



An  
Bord  
Pleanála

## Inspector's Report ABP-305369-19

---

<b>Development</b>	House, Waste Water Treatment System, bored well, driveway, landscaping and associated works.
<b>Location</b>	Tinnehinch Farm, Enniskerry, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	19/226
<b>Applicant(s)</b>	Noelle Duff
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Noelle Duff
<b>Date of Site Inspection</b>	27 <sup>th</sup> November 2019
<b>Inspector</b>	Paul O'Brien

## 1.0 Site Location and Description

- 1.1. The subject site with a stated area of 0.17 hectares, comprises an area of land located to the south of the R760 regional road located to the south of Enniskerry. The area is characterised by woodlands and the presence of high boundary walls along the public roads, screens the area from view when on the road network.
- 1.2. The site is undeveloped and is located within a woodland with its own access road from the public road. The site slopes upwards on a south to north axis, though the location/ footprint of the proposed house is somewhat less steep than adjoining areas. The subject site formed part of a golf course that has ceased operation, but has resulted in an extensive internal road network, other infrastructure and extensive landscaping on the former golf course lands.
- 1.3. The River Dargle meanders approximately 150 m to the south west of the subject lands, at its nearest point.

## 2.0 Proposed Development

- 2.1. The proposed development consists of a detached part single, part one and a half storey house serviced by a new wastewater treatment system. The proposed house has a given floor area of 135.7 sq m providing for two bedrooms and generous habitable floor space. Access to the site will be by way of an existing access lane from the existing entrance to the public road. The access road runs almost parallel to the public road, however there is a separation distance of circa 8 to 9 m between the access and the boundary which consists of a high stone wall with barbed wire fencing over. The site is not visible from the public road due to the boundary wall, existing woodlands and slope of the site.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to refuse permission for a single reason as follows:

1. *The proposed development would not represent a necessary dwelling in this landscape designated (Mountain and Lakeshore AONB,) contrary to the provision*

*of Section 4.4 of the 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 housing development to cases where 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. The proliferation of non-essential housing in rural landscape 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**

The Planning report reflects the decision to refuse permission. The Planning Authority Case Officer comments on the location of the site screening the house from view, the design of house is of a traditional design and drainage can be accommodated on site. From the submitted information, the Case Officer considers that the applicant does not qualify for a rural dwelling as the family had moved from the area and the severance was deemed to be significant. A time extension of four months was granted to the applicant and unsolicited information was submitted; however, the decision of the Planning Authority to refuse permission did not change in a subsequent report on the submitted details.

#### **3.2.2. Other Technical Reports**

**Environmental Health Officer:** Note that the site is area of the site at 0.17 hectares is less than the Wicklow County Council Guidelines which require a site of 0.2 hectares, however it is recommended that the proposed wastewater treatment system is acceptable subject to conditions.

### **3.3. Objections/ Observations**

A letter of objection has been received from Mark & Penny Colley, Lovers Leap Lane, Enniskerry and their comments include the following:

- The site is zoned green belt and not residential use.
- There is sufficient land in the area for residential development in Enniskerry with a potential total of 470 units and a greater number further away in Cherrywood and Fassaroe.
- The applicant is not the owner of the land.
- The site is located within a Landscape Zone (Mountain and Lakeshore Area) of Outstanding Natural Beauty and the proposed house would not provide for a necessary dwelling.
- Trees screening the site as referenced in the applicant's cover report, can be removed from the site.
- The development would detract from a number of Special Amenity Areas (SAA's).
- The Council policy is to encourage residential development within established urban areas and not in rural areas.
- There is a history of refused applications on this site.
- The applicant does not demonstrate compliance with the requirements of the Wicklow County Development Plan.

## 4.0 Planning History

4.1. **P.A. Ref. 12/6625** refers to an application for a detached house, driveway, drainage etc. on lands to the east of the subject for a John Duff. The application was recommended for refusal but was withdrawn before a decision was issued.

**P.A. Ref. 09/112** refers to a March 2009 decision to refuse outline permission for a house, bored well and wastewater treatment system for John & Marian Duff, to the eastern side of the former golf club. It was considered that the applicant did not comply with the requirements for housing need in a rural area.

**P.A. Ref. 07/667, ABP ref. PL27.223935** refers to a January 2008 decision to refuse permission for a detached house, bored well, effluent treatment system and car parking for John Duff, to the eastern side of the former golf club. It was considered

that the applicant did not comply with the requirements for housing need in a rural area.

## 5.0 Policy and Context

### 5.1. Development Plan

5.1.1. Under the Wicklow County Development Plan 2016 – 2022, the subject site lies outside of an Urban Area and is therefore assessed under the section ‘Level 10 Open Countryside’. Rural housing is subject to 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*’. A total of 16 circumstances are provided under which residential development in rural areas will be considered. The following are the most relevant to the applicant:

- 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.*
- 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.*
- 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.*

*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*

5.1.2. The Wicklow Landscape Category Map – indicates that the site is located within Glencree/ Glencullen Area of Outstanding Natural Beauty (AONB).

5.1.3. Objective NH50 requires a Landscape/ Visual Impact Assessment with applications in the AONB.

5.1.4. *'Appendix 2 – Design Guidelines for New Homes in Rural Wicklow'* is noted and provides extensive guidance on the location, layout and design of houses in rural locations.

## 5.2. **National Guidance**

5.2.1. **The Sustainable Rural Housing – Guidelines for Planning Authorities** (April 2005) is relevant to this development.

5.2.2. **National Planning Framework – Project Ireland 2040** recognises the importance of rural Ireland. National Policy Objective 19 is noted as relevant to this development:

*Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:*

- *In rural areas under urban influence, 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 and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;*
- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.*

### 5.3. **Natural Heritage Designations**

The site is located within an Area of Outstanding Natural Beauty – Glencree/ Glencullen AONB.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The applicant has appealed the decision of Wicklow County Council to refuse permission for this development. The issues raised in support of the appeal include:

- Refers to the generally positive report of the Planning Authority Case Officer with regards to design, siting and impact on the area.
- Permission was recommended for refusal on the basis of an application and supporting information, made by the applicant's parents in 2007.
- Evidence has been provided in the form of landlord letters and utility bills that the applicant lived in the Enniskerry area since 2005.
- The applicant's uncle inherited the only house on the family land and her family were left with land with no house on it.
- It has not been possible to properly farm the land without a house due to security and health reasons.
- The applicant proposes to plant trees on the land and to keep free range pigs on the land. These pigs will not impact on the River Dargle to the south of the site.
- The applicant has a degree in Agricultural Science and in addition to the proposed use of the lands she can continue part time work in the health and fitness industry.

### 6.2. **Oral Hearing**

A request for an oral hearing was refused as sufficient written evidence was available on file to enable a full assessment.

## 7.0 Assessment

7.1. The main issues that arise for consideration in relation to this appeal can be addressed under the following headings:

- Demonstration of Need for a Rural House
- Design and Impact on the Character of the Area
- Impact on Residential Amenity
- Infrastructure
- Appropriate Assessment Screening

### 7.2. Demonstration of Need for a Rural House

- 7.2.1. The applicant who is 31 years old, states that she has lived in the Enniskerry Area for a total of 27 years. She lived in Tinnehinch from birth until she was 12 years old when her family moved to Bray and stayed there for a total of four years. They then moved back to the Enniskerry area. From the submitted details, the family have moved home on a number of occasions. A copy of a telephone bill dated October 2005 is addressed to Ballingee, Enniskerry which is in the rural part of Enniskerry. However, an Eir bill dated April 2019, a Bord Gáis Energy bill dated April 2019, a Voting Register screenshot for the Register of Electors 2019 – 2020 and a letter from St Vincent's University Hospital dated June 2019, gives the family address as Tinnebeg, Cookstown, Enniskerry; this address is located within the urban area of Enniskerry. Other submitted documentary evidence is noted. A letter from Powerscourt National School states that the applicant attended the school between September 1991 and June 2000, a period of 9 years. Bank and bill details have been provided in the applicant's name, but some details have been in the mother's name, which may not be relevant to the applicant.
- 7.2.2. I have had regard to the application for a house for the applicant's father, under P.A. Ref. 07/667 and subsequent ABP Ref. PL27.223935 including the Inspector's report. In summary the applicant in that case, did not comply with the requirements for a rural house and permission was refused.
- 7.2.3. The applicant has provided a significant amount of documentation in support of her application; however this does not make it sufficiently clear that she lived in a rural



area of Wicklow for the required amount of time. There are large gaps in the submitted documentation and some of the details are not specifically relevant to her. I would raise concern about the Unsolicited Further Information letter dated June 1<sup>st</sup> 2019; with reference to the statement that the postman re-routed post to the applicant. Whilst I accept that this may have happened, it does give rise to question, if any of the addresses provided in support of this application can be accepted as correct. I also note that the letter from University College Dublin dated 18<sup>th</sup> February 2019 states that she attended the University between 2006 to 2008, 2009 to 2011 and 2012/2013 whilst her address was Tinnehinch Farm, Enniskerry; she herself said she moved from Tinnehinch Farm when 12 years old (later dated June 1<sup>st</sup> 2019).

7.2.4. With regard to Objective HD23, no.1 of the listed considerations is most relevant. I don't consider that the applicant is principally employed in agriculture (ruling out nos. 5 & 6), she states herself that she will continue to work in an area outside of agriculture (ruling out no. 7 & 11 no specific need to live here) and the issue of gifting of land for a rural house does not arise (ruling out no. 9). Circumstance no.1 is most relevant to her and as already outlined, I am not satisfied with the submitted information that she has lived in the rural area for a total of 10 years. Certain documentation such as educational details and tax letters are usually reliable forms of evidence of place of address. I note that the applicant's birth certificate states that she was born on the 11<sup>th</sup> of September 1987 and a letter from the school states that she attended from September 1991 to June 2000. Generally the length of primary school attendance is 8 years and not the 9 as indicated here. This may be correct or may be a misprint. It is unfortunate that no details of receipt of child allowance etc. has been submitted that would demonstrate that the applicant lived here for ten years. The applicant has not sufficiently demonstrated that she has lived in the rural area for the required number of years and permission should therefore be refused.

7.2.5. The subject site is clearly in an area under urban influence and development should therefore be focused on existing settlements such as Enniskerry. Permitting the proposed development would be contrary to National Policy Objective 19 as no demonstrable economic or social need to live in the rural area has been provided. The applicant is primarily employed in an urban location and her family currently live in an urban location, within the development boundary of Enniskerry.

7.2.6. I would have concern about the development of a house in an area designated as an Area of Outstanding Natural Beauty (AONB). The protection of such areas is essential and no matter what mitigation measures are proposed, the development of an additional house on such lands would erode the character of the AONB.

### 7.3. **Design and Impact on the Character of the Area**

7.3.1. Considering the location of the site within a designated Area of Outstanding Natural Beauty (AONB), the proposed development does not adequately demonstrate the impact on the character of the area. A two-bedroom house is proposed but with a 6.92 m high ground to roof ridge height section and a floor area of 135.7 sq m. The submitted plans do not indicate how this unit will be set into the contours of the site. The design is generic and does not appear to have been specifically designed for this site. It is possible that the house will be visible from the public road to the north of the site.

7.3.2. The applicant has not demonstrated that the development is acceptable in terms of Objective NH50 of the Wicklow County Development Plan 2016 – 2022. No visual or landscape assessment has been provided. Whilst the existing trees on site are extensive, the applicant has provided no certainty that they are sufficient to screen the visual impact of this addition to the landscape.

### 7.4. **Impact on Residential Amenity**

7.4.1. The proposed house is considered to be acceptable in terms of adequate room sizes and storage provision. Adequate private amenity space is available. The proposed house does not impact on any other units in terms of overlooking leading to a loss of privacy or in terms of overshadowing.

### 7.5. **Infrastructure**

7.5.1. I note that the Environmental Health Officer had no objection to the proposed development with regards to the wastewater treatment system to serve the house.

7.5.2. Concern was noted in the Case Officers original report regarding the gradient of the driveway to the house, revised details were submitted by way of unsolicited further information and are noted.

## **7.6. Appropriate Assessment Screening**

- 7.6.1. Having regard to the nature and scale of the proposed development and the location of the site, subject to the provision of the waste water treatment system as proposed and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on an European site.

## **8.0 Recommendation**

- 8.1. I recommend that planning permission be refused for the following reasons and considerations as set out below.

## **9.0 Reasons and Considerations**

1. Having regard to the location of the site within "Area Under Strong Urban Influence" as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and the National Policy Objectives of the National Planning Framework (February 2018), which seek to manage the growth of areas that are under strong urban influence to avoid over-development and to ensure that the provision of single housing in rural areas under urban influence are provided based upon demonstrable economic or social need to live in a rural area, and in an area where housing is restricted to persons demonstrating local need in accordance with the current Wicklow County Development Plan 2016 - 2022, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines, National Policy or the Development Plan for a house at this location. 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, thus, contravene the objectives of the Wicklow County Development Plan, would be

contrary to the provisions of the *Sustainable Rural Housing Guidelines for Planning Authorities* and rural policy provisions of the National Planning Framework, and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The site is located in an area which is designated in the current Wicklow County Development Plan 2016 - 2022, as an Area of Outstanding Natural Beauty to which it is a policy of the planning authority to control development in order to maintain the scenic values, recreational utility and existing character of the area. This designation and policy are considered reasonable. The applicant has not demonstrated that the proposed development would not detract to an undue degree from the rural character and scenic amenities of the area. It is considered, therefore, that the proposed development would contravene this policy and be contrary to the proper planning and sustainable development of the area.

---

Paul O'Brien  
Planning Inspector

29<sup>th</sup> November 2019