



An
Bord
Pleanála

Inspector's Report ABP309334-21

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| Development | House and WWTP. |
| Location | Manger, Stratford, County Wicklow. |
| Planning Authority | Wicklow County Council |
| Planning Authority Reg. Ref. | 20/829 |
| Applicant(s) | Richard and Kellie Curran. |
| Type of Application | Permission |
| Planning Authority Decision | Refuse permission |
| Type of Appeal | First Party |
| Appellant(s) | Richard and Kellie Curran. |
| Observer(s) | None. |
| Date of Site Inspection | 12 th June 2021 |
| Inspector | Hugh Mannion |

1.0 Site Location and Description

1.1. The site has a stated area of 0.37ha and comprises part of a pasture field at Manger, Stratford, County Wicklow. The roadside boundary comprises a sod bank topped by a substantial hedge. The site slopes away from the road and the submitted sections indicate cut and fill within the site to accommodate the house. The area comprises the south-eastern slopes of a local highpoint (Ballyhook Hill) and overlooks the Slaney River valley. The river runs north-east to south-west in the immediate area and generally parallel to the N81. Stratford is a small village about a kilometre from the site. Blessington is about 20kmns to the north and Baltinglass is about 7 kms to the south.

2.0 Proposed Development

2.1. The proposed development comprises the erection of a bungalow with a domestic wastewater treatment system at Manger, Stratford, County Wicklow.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission.

1. The proposed development is located in the Baltinglass Hills Area of High Amenity. Section 4.4 of the County Development Plan requires that the scenic amenity, recreational utility and existing character of the area be protected and that views of special amenity value be preserved. The planning authority's objective is to encourage further housing growth into existing settlements and the applicants do not come within the exemption for rural housing set out in HD23 of the County Development Plan.
2. The proposed development would endanger public safety by reason of traffic hazard.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The planner's report recommended refusal as set out in the manager's order.

3.2.3. Other Technical Reports

The **Environment Section** reported that the site is suitable for the disposal of domestic effluent.

The **Area Engineer** reported that the applicant should be required to demonstrate 80m sightline in both directions from the access point.

3.3. Submissions.

An Taisce stated that proposed development conflicted with objective 19 in the NPF, that the proposed development would negatively impact on ground and surface water and the proposed development would contribute further to a pattern of dispersed rural housing development.

4.0 Planning History

Under 09/136 permission was granted for a house on this site.

Under 18/1061 permission was refused for a house on this site.

5.0 Policy and Context

5.1. National Planning Framework

5.2. Objective 19

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. Sustainable Rural Housing Guidelines.

5.4. **The Sustainable Rural Housing Guidelines** (DOEHLG 2005) require planning authorities in addressing demand for rural housing to distinguish between rural generated housing need and urban generated housing need. Rural generated housing needs should, generally, arise from demonstrable connections to the site, to rural based occupations and/or relationship with the landowners. The Guidelines include an indicative map which distinguishes between rural area types. The application site is in an area designated as 'under strong urban influence' where the Guidelines have identified areas as being under pressure for housing development due to proximity to larger cities and towns.

5.5. Development Plan

5.6. 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.

5.7. Residential development will be considered in the countryside in the following circumstances:

1. A permanent native resident seeking to build a house for his / her own family and not as speculation. A permanent native resident shall be a person who has resided in a rural area in County Wicklow for at least 10 years in total (including permanent native residents of levels 8 and 9), or resided in the rural area for at least 10 years in total prior to the application for planning permission.
2. A son or daughter, or niece/nephew considered to merit the same position as a son/daughter within the law (i.e. when the uncle/aunt has no children of his/her own), of a permanent native resident of a rural area, who can demonstrate a definable social or economic need to live in the area in which the proposal relates and not as speculation.

3. A son or daughter, or niece/nephew considered to merit the same position as a son/daughter within the law (i.e. when the uncle/aunt has no children of his/her own), of a permanent native resident of a rural area, whose place of employment is outside of the immediate environs of the local rural area to which the application relates and who can demonstrate a definable social or economic need to live in the area to which the proposal relates and not as speculation.
4. Replacing a farm dwelling for the needs of a farming family, not as speculation. If suitable the old dwelling may be let for short term tourist letting and this shall be tied to the existing owner of the new farm dwelling were it is considered appropriate and subject to the proper planning and development of the area.
5. A person whose principal occupation is in agriculture and can demonstrate that the nature of the agricultural employment is sufficient to support full time or significant part time occupation.
6. An immediate family member (i.e. son or daughter) of a person described in 5, who is occupied in agriculture and can demonstrate that the nature of the agricultural employment is sufficient to support full time or significant part time occupation.
7. A person whose principal occupation is in a rural resource based activity (i.e. agriculture, forestry, mariculture, agri-tourism etc.) can demonstrate a need to live in a rural area in order to carry out their occupation. The Planning Authority will strictly require any applicant to show that there is a particular aspect or characteristic of their employment that requires them to live in that rural area, as opposed to a local settlement.
8. A close relative who has inherited, either as a gift or on death, an agricultural holding or site for his/her own purposes and not for speculation and who can demonstrate a definable social and / or economic need to live in the area to which the proposal relates.
9. The son or daughter of a landowner who has inherited a site for the purpose of building a one off rural house and where the land has been in family

ownership as at 11th October 2004 for at least 10 years prior to the application for planning permission and not as speculation.

10. An emigrant who qualifies a permanent native resident, returning to a rural area in County Wicklow, seeking to build a house for his/her own use not as speculation.
11. Persons whose work is intrinsically linked to the rural area and who can prove a definable social or economic need to live in the rural area
12. A permanent native resident that previously owned a home and is no longer in possession of that home (for example their previous home having been disposed of following legal separation / divorce / repossession, the transfer of a home attached to a farm to a family member or the past sale of a home following emigration) and can demonstrate a social or economic need for a new home in the rural area.
13. Permanent native residents of moderate and small growth towns, seeking to build a house in their native town or village within the 60kph / 40mph speed limit on the non-national radial roads, for their own use and not as speculation as of 11th October 2004.
14. A person whose business requires them to reside in the rural area and who can demonstrate the adequacy of the business proposals and the capacity of the business to support them full time.
15. Permanent native residents of the rural area who require a new purpose built specially adapted house due to a verified medical condition and who can show that their existing home cannot be adapted to meet their particular needs.
16. Persons who were permanent native residents of a rural area but due to the expansion of an adjacent town / village, the family home place is now located within the development boundary of the town / village. In the event of conflict of any other settlement strategy objective / Landscape Zones and categories, a person who qualifies under policy HD23 their needs shall be supreme, except where the proposed development would be a likely traffic hazard or public health hazard.

17. With regard to the preservation of views and prospects, due consideration shall be given to those listed within the area of the National Park; and with respect to all other areas, to generally regard the amenity matters, but not to the exclusion of social and economic matters. The protection and conservation of views and prospects should not give rise to the prohibition of development, but development should be designed and located to minimise impact.

NH51 To resist development that would significantly or unnecessarily alter the natural landscape and topography, including land infilling / reclamation projects or projects involving significant landscape remodelling, unless it can be demonstrated that the development would enhance the landscape and / or not give rise to adverse impacts.

SS4 (in chapter 3 - The Settlement Strategy) To require new housing development to locate on designated housing land within the boundaries of settlements, in accordance with the development policies for the settlement.

SS7 To strengthen the established structure of villages and smaller settlements both to support local economies and to accommodate additional population in a way that supports the viability of local infrastructure, businesses and services, such as schools and water services.

5.8. **Natural Heritage Designations**

Not relevant

5.9. **EIA Screening**

5.10. Having regard to the modest scale of the proposed development the need for submission of an EIAR and carrying out of EIA can be discounted at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

- The planning authority have incorrectly interpreted the County Development Plan.
- The planning authority have not had proper regard to Article 45 of the EU Charter of Fundamental Rights.
- The application should properly be considered to fall into the category set out in Development Plan objective HD23 since the applicant is a permanent resident of the County seeking to build a family home.
- The definition of permanent resident in the Plan is a person who has lived in a rural area for 10 years. The applicant's family home is in The Banks, Manor Kilbride, County Wicklow.
- A nearby sites in similar circumstances have benefited from grants of planning permission.
- Both applicants have strong sporting and youth work links to the area.
- The applicants' existing home in Stratford is inadequate to accommodate a growing family.
- An amended site layout is submitted which addresses the traffic issue.

6.2. Planning Authority Response

- None.

6.3. Observations

- None

7.0 Assessment

7.1. Rural Housing Policy.

- 7.2. The application site is located in an area designated under strong urban influence in the NSS Rural Area Types Map. Such areas are described as being proximate to or within commuting distance of large cities and towns and under strong development pressure with demands on infrastructure and local road networks. The NPF (objective 19) states that the provision of single houses in such areas should be 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. The County Development Plan requires that new houses be located within the development boundary of existing villages and settlements which will allow for the more economic provision of public services and facilities. The Sustainable Rural Housing Guidelines rely on distinguishing between urban generated housing need and housing need generated in rural areas. The Wicklow County Development Plan provides a number of categories of persons who may qualify to be considered for rural housing where a housing need arises.
- 7.3. In the present case the applicants make the point that they have sporting and family links to the area and that they live in a nearby village but find that their existing home is inadequate to meet their accommodation needs. Objective HD23 in the development plan states that new rural housing 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. I do not consider that the factors set out in the application and appeal meet the test for a definable social or economic need to live in the open countryside as set out in the County development Plan, the test for rural generated housing need as distinguished in the Sustainable Rural Housing Guidelines or that of demonstrable social or economic need to live in the countryside set by the NPF. The appeal makes the point that consideration of the application should have regard to the provisions of Article 45 of the EU Charter of Fundamental Rights. Article 45 refers to the rights of EU citizens to free movement and residence in the territories of member states. I consider that the national and local policy provisions in relation to

rural housing, and the planning authority's decision in this case, do not conflict with right to freedom of movement.

7.4. I conclude therefore that the proposed development does not arise from a rural generated housing need, that it would materially contravene objective HD 23 in relation to rural housing and objective SS4 of the Settlement Strategy set out in the County Development Plan to require new housing development to locate on designated land within the boundaries of settlements, in accordance with the development policies for the settlement.

7.5. **Landscape Impacts.**

7.6. Table 10.4 in the County Development Plan sets out a scheme of landscape categories. The application site is within an "Area of High Amenity" which includes the Baltinglass Hills. This area is described as "the rolling undulating terrain of the hills around Baltinglass, characterised by the existence of important archaeological remains and monuments. This area is of significant heritage value while also forming a key tourist attraction within this area". Objective 51 seeks to resist development which would significantly or unnecessarily alter such landscapes.

7.7. The application site is located on the south-eastern slope of a local high point (Ballyhook Hill) which overlooks the Slaney river valley to the south and east. The landscape is designated high amenity which is the third/middle designation in a 5-point landscape category rating set out in table 10.4. Objective NH51 in the County Development Plan seeks to resist development that would significantly or unnecessarily alter the natural landscape and topography, including land infilling / reclamation projects or projects involving significant landscape remodelling, unless it can be demonstrated that the development would enhance the landscape and / or not give rise to adverse impacts. The section through the site (drawing 002B5) submitted with the application demonstrates that a significant element of cut and fill is required within the site to accommodate the proposed development. The Rural Housing Guidelines (appendix 2) makes the point that careful siting and design are central to sensitive development in the landscape and that proposals for rural housing should be assessed for landscape impact and the avoidance of unacceptable visual intrusion.

7.8. I conclude that the proposed development, located as it is over a public road along a sensitive river valley and requiring significant cut and fill and removal of a roadside hedge would give rise to an unacceptable level of landscape impact in a sensitive area and would materially contravene the Development Plan objective in relation to the protection of 'area of high amenity'.

7.9. Traffic Hazard.

7.10. The application site is on rising ground overlooking River Slaney valley to the south and east. The road is single carriageway without a median line, footpath, cycle path or public lighting and the speed limit in the area would be 80kph. The roadside boundary comprises a sod bank topped by a hedge. There is an existing agricultural access to the site off the public road at the site's north-eastern end. The planning authority's engineering advice was that this was unsatisfactory from a traffic safety perspective. The applicant submitted an amended drawing with the appeal which it is stated provides the required 80m sightlines.

7.11. Given the closeness of the bank/hedge to the inner edge of the public road I consider that the entire bank and hedge would have to be removed to accommodate the proposed sightlines and that some bank/hedge removal works would require encroachment on lands outside the application site which the application has not demonstrated are within control of the applicant. The Sustainable Rural Housing Guidelines make the point (paragraph 4.4) that it is vitally important that new housing in rural areas that is located along non-national routes is located in such a manner as to avoid endangering public safety by reason of traffic hazard.

7.12. In general I consider that the road network in the area is inadequate to accommodate additional traffic turning movements unrelated to a demonstrated need for additional rural housing, and having regard to the inadequate width of the road, lack of footpaths, lighting, pedestrian crossings and notwithstanding the amended access point layout submitted with the appeal I conclude that the proposed development would endanger public safety by reason of traffic hazard.

8.0 Recommendation

8.1. I recommend refusal.

9.0 Reasons and Considerations

1. Having regard to the location of the site within an 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 in an area where housing is restricted to persons demonstrating local need in accordance with the current Wicklow County Development Plan, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines 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, therefore, be contrary to the proper planning and sustainable development of the area.
2. The site of the proposed development is located in an area designated as an Area of High Amenity in the current Wicklow Development Plan for the area. It is an objective of the planning authority as expressed in the Development Plan, to resist development that would significantly or unnecessarily alter the natural landscape and topography. This objective is considered reasonable. The proposed development, which would require significant alteration to the topography of the site and loss of a significant hedgerow in the Slaney River valley would contravene materially that objective indicated in the Development Plan, and the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. The site is located on a minor road which is seriously substandard in terms of width and alignment, is without a median line, footpaths or public lighting and where sightlines are inadequate. The additional traffic turning movement

generated by the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users.

Hugh Mannion
Senior Planning Inspector

14th June 2021