



An  
Bord  
Pleanála

## Inspector's Report ABP-309203-21

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<b>Development</b>	8 houses.
<b>Location</b>	Ballmoney Lower, Courtown, Co. Wexford.
<b>Planning Authority</b>	Wexford County Council
<b>Planning Authority Reg. Ref.</b>	20201210
<b>Applicant(s)</b>	Imelda Scully
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Imelda Scully
<b>Observer(s)</b>	Sharon Murphy
<b>Date of Site Inspection</b>	20 <sup>th</sup> May 2021
<b>Inspector</b>	Suzanne Kehely

## 1.0 Site Location and Description

- 1.1. The appeal site of 0.89 is an L-shaped green field located at Ballymoney about halfway between Ballymoney Crossroad and the sea (.6km to the east) with access off the southern side of Sea Road. Ballymoney is a dispersed residential settlement circa 5km to the east of Gorey town and 4km to the north of Courtown. The area is characterised by a mix of residential and tourist uses including a holiday caravan park and associated facilities in the vicinity .
- 1.2. The site is adjoined by a row of one-off houses to the north and a small development of detached houses (Beachwalk) is located to the south – the southern boundary of the site being adjoined by one of the houses. The eastern boundary fronts onto a short private access lane (c. 130m) which provides access to surrounding lands/properties. The site is otherwise adjoined to the south by the grounds of the Seafield complex which includes a hotel, spa and sporting resort.
- 1.3. The Ballymoney Lower stream runs along northern boundary of the site.

## 2.0 Proposed Development

- 2.1. Permission is sought for the construction of 8 no. dwelling units and associated site works:
- 2.2. The layout provides for 4 detached houses fronting onto the laneway and 4 houses or different designs fronting onto a new access road extending between the laneway houses and alongside the northern boundary. The development is described as consisting of; (a) 8 no. four bedroom detached two-storey dwellings with ancillary domestic storage sheds; (b) Connection to existing services including connection to foul water treatment plant, with associated pipe-work and engineering works; (c) Upgrading and improvement works to the existing access roadway to include vehicular access, footpaths, the laying of services and public lighting with ancillary works (d) Surface water drainage and associated attenuation systems (e) Hard and soft landscaping works including boundary treatments (f) Ancillary works.
- 2.3. The application is accompanied by
  - A planning report with letter from owners of the lands and Seafield Complex Wastewater Treatment System with consent for connection and use of the

system which is outside the site as delineated in red. Details of the scope of the legal agreement between the parties is included. The applicant claims full rights to connect and avail of the treatment system. It is also explained that a dwelling to the north (on a private septic tank) is proposed to be connected to the private treatment plant subject to planning permission [thereby reducing its need for a percolation area etc]. It is submitted that while this was refused for similar reasons as the previous housing development, the subject proposal mitigates the grounds for refusal.

- A environmental report by Tobin Consulting engineers on the wastewater treatment system and its capacity for connection. 'Discharge to ground from Housing Development in Seafield, Co. Wexford – groundwater assessment' a maintenance contract dated 8<sup>th</sup> October 2020 is appended.
- A site Specific Flood risk Assessment: Part of the site is located in Flood zone A and a Justification Test is required. The primary risk is attributed to a fluvial flood event in the Ballymoney Lower Stream that bisects the site. The site is not at risk of coastal or groundwater flooding. A number of recommendations are proposed in relation to stream management and construction which is informed by a detailed hydraulic model for the stream and which identifies the eastern end of the site as vulnerable and partially within Flood zones A and B . Secondary flood risk is attributed to the urban drainage and water supply infrastructure due to blockages in the culverts. It is concluded that it is considered that the development as proposed is not expected to result in an adverse impact to the hydrological regime

## **3.0 Planning Authority Decision**

### **3.1. Decision**

3.1.1. The planning authority decided to refuse permission for the stated reasons:

- The proposed connection to a private wastewater treatment plan (increasing loading) which is located outside of the site edged red (applicant's landholding) and outside of the applicant's control may lend itself to capacity , functionality, quality issues in the event of system failure and is thus considered prejudicial to public health and the proper planning and sustainable development of the area.

- The connection to a private wastewater treatment plan from the proposed housing estate is not acceptable to the Planning Authority given the high likelihood of failure of the System due to inadequate management in the long-term. The wastewater treatment plant is unlikely to be taken in charge by Irish Water and, as such is considered to be prejudicial to public health.

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

#### 3.2.1. Planning Report:

The planning report notes the acceptability in principle of housing at this location which is classed as a village but in an essentially suburban context. No restrictions on occupancy apply nor are there requirements for part V housing or a particular unit mix for development of this scale and density at 8/9 units to the hectare. In terms of design and impact on amenity, it is noted that the balconies have been repositioned to the southern elevation as compared to the previous proposal and this is considered to address overlooking within the development. There are no other significant residential impacts identified and the units are otherwise of an acceptable standard. Flood risk is not considered to be an issue.

Notwithstanding the details of an outline agreement as submitted there are concerns about the management and capacity of a treatment system outside the control of the applicant. This would lead to quality issues in the event of system failure and would ultimately be prejudicial to public health.

#### 3.2.2. Technical Reports:

Senior Executive Scientist (Environment Section) :- recommends refusal. The proposal is stated to be premature pending the outcome of legal proceedings regarding the operation and management of the existing Wastewater Treatment System to which it seeks to discharge.

Area Engineer: No report but previous roads design report required further information regarding access and turning bays.

#### 3.2.3. Appropriate assessment screening: No potential for significant effects on Natura 2000 sites.

### 3.3. **Prescribed Bodies**

3.3.1. Water services – No report but correspondence submitted by applicant indicates connection can be facilitated subject to conditions.

#### 3.4. **Third Party Observations**

3.4.1. The Planning Authority received 6 submissions/observations in relation to the application. The issues raised concerns in regard to the following: flood risk, excessive density, impact upon local biodiversity, location of culverts relative to Beach Walk, traffic, , inadequate turning, site excludes treatment plant, lack of SUDs calculations, , overlooking, public water supply/pressure, over use of Seafield treatment plant - there are capacity issues with the public water supply during summer months., holiday only use, out of character, open space, housing policy, procedural.

### 4.0 **Planning History**

4.1. The Site:

4.1.1. An Bord Pleanála ref. 306591 refers to a refusal for the following stated reason for a similar housing development on the site and comprising a) 8 no. four bedroom detached two-storey dwellings with ancillary domestic storage sheds; (b) Connection to existing services including connection to foul water treatment plant, with associated pipe-work and engineering works; (c) Upgrading and improvement works to the existing access roadway to include vehicular access, footpaths, the laying of services and public lighting with ancillary works (d) Surface water drainage and associated attenuation systems (e) Hard and soft landscaping works including boundary treatments (f) Ancillary works.

Having regard to the documentation submitted with the planning application and the appeal, and specifically in the absence of a confirmed contractual relationship between the proposed development and the management and maintenance of suitable wastewater treatment facilities serving the proposed development, the Board is not satisfied that suitable wastewater treatment facilities will be available to and under the control of future owners/occupiers of the proposed dwellings. In this regard, it is considered that the proposed development would be contrary to objective WW05 of the Wexford County Development Plan 2013-2019 and would be

prejudicial to public health. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

In a note the Board stated that it noted the commentary relating to flood risk but concluded, based on the information submitted in the totality of the documentation including the Site Specific Flood Risk Assessment Report which incorporated a Justification Test, that refusal in this regard was unwarranted.

The planning authority had refused permission on grounds that the use of a shared private effluent treatment plant is not acceptable to the planning authority, the proposal to culvert the existing stream for a length of 130m is considered contrary to the protection of local biodiversity and there is potential for increased overspill flooding onto adjoining lands and overlooking. Inadequate information with regards to demonstrating evidence of an agreement from Irish Water for the proposed development to connect to the public water supply, lack of evidence of having obtained a legal right of way over the access lane and substandard turning bays.

## **5.0 Policy Context**

### **5.1. Wexford County Development Plan**

- 5.1.1. The Wexford County Development Plan 2013-2019 is the governing plan at the time of writing this report. The Draft Plan 2021-2027 has not yet been adopted.
- 5.1.2. As in the previous appeal the following sections remain relevant to housing developments in Ballymoney. Section 3.4.9 - Smaller Villages, Section 4.3 - Sustainable Rural Housing, Section 12.6 - Managing Flood Risk, Section 13.5 - Coastal Zone, Section 14.4.2 - Landscape Character Assessment: Coastal, Section 17.7 - Rural Design Guide, Section 18.12 - Rural housing, Section 18.8 – Accessibility, Section 18.29.3 – Sightlines, Section 18.29.7 - Car Parking Standards, Section 18.32 - On-site Wastewater Treatment facilities.
- 5.1.3. Objective WW05 refers to communal wastewater treatment plants. It is an objective to “consider the provision of communal private wastewater treatment facilities where appropriate to serve developments in Strong Villages, Smaller Villages and Rural Settlements only where it is demonstrated that the proposed wastewater treatment system will meet all the relevant environmental criteria of the EPA and the Planning

Authority and subject to complying with the provisions and objectives of the EU Water Framework Directive, relevant River Basin Management Plan, relevant Pollution Reduction Programmes for Shellfish Waters and the Habitats Directive. An annual renewed contract for the management and maintenance of the system contracted to a reputable company/person will be required: details of which shall be submitted to the Planning Authority.”

5.1.4. Submissions raised in preparation of the Draft Wexford County Development Plan 2021-2027

On the issue of private communal wastewater systems which was raised in submission WXF-C3-162, by Molloy, it is stated by the planning authority that it is considered that such infrastructure is not appropriate due to problems with ownership and maintenance. No amendment is recommended.

**5.2. Natural Heritage Designations**

5.3. The nearest Natura 2000 sites are;

- Kilpatrick Sandhills SAC (Site Code 001742) is located 6.2km to the northeast
- Slaney River Valley SAC (Site Code 000781) is located 8.3km to the west.
- Cahore Polders and Dunes SAC (Site Code 000700) is located 13.3km to the south.
- Cahore Marshes SPA (Site Code 004143) is located 13.4km to the south.

**5.4. EIA Screening**

5.4.1. An Environmental Impact Assessment Screening report was not submitted with the application.

Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,

- Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

5.4.2. It is proposed to construct 8 dwellings in rural village area. The number of dwellings proposed is well below the threshold of 500 dwelling units noted above. The site has an overall area of 0.89ha and is located could be classed as a suburban area but not in a business district. The site area is therefore well below the applicable threshold of 10 ha. The site is a green field but located between housing developments and a holiday complex and is a form of infill type development. The introduction of a small residential scheme will involve c. 60m of culverting of a stream that’s is partly culverted under the road at present an will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site (as discussed below).

5.4.3. The proposed development has a feasible connection to a public water supply. The proposal also involves connecting into an existing private communal wastewater treatment system outside the site and while there are concerns about the ongoing management of this facility as it is outside the direct control of the applicant and which has implications for public health, the proposed development is not of a scale that would warrant a full environmental impact report in addition to the information that has already been provided. The issue relates to a strategic matter of managing waste facilities that is more appropriately addressed within the wider parameters of proper planning and sustainable development as discussed below.

5.4.4. Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),



- The location of the site within the existing village area, which is partially served by public infrastructure, and the existing pattern of residential development in the vicinity,
- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended) and the mitigation measures proposed to ensure no connectivity to any sensitive location,
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development is not necessary in this case (See Preliminary Examination EIAR Screening Form).

## **6.0 The Appeal**

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

6.1.1. A first party appeal has been submitted by Brock McClure Planning and Development Consultants on behalf of the applicant Imelda Scully. The grounds of appeal are based on the following:

- The principle of what is described infill housing at this location accords with settlement strategy and this is supported by reference to the inference of the Board’s previous reason for refusal, which solely related to the contractual relationship between the proposed development and wastewater treatments facilities. This remains the issue before the Board.
- The Board is requested to consider the details of the contractual relationship now before it

- It is clarified that the applicant has always had a confirmed contractual relationship to connect to the plant but that the legal specifics were not submitted with the original application whereas this information has now been submitted but have it been it appears, dismissed by the planning authority.
- The reason for refusal has been addressed.

## 6.2. **Planning Authority Response**

6.2.1. No comment to make on appeal.

## 6.3. **Observation**

6.3.1. Sharon Murphy, 6 Beachwalk, Ballymoney has submitted an observation through her agent Gary Morris Chartered Surveyors. The following issues are of concern:

- Flood Risk particularly having regard to the relative ground levels of her property and with the attenuation pond and the design reliant on culvert maintenance. The accuracy of the Flood Risk Assessment is queried.
- The proposed development has not addressed foul water and public water
- The design of the scheme does not protect amenity and privacy and the proposed development would negatively impact upon residential amenity due to overlooking.
- Prematurity in context of legal proceedings
- Impact on other septic tanks
- Site boundary relative to proposed works.

## 7.0 **Assessment**

### 7.1. **Issues**

7.1.1. This appeal follows a previous case before the Board for substantially the same development . The substantive issue relates to the matter of effluent treatment and the proposed sharing of a wastewater treatment plant. Other issues raised by the observing party relate to flooding and residential amenity. The matter of appropriate assessment also requires consideration. I am satisfied that the development is otherwise acceptable as has been set in out the planning authority's assessment, in terms of quality of housing design and site layout in the context of national

guidance, the site characteristics and site context and the proposal does not require re-examination in this regard.

## **7.2. Effluent Treatment**

7.2.1. The applicant makes the case that the Board in its Direction in the previous case gave clear direction that the matter of contract details was the only substantive outstanding issue and that this has been addressed in the application but effectively disregarded by the planning authority. It is submitted that the Deed of Easement addresses the concerns of the Board. It is explained that a copy of the agreement and associated maps between the applicant (Imelda Scully) and other parties provides definitive evidence of the right to run services and connect to the existing treatment plant on the Seafield Estate. The Deed of Easement is cited and the Granted Easements are stated to be:

“Full right and liberty for the Owners and the owners and occupiers for the time being of the site and as appurtenant to the site:

- 1) At all times by day and by night for the purpose of the use of the site with the dwelling house thereon for the purpose of a single private residence and with or without horses, carts, motor cars and motor lorries and all other manner of vehicles ... to go pass and repass over and along Access Road A and Access Road B leading from and to any part of the site to and from the public road and over the Commons area.
- 2) The free and uninterrupted passage and running of the services from the treatment centre and to the site and/or the development through the utilities which now are or may at any time within the perpetuity period be in under passing through coming from and leading to the development, or any part thereof, from or to the treatment centre.
- 3) The right to connect up with the utilities and the treatment centre and to cleanse repair and renew the utilities which now are in, under or passing through the development and to cleanse repair and renew the same and for the aforementioned proposes to enter upon the development with workman and others and all necessary equipment making good any damage thereby occasioned but not being responsible for any temporary inconvenience caused by any such works. ”

- 7.2.2. It is accordingly submitted that the subject development has full legal rights to connect and avail of the Seafield Estate Wastewater Treatment Plant. It is submitted that such an agreement proves that suitable facilities will be available to future occupants and therefore overcomes the previous sole reason for refusal.
- 7.2.3. The planning authority states however that the proposal is premature pending the outcome of legal proceedings regarding the operation and management of the existing Wastewater Treatment System serving the Seafield development and to which the applicant seeks to discharge. However in its reason for refusal the issues centre on the principle of additional loading on a system and possibility of system failure which is outside the control of the applicant and outside the site. This has implications for water quality and public health. The ongoing management is the underlying cause of concern particularly as it is unlikely to be taken charge by a public body such as Irish Water.
- 7.2.4. The applicant has submitted a wastewater treatment and effluent disposal system report "Discharge to Ground from Housing Development in Seafield, Co. Wexford" by Tobin Consulting engineers ( appended to the application) which supports the case that in terms of the design of the treatment system, it has capacity to cater for additional loading. The report explains this by reference to the characteristics of the system and the receiving environment and notably refers to the upgrades in the system which have been carried out since the last application. The context of the current enforcement proceedings is also explained in so far as the applicant has met with the county council technical representatives and addressed concerns.
- 7.2.5. I have read the contents of the attached history file and note that the issue of capacity was addressed by the applicant but there nevertheless remains outstanding enforcement issues regarding the operation of the treatment plant. Accordingly, the planning authority remains of the view that the reason for refusal still stands notwithstanding the claims of adequately addressing the enforcement issues.
- 7.2.6. The resolution of the enforcement issues remains a matter of dispute. I note the report of the environment section states that there is current court action in regard to the operation and management of this system . In addition it is stated that it is believed that there is no existing Discharge License to Waters under the Local Government Water Pollution Acts 1977-1990 as amended for the development. In

such circumstances the environment section remains of the view that the application is premature. To increase loading on a system, the satisfactory operation of which is in dispute, is, I consider, an unacceptable situation and I therefore concur with the planning authority that it is reasonable to refuse permission on this basis.

Notwithstanding, the resolution of the enforcement matters, in my judgement, the issue of long term management remains.

7.2.7. I consider the issue centres on the ongoing management and operation more so than the technical capacity and operational issues and this is perhaps evidenced by the complexity of a multiple party contract arrangements, some of whom are representative of a limited company - a commercial entity. In this case, not only does the applicant not own the treatment plant but is reliant on a limited company that may cease to trade or exist, for the provision of essential for sanitary services . It is my understanding that the treatment plant presently serves a seasonal holiday and recreational facility and while there are holiday houses on the site they appear to be not permanently occupied and are not typical domestic dwellings. In the event of the company ceasing to trade I can understand how the planning authority would be faced with unsatisfactory arrangements. It is the view of the planning authority for example, that Irish Water for example would be unlikely to take the plant in charge. It is I consider, not practical to allow dwelling houses for permanent occupancy to depend on a seasonal commercial entity for its continued sanitary waste management and treatment. The arrangement is further weakened by the exclusion of the system from the development site. While I note the housing is otherwise generally acceptable in terms of location, I consider the arrangement for effluent treatment and disposal to be contrary to proper planning and sustainable development.

7.2.8. I accept that objective WW05 provides for consideration of communal wastewater treatment plants in a village location such as may be applicable in this case, but only where it is demonstrated that the proposed wastewater treatment system will meet all the relevant environmental criteria of the EPA and the Planning Authority and subject to complying with the provisions and objectives of the EU Water Framework Directive, relevant River Basin Management Plan, relevant Pollution Reduction Programmes for Shellfish Waters and the Habitats Directive. An annual renewed

contract for the management and maintenance of the system contracted to a reputable company/person is also required.

- 7.2.9. The treatment system presently serves a single commercial operation but which extends to include multiple units and is a type a communal wastewater treatment plant and so the addition of multiple private dwellings amounts to effectively a conglomerate of hybrid communities intended to be served by the same treatment plant. While I accept that the engineering report demonstrates the potential for sufficient capacity and treatment, there appears to be issues with monitoring and enforcing of standards as evidenced by the enforcement proceedings. In the absence of support of the planning authority for such a system I do consider there is sufficient basis to permit the proposed waste treatment arrangement.
- 7.2.10. Accordingly, I conclude that the absence of a standalone on-site wastewater treatment plant to serve the proposed development is unacceptable from a public health perspective.

### **7.3. Design and residential amenity**

- 7.3.1. The issue of overlooking and loss of privacy has been raised by the third parties in the application and in the observations on the appeal. This was also an issue in the previous case in that the Planning Authority had concerns in relation to the design of the scheme specifically having regard to potential overlooking of neighbouring properties from proposed balconies and opposing first floor windows. In this case, as compared to the previous proposal, the balconies have been repositioned in house types A, B and B1 and removed from the other houses so as to avoid overlooking. They have for example been relocated to the southern elevations in the revised designs where the houses are positioned to back onto the open space/golf course and are at right angles to the rear elevations of the Beach Walk houses to the south east.. I accept that the separation distances are sufficient and that overlooking is not a significant issue in this case.

### **7.4. Flooding and Culverting of Stream**

- 7.4.1. The observing party has raised the issue of flooding risk and also refers to concerns about culverting of the stream and impacts in the area. the submitted Site Specific Flood Risk Assessment has been prepared by consulting engineers for the applicant. In regard to the culverting arrangements, I note that the proposed culvert of 63m is

kept to a minimum so as to cross the access roads and that it is otherwise to be maintained as an open channel.

- 7.4.2. In terms of flood risk the report identifies that part of the site falls within Flood Zone A and B and that a Justification Test is required in accordance with "The Planning System and Flood risk Management Guidelines" 2009. The FRA contains detailed modelling and concludes that the risk of flooding is low. It is also highlighted that the risk of flooding arising from the culvert is minimal but nevertheless recommends that the existing and proposed culverts be upgraded to 2 no. 900mm diameter surface water piping - details of which are included in the drawings. Accordingly in so far as the site is located within a smaller village and the development will not increase the risk of flooding the proposed development is considered to comply the guidance requirements.
- 7.4.3. I note in the Board's direction in the previous case and the inspector's recommendation to refuse permission on the basis of flood risk that Board stated that it noted the commentary relating to flood risk but concluded, based on the information submitted in the totality of the documentation including the Site Specific Flood Risk Assessment Report which incorporated a Justification Test, that refusal in this regard was unwarranted.
- 7.4.4. Having regard to this standpoint and that there does not appear to be any substantive change in circumstances to warrant a revision of the previous conclusions in this regard I do not consider a refusal of permission on this basis of flood risk to be reasonable. I would however comment that while the Planning Authority had raised previous concerns regarding the potential for increased overspill flooding onto adjoining lands and this is considered to be satisfactorily addressed I consider that in the event of permission a condition requiring adequate SUDs should be incorporated to ensure to control surface water run-off. This would I consider require the omission of the house at site 6 at a low point alongside the stream (culvert outflow) and where it is marked as 'indicative ponding' (in the consultant's report) so as to provide an attenuation area for the development. This could also be landscaped as open space.

## 7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development in partially serviced area and in the absence of any pathway to any European site in the wider area, no appropriate assessment issues arise, and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

## 8.0 Recommendation

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

## 9.0 Reasons and Considerations

Having regard to the documentation submitted with the planning application and the appeal, and the exclusion of a suitable wastewater treatment system from the development site and the proposal to connect to and rely on a commercial establishment, the Board is not satisfied that suitable wastewater treatment facilities will be available to and under the control of future owners/occupiers of the proposed dwellings at all times. In this regard, it is considered that the proposed development would be piecemeal and contrary to objective WW05 of the Wexford County Development Plan 2013-2019 and would be prejudicial to public health. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Suzanne Kehely

Senior Planning Inspector

6<sup>th</sup> July 2021