An Bord Pleanála

Inspector's Report
ABP 300825-18

Development	Erect house with waste water treatment system, bored well and ancillary site works.
Location	Ballylug, Laragh, County Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	15/1253
Applicant(s)	Tony Porter
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	Applicant vs refusal
Appellant(s)	Tony Porter
Observer(s)	Gary O'Neill
Date of Site Inspection	23rd and 27th August 2018
Inspector	Hugh Mannion

1.0 Site Location and Description

1.1. The site has a stated area of 0.465ha is the more western of two concurrent applications located in a rural upland area in the townland of Ballylug in County Wicklow. The site is approximately 3.5 kilometres south-east of Laragh village. The nearest public road to the site is road L6086 which is a minor road that runs around the southern flank of Trooperstown Hill. The site and adjoining area overlook the valley of the Avonmore river which flows southeast towards its confluence with the Avoca River some 12kms to the southeast. On the opposite side of the Avonmore river valley is Kirikee mountain. Access is over a private gravelled drive way which connects with the L6086 to the southeast of the site. This private laneway already serves an existing house (permission under PL27.236935) and is also proposed to serve the proposed house to the east (ABP 300824-18). The site has been planted with a type of fir or spruce and wooden outlines of the proposed houses have been erected on both application sites.

2.0 Proposed Development

2.1. The proposed development comprises the erection of a single storey house, and construction of a domestic waste water treatment system, provision of a bored well and ancillary site works at Ballylug, Laragh, County Wicklow.

3.0 Planning Authority Decision

3.1. Decision

Permission was refused for three reasons as follows;

1. Applicant is not a permanent resident in the area and the application contravenes the Sustainable Rural Housing guidelines.
2. The proposed development would negatively impact on a landscape area of special amenity and a listed prospect and would be contrary to the provisions of the County Development Plan.

3. Adequate sightlines are not available at the proposed site entrance and the proposed development would endanger public safety by reason of traffic hazard.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The planner's report recommended refusal for the reasons set out in the manager's order.

3.2.2. Other Technical Reports:

3.3. **Area Engineer** reported at no objections to the entrance gates based on the drawings submitted.

3.4. **Environmental Health Officer** reported no objection on the grounds of suitability for the disposal of domestic effluent.

4.0 Planning History

4.1. Under PL27.231997 Permission was refused on a nearby site for retention of a replacement house because;

> The site is located in an area which is designated in the Wicklow County Development Plan, 2004-2010 as a Special Amenity Zone in relation to which it is the policy of the planning authority to protect landscape amenities and assets. This designation and policy are considered reasonable. The proposed development provides for a new access road, lengths of which would have a steep gradient on a visually prominent site, and a new entrance on to the public road. The proposed entrance requires a lowering of the existing roadside verge and extensive earthworks and retaining structures resulting in a significant loss of vegetation, which together with the proposed access road to the house would, notwithstanding landscaping proposals, detract from the rural character of the area and seriously injure the visual amenities of the area. The proposed development would, therefore, contravene the policy of the planning authority, as set out in the development plan, and be contrary to the proper planning and sustainable development of the area.

4.2. Under PL27.235303 permission was refused for retention of a house (same house as in PL27.231997) because;

> The development proposed for retention provides for the use of a significant extent of existing forestry access road, which is seriously substandard in terms of width, alignment, structural condition and construction, to serve the dwellinghouse proposed for retention and, therefore, does not provide adequate access to the dwelling. Furthermore, the sightlines available at the junction of the forestry access road with the public road are considered to be seriously deficient. It is, therefore, considered that the development proposed for retention would be contrary to the proper planning and sustainable development of the area and would endanger public safety by reason of traffic hazard.

4.3. Under reference PL27.236953 permission was granted for retention of a replacement dwelling subject to conditions.

5.0 **Policy Context**

5.1. **The National Planning Framework**

5.2. The National Development Plan (section 26) makes the point that housing growth at the edges and outside cities and towns leads to a constant process of infrastructure and service provision catch up and remarkably high levels of car dependence, a gradual run down of city and town centres, the creation of greenfield sprawl and significantly higher carbon footprint due to higher transport and energy demand.

5.3. A preferable approach is one where growth is in settlements of all kinds from larger cities to smaller village that contributes to the viability of services, shops and public transport, increases housing supply and enable more people to be closer to employment and recreational opportunities, as well as to walk or cycle more and use the car less.

5.4. **The Sustainable Rural Housing Guidelines** (DOEHLG 2005) require planning authorities in addressing demand for rural housing to distinguish between rural

generated housing need and urban generated housing need. Rural generated housing needs should, generally, arise from demonstrable connections to the site, to rural based occupations and/or relationship with the landowners. The Guidelines include an indicative map which distinguishes between rural area types. The application site is in an area designated as 'under strong urban influence' where the Guidelines have identified areas as being under pressure for housing development due to proximity to larger cities and towns.

5.5. **Wicklow County Development Plan** 2016 to 2022 contains relevant objectives;

SS1 To implement the County Wicklow Core Strategy and Settlement Strategy, having regard to the availability of services and infrastructure and in particular, to direct growth into the designated metropolitan growth centres and the large, moderate and small growth towns in the Greater Dublin hinterland area.

SS4 To require new housing development to locate on designated housing land within the boundaries of settlements, in accordance with the development policies for the settlement.

SS7 To strengthen the established structure of villages and smaller settlements both to support local economies and to accommodate additional population in a way that supports the viability of local infrastructure, businesses and services, such as schools and water services.

HD 23 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:

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, or niece/nephew considered to merit the same position as a son/daughter within the law (i.e. when the uncle/aunt has no children of his/her own), 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, or niece/nephew considered to merit the same position as a son/daughter within the law (i.e. when the uncle/aunt has no children of his/her own), 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.

4. Replacing a farm dwelling for the needs of a farming family, not as speculation. If suitable the old dwelling may be let for short term tourist letting and this shall be tied to the existing owner of the new farm dwelling were it is considered appropriate and subject to the proper planning and development of the area.

5. A person whose principal occupation is in agriculture and can demonstrate that the nature of the agricultural employment is sufficient to support full time or significant part time occupation.

6. An immediate family member (i.e. son or daughter) of a person described in 5, who is occupied in agriculture and can demonstrate that the nature of the agricultural employment is sufficient to support full time or significant part time occupation.

7. A person whose principal occupation is in a rural resource based activity (i.e. agriculture, forestry, mariculture, agri-tourism etc.) can demonstrate a need to live in a rural area in order to carry out their occupation. The Planning Authority will strictly require any applicant to show that there is a particular aspect or characteristic of their employment that requires them to live in that rural area, as opposed to a local settlement.

8. A close relative who has inherited, either as a gift or on death, an agricultural holding or site for his/her own purposes and not for speculation and who can demonstrate a definable social and / or economic need to live in the area to which the proposal relates.

9. The son or daughter of a landowner who has inherited a site for the purpose of building a one off rural house and where the land has been in family ownership as at 11th October 2004 for at least 10 years prior to the application for planning permission and not as speculation.

10. An emigrant who qualifies a permanent native resident, returning to a rural area in County Wicklow, seeking to build a house for his/her own use not as speculation.

11. Persons whose work is intrinsically linked to the rural area and who can prove a definable social or economic need to live in the rural area

12. A permanent native resident that previously owned a home and is no longer in possession of that home (for example their previous home having been disposed of following legal separation / divorce / repossession, the transfer of a home attached to a farm to a family member or the past sale of a home following emigration) and can demonstrate a social or economic need for a new home in the rural area.

13. Permanent native residents of moderate and small growth towns, seeking to build a house in their native town or village within the 60kph / 40mph speed limit on the non-national radial roads, for their own use and not as speculation as of 11th October 2004.

14. A person whose business requires them to reside in the rural area and who can demonstrate the adequacy of the business proposals and the capacity of the business to support them full time.

15. Permanent native residents of the rural area who require a new purpose built specially adapted house due to a verified medical condition and who can show that their existing home cannot be adapted to meet their particular needs.

16. Persons who were permanent native residents of a rural area but due to the expansion of an adjacent town / village, the family home place is now located within the development boundary of the town / village.

5.6. Natural Heritage Designations

See AA screening below.

6.0 The Appeal

6.1. Grounds of Appeal

- The applicant qualifies for permission for a one-off rural house since he has lived with his sister's the house permitted under PL27.236953 and previously with his parents in a nearby family home. Although for a period his sister's house was unauthorised this should not impact on calculating the 10 years required to qualify under the development plan criteria.
- The applicant further qualifies under the development plan criteria as he has been gifted the site by his family. The applicant once worked in Ashford studios but now works in the family Christmas tree business.
- The development plan does not ban housing beside areas of outstanding natural beauty rather seeks to ensure that developments don't unduly affect the landscape. The visual impact of a low profile, stone clad house as proposed is acceptable in this location.
- The Board has previously accepted that a nearby house would not give rise to traffic hazard.

6.2. Planning Authority Response

- None

6.3. Observations

Garry Neill made the following observations.

- The correct address of the development is Ballylug, Rathdrum, County Wicklow.
- The applicant does not have a local housing need related to the application site.

- The proposed development along with tree felling/crop spraying on the landholding of which the application forms part is injurious to the amenity of the observer's house.
- There is an extensive planning history on the application site and adjoining lands.
- The proposed development, in conjunction with adjoining proposed development, would erode the landscape character of an Area of Special Amenity identified in the County Development Plan.
- The proposed development will negatively impact on views and prospects identified in the County Development Plan.
- The proposed development is an inappropriate suburban type bungalow.
- The access road is substandard and the proposed development would give rise to traffic hazard.
- The applicant has not demonstrated a local housing need in compliance with the Sustainable Rural Housing Guidelines.
- The concentration of septic tanks in the area has the potential to impact on the observer's well water supply.

6.4. **Further Responses**

The applicant responded to the observation as follows;

- The applicant is a long-time resident of this area, does not own other lands, works in Porters Christmas Tree farms, will provide companionship for his father and meets the criteria for local need set out in the Wicklow County Development Plan.
- The proposed development would not impact on the visual amenity of an Area of Special Amenity.
- The proposed development would access a lightly trafficked public road which does not link significant settlements and would not give rise to traffic hazard.
- The EHO reported no concerns in relation to ground water impacts.

7.0 **When the case was remitted back to the Board from the High Court the Board invited both parties and the observer to make further submissions. These submissions may be summarised as follows;**

7.1. Gary Neill/ Observer (received by the Board 24th April 2018):

- The applicant is not a permanent native resident of the area.
- The proposed development will give rise to traffic hazard.
- The house which was the subject of the appeal PL27.236953 had not been occupied in living memory.
- The applicant (Tony Porter) currently works in Ashford film studios.

7.2. The Applicant (18th April 2018):

- The applicant is exercising his rights under European law to live on this site. The restrictive nature of development plan policy in relation to one-off housing may contravene EU law.
- The County Development Plan along with its settlement strategy which supports the growth of designated towns, villages and hamlets envisages 340 persons living in the open countryside.
- The provisions of the County Development Plan 2010 and the County Development Plan 2016 in relation to rural housing are broadly similar. Compliance with one of the tests for rural housing need in ED23 (formerly RH 14) is sufficient to qualify an applicant for housing in the open countryside.
- In similar cases (PL27.248252, PL27.247982, PL27.247906) the applicant's sister's need for rural housing was recognised and the change from the earlier development plan to the current development was not material.
- The applicant meets several of the tests in the HD23. He is a permanent resident. He wishes to play an increased role in the family Christmas tree business.
- The proposed development will not negatively impact on the visual amenity of the area. The development plan is tolerant of the impact on visual amenity of one-off housing.

- The applicant was denied access by the Board to some material relevant to this issue.

7.3. The Applicant (1st June 2018):

- The applicant also meets the criteria for compliance with the development plan policy in relation to one-off housing in the countryside.
- The Board has accepted previously that development on the adjoining site using the existing access would not give rise to traffic hazard.

8.0 **Assessment**

8.1. **Rural Housing Policy**

8.2. The site is located in an area designated as a 'rural area under strong urban influence' in the sustainable housing rural housing guidelines. These areas are characterised as being close to or within commuting distances of large cities and towns with evidence of pressure for housing due to proximity to such urban areas and transport corridors. The Guidelines repeat the requirement set out in the NSS to distinguish between rural generated housing and urban generated housing needs. The current County Development Plan has had regard to the guidelines and has adopted a core strategy and settlement strategy whose objective is to concentrate housing and other development in designated centres where public services and facilities may be provided. Table 2.2 in the plan includes Rathdrum as a small growth town about 9kms from the application site. The county development plan (objective HD1) states that "new housing development shall be required to locate on suitably zoned or designated land in settlements, and will only be considered in the open countryside when it is for the provision of a rural dwelling to those with a housing, social or economic need to live in the open countryside".

8.3. The county development plan contains objective HD23 which states that residential development will be considered in the country side where the applicant's circumstances are reflected in 14 different criteria. Furthermore, objective HD23 summarises the position in relation to one-off rural housing that in the event of

conflict with any other settlement strategy objective that a person who qualifies under Policy HD23 their needs shall be supreme. The applicant in this case, *inter alia,* makes the point that he has lived in his sister's house on the adjoining site since 2008 (see grounds of appeal) and that he takes additional leave from his full-time employment in transport and logistics in December to insure with his father that the Christmas tree harvest is complete (letter submitted with application to planning authority).

8.4. The County Development Plan sets out a comprehensive settlement strategy which envisages concentrating new growth in a hierarchy of towns, villages and smaller settlements. There is a conflict within the development plan between the overall settlement strategy and the rural housing acceptance criteria and there is a conflict between the development plan and the national guidance set out in the sustainable housing rural housing guidelines. The Guidelines envisage that planning authorities distinguish between urban generated and rural generated housing and in particular in areas under strong urban pressure closer to cities and towns. The National Planning Framework (NPF) states that housing growth at the edges and outside cities and towns leads to a constant process infrastructure and service provision catch up and remarkably high levels of car dependence, a gradual run down of city and town centres, the creation of greenfield sprawl and significantly higher carbon footprint due to higher transport and energy demand. Furthermore, the NPF prefers growth in settlements to better provide for public services and limit dependence on fossil fuels particularly when linked to the need for private transport.

8.5. The appeal makes the point that this application should be considered to comply with the same criteria for one-off rural housing as applied to the applications in the adjoining site. This application may be distinguished from previous applications on the adjoining site (PL27.235303 and PL27.231997) in that in those applications were based, partially, on the grounds of the house proposed to be retained was a replacement farmhouse for a pre-existing house and that the applicant's principal occupation was in the family forest business.

8.6. There are conflicts in the information provided in connection with the application and appeal. The applicant is variously described as working in Ashford Studios and full time in forestry. The landholding outlined in the application is largely in forestry, and (relaying on the areas included in the blue line of the family landholding drawing

submitted with the application) comprises about 12ha. A 2015 Tegasc survey classified small farms about 14ha in area providing an income in the region of €3,000 per annum. I conclude that the application has not demonstrated that the proposed development arises from a need to occupy the landholding which is already occupied by the applicant's sister whose application was, in part, based on employment on the family landholding.

8.7. There are conflicting objectives within the county development plan in relation to the location of rural housing and settlement policy and between the county development plan and national policy in relation to distinguishing between urban generated housing applications and rural generated housing applications. Having regard to the location of the proposed development outside any designated settlement boundary, in an area where there is no public water supply or sewerage facilities and where there is an inadequate road network to serve the proposed development I conclude that the application has not demonstrated that it arises from rural generated housing need in areas under strong urban influence as designated in the Sustainable Rural Housing Guidelines and I recommend refusal on this point.

8.8. **Domestic Effluent Disposal.**

8.9. The application proposes the sinking of a new bored well and installation of a proprietary effluent treatment system with polishing filter. The T value on site is given as T=11 which is in accordance with Table 6.3 of the EPA code of practice and is reflective of the topography and vegetation on site. The effluent treatment system is down gradient of the house and the polishing filter is down gradient of the effluent treatment system so drainage will be by gravity. The planning authority's environmental health officer reported no objection on this point.

8.10. The observer makes the point that the proposed development will contribute to a concentration of septic tanks which may impact on his own well which is his supply of potable water.

8.11. The existing house on this landholding (PL27.236953) is served by a domestic waste water treatment system (DWWTS) and private well, this proposed house (ABP300825) and the proposed adjoining house (ABP300824) are proposed to be served by DWWTSs. There are three houses fronting onto the public road down

gradient of the existing and proposed systems and I infer that these roadside houses are also served by DWWTSs and private wells. It would have been preferable had the application included an assessment of the potential cumulative impacts of the proposed additional DWWTS but I conclude on the basis of the material submitted with the application, the reports of the planning authority and my site inspection that the effluent proposed for discharge will be safely treated within the application site and will not give rise to ground or surface water pollution.

8.12. **Traffic Safety.**

8.13. The planning authority refused because adequate sightlines are not available at the entrance to the public road. The appellant makes the point that the Board has previously granted permission for the drive way and access and concluded that the access is acceptable from a traffic safety perspective.

8.14. It is appropriate to distinguish between the previous application under PL27.236953 and the present application. A point made in favour of that application and appeal was that the proposed house was a replacement for a previously existing house and the Board's decision referenced the replacement aspect of that application. The present case represents a significant intensification of use of the access and the local road network.

8.15. The local public road which serves the proposed site is narrow, without median lines, public footpaths, cycle paths, public lighting or pedestrian crossings and in places no pedestrian refuse from passing vehicular traffic. There is local authority signage warning motorists of bends in the vicinity of the site entrance. The speed limit is 80kms per hour. Each additional house accessing this public road network at the existing junction of the private laneway gives rise to additional traffic turning movements on an inadequate public road network. The proposed development will give rise to additional traffic turning movements on this inadequate road network and will, therefore, endanger public safety by reason of traffic hazard.

8.16. **Visual Impact**

8.17. The appeal site is located in the 'North East Mountain Lowlands' which is designated an 'Area of High Amenity' in Map 10.13(c) attached to the Wicklow County Development Plan. The site is potentially visible from listed prospects 41, 42 and 43. Prospect 41 is from the R755 Vale of Clara Laragh to Rathdrum described as the

wooded valley prospect of Clara vale on both sides of the valley and Clara bridge and church. Prospect 42 is the L6086 on the northern side of Clara vale described as the prospect northeast of Trooperstown Hill and Clara Vale to the southwest. Prospect 43 is along the L2083, L2128, L3260, Laragh (Bookey Bridge) to Mullin Crossroads, via Aghavannagh described as prospects from both sides of Military road from Laragh to Mullins Crossroads.

8.18. Objective NH 52 in the County Development Plan states that it is an objective of the planning authority in relation to views and prospects "to protect listed views and prospects from development that would either obstruct the view /prospect from the identified vantage point or form an obtrusive or incongruous feature in that view/prospect. Due regard will be paid in assessing development applications to the span and scope of the view/prospect and the location of the development within that view/prospect".

8.19. The landscape in the area is very varied, the southern side of Trooperstown Hill is partially forested and partially open land; because the L6086 runs along the hillside close to the river in the valley floor/Avonmore River the views from this route are more south and south west (prospect 42 in the current plan). Prospect 41 is the R775 to Rathdrum and is heavily wooded for much of its length and generally within the Avonmore River valley. Prospect 42 is from the Military Road. This route climbs out of Laragh to the southwest and therefore offers open views of the southern flank of Troopertown hill and the application site. It is of note that where there is screening from these listed prospects or within the Trooperstown Hill/ Kirikee mountain area much of it is commercially planted trees which have a defined lifespan and their utility as screening vegetation is, therefore, limited.

8.20. The application gives a FFL of about 230m OD. The development plan makes the point that houses in the open countryside should be nestled into the landscape to mitigate their visual impact.

8.21. Having regard to the location of the proposed house in an elevated sensitive landscape of high amenity value on a site which is visible over a wide area and from a prospect listed for protection in the county development plan I conclude that the proposed development will comprise a visually incongruous and obtrusive feature and would seriously injure the visual amenities of the area.

8.22. **Appropriate Assessment**

8.23. Having regard to modest scale of the proposed development, the foreseeable emissions and its location remote from any 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.

9.0 Recommendation

9.1. I recommend permission be refused for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. Having regard to the location of the site within an area under strong urban influence as identified in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April, 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the current Wicklow County Development Plan, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, contravene the "Sustainable Rural Housing Guidelines for Planning Authorities" and be contrary to the proper planning and sustainable development of the area.

2. The public road network serving the proposed development in inadequate in horizontal and vertical alignment and has no median line, footpaths or

cyclepaths, public lighting or pedestrian crossings. The proposed development would give rise to additional traffic turning movements on this inadequate road network and would, thereby, endanger public safety by reason of traffic hazard.

3. The site of the proposed development is located in an area which is designated as an Area of High Amenity in the current Wicklow County Development Plan and is visible in prospects listed for protection in the County Development Plan. The proposed development would comprise a visually incongruous and obtrusive feature in the landscape, would seriously injure the visual amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

Hugh Mannion
Senior Planning Inspector

31st August 2018