



An
Bord
Pleanála

Inspector's Report ABP-309682-21.

Development

Retain mobile home, biocrete wastewater treatment system and all associated site works including bored well. Permission for erection of a serviced dwellinghouse and domestic garage and store and for installation of a tertiary level polishing filter and all site works.

Location

Oulartleigh, Ballyhuskard, Glenbrien, Enniscorthy, Co. Wexford.

Planning Authority

Wexford County Council.

Planning Authority Reg. Ref.

20201583.

Applicants

Thomas and Sarah Yennusick.

Type of Application

Permission.

Planning Authority Decision

Refuse permission

Type of Appeal

First Party

Appellant

Thomas and Sarah Yennusick

Observer

None.

Date of Site Inspection

7 May 2021.

Inspector

Mairead Kenny.

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1.0 Site Location and Description

- 1.1. The site is located in a rural area about 5 kilometers from the town of Enniscorthy and a similar distance from a junction with the M11 motorway. The site is situated adjacent to a short private lane which is a cul-de-sac serving a stud farm and other lands.
- 1.2. Close to the junction of the private lane and the local road is a grouping of about 12 houses the majority of which would appear to have been constructed in recent decades. At the junction itself is a farmhouse and outbuildings of vernacular design.
- 1.3. The subject site is on the opposite side of the lane to the stud farm. It comprises a 0.3 ha plot of land, one of 4 no. such sites at this location. A house is currently under construction on one of the plots. The subject site is separated from the construction site by a vacant plot of land.
- 1.4. The site is of regular shape and has been partially developed by way of the installation of an entrance and gates, deep drains around the site boundary, a well, a storage container and a Biocrete wastewater treatment unit. The applicant family is resident on site in a large mobile home.

2.0 Proposed Development

- 2.1. Permission is sought to retain the double sized mobile home, biocrete wastewater treatment system and all associated site works including bored well. Site works undertaken include a vehicular entrance and gate. In addition, at either side of the site and to the rear drainage channels have been put in place.
- 2.2. Permission is sought for the erection of a serviced dwellinghouse and domestic garage and store and for installation of a tertiary level polishing filter and all site works.
- 2.3. The stated area of the proposed dwelling house is 183m² and of the garage is 32m².
- 2.4. The house design proposed is two-storey house and external finishes include a plaster finish and selected slate roof.
- 2.5. The application drawings include the site plan which shows the location of the house under construction to the west of the site.

2.6. A 65m sightline is shown at the site entrance and also where the private lane meets the nearby county road.

2.7. Documentation attached with the planning application includes:

- A number of documents which refer to the background of the applicant family including the background in a farming community and relating to the medical circumstances of their children. Due to their circumstances of the children they need outdoor space and the stability of a permanent home. I refer the Board to the full suite of documentation presented for further detail.
- The background to the housing circumstances as tenants under the RAS scheme since 2008 is outlined.
- The family of 7 now resides on the site which was purchased in April 2019 and previously lived in county Wicklow.
- The children all attend the local school as indicated in supporting documentation.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to refuse permission for two reasons which are summarised below:

- The applicant is neither classified as a 'local rural person' or from the 'local rural area' and do not comply with the policy cited. In the absence of identified definable need to the proposed development would contribute to random rural development and militate against the preservation of the rural environment and efficient provision of public services and infrastructure and be contrary to objective RH01 of the development plan.
- There is evidence of failed drainage conditions on site with the underlying subsoil potentially not capable of hydraulically disposing of the effluent generated by the proposed development with the potential result that the proposed development could give rise to a health hazard.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The planning report dated 16 February 2021 was written by the assistant and senior executive planner and countersigned by the senior planner.

3.2.3. Amongst the points made in the 16-page report are:

- The applicants were verbally advised during pre-application consultation that they may find it difficult to demonstrate local need and linkage.
- The outlined planning history includes a refusal of permission under reference 2019 1540 at this site for a garage and other development.
- The report of the senior executive scientist (environment) and the recommendation to refuse permission are quoted.
- The applicant has corresponded with the CEO outlining emergency health circumstances and work undertaken to bring the site to a suitable standard.
- None of the works undertaken have the benefit of planning permission.
- The site is in an Area Under Strong Urban influence and requirements include linkage/need and occupancy and permanent residency conditions apply. Objective RH01 refers.
- A detailed summary of the applicants circumstances is set out in the information provided with respect to land registry, education and medical needs described.
- Notwithstanding the significant submission outlining a housing need and including enrolment and attendance in local schools and their interest in the site the applicants do not meet the criteria of 'local people' as they are not from the area, nor have they lived in the area for sustained or unbroken period of time greater than five years nor do they require to live on the specific site for agricultural purposes and hence do not have a 'local need'.
- The development would be contrary to national guidance, the NPF and the development plan.

- The house design is satisfactory and the siting broadly in keeping with the surrounding pattern of development. There are no issues with respect to residential amenity. The required 65 m site line can be achieved in both directions. The shared laneway is of adequate width.
- As noted in the environment section report the proposed development could give rise to a health hazard.
- Permission should be refused.

3.2.4. Other Technical Reports

Environment Section:

- There is a pluvial flood zone within the site on the southern side but not within the location of the proposed polishing filter.
- There is evidence of failed drainage conditions with the underlying subsoil potentially not capable of hydraulically disposing of the effluent generated by the proposed development. The proposed development could give rise to a public health hazard.

The Acting Chief Fire Officer set out requirements relating to fire safety.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

- 3.4.1. A letter submitted on behalf of the adjacent landowner noted the planning history on the site and the subsequent opening up of a new entrance and installation of two mobile homes. The objection referred to the services which appear to be installed including the wastewater treatment plant. The site was stated to be not capable of treating on-site sewage. The site was described as being in an Area of Strong Urban Influence and the applicants do not meet local need criteria.
- 3.4.2. The applicant made an observation which outlined correspondence with the CEO of Wexford County Council outlining the work undertaken to bring the site to a suitable standard and an email sent explaining emergency health circumstances.

4.0 Planning History

Nearby site

- 4.1.1. Under ABP-306618-20 the Board refused permission to retain a residential unit and septic tank and for permission to install an EPA compliant percolation area.
- 4.1.2. The reasons for refusal related to public health, ad hoc piecemeal development and design and layout.

On site

- 4.1.3. Reg ref 20191540 refers to a decision of Wexford County Council to refuse permission on 17 January 2020 for an application at the site of the current application for permission to develop new garage, new boundary wall, entrance gates and wing walls and associated site works. The reason for refusal referred to the absence of the proposed use indicated in the inadequate information which meant that the planning authority was not able to assess the potential acceptability or otherwise of the proposal.
- 4.1.4. A second reason for refusal referred to the absence of details regarding legal rights to use the lane and to undertake upgrades to its condition and alignment.

5.0 Policy Context

5.1. National policy

National Planning Framework, 2018

- 5.1.1. Under National Policy Objective 19 it is policy to facilitate the provision of single housing in the countryside based on the core consideration of a demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements.

Sustainable Rural Housing Guidelines for Planning Authorities, 2005

- 5.1.2. The document sets limits for urban generated housing. It sets out guidance to ensure that where rural housing is permitted there will be minimum impacts on the environment.

5.2. Development Plan

- 5.2.1. Under the **Wexford County Development Plan 2013-2019** in 'Areas under Strong Urban Influence' objective RH01 is to facilitate the development of individual houses in the open countryside in accordance with criteria set down in table 12 subject to compliance with the normal planning and environmental criteria and the development management standards. In such areas housing for local rural people building permanent residences for their own use who have a definable housing need and are building in their local rural area is permitted. The local rural areas defined as within a 7 km radius of where the applicant has lived. It is stated also that a housing need is generally a reference to people who have never owned a rural house.
- 5.2.2. The Draft County Development Plan has not yet been finalised.

5.3. Natural Heritage Designations

- 5.3.1. The following European sites and Natural Heritage Areas are in the general area:
- The Slaney River Valley Special Area of Conservation (Site Code: 000781), approximately 6km to the west of the site.
 - The Slaney River Valley Proposed Natural Heritage Area (Site Code: 000781), approximately 6km to the west of the site.
 - The Wexford Harbour and Slobbs Special Protection Area (Site Code: 004076), approximately 6km to the west of the site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the development proposed, the location of the site outside of any protected site and the nature of the receiving environment, the habitat and low level ecological value of the lands and the separation distance from the nearest sensitive location, 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 main points of the first-party appeal include:

- The planning authority failed to consider the extenuating circumstances in this application. The applicants have demonstrated a social requirement for housing needs in an area of urban influence and have detailed their experience of near homelessness.
- The applicants have established a social requirement to live in this specific area in keeping with NPO 19. They do not and have never owned their own home and are subjected to the risk of homelessness.
- The planning authority has failed to clarify how Table 12 and Policy RH01 would be assessed. Table 12 refers to housing for people with exceptional health and/or family circumstances building permanent residences for their own use, which is further defined in terms of the requirement for relevant documentation which proves that a person needs to live in a particular environment or close to family support requires a close family member to live in close proximity.
- The health circumstances include autistics spectrum disorder and the site was specifically chosen because it is the best place for our children.
- The drainage channels have been draining the site. There is good drainage on the site, and it is capable of draining water from the site, which has been significantly improved by the installed drains.
- The applicants have installed the best treatment system on the site. It is a high-tech system and the best possible to provide.

6.2. Planning Authority Response

The planning authority in response reaffirms its position.

6.3. Observations

- None.

7.0 Assessment

7.1. I consider that the main issues in this case relate to :

- Compliance with the development plan and national policy provisions.
- The suitability of the site for wastewater treatment.
- Other issues.

7.2. Policy

7.2.1. Having regard to the pattern of development in the area, the designation of the area in which the site is located as an Area under Strong Urban Influence is clearly justifiable. In the immediate vicinity at the nearby county road is one cluster of about a dozen houses and close by are other similar settlement patterns. I would consider that there is substantial evidence to indicate that this area is under considerable development pressure.

7.2.2. The provisions under RH01 are the most relevant local policy provision. The general thrust of this policy is on the one hand to facilitate local housing needs subject to certain criteria but on the other hand to direct other individuals towards villages and settlements. This policy type is well established and in keeping with the principles set out under the Sustainable Rural Housing Guidelines. More recent national policy provision emanates from the NPF and also has similar requirements.

7.2.3. The criteria set down in the development plan under table 12 permits housing for 'local rural people' who have a definable 'housing need' building in their 'local rural area'. The applicant family does not meet these by reason of being recently resident in the county and not complying with other outlined circumstances. However, table 12 also provides for special consideration to be given in cases of exceptional health circumstances supported by relevant documentation. It is this matter which is at the heart of the grounds of the appeal. I quote from the relevant section below:

Special consideration shall be given in cases of exceptional health circumstances – supported by relevant documentation from a medical practitioner proving that a *person needs to live in a particular environment* or close to family support, or requires a close family member to live in close proximity to that person. In cases where an applicant needs to reside near elderly parents so as to provide security, support and care, or where elderly parent(s) need to reside near an immediate family member favourable consideration will also be given. Similar consideration will be given to a relative of an elderly person who has no children.

The Board will note the phrase which I have emphasised in italics. This in my opinion is the only criteria which might be relevant to the applicant circumstances and if the board considers that the criteria are met, it would have considerable bearing on the first reason of the decision of the planning authority. The question is whether the need to reside in a particular environment is supported by the submitted facts. In this respect the first party submissions include reference to the benefits of outdoor space and the safety and security which can be provided on an enclosed gated site. Notwithstanding the stated benefits associated with living in this rural area, I am wholly unconvinced that this constitutes an actual need to live in the particular environment. I consider that it is not demonstrated that such benefits could not be achieved elsewhere away from an area under such significant development pressure or in a settlement in the locality. It is a high bar to demonstrate a need to live in a particular environment on the basis of exceptional health circumstances and in my opinion it is not met. I do not consider that this criteria or any of the other criteria in table 12 apply.

The Board may wish to consider the national policy provisions and I refer to the consideration under NPO 19 of the NPF to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need in Areas Under Urban influence. The appellant's case is that there is a social need including in the form of having housing need and recently being on the brink of homelessness. However, I consider that this provision should be interpreted with reference to whether or not there is a functional social or economic need to reside at this specific site having regard to the high level of development pressure in the area. Again, I find that there is no demonstrated need to reside at this specific location and

no functional social or economic need that could not be met at other locations under less pressure.

Having regard to my considerations above I consider that the proposed development is contrary to national and local policies. In my opinion the proposed development would contribute to the evident encroachment of random rural development in the area and militate against the preservation of the rural environment and the efficient provision of public services and infrastructure.

I recommend that the Board refuse permission as set out below.

7.3. **Wastewater treatment**

The second reason for refusal cited by the planning authority relates to potential public health concerns. The application documents include a letter from the supplier of the Biocrete unit which has been installed at the site. It certifies that the installed unit was last visited under warranty condition in December 2020 and that it was in good working order. The unit is covered under warranty conditions. An independent assessor engaged by the applicant noted that the unit is large , resulting in less frequent requirements for maintenance.

There is a well on site. I note that the application submissions also include a letter from Irish Water regarding a pre-connection enquiry which states that connection is feasible without an infrastructure upgrade.

The nub of the issue is related to the subsoil and its ability to convey treated wastewater in a manner which avoids ponding. It is noted in the site suitability assessment are that there are drainage issues with the material below the shallow topsoil and also that at 1.3m there is mottling and some perched water but the water table was not encountered at 1.7m. The recommended solution is to develop a raised tertiary sand filter with a large gravel distribution layer beneath. The subsoil is to be replaced over an area of 60m² and depth of 800mm. Extensive willow planting of 3m width around the sand filter is described as part of the design.

In my opinion it is clear from the extensive range of measures recommended that this site is inherently unsuitable for wastewater treatment. It requires complicated engineering and long-term maintenance of the Biocrete unit and the willow planting. Even if that were to be achieved, the issue raised by the planning authority is not

readily amenable to a solution, namely, how to disperse the treated effluent given the characteristics of the subsoil, some of which will be removed. I am of the opinion that there is considerable merit to the decision of the planning authority to refuse permission and I recommend that the Board uphold reason number two.

Other issues

I briefly reference a number of other issues which arise in relation to the suitability of the site and the proposed development overall.

Roads and traffic.

The position of the site along a private lane was raised during the pre-application consultations in relation to the right of way and the ability to maintain the lane. In addition to the application submission that demonstrated the benefit of a right of way it was noted that the condition and alignment of the lane are adequate, that a dust free surfaces in place and there are adequate sightlines available from the entrance of the site to the lane. The issue of the availability of sightlines at the junction of the lane with the public road is addressed on the site layout plan which shows 65m in both directions as measured from 1.7m from the road edge. Following site inspection, I do not consider that a refusal of permission for reasons of roads and traffic would be reasonable.

House Design and Siting

I consider that the subject two-storey house design is compatible with the emerging character in the area and note the ongoing construction nearby of a dwellinghouse of not dissimilar scale and character.

The siting of the house on a secluded private lane means that there are no widespread landscape impacts. The applicant proposes a screen planting around the site boundaries to consist of indigenous trees and shrubs. This proposal is suitable and would assist in landscape integration and biodiversity.

7.4. Appropriate Assessment:

- 7.4.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, I am satisfied that no appropriate assessment issues arise and that

the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

8.1. I recommend that permission be refused for the reasons and considerations below.

9.0 Reasons and Considerations

1. The Board considered the provisions of the Wexford County Development Plan 2013-2019 including the requirements of policy RH01 and the criteria in Table 12 and noted national policy as set out in National Policy Objective 19 of the National Planning Framework, to 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, having regard to the viability of smaller towns and rural settlements.

Having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicants have established a demonstrable economic or social need to live at this specific site in this rural area, which is under considerable development pressure.

The proposed development would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would be contrary to the overarching provisions of the National Planning Framework and to Policy RH01 of the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the low permeability of the subsoil and presence of mottling and perched water at 1.3m below ground level, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the site can be drained satisfactorily by means of a septic tank, notwithstanding the proposed use of a proprietary wastewater treatment

system and polishing filter. The proposed development would, therefore, be prejudicial to public health.

Mairead Kenny
Senior Planning Inspector

15 May 2021