide access to a limited number of existing dwellings and where traffic speeds are low, I am satisfied that it is adequate. The laneway exits onto the main R759 route. A drawing has been provided indicating that a sightline of 90 metres can be achieved from a 3 metre set back. It was observed on site that good sightlines are achievable and the access is thus considered satisfactory. It is also noted that there were no objections to the proposal from the Councils Road Department.

7.6 Appropriate Assessment

7.6.1 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

1. The site is located in an area which is designated in the current Wicklow County Development Plan 2016-2022 as a Coastal 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 design and elevated siting 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
2. The Board is not satisfied that, when taken in conjunction with the high concentration of waste water treatment units in the area, the development would not contribute to unacceptable increase of nitrate levels in the receiving groundwater and result in an excessive concentration of development served by waste water treatment units in the area. Accordingly, it has not been demonstrated that the effluent which would be generated as a result of the development can be adequately treated and safely disposed of on-site without risk to groundwater quality. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

Erika Casey

Senior Planning Inspector

27th June 2018