



An
Bord
Pleanála

Inspector's Report ABP-310192-21

Development	Extension to side of existing house, internal alterations, change to fenestration on west elevation and replace existing septic tank with an effluent disposal system and all associated site works.
Location	Killough Lower, Bray, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	20/1082
Applicant(s)	Philip Mulligan
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Date of Site Inspection	30 th June 2021
Inspector	Paul O'Brien

1.0 Site Location and Description

- 1.1. The subject site with a stated area of 0.3 hectares, comprises of a detached single-storey house and associated lands, located to the western side of the R755 road, approximately 660 m to the south of the junction of the R760 and the R755. The house is approximately 2 km to the south west of Kilmacanogue.
- 1.2. The site slopes downwards on an east to west axis, from the public road towards the western side of the site. The house is located to the eastern side of the site and is surrounded by an area of tarmac that allows for car parking. The slope from the back of this towards the western corner of the site is very steep. A detached garage is located to the south and the entrance is in the north eastern corner. The foul water treatment system is located to the west within an area that is under grass. Boundaries primarily consist of hedgerows, though of different plant types.
- 1.3. The existing house is a three bedroom unit, though not all of these are currently in use as bedrooms. The stated floor area is 108 sq m. A modest extension was made to the rear/ western side of the house at some stage. The location of the house is such that it is afforded exceptional views to the west/ north west towards Enniskerry and Powerscourt.
- 1.4. There are existing houses to the north and to the south west of the subject site. There is a cluster of houses along both sides of the R755 at this point. House designs vary from one house to the other.

2.0 Proposed Development

- 2.1. The development consists of:
 - The provision of a 43 sq m extension to the side of the existing house.
 - Internal alterations to the house and revisions to the fenestration on the western elevation.
 - The replacement of an existing septic tank with an effluent treatment system in accordance with the EPA Guidelines (2009).
 - All associated necessary site works.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for the proposed development for one reason as follows:

‘It is considered that the proposal for an independent living unit on this site would result in sporadic development in a rural area. This is contrary to the settlement strategy as set out in the County Development Plan, and would set a precedent for similar footloose development which would undermine the policies of the County Development Plan and would be contrary to the proper planning and sustainable development of the area’.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report reflects the decision to refuse permission following the receipt of further information. The Planning Authority Case Officer reported that the extension of 43 sq m was to provide for an independent living unit. A cover letter with the application indicated that the house was jointly owned by four siblings and for personal reasons one of them required to live in this unit; no information was available as to who lived in the house. The originally submitted floor plans indicated that the independent unit was to be separated from the rest of the house; a hall doorway was to be closed off.

The Planning Authority Case Officer reported that the development would not have any impact on the visual amenity of the area nor on residential amenity. The EHO has no objection to the proposed upgraded wastewater treatment system but the Planning Authority Case Officer reports that the connection of two separate units to a single wastewater treatment system is contrary to EPA Standards and Wicklow County Council Policy and would be prejudicial to public health. Refusal was recommended on the basis of the independent unit being contrary to the County Development Plan and secondly the proposed method of foul drainage was unacceptable – provision of one unit to serve two separate dwellings.

The applicant requested that a time extension of four months be provided, and further information was provided setting out the need for the unit/ extension to the house.

On receipt of the further information, it was decided to refuse permission for the reason provided – the provision of an independent living unit would result in sporadic development in a rural area.

3.2.2. **Other Technical Reports**

Senior Environmental Health Officer: Report from EHO stating no objection subject to conditions.

3.3. **Objections/ Observations**

- None.

4.0 **Planning History**

- None recorded.

5.0 **Policy and Context**

5.1. **Development Plan**

5.1.1. Under the **Wicklow County Development Plan 2016 – 2022**, the site is within a Level 10 – Rural Area.

5.1.2. Within Chapter 2 – Vision and Core Strategy, an assessment of the rural areas found that there is no evidence of significant population decline in any part of the County and pressure for rural housing around the fringes of major towns is evident.

5.1.3. Within Volume 3 – Appendix 1 – Development Design Standards, the following is relevant:

‘Independent living units (‘Granny-flats’)

‘A ‘granny flat’ or ‘independent living unit’ is a separate living unit on an existing house site, used to accommodate a member of the immediate family, often an elderly parent, for a temporary period. The construction or conversion of part of an

existing dwelling into a 'family flat' will only be permitted where the development complies with the following requirements:

- The need for the unit has been justified and is for the use of a close family member;
- The unit forms an integrated part of the structure of the main house – in exceptional circumstances, the conversion of an existing detached garage / store etc may be considered subject to the structure being in very close proximity to the main house;
- The unit is modest in size and in particular, it shall not exceed 45sqm and shall not have more than 1 bedroom;
- The unit shall not be sold or let as an independent living unit and the existing garden shall not be sub-divided;
- The structure must be capable of being functionally re-integrated into the main house when its usefulness has ceased. Permission for such units shall be restricted to a period of 7 years, after which it must revert to a use ancillary to the main house (e.g. garage, store, hobby room) unless permission has been secured for its continuation as an independent unit for another period'.

The above is contained in the section for 'Mixed Use and Housing Developments in Urban Areas', but I will take this as relevant as no such information is provided for Level 10 – Rural Areas.

- 5.1.4. Appendix 2 refers to the 'Design Guidelines for New Homes in Rural Wicklow' and Chapter 4 includes a section on 'Extensions to Existing Rural Houses' and the following is relevant:

'The design of an extension should be sympathetic to the existing house. This does not mean that it has to exactly match the existing style, height and finishes, but that it should complement the existing house and not look out of place.

A good extension is usually subservient to the main building i.e. extensions should be designed so that they look like extensions rather than a new house 'attached' to an old house. Extensions can reflect traditional aspects of the existing building, but contemporary extensions can also serve to complement the existing building.

There are no hard and fast rules about the size of an extension, but it will be necessary to ensure that:

- The extension respects the size of the existing house;
- The extension does not reduce the area of the garden to such a degree that it affects the usefulness of the garden;
- The site is big enough to accommodate the extension as well as all the other facilities that a house requires e.g. effluent disposal system, car-parking area etc.’

5.1.5. The Wicklow Landscape Category Map – Appendix 5 – indicates that the site is located within the ‘North East Mountains Lowlands – Area of High Amenity’.

The following description is provided under Section 5.3.11 of the Wicklow Landscape Assessment:

‘North East Mountain Lowlands KDC

1. To protect and facilitate the conservation of structures, sites and objects within the north east Mt. lowlands which are part of the County’s cultural heritage, whether or not such structures, sites and objects are included on the Record of Protect Structures.

2. To encourage the preservation and enhancement of native species within and surrounding the Devil’s Glen area and the Vale of Clara.

3. To support and facilitate the provision of amenity routes, in a manner which does not detract from the scenic nature of the area and ensure that new development is sited such that any impacts on the recreational amenity of any such route is minimised.

4. Through appropriate siting and design to ensure that developments along local/regional roads in particular those bordering the Mountain Uplands AONB will not be conspicuous or have a disproportionate or dominating visual impact on the surrounding environment as seen from the local scenic routes and settlements’.

5.1.6. Objective WI7 of Chapter 9 – Infrastructure, is noted and states:

‘Permission will be considered for private wastewater treatment plants for single rural houses where:

- the specific ground conditions have been shown to be suitable for the construction of a treatment plant and any associated percolation area;
- the system will not give rise to unacceptable adverse impacts on ground waters / aquifers and the type of treatment proposed has been drawn up in accordance with the appropriate groundwater protection response set out in the Wicklow Groundwater Protection Scheme (2003);
- the proposed method of treatment and disposal complies with Wicklow County Council's Policy for Wastewater Treatment & Disposal Systems for Single Houses (PE ≤ 10) and the Environmental Protection Agency "Waste Water Treatment Manuals"; and
- in all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitively demonstrate that the proposed development will not have an adverse impact on water quality standards and requirements set out in EU and national legislation and guidance documents'.

5.2. National Guidelines

- The Environmental Protection Agency Domestic Waste Water Treatment Systems (Population Equivalent ≤10) (2021)
- Development Management – Guidelines for Planning Authorities (DoEHLG, 2007)

5.3. Natural Heritage Designations

The site is located along the road that is designated as 'The Great Sugar Loaf- a proposed Natural Heritage Area (Site Code 001769) refers).

6.0 The Appeal

6.1. Grounds of Appeal

The applicant Philip Mulligan has engaged the services of Flynn Planning & Design to prepare an appeal against the decision of Wicklow County Council to refuse permission for this development.

The issues raised in the appeal are summarised as follows:

- The need for the independent unit has been established and the unit is for a close family member. Due to a divorce the applicant has a housing need, wishes to live here, back in the family home, but wishes to have a level of independence from his sister who currently resides here. The house is owned jointly by the applicant, his sister and two other siblings.
- Believes that the proposal is in accordance with the current Wicklow County Development Plan 2016 – 2022 and will provide for some certainty for the applicant for the future.
- The proposal is not for a separate dwelling and the applicant will be using the same bedroom as at present.
- The unit is modest in size and does not exceed 45 sq m and provides for only one bedroom. The Planning Report refers to the unit as being 57 sq m – only 43 sq m of additional floor area is proposed and combined with the existing bedroom the unit will be 57 sq m. Do not consider that the existing bedroom should be included in the floor area.
- Willing to reduce the width of the extension if recommended.
- There are no proposals to ever subdivide this unit from the rest of the house. Similarly, the garden and parking areas will not be subdivided.
- The proposal is designed to be easily reintegrated with the rest of the house if no longer required as an independent unit.
- The applicant is happy to be restricted to a seven year use of this unit. The unit is for an immediate need.
- The reason for refusal referred to sporadic development in the rural area. There is an existing house on site and the proposal is for a modest extension to this house. The report raised no issues in relation to design or impact on the amenity of the area.
- The use of the term 'footloose' is 'confusing and unhelpful'. The term is defined as 'having no ties: free to move about'. This does not apply as the applicant wishes to live in his family home. 'The term was found hurtful by the applicant'.

- The area is a Level 10 – Rural Area in the current county development plan. The applicant has identified a social and an economic need to locate in the area.
- The proposed development does not set a precedent for similar development in the area having regard to the specific circumstances outlined in the appeal.
- In summary, there is an immediate need for this extension so as to provide for a modest independent unit to accommodate the applicant, who can demonstrate that he has a social and an economic need to locate in the area.

6.2. **Planning Authority Comment**

None.

7.0 **Assessment**

7.1. The main issues that arise for consideration in relation to this appeal can be addressed under the following headings:

- Principle of the Development
- Design and Impact on the Character of the Area
- Compliance with Independent Living Unit Requirements
- Wastewater Treatment
- Other Issues
- Appropriate Assessment Screening

7.2. **Principle of the Development**

7.2.1. The proposed development is to provide for an extension of 43 sq m of floor area and to reconfigure the internal layout of this house so as to provide for an independent residential unit within the house. The existing septic tank is to be replaced with a wastewater treatment system.

7.2.2. There is an existing house on site and the primary issues of concern relate to the impact on the visual amenity of the area, the acceptability of this independent unit/ compliance with county development plan and comment on the proposed wastewater treatment system.

7.3. Design and Impact on the Character of the Area

- 7.3.1. I am satisfied that the proposed development will not negatively impact on the visual amenity of the area. The existing house is located below the level of the public road and is well screened by the existing boundary/ hedgerow. The existing house is a relatively modest, single storey unit. Views of the house may be had from points to the west/ north west, but these are very distant views and as reported, the modest scale of the house does not give rise to a significant impact on the visual amenity of the area.
- 7.3.2. The proposed extension is of a similarly modest nature with an additional floor area of 43 sq m. The extension will be to the northern side of the house and provides for an additional Kitchen/ Sitting Room and an en-suite bedroom. The revised floor plan (Drawing Number: PM/20-10/03 rev A) clearly indicates that there is a direct internal link between the independent unit and the existing house. A new access door is located to the northern elevation, this provides for access to the unit which is separate to that of the main house.
- 7.3.3. The elevational design of this unit will match that of the existing house and overall, I am satisfied that the development will not negatively impact on the visual amenity of the area. The extension will demonstrate compliance with the Appendix 2 of the Wicklow County Development Plan, in relation to extensions to rural houses.

7.4. Compliance with Independent Living Unit Requirements

- 7.4.1. Wicklow County Council refused permission on the basis ‘..that the proposal for an independent living unit on this site would result in sporadic development in a rural area. This is contrary to the settlement strategy as set out in the County Development Plan’. There is an additional section included with the reason for refusal that I will comment on later in this report.
- 7.4.2. As I have already referenced in this report and as referred to by the Planning Authority Case Officer, ‘Appendix 1 – Development Design Standards’ includes a section on ‘Independent Living Units’. A list of requirements is provided and I will comment on each here:
- **Need for the unit is justified and is for a close family member:** Mr Mulligan has set out his need for this unit. For personal reasons he has lost his former

home, he is part owner of this property, and this is his original family home. A letter from the Solicitor of this former wife, confirms that his and her family home is to be sold. I accept that he complies with this requirement justifying a need for the unit.

- **The unit is integrated with the existing house:** The Planning Authority sought further information and the revised floor plans clearly indicate that this unit is connected internally with the existing house. The proposed unit is an extension to the existing house and existing access, car parking and open space will be shared.
- **Unit is modest, does not exceed 45 sq m and only has one bedroom:** The unit is stated to be 43 sq m, but I concur with the Planning Authority that it is closer to 57 sq m. Part of this excess is made up of the existing floor area of the house. The applicant has suggested that the width of the unit could be reduced.

The unit is modest and only provides for one bedroom in accordance with the requirements. The existing house appears to be a three bedroom unit and the proposed independent unit and the house will only provide for a combined total of three bedrooms. It may be possible in the future to convert one of the other rooms into a bedroom. Considering the site layout etc. I have no objection to the unit exceeding the minimum requirement. A reduction in width (east to west axis) by 1 m would reduce the floor area by circa 8.9 sq m and the floor area would be 48 sq m. This is closer to the 45 sq m as outlined in the requirements but would provide for a significantly reduced level of residential amenity and no overall visual/ amenity benefit. I note that the floors plans provide for a basic layout. I would expect that storage areas will be required within the floor area and some form of lobby be provided in the location of the access door.

- **The unit shall not be sold or let as an independent unit/ garden shall not be subdivided:** A specific immediate need has been identified for this unit and there is no intention of selling or letting this unit. No changes are proposed to the garden layout.
- **Unit must be capable of being functionally re-integrated into the main house:** As already reported, the revised floor plans submitted in response to the

further information request have adequately addressed this issue. There is no issue regarding future integration.

- **Permission is restricted for a period of seven years:** The applicant has raised no objection to this.

7.4.3. I am therefore satisfied that the applicant has demonstrated that they meet the requirements for such a unit. The issue of being an immediate member of the family is addressed by the fact that the applicant has stated that he partially owns this house and this is his original family home. Although no documentary evidence of this has been provided, there is no requirement for provide this. The submitted cover letter dated 4th of January 2021 and the information provided in the appeal statement provide for adequate information. A letter of consent from the other siblings has been included with the original application (dated 23rd of October 2020) and clearly states that Philip is a joint owner of this property.

7.4.4. I have commented on the floor area exceeding the requirements of the development plan and I have provided a justification as to why this is acceptable in this case. This does not set a precedent, as such units are assessed on their own merits.

7.5. **Wastewater Treatment**

7.5.1. It is proposed to install a wastewater treatment system which has capacity for 6 persons. Included with the system is a 50 sq m polishing filter in accordance with the EPA regulations. The treatment system is located approx. 13 m to the west of the house. Table 6.2 of the 'The Environmental Protection Agency Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)' sets out minimum separation distances and the proposed development is compliant.

7.5.2. The site is located in an area identified with a 'High' vulnerability classification in the GSI Groundwater maps and is located within area defined "Poor" Aquifer category, representing a Groundwater Protection Response of R1 as per Table E1 of the EPA Code of Practice (2021).

7.5.3. The trial hole had a depth of 2.1 m and the assessment submitted by the applicant indicates that that a mix of loose gravel/ silt was encountered at this depth. The submitted site characterisation records a T-test value (Standard Method) of 19.17 min indicating a good soakage. The submitted report indicates that three separated

trial holes were provided. The soil is suitable for a variety of treatment systems and all required separation distances to houses, structures and other treatment systems are complied with.

- 7.5.4. In conclusion, from the submitted details, in addition to the report of the Environmental Health Officer, no concerns regarding the provision of a wastewater treatment system have been raised and the proposed development is unlikely to have a negative impact on the groundwater in the area or on watercourses subject to the provision of the wastewater treatment system as detailed in the application.
- 7.5.5. I note the comments made by the Planning Authority Case Officer that the treatment system will in effect be serving two separate residential units. As this is an independent unit with a temporary permission of seven years, I do not foresee any issue with the proposed treatment system serving the existing house and the independent unit.

7.6. Other Issues

- 7.6.1. Part of the reason for refusal stated that the development 'would set a precedent for similar footloose development which would undermine the policies of the County Development Plan and would be contrary to the proper planning and sustainable development of the area'. I note the comments made by the applicant/ appellant regarding the use of the word 'footloose'. The planning report does not describe what the context of this word is. It indicates that the applicant moves from place to place on a regular basis though no evidence of this has been provided. I do consider the use of this word to be inappropriate especially as its meaning is not provided in the context of this development.
- 7.6.2. I do not foresee that there will be any impact on the Area of High Amenity designation, again considering the location and screening of the proposed development. The development does not erode the rural character of the area and the extension is modest in the context of the existing house/ the extent of the subject site.
- 7.6.3. Comment was made about the 'development description is for 'extension' and not 'independent unit'. The Planning Authority assessed the development on the basis

of it being an independent unit and if there was a concern about the description, revised public notices should have been sought.

7.7. Appropriate Assessment Screening

- 7.7.1. Having regard to the nature and scale of the proposed development and the location of the site and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on an European site.

8.0 Recommendation

- 8.1. I recommend that planning permission be granted for the following reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the nature, extent and design of the proposed development and the provisions of the Wicklow County Development Plan 2016 – 2022, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area and would not negatively impact on the character of the area. 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 on the 27 th of October 2020 and modified by the further plans and particulars lodged with the Planning Authority on the 13 th of January 2021 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
----	---

	<p>commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>a) The existing dwelling and proposed family flat shall be jointly occupied as a single residential unit and the family flat shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.</p> <p>b) The family flat shall be used for private domestic use only and it shall be reintegrated into the main dwelling house, seven years after first occupation or when no longer required for the purpose applied for. Upon first occupation of the family flat, the applicant shall notify the Planning Authority by letter.</p> <p>Reason: To restrict the use of the extension in the interest of residential amenity.</p>
3.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.</p> <p>Reason: To ensure adequate servicing of the development, and to prevent pollution.</p>
4.	<p>(a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the Planning Authority on the 27th of October 2020, and in accordance with the requirements of the document entitled "Code of Practice - Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)" – Environmental Protection Agency, 2021. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>(b) Within three months of the completion of the treatment system, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with</p>

	<p>the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health.</p>
5.	<p>All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.</p> <p>Reason: In the interest of visual amenity.</p>
6.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between the hours of 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.</p> <p>Reason: In order to safeguard the amenities of property in the vicinity.</p>
7.	<p>That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.</p> <p>Reason: To protect the amenities of the area.</p>

Paul O'Brien
 Planning Inspector

12th July 2021