



An
Bord
Pleanála

Inspector's Report ABP-302176-18.

Development	Dwelling, wastewater treatment system.
Location	Ballykeppoge, Wicklow, County Wicklow
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	1840.
Applicant	Robert Belton.
Type of Application	Permission.
Planning Authority Decision	Refusal.
Type of Appeal	First Party
Appellant	Robert Belton.
Observers	George and Suzanne Acres.
Date of Site Inspection	13 th September 2018.
Inspector	Philip Davis.

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1.0 Introduction

This appeal is by the applicant against the decision of the planning authority to refuse permission for the construction of a dwelling in a rural area. The grounds of refusal relate to policy on rural housing. One observer has submitted an objection.

2.0 Site Location and Description

2.1. Ballykeppoge, Wicklow

The townland of Ballykeppoge (sometimes spelt Ballykippogue) is located in the rolling countryside of south-east Wicklow, approximately 5 km south-west of Wicklow Town centre, 4km west of the Irish Sea coast at Blainroe and 2km east of the M11. The area is characterised by a mix of large irregular fields, mostly in use for pasture, either dairy or stud farms. There is a scattering of houses and larger farmsteads along the minor road network which serves the area, with occasional clusters. The R751 which links the M11 to Wicklow runs to the north. A stream known as the Three Mile Water runs west to east through the townland.

2.2. The site and environs

The appeal site, with a site area given as 0.30 hectares, is a rectangular pasture field on the west side of a long, straight third class road (the L5108) running south from the R751. The field drops in level to the west and slightly to the north, down to the shallow valley of the Three Mile Water. The site is bounded on three sides by post and rail fences. The boundary to the road is marked by a ditch lined with mature ash and oak trees and a thorn hedgerow.

South of the site is a similar sized field with a dwelling under construction. There is another new dwelling on higher ground directly west of this, with open land and a large farmstead further south.

To the **west** of the site is open countryside, with a small stream or land-drain approximately 150 metres from the site boundary. To the **north** is a small field, with a large farm complex (Ballykeppoge stud) beyond this, after which is a wooded strip along the Three Mile Water.

East of the site is the road (L5018), which has a very straight alignment along this stretch. There are three detached dwellings opposite.

3.0 Proposed Development

The proposed development is for a dwelling with garage and a new proprietary wastewater treatment system in addition to a private well.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to refuse permission for one reason, I summarise as follows:

- It is considered that the applicant is outside the scope of Objective HD23 of the County Development Plan with regard to housing need, and in the context of the location of the site close to the zoned lands of Wicklow Town it is considered contrary to the settlement strategy set out in the Plan.

4.2. Planning Authority Reports

4.2.1. Planning Reports

- Notes a previous refusal by the Board (**PL27.247906**).
- Notes history in the area of several refusals and one recent permission for dwellings.
- Relevant policy – Settlement Strategy – it is described as a ‘Level 10’ area (open countryside).
- It is stated that they are not satisfied that the applicant qualifies under HD23.
- It is considered that in other respects the application is acceptable.
- It is not considered there would be an impact on any EU habitat.
- Refusal recommended.

4.2.2. Other Technical Reports

The application: A site characterisation form submitted with the application indicates that the site is over an aquifer of ‘extreme’ vulnerability, with an R2

Groundwater protection response. The trial holes indicate water ingress at around 0.8 metres, with the subsoil clay with marl at deeper levels.

The application included substantial personal information to demonstrate the applicant is a long established local who works in the family business.

Wicklow County Engineer: No objection.

Environmental Health Officer: Notes ambiguity regarding trial hole information on this site and the adjoining site – recommended further information for clarification.

4.3. **Prescribed Bodies**

No comments on file.

4.4. **Third Party Observations**

George and Suzanne Acres of Ballykeppogue Farm objected on the grounds of the proximity to their well, possible flooding, and issues regarding public health.

5.0 **Planning History**

In 2017 the Board, on appeal, **upheld** the decision of the planning authority to **refuse** permission for a dwelling on the site (a different applicant to the current appeal (**PL27.247906**)). The grounds of refusal related to the location in a rural area and policy objective HD23.

The planning report indicates five recent applications for dwellings in the vicinity, one granted, the other four refused.

6.0 **Policy Context**

6.1. **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.

6.2. 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 4 km to the south-east.

7.0 The Appeal

7.1. Grounds of Appeal

- It is argued that the applicant is a local man who has strong links from a family in the area for three generations. His two brothers have built houses nearby as have other family members.
- It is stated that he needs to live in the area as he works in the family fuel merchant business which is based in the locality and serves the Wicklow to Arklow area.
- It is noted that HD23 allows that an application is open to consideration if the site is within 8 km of the rural home – the applicants home is just 2.5 km from the family dwelling.

- It is argued that the stated reasons for refusal are spurious as extensive documentation has been submitted supporting the applicant's links to the area.
- It is noted that the previous refusal related to a retired person who lived in Wicklow Town and thus had no demonstrated 'need' to a dwelling in the area.
- It is argued that the decision is inconsistent as other houses have been granted permission for applicants with lesser connections to the immediate area.

7.2. Planning Authority Response

The planning authority did not respond to the grounds of appeal.

7.3. Observer

George and Suzanne Acres of Ballykeppogue Farm

- It is argued that there is only room in the area for a limited number of dwellings, and these should be for local landowners only.
- It is argued that the proposed wastewater treatment system is too close to their well and may have health impacts.
- It is questioned why the applicant requires a large garage, it is suggested that it will be used in association with the fuel business.
- It is argued that the planning authority were correct to refuse on the grounds that the applicant does not qualify under the relevant policy objectives.

8.0 Assessment

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

- Principle of Development
- Visual impact
- Public health
- Traffic

- Flooding
- Appropriate Assessment
- EIAR
- Other issues

8.1. Principle of development

The proposed development is for a dwelling on a farmland site in a rural area without a specific zoning designation. I would consider that the area would, due to its close proximity to both Wicklow Town and Arklow Town and to a junction on the M11, 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.

The policy is, in short, to discourage rural housing, especially when relatively close to towns and residentially zoned lands – the appeal site is within 5 km of Wicklow Town which has extensive areas of serviced land available for residential development. The exceptions 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.

The applicant has submitted copious information to support his contention that his family have strong local links, and he works in the family business. I do not question in any way the local family links to the area. Notwithstanding this, I note that the site is not within the family landholding, and is some distance from other family members. While they are all within the locality, as the planning report notes the site is very close to the zoned lands of Wicklow Town, and there does not seem to be a clear reason as to why the applicant has a ‘need’ to be in this specific area and not the town or other nearby zoned settlement.

I note the previous recent refusal for permission for a dwelling on the site by the Board, and I also note that the applicant in that appeal seemed to have more tenuous links to the area. In addition, I would note that there have been a number of permissions granted in the vicinity in recent years – most of the dwellings nearby appear quite new. But I would concur with the planning authority that in the overall

context of national and local policy there are very strong hurdles to cross for an application so close to zoned lands in an area under clear urban generated development pressures. I would conclude that the planning authority were correct to conclude that the applicant does not have a demonstrated need to live in the immediate area, so the general policy provisions favouring urban over rural sites applies. I therefore recommend that the Board refuse permission for generally similar reasons to the previous appeal on the site.

8.2. **Visual impact**

The area has a very attractive rural ambience, but does not have a specific landscape protection designation. The overall qualities of the area have been significantly degraded through the construction of rural housing, in particular by way of the gradual removal of the fine line of mature trees along this road to provide for more accesses. The dwelling is relatively low key and modest, and its low-lying location in the landscape would minimise the direct landscape if appropriate landscape planting was included in the scheme.

8.3. **Public health**

The area appears to be characterised by deposits of clay and marl over gneiss bedrock. The site suitability assessment indicated that the groundwater is of 'extreme vulnerability'. The EHO in a memo on file highlighted some ambiguities and contradictions between other file information available on groundwater levels and the submitted site survey. I would note an indication of water up to 0.8 metres below the level, and quite impermeable subsoil.

Given the location within an area with a substantial number of existing systems, the proximity of private wells, and the apparently poor drainage characteristics of the soil, along with a possible high water level, I would consider that the information provided is not sufficient to clearly demonstrate that the site is suitable for a wastewater treatment system and well. While this is a 'new issue' I would not recommend a refusal for this reason, but if the Board is minded to grant I would recommend that it requests a new site characterisation survey with more detail to provide firm evidence that the site is suitable without resulting in a hazard to public health or pollution to nearby watercourses.

8.4. Traffic and safety

The adjoining road is straight and the proposed access would allow for adequate sightlines, albeit with the probable loss of one or more mature trees and some hedgerow. I noted quite high speeds on the road due to the good visibility, but there does not appear to be particularly heavy traffic loads in the area.

8.5. Flooding

The site is low-lying, with a watercourse to the north, which flows to the Three Mile Water, which flows east to the Irish Sea. There are no indications from available sources that the site is subject to flooding, although the increasing number of dwellings in the vicinity would no doubt have an overall impact on increasing run-off rates to the nearby watercourses.

8.6. Appropriate Assessment

There are no SPA's or SAC's in the immediate vicinity. The closest is the Magherabeg Dune systems (site code 001766) on the coast. The local water system drains close to this SAC by way of the Three Mile Water and other streams. But due to the small scale of the proposed development and the absence of direct conduits to the stream, I would consider that there would be no significant effects on this or other designated habitats in the vicinity.

I would therefore consider that it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 001766, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.7. EIAR

Having regard to nature of the development comprising a relatively minor structure, and the location of the site some significant distance from sensitive habitats or other receptors 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.

8.8. Other issues

I do not consider that there are any other substantive issues raised in this appeal. There is no evidence on file of historic features or archaeological remains on the site or the immediate vicinity or any other features of particular environmental sensitivity. If the Board is minded to grant the proposed development would be subject to an occupancy condition and a Section 48 development contribution under the adopted Scheme.

9.0 Recommendation

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

10.0 Reasons and Considerations

Having regard to the location of the development within lands designated as being under strong urban influence and proximate to the development boundaries of Wicklow Town and Environs, where lands have been zoned for housing and its location at a distance from the family home, it is considered that the applicant has not demonstrated that he would come within the scope of Objective HD23 of the current Wicklow County Development Plan, and neither has it been shown that his requirement could not be suitably catered for by a dwelling located within Wicklow Town. Therefore, to allow this dwelling, at this location in the absence of a demonstrated need would clearly set a precedence for further piecemeal development to the edges of Wicklow Town, and would undermine the Council's settlement strategy 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.

The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, materially contravene an objective indicated in the current Wicklow

County Development Plan and would be contrary to the proper planning and sustainable development of the area.

Philip Davis
Planning Inspector

22nd November 2018