



An  
Bord  
Pleanála

0

## Inspector's Report ABP-311550-21.

---

<b>Development</b>	House, wastewater treatment and percolation area, entrance improvements.
<b>Location</b>	Killahurler Lower, Arklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority Reg. Ref.</b>	21841.
<b>Applicant</b>	Daniel Somers.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refusal.
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Daniel Somers.
<b>Observer</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> July 2022.
<b>Inspector</b>	Philip Davis.

# Contents

1.0 Introduction.....	3
2.0 Site Location and Description .....	3
3.0 Proposed Development .....	3
4.0 Planning Authority Decision .....	4
4.1. Decision .....	4
4.2. Planning Authority Reports .....	4
4.3. Prescribed Bodies .....	5
4.4. Third Party Observations .....	5
5.0 Planning History.....	5
6.0 Policy Context.....	5
6.1. Development Plan.....	5
6.2. Natural Heritage Designations .....	5
7.0 The Appeal .....	6
7.1. Grounds of Appeal .....	6
7.2. Planning Authority Response .....	6
8.0 Assessment.....	6
9.0 Recommendation.....	11
10.0 Reasons and Considerations .....	12

## 1.0 Introduction

This appeal is by the applicant against the decision of the planning authority to refuse permission for a single dwelling in backland in a rural area in south County Wicklow. The grounds of refusal relate to settlement policy, pattern of development and public health.

## 2.0 Site Location and Description

### 2.1. Killahurler Lower

Killahurler Lower is a townland located near the Wexford border in south county Wicklow, some 5km west of Arklow town. The area is characterised by the rolling topography of the Wicklow Mountain foothills, with levels generally falling to the east and north. The townland is generally around 150 to 200 metres AOD, with open grazing farmland bounded by ditches and intermittent hedgerows and woodland with conifer plantation on higher ground. The area is served by a network of minor country roads, with a scattering of farms and dwellings, some forming small clusters.

### 2.2. Appeal site

The appeal site, with a site area given as 0.412 hectares (but is within a somewhat larger landholding), is an elongated area of grazing land extending south from a third class road and sloping up significantly away from the road. It consists of a farm gate access next to an existing bungalow and extends south behind this dwelling. The land is typical upland pasture, bounded by ditches and furze hedge on the western and southern side. The eastern and northern boundaries as marked on the plans and on older maps are now gone, the field has been incorporated into a larger field network. There are relatively recently constructed single and two storey dwellings along either side of this road and opposite, on lower ground. On the eastern side of the entrance is a relatively modern, but seemingly unused garage.

## 3.0 Proposed Development

The proposed development is for a single dormer dwelling of 242 sqm with wastewater treatment plant and upgraded entrance.

## 4.0 Planning Authority Decision

### 4.1. Decision

The planning authority decided to refuse permission for three stated reasons, which I would summarise as follows:

1. The proposed development represents inappropriate backland development.
2. It is contrary to Objective HD3 in the 2016 Development Plan for design quality.
3. Insufficient evidence on the appropriateness of the site for wastewater treatment.

### 4.2. Planning Authority Reports

#### 4.2.1. Planning Reports

- Notes a previous refusal on the site, with two grants of permissions to the north.
- Notes documentation attached on the applicant's local area qualifications.
- States that the site is in a 'Level 10' rural area with relevant policies HD3; HD23; HD24.
- The applicant is adjudged to be from the local area with regard to qualifying for the special provisions under policy HD23.
- The proposed development is considered to be backland in nature and so inappropriate for a rural location. It is noted that it may interfere with the amenity of the dwelling facing the road. The design is considered bulky and inappropriate.
- Noted that the site characterisation form is not in line with the most up to date EPA requirements.

#### 4.2.2. Other Technical Reports

**Environmental Health Officer:** Revised site characterisation form required in line with new EPA Code of Practice 2021.

**Municipal District Office:** Recommends alterations for drainable.

#### 4.3. **Prescribed Bodies**

None on file

#### 4.4. **Third Party Observations**

None on file

### 5.0 **Planning History**

**20/1171:** Dormer dwelling on the site refused for reasons of backland development and design.

**00/2330; 93/275:** Permission granted for dwelling and extension on the site to the north.

### 6.0 **Policy Context**

#### 6.1. **Development Plan**

The appeal site is in open countryside without a zoning designation. It is considered a 'Level 10' rural area in the Wicklow County Development Plan 2016-2022 with policies HD3; HD23 and HD24 applying, and a landscape category of '3' - 'Areas of High Amenity'. Policies NH49 and W17 are considered by the planning authority to apply, in addition to Appendix 1 and 2, relating to development standards and design guidelines for single rural houses.

#### 6.2. **Natural Heritage Designations**

The closest EU designated habitat is the Slaney River Valley SAC site code 000781, approximately 10km to the south-west. The site is not within the river catchment. The Wicklow Mountains SAC site code 002122 is about 15km to the north-west. The site is within the catchment of the Avoca River, which downstream is a proposed NHA.

### 6.3. EIAR

Having regard to the nature of the proposed development, its relatively small scale within an improved agricultural field, and the absence of any sensitive receptors in the immediate vicinity, the development would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded and a screening determination is not required.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

- The applicant states that he is a local resident, working locally, currently living with his parents, and there are no dwellings for sale in the vicinity.
- Argues that the site is chosen to have the least impact on local farming and visual impact.
- It is argued that building behind the existing dwelling is more appropriate than houses fronting the main road.
- It is argued that the design is similar to others recently granted permission in the area.
- An updated EPA site characterisation form is attached in response to reason no.3.

### 7.2. Planning Authority Response

The planning authority did not respond to the grounds of appeal.

## 8.0 Assessment

Having inspected the site and reviewed the file documents, I consider that the proposed development can be addressed under the following general headings:

- Principle of development
- Pattern of development

- Landscape and Design
- Public health
- Traffic safety
- Appropriate Assessment
- Other issues

### 8.1. Principle of Development

The site is in open countryside without a zoning designation under the 2016-2022 Wicklow County Development Plan (WCDP) - the 2022-2028 Development Plan has not yet been adopted. The area is described as 'Level 10' in the CDP, which covers all rural areas. The WCDP does not clarify as to how this area should be defined under the Rural Area Types set out in Section 3.2 of the Sustainable Rural Housing Guidelines, but I would consider that it has elements of both an 'area under strong urban influence' - It is within 5 km of Arklow and the M11) - and a 'Stronger Rural Area'. In other respects, I consider that the WCDP is in accordance with national guidelines. The site is within an area categorised as an 'Area of High Amenity'. A number of specific policies for rural housing set out criteria for design, traffic safety and public health.

In such Level 10 areas, the WCDP states (policies HD23 and HD24) that rural housing applicants should have a definable social or economic need to live in the open countryside and should lodge a S.47 agreement limiting the use of the dwelling. The planning authority has stated that it is satisfied that the applicant qualifies for a dwelling in the area although has not submitted the required sworn declaration.

A previous application for a dwelling on the site was refused for reasons relating to the pattern of development (backland development).

I would conclude that as the applicant is considered to satisfy the requirements for local need, there is no objection in terms of overall policy principle not to grant permission, but having regard to the planning history of the site the applicant needs to satisfy the planning authority that the proposed development represents an acceptable form of development in a rural area, and addresses the other policy considerations for such a rural dwelling.

## 8.2. Pattern of Development

The planning authority generally repeated the previous reason for refusal – that it constitutes disorderly backland development and would be out of character with the existing pattern of development in the area.

Most development in the immediate area of Killahurler is relative recent. While on the road east to Arklow there is a rapidly developing sprawl of very exposed dwellings on the eastward sloping topography towards the sea, in Killahurler the topography and dense roadside vegetation has generally screened most houses quite well, preserving the areas rural character to a significant degree. While at a significant elevation, agriculture in the area is to some degree quite intensive, with hedgerow removal having ‘opened up’ parts of the landscape. There are also visible windfarm developments to the west on higher ground. The site is elevated above the adjoining road (levels rise to the south) but is well screened from the road by vegetation.

The applicant has argued that the site is well hidden in the landscape, and that the proposed development is more appropriate than further linear development along the local road network. It is undeniable that a gradual if intermittent level of further linear development extending westward from the M11 does not represent an appropriate form of development, and there is certainly an argument that clustering is a better approach to serve the needs of genuine rural dwellings. Notwithstanding this, such clustering is only really appropriate when there are at least some services associated with the cluster and there is no risk of an excess concentration of wastewater treatment units in a small area. At present, there is no WCDP support for such clustering in this area and there are few historic examples.

While in some circumstances I would consider that locating new dwellings behind the existing road line would be the most appropriate way of facilitating rural dwellers, having regard to the elevated nature of this site and the number of new dwellings in the vicinity, I consider that the approach of the planning authority was correct, and I recommend that this reason for refusal be repeated.



### 8.3. Landscape and Design

The second reason for refusal relates to Objective HD3 of the WCDP which sets out design criteria for rural houses. The reason for refusal refers to the Wicklow Single Rural Houses Design Guide and outlines that:

*‘The proposed dwelling, due to its design which incorporates various setbacks, over complicated elevations, a bulky/top heavy roof, urban like finishes, the use of stone to multiple sections and an excessive driveway....’*

The applicant argues that the design is not out of place and is consistent with other such newer dwellings in the area. It is certainly true that there are a number of newer dwellings in the area that do not conform to the Wicklow Single Rural Houses Design Guide although in general those dwellings are located lower down the topography and so are less intrusive.

The proposed design is for a two story dwelling on the southern (most elevated) part of the site. While the site is partially screened from the nearby road, its elevation would make it quite prominent in the landscape from some distance, especially from the east where there are clear views from the site to the coast. If a dwelling is to be permitted on this site, I would concur with the planning authority that a location on a lower level (i.e. closer to the road) and a simpler, less suburban design form would be more appropriate and more in accordance with the Design Guide set out in the appendix to the WCDP. I therefore recommend that this reason for refusal is repeated.

### 8.4. Public health

The site is on a grazing field with a wastewater treatment system proposed to be located between the house site and the northern (lower) end of the field. A site characterisation form was submitted which indicates that the site is on geology of extreme vulnerability over a local important aquifer and has moderately well draining soils. The subsurface is described as having loose slate/sandstone over till with high stone content. The trial pits were not visible during my site visit, but the description is consistent with what I would expect for such an upland site. The form indicates bedrock to 1 metre below ground level, but the trial pit is reported as being 2.1 metres deep, with the subsurface stone as loose and granular. The section on

depth to groundwater is blank – it is implied, but not stated that no groundwater was encountered. There are no water courses on the site. The older OS plans show a stream commencing from the north of the site, across the road – in visual inspection this appears to be dry - it is likely a seasonal local drain, at its closest perhaps 100 metres from the wastewater treatment system.

The planning authority refused, noting correctly that the site characterisation form is not in line with the most up to date EPA guidance. The applicant submitted a revised site assessment with the appeal. This uses the most up to date form, although seems to have been related to the previous survey, but some figures have been changed – for example, depth from ground surface to bedrock is now given as 1.2 metres where previously it was 1 metre. There are no indications on what basis these changes have been made.

While I would not recommend that the reason for refusal is repeated as the applicant has addressed the immediate reason – i.e. it now has an up to date characterisation form – I would have concerns about the proliferation of such wastewater treatment systems over a vulnerable aquifer in an area where the geology is clearly sub-optimum for groundwater disposal. But as there are other substantive reasons for refusal, I do not recommend adding what could be considered a new issue.

#### **8.5. Traffic safety**

The site is to be accessed via what is now a disused farmgate, through a narrow gap between a garage and a dwelling. The adjoining road is relatively straight, albeit at the standard speed limit for such rural roads. Sight lines are considered acceptable by the planning authority. There is an increasing proliferation of individual accesses along this rural road, but traffic is generally very light.

#### **8.6. Appropriate Assessment**

The closest EU designated habitat is the Slaney River Valley SAC site code 000781, approximately 10km to the south-west. The site is not within the catchment. The Wicklow Mountains SAC site code 002122 is about 15km to the north-west. The site is within the catchment of the Avoca River, which downstream is a proposed NHA.

There are no watercourses on the site and the older OS plans do not indicate any historic drains or streams on the site. As I have noted above, there is a watercourse indicated on older OS maps around 100 metres to the north, but it was dry on inspection.

The freshwater habitat (Slaney River) is not in hydraulic continuity with the site, which drains to the Avoca watershed to the north via the Goldmine River. There are no SPA/SAC's on the Avoca or at the estuary in Arklow. The Wicklow Mountains SAC is designated for a variety of upland habitats – none of these qualifying interests are present on the site, which is for the most part improved grassland. The planning authority carried out a screening and concluded that there would be no adverse impacts on the qualifying interests of any of the Natura 2000 sites. I concur with this conclusion.

I have examined the screening in the context of my site visit and other available sources of habitat and environmental data and I am satisfied that it includes sufficient information to allow the Board to carry out a complete assessment of all aspects of the project. I am therefore satisfied that a conclusion of no adverse effects can be reached. I am therefore satisfied, that the proposed development, in itself or in combination with other plans or projects would not be likely to have a significant effect on the integrity of European sites no. 000781 or 002122, or any other European site, in view of these sites Conservation objectives and thus a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

#### **8.7. Other issues.**

There are no records of archaeological remains on the site, and there are no protected structures in the vicinity. The site is not identified on available resources as subject to flooding. I do not consider that there are any other substantive issues raised in this appeal.

#### **9.0 Recommendation**

I recommend that the Board generally uphold the decision of the planning authority to refuse permission for two of the three reasons stated.

## 10.0 Reasons and Considerations

1. Taken in conjunction with existing development in the area, the proposed development would constitute an excessive density of suburban-type development in a rural area and would constitute disorderly backland development which would be more akin to an urban location and would be out of character with the existing pattern of development in the area and lead to demands for the provision of further public services and community facilities, and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Objective HD3 of the Wicklow County Development Plan 2016-2022 states that all new housing developments in rural areas shall achieve the highest quality of layout and design in accordance with the standards set out in the County Development Plan and the Wicklow Single Rural Houses Design Guide. The proposed dwelling is to a design which is considered excessively complex and suburban in form and is located on an elevated section of the site is not considered to be in accordance with the design standards as set out in the development plan, does not have regard to the prevailing pattern of development and is inappropriate in this area designated as being an Area of High Amenity, and would thus militate against the preservation and protection of the rural and visual amenities of the area and would therefore be contrary to the objectives of the development Plan and would be contrary to the proper planning and sustainable development of the area.

---

Philip Davis  
Planning Inspector

13<sup>th</sup> July 2022