



An  
Bord  
Pleanála

## Inspector's Report ABP307047-20

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<b>Development</b>	Erect a dwelling house
<b>Location</b>	Ballyhoge, County Wexford
<b>Planning Authority</b>	Wexford County Council
<b>Planning Authority Reg. Ref.</b>	20191458
<b>Applicant(s)</b>	Walter Crean/Roisin Fagan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	James Byrne
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> June 2020
<b>Inspector</b>	Hugh Mannion

## **1.0 Site Location and Description**

- 1.1. The site has a stated area of 0.58ha and is located in rising ground just west of the Slaney River in Ballyhoge, County Wexford. The site is part of an agricultural field which adjoins a single carriageway local road which is part of a network of narrow roads in the area around the village of Ballyhoge. On the other side of the public road is a two-storey farmhouse and farm buildings which are in the ownership of the applicant's family. To the east and between the site and the River Slaney is Bellvue church and to the south is Brookhill House.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises the erection of a house and garage at Ballyhoge, Enniscorthy, County Wexford.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Grant with conditions. Condition 3 required the applicant to enter an agreement under section 47 in relation to permanent residence in the proposed house for 5 years.

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

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

- 3.3. The initial planner's report requested further information in relation to compliance with the County Development Plan's rural housing policy, a colour coded map of existing drainage channels within the site boundary, an amended drawing showing location of polishing filter.

#### **3.3.1. Other Technical Reports**

- 3.3.2. The **Area Engineer** recommended a grant of permission subject to maintenance of sightlines on the public road, suitable site entrance arrangements and treatment of all surface water within the site.
- 3.3.3. The **Environment Section** noted that the trial holes were dug within the proposed percolation area and that therefore the percolation area should be moved and the relocated percolation are shown on a new drawing.

## 4.0 **Planning History**

No relevant history.

## 5.0 **Policy and Context**

- 5.1. The **Sustainable Rural Housing Guidelines for Planning Authorities** (2005) designate four general rural area types. The application site is a rural area under strong urban influence. The Guidelines require planning authorities to distinguish between rural generated housing need and urban generated housing need and frame policies accordingly to limit housing development in rural areas not associated with a demonstrable need to live in the countryside.
- 5.2. **Wexford County Development Plan 2013 to 2019<sup>1</sup>**
- 5.3. **Objective RH01** To facilitate the development of individual houses in the open countryside in 'Areas under Strong Urban Influence' in accordance with the criteria laid down in Table No. 12 subject to compliance with normal planning and environmental criteria and the development management standards laid down in Chapter 18.
- 5.4. **Objective L03** To seeks to ensure that developments are not unduly visually obtrusive in the landscape, in particular in the Upland, River Valley and Coastal landscape units and on or in the vicinity of Landscapes of Greater Sensitivity.
- 5.5. **Objective PS01** To protect the architectural heritage of County Wexford and to include structures considered to be of special architectural, historical, archaeological,

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<sup>1</sup> The lifetime of this plan has been extended to allow for the incorporation of the Regional Spatial and Economic Strategy in the new plan.

artistic, cultural, scientific, social or technical interest in the Record of Protected Structures.

5.6. **Objective PS02** To protect the curtilage of Protected Structures or proposed Protected Structures from any works which would cause loss of, or damage to, the special character of the structure and loss of or damage to, any structures of heritage value within the curtilage or attendant grounds of the structure.

## 5.7. **Natural Heritage Designations**

Not relevant.

## 5.8. **EIA Screening**

5.9. Having regard to the minor scale of the proposed development 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.

## 6.0 **The Appeal**

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

- The site is within an area under strong urban influence where there is pressure for rural housing. The applicants are not employed in the area.
- The site is in a landscape area designated "River Valley". In these areas in addition to demonstrating a local housing need an applicant must demonstrate an overriding need to live in the area.
- The site lacks adequate screening and the proposed house will be visible over a wide area.
- The applicants did not demonstrate that there were no alternative sites available and did not establish the family land holding in the area.
- The 'famine wall' and trees within the application site are within the curtilage and attendant grounds of Bellevue Church and/or Brookhill House and are protected structures.

- Part of the back lane to Brookhill House is being incorporated into the application site which impacts on the appellant's property rights/right of way.
- The proposed septic tank/percolation area has the capacity to pollute a nearby stream.
- The proposed loss of trees and potential for water pollution will impact on the River Slaney SAC. The woodland is a habitat for bats.

## 6.2. Applicant Response

- The application site is within the applicant's family's landholding. The applicant meets the County Development Plan criteria for local need.
- The proposed development does not impact on the wall along Bellevue Lane, the lane itself or woodlands. The planning system is not designed to settle land ownership disputes.
- There is Japanese knotweed in the area long road verges, but this does not impact on the proposed development.
- The proposed development will not impact on the landscape of the River Slaney in the area.
- The proposed development will not impact on groundwater or surface water quality since the application site can safely dispose of domestic effluent.
- Three or four apple trees in poor condition will be felled to accommodate the proposed percolation area. These are not significant bat habitats.

## 6.3. Planning Authority Response

- The site is about 750m west of the Slaney River. It is 300m west of Bellevue Church and 300m north of Brookhill House which is a protected structure.
- The planning authority is satisfied that the application site is in the ownership of the applicant's family.
- The trees and wall referred to in the grounds of appeal are not listed in the NIAH or the RPS.

- The proposed development does not impact in Bellevue Church.
- Ballyhoge House/Castle is 330m due east of the application site and is not impacted upon by the proposed development.
- The laneway referenced in the grounds of appeal is not included in the application site.
- Trees within the site are not subject to a tree preservation order and outside the footprint of the proposed development.
- The applicant meets the County Development Plan's criteria for local housing need.
- The planning authority is satisfied that the application site is suitable for the safe disposal of domestic effluent.
- The proposed development does not require a NIS. The site is not within a European site and limited tree felling does not require planning permission.

#### 6.4. **Observations**

- None

### 7.0 **Assessment**

#### 7.1. **Rural Housing Policy.**

7.2. The application site is in a rural area under strong urban influence as designated in the Sustainable Rural Housing Guidelines (2005). These areas are described as exhibiting characteristics such as proximity to the immediate environs or close commuting catchment of large cities and towns, rapidly rising population, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network. The guidelines require planning authorities to distinguish between rural generated housing need and urban generated housing need and frame policies accordingly to limit housing development in rural areas not associated with a demonstrable need to live in the countryside.

- 7.3. The County Development Plan has had regard to the Sustainable Rural Housing Guidelines and map 6 Rural Area Types in the plan places the application site within an area under strong urban influence. It is an objective (objective RH01) to facilitate the development of individual houses in the open countryside in 'Areas under Strong Urban Influence' in accordance with the criteria laid down in Table No. 12 subject to compliance with normal planning and environmental criteria and the development management standards laid down in Chapter 18. The criteria for considering applications for new houses in areas under strong urban influence set out in table 12 require, *inter alia*, that the proposed house be for 'local rural people' building permanent residences for their own use who have a definable 'housing need' building in their 'local rural area'. Local people are those who have lived in the area for 5 years and/or are landowners in the area or a son/daughter of such a landowner.
- 7.4. The planning authority sought further information in relation to the applicant's compliance with the Development Plan policy in relation rural housing, specifically the applicant's links to the area. The applicant presented evidence of attendance at the local national school, continued residence in his parents' house opposite the site to the north and that the site is part of a family's farm.
- 7.5. I conclude in this basis that the applicant complies with the County Development Plan policy in relation to the provision of a rural house.
- 7.6. **Section 47 Occupancy Condition.**
- 7.7. The County Development Plan at 4.3.3.3 states that in order to ensure that rural houses are being used in accordance with the needs specified in the Sustainable Rural Housing Strategy, the Planning Authority will impose 'Occupancy Conditions' on grants of planning permissions in 'Areas under Strong urban Influence' and that the length of the agreement shall be 5 years. I consider that this is a reasonable measure in support of Development Plan policy in relation to limiting one-off rural housing, and I include a similar condition in the draft order below specifying the time period of 5 years.
- 7.8. **Landscape Impact.**
- 7.9. The County Development Plan (Objective L03) seeks to ensure that developments are not unduly visually obtrusive in the landscape, in particular in the Upland, River Valley and Coastal landscape units and on or in the vicinity of Landscapes of

Greater Sensitivity. The application site is within the Slaney/Bann River Valley as illustrated on Map number 13 - Landscape Units and Features to which objective L03 applies.

7.10. The application site is not visible from the local regional route R730 Wexford town to Graiguenamanagh because of intervening distance and topography nor is it visible from the local road network in the area of Ballyhoge village and there is extensive screening along the western boundary and in the north-western quadrant of the site. The site is likely to be visible from N11 to the east of the Slaney valley but having regard to the intervening distances (2kms or 3kms at the closest) I conclude that it will read as one of many aspects of the overall landscape. The proposed house is a part single storey/part two storey structure and would have benefitted from having more obvious regard to the rural house design advice set out in Chapter 17 of the County Development Plan. I recommend that a condition be attached requiring that the roof be blue/black in colour and the external walls rendered white.

7.11. Having regard to the foregoing I conclude that the proposed development will not be unduly visually obtrusive in the landscape and therefore that it would not materially contravene an objective of the County Development Plan in relation to landscape protection.

**7.12. Impacts on Protected Structures.**

7.13. Bellevue Church and Brookhill House are protected structures and the County Development Plan sets out objectives (objective PS01 and objective PS02 in particular) in relation to the conservation of buildings and structures and their curtilages listed in the RPS. The appeal makes the point that the proposed development will impact negatively on Bellevue Church and Brookhill House.

7.14. The proposed development is about 300m west of Bellevue Church which is a Catholic chapel completed in 1860. The chapel is east of the application site and between the application and the Slaney river and is served by the same road network. While the proposed house will be visible from the chapel it is too distant to physically impact on it. I conclude on this basis that the proposed development will not impact on this protected structure in a manner as to materially contravene an objective of the County Development Plan.



- 7.15. The application site is about 300m north of the Brookhill House which was in situ in 1840 and is described (in the NIAH) as a country house fronted by three bays with a longer (five bay) southern side elevation. The application incorporates part of an existing laneway which links the protected structure to the public road network but when I carried out a site inspection this laneway was gated and locked. It appears from the correspondence on file that there may be a dispute as to the ownership of this lane. The Development Management Guidelines makes the point that the development management system is not a mechanism to resolve matters of title to land and in any case Section 34(13) provides that where other impediments exist a planning permission of itself does not confer a right to development. In this regard I am satisfied that the applicant has sufficient legal interest in the site to make a valid planning application.
- 7.16. The appeal makes a further point that this lane constitutes the curtilage of a protected structure. While this lane may at one time have been part of the same land holding as Brookhill House this historic fact would not necessarily extend the protected structure status to the lane. Additionally, the wall which is referred to in the grounds of appeal as a 'famine wall' is not subject to works as part of the current application. The Architectural Heritage Protection Guidelines addresses the matter of development within the curtilage of protected structures in Chapter 13. The point is made that the configuration of curtilages may vary over time and that planning authorities should be careful to delineate curtilages in the RPS where they contain significant features which contribute to the setting of the protected structure itself. The planning authority is the competent authority when making the RPS and in response to the appeal states that the lane, 'famine wall' and trees are not within the curtilage of the protected structure.
- 7.17. Having regard to the foregoing I conclude that the proposed development would not impact on a protected structure in a manner as to materially contravene an objective of the planning authority in relation to architectural conservation.
- 7.18. **Water Supply**
- 7.19. The proposed development will be served by a private well. I attach a condition in the draft order below requiring the applicant to satisfy the planning authority of the adequacy of this proposed arrangement.

**7.20. Domestic Effluent Disposal.**

7.21. The site suitability assessment for the disposal of septic tank effluent submitted with the application determined that the site is suitable for the safe disposal of domestic effluent with a T value of 49 which is within the range of acceptability of  $3 \leq T \leq 50$  provided for in Table 6-3 of the EPA Code of Practice for DWWTS. On foot of a report from the Environment Section the planning authority required the relocation of the percolation area away from where the percolation tests had been carried out and a field drain which skirts the western edge of the site outside the area of trees and then turns east and runs along the roadside boundary of the field in which the site is located towards the Slaney. This drain (which was dry on the date of my site inspection) is proposed to be piped within the site.

7.22. Having regard to the material submitted with the application including the site suitability assessment and the reports of the planning authority I am satisfied that domestic effluent arising from the proposed development can be adequately treated within the site without a risk to public health or surface or groundwater pollution.

**7.23. Bats/Trees.**

7.24. The appeal makes the point that the proposed development will give rise to loss of habitat for bats and loss of trees.

7.25. The applicant makes the point that re-positioned percolation area will require the felling of four mature apple trees. This is consistent with my observations on my walk-over site visit. The planning authority states that the trees are not subject to a TPO. I conclude on this basis that the proposed development will not impact on trees within the application site in a manner as to seriously injure the visual or landscape character of the area.

7.26. The trees (excepting the mature apple trees) along the laneway to the western side of the site potentially provide bat habitat but as stated above the footprint of the proposed development will not impact on the important trees. Nevertheless, I set out a condition below in the draft order requiring the applicant to agree measures with the planning authority to protect bats where they are identified within the site.

**7.27. Appropriate Assessment Screening.**

7.28. The application site is within the attachment of the Slaney River Valley SAC (000781). The overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. The NPWS has set out the qualifying interests which comprise habitats and species for which the Slaney River Valley SAC (000781) has been designated. The species that are qualifying interests are;

- Freshwater Pearl Mussel
- Sea Lamprey
- Brook Lamprey
- River Lamprey
- Twaite Shad
- Atlantic Salmon
- Otter
- Harbour Seal

7.29. The habitats that are qualifying interests are;

- estuaries,
- mudflats and sandflats not covered by seawater at low tide,
- water courses of plain to montane levels with floating river vegetation,
- old sessile oak woods
- alluvial forests.

7.30. Having regard to the modest scale of the proposed development and foreseeable emissions therefrom, the dispersed pattern of residential development in the area, the suitability of the site for domestic effluent disposal and the measures incorporated into the proposed development (including the effluent treatment system) 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 the Slaney River Valley SAC (000781) 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.

## 8.0 Recommendation

8.1. I recommend that permission be granted.

## 9.0 Reasons and Considerations

Having regard to the policies in relation to rural housing set out in the Sustainable Rural Housing Guidelines (DOEH LG 2005) and the current Wexford County Development Plan, to the suitability of the application site for the safe disposal of domestic effluent and subject to the conditions set out below it is considered that the proposed development would not be prejudicial to public health or surface or ground water quality, would not negatively impact on protected structures or the visual amenity of the area and would, otherwise, be in accordance with the County Development Plan and the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 21<sup>st</sup> day of February 2020 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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
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2.	<p>The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
3.	<p>The external walls shall be finished in neutral colours such as grey or off-white.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
4.	<p>Prior to commencement of development details of the site entrance (including entrance gates, set back from the edge of the public road, boundary treatments and roadside drainage) shall be submitted to and agreed in writing with the planning authority.</p> <p><b>Reason:</b> In the interests of traffic safety and visual amenity.</p>
5.	<p>Detailed measures in relation to the protection of bats shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. These measures shall be implemented as part of the development. Any envisaged destruction of structures that support bat populations shall be carried out only under licence from the National Parks and Wildlife Service and details of any such licence shall be submitted to the planning authority.</p> <p><b>Reason:</b> In the interest of wildlife protection.</p>
6.	<p>The water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> To ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.</p>
7.	<p>(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).</p>

	<p>(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).</p> <p>(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.</p> <p><b>Reason:</b> In the interest of public health.</p>
8.	<p>(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 five 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.</p> <p>(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.</p> <p>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.</p> <p><b>Reason:</b> 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.</p>
9.	<p>Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority plans and particulars for the implementation of an Invasive Species Management Plan. This plan shall include the employment of suitably qualified and experienced personnel to monitor the development works and the treatment, and/or removal and safe</p>

	<p>disposal, of contaminated material where it arises within the application site.</p> <p><b>Reason:</b> To prevent the spread of invasive plant species.</p>
10.	<p>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.</p> <p><b>Reason:</b> 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.</p>

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Hugh Mannion  
Senior Planning Inspector

12<sup>th</sup> August 2020.