



An
Bord
Pleanála

Inspector's Report ABP.301958-18

Development	Construction of a dwelling, garage, effluent disposal system to current EPA standards, well, proposed new entrance, together with ancillary site works.
Location	Ballintombay Lower, Rathdrum, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	18/191
Applicant(s)	Dean Cahill
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Mary Mooney
Observer(s)	An Taisce
Date of Site Inspection	27 th September 2018
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The subject site is located in a rural area situated approximately 4km (as the crow flies) from Rathdrum. The predominate land uses locally are agriculture and forestry.
- 1.2. The size of the appeal site is approximately 0.25 ha (0.6175 acres) and shape of the appeal site is approximately square.
- 1.3. The appeal site is fully removed from public view due to the presence of mature hedgerows and boundaries along the front (eastern) boundary.
- 1.4. The northern boundary of the appeal site adjoins an established vehicular entrance and driveway. The access and driveway provides access to a residence which is located to the immediate west of the appeal site.
- 1.5. There is also a single storey house located on the opposite side of the public road to the appeal site.
- 1.6. The topography of the local area slopes upwards in a northern direction.
- 1.7. There are mature trees / hedging along all the boundaries of the appeal site.

2.0 Proposed Development

- 2.1. The proposed development is for the construction of a single storey house, garage, domestic wastewater treatment system and vehicular entrance.
- 2.2. The floor area of the proposed house is 162 sq. metres and the floor plan comprises of living space and 3 bedrooms at ground floor level.
- 2.3. The height of the proposed roof pitch is approximately 5.7 metres above ground level.
- 2.4. The floor area of the proposed single storey detached garage is 44 sq. metres and the overall height of the garage is 5.5 metres above ground level.

Additional information was sought requesting the applicant to submit details in relation (a) wastewater treatment, (b) surface water drainage, (c) surface water drainage in relation to the public road and (d) a tree planting and landscaping scheme.

3.0 Planning Authority Decision

3.1. Wicklow County Council decided to **grant** planning permission subject to 13 no. conditions. Condition no. 2 is an occupancy condition. All the conditions are standard for the nature of the proposed development.

3.2. Planning Authority Reports

3.2.1. The main issues raised in the planner's report are as follows;

Area Planner

- Sightline provision acceptable.
- Planting proposals required to demonstrate that the proposed house can be successfully designed into the site.
- Further information required for waste water treatment system.
- No AA issues arise.

3.3. Internal Reports;

Environment Health Office; - No objections subject to conditions.

3.4. Third Party Observations

There is one third party submission and the issues have been noted and considered and are generally similar to the issues raised in the third-party appeal.

4.0 Planning History

- L.A. 09/304 – Wicklow County Council **granted** permission subject to 18 no. conditions for a house, garage and domestic waste water system. Following an appeal (appeal ref. 234092) from An Taisce the An Bord Pleanala **refused** permission in December 2009 for the following reason;

- The site of the proposed development is located on lands designated as part of an Area of Outstanding Natural Beauty in the Wicklow County Development Plan, 2004 – 2010, where it is the policy of the planning authority to control development in an order to protect the amenities and assets of the landscape. Having regard to the topography of the site and surrounding landscape, the absence of a visual impact assessment and the lack of adequate screening to the western boundary, it is considered that the proposal would appear particularly visible and prominent on the landscape and would interfere with the character of the landscape which is necessary to preserve.

Application withdrawn

- L.A. Ref. 17/427 – Application withdrawn after refusal recommended. The reasons for refusal include (a) adverse impact on landscape, (b) loss of hedgerow and (c) traffic hazard.

5.0 Policy Context

5.1. Development Plan

The operational Development Plan is the Wicklow County Development Plan, 2016 – 2022.

The relevant rural housing policy provisions include;

- HD20: Urban generated housing shall not be permitted in the rural areas of the County, other than in rural settlements that have been deemed suitable to absorb an element of urban generated development (see objective HD19).

- HD23: 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.

Landscape

- The appeal site is located in an area designated 'Area Natural Outstanding Beauty'
- Policy Objective NH50 is relevant

6.0 National Guidelines

6.1 Sustainable Rural Housing Guidelines

The subject site is located within an 'Area under Strong Urban Influence' as identified in Map 1: Indicative Outline of the NSS rural areas types in the DOEHLG Sustainable Rural Housing Guidelines for Planning Authorities, 2005. The Guidelines note that in these areas the objective should be on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority

in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.

7.0 The Appeal

7.1. The following is the summary of a third-party appeal submitted by Mary Mooney resident of the immediate house to the west of the appeal site;

- There is a long planning history on the appeal site including a refusal and some applications were withdrawn as refusal recommended by local authority.
- The Local Authority planner had concluded that the applicant is a not a local rural person.
- The applicant grew up and attended school in Rathdrum where he continues to live. The applicant works for Dublin Bus.
- The appeal site is not located adjacent to the home of his uncle.
- It is submitted that the required sightlines for the proposed development is 120m to 70m each way. The provision of these sightlines will result in a considerable loss of hedgerow and mature trees. There will be an adverse impact on ecology.
- It is submitted that a visual impact assessment is required.
- An Taisce has previously outlined that the proposal must have regard to the rural housing guidelines and cumulative impacts of effluent disposal systems in compliance with the EU Groundwater Directive and compliance with EPA 2000.
- It is submitted that the grant of planning permission deviates from the Wicklow County Development Plan.
- The proposed development is near an existing well.
- No assessment on the visual impact of the proposal on this rural area of outstanding natural beauty.

- It is contended that the proposed garage will be used for non-domestic purposes.
- The site survey is outdated.
- The site notice was invalid.

7.2. First Party Response

The following is the summary of a response submitted by the applicant;

- It is submitted that the appellant's address is a delapidated shed used for human habitation by a member of the appellant's family. This is presently an enforcement case.
- It is contended that the appellant currently lives in Dublin, some 45 miles away.
- The said shed is currently served by a non-compliant septic tank which is a health risk.
- The applicant qualifies under Policy RH14.

7.3. Observations

The following is the summary of an observation submitted by An Taisce.

- The subject site is located within an area designated 'Area of Outstanding Natural Beauty'.
- The height of the proposed house is marginally lower than the house proposed in the previous refused permission (L.A. Ref. 17/427).
- The proposed development would detract from the character of the area.
- An Bord Pleanála refusal reason (appeal ref. 234092) related to a refusal reason due to the landscape.

- Notwithstanding the proposed landscaping it is considered, given the elevated nature of the site that the proposed development would have a negative impact on the visual amenity of the area and would detract from the character of the area.

8.0 **Assessment**

- Principle of Development
- Visual / Landscape Impact
- Vehicular Access
- EIAR
- Appropriate Assessment
- Waste Water Treatment System

8.1. **Principle of Development**

- 8.1.1. A key consideration in this appeal relates to the applicant's rural housing need in this area and as such whether this housing need complies with the provisions of the Wicklow County Development Plan, 2016 – 2022, and the Sustainable Rural Housing Guidelines, 2005.
- 8.1.2. Based on the information available I would note that the applicant currently lives in Rathdrum and works for Dublin Bus. The applicant is seeking permission to build a house on a site owned by his uncle. I have reviewed Policy Objective HD23 of the County Development Plan and I would acknowledge the criteria required for an applicant to fulfil in order to qualify as a person to build a house in the open countryside. Having reviewed all 16-no. criterion (which I have set out in Section 5.1 above) I would consider that the applicant would not qualify for a local rural housing need and that this current application is essentially urban generated.

- 8.1.3. I would conclude that there is no information on the current file that would demonstrate that the applicant has a rural housing need to live on the appeal site. There is a letter on the file from the landowner (Jack Cahill) consenting to his nephew making a planning application on the appeal site. The Local Authority's planner's report outlines that rural housing need was determined in planning application L.A. Ref. 17/427, however this application was withdrawn before a decision was made. I would note from the information available that in relation to L.A. Ref. 17/427 that a planner's report was finalised and a draft manager's order prepared. It is interesting to note that the refusal reason no. 1 in the planner's report stated that that the applicant does not come within the scope of the housing need criteria. However, the draft manager's order makes no reference to non-compliance with rural housing need criteria.
- 8.1.4. Accordingly, I would conclude that the applicant has not adequately demonstrated that they would comply with County Development Plan Policy Objective H23 and any of the 16 points to qualify for a rural housing need. Therefore, I would consider that the applicant fails to comply with the rural housing need policies and provisions of the Wicklow County Development, 2016 – 2022, and as such I would recommend a refusal to the Board.

8.2. **Landscape / Visual Impact**

- 8.2.1. The appeal site is located within an area designated 'Mountain Uplands - Area Outstanding Natural Beauty'. The County Development Plan refers to a key characteristic of this area is '*mountainous topography with U-shaped valleys, lakes and glacial topography*'.
- 8.2.2. Policy Objective NH50 of the Wicklow County Development Plan, 2016 – 2022, would be relevant to the appeal site. Policy Objective NH50 requires a Landscape / Visual Impact Assessment for application for permission which may have the potential to significantly adversely impact the landscape area. The current application before the Board is a single storey house. I would consider that the proposed house is modest in design terms noting that the maximum height of the

proposed house is 5.7m above ground level. I also noted from my site inspection that the appeal site is generally not visible from the public road due to a mature and established front boundary. The proposed development will require the removal of this boundary to provide for adequate sightline provision. The applicant submitted a landscape plan, as requested by the Local Authority, which outlines planting to the front of the site post construction. I noted also from my site inspection that the gradient of the appeal site rises gradually upwards from the public road and the site itself adjoining the public road is higher than the public road. The topography locally rises in a northern direction.

8.2.3. I would note from the Local Authority's planner's report that the proposed house design is considered a simple traditional rural house that would fit into the area. The planner's report acknowledges the need for planting to the front of the subject site to assimilate the proposed development into the landscape.

8.2.4. It is questionable whether the proposed development would have an adverse impact on the designated 'Area Outstanding Natural Beauty', however the onus is on the applicant to demonstrate that there would be no adverse visual / landscape impact. In a previous application for a house on the appeal site the Local Authority granted permission, however the Board (appeal ref. 234092) refused permission for a single reason. The reason for refusal is stated in Section 4 of this report above. This previous application was also for a single storey house with a smaller floor area (116 sq. m) than that in the current proposal (162 sq. m). I accept that the previous application was made under an earlier County Development Plan but overall, given the scale of the house proposed, I would conclude that the applicant has not adequately addressed the previous refusal reason on the appeal site. I would consider that the application for a single storey house would be contrary to Policy Objective NH50 of the Wicklow County Development Plan, 2016 – 2022.

8.3. **Access**

8.3.1. The public road adjacent to the appeal site is a tertiary rural road and I noted during my site inspection, i.e. weekday mid-afternoon, that the road was lightly trafficked. I

would consider, based on a visual observation of the area, the primary traffic on the public road is local access traffic.

8.3.2. The proposed development includes a vehicular access with a sightline provision of 80m in either direction. I note that there is no objection to this sightline provision in the planner's report.

8.3.3. Overall, I would consider, given the class of road, that the proposed sightline provision would be acceptable and would not give rise to a traffic hazard. I would consider that the proposed vehicular entrance is acceptable in terms of public safety.

8.4. **EIA Screening**

8.4.1. Based on the information on the file, which I consider adequate to issue a screening determination, it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development and an environmental impact assessment is not required.

8.5. **Appropriate Assessment**

8.5.1. Having regard to the nature and scale of the development proposed, to the nature of the receiving environment and the likely effluents arising from the proposed development I recommend that no appropriate assessment issues arise.

8.6. **Waste Water Treatment System**

8.6.1. It is proposed that the single storey house will be served by an on-site private effluent treatment.

8.6.2. In relation to waste water treatment I would note from the submitted Site Characteristic Form that the recorded T-value is 5.4. The E.P.A. publication, Code of Practice, Wastewater Treatment and Disposal Systems Serving Single Houses,

2009, advises that a T value between 3 and 50 that the site is suitable for development of a septic tank or a secondary treatment system. I would consider that the waste water treatment proposals are acceptable.

9.0 Recommendation

9.1. I have read the submissions on the file, visited the site, had due regard to the County Development Plan, and all other matters arising. I recommend that planning permission be refused for the reasons set out below.

10.0 Reasons and Considerations

1. The proposed development would constitute random residential development in a rural area which is under strong development pressure from the Greater Dublin Area, and which is lacking in certain public services and community facilities. It is the policy of the planning authority, as expressed in the current Wicklow County Development Plan, 2016 – 2022, to restrict development in rural areas to serve the needs of certain defined categories of person, including those engaged in agriculture or with strong ties to the area. It is considered that the applicant does not come within the scope of the housing need criteria in the development plan or as set out in the document 'Sustainable Rural Housing Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in April 2005. The proposed development would conflict with the policy Objective HD23 of the Wicklow County Development Plan, 2016 – 2022, would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The site of the proposed development is located on lands designated as part of an Area of Outstanding Natural Beauty in the Wicklow County Development Plan, 2016 – 2022, where it is the policy of the planning authority to control development in an order to protect the amenities and assets of the landscape. Policy Objective HD50 of the Wicklow County Development Plan, 2016 –

2022, requires that any application for development within a designated Area of Outstanding Natural Beauty is accompanied by a Landscape / Visual Impact Assessment. Having regard to the topography of the site and surrounding landscape and the absence of a visual impact assessment, it is considered that the proposal would appear particularly visible and prominent on the landscape and would interfere with the character of the landscape which is necessary to preserve.

Kenneth Moloney

Planning Inspector

5th October 2018