



An
Bord
Pleanála

Inspector's Report ABP-302002-18

Development	House, wastewater treatment system, garage, access from existing driveway and associated works
Location	Cullen Upper, Wicklow, Co. Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	18/361
Applicant(s)	Aisling Graham
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Ciaran and Patricia Graham
Observer(s)	None
Date of Site Inspection	6 th November 2018
Inspector	Emer Doyle

1.0 Site Location and Description

- 1.1. The application site has a stated area of 0.40 hectares and is located in the rolling countryside of south Wicklow between the villages of Kilbride and Threemilewater.
- 1.2. The site is located c. 50m from the public road and is located within a cluster of family dwellings including the dwellings of her parents, aunt and uncle and late grandmother. There are also a number of sheds and farm buildings. One shared entrance from the public road serves all the buildings at this location.

2.0 Proposed Development

- 2.1. The proposed development is for a dwelling with garage and a new proprietary wastewater treatment system in addition to a private well. The proposed dwelling is single storey with a stated area of 202 square metres.
- 2.2. Further Information was requested in relation to the ownership of the late grandmother's dwelling. A response submitted dated the 25th of May 2018 indicated that neither the applicant or her parents owned this property and that it was in the ownership of her aunt and uncle.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to 9 No. standard conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planner has no objection to the design or principle of development. It was considered that the applicant complies with the rural housing policy. It was noted that there is a dispute over the ownership etc. of the access driveway to serve the landholding. It stated that 'in this regard, it should be noted that

issues of land ownership/ rights are not material planning considerations and the granting of a planning permission would not infer any rights over land/property.'

3.2.2. Other Technical Reports

- Environmental Health Officer: No objection subject to conditions.

3.3. Prescribed Bodies

No comments on file.

3.4. Third Party Observations

The issues raised in the observations submitted to the Planning Authority are similar to the grounds raised in the appeal.

4.0 Planning History

None on site.

PA Reg. Ref. 17/1216

Previous application by applicant withdrawn on a nearby site following recommendation by planner to refuse permission.

5.0 Policy Context

5.1. Development Plan

The site is in unzoned open countryside, described as 'Level 10 – The Rural Area' in the most recent variation to the Wicklow County Development Plan 2016-2022. The objectives are as follows:

Section 3.3 Settlement Strategy Objectives

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

SS2 *To facilitate service and infrastructure providers in the delivery of services and infrastructure to enable the implementation of the County Wicklow Core Strategy and Settlement Strategy.*

SS3 *To ensure that all settlements, as far as is practicable, develop in a self sufficient manner with population growth occurring in tandem with physical and social infrastructure and economic development. Development should support a compact urban form and the integration of land use and transport.*

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

SS5 *To implement the population and housing growth targets as set out in the Core Strategy and Settlement Strategy, to monitor development and the delivery of services on an ongoing basis and to review population allocations where service delivery is impeded.*

SS6 *To prepare new local plans for the following areas during the lifetime of this development plan: Bray Municipal District, Wicklow-Rathnew, Arklow, Rathdrum, Newtownmountkennedy, Greystones-Delgany and Kilcoole, Blessington.*

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

SS8 *To ensure that key assets in rural areas such as water quality and natural and cultural heritage are protected to support quality of life and economic vitality.*

A number of relevant policies apply, including 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).

HD22:

Where permission is sought for residential development in a settlement with occupancy controls (Levels 6-9), the applicant will be required to show compliance with objectives for that settlement set out in this plan and to lodge with the Land Registry a burden on the property, in the form of a Section 47 agreement, restricting the use of the dwelling(s) for a period of 7 years in accordance with the relevant objective.

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.

5.2. Natural Heritage Designations

There are no designated EU habitat sites in the immediate vicinity. The closest are the Magherabeg Dune systems (site code 001766) on the coast approximately 2 km to the east.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The issues raised in the appeal can be summarised as follows:

- The applicant has shown the proposed house accessed over a driveway, 'which driveway was left to us under the will of Joan Graham, but has wrongfully and without our permission, been taken into the name of another person in a particular Land Register Folio.'

- We are issuing proceedings in the High Court regarding this matter.
- No planning application in respect of this driveway should be granted until our claim has been determined.

6.2. Applicant Response

6.2.1. The response submitted on behalf of the applicant can be summarised as follows:

- Appellant has no concern regarding the building of a dwelling on the family land but rather is quoting a dispute concerning the legal ownership of the existing access to the property.
- This is a civil and not a planning matter.
- A solicitor's letter together with a land registry map is attached to the appeal.

6.3. Observations

- None.

7.0 Assessment

7.1. Having inspected the site and reviewed the file documents, I consider the main issues can be addressed under the following headings:

- Principle of Development
- Legal Issues
- Appropriate Assessment
- EIAR

7.2. Principle of Development

7.2.1. The proposed development is for a dwelling within an existing farm cluster on family lands in a rural area without a specific zoning. Having regard to the location of the site, I would consider the site to be characterised as being under 'strong urban pressure', as defined in the Sustainable Rural Housing Guidelines 2005. I would consider the policies set out in the Wicklow County Development Plan 2016-2022 to be consistent with national and regional guidelines in this regard.

- 7.2.2. The policy is to discourage rural housing, especially when relatively close to towns and residentially zoned lands. The exemptions are set out in detail in policy HD23, essentially allowing for people with strong local connections with a demonstrated need to live in the area.
- 7.2.3. The site is located on family lands and the applicant has submitted copious documentation which details her connections with the area. She has also submitted a letter from the Office of the Revenue Commissioners which confirms that she has never been in receipt of any mortgage interest relief. It is stated in the information submitted with the application that she does not own a house and currently lives in rented accommodation in the nearby village of Brittas Bay, Co. Wicklow.
- 7.2.4. I am satisfied that the applicant has demonstrated that she has a housing need on family lands and compliance with the rural housing policy for the area. No issues have been raised in the planning and other technical reports, or by the appellant, in relation to visual impact, impact on residential amenities, traffic safety, or public health, and I do not have any concerns in relation to these matters. As such, I am satisfied that the principle of development is acceptable at this location.

7.3. Legal Issues

- 7.3.1. The sole issue raised by the appellant relates to the proposed access over a driveway where high court proceedings have been issued in terms of land ownership. The appellant's consider that planning permission should not be granted until their claim in the High Court has been determined.
- 7.3.2. The applicant has pointed out that no other issues were raised in the appeal and that this is a civil and not a planning matter.
- 7.3.3. Section 5.13 of the 'Development Management' Guidelines for Planning Authorities, DoEHLG 2007 sets out guidance in relation to this matter as follows:
- 'The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development.'*

7.3.4. As such, the Board has no role in relation to this matter.

7.4. Appropriate Assessment

7.4.1. Having regard to the nature and scale of the proposed development, a one off house within an existing farm cluster in a rural area, and the distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.5. Environmental Impact Assessment

7.5.1. Having regard to the minor nature and scale of the proposed development and the location of the site some significant distance from any sensitive locations or features, 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

It is recommended that permission be granted subject to conditions for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the rural housing policy considerations as set out in the current Wicklow County Council Development Plan 2016 to 2022, to the siting of the proposed development within a cluster of existing housing on lands in family ownership, and to the nature and scale of the proposed development, it is considered that, subject to compliance with the following conditions, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, or give rise to a traffic hazard. The proposed

development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. The applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to

meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. a) Water supply and drainage arrangements, including the disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. (a) The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled “Wastewater Treatment Manual – Treatment Systems for Single Houses” – Environmental Protection Agency, 2009.

(b) Treated effluent from the septic tank system shall be discharged to a raised percolation area which shall be provided in accordance with the standards set out in “Wastewater Treatment Manual – Treatment Systems for Single Houses” – Environmental Protection Agency 2009.

(c) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the raised percolation area is constructed in accordance with the standards set out in the EPA document.

(d) The applicant shall enter into an annual maintenance agreement with the system supplier.

Reason: In the interest of public health.

5. In the first planting season following occupation of the house, the site shall be planted in accordance with a planting scheme which shall have been submitted to and agreed in writing with the planning authority before the development is commenced.

Reason: In the interest of visual amenity.

7. a) The external finishes of the proposed development shall be nap plastered, dry dash or natural stone, unless otherwise agreed in writing with the planning authority.

b) The roof shall be of a blue/black, black, dark brown or dark grey colour.

Reason: In the interest of visual amenity.

9. All service cables associated with the proposed development (such as electrical, television and telephone) shall be run underground within the site.

Reason: In the interest of the visual amenities of the area.

10. During construction the developer shall provide adequate off carriageway parking facilities, for all traffic associated with the proposed development, incl. delivery and service vehicles / trucks. There shall be no parking along the public road.

Reason: In the interest of traffic safety.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Emer Doyle

Planning Inspector

4th December 2018