



An  
Bord  
Pleanála

## Inspector's Report ABP-300898-18.

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|-------------------------------------|---|
| <b>Development</b>                  | Demolition and replacement of dwelling.   |
| <b>Location</b>                     | Ballyduboy, Kilmuckridge, County Wexford. |
| <b>Planning Authority</b>           | Wexford County Council.                   |
| <b>Planning Authority Reg. Ref.</b> | 20171498.                                 |
| <b>Applicant(s)</b>                 | Bernard Murray.                           |
| <b>Type of Application</b>          | Permission.                               |
| <b>Planning Authority Decision</b>  | Refusal.                                  |
| <b>Type of Appeal</b>               | First Party                               |
| <b>Appellant(s)</b>                 | Bernard Murray.                           |
| <b>Observer(s)</b>                  | None.                                     |
| <b>Date of Site Inspection</b>      | 16 <sup>th</sup> May 2018.                |
| <b>Inspector</b>                    | Philip Davis.                             |

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## 1.0 Introduction

This appeal is by the applicant against the decision of the planning authority to refuse permission for the demolition of an existing small dwelling and its replacement on the same landholding close to the coastline. The grounds of refusal relate to policy on residential construction on the coast.

## 2.0 Site Location and Description

### 2.1. Ballyduboy, Kilmuckridge, County Wexford

The townland of Ballyduboy is located on the east facing coast of Wexford about 24 km north-north-east of Wexford town and 16 km due south of the holiday village of Courtown. The long coastal stretch between the border with Wicklow and Wexford Harbour is characterised by a near continuous beach backed by a mix of high dunes and cliffs of mostly unconsolidated sand and gravel deposits. With the exception of the small harbour village of Courtown there are few settlements on the coast, mostly due the inaccessibility of the coast and the absence of many suitable locations for harbours or for safe recreation. The R741 runs more or less parallel to coast, but about 8 km inland. A more minor regional road, the R742 runs on a more haphazard route between the R741 and the coast. This road links a number of small villages and holiday settlements (including some caravan parks) along the long coastal stretch.

The closest village to Ballydubay is Kilmuckridge, a small rural settlement with a mix of local service facilities and holiday homes. It is 2.5 km north-west from the townland, although it is nearly 5km by road, as the local road network follows a very random winding network. Although maps indicate that a minor road runs through the townland, a section is private and gated, so it is only served by a cul-de-sac road. The last half kilometre of the road into the townland is unpaved and little more than 3 metres wide.

The townland is next to the coast, which forms a high ridge more or less parallel with the coast. It is settled by a fairly haphazard mix of dwellings, many of which appear to be second homes. At the terminus of the paved public highway is a medium sized holiday caravan park. Most dwellings in the area are in a distinct dip in the landscape behind the coastal ridge. The coast is marked by a beach which is

mostly underwater at high tide. The coastal cliffs are of unconsolidated sand and gravel deposits, visibly eroding in many sections. The cliff is around 25 metres in height for most of its length. There is no public access to any of the cliff-top, and there are few public accesses to the beach for much of its length, the closest being about 1.5 km south of the townland.

## **2.2. The site and environs**

The appeal site is an irregularly shaped area of land with an area given as 1.37 hectares. It is located close to the terminus of the single cul de sac country road serving Ballyduboy. At the terminus of the cul-de-sac there is a junction where it continues north on a private track with a gated entrance. The other branch turns east where it terminates after about 350 metres at the entrance to a dwelling on a local high point overlooking the sea. The site has a single small dwelling on the western side, next to the road junction. The rest of the site rises in level significantly to the east towards the coast. Most of the land is dense overgrown gorse and scrub.

The site is bounded to the south by a single dwelling. To the west is the road, with open fields beyond this. To the north is the spur road, with a cottage opposite, in addition to the private road which runs north, eventually connecting again with the minor road network. To the east is a section of raised marram grass and dunes next to the seashore.

## **3.0 Proposed Development**

The proposed development is for the demolition of the existing dwelling and its replacement with a new 3-bedroom dwelling on an alternative location within the site. In addition, the proposed development includes the replacement of the septic tank system by the installation of a new proprietary system and a geothermal heating system.

## 4.0 Planning Authority Decision

### 4.1. Decision

The planning authority decided to refuse permission for two reasons, I'd summarise as follows:

- Contrary to Section 4.3.4.1 (with regard to replacement houses) of the CDP as it is considered that it is not in accordance with the criteria set out.
- Contrary to objective CZM15 of the CDP, which prohibits the development of any building outside the boundary of existing settlements where the development is within 100 metres of the 'soft shoreline'.

### 4.2. Planning Authority Reports

#### 4.2.1. Planning Reports

- Notes proximity to SAC, but concurs with Screening Report that there will be no likely significant impacts.
- Notes the site is within a Coastal Zone where an occupancy condition and permanent residency conditions should apply.
- It is considered that the proposal is not in accordance with policy on replacement dwellings.
- It is considered that the site is contrary to Objective CZM15 due to its proximity to the 'soft' coastal zone.
- In other respects the proposed development is considered acceptable.

#### 4.2.2. Other Technical Reports

A Screening Report submitted with the application concluded that there would be no effects so an NIS is not required.

A Site Characterisation form submitted with the application indicated that the site for the proposed new wastewater treatment unit is over poorly drained till material and

alluvium. A T-test indicated very poor percolation, and so a raised polishing filter is required. The site is served by public mains.

A memo from the Council Environment Section recommends standard conditions.

#### 4.3. **Prescribed Bodies**

No comments on file.

#### 4.4. **Third Party Observations**

No comments on file.

### 5.0 **Planning History**

No records on file.

### 6.0 **Policy Context**

#### 6.1. **Development Plan**

The area is unzoned, but is within an area identifies as under 'strong urban influence' with regard to the Sustainable Rural Housing Guidelines. It is also within the general 'Coastal Zone' of the County (Map no. 11 of the CDP).

Section 4.3.4.1 and Table no.13 sets out the criteria for replacement rural dwellings. In this regard the relevant objectives state:

***Objective RH10***

*To adopt a presumption in favour of the retention of existing traditional dwellings with appropriate adaption, as required, subject to normal planning and environmental criteria and, where appropriate, the development management standards laid down in Chapter 18.*

***Objective RH11***

*To facilitate the replacement of dwellings where it has been demonstrated that a dwelling cannot be retained having regard to sustainability or structural condition or where the dwelling concerned is not worthy of retention subject to the criteria*

*outlined in Table No. 13, normal planning and environmental criteria and the development management standards laid down in Chapter 18.*

With regard to Coastal Zones:

**Objective CZM07**

*To ensure that developments in the coastal zone are correctly sited and designed having regard to visual impact on the coastal zone and the coastal landscape character unit.*

**Objective CZM10**

*To consider one-off housing in areas outside of the boundaries of existing settlements in accordance with the rural housing objectives in the Sustainable Rural Housing Strategy in Chapter 4 and subject to compliance with normal planning and environmental criteria and the development management standards contained in Chapter 18.*

**Objective CZM13**

*To ensure that developments are sensitively sited, designed and landscaped and do not detract from the visual amenity of the area.*

**Objective CZM14**

*To prohibit development outside the boundaries of existing coastal settlements where such development could not be adequately defended over the lifetime of the development without the need to construct new or additional coastal defence works.*

**Objective CZM15**

*To prohibit the development of any building (including caravans or temporary dwellings) outside the boundary of existing coastal settlements where the development is within 100m of the 'soft shoreline', that is, shorelines that are prone to erosion, unless it can be objectively established based on the best scientific information available at the time of the planning application, that the likelihood of erosion at the location is minimal taking into account, inter alia, any impacts of the proposed development on erosion, or deposition, and that the development will not pose a significant or potential threat to coastal habitats or features. This objective will not apply to minor extensions to existing buildings.*

## 6.2. Natural Heritage Designations

The site is immediately adjacent to the Kilmuckridge-Tinnaberna Sandhills, SAC, site code 001741. This SAC is designated for its three scheduled coastal dune habitats. There are no other Natura 2000 designated sites in the immediate area.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

- It is argued in general terms that the proposed replacement dwelling is superior in all respects to the existing dwelling and will result in an improvement to the general area. It is also argued that it is in accordance with Development Plan and national policy.
- With regard to reason 1, it is argued that the proposed development is not contrary to section 4.3.4.1 of the CDP as notwithstanding that it is not on or near the same footprint, the overall design and landscape context would allow the new design to integrate as well, if not better, than the existing dwelling. It is emphasised that the site has mature trees to allow an immediate integration of the new structure and that the proposed dwelling is of significantly greater architectural merit than the existing structure. It is argued that the proposed structure would not be visible from any viewpoints along the coast or the sea.
- With regard to reason 2, it is argued in some detail that the proposed development is not within 100 metres of a 'soft shoreline' as defined by the 'UN Protocol on Coastal Zone Management for the Mediterranean' and other international guidance documents. It is argued that the Flood Risk Assessment Strategy in Appendix 2 and the 'Irish Coastal Protection Strategy Studies Phase 2 (OPW does not identify the area around Ballyduboy as an area of erosion risk – it is actually identified as one of accretion, not erosion (map copy provided)).
- In summary, it is argued that the proposed development would provide significant environmental and landscape benefits, and is not contrary to the stated policy objectives.

## 7.2. **Planning Authority Response**

The planning authority reaffirms that it is considered to be contrary to policy as outlined in the original planners report.

## 8.0 **Assessment**

Having inspected the site and reviewed the file documents, I consider that the main points of this appeal can be addressed under the following headings:

- Principle of Development
- Overall landscape impact
- Coastal policy and erosion
- Public health
- Traffic
- Flooding
- Appropriate Assessment
- Other issues

### 8.1. **Principle of development**

The proposed development is for a replacement dwelling on a rural site in an area designated as a 'strong rural area' in the Wexford County Development Plan 2013-2019 in accordance with the Sustainable Rural Housing Guidelines. As the proposed replacement dwelling is not significantly greater in scale than that existing (both under 200 square metres) I do not consider that the normal considerations of the Guidelines or the policies relating to rural housing apply.

There are no specific national or regional plans or guidance for replacement dwellings. I note that the policy document 'Planning for a Climate Resilient Ireland' published in January 2018 by the Department of Climate Action & Environment projects sea level rises of 55-60 cm to 2100 (page 28 of that document). It does not set out specific policies for structures that may be impacted by rising sea levels, but it does set out requirements for local authorities to carry out appropriate coastal zone studies and address the issue in future planning.

The development plan has a number of policies relevant to dwellings in the coastal fringe of the county, most notably section 4.3.4.1 and policy CZM15. These set out that replacement dwellings should be on or near the existing footprint and in the case of the latter policy, that new structures should be built within 100 metres of the 'soft' coastline.

I would conclude that there is no unambiguous policy relating to a proposal of this type, but that it should be dealt with on its own merits having regard to the provisions of the development plan.

## **8.2. Overall landscape impact**

The existing dwelling is a modest cottage that appears to be around 20 or 30 years old on a wooded corner of the site near the end of a cul-de-sac. Although some maps indicate this is a through road, it is gated and at least one section to the north is a private lane. The road is unpaved from the caravan park about 300 metres south of the appeal site. The road appears to only serve the handful of dwellings and holiday cottages and the farmland in the townland. There is no direct public access to the sea or other points from the road, so it appears to be only used by residents and visitors.

The dwelling is on the western, lowest part of the site. Levels rise steadily west of the site, which is currently densely overgrown with gorse and scrub. The boundary of the site is more or less at the highest point where the site meets the dry dunes next to the coast. There is a more or less continuous beach along the coast, but the closest public accesses are some 1.5 km to the south and 2.5 km to the north, so the beach is not intensively used by the public. I noted many warning signs at the entrances about the disappearance of the beach at high tide and the danger of eroding cliffs.

The existing house would not be widely visible for many except the immediate neighbours and the very occasional person using the road. The proposed dwelling would be on a more raised site, and so would inevitably be visible from a wider area, both west of the site (albeit very distant views from the direction of Kilmuckridge), and from the east, although I accept the submission that it would be only minimally visible from the beach and the sea. The proposed design is contemporary in form and I would consider of a high overall quality.

I would consider that with appropriate landscaping and care the proposed development would have a relatively minor additional impact on the landscape, although its more elevated location would be a concern, in particular as the coastline here is relatively unspoilt – most development being well below the ridgeline. While the impact would not be very high, it would, I consider, be significant compared to replacing the house on or near its footprint, and so I would conclude that it is contrary to the spirit of section 4.3.4.1 of the Development Plan.

### 8.3. Coastal policy and erosion

The site is located on a visibly eroding coastline, although the specific area next to the site is a depositional marram grass feature (the SAC). Almost all the coast along this stretch is identified by the OPW as ‘eroding’ except for this specific stretch.

Policy CZM15 states in this regard:

*To prohibit the development of any building (including caravans or temporary dwellings) outside the boundary of existing coastal settlements where the development is within 100m of the ‘soft shoreline’, that is, shorelines that are prone to erosion, unless it can be objectively established based on the best scientific information available at the time of the planning application, that the likelihood of erosion at the location is minimal taking into account, inter alia, any impacts of the proposed development on erosion, or deposition, and that the development will not pose a significant or potential threat to coastal habitats or features.*

The definition of ‘soft shoreline’ in this policy is somewhat ambiguous, and the applicant argues in some detail that it does not apply under international definitions. From the context I consider that it just used as a general term for an eroding shoreline, with the onus on the applicant to demonstrate that it is not eroding in the event of a dispute. With the exception of some minor rock outcrops such as at Cahore Point, most of the coastline from Courtown down to Wexford Harbour is of unconsolidated till and sand deposits which are visibly eroding and retreating. The short stretch at Ballyduboy is one area where depositional features are dominant, but having regard to the recently issued guidance ‘Planning for a Climate Resilient

Ireland' published in January 2018 by the Department of Climate Action & Environment, and its projection of sea level rises of 55-60 cm to 2100 (page 28 of that document) it would, I consider, be unwise to assume that this dune feature is anything but temporary, and it would seem almost inevitable that erosion will accelerate rapidly on this coastline over the next few decades. In this regard I would consider this to be a 'soft' coastline and so I concur with the decision of the planning authority to apply the restrictions set out in policy CZM15, which I would consider to be consistent with national policy and so I would recommend that the Board refuse permission for this reason.

#### **8.4. Public health**

The site assessment indicates that the natural subsoil of the site is mostly a very impermeable clay/marl, with groundwater encountered at 1.6 metres below the ground surface. The applicants propose replacing the existing septic tank with a new proprietary system with a raised polishing filter with a drain to the nearest surface ditch as there is little or no possibility of meaningful disposal to subsurface geology. I note in this regard that the submitted information is contradictory, with section 4.0 of the site assessment indicating that there would be a discharge to groundwater, while section 5 states that it will be a surface water discharge – I would consider the latter to be the only option consistent with the EPA guidelines. Given the proximity of a number of dwellings and the SAC I would be very concerned about the suitability of the site for any such system, but having regard to the existing permitted septic tank and the size of the site, and that the proposed replacement dwelling is not significantly I would consider this acceptable in principle.

#### **8.5. Traffic**

The site is located at the end of a cul de sac approximately 1.5 km long and is about 3-km by road from the village of Kilmucridge. The status of this road is somewhat ambiguous as it is unpaved for several hundred metres and has a sign at the entrance stating that it is a private road, although maps indicate it is public road up to the application site, where it is certainly private beyond this point. The main source of traffic is the farms and small number of dwellings at the end, although the

caravan park is likely to be a major draw for traffic in the summer months. The road is unpaved north of the entrance to the caravan park,

The road is very narrow and substandard and little more than a farm track at times, but as the proposed development would not result in a net increase in traffic I do not consider this a reason for refusal.

## 8.6. Flooding

Notwithstanding the very poorly draining subsoil, the general slope to the west seems to result in relatively smooth run-off from the site – the site appears to drain to a small stream to the north, which discharges to the coast about 1-km to the north. There are no indications from the usual sources that the site is subject to flooding.

## 8.7. Appropriate Assessment

The site is immediately adjacent to an SAC, the Kilmuckridge-Tinnaberna Sandhills, site code 001741. This SAC incorporates the depositional dune systems between the edge of the natural local geology (mostly till soils) and the coastline. It incorporates three priority habitats – Embryonic shifting dunes, Marram Dunes and Fixed Dunes. This stretch of the SAC is described as follows in the Site Synopsis:

*The site is comprised of a fine-grained sandy beach up to 50 m wide, backed by steep clay cliffs at the southern end and sand dunes at the northern end. The cliffs are up to 15 m high, and are eroding in places. They support a patchy vegetation that includes Wild Carrot (*Daucus carota*), Common Bird's-foot-trefoil (*Lotus corniculatus*) and Yarrow (*Achillea millefolium*). Embryonic dunes are well developed along the length of this stretch of coast, particularly in the area around the townland of Ballyduboy. This represents one of the few actively accreting shorelines along the east coast.*

In addition, a very rare species, the Moores Horsetail, found only in coastal parts of Wexford and Wicklow is found on the dunes.

The appeal site, apart from the area immediately around the dwelling, appears to be abandoned farmland, and is mostly inaccessible due to a thick scrub growth with thorny plants including gorse, indicating quite acidic conditions. Although due to its

scrubby nature I was unable to investigate the interface, it would appear that there is a natural continuity between the shifting dune system and the appeal site. The proposed development would result in a significant alteration to the habitat just next to the SAC, with the removal of scrub, although there are no indications that this represents any part of the priority habitats. I further note that the proposed proprietary wastewater system would discharge to a drain which in turn flows north and drains into the SAC.

Notwithstanding this, having regard to the existing dwelling on the site and the nature of the proposed development I do not consider that it would have a significant effect on this or any other SAC.

I would therefore consider that it is reasonable to conclude that 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 European Site No. 001741, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

#### **8.8. Other issues**

I do not consider that there are any other substantive issues raised in this appeal.

#### **9.0 Recommendation**

I recommend that the proposed development be refused permission for the reasons and considerations set out in the schedule below.

#### **10.0 Reasons and Considerations**

The proposed development is located close to accreting dune systems on a coastline generally subject to erosion. Policy SCM15 of the Wexford County Development Plan 2013-2019 states that it is an objective of the Council to prohibit the development of any building outside of the boundary of existing coastal settlements where the development is within 100 metres of the 'soft shoreline'. It is

considered that the proposed development is within approximately 50 metres of the soft shoreline. Having regard to the policy document 'Planning for a Climate Resilient Ireland' published in January 2018 by the Department of Climate Action & Environment it is considered that this policy is reasonable and was correctly applied and as such the proposed development would represent a material contravention of a policy objective in the Development Plan and as such is contrary to the proper planning and sustainable development of the area.

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Philip Davis  
Planning Inspector

23<sup>rd</sup> May 2018