



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308321-20

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<b>Development</b>	Construction of dwelling, new well, and a proposed secondary treatment system to current EPA guidelines.
<b>Location</b>	Castletimon, Brittas Bay, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	20/689
<b>Applicant(s)</b>	Denis Higgins
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Owen Reid
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	15 <sup>th</sup> January 2021
<b>Inspector</b>	Emer Doyle

## **1.0 Site Location and Description**

- 1.1. The site of the proposed development has a stated area of 0.565 hectares and is located in a rural area east of Brittas Bay in County Wicklow. There is an existing newly built dwelling on the site to east. The site is part of an existing agricultural landholding which is lower than the public road at this location and is bounded to the west by agricultural lands.
- 1.2. Development in the area generally consists of sporadic one off houses with very varied designs. The site is located within a Designated Area of Outstanding Beauty (Southern Coastal Area) and along a Designated Prospect (Prospect No. 53 from L5108-63 Castletimon, Brittas – view towards beach, sand dunes and Ardinary).

## **2.0 Proposed Development**

- 2.1. Permission is sought for the construction of a two storey dwelling of traditional design, together with a new entrance and associated site works. A new well is proposed together with a secondary effluent treatment system and percolation area.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. On the 7<sup>th</sup> of September 2020, Wicklow County Council decided to grant permission for the development subject to 12 no. conditions. All conditions are of a standard nature.

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

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

- The planner's report considered that the applicant demonstrated a definable social and economic need to live at this rural location and considered the dwelling to be a necessary dwelling for a farmer's son.

- It considered that the site was located c. 6m below the public road and the dwelling could be absorbed into the landscape and would not form an obtrusive or incongruous feature in Prospect No. 53- view to the sea.

### 3.2.2. Other Technical Reports

3.2.3. Environmental Health Officer: No objection subject to conditions.

## 3.3. Prescribed Bodies

3.3.1. No reports.

## 3.4. Third Party Observations

One third party objection was submitted to the Planning Authority. The issues raised are similar to the issues raised in the appeal to the Board.

## 4.0 Planning History

### PPR 18/181

Permission granted for dwelling on adjacent site to the east.

### PPR 19/985

Permission granted for minor alterations to PPR 18/181 including revised site boundaries and revised location of dwelling on site.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The operative development plan is Wicklow County Development Plan 2016-2022.

5.1.2. Relevant policies include:

Section 4.3.6: Relates to the Design of New Developments and it is stated that all new housing including rural housing shall achieve the highest quality of layout and design.

Appendix 2: Sets out guidelines regarding single rural house design.

Housing in the Open Countryside Policy HD23: 16 criteria are set out which relate to the circumstances that will be considered regarding residential development in the countryside. The most relevant is no. 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.”

The Plan sets out 10 levels of settlement and the subject site is located in Level 10 – The Rural Area. It is stated in the plan regarding Level 10 areas that:

“Development within the rural area should be strictly limited to proposals where it is proven that there is a social or economic need to locate in the area. Protection of the environmental and ecological quality of the rural area is of paramount importance and as such particular attention should be focussed on ensuring that the scenic value, heritage value and/or environmental/ecological/conservation quality of the area is protected.”

Appendix 5: Landscape Assessment: The subject site is located within an a Designated Area of Outstanding Beauty (Southern Coastal Area) and along a Designated Prospect (Prospect No. 53 from L5108-63 Castletimon, Brittas – view towards beach, sand dunes and Ardinary).

#### **5.1.3. National Planning Framework – Project Ireland 2040, Department of Housing, Planning and Local Government (2018)**

National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence i.e. commute catchment of cities and large towns and centres of employment.

#### **5.1.4. Sustainable Rural Housing Development Guidelines (DoECLG 2005)**

The site of the proposed development is located within an ‘Area Under Strong Urban Influence’. The guidelines require a distinction to be made between ‘Urban Generated’ and ‘Rural Generated’ housing need. Although not specifically defined,

examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply. These include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

The guidelines state, in respect of rural areas under Strong Urban Influence, that "the housing requirements of the rural community should be facilitated on the one hand, while on the other hand, directing urban generated housing development to areas zoned for new housing in cities, towns and villages". It is further stated that "development driven by cities and larger towns should generally take place within their built up areas or in areas identified for new development through the planning process."

## **5.2. Natural Heritage Designations**

5.2.1. There are two designated EU habitat sites close to the site as follows:

- Brittas Dunes and Fen SAC Site Code 00729 is located c. 1km to the south east.
- Magherabeg Dunes SAC Site Code 001766 is located c. 1.8km to the north east.

## **5.3. EIA Screening**

5.3.1. Having regard to the nature 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 grounds of appeal can be summarised as follows:

- A council engineer raised concerns regarding the unsuitability of the adjoining site under PA Ref. 18/181 but these concerns were ignored. This site is in the same field.

- “I am also concerned that Ms. Niamh McGrath, - Principal Environmental Health Officer of Wicklow County Council, has decided on this matter. Ms. McGrath- would appear to have a conflict of interest. Her father is currently farming the land on which this site is located and has done so for many years. I am thus concerned that she is or appears to be compromised in the exercise of her duties in regard to this matter.”

## 6.2. Applicant Response

The response submitted by the applicant can be summarised as follows:

- Contrary to the assertion of the appellant, the Council has taken into account the effects of surface water in Condition 7 of the grant of permission.
- Contrary to the assertion of the appellant, the alleged unsuitability of the land on the adjoining site was taken into account by the assistant planner. The location initially proposed for the effluent treatment system was relocated to the satisfaction of the planner and her final report states “The applicant has satisfactorily overcome the previous concerns regarding the proposed entrance and effluent treatment system”.

## 6.3. Planning Authority Response

The response submitted by the Planning Authority can be summarised as follows:

- It is considered that all relevant planning matters are dealt with in the Planning Authority’s report.
- However, the Planning Authority would like to express its serious concerns in relation to the unfounded statements made by the appellant in relation to Ms. McGrath, Principal Environmental Health Officer.
- A email is also attached from the Principal Environmental Health Officer. It is stated that the EHO and Principal EHO reviewed the submission the subject of this appeal and confirm the original recommendation that the proposed dwelling complies with EPA code of practice.

## 6.4. 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:

- Rural Housing Policy
- Treatment of Wastewater
- Appropriate Assessment

### 7.2. Rural Housing Policy

- 7.2.1. The application site is in an area designated as a strong rural area under urban influence. The Sustainable Rural Housing Guidelines advise that houses in such areas may be provided to meet the housing needs of the local rural community, but that urban generated housing should be directed to zoned and serviced lands within settlements.
- 7.2.2. The policy in the Wicklow County Development Plan 2016 - 2022 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 applicant has submitted copious documentation which details his connections with the area. It is stated that he is a permanent native resident and has lived in Brittas Bay all his life. He works for Irish Water in the Wicklow area and part-time on the family farm. He intends to take over the farm next year and has just finished his Green Certificate (Farming Qualification). He has never owned a dwelling and has submitted documentary evidence in this regard.

I am satisfied that the applicant has demonstrated that he would fall within the criteria set out in HD23 of the Development Plan. Having regard to the existing involvement of the applicant in part-time work on the family farm and his intention to

take over the farm next year, I am satisfied that he also complies with National Policy Objective 19 of the National Planning Framework (February, 2018).

### **7.3. Treatment of Wastewater**

- 7.3.1. The appellant considers that the Planning Authority has failed to take into account the effects of run off water into his property. It is stated that concerns were raised about the suitability of an adjacent site by a Council Engineer but these concerns were ignored. The appellant raises concerns in relation to a particular HSE employee and a conflict of interest in this matter as her father is farming this land and she “is or appears to be compromised in the exercise in her duties in regard to this matter.”
- 7.3.2. I note that from the history file and the response submitted by the applicant that the council had originally intended to refuse permission on the adjacent site under PPR18/181 for two reasons relating to public health and traffic safety. Revised details including the relocation of the sand polishing filter, treatment plant, and well were submitted to the Planning Authority. These revised details were in accordance with EPA Guidelines and subsequently approved by the Planning Authority.
- 7.3.3. In terms of the current site, I note that Condition 7 of the Planning Authority deals with the matter of surface water run-off. I am satisfied that this matter can be adequately addressed by the inclusion of a similar condition if the Board is minded to grant permission.
- 7.3.4. I note that a site characterisation form was submitted with the application. A treatment system plant was proposed together with a soil polishing filter of 108 square metres in accordance with EPA standards.
- 7.3.5. The response submitted by the Planning Authority indicated that both the EHO and the Principal EHO reviewed the appeal details and confirm the original recommendation that the proposed dwelling complies with the EPA code of practice.
- 7.3.6. I note that the response from the Planning Authority expresses ‘serious concerns in relation to the unfounded statements’ made towards the HSE employee. I consider that the Board has no role in relation to this matter.
- 7.3.7. I am satisfied that all required distances to houses, structures and other treatment systems as set out in the EPA Code of Practice are complied with in this case. I am



also satisfied that the subject site is suitable for the disposal of wastewater, without injury to public health.

#### **7.4. Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude, on the basis of information on 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 a European site.

#### **8.0 Recommendation**

- 8.1. Based on the above assessment, I recommend that permission be granted for the proposed development for the reasons and considerations set out below.

#### **9.0 Reasons and Considerations**

Having regard to the nature, extent and design of the proposed development and the provisions of the Wicklow County Development Plan 2016 - 2022, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area and, subject to the provision of a wastewater treatment system as proposed, the development will not give rise to any public health concerns. 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. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 as amended, 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 in the interest of the proper planning and sustainable development of the area.

3. 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 and to ensure a proper standard of development.

4. Surface water from the site shall not be permitted to drain onto the adjoining public road.

**Reason:** In the interest of traffic safety

5. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority with the application, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.  $\leq 10$ )" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated

copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) 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 proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the Environmental Protection Agency document.

**Reason:** In the interest of public health.

6. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the amenities of property in the vicinity.

7. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be run underground within the site. Ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interest of orderly development and the visual amenities of the area.

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall

provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

9. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) the establishment of a hedgerow along all boundaries of the site, and

(b) planting of trees at two-metre intervals along all boundaries of the site.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

10. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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.

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Emer Doyle  
Planning Inspector

21<sup>st</sup> January 2021