



An  
Bord  
Pleanála

## Inspector's Report ABP-301573-18

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<b>Development</b>	Construction of a house, proprietary wastewater treatment system, polishing filter, new site entrance all associated services and site works.
<b>Location</b>	Raheen, Baltinglass, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority Reg. Ref.</b>	18/165.
<b>Applicant</b>	Eve O'Brien.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party.
<b>Appellant</b>	Eve O'Brien.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	12 <sup>th</sup> September 2018.
<b>Inspector</b>	Daire McDevitt.

## **1.0 Site Location and Description**

- 1.1 The appeal site is located along the northern side of the L8783 in the rural townland of Raheen in the Baltinglass hills, c.1.4km north of the Baltinglass. There are no houses in the immediate vicinity, c. 650m to the northeast there is a line of houses closer to the junction with the N81. The closest house to the northwest is c.260m from the site.
- 1.2 The site, which is stated to be in the applicant's ownership with a stated area of c.0.4hectares, is triangular in shape and is taken from a larger field. The site forms the northwestern corner of this larger field, with mature trees and hedgerow forming the northern (side) and roadside boundaries. It has been fenced off from the larger field and is currently overgrown. Sheep were present on the larger field. There are no details of landholding from which the site is taken.
- 1.3 Access is proposed off a straight stretch of the L8783 which links to the N81. There is an existing agricultural access off the road. The roadside boundary consists of an embankment and mature vegetation.
- 1.4 The site is relatively level vis a vis the public road. There are limited short views into the site due to the current vegetation along the roadside boundary. There are intermittent long views from the eastern approach along the L8783 due to the topography of the area and mature vegetation. There are long views of the site from the south. The site is in the Baltinglass Hills High Amenity Area. The river Slaney runs along the eastern side of the N81 c. 1200m east of the site.

## **2.0 Proposed Development**

The proposed development consists of a single storey dwelling with a gfa of c. 156.5sq.m on a site with an overall area of c. 0.4hectares. A proprietary wastewater treatment system and polishing filter are also proposed and the opening of a new entrance off the public road.

- 2.1 The application includes:
- Site Characterisation Form.

- Documentation to support the applicant's compliance with the rural housing policy.

### **3.0 Planning Authority Decision**

#### **3.1 Decision**

Refuse permission for the following reason:

- 1. The proposed development would not represent a necessary dwelling in this landscape designated an Area of High Amenity contrary to the provisions of Section 4.4 of the Wicklow County Development Plan 2016-2022. These provisions are required to maintain scenic amenities, recreational utility, existing character, and to preserve views of special amenity value and special interest and to conserve the attractiveness of the county for the development of tourism and tourist related employment.*

*The Council's settlement strategy is to encourage further growth of existing settlements and to restrict rural housing development to cases where there is a bona fide necessity to live in the rural area instead of in existing settlements. It is considered that the applicant does not come within the scope of the housing need criteria as set out under Objective HD23 of the County Development Plan. Their proliferation of non-essential housing in the rural areas erodes the landscape value of these areas and seriously detracts from views of special amenity value.*

#### **3.2 Planning Authority Reports**

##### **3.2.1 Planning Reports**

###### **Planning Report (28 March 2018)**

The focus of the Planners report was compliance with the Councils' adopted rural housing policy. Reference to the extensive planning history was made and

the Executive Planner recommended that further information be requested in relation to the applicant's compliance with Objective HD23.

The Senior Executive Planner's handwritten note sets out that the information requested by the Executive Planner was available on the history files and that there was sufficient information available to determine the application and recommended that permission be refused.

A recommendation to refuse permission on non compliance with Objective HD23 was made on the 9<sup>th</sup> April 2018, this was endorsed by the Director of Services on the 12<sup>th</sup> April 2018.

Access noted as per the 2017 application.

### **3.2.2 Other Technical Reports**

**Environmental Health Officer.** No objection subject to conditions.

**Municipal Engineer.** No report on file.

### **3.3 Prescribed Bodies**

None.

### **3.4 Third Party Observations**

None.

## **4.0 Planning History**

There are a number of previous applications by the applicant on the appeal site. This is the first appeal.

**Planning Authority Reference No. 17/732** refers to a 2017 application for permission for a house. The application was **refused** permission for similar reasons as the current application before the Board.

**Planning Authority Reference No. 17/34** refers to a 2017 decision to **refuse** permission for a house on three grounds: 1) as per the current reason before the Board, 2) Suburban design in an area of High Amenity and non compliance

with objective HD3 and 3) traffic hazard as it had not been demonstrated that adequate sightlines could be achieved at the proposed entrance.

**Planning Authority Reference No. 16/498** refers to a 2016 decision to **refuse** permission for a dwelling for three reasons. 1) non compliance with rural housing policy (Section 6.3.2 of the 2010-2016 Development Plan) in an Area of Special Amenity and reason 2 & 3 mirror those of 17/34.

**Planning Authority Reference No. 15/589** refers to a 2015 decision to **refuse** permission for a dwelling due to non compliance with rural housing policy (Section 6.3.2 of the 2010-2016 Development Plan) in a Mountain and Lakshore Area of Outstanding Natural Beauty (AONB).

**Planning Authority Reference No. 14/1449** refers to a 2014 application that was deemed withdrawn as the further information request was not responded to within the allocated time.

**Planning Authority Reference No. 11/4137** refers to an **Extension of Duration** of Planning Authority Reference No. 06/4770. Permission was extended to **April 2014**.

**Planning Authority Reference No. 06/4770** refers to a 2006 **grant** of permission for a dwelling on the site.

**Applications associated with the applicant's family:**

There are no details on file of the landholding from which the site is taken or the location of the applicants grandparents house and farm at Hartstown.

The applicant has not submitted details of residences of family members in the area.

## **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 application site is in an area designated as 'under strong urban influence' where the Sustainable Rural Guidelines have identified areas as being under pressure for housing development due to proximity to larger cities and towns.

#### **Section 4.4 sets out General Housing Objectives for the county.**

**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.

**HD3** 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 objective HD23 their needs shall be supreme, except where the proposed development would be a likely traffic or public health hazard conflict of any settlement strategy objective/landscape zones and categories, a person who qualifies under.

#### **Heritage**

##### **Section 10.3 Natural Heritage.**

**NH19** To encourage the retention, wherever possible, of hedgerows, stone walls and other distinctive boundary treatment in the County. Where removal of

a hedgerow, stone wall or distinctive boundary treatment is unavoidable, provision of the same type of boundary will be required of similar length and set back within the site in advance of the commencement of construction works on site (unless otherwise agreed by the Planning Authority).

**Table 10.4 – Wicklow Landscape Categories.**

The site is located within the **Baltinglass Hill Area of High Amenity** (level 3 in the landscape hierarchy). This area refers to the rolling undulating terrain of the hills around Baltinglass, characterised by the existence of important archaeological remains and monuments. The area is of significant heritage value while also forming a key tourist attraction within this area.

**Appendix 1** refers to general Development and Design Standards. These include opening of new entrances, effluent disposal, etc.

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

**Appendix 5** Landscape Assessment.

The site is located within the Baltinglass Hills landscape area, a designated Area of High Amenity. In order to protect views towards the natural hill formations, development within or surrounding the Baltinglass Hills landscape area should be sited in a manner which avoids intrusions on ridge lines or impacts negatively on the natural skyline

## 5.2 Guidelines

### **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.

### **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.

Planning authorities were advised that the existing 2005 Guidelines remain in place and 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 procedure. This was considered prudent in order to avoid planning authorities adopting different approaches on the matter in the interim.



## **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.

### **5.3 Natural Heritage Designations**

There are no European designated sites within the immediate vicinity of the site.

The nearest designated site is the Slaney River SAC (site code 000781) c. 1.2km east of the site.

## **6.0 The Appeal**

### **6.1 Grounds of Appeal**

The first party appeal seeks to address the Planning Authority's reason for refusal and can be summarised as follows:

- The applicant obtained permission to build a house on the site in 2006, an extension of duration of the permission was granted in 2011. Permission expired in 2014.
- The applicant was unable to build the house due to personal and economic circumstances.
- She lived with her grandparents in Hartstown, a rural townland, from birth until her teenage years. The applicant is of the view that she complies with

Objective HD23 as she resided in a rural area for a period of 10 years and has social and familial links to the area.

- A letter signed by the applicant and by a Sargent of An Garda Siochana and letter from local national school are included to support this.
- The applicant states that her family farm land in the area and that the site is taken from land farmed by her family for generations.
- Reference to errors in information submitted with a planning application submitted in 2014 which appears to have confused the Planning Authority.
- Reference to the European Court of Justice case (The Flemish case) relating to freedom of movement.
- Request that the Board overturn the Planning Authority's decision and grant permission.

## **6.2 Planning Authority Response**

This is summarised as follows:

- The 2014 application was a section 42 application. The applicant's agent, therefore is incorrect in stating that the applicant was granted permission twice for a house.
- Given the time lapse between the 2006 application and the current application, ie 12 years. And given that there has been two County Development Plans adopted in the interim it was considered appropriate to consider that application in terms of the current objective for rural housing (Objective HD23). In addition, as highlighted under PRR 06/4770, the grandparents home at Hartstown was identified as the family home, and it was never indicated that this house was the grandparents house.
- The agent referred to the fact that utility bills could not be produced as the applicant was a child. There are other available documents that can be used to support an applicant's place of birth, residency, etc

- The Planning Authority requires all applicants to submit sufficient evidence to confirm compliance with HD23. In this instance insufficient evidence has been submitted to demonstrate that the proposal is a necessary dwelling.
- The current application has not rectified the issues raised in the reports on previous applications: PRR 14/1449, PRR 15/589, PRR 16/498, PRR 17/34 and PRR 17/732.

### **6.3 Observations**

None.

### **7.0 Assessment**

The main issues in this appeal are those raised in the grounds of appeal which seek to address the Planning Authority's reason for refusal which refers to compliance with the Councils Rural housing policy. The issue of appropriate assessment and environmental impact assessment also needs to be addressed

It is also considered that, although not included by the Planning Authority in the reasons for refusal or raised by the first party in the appeal, other substantive issues arise. I advise the Board that as these are new issues, if the Board agrees with the assessment and recommendation set out hereunder, they may wish to recirculate to the parties for comment prior to the decision as per the requirements set out under section 137 of the Planning and Development Act 2000, as amended.

The issues can be dealt with under the following headings:

- Rural Housing policy.
- Traffic.
- Appropriate Assessment.
- Environmental Impact Assessment.

## **7.1 Rural Housing Policy**

- 1.1.1. The Sustainable Rural Housing Guidelines 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.
- 7.1.2 The applicant has set out in the grounds of appeal that she was granted permission for a house on the application site in 2006 but due to personal and economic circumstances was unable to build on foot of that permission or its extension of duration. Notwithstanding, the application before the Board must be assessed in the context of the rural housing policies and objectives for the site under the current Wicklow County Development Plan 2016-2022.
- 7.1.3 The applicant has also referred to ‘The Flemish’ case in their appeal and freedom of movement. In relation to the argument that local rural housing policies are 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.

- 7.1.4 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.
- 7.1.5 Furthermore, under the current County Development 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 current Plan.
- 7.1.6 The applicant is of the view that, based on her residency with her grandparents as a child, she qualifies for a house as she resided there for over ten years. I note that a letter is included with the application from Scoil Naomh Iosaf, Baltinglass confirming the applicant's attendance from 1976 to 1984 and a letter signed by the applicant and a Sargent of An Garda Siochana in relation to the applicant's place of residence with her grandparents for a period of 10 years. No details have been submitted to support the applicant's links to the area since that time. I note that the applicant was granted permission for a dwelling at this location 12 years ago (P.A Ref. 06/4770). There is no information on file to support the applicant's current social, economic or familial ties to the area. No information has been submitted in relation to places of employments, schools attended by her children, location of family members dwelling or details of lands in the family ownership in the immediate area or at Hartstown.
- 7.1.7 Therefore I consider, based on the information on file, the applicant has not demonstrated compliance with the requirements set out under Objective HD23

for a house in the countryside. The applicant, 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.

7.1.8 I, therefore, do not consider that the grounds of appeal should be upheld and permission should be refused.

## **7.2 Traffic – New Issue**

7.2.1 Substantive issues arise in relation to traffic and include both technical and policy issues relating to the proposed access to the site.

7.2.2 In relation to the technical issues which arise. The Area Planner concluded that that access remained as per previous applications and that the requisite 90m sightlines could be achieved. Access is proposed off a straight stretch of the L8783 where sightlines can be achieved in both directions subject to extensive removal of mature roadside boundaries. I note that the Site Layout Plan submitted with the application makes no reference to works outside the application site boundaries or the existing agricultural access to site where the site notice is erected.

7.2.3 Given the nature of the existing roadside boundary, the provision of a domestic entrance and the achievement of 90m sightlines would require the removal of an extensive tract of roadside boundary consisting of mature vegetation and embankments along the roadside boundary within the applicant's control. Works to the roadside boundary to the east would also be required. The lands to the east, while forming part of the larger field from which the site is taken, are not indicated to be in the applicant's ownership or control. No letter of consent have been submitted for the required works.

- 7.2.4 Based on the information on file, the applicants have not demonstrated that they have sufficient control of the necessary lands to remove the required roadside boundary to achieve adequate sightlines. 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.
- 7.2.5 The question of ownership of boundaries 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*'.
- 7.2.6 In terms of policy, the Development Plan seeks to control the removal of mature roadside boundaries and hedgerows. Appendix 1 of the County Development Plan sets out that new entrances off local roads shall be tailored to local conditions and comply with the requirements of the NRA Design Manual for Roads and Bridges. And that specific regard shall be paid to the protection of the natural environment, particularly mature trees and hedgerows.
- 7.2.7 There are no houses within the immediate vicinity. The site located within the Baltinglass Hill Area of High Amenity, is rural in character with the roadside boundaries along this section of the L8783 consisting of mature hedgerows and trees. I consider that the removal of the existing roadside boundary over a length of c.100m is not acceptable as it would have a negative impact upon the character of the immediate area. To lessen the impact of the hedge removal, where required, the applicant proposes to reinstate the boundary treatment accordingly. No detailed proposals have been submitted for the replacement boundary. In my opinion the impact of hedge removal and replacement boundaries at other locations along site frontages can be seen along the L8783 closer to the N81 where there is linear development. I note that the Wicklow County Development Plan seeks to retain existing roadside boundaries, but where removal is required, a replacement hedge should be planted. In my mind, the removal of such a large quantity of mature hedgerow would alter the

character of the roadway at this location in an Area of High Amenity. A modified boundary, even if planted with native species would alter the configuration of the roadway and consequently the character of the immediate area and detract from the amenities of the area.

7.2.8 The principle behind the Council's development management standards and the single rural housing design guide is to protect the rural character of the area and to assimilate development into the existing landscape. The principle behind Objective NH19 which seeks to encourage the retention, wherever possible, of hedgerows and other distinctive boundary treatment in the County is to protect the character of the area. This is considered a reasonable approach and I note is applied by most Planning Authorities to development in the rural areas. In my view, to permit such an access under the circumstances presented in this application would set an undesirable precedent. Such an approach would lead to a proliferation of boundary removal along county roads in rural areas in direct contravention of the overall objective of the Plan which is protect the rural character and biodiversity value of such areas.

7.2.9 I consider that the achievement of the required sightlines at the proposed entrance requiring the removal of in excess of c.100m of mature roadside boundary which would be contrary to Appendix 1 and Objective NH19 of the County Development Plan and would irrevocably detract from the rural character of the area, the Baltinglass Hills, an Area of High Amenity. Therefore, I consider the proposal unacceptable.

### **7.3 Appropriate Assessment**

7.3.1 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.



## **7.4 Environmental Impact Assessment**

Having regard to the nature and scale the development which consists of single house in an unserved rural location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **8.0 Recommendation**

I recommend that permission be refused for the reasons and consideration 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 applicant has a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicant does 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 over-arching 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 where sightlines are restricted. The proposed development would, therefore, not be in accordance with the proper planning and sustainable development of the area.
  
3. The site of the proposed development is located within an Area of High Amenity as set out in the Wicklow County Development Plan 2016-2022, where emphasis is placed on the importance of integrating with the landscape and of siting of development to minimise visual intrusion as set out in Objective HD3 and Appendix 1 of the County Development Plan. Having regard to the removal of the roadside boundary, the Board considers that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area, would fail to be adequately absorbed and integrated into the landscape, would militate against the preservation of the rural environment as set out in Objective NH19 of the said Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

\*Reason No. 2 & 3 refer to a new issue.

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Dáire McDevitt  
Planning Inspector

28<sup>th</sup> September 2018