



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309683-21

---

<b>Development</b>	Construction of bungalow, effluent treatment unit with discharge into public sewer and associated works, revised location of access point from public road to adjoining Cherrybrook premises.
<b>Location</b>	Kilmagig Upper, Avoca, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	20866
<b>Applicant(s)</b>	Patrick Ivers.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Patrick Ivers.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	7 <sup>th</sup> May 2021

**Inspector**

Sarah Lynch

# Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	4
3.3. Prescribed Bodies .....	5
3.4. Third Party Observations .....	5
4.0 Planning History.....	5
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations .....	7
6.0 The Appeal .....	7
6.1. Grounds of Appeal .....	7
6.2. Planning Authority Response .....	8
6.3. Observations .....	8
7.0 Assessment.....	8
8.0 Recommendation.....	12
9.0 Reasons and Considerations.....	12
10.0 Conditions .....	12

## **1.0 Site Location and Description**

1.1. The appeal site is located within the side garden/driveway of an existing dormer dwelling which is used as a B&B and is the applicants family home. The site is within the designated settlement boundary of Avoca. The site consists of 0.1 Ha, is infill in nature and located along a row of five dwellings which take access from, the Arklow Road (L-2180). To the rear of the site is a stream which runs westwards into the Avoca river running between the row of dwellings fronting onto the Arklow Road and the residential estates of Ballanagh Close and Ballanagh Crescent located to the rear of the site.

## **2.0 Proposed Development**

2.1. It is proposed to construct a single storey 3 bedroom dwelling.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Wicklow County Council determined to refuse permission for the following reasons:

1. The site of the proposed development is located in the town of Avoca where the existing wastewater treatment plant is already over capacity. It is considered that the proposed development would be premature by reference to the existing deficiency in the provision of sewerage facilities and the period within which these constraints may be reasonably be expected to cease. It is further considered that the proposal to provide on-site treatment with connection to the public sewer would be contrary to public health and would set an undesirable precedent for similar proposals in the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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

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

The planners report is consistent with the decision of the planning authority.

### 3.2.2. Other Technical Reports

- MD Engineer - No Objections subject to works to existing footpath being agreed.
- EHO - The installation of a wastewater treatment unit prior to disposal to the public sewer would not be considered standard practice.

The planner noted that the previous EHO Report and recommendation sought to refuse under 19/640.

### 3.3. Prescribed Bodies

- Irish Water – no objection, application will be subject to connection agreement, connections will be subject to the Irish Water capital investment Programme. All development to be carried out in compliance with Irish Water Standards codes and practices.

### 3.4. Third Party Observations

- None

## 4.0 Planning History

191640 - Patrick Ivers – Application for Dwelling withdrawn

18/808 - Patrick Ivers - Dwelling Refused for the following reasons:

1. Having regard to the location of the development within an area which has been identified as having a high probability of flooding or in the absence of Site Specific Flood Risk Assessment of the proposal, it is considered that the proposed development would be contrary to the provisions of "The Planning System and Flood Risk Management, Guidelines for Local Authorities 2009", would set an undesirable future precedent for similar types of development in the area, would be prejudicial to public health, and would be contrary to the proper planning and sustainable development of the area.
2. The site of the proposed development is located in the town of Avoca where the existing wastewater treatment plant is already over capacity. It is considered

that the proposed development would be premature by reference to the existing deficiency in the provision of sewerage facilities and the period within which these constraints may reasonably be expected to cease. The proposed development, therefore, would be contrary to the proper planning and sustainable development of the area.

01/5478 - Denis & Bernie Ivers - sunroom to side & extension to rear of existing house – granted.

89/5213 - Denis and Bernie Ivers - Dormer Bungalow - granted

## 5.0 Policy Context

### 5.1. Development Plan

Wicklow County Development Plan 2016-2022

Settlement Strategy: Level 6 - Rural Towns (Avoca) Zoning - Secondary Zone

- Section 4.3 - Key Housing Principles
- Section 4.4 - Housing Objectives: HD21- To implement the following housing occupancy controls:
  - Single house development Applicant / purchaser of any new home must be either a resident for at least 3 years duration in County Wicklow or in permanent employment for at least 3 years duration in County Wicklow prior to making of application / purchase of new house.
- Section 9.1- Roads and Transportation
- Section 9.2 - Water infrastructure and Flooding

Appendix 1: Development and Design Standards

Appendix 2: Design Guidelines for New Homes in Rural Wicklow

Avoca Town Plan Secondary Zone Vision: To provide for the sustainable development of a mix of uses including residential, employment, community and recreational uses that provide for the needs of the existing settlement and that allows for the future growth of the settlement.

Objectives:

- In existing residential areas, it shall be an objective of the Council to protect existing residential amenity and to provide for infill residential development at a density and design that reflects the established character of the area in which it is located.

Flood Risk Assessment 'Level 5 Mitigation Objective',

## 5.2. **Natural Heritage Designations**

Buckkronney-Brittias Dunes and Fen SAC is the nearest Natura 2000 site to the development site and is located c. 6.52 km to the east.

## 6.0 **The Appeal**

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

This is a first party appeal against Wicklow County Council's decision to refuse permission for the proposed dwelling. The appeal submission has been submitted by Patrick Ivers and is summarised as follows:

- The applicant states that he has been resident in America for 8 years and intends on coming home.
- Parents live in bungalow and applicant was to come home to assist with caring for his sibling.
- An outline of the planning history is provided.
- Irish water is satisfied that the connection is feasible, the proposed development would therefore not be premature.
- Environmental department stated they had no objections.
- The Council have granted planning permission for onsite treatment system and dwelling ref 19462 and an onsite wastewater treatment plant for 27 houses under ref 06/6851.
- The proposed development would therefore not create a precedent for similar development.

## 6.2. Planning Authority Response

- None

## 6.3. Observations

- None

## 7.0 Assessment

- 7.1. This is a first party appeal against Wicklow County Councils decision to refuse permission for a single dwelling and on site wastewater treatment system with connection to the mains sewer. The appeal site is located c. south east of Avoca within existing residential lands that are zoned for 'Secondary Development Use' where it is the objective of the Council to 'Protect existing residential amenity and to provide for infill residential development at a density and design that reflects the established character of the area in which it is located.' I note that Wicklow County Council refused the proposed development for one reason which was related to waste water discharge. I further note that no objections were made by the Council in relation to the design or siting of the proposed dwelling or the location of the proposed new entrance to serve the existing dwelling.
- 7.2. I have reviewed the plans and particulars submitted in the context of the Avoca Settlement Plan and consider that the proposed infill development is an effective and efficient use of developed land. The proposal will provide an additional dwelling at the edge of the village whereby residents can avail of local services on foot and easily access public transport. I consider therefore, that the proposed development supports the notion of compact development and is acceptable in principle. I further consider that the location of the new entrance which has adequate sight visibility in both direction is acceptable and does not pose a threat to the safety of road users.
- 7.3. I note that concerns were raised in previous applications in relation to flooding and further note from the information submitted that the site was subject to a mapping error which has now been resolved. Given the proximity of the proposed development to the existing watercourse to the rear I consider it prudent to request the applicant to



provide details of protective measures to protect the water quality of this stream during the construction stage.

- 7.4. Based on the foregoing I consider that the issues for consideration before the board relate to the reason for refusal and any issues that may arise in relation to Appropriate Assessment. I am satisfied that no other substantive issues arise.
- 7.5. It is of note that the development is located within appropriately zoned lands and can be easily accessed from the adjacent public road. The proposed development is single storey in height and does not impact on any neighbouring properties in any negative manner.

### **Wastewater**

- 7.6. The proposed development, as mentioned above, is located within the development boundary of Avoca whereby development connected to public wastewater mains are directed for treatment to the Avoca Wastewater Treatment Plant which is located in Ballanagh. I note from the Avoca Settlement Plan 2016-2022 that there are issues around access to the existing treatment plant and treatment process at the plant. I further note that Irish Water are seeking to resolve such issues. In the event that these issues are resolved it is stated within the settlement plan that there will be adequate capacity to serve existing zoned lands within Avoca.
- 7.7. It is contended by the applicant within the grounds of appeal, that Irish Water are the authority responsible for the wastewater infrastructure and have stated that they have no objection to the proposed development. The applicant has submitted correspondence in relation to his connection inquiry whereby it is stated by Irish Water that there is no objection to his proposed connection and on site arrangements. The applicant also refers to the formal response submitted to the Council in relation to their consultations, in which it is further stated by Irish Water that they have no objections to the connection proposed by the applicant.
- 7.8. Whilst I acknowledge the foregoing, it is important to properly examine the solution proposed in order to determine the potential for impacts to public health as cited within the reason for refusal.
- 7.9. The proposed development will involve the installation of a secondary treatment system within the garden area of the proposed dwelling. This secondary system will

be connected to the public wastewater network and will provide a level of treatment which will result in the removal of sludge and bacteria from entering the public network.

- 7.10. It is stated within the Site Suitability Report submitted with the application that effluent entering the public network will be treated to a high level in terms of sludge and bacteria removal. I note that such secondary treatment systems are commonly used and the processes involved are similar to those carried out within large scale wastewater treatment plants. As such Secondary treatment systems are known to be an effective manner of treatment.
- 7.11. As per the information submitted, the process involves the removal of solids at the first stage of treatment and the aeration of effluent to affect the treatment of bacteria within the second stage. Any residual solids present within the second chamber are removed and directed to the first stage of treatment. The first stage chambers where solids are retained require desludging on a periodic basis similar to the desludging of a standard septic tank. Such processes are carried out by a licenced contractor and can be adequately addressed by conditions.
- 7.12. The treatment process associated with secondary systems ensures that effluent is treated to a high level prior to discharge. The removal of solids ensures that effluent entering the public system contains no solid matter and therefore removes such loadings from the public network. Based on the information provided I consider that the proposal will only add additional treated fluids to the public network and will not increase the required treatment capacity of the network. It is important to note at this juncture that the proposed secondary treatment system is a contained unity that will connect directly to the public sewer with no discharge to ground, as such I have no concerns relating to any potential for impact to arise in relation to either the development site or the surrounding lands.
- 7.13. In this context I acknowledge the applicant's contentions in relation to the lack of objection from Irish Water to the development. I do, however, note that Irish Water state within their submission to the Council, that a connection agreement is to be made and that their submission is only reflective of the situation at the time of inquiry. In this regard, I draw the Boards attention to Section 34 (13) of the Planning and Development Act, which states that the granting of permission does not entitle a person to carry out development and covers the eventuality that the development

cannot be implemented for legal reasons. A connection agreement would be required prior to the commencement of development. Should this not be permissible at the time, section 34(13) will apply.

- 7.14. It is of note from the planner's report that no assessment of the proposed secondary treatment system in terms of its suitability as a solution has been carried out by the Council. The planning report merely states that whilst the proposed treatment unit is a technical solution it is not the policy of the Council to permit such proposals. Thus, I am unable to properly examine and consider the Council's issues and concerns in relation to this engineering solution. In the absence of any such justification or explanation I have had regard to both the scientific processes involved in secondary treatment systems and the submission made by Irish Water in relation to the suitability of the proposed development and based on the limited scale of the development which would not give rise to any significant increases within the sewer network, I consider the use of a secondary treatment system within this zoned suburban site to be an acceptable solution to facilitate the proposed development until such time as the wastewater treatment plant has been upgraded, which is expected to be completed by 2025.

### **Appropriate Assessment**

- 7.15. Having regard to the minor nature of the development, its location in a serviced urban area, and the separation distance to any European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **Conclusion**

- 7.16. I am satisfied based on the information provided in relation to the on-site wastewater treatment system and the limited scale of the development comprising of one 3 bedroom dwelling, that the proposed system will not add an unsustainable loading to the public wastewater network and as such I consider that the proposed development would not endanger public health and is in accordance with the proper planning and sustainable development of the area.

## 8.0 Recommendation

8.1. I recommend that permission is granted subject to the following conditions.

## 9.0 Reasons and Considerations

9.1. Having regard to the provisions of the Wicklow Development Plan 2016-2022 and the Avoca Settlement Plan 2016-2022, the existing pattern of development in the area, and the limited nature and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity or be prejudicial to public health. 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. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the visual amenities of the area

3. Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.

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

4. Prior to the commencement of development the applicant shall submit details of the maintenance program relative to the on-site secondary treatment system and the frequency of desludging required.

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

5. Prior to the commencement of development the applicant shall submit details of adequate measures to be implemented to protect the quality and integrity of the watercourse to the rear of the site during construction for the written agreement of the planning authority.

**Reason:** In the interest maintaining water quality.

6. Water supply and drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

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

7. Access and parking arrangements shall comply with the requirements of the planning authority for such works. Full details of the proposed footpath and kerb to be dished shall be agreed in writing with the planning authority prior to the commencement of development.

**Reason:** In the interests of public health and traffic safety.

8. Details of all boundary treatments to be submitted and agreed in writing with the planning authority prior to the commencement of development.

**Reason:** In the interest of visual and residential amenity for future occupants.

9. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. All existing over ground cables shall be relocated underground as part of the site development works.

**Reason:** In the interests of visual and residential amenity.

10. The site and development works shall be carried out in such a manner as to ensure that the adjoining street(s) are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public road, the said cleaning works shall be carried out at the developers expense.

**Reason:** In the interest of orderly development.

11. Site development and building works shall be carried out only between the hours of 0800 to 1900 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.

12. 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

13. 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.

---

Sarah Lynch  
Planning Inspector

16<sup>th</sup> May 2021