



An
Bord
Pleanála

Inspector's Report ABP 301436-18

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| Development | Dwelling, garage, packaged wastewater treatment system and polishing filter. |
| Location | Ballyronan Road, Kilquade, Co. Wicklow. |
| Planning Authority | Wicklow County Council. |
| Planning Authority Reg. Ref. | 18/99. |
| Applicants | Eddie & Tara D'Arcy. |
| Type of Application | Permission. |
| Planning Authority Decision | Refuse. |
| Type of Appeal | First Party. |
| Appellants | Eddie & Tara D'Arcy. |
| Observers | None. |
| Date of Site Inspection | 13 th July 2018. |
| Inspector | Dáire McDevitt. |

1.0 Site Location and Description

- 1.1. The site is located to the rural townland of Kilquade, c.1km southeast of the village of Kilpedder, c.1.8km northwest of Newtownmountkennedy, c.1.6km west of Kilcoole, c.3km south of Delgany and c.4km south east of Greystones in county Wicklow. The site is located at the end of a lane off the Ballyronan Road which links the N11 and the R761.
- 1.2. The site, with a stated area of 0.291 hectares, forms part of a larger site containing a small garden centre. It is accessed via a single carriageway lane off the Ballyronan Road. Five houses of varied designs and scale, ranging from single storey to two storey dormer, are located along the lane.
- 1.3. The site is overgrown with extensive vegetation and trees. Mature trees form the southern boundary with the adjoining house. Permission was granted in 2017 for a house immediately adjoining the site to the south, which has yet to be constructed. There are no boundaries separating the site from the garden centre and associated hardcore yard. Access to the site is via the access to the garden centre at the end of the lane.

2.0 Proposed Development

- 2.1 Permission is sought for a c.292 sq.m contemporary style L-shaped two storey house. With the main living areas and two bedrooms proposed at ground floor level and three bedrooms and a den at first floor. It also includes 2 bathrooms, a toilet and one en-suite. A c. 52 sq.m detached garage is also proposed.
- 2.2 The proposed finishes and materials to the house include render walls to the ground floor and zinc cladding with a glazed link to the upper floor.
- 2.3 A site suitability assessment accompanies the planning application which indicates that the site is suitable for a packaged wastewater treatment system.
- 2.4 The application is accompanied by a number of documents including an Architects Report, an Engineering Report. A substantial number of documents

accompany the application indicating the applicant's links with Greystones and Delgany.

3.0 Planning Authority Decision

3.1. Decision

Refused permission for the following 4 reasons:

- 1. The site is located within an Access Corridor Area as designated in the current Wicklow County Development Plan where non-essential residential development will be strictly controlled. It is considered that the applicants do not come within the scope of the housing need criteria as set out under objective HD23 of the County Development Plan as the applicants have failed to establish strong linkages or a local housing need to build in this particular rural area.*

Taken in conjunction with the existing development in the immediate vicinity, it is considered that the proposed development would further diminish the rural character of the area and would seriously injure the visual amenities of the area. The proposed development would, therefore, conflict with the Development Plan policy and would be contrary to the proper planning and sustainable development of the area.

- 2. Having regard to the rural location of the site, it is considered that the proposed dwelling due to its design (which incorporates a number of suburban features and elements alien to the Irish rural landscape), height, large mass and floor area would be contrary to the Development and Design Standards document and the objectives of the County Development Plan which includes the Wicklow Single Rural Houses Design Guide and would, therefore, be contrary to the proper planning and sustainable development.*

3. *The proposed garage, by virtue of its size and scale is considered excessive, would be over and above the needs of the proposed dwelling and could not be considered ancillary to the main dwelling. To allow this structure would set an undesirable precedent for similar large scale development in the absence of a genuine need and would be contrary to the amenities of the area and to the proper planning and sustainable development.*
4. *The proposed development would endanger public safety by reason of a serious traffic hazard because of inadequate sightlines at the junction of the proposed access laneway and the Ballyronan public road.*

3.2. Planning Authority Reports

3.2.1. Planning Reports (21st March 2018)

This formed the basis for the Planning Authorities decision and the main points can be summarised as follows:

- The applicants have not demonstrated social or economic linkages to the immediate area. Their links are to Greystones and Delgany where they own their existing place of residence. The applicants do not have a proven need for a rural house. They have not demonstrated that they comply with objective HD23 for rural housing.
- The design incorporated excessive roofing, where the roof edges 'oversail' the external walls, resulting in the roof having more dominance over the main structure of the house. The roof design, taken together with the proposed windows; which are of varying size, render the appearance of the dwelling out of keeping with the traditional Irish rural house and adjacent dwellings.
- The size of the garage is considered excessive and the applicants have not justified a need for a garage of this size and scale.
- Access is off a lane where sightlines are poor at the junction with the adjoining Ballyronan road.

3.2.2. **Other Technical Reports**

EHO (22nd February 2018). Further Information recommended.

The file was also referred to the District Engineer and the Environment Section.
No reports noted on file.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

Site:

Planning Authority Ref. No. 00/3370 (An Bord Pleanála Ref. No. PL.27.122884) (Richard Stapleton), this refers to a 2001 decision to refuse outline planning permission for three bungalows for three reasons relating to 1) sporadic housing in the countryside that does not come within the scope of the housing need criteria, 2) it would constitute a traffic hazard due to inadequate sightlines at the junction of the lane and the Ballyronan Road and 3) the proposal would be prejudicial to public health due to an excessive concentration of effluent disposal systems in the immediate area and because the area is underlain by a sand and gravel aquifer which is afforded protection in the County Development Plan.

Planning Authority Ref. No. 05/3883 refers to a 2005 planning application for a dormer house. Application was withdrawn.

Adjoining the site, along the lane:

Planning Authority Ref. No. 17/974 refers to a 2017 grant of permission for a dormer dwelling.

Planning Authority Ref. No. 16/1049 refers to an application for an extension of duration of Planning Authority Ref. No. 10/2834. This was withdrawn.

Planning Authority Ref. No. 10/2834 refers to a 2010 grant of permission for a split level house, part two storey, part single storey.

5.0 Policy Context

5.1. Wicklow County Development Plan 2016-2022

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

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

The area is identified as an Area Under Strong Urban Influence.

General Housing Objectives:

HD1 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.

HD 3 refers to the need for single rural houses to comply with certain design criteria as set out in Appendix 1 and Appendix 2.

Level 10 Housing in the Open Countryside Objective

HD23 sets out that 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 under 16 circumstances as set out under HD23.

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

Appendix 1 refers to general development and design standards.

Appendix 2 The Single Rural Houses Design Guidelines for New Houses in Rural Wicklow.

The site is located within the **Access Corridor Area**, identified as an area of medium vulnerability, in the Landscape Character Assessment.

5.2 Guidelines

Department of Housing, Planning, Community and Local Government.

Circular Letter PL 2/2017:

The European Commission originally issued an infringement notice against Ireland in 2007 in relation to the “local needs criteria” in the 2005 Guidelines. This infringement notice was subsequently deferred pending the outcome of an infringement case taken against Belgium, now referred to as the Flemish Decree case and on which the European Court of Justice (ECJ) delivered its Judgement in 2013. In this Judgement, the ECJ ruled that the Flemish Decree constituted an unjustified restriction on fundamental freedoms under the Treaty on the Functioning of the European Union (the EU Treaty), in particular that it breached article 43 of the EU Treaty on the freedom of movement of citizens.

Further to the ECJ Judgement in the Flemish Decree case, the European Commission re-engaged with the Department regarding the 2007 infringement notice and its previously expressed concerns in relation to the “local needs criteria” in the 2005 Guidelines, particularly requirements incorporated in local

authority development plans further to these criteria that persons wishing to apply for planning permission for a house in designated rural areas should fulfil a prior minimum residency requirement in the rural area in question or have familial ties to that specific rural area. Requirements that planning applicants have occupational or employment related ties to the rural area in question is not considered problematical in this context as such criteria are non-discriminatory between locals and non-locals.

Planning authorities were advised that the existing 2005 Guidelines remain in place and that pending the conclusion of the two national policy review processes (the Working Group deliberations and the publication of the NPF) and advised otherwise by the Department, they should defer amending their rural housing policy/ local housing need criteria in existing statutory development plans either by way of the cyclical review or variation procedures. This was considered prudent in order to avoid planning authorities adopting different approaches on the matter in the interim.

Sustainable Rural Housing Guidelines (2005):

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

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

National Planning Framework – Project Ireland 2040, Department of Housing, Planning and Local Government (2018)

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 commute catchment of cities and large towns and centres of employment. This will be subject to siting and design considerations.

In all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitely demonstrate that the proposed development will not have an adverse impact on water quality and requirements set out in EU and national legislation and guidance documents.

Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009

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

5.2. Natural Heritage Designations

The nearest European designated sites are:

- The Murrrough Wetlands SAC (site code No. 002249) is c. 3km to the northeast of the site.
- The Murrrough SPA (site code No. 004186) is c 3.1km east of the site.
- Carriggower Bog SAC (site code No. 000716) is c. 4.3km to the west of the site.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal seeks to address the Planning Authority's decision to refuse permission and can be summarised as follows.

Regarding Reason No. 1 and non-compliance with Objective HD23 of the Wicklow County Development Plan 2016-2022:

- The applicants acknowledge that they do not comply with the criteria for rural housing as set out in objective HD23 and are not requesting that the Board assess their compliance with same.

- The Board is instead invited to conclude that EU law reigns supreme over domestic law (Fatortame) and that the Rural Housing test is inconsistent with the freedoms of movement which are enshrined in the EU Treaty and lastly, as directed, by the Irish Government in DoEHLG Circular PD06/08 to disapply national provisions in favour of EU law.
- The applicants are of the opinion that planning permission cannot lawfully be refused on the basis of non-compliance with provisions, which are themselves, illegal for breaching the EU Treaty and respectfully suggest that the Board cannot deny consent on such grounds.
- In this regard, should the Board disagree with this conclusion, the applicants respectfully ask the Board to identify the grounds for reaching an opinion that objective HD23 of the Plan accords with the EU Treaty.

Regarding reason No. 3 relating to the design, height, mass, etc of the proposed house and its non- compliance with the Design Guidelines for rural houses and the Development and Design standards as set out in the County Development Plan.

- The countryside contains a myriad of house types and styles and the applicants care of the view that, as rural dwelling designs are so varied, it is difficult to identify a particular architectural type which characterises such forms of development outside the established perimeter or rural towns and villages. In the applicants' view the proposed development, which is a modern interpretation of a vernacular agricultural building, would not adversely affect the amenity to such a critical extent so as to warrant withholding permission.
- A design statement is included with the appeal. This sets out the design rationale, refers to international and national examples which are cited as precedents.

Regarding reason No. 3 relating to size and scale of the proposed garage which was considered excessive and not ancillary to the main dwelling.

- The garage has been omitted from the proposed development.

Regarding reason No. 4 concerning the proposal constituting a traffic hazard due to inadequate sightlines at the junction of the laneway and the Ballyronan Road.

- There is no expert opinion or report from the Council's Engineers. The Planning Officer concluded that the proposal would constitute a traffic hazard on the basis of the planning history of the site.

6.2. Planning Authority Response

None.

6.3. Observations

None.

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal. I am satisfied that no other substantive issues arise. Details pertaining to the proposed proprietary waste water treatment system are also briefly addressed. Appropriate Assessment also needs to be addressed. The issues can be dealt with under the following headings.

- Rural Housing Policy.
- Design & Visual Impact.
- Access.
- Wastewater Treatment.
- Appropriate Assessment.

7.1 Rural Housing Policy

- 7.1.1. The application site is in an area designated as a strong rural area under urban influence. The Sustainable Rural Housing Guidelines advise that houses in such areas may be provided to meet the housing needs of the local rural community, but that urban generated housing should be directed to zoned and serviced land within settlements.
- 7.1.2. The current County Development Plan places an emphasis in the Rural Housing policy for houses in the open countryside on proving a “definable social or economic need” by reference to one of 16 circumstances as set out in objective HD23.
- 7.1.3 The applicants, in the grounds of appeal, have acknowledged that they do not comply with Objective HD23 of the Wicklow County Development Plan and note that the Board is not being asked to perform an assessment of their compliance with HD23 in this instance. Instead, the applicants have invited the Board to disapply national law in favour of EU law and refer to Circular Letter PD6/08 issued by the Department of Environment, Housing and Local Government.
- 7.1.4 In relation to the applicant’s argument that the objective contained in the County Development Plan is contrary to Article 43 (Freedom of Movement of People) of the Treaty on the Functioning of the European Union, I would note that Circular Letter PL2/2017 issued by the Department of Housing, Planning, Community and Local Government in May 2017, advises that the existing 2005 Guidelines remain in place.
- 7.1.5 Clear policy is set out at both a national and local level regarding rural housing need. With regard to the Sustainable Rural Housing Development Guidelines, the subject site is located in an area designated as ‘Area Under Strong Urban Influence’. This is an area where urban generated development is to be directed to areas zoned for new housing in towns and villages. National Policy Objective 19 of the National Planning Framework refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence.

7.1.6 Furthermore, under the current County Plan, objective HD1 restricts rural dwellings to those with a housing, social or economic need to live in the countryside. In addition under the Settlement Strategy, for Level 10 – rural areas it is clearly 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.”* Therefore, in my view, the applicants need to demonstrate a social or economic need to live in this area, in accordance with the requirements set out in objective HD23 of the Plan.

7.1.7 Documentation has been submitted, including birth certificates, letters of attendance at schools and membership of clubs supporting the applicants and their children's ties to Greystones and Delgany, both of which are urban areas. The applicants own their current place of residence in Delgany and are proposing to purchase the application site off a third party (Richard Stapleton). The first named applicant is a builder and the second named applicant is a teacher in Greystones. They are not from the area and have no social or familial connections with Kilquade.

7.1.8 Based on the information on file, the applicants do not comply with the requirements set out under Objective HD23 for a house in the countryside. This is acknowledged by the applicants in their appeal documentation. The applicants, therefore, do not have a defined social or economic need to live in this area of strong urban influence and thus the development would be contrary to Objective 19 of the National Planning Framework, would be contrary to the guidance set out in the Sustainable Rural Housing Guidelines and contrary to objective HD1 and HD23 of the Wicklow County Development Plan.

7.1.9 I, therefore, do not consider that the grounds of appeal on these grounds should be upheld.

7.2 Design and Visual Impact

7.2.1 Permission is sought for a contemporary style two storey house with a proposed gfa of c. 292sq.m, a detached garage with a proposed gfa of c. 52 sq.m on a site within a stated area of c. 0.291hectares. The house is L-shaped

with render walls to the ground floor and zinc cladding with a glazed link to the upper floor.

7.2.2 The Planning Authority's second reason for refusal was on the premise that the design incorporated a number of suburban features and elements alien to the Irish rural landscape and, therefore, contrary to the County's rural house design guidelines and the Development Plan standards.

7.2.2 The Area Planner concluded that the proposed design was not reflective of the traditional Irish house or those adjoining the site. I note that the design Guidelines adopted by Wicklow County Council do not preclude modern contemporary designs where appropriate. The applicant has set out in the grounds of appeal that the design and scale of the proposed house is inspired by traditional vernacular agricultural buildings. In this instance, I agree with the applicants design approach. I consider the proposed design appropriate for this location and context. In my view, the proposal, overtime, would blend and not dominate the local landscape.

7.2.4 The site is located at the end of a narrow lane which has a variety of house types and designs, mainly dating from the 1970 and 80s. There are limited views of the site from the wider area and approaches along the adjoining Ballyronan road. I consider the site suitable for the proposed development, its visual impact would be contained having regard to the siting of the proposal within the wider landscape. Additional screening and landscaping could be required by condition if the Board consider granting permission.

7.2.5 I note that the Planning Authority's third reason for refusal referred to the excessive size and scale of the proposed garage. I am of the view that a c.52sq.m garage is not excessive and would be ancillary to the main house. Concerns relating to its use could be dealt with by condition. However, I note the grounds of appeal refer to the omission of the garage from the proposed development.

7.2.6 Having regard to the above, I, therefore, consider that the grounds of appeal relating to the Planning Authority's second reason for refusal should be upheld and refusal of permission on these grounds removed. I note that the omission of the garage by the applicants in the appeal addresses the third reason for refusal. However, in the event that the Board consider a grant of permission forthcoming, I do not consider that the omission of the garage, as originally proposed in the planning application, is required.

7.3 Access

7.3.1 The Planning Authority's fourth reason for refusal was on the basis that the proposed development would constitute a traffic hazard due to inadequate sightlines at the junction of the access lane and the adjoining Ballyronan Road.

7.3.2 The applicants in their response to the appeal are of the view that the lane serves numerous houses and that adequate sightlines are available in both directions. A photograph has been submitted with the appeal to support this. The appellants noted that the Area Planner based their recommendation on the planning history of the site and not on advice from Council engineers. The Area Planner concluded in their report that adequate sightlines were not available and included a photograph taken from within a car. I have examined the

junction and I observed that the presence of a stone wall obscures sightlines to the east, resulting in cars having to edge onto the public road, when exiting the lane, to have a clear view of the road in this direction.

7.3.3 The Design Manual for Roads and Bridges sets out guidance regarding sightlines. The guidance notes that the desirable distance back (referred to as the 'x' distance) from a direct access for a simple junction is 2.4 to 3 metres. The guidance further sets out the minimum sightline distances ('y' distance) that will be required to be able to see clearly points to the left and right. Table 7.1: 'y' Visibility Distances from the Minor Road sets out that the 'y' distance within a 50 kph design speed is 70 metres. For a road with a design speed of 60 kph the 'y' distance increases to 90 metres. Notwithstanding the fact that this is an existing lane off a public road, the existing sightlines to the east are clearly short of the required sightline standards. I am not satisfied, therefore, that the proposed intensification of use of this access point would not give rise to a traffic hazard

7.3.4 Furthermore, the applicants have not demonstrated that they have sufficient control of the necessary lands to remove obstructions to achieve adequate sightlines at the junction with the Ballyronan Road. I consider, therefore, that the proposed development would endanger public safety, by reason of traffic hazard, because of the additional traffic turning movements the development would generate on a road at a point where sightlines are currently restricted.

7.3.5 There are no details on file pertaining to right of way over the lane. The question of the exercise of any right of way is a legal matter and outside the scope of a planning permission. In this context, I would draw attention to Section 34 (13) of the Planning and Development Act 2000 (as amended) which reads '*A person shall not be entitled solely by reason of a permission under this section to carry out development*'.

7.4 Other

7.4.1 Discrepancies are noted in the information submitted on file relating to the proposed wastewater treatment system and the proposed pe (population equivalent) stated in the documentation submitted with the planning application. The Site Characterisation Form refers to a 4 bedroom house with a pe of 6. The Engineers report refers to a 5 bedroom house with a pe of 10. The proposed

house is a 5 bed roomed house. This issue was not raised by the Planning Authority in their assessment and therefore would be considered a new issue which should be addressed if the Board consider granting permission.

7.4.2 The site Characterisation Form refers to a t-value of 5.47 on a site in an area of high vulnerability. Connection to the water mains is proposed.

7.5 Appropriate Assessment

Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on a European Site.

8.0 Recommendation

I recommend that permission be refused for the reasons and considerations as set out below

9.0 Reasons and Considerations

1. The site of the proposed development is located within an “Area Under Strong Urban Influence” as set out 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 social and economic local need in accordance with the Wicklow County Development Plan 2016-2022. Furthermore, the subject site is located in a rural area that is under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area. Having regard to the proximity of existing settlements to the subject site and having regard to the documentation submitted with the application and appeal, the Board is not

satisfied that the applicants have a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicants do not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. The proposed development would, therefore, be contrary to the Ministerial Guidelines and to the overarching national policy, notwithstanding the provisions of the current Wicklow 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 additional traffic turning movements the development would generate at the junction of the lane and the Ballyronan Road where sightlines are restricted. The proposed development would, therefore, not be in accordance with the proper planning and sustainable development of the area. The proposed development would, therefore, not be in accordance with the proper planning and sustainable development of the area.

Dáire McDevitt
Planning Inspector

8th August 2018