



An
Bord
Pleanála

Inspector's Report ABP-310555-21

Development

Construction of a new single-storey dwelling; upgrading the use of the site entrance from agricultural to domestic; minor enhancements to the L97641 and R764 / L97641 junction, in addition to widening and repaving of the site access road; new sewage treatment system together with all necessary ancillary works to facilitate this development.

Location

Ballyduff Upper, Co. Wicklow.

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

21/197

Applicant(s)

Simon Wilson

Type of Application

Permission

Planning Authority Decision

Grant subject to conditions

Type of Appeal

Third Party v. Decision

Appellant(s)

Noel and Marina Bolger

Observer(s)

None

Date of Site Inspection

19th January, 2022

Inspector

Robert Speer

1.0 Site Location and Description

1.1. The proposed development site is located in the rural townland of Ballyduff Upper, Co. Wicklow, approximately 900m northwest of the rural cluster of Killiskey and 3.5km north-northwest of Ashford town, in an area characterised by the gradual transition between those lower lying lands to the east and the foothills of the Wicklow Mountains to the west, where the broader landscape is dominated by open fields and intermittent one-off housing & agricultural outbuildings at lower elevations with open heath and forestry on higher ground. It occupies a position on elevated lands that rise northwards over the R764 Regional Road and forms part of a larger landholding that includes an agricultural shed / hay barn. Access is obtained via an agricultural track that extends from Local Road No. L97641 to the south. It has a stated site area of 0.52 hectares and comprises a relatively steeply sloping field which is bounded by a combination of mature hedgerow and a stone walling along its perimeter. There is a small stream running along the western site boundary while a mature tree stand alongside the public road screens views of the site from lower elevations.

2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a single-storey, split-level dwelling house based on an irregular floor plan with a stated floor area of 135.3m² and a ridge height of 6.2m. The overall design encompasses a contemporary interpretation of the traditional vernacular and comprises two narrow plan forms set askew from one another and connected by an interlinking central entrance lobby. The orientation and construction of the proposal, including the higher proportion of glazing to the south-facing elevations, would appear to be intended to avail of passive solar gain and the views over the wider area. External finishes include an off-white render, burnt larch timber cladding, dark grey / back alu-clad timber framed doors & windows, and blue / black roof slates.
- 2.2. Access to the site will be obtained via a new entrance arrangement onto an existing agricultural track (to be upgraded, widened, realigned and resurfaced as part of the development) that extends from the minor local road (L97641) which in turn branches off from the R764 Regional Road further east. The 'Transport Technical Note' submitted with the planning application details various road improvement

works proposed to be undertaken along the local road between the site access and the junction with the regional road (these are shown to include the widening of the carriageway of Local Road No. L97641 to 4.5m over a distance of approximately 72m and the amendment of the R764 / L97641 junction arrangement).

- 2.3. It is proposed to install a packaged wastewater treatment system with treated effluent being pumped to an upgradient sand polishing filter for disposal to ground (the siting of which was amended in response to a request for further information). The water supply is to be obtained from a new on-site bored well.

3.0 **Planning Authority Decision**

3.1. **Decision**

- 3.1.1. Following the receipt of a response to a request for further information, on 28th May, 2021 the Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to 11 No. conditions. These conditions are generally of a standardised format and relate to issues including occupancy, drainage, effluent disposal, external finishes, and development contributions.

3.2. **Planning Authority Reports**

3.2.1. *Planning Reports:*

An initial report details the site context, including the relevant policy considerations, and states that Objective HD23 of the Development Plan is applicable in this instance given the site location in a rural area. It proceeds to consider the submitted particulars as regards compliance with the rural housing eligibility criteria and determines that the applicant qualifies for a rural dwelling on the basis of the information provided. In terms of overall design and visual impact, the elevated nature of the site is noted, however, it was considered that the development could be assimilated into the surrounding landscape by reference to the screening offered by existing planting and the submitted landscaping proposals (provided the construction is relocated to a lower elevation closer to the more established site boundaries thereby reducing the impact of the excavations into the hillside). No objections are raised from a traffic safety perspective following internal consultations while it was

also noted that the proposed works to improve the junction on the public road will be of wider benefit to local road users. With regard to the proposals for wastewater treatment, on the advice of the Environmental Health Officer, it was recommended that the applicant be required by way of a request for further information to submit an updated Site Characterisation Form relevant to the location proposed for the new treatment system.

Following the receipt of a response to a request for further information, a subsequent report recommended a grant of permission, subject to conditions.

3.2.2. *Other Technical Reports:*

Environmental Health Officer: An initial report noted that the Site Characterisation Form supplied with the application related to an earlier planning proposal and that the test area shown was significantly removed from the percolation area presently proposed. It was therefore recommended that a new Site Characterisation Form specific to the subject proposal along with design details of the proposed wastewater treatment and disposal arrangements be submitted by way of further information.

Following the receipt of a response to a request for further information, a final report was prepared which stated there was no objection, subject to conditions.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. A single submission was received from the appellants and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The planning history of the application site and the wider landholding.
- The detrimental visual impact of the proposal given the elevated and exposed location of the site in an area of high amenity / landscape sensitivity.
- Non-compliance with the applicable rural housing policy and failure to demonstrate a social or economic housing need to live in this rural area.
- The lack of a need to develop a dwelling at this location to farm the land.
- The site location in a designated 'greenbelt'.

- Undesirable precedent for further sporadic development in the area.
- Detrimental impact on the amenity and agricultural use of the land and adjoining fields.
- The adverse impact on biodiversity and wildlife considerations.
- The overlooking of nearby property with an associated loss of privacy.
- The proposal constitutes haphazard backland development.
- Inaccuracies in the Transport Technical Note given that the traffic counts were undertaken during COVID-19 restrictions.
- It has not been established that the application site is suitable for the proposed wastewater treatment arrangements.
- The additional traffic turning movements would endanger public safety by reason of traffic hazard.

4.0 Planning History

4.1. On Site:

PA Ref. No. 015377 / ABP Ref. No. PL27.130820. Was refused on appeal on 27th February, 2003 refusing Mr. & Mrs. W. & G. Colgan permission for a bungalow, garage & septic tank at Ballyduff Upper, Ashford, Co. Wicklow.

- It is the policy of the planning authority, as expressed in the current Wicklow County Development Plan, generally not to permit residential development in rural areas, other than the provision of a necessary dwelling in special circumstances, as set out at section 3.3.1 of the development plan. This policy is considered reasonable. It is further considered that the applicant does not come within the scope of the housing need criteria set out in the development plan. The proposed development would, therefore, contravene materially the policy of the planning authority and be contrary to the proper planning and development of the area.
- The site of the proposed development is located in an elevated position in an area designated in the current Wicklow County Development Plan as an Area of Special Amenity by reason of its landscape quality. It is considered that the

proposed development, by reason of its location and scale, would be detrimental to the high scenic amenity of the area and would seriously injure the amenities of the area. The proposed development would, therefore, be contrary to the proper planning and development of the area.

- Having regard to the soil conditions on the site, as established by tests, the Board is not satisfied that the site can be drained satisfactorily by means of a septic tank, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

PA Ref. No. 94806 / ABP Ref. No. PL27.094806. Was refused on appeal on 20th March, 1995 refusing Sean Gallagher permission for a three bedroom bungalow with septic tank at Ballyduff Upper, Ashford, Co. Wicklow.

PA Ref. No. 93154. Was refused on 23rd April, 1993 refusing Joe Smith outline permission for a bungalow at Ballyduff Upper, Ashford, Co. Wicklow.

PA Ref. No. 928757. Was refused on 22nd December, 1992 refusing Joe Smith outline permission for a bungalow at Ballyduff Upper, Ashford, Co. Wicklow.

4.2. On Adjacent Sites:

4.2.1. (to the immediate southeast):

PA Ref. No. 081109. Application by John O'Neill for permission for a dwelling house with solar panels, garage, septic tank, and all associated site works at Ballyduff Upper, Ashford, Co. Wicklow. This application was withdrawn.

PA Ref. No. 9942. Was granted on 19th July, 1999 permitting Matt & Sheila O'Neill permission a bungalow and septic tank at Ballyduff Upper, Ashford, Co. Wicklow.

4.3. Other Relevant Files (elsewhere on the landholding):

PA Ref. No. 20385. Application by Simon Wilson for permission for a single storey dwelling, upgrading the use of the site entrance from agricultural to domestic, new sewage treatment system, together with all ancillary works at Ballyduff Upper, Ashford, Co. Wicklow. This application was withdrawn.

PA Ref. No. 19139. Application by Simon Wilson for permission for a single storey dwelling, upgrading the use of the site entrance from agricultural to domestic, new

sewage treatment system, together with all ancillary works at Ballyduff Upper, Ashford, Co. Wicklow. This application was withdrawn.

PA Ref. No. 181125. Application by Simon Wilson for permission for a single storey dwelling, upgrading the use of the site entrance from agricultural to domestic new residential laneway to proposed dwelling, new sewage treatment system, together with all ancillary works, at Ballyduff Upper, Ashford, Co. Wicklow. This application was withdrawn.

PA Ref. No. 18543. Application by Simon Wilson for permission for a single storey dwelling, upgrading the use of the site entrance from agricultural to domestic, new sewage treatment system, together with all ancillary works, at Ballyduff Upper, Ashford, Co. Wicklow. This application was withdrawn.

4.4. **Other Relevant Files (on surrounding lands):**

PA Ref. No. 17/1531. Was granted on 20th June, 2018 permitting Karla Hall permission for a single storey dwelling, wastewater treatment system, entrance improvement, and associated works, all at Tomcoyle Lower, Ashford, Co. Wicklow.

5.0 **Policy and Context**

5.1. **National and Regional Policy**

- 5.1.1. The '*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*' promote the development of appropriate rural housing for various categories of individual as a means of ensuring the sustainable development of rural areas and communities. Notably, the proposed development site is located in an '*Area under Strong Urban Influence*' as indicatively identified by the Guidelines.

5.2. **Development Plan**

5.2.1. **Wicklow County Development Plan, 2016-2022:**

Chapter 3: Settlement Strategy:

Level 10: The Rural Area:

Development within the rural area should be strictly limited to proposals where it is proven that there is a social or economic need to locate in the area. Protection of the

environmental and ecological quality of the rural area is of paramount importance and as such particular attention should be focused on ensuring that the scenic value, heritage value and / or environmental / ecological / conservation quality of the area is protected.

Chapter 4: Housing:

Section 4.3: Key Housing Principles:

Section 4.3.5: Rural Housing:

As set out in Chapter 3 of this plan, rural housing in County Wicklow requires to be managed, to protect the County's pristine landscapes and natural resources, to avoid urban generated rural housing and to ensure the needs of those with a bona fide necessity to live in the rural area are facilitated.

Section 4.4: Housing Objectives:

HD1: New housing development shall be required to locate on suitably zoned or designated land in settlements, and will only be considered in the open countryside when it is for the provision of a rural dwelling to those with a housing, social or economic need to live in the open countryside.

HD3: All new housing developments (including single and rural houses) shall achieve the highest quality of layout and design, in accordance with the standards set out in the Development and Design Standards document appended to this plan, which includes a Wicklow Single Rural Houses Design Guide.

HD20: Urban generated housing shall not be permitted in the rural areas of the County, other than in rural settlements that have been deemed suitable to absorb an element of urban generated development (see objective HD19).

HD23: Residential development will be considered in the open countryside only when it is for those with a definable social or economic need to live in the open countryside.

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

1. A permanent native resident seeking to build a house for his / her own family and not as speculation. A permanent native resident shall be a person who has resided in a rural area in County Wicklow for at least 10 years in total (including permanent native residents of levels 8 and 9), or resided in the rural area for at least 10 years in total prior to the application for planning permission.
2. A son or daughter, or niece/nephew considered to merit the same position as a son/daughter within the law (i.e. when the uncle/aunt has no children of his/her own), of a permanent native resident of a rural area, who can demonstrate a definable social or economic need to live in the area in which the proposal relates and not as speculation.
3. A son or daughter, or niece/nephew considered to merit the same position as a son/daughter within the law (i.e. when the uncle/aunt has no children of his/her own), of a permanent native resident of a rural area, whose place of employment is outside of the immediate environs of the local rural area to which the application relates and who can demonstrate a definable social or economic need to live in the area to which the proposal relates and not as speculation.
4. Replacing a farm dwelling for the needs of a farming family, not as speculation. If suitable the old dwelling may be let for short term tourist letting and this shall be tied to the existing owner of the new farm dwelling where it is considered appropriate and subject to the proper planning and development of the area.
5. A person whose principal occupation is in agriculture and can demonstrate that the nature of the agricultural employment is sufficient to support full time or significant part time occupation.
6. An immediate family member (i.e. son or daughter) of a person described in 5, who is occupied in agriculture and can

demonstrate that the nature of the agricultural employment is sufficient to support full time or significant part time occupation.

7. A person whose principal occupation is in a rural resource-based activity (i.e. agriculture, forestry, mariculture, agri-tourism etc.) can demonstrate a need to live in a rural area in order to carry out their occupation. The Planning Authority will strictly require any applicant to show that there is a particular aspect or characteristic of their employment that requires them to live in that rural area, as opposed to a local settlement.
8. A close relative who has inherited, either as a gift or on death, an agricultural holding or site for his/her own purposes and not for speculation and who can demonstrate a definable social and / or economic need to live in the area to which the proposal relates.
9. The son or daughter of a landowner who has inherited a site for the purpose of building a one-off rural house and where the land has been in family ownership as at 11th October 2004 for at least 10 years prior to the application for planning permission and not as speculation.
10. An emigrant who qualifies as a permanent native resident, returning to a rural area in County Wicklow, seeking to build a house for his/her own use not as speculation.
11. Persons whose work is intrinsically linked to the rural area and who can prove a definable social or economic need to live in the rural area.
12. A permanent native resident that previously owned a home and is no longer in possession of that home (for example their previous home having been disposed of following legal separation / divorce / repossession, the transfer of a home attached to a farm to a family member or the past sale of a home following emigration) and can demonstrate a social or economic need for a new home in the rural area.

13. Permanent native residents of moderate and small growth towns, seeking to build a house in their native town or village within the 60kph / 40mph speed limit on the non-national radial roads, for their own use and not as speculation as of 11th October 2004.
14. A person whose business requires them to reside in the rural area and who can demonstrate the adequacy of the business proposals and the capacity of the business to support them full time.
15. Permanent native residents of the rural area who require a new purpose built specially adapted house due to a verified medical condition and who can show that their existing home cannot be adapted to meet their particular needs.
16. Persons who were permanent native residents of a rural area but due to the expansion of an adjacent town / village, the family home place is now located within the development boundary of the town / village.

In the event of conflict of any other settlement strategy objective / Landscape Zones and categories, a person who qualifies under policy HD23 their needs shall be supreme, except where the proposed development would be a likely traffic hazard or public health hazard.

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

HD24: Where permission is granted for a single rural house, the applicant will be required to lodge with the Land Registry a burden on the property, in the form of a Section 47 agreement, restricting the use of the dwelling for a period of 7 years to the applicant, or to those persons

who fulfil the criteria set out in Objective HD23 or to other such persons as the Planning Authority may agree to in writing.

Chapter 10: Heritage:

Section 10.3: Natural Heritage and Landscape:

Section 10.3.9: Wicklow's Landscape:

NH49: All development proposals shall have regard to the County landscape classification hierarchy in particular the key landscape features and characteristics identified in the Wicklow Landscape Assessment (set in Volume 3 of this plan) and the 'Key Development Considerations' set out for each landscape area set out in Section 5 of the Wicklow Landscape Assessment.

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

Appendix 2: Wicklow County Council: Single Rural Houses: Design Guidelines for New Homes in Rural Wicklow

Appendix 5: Landscape Assessment:

Section 4.5: Wicklow's Landscape Areas:

Section 4.5.3: Area of High Amenity: 3(a) - The North East Mountain Lowlands:

Transitional lands located between the corridor zone and the AONB, comprising of Trooperstown Hill, large tracts of forestry lands, including Devils Glen (a listed County Geological site) and a number of views and prospects in particular those surrounding the Vartry Reservoir.

Section 5: Policy Provision:

Section 5.3.1: General Development Considerations (GDC)

Section 5.3.11: North East Mountain Lowlands Key Development Considerations:

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 Protected 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.

The proposed development site is located within the '*The North East Mountain Lowlands Area of High Amenity*' landscape category as detailed in Figure 4.11: '*The Landscape Category Map*' and Map 10.13(c) of the Landscape Assessment.

5.3. Natural Heritage Designations

- 5.3.1. The following natural heritage designations are located in the general vicinity of the proposed development site:
- The Devil's Glen Proposed Natural Heritage Area (Site Code: 000718), approximately 1.8km southwest of the site.
 - The Vartry Reservoir Proposed Natural Heritage Area (Site Code: 001771), approximately 4.3km west of the site.
 - The Murrough Special Protection Area (Site Code: 004186), approximately 5.0km east of the site.
 - The Murrough Proposed Natural Heritage Area (Site Code: 000730), approximately 5.0km east of the site.

- The Murrough Wetlands Special Area of Conservation (Site Code: 002249), approximately 5.0km east of the site.

5.4. EIA Screening

5.4.1. Having regard to the nature and scale of the development proposed, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, 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 proposed development will have an adverse impact on the scenic quality of the surrounding area due to its location on land within a 'Greenbelt' which is subject to a 'Special Amenity Area' landscape designation.
- The subject site is in the same field where permission was previously refused for housing under PA Ref. No. 94806 / ABP Ref. No. PL27.094806 and PA Ref. No. 015377 / ABP Ref. No. PL27.130820.
- A grant of permission would set an undesirable precedent for further housing on these lands which should be preserved from development.
- There are multiple underground springs beneath the lands in question.
- The applicant is not a permanent native resident of Ballyduff Upper.
- The applicant has applied for planning permission on multiple occasions elsewhere on the landholding and each of those applications was subsequently withdrawn in anticipation of a refusal of permission.
- The proposed dwelling house will overlook the appellants' property with a consequential loss of privacy.

- There has been no change in the applicable circumstances / considerations (e.g. the site location is within a 'Special Amenity Area' and 'greenbelt' designation) since the refusal of PA Ref. No. 94806 / ABP Ref. No. PL27.094806 & PA Ref. No. 015377 / ABP Ref. No. PL27.130820 (as well as the anticipated refusal of other planning applications elsewhere on the landholding) as to warrant a grant of permission.

6.2. Applicant's Response

- The applicant has a definable social and economic need to live in the area and satisfies the relevant eligibility criteria set out in both the County Development Plan and the '*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*' by virtue of the following considerations:
 - He has lived in Co. Wicklow all his life and has resided in Killinskey (c. 700m from the application site) for the last 21 No. years.
 - The applicant is actively engaged in the farming of a 25-acre landholding previously purchased by his mother and also works on his uncle's farm as a relief milker and calver.
 - The applicant has a long-established ancestral / familial connection to the area.
 - He presently lives with his mother and brother in the family home a short distance away.
 - He is an active member of the local community and is involved in various sports and charitable organisations etc.
 - The applicant's mother suffers from ill-health and requires day-to-day care and support.
 - He has never previously owned a dwelling house.
 - The applicant is a permanent native resident of the area who is seeking to build a dwelling house for his own needs and not as speculation.
 - In the event of conflict with any other settlement strategy objective / Landscape Zones and categories, a person who qualifies under policy

HD23, their needs shall be supreme, except where the proposed development would be a likely traffic hazard or public health hazard.

Extensive documentary evidence has been submitted to support the applicant's eligibility under Policy HD23 of the Development Plan.

- There is no evidence of any burden having been registered against the title of the landholding that would prohibit the construction of a dwelling house on the land.
- The proposed development will not impact on the agricultural use of the applicant's farmland or adjacent fields.
- National and local planning policy provides sufficient deterrent against the development of unwarranted speculative housing in the area.
- Contrary to the grounds of appeal, the proposed development site is not located on lands designated as a 'greenbelt'.
- The appellants' representation of the planning history of the landholding is incorrect and misleading as follows:
 - The 5 No. applications dating from 1989 to 1994 relate to a different site and concern the dwelling constructed on the adjacent lands to the south under PA Ref. No. 99/042.
 - PA Ref. No. 94/806 does not relate to the subject site and was for a development identical to that subsequently approved and constructed under PA Ref. No. 99/042.
 - Although the application lodged on site under PA Ref. No. 015377 was refused on appeal by the Board, it is notable that the inspector had recommended a grant of permission.
 - PA Ref. No. 08/6043 was incomplete and is no relevance.
 - PA Ref. No. 08/1109 relates to a different location and was ultimately withdrawn.
- While permission was previously refused on site, those applications were not lodged by someone farming the land and were assessed under previous development plans and different planning frameworks.

- The application site is situated within the 'North East Mountain Lowlands' Area of High Amenity and, therefore, great care has been taken in the design and location of the proposed dwelling to minimise its impact and to ensure that it is in keeping with the surrounding pattern of development.
- The proposed dwelling will not be visible from the lower road and is at a lower elevation than other housing on the hillside.
- Through the previous applications lodged by the applicant, it is apparent that several different locations and house types / designs were submitted with the intention of identifying a site / proposal agreeable to the Planning Authority. The subject proposal has been found to be acceptable and has a minimal impact on the landscape.
- The proposed dwelling has been carefully designed to minimise the impact on the landscape. Its modest size and proportions fully comply with the requirements of the Development Plan and national guidance.
- The scale of the proposed dwelling has been significantly reduced from that previously refused permission under PA Ref. No. 015377 / ABP Ref. No. PL27.130820.
- The existing trees, hedges and natural screening on site have matured significantly over the last 20 No. years and the proposed dwelling will not be visible from any public roads.
- Due to the presence of screening and the separation distance involved (c. 175m), there will be no loss of privacy to the appellants' dwelling house.
- The road improvement works proposed in the traffic report will resolve all outstanding traffic safety issues and will be of benefit to all those who use the roadway.
- The road improvement works proposed have been acknowledged by the Local Authority as appropriate and sufficient to ensure safe access. In addition, all of the works are required to be completed prior to occupation of the dwelling at the applicant's own cost (despite the lands in question being in the charge of the Council).

- Local Road No. L97641 already caters for traffic movements associated with the applicant's farming activities while proposals have also been developed to upgrade the laneway serving the site.
- It was a condition of the grant of permission issued for PA Ref. No. 17/1531 that the roadside boundary at the junction of Local Road No. L97641 with the R764 Regional Road be set back to provide sightlines of 90m. The junction has since been upgraded and accords with Part 6 of the National Roads Authority's guidelines.
- Due to the geometry of the L97641 / R764 junction, sightlines of at least 90m are achievable in each direction while eastbound traffic turning off the regional road onto the local road will have to negotiate a sharp turn thereby ensuring significantly reduced vehicle speeds.
- The subject application accords with national and local planning policy and employs the most up-to-date environmental building technologies. It will not pose a risk to the ecology of the area.
- It has been established the site is suitable for the use of a septic tank system and this assessment has been accepted by the Planning Authority.
- The percolation area as approved is in a different location to what was previously planned and is suitable for the wastewater treatment system proposed as acknowledged by the Environmental Health Officer.
- Given the extent of the landholding, percolation was never going to be an issue as the percolation area could potentially be sited anywhere on the farm.

6.3. Planning Authority Response

None.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The principle of the proposed development / rural housing policy
- Overall design and layout / visual impact
- Impact on residential amenity
- Traffic considerations
- Wastewater treatment and disposal
- Appropriate assessment

These are assessed as follows:

7.2. The Principle of the Proposed Development / Rural Housing Policy:

7.2.1. In terms of assessing the principle of the proposed development pursuant to current rural housing policy, it is of relevance in the first instance to note that the proposed development site is in an '*Area under Strong Urban Influence*' as indicatively identified by the '*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*' (there is no further identification of rural area types at a county level in the Wicklow County Development Plan, 2016). The Guidelines state that these areas will exhibit characteristics such as their proximity to the immediate environs or the close commuting catchments of large cities and towns (e.g. Wicklow Town) and will generally be under considerable pressure for the development of housing due to their proximity to these urban centres or the major transport corridors accessing same (e.g. the M11 / N11 corridor). Notably, within these '*areas under urban influence*', the National Planning Framework ('Project Ireland 2040: Building Ireland's Future') states that it will be necessary for applicants to demonstrate '*a functional economic or social requirement for housing need*' (with National Policy Objective No. 19 stating that the provision of single housing in rural areas under urban influence is to be based on the core consideration of a demonstrable economic or social need to

live in a rural area and the siting and design criteria for rural housing contained in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements) while the Guidelines further state that the housing requirements of persons with roots or links in rural areas are to be facilitated and that planning policies should be tailored to local circumstances.

- 7.2.2. While the Wicklow County Development Plan, 2016 does not provide any further detailed identification of rural area types at a county level, and although this omission is regrettable and is perhaps related to the specific circumstances of the county given its proximity to Dublin City and the M7 & M11 Corridors, having conducted a site inspection, I am satisfied that the proposed development site could be construed as being within an '*Area under Strong Urban Influence*' given the site location relative to the urban centres of Wicklow Town & Greystones, the Greater Dublin Area, and the M11 / N11 Corridor.
- 7.2.3. Section 4.3.5: '*Rural Housing*' of the County Development Plan emphasises the need to avoid urban-generated rural housing and to facilitate those who have a 'bona fide' need to live in a rural area. In this respect I would refer the Board to Objective HD23 which states that residential development will only be considered in the open countryside when it is intended for use by persons with a '*definable social or economic need*' by reference to one of 16 No. qualifying criteria.
- 7.2.4. Having reviewed the available information, I am satisfied that the applicant has demonstrated that he complies with Part 1 of the eligibility criteria set out in Objective HD23 on the basis that he is '*a permanent native resident seeking to build a house for his / her own family*'. In this regard, I note that the applicant presently resides a short distance away (c. 850m to the southeast) in the family home with his elderly mother (and a brother) in a rural area situated to the north of the small rural cluster of Killiskey (a 'Level 9' settlement as per the county settlement hierarchy) where he has lived since the year 2000 (having previously resided with his grandparents in Ballinameesda, Co. Wicklow). Additional support is lent to the proposal by the applicant's ancestral / familial links to the wider area; his desire to live locally in his own home in order to provide care and support for his mother; and the assertion that he is an active member of the local community through his involvement in various sporting and other organisations. However, it is of particular relevance to note that the applicant is actively engaged in farming the wider landholding of which the

subject site forms part and that this would appear to be his principal source of income / employment. By way of further clarity, although the farm in question was only seemingly purchased by the applicant's mother in 2017, sufficient supplementary information has been provided to confirm the applicant's involvement in farming, including his role in assisting in the operation of his uncle's (Raymond Murphy's) farm at Ballinammesda, Kilbride, as a relief milker and calver.

- 7.2.5. At this point, I would suggest that it is appropriate to note the provisions of the *'Sustainable Rural Housing, Guidelines for Planning Authorities'* which state that in facilitating housing intended to meet rural-generated needs eligible persons can include those working full-time or part-time in rural areas or persons who are an 'intrinsic part of the rural community' which are defined as follows:

'Such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first homes near their family place of residence.'

(For the purposes of clarity, I would advise the Board that Circular letter PL 2/2017: *'Sustainable Rural Housing Guidelines for Planning Authorities 2005 – Local Needs Criteria in Development Plans'* clearly states that the *'Sustainable Rural Housing, Guidelines for Planning Authorities, 2005'* remain in place and thus form the current 'default' position (as supported by the National Planning Framework) pending the publication of revised guidance by the Department).

- 7.2.6. On the basis of the submitted details, I would accept that the applicant has a housing need on the basis that he has never previously owned or built a dwelling house and that he has social / familial links to the locality thereby satisfying Criterion No. 1 of Objective HD23 of the Development Plan. Moreover, he has an economic and functional need to reside at this location by reference to his farming of the landholding. Therefore, it is my opinion that the need for an additional dwelling at this location in an area under strong urban influence has been adequately justified and

that the development accords with Objective 19 of the NPF and the guidance set out in the Sustainable Rural Housing Guidelines.

7.3. Overall Design and Layout / Visual Impact:

- 7.3.1. The proposed development site is not subject to any 'greenbelt' designation, however, it is located within '*The North East Mountain Lowlands Area of High Amenity*' as detailed in Figure 4.11: '*The Landscape Category Map*' and Map 10.13(c) of the Landscape Assessment contained in the Wicklow County Development Plan, 2016. This is considered to be a transitional landscape located between the 'Eastern Corridor' and the 'Mountains Uplands Area of Outstanding Natural Beauty' and is described as including Trooperstown Hill, large tracts of forestry lands, and a number of views and prospects listed for protection / preservation. Within this area it is the policy of the Planning Authority to ensure through appropriate siting and design that new development along local / regional roads, with particular reference to 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.
- 7.3.2. In a local context, the proposed development site occupies a hillside location on lands which rise steeply on travelling northwards away from the local road. While the site itself is comparatively well screened from view at lower elevations due to the extensive tree planting proximate to the roadside, the intended positioning of the proposed dwelling house is more readily apparent from vantage points elsewhere in the surrounding area, with particular reference to those views from the more elevated sections of the R764 Regional Road on the opposite side of the valley when travelling eastbound (although it should be noted that the views from this roadway are not listed for protection in the Development Plan and that the proposal will not interfere with any view or prospect expressly identified as being of special amenity value or interest).
- 7.3.3. In relation to the actual siting and design of the proposed dwelling house, regard should be had to the provisions of the '*Single Rural Houses: Design Guidelines for New Homes in Rural Wicklow*' set out in Appendix 2 of the County Development Plan, however, cognisance should also be taken of the efforts employed in the subject proposal to address the Board's previous refusal of PA Ref. No. 015377 /

ABP Ref. No. PL27.130820. In this respect, it is my opinion that the overall design has sought to evoke a contemporary interpretation of the traditional vernacular through its use of features such as the single-storey, split-level construction, the two narrow plan forms set askew from one another and linked by a connecting entrance lobby, the steep roof pitches, and the chimney stacks positioned atop the ridge line, in combination with a palette of external finishes including a simple render, timber cladding, and blue / black roof slates. It adheres to the basic design principles set out in the aforementioned guidance and represents a marked improvement over the conventional bungalow previously refused permission on site under ABP Ref. No. PL27.130820.

- 7.3.4. In seeking to address the refusal of ABP Ref. No. PL27.130820, it should be noted that the Board refused permission contrary to the recommendation of the inspector who was of the opinion that the visual impact of the proposal could have been satisfactorily mitigated to an acceptable level, subject to conditions. While the reporting inspector acknowledged that the site occupied an elevated position in a landscape of special amenity value and would be highly visible from the surrounding area, it was considered that through the revision of the house design (including a reduction in its size and ridge height), the omission of a proposed garage, and a reduction in the extent of the graveled area to the front and side of the dwelling, the proposal could have been accommodated. Conversely, the Board formed the opinion that the proposed development, by reason of its location and scale, would be detrimental to the high scenic value of the area and would seriously injure the amenities of the area, although it would appear from a reading of the Board Direction that the ultimate decision to refuse permission was informed by a determination that the applicant had not demonstrated an economic or social need for a dwelling at this location.
- 7.3.5. Given that it has already been established that the current applicant satisfies the eligibility criteria set out in Objective HD23 of the Development Plan (and noting that the needs of a qualifying person are deemed to be supreme over any conflicting landscaping objective in the Development Plan, although I would suggest that this should not be a determinative factor), it is appropriate to consider the design response of the subject proposal when compared to that refused under ABP Ref. No. PL27.130820. In this regard, I would reiterate my earlier comments that the house

design itself adheres to the '*Single Rural Houses: Design Guidelines for New Homes in Rural Wicklow*' and is more appropriate to a rural context. More specifically, I would advise the Board that the proposed dwelling has been positioned further forward (southward) on site and thus is situated at a moderately lower elevation than was previously proposed. This is reflected in the finished floor level(s) which will be approximately 1m below that proposed in ABP Ref. No. PL27.130820. In addition, the extent of the excavation works into the hillside would appear to have been lessened while the expanse of the hard surfacing / parking area has been relocated primarily to the rear and side of the construction. Therefore, the immediate visual impact of both the structure and the associated works has been reduced somewhat and can perhaps more readily avail of the screening offered by the mature tree planting between the site proper and the public road. Any such impact could potentially be mitigated further by additional supplementary landscaping as part of the proposed development.

- 7.3.6. Although it would be possible to relocate the proposed dwelling further south to a lower elevation and closer to the established site boundaries with a view to reducing the visual impact further, this would also have the likely effect of increasing the amount of shading experienced within the house itself due to the overshadowing caused by the mature trees thereby impacting on solar gain considerations.
- 7.3.7. Having regard to the foregoing, on balance, I am satisfied that the overall design and siting of the proposed development is acceptable and will not unduly detract from the visual amenity or scenic quality of the surrounding rural landscape. While the site occupies a locally elevated position in a landscape of high amenity value, the development will not be so conspicuous as to have a disproportionate or dominating visual impact on the surrounding environment nor will it interfere with any view or prospect listed for protection in the Development Plan (although more distant views of the proposal may be available from vantage points along the R764 Regional Road to the west, these will be intermittent and offset from the (eastbound) direction of travel and will be largely obstructed by intervening landscaping).

7.4. Impact on Residential Amenity:

- 7.4.1. Having reviewed the available information, and in light of the site context, including its relationship with neighbouring properties, the considerable separation distances

involved, and the level of screening provided by intervening landscaping, in my opinion, the overall design, positioning and orientation of the proposed dwelling will not have any significant detrimental impact on the residential amenity of surrounding houses by reason of overlooking or a loss of privacy.

7.5. Traffic Considerations:

7.5.1. The proposed development site will be accessed via a new entrance arrangement onto an existing agricultural track that extends from the minor local road (L97641) to the south which in turn branches off from the R764 Regional Road further east. In this regard, various road improvement works (which are stated as having been informed by recent planning applications in the vicinity of the site) are proposed to be undertaken as part of the development. Although the site layout plan details that it is proposed to widen and upgrade that section of the laneway between the proposed entrance and the local road to achieve a maximum gradient of 1:10 and a clear minimum width of 3.6m, the 'Transport Technical Note' provided with the application details a wider range of road improvement works that include enhancing the access laneway connecting the proposed dwelling to the adjoining L97641, the localised widening of the L97641 between the laneway and the R764 Regional Road, and amendments to the layout of the junction of the L97641 with the R764. Accordingly, I would draw the Board's attention to Section 3: '*Proposed Road Amendments*' of the Transport Technical Note and the accompanying drawings which detail the following:

- The widening of the L97641's carriageway to 4.5m from its junction with the R764 Regional Road over a distance of approximately 72m.
- The amendment of the R764 / L97641 junction to improve its skewed layout and to achieve sightlines of 90m in both directions by relocating the centreline adjacent to the outside centre of the bend of the R764 (based on an assumed design speed of 60kph along the regional road).
- The widening of the existing site access road (the agricultural track) to 4.1m for a distance of 10m from its junction with L97641 and to 3.5m for a further 60m length thereafter i.e. past the entrance to the proposed dwelling. This will ensure that the carriageway adjacent to the public road will be able to accommodate vehicles concurrently accessing / egressing

the junction. Clear junction radii are also to be provided while the roadway is to be repaved in a gravelled surface.

- 7.5.2. It is anticipated that all of these works can be accommodated within the existing road boundaries, will not be dependent on third party agreement, and will not rely on the trimming of hedges to achieve the required sightlines. The works are also to be implemented in agreement with the Local Authority.
- 7.5.3. In addition to the aforementioned road improvement works, I would refer the Board to the grant of permission issued in respect of PA Ref. No. 171531 which approved the construction of a dwelling house on lands further west along Local Road No. L97641. That grant of permission has since been implemented and Condition No. 2 of the approval requires certain road improvement works to be completed to the written satisfaction of the Planning Authority in advance of any other aspect of the development. Notably, those works include a requirement that the roadside boundary at the junction of the L97641 / R764 be set back in accordance with a drawing ('Public Road Junction Details) received by the Planning Authority on 8th March, 2018 in order to ensure that 90m sightlines are provided in both directions along the R764 when measured at a point measured 2.4m back from the public road carriageway at the centre of the junction. Therefore, it is apparent that the resultant sightlines proposed at the junction of the L97641 / R764 consequent on the subject proposal (as per the improvement works detailed in the applicant's Transport Technical Note) correspond with those previously sought and accepted by the Planning Authority in its determination of PA Ref. No. 171531 (while it is unclear if the works required by Condition No. 2 of PA Ref. No. 171531 have been carried out as required, the relevant applicant / developer would nevertheless be obliged to comply in full with the terms and conditions of that grant of permission).
- 7.5.4. Following a review of the available information, and having conducted a site inspection, I am satisfied that adequate sightlines can be achieved onto the public road and that the surrounding road network in the vicinity of the application site can accommodate the additional traffic volumes consequent on the proposed development without detriment to public safety, subject to the implementation of the road improvement works set out in the submitted plans and particulars.

7.6. Wastewater Treatment and Disposal:

- 7.6.1. It is proposed to install a wastewater treatment system which will pump discharge to a partially raised sand polishing filter located on the more elevated lands to the rear of the site and, therefore, it is necessary to review the available information in order to ascertain if the subject site is suitable for the proposed disposal of treated effluent to ground. In this respect, I would refer the Board to the Site Characterisation Form submitted in response to the request for further information which details that the trial hole encountered a 650mm layer of compact topsoil (composed of loose CLAY / LOAM with widespread cobbles) overlying c. 450mm of SILT / CLAY with fines followed by 1,100mm of compact & glazed CLAY to the depth of the excavation at 2.2m below ground level. The water table and bedrock were encountered at a depth of 2.1m with water ingress / a perched water table recorded at approximately 1.9m-2.0m below ground. With regard to the percolation characteristics of the underlying soil, a 'T'-value of 41.81min / 25mm and a 'P'-value of 37.75min / 25mm were recorded which would constitute a pass in accordance with the EPA Code of Practice.
- 7.6.2. On the basis of the foregoing results and the accompanying supplementary information, in addition to the recommendation of the Environmental Health Officer of the Local Authority, it would appear that the subject site is suitable for the installation of the wastewater treatment system proposed, subject to conditions.
- 7.6.3. With respect to the appellant's assertion that there are underground springs present on site, no clear or verifiable evidence has been submitted to support this claim and, therefore, I do not propose to comment further on the matter. While there is a stream passing along the western boundary of the site, which discharges to a larger watercourse alongside the regional road, the siting of the proposed treatment system accords with the necessary separation distances.

7.7. Appropriate Assessment:

- 7.7.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, the adequacy of the wastewater treatment and disposal arrangements proposed, and the proximity of the lands in question to the nearest European site, it is my opinion 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. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission for the proposed development be granted for the reasons and considerations, and subject to the conditions, set out below:

9.0 Reasons and Considerations

- 9.1. Having regard to the “Sustainable Rural Housing, Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005, and to the location of the site in a ‘Rural Area under Strong Urban Influence’ as defined by those guidelines, 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, would be acceptable in terms of traffic safety and convenience, and would not 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, as amended by the further plans and particulars submitted on the 10th 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.

Reason: In the interest of clarity.

2.

- a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.
- b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3.

- a) The external wall finishes of the proposed dwelling house shall have a neutral coloured nap plaster render, using colours such as grey or off white.
- b) The roof colour of the proposed dwellinghouse shall be blue-black, or slate grey using tiles or slates. The colour of the ridge tiles/cappings shall be the same as the colour of the roof.
- c) White uPVC shall not be used for windows, external doors and rainwater goods.

Reason: In the interest of visual amenity.

4. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

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

Reason: To ensure adequate servicing of the development, and to prevent pollution.

6. The water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.

7.

- a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

- b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interest of traffic safety and to prevent pollution.

8. The road improvement works set out in the 'Proposed Residential Development on Lands at Killiskey, Co. Wicklow – Transport Technical Note' received by the Planning Authority on the 26th day of February, 2021 shall be completed at the developer's expense and to the written satisfaction of the planning authority prior to the first occupation of the dwelling house.

Reason: In the interests of traffic safety and convenience.

9.

- a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority and in accordance with the requirements of the document entitled "Code of Practice – Domestic Waste Water Treatment Systems (p.e. ≤ 10)" – Environmental Protection Agency, 2021. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.
- b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.
- c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.
- d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.
- e) Within three months of the first occupation of the dwelling, 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 the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

10. The site shall be landscaped, using only indigenous deciduous plants and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Any plants which die, are removed or become seriously

damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity

11. 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.

Robert Speer
Planning Inspector

23rd February, 2022