



An
Bord
Pleanála

Inspector's Report ABP310552-21

Development	Construct 15 houses
Location	Ballyguile Beg, Ballyguile Road, County Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	201166
Applicant(s)	Wickar Properties limited.
Type of Application	Permission
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party
Appellant(s)	1. Vincent Flynn 2. Peter Crossan
Observer(s)	None.
Date of Site Inspection	24 th June 2022
Inspector	Hugh Mannion

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1.0 Site Location and Description

1.1. The application site has a stated area of 1.87ha, is roughly L shaped and comprises a pasture field that slopes upwards from the public road boundary northeast towards a local highpoint (Ballyguile Hill). The existing/proposed site entrance onto Ballyguile Road within a 50kph speed zone and about 2.5kms south of Wicklow town centre. Immediately to the north is Avondale Court (6 two storey houses) that also accesses Ballyguile Road. A further housing development (Avondale Hall – 14 two storey houses) is accessed from Ballyguile Road and the last of these houses backs onto the north-eastern corner of the application site. On the opposite (west) side of Ballyguile Road and set below road level are a line of bungalows stretching north towards the town centre. Immediately to the south of the application site boundary is a large bungalow (Robin Hill). Beyond the eastern site boundary is undeveloped farmland.

2.0 Proposed Development

2.1. Erect 15 four bedroom detached houses, 30 car parking spaces, footpaths, roads, signage, site works, drainage, street lighting and landscaping at Ballyguile Beg, Ballyguile Road, County Wicklow.

3.0 Planning Authority Decision

3.1. Decision

Grant permission with conditions.

Condition 1 required compliance with the additional information submitted on the 7th of May 2021.

Condition 2 required the sale of the houses in the first instance to persons who had been living 10kms of the site for a period of 3 years.

Conditions 15 and 16 referred to the provision of public open space.

Condition 22 required that an archaeologist oversee the development works and submit a report to the planning authority and National Monuments Service.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial planner's report recommended requesting additional information.

Additional information as requested as follows.

1. Provide details to address the lack of footpaths/public lighting to serve the site.
2. The applicant should agree details of compliance with Part V with the planning authority's housing section.
3. The applicant should demonstrate compliance with the design guidelines set out in the County Development Plan and Sustainable Residential Development in Urban Areas Guidelines. The submission should address the proposed 20m set back from the Ballyguile Road, the reasons for the steep rises in levels of the dwellings which should be avoided where possible, revised proposals for roadside boundary treatment, section drawings demonstrating cut/fill requirements, sections demonstrating suitable gradients in rear gardens, section drawings for the public open space.
4. The applicant should submit details of his ability/sufficient legal interest to connect to services outside the site.

3.2.2. Other Technical Reports

3.2.3. **Housing Section** reported that the proposed Part V units were unsuitably large to serve as social/affordable homes.

3.2.4. **Irish Water** reported no objection.

3.2.5. **The Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media** commented that there is a recorded monument in an adjoining field and that where permission is

granted a condition relating to protection of archaeological remains should be attached.

3.2.6. **Water & Environmental Services section** reported that the existing surface water drain to the front of the site should be retained as far as possible.

3.3. Following the submission of additional information the planning authority granted permission subject to conditions.

4.0 **Planning History**

4.1. Permission was refused under ABP306239-19 for development of housing on this land for the following reasons.

1. Having regard to the provisions of the Wicklow Town–Rathnew Development Plan 2013-2019, specifically Objective NH4 which refers to the subject site which states it is a development objective “to provide for low density housing (maximum of 15 units) on lands zoned R4 at Ballyguile Beg (as identified on the zoning map) to be reserved for those living permanently for a period of at least 3 years in the area within 10km of the site prior to seeking of permission / purchase of a house on these lands.” The subject proposal seeks the non-application of Objective NH4. Therefore, the proposed development would materially contravene a development objective set out within the Wicklow Town–Rathnew Development Plan, 2013-2019 and would therefore be contrary to the proper planning and sustainable development of the area.
2. Having regard to the elevated topography of the site and the height, scale and bulk of the proposed detached dormer dwellings which are positioned with steep rises between dwellings in the lowest part of the site, it is considered that that the development as proposed would not be assimilated into the landscape and would form a discordant and obtrusive feature on the landscape. The proposed development would seriously injure the visual and residential amenities of the area contrary to Objective HD2 of the Wicklow County Development Plan 2016-2022. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy and Context

- 5.1. The National Planning Framework (NPF) aims to secure compact and sustainable growth through compliance with national policy objectives.
- 5.2. NPO3a - Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.
- 5.3. NPO3b - Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints.
- 5.4. NPO 3c - Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints.
- 5.5. **The Eastern and Midland Regional Spatial and Economic Strategy 2019-2031**
- 5.6. The RSES seeks to achieve a number of regional strategic outcomes including compact growth and urban regeneration through the promotion of “the regeneration of our cities, towns and villages by making better use of under-used land and buildings within the existing built-up urban footprint and to drive the delivery of quality housing and employment choice for the Region’s citizens. (RSO 2)
- 5.7. **County Development Plan**
- 5.8. The Wicklow County Development Plan 2016 – 2022 is the current County Development Plan for the area¹.
- 5.9. Wicklow/Rathnew Town Development Plan².
- 5.10. The application site has a specific zoning objective (NH4) provided for in table 2.5 which allows for a maximum of 15 houses on about 2ha with the objective “To provide for low density housing (maximum of 15 units) on lands zoned R4 at Ballyguile Beg (as identified on the zoning map) to be reserved for those living permanently for a period of at least 3 years in the area within 10km of the site prior to seeking of permission / purchase of a house on these lands”.

¹ The planning authority expects to adopt a new County Development Plan in September 2022.

² The review of the Wicklow/Rathnew Plan will commence in 2023.

5.11. Natural Heritage Designations

Not relevant.

5.12. EIA Screening

5.13. Having regard to the residential nature of the proposed development, its modest scale at 15 houses, its location within an urban settlement remote from sensitive environmental areas, the availability of public water and sewerage and the nature of the foreseeable emissions therefrom I consider that the requirement for submission of an EIAR and carrying out of an EIA can be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

- Permission was refused on this site under ABP306239-19. The present scheme is not significantly different from the refused scheme or address
- The appellant's property at 14 Avondale Hall adjoins the application site. The application site is significantly higher than the adjoining residential development, will be visually obtrusive when viewed from adjoining developments and the surrounding landscape. The proposed development will (especially 3,4 and 5) will overlook 14 Avondale Hall. The proposed development will devalue property in the area.
- The proposed development will require excessive earth works. The submitted drawings are inaccurate. There is no lane along the northern boundary.
- The proposed development comprises extremely low density (8.02 units/ha) housing. This density is contrary to the objectives set out in the NPF and the East/Midland Regional Spatial and Economic Strategy which seek more compact/higher density housing developments. The site is 2.5kms from the town centre.
- The residential zoning for the site in the Wicklow Town–Rathnew Development Plan 2013-2019 has lapsed.

- The application does not comply with Objective NH4 of the Wicklow Town–Rathnew Development Plan 2013-2019 in that it does not meet a demand for affordable houses for local people. Condition 2 of the grant of permission does not overcome this objection.
- The provision of social/affordable housing does not meet the standards of Part 5.
- The site lacks appropriate infrastructure on the edge of the town (water supply, roads/footpaths, foul/surface water).
- The application has not had proper regard to the urban design manual issued with the Sustainable Residential Development in Urban Areas guidelines. The set back from the Ballyguille Road is excessive.
- The application is deficient in that there is no ecological impact assessment, no assessment of noise/vibration levels, no detail of soils/geology within the site, no mobility management plan.
- The application includes a foul water connection through the public open space at Avondale Court. This space belongs to a third party and the applicant does not have sufficient legal interest to carry out the development.

6.2. Applicant Response

- The proposed development is not contrary to the Wicklow Town–Rathnew Development Plan 2013-2019 or the Wicklow County Development Plan.
- The planning authority did not consider that the proposed development contravened objective NH4 of the County Development Plan. The design/layout standards set out in the County Development Plan and in the Sustainable Residential Development in Urban Areas Guidelines and the design was improved by way of the submission of further information at application stage.
- The proposed development will meet a local need for housing in the area.
- The applicant is aware that there is a 662m of footpath provision required and additional public lighting.

- The planning authority is satisfied with the provision for Part V compliance.
- As further information the applicant submitted evidence showing that there is a wayleave agreement and easements in place which allows for the connection of public service from the application site through Avondale Court and evidence that Avondale Court was taken in charge by the planning authority.

6.3. **Planning Authority Response**

- No response

6.4. **Observations**

- None

6.5. **Further Responses**

- None

7.0 **Assessment**

7.1. The principal planning issues in this case are, planning policy, design and layout, footpath connection to town centre, vehicular access, impact residential amenity, compliance with Part V, connection to water/sewerage.

7.2. **Planning policy.**

7.3. The application site is zoned for low density housing development in the Wicklow Town–Rathnew Development Plan 2013-2019 which is out of date but not lapsed. It appears that a new plan and zoning map are some way off. The Board's previous refusal reason referenced the specific requirements in the zoning provision that sale of the permitted 15 houses would be confined to persons who had lived within 10kms of the site for the previous 3 years. The present application (see paragraph 8.1 of the design statement submitted on the 18th November 2020) makes the point that, in contrast to earlier applications, it is now proposed to comply with the NH4 objective for the lands. On this basis, including that this commitment is included in the

application) I conclude that the application overcomes the first reason for refusal set out in ABP-306230-19.

7.4. On the wider issue of compliance with national and regional policy in relation to the provision of higher density raised by the appellant it is the case that the proposed density (about 8 units/ha) is low. However, having regard to;

- The zoning for low density residential development set out in the Town Plan, and the absence of any contiguous zoned land for which the present application would set a precedent,
- The modest scale of the proposed development and its location adjoining existing low-density development and the advice set out in the Sustainable Residential Development Guidelines that in controlled circumstances lower densities (densities below 15/20 units/ha) may be acceptable as an alternative to one-off rural housing (paragraph 6.12)
- The nature of the site as the last landholding zoned for development on the edge of Wicklow town remote from public transport links,
- The elevated nature of the site which may limit the scope for new development,

I conclude, in this specific instance, that the proposed density is acceptable.

7.5. **Design and layout**

7.6. The appellant makes the point that the proposed development is unacceptably poor in terms of the design and layout and this point echoes the second reason for refusal set out by the Board in ABP306239-19.

7.7. There is a significant fall in levels east to west towards the Ballyguille Road within the site. The proposed development comprises dormer houses and proposed numbers 1 to 5 and 13 to 15 reflect these changes in site levels by 'stepping' up the site as the levels increase. It may be noted in this regard that the houses in Avondale Hall and Avondale Court are two storeys and the houses in Avondale Hall are very significant in terms of their bulk and mass. There are a further 5 houses facing onto Ballyguille Road just north of Avondale Hall that are very similar in design and mass to those in Avondale Hall. The application includes some cut and fill which slightly reduces the visual impact but overall, the proposed houses and the existing

houses in Avondale Hall, Avondale Court and along Ballyguille Road will read as an edge of town housing cluster when viewed from the adjoining road network including the Ballyguille Road and, further west, the R751.

7.8. Footpaths.

7.9. The appeal makes the point that the site lacks a footpath connection to the town centre.

7.10. The application makes the point that the application site is circa 2.8kms/33mins walk to the town centre. The planning authority reports that there is a lack of continuous footpath along Ballyguille Road but that this is required to be addressed under a grant of planning permission for 34 housing units (planning register reference number 16/514) which is under construction on the opposite side of the Ballyguille Road just north of the application site.

7.11. The site is zoned for development. The footpath between the application site and the town centre is not continuous and the application (see Street lighting and Footpath Audit dated 9th April submitted with the application) identifies a section 662m long where the footpath is deficient. This assessment is accurate in that the break is some distance north of the application site and beyond several housing developments that would benefit from provision of a path. I conclude that the provision of a footpath is required to facilitate the proposed development and I recommend that a condition be applied in this case requiring the developer to make a special contribution under section 48(2)(c) towards the provision of a footpath (condition 12 in the draft order below).

7.12. Impact on Residential Amenity.

7.13. An appellant refers to the impact of the proposed development on the amenity of the houses in Avondale Hall and specifically 14 Avondale Hall. The revised layout received by the planning authority on the 7th May 2021) shows a separation distance of 33.9m between the closest proposed house (number 4 – house type D) and 14 Avondale Hall. House type D is a dormer with a roof ridge height of 6.989m, three rear facing dormer windows and is at a slightly lower level (about 0.5m) than that of 14 Avondale Hall (see section drawing 2019-034 3.1.402 received by the planning authority on the 18th November 2021). Having regard to these factors (roof ridge height, elevation and separation distance) I conclude that the proposed development

will not negatively impact on the amenity of adjoining property in Avondale Hall or Avondale Court through overshadowing or overlooking.

7.14. Additionally having regard to the separation distances and heights of proposed houses 1, 2 3, and 5 along this northern boundary I conclude that these houses will not seriously injure the amenity of existing houses in Avondale Hall and Avondale Court.

7.15. Proposed houses 13, 14 and 15 on the southern boundary address the adjoining bungalow (Robin Hill) at a distance of 25m at the closest. Having regard to these factors I conclude that the proposed development will not seriously injure the amenity or depreciate the value of property in the vicinity.

7.16. **Part V**

7.17. The appeal makes the point that the proposed development does not comply with Part V of the Act in relation to the provision of social/affordable housing. This matter was raised by the planning authority in the request for additional information. The applicant responded that the local authority's housing section had agreed the provision of a bungalow in fulfilment of the applicant's Part V contribution and attached a letter from housing section confirming this general arrangement. I conclude on this basis that the matter can be resolved by agreement between the applicant and the local authority as required by condition 11 set out in the draft order below.

7.18. **Vehicular access.**

7.19. The proposed development includes an access to the public road within the 50kph speed limit zone and where adequate sightlines are available. On this basis I conclude that the proposed development will not give rise to traffic hazard.

7.20. **Access to services.**

7.21. Avondale Court (6 houses) adjoins the application site to the north and there is a parcel of public open space between the public road and the elevation of house closest to the public road. The appeal makes the point that this area of land (coloured yellow on the drawing attached to the second third party appeal) is in private ownership and that the applicant does not have permission to lay foul water

mains within it to link the proposed development and the existing sewer network in the verge along Ballyguile Road.

- 7.22. The planning authority raised this issue with the applicant as a point of additional information requesting that the applicant submit details of his ability/sufficient legal interest to connect to services outside the site. The applicant responded to the request (see the submission “Third Party Land – Wayleave” received by the planning authority on the 7th May 2021). The applicant makes the point in that submission that the piece of public open space claimed by the appellant has been taken in charge by the planning authority (see public open space coloured green/marked OS3 in the submission) and that only the agreement of Irish Water/the local authority is required to connect to these services.
- 7.23. Section 34(13) of the Act provides that a grant of permission does not confer a right to develop land where another impediment applies. The Development Management Guidelines advises planning authorities when considering applications for permission that where issues of title to land arises that it may be appropriate to raise the matter with the applicant by way of a request for additional information and satisfy itself that the applicant has sufficient legal interest to make a valid application. The planning authority sought additional information in this case and the applicant made the submission outlined above.
- 7.24. Having regard to the material submitted with the application and appeal I am satisfied that the applicant has sufficient legal interest to make a valid application that includes connection to the public sewer.
- 7.25. **Appropriate Assessment Screening.**
- 7.26. The closest Natura 2000 sites are the Murrough Wetlands SAC, Murrough Wetlands SPA and the Wicklow Head SPA.
- 7.27. Having regard to;
- the modest scale of the proposed development,
 - the foreseeable emissions therefrom,
 - the availability of public water and sewerage facilities,

- the absence of a hydrological connection between the application site and any Natura 2000 site,
- the conservation interests and the conservation objectives for these European sites set out in the published NPWS material

I conclude that 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 any European site.

8.0 Recommendation

8.1. I recommend a grant of permission.

9.0 Reasons and Considerations

Having regard to;

- the zoning of the site for residential development in the Wicklow Rathnew Plan 2013 – 2019,
- it's location on the edge of the urban area of Wicklow Town adjoining un-zoned agricultural land,
- to the pattern of residential development on adjoining lands to the north, especially Avondale Hall and Avondale Court,

and subject to compliance with the conditions set out below, it is considered that the proposed development will provide an acceptable transition between the built up/urban area of Wicklow town and the adjoining rural area, will not seriously injure the amenity or depreciate the value of property in the vicinity and would be acceptable in terms of public health and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 7th day of May 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 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>Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
3.	<p>The developer shall enter into water and wastewater connection agreements with Irish Water.</p> <p>Reason: In the interest of public health.</p>
4.	<p>Surface water drainage arrangements, including surface water attenuation, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
5.	<p>Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces details of which shall be submitted to, and agreed in writing with, the planning</p>

	<p>authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.</p> <p>Reason: In the interests of amenity and public safety.</p>
6.	<p>A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p>Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.</p>
7.	<p>Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 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 residential amenities of property in the vicinity.</p>
8.	<p>The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.</p> <p>Reason: In the interests of amenity and of traffic and pedestrian safety.</p>
9.	<p>The areas of public open space shown on the lodged plans shall be reserved for such use. These areas shall be soiled, seeded, and landscaped in accordance with the landscaping scheme submitted to the planning authority. This work shall be completed before any of the dwellings are made available for occupation.</p>

	<p>Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.</p>
10.	<p>The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:</p> <ul style="list-style-type: none"> a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. <p>The assessment shall address the following issues:</p> <ul style="list-style-type: none"> (i) the nature and location of archaeological material on the site, and (ii) the impact of the proposed development on such archaeological material. <p>A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.</p>
11.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision</p>

	<p>of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.</p>
12.	<p>The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of the provision a continuous footpath between the entrance to the proposed development and Wicklow town centre. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board for determination. The contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.</p> <p>Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.</p>
13.	<p>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</p>

	<p>Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000 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.</p>
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Hugh Mannion
Senior Planning Inspector

30th June 2022.