



An
Bord
Pleanála

Inspector's Report ABP312665-22

Development	Construction of a new dwelling & replacement of existing entrance.
Location	Donaghmore, Glen of Imaal, Co. Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	211415.
Applicant(s)	Bill Keogh.
Type of Application	Permission.
Planning Authority Decision	Grant with condition.
Type of Appeal	Third Party
Appellant(s)	John & Ann O'Brien.
Observer(s)	N/A.
Date of Site Inspection	27.05.2022.
Inspector	Mary Mac Mahon.

1.0 Site Location and Description

- 1.1. The site is located in Donaghmore, Co. Wicklow. Donaghmore is a small settlement 1.5km east of the N81, roughly halfway between Poulaphouca and Baltinglass. Donaghmore has a school, shop and public house – the Glen Lounge.
- 1.2. The site is adjacent to and includes lands that were formally part of the public house. It fronts onto the local road and has a northerly aspect. The eastern boundary of the site is shared with the appellants. There is a ruin of a bungalow on the site. The southern boundary is well screened. A wooden fence in on the western side of the site, adjacent to the car park of the public house. There appears to be gradient from northwest to northeast from 167.916 to 167.360 and to the southeast, to 167.213 (the figures on the proposed site plan are not very legible). The site area is stated as 0.151 ha. The existing structure is stated as having a gross floor area of 86 square metres.

2.0 Proposed Development

- 2.1. The proposed development is the demolition of an existing structure, relocation of entrance, decommissioning of existing septic tank and installation of wastewater treatment unit and soil polishing filter and associated works. The gross floor area of the proposed dwelling is stated as 195 square metres. Water supply is from the public mains and a new wastewater treatment system – Oakstown – is proposed.
- 2.2. A Site Characterisation Report is provided. The aquifer category is Locally Important and Vulnerability is High. A Groundwater Protection Response of R1 is anticipated. A trial hole of 1.8 metres was excavated. Clay silt and sandy stoney soil were found below the topsoil level. A 'T' value result of 29 and 'P' value result of 14.5 were achieved. A polishing filter area of 23 square metres is recommended.

3.0 Planning Authority Decision

3.1. Decision

Grant with 10 conditions. These conditions are generally standard. Condition 2 is an occupation condition. Condition 10 requires the existing vegetation to be retained and a landscaping plan submitted.

3.2. Planning Authority Reports

3.2.1. Planning Reports

An observation from the appellant was received and its contents noted. Due to the absence of planning permission for the structure on site, the development thereon is not considered a dwelling house. Therefore, the application will be assessed as a new dwelling. The applicant comes within the scope of a new dwelling in this location given the evidence submitted. The red line boundary is in the ownership of the applicant. The site is located in a cluster. The design is acceptable and would be a significant visual improvement on the site's current condition. The metre in height difference between roof ridge height and the application and the neighbouring dwelling is considered acceptable and will not impact on residential amenities. The boundary detail is acceptable. The planner's report notes that the EHO report which finds EPA Code of Practice 2021 separation distances are met. The planner scaled the site area by hand and considered that the site area was circa 1,400 square metres. The removal of the existing septic tank is an environmental gain.

3.2.2. Other Technical Reports

Environmental Health Officer – no objection subject to condition.

Area Engineer - Sight visibility lines can be achieved. No surface water to enter the public road.

Irish Water – grant subject to condition.

4.0 Planning History

21164 – Planning application for a dwelling house for the applicant withdrawn.

07/2425 – Retention of the existing 3 bedroom bungalow and replacement of same with a 4 bedroom bungalow with an Aquamax wastewater treatment system refused to Marie Byrne for 3 no. reasons – prejudicial to public health due to inadequate site size, non-essential rural housing and consolidation of a pre-fab on the site.

99/373 – Retention of bungalow for Patrick Byrne deemed withdrawn.

5.0 Policy and Context

5.1. National Policy

The EPA Code of Practice: Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10) 2021 applies. It applies to new sites. It states on page 6 in relation to existing sites:

“Existing DWWTSSs may not meet the performance requirements as set out in this CoP. If existing DWWTSSs are being upgraded, variances to the requirements set out within this CoP may be considered by the local authority where the authority is satisfied that the proposed upgrade will protect human health and the environment. DWWTSSs serving buildings of architectural or historical interest may be especially likely to give rise to such circumstances.”

It sets out the improvements that a secondary treatment system provides over a conventional septic tank.

Pollutant	Conventional septic tank	Secondary treatment system
Faecal coliforms	2.1 million/100 ml	73,000/100 ml
Phosphate (mg/l P)	18.6	13.5
Nitrogen (mg/l N)	112.7	72.9
BOD5 (mg/l)	150–500	20–50

A typical daily hydraulic loading of 150 litres per person should be used to calculate capacities for all DWWTSSs (both septic tanks and secondary/tertiary DWWTSSs) to ensure that adequate treatment is provided.

The Code of Practice provides standards for the treatment of effluent from these systems.

“Where the requirements of Article 18 (newspaper notice), Article 19(1)(a) (site notice) and Article 22 (application form and required accompanying documentation) are complied with the application is then deemed to be valid. As set out in the preceding paragraphs, planning authorities should adopt a reasonable approach towards validation. While compliance with the Planning Regulations is essential, particularly to protect the interests and participation rights of third parties who may be affected by the proposed development, planning authorities should take a common sense approach and should avoid invalidating applications on very minor points such as a mis-spelling or an illegible signature, particularly if third party rights are not prejudiced. While it is of course the responsibility of applicants and agents to submit applications which comply with the Regulations, planning authorities might consider an approach whereby (as recommended in the case of a small underpayment of a fee) in a case where an application contains just one minor defect, the applicant would be contacted and offered the opportunity, within a very tight time-frame, to correct the defect (the application would be regarded as valid in the interim period).”

In relation to unsolicited further information, the guidelines state:

“As the submission of unsolicited further information by the applicant may have implications for the rights of third parties, such submissions should only be considered when they relate to non-contentious matters, such as clarification of details already submitted. If further information received departs substantially from the application as originally lodged, it should be dealt with in accordance with the requirements of Article 35, as detailed above, otherwise the application should be determined on the basis of the original plans. Alternatively, the applicant may choose to withdraw the original application and to submit a fresh application.”

5.3. Development Plan

The *Wicklow County Development Plan, 2016-2022* applies. Donaghmore is Level 8 small village. The core strategy allows for an additional 10 units. The plan requires that an applicant for a dwelling in the settlement must be a resident in Wicklow for at least five years or in permanent employment for at five years in Wicklow within 15 km of the small village.

HD03 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.

HD22 Where permission is sought for residential development in a settlement with occupancy controls (Levels 6-9), the applicant will be required to show compliance with objectives for that settlement set out in this plan and 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(s) for a period of 7 years in accordance with the relevant objective.

HD25 The conversion or reinstatement of non-residential or abandoned residential buildings back to residential use in the rural areas will be supported where the proposed development meets the following criteria:

- the original walls must be substantially intact – rebuilding of structures of a ruinous nature will not be considered;
- buildings must be of local, visual, architectural or historical interest;
- buildings must be capable of undergoing conversion / rebuilding and their original appearance must be substantially retained. (A structural survey by a qualified engineer will be required with any planning application); and
- works must be executed in a sensitive manner and retain architecturally important features wherever possible and make use of traditional and complementary materials, techniques and specifications.

The Baltinglass Hills Area of High Amenity - The rolling undulating terrain of the hills around Baltinglass, is characterised by the existence of important archaeological remains and monuments. This area is of significant heritage value while also forming a key tourist attraction within this area.

WI7 Permission will be considered for private wastewater treatment plants for single rural houses where:

- the specific ground conditions have been shown to be suitable for the construction of a treatment plant and any associated percolation area;

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

Wicklow County Council Policy for DWWTS 2021

This document references the EPA Code of Practice and seeks additional requirements. This includes that the minimum area for a site on mains water supply shall be generally to be 1,500 square metres

5.4. Natural Heritage Designations

5.5. Having regard to minor scale and the foreseeable emissions from the proposed development no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

5.6. EIA Screening

5.7. Having regard to residential nature and minor scale of the proposed development, its location on a brownfield site in an area where public water supply is available and in light of the foreseeable emissions therefrom it is possible to exclude the requirement for submission of an EIAR at a preliminary stage.

6.0 The Appeal

6.1. The Third Party appellants have submitted the appeal, which is summarised below.

6.2. Grounds of Appeal

- The application should have been invalidated – the structure was a dwelling and its demolition should have been referenced in the public notice; the applicant's lands in the vicinity of the site should have been outlined in blue; the appellants' septic tanks and soakpit are not identified and a contiguous elevation not presented. The description of the use of the land as grassland in the application form is misleading;
- Unsolicited further information should not have been accepted and while the appellants were informed of it, the wrong information was available on line and they could not access it. The acceptance of this unsolicited information is contrary to the procedures set out in the *Development Management Guidelines* 2007;
- The assessment of the wastewater treatment system does not comply with the planning authority policies or the EPA Code of Practice 2021 and so constitutes a threat of pollution.
- Negative impact on privacy, by reason of overlooking by roof lights;
- A dormer bungalow is incongruous in this location and no contiguous elevation has been provided
- Concerns over the party boundary – a 2.5 metre block wall is requested;
- The site area is contended to be inaccurate and the red line extends to the middle of the road. As the site area is below 1,500 square metres, the provision of a wastewater system would be prejudicial to public health as separation distances cannot be met (3 metres to the site boundary and 4 metres to the road) and materially contravenes the planning authority's policy Objective W17;

- The polishing filter is up-gradient of the proposed dwelling and at a higher level than the finished floor level. Details on the drawings, including invert and pipe levels are not presented;
- Concern over potential contamination of the appellants' well;
- Previous application Reg. Ref. 21/1164 was withdrawn;
- Condition 10 relating to landscaping does not provide any input from the Third Party most affected.

6.3. Applicant Response

The applicant's agent, LK Design, submitted the following response, summarised below. It includes drawings to demonstrate the additional purchased:

- The wastewater treatment system complies with the EPA Code of Practice separation distance – including to the road structure;
- The site is 1,500 square metres to the edge of the public road;
- Additional land has been purchased to ensure that the minimum area has been achieved;
- W17 refers to sites being generally 1,500 square metres;
- No pollution arises and within the 7.5 ha of the settlement, 10.7653mg/l_N per hectare is achieved, and the EU maximum is 50 mg/l_N per hectare.
- The proposed development is an environmental improvement over the existing septic tank.

6.4. Planning Authority Response

None on file.

7.0 Assessment

7.1. The main issues to be assessed are:

- The planning status of the structure on site;
- Compliance with development plan settlement policy;
- Disposal of waste water;
- Impact on visual amenities;
- Impact on residential amenities;
- Procedural matters.

7.2. The existing structure on site is a ruin. I accept that it has been used as a dwelling in the past and that there is a septic tank present on site associated with that use. However, that use was unauthorised, so the applicant does not benefit from the presence of the structure in planning terms – i.e. as a replacement dwelling.

7.3. In relation to development plan settlement policy, the applicant has demonstrated that he comes within the scope of a dwelling house at this location, due to his residence in the area and place of employment. The development plan allows for up to 10 new dwellings in Donaghmore. An examination of the on-line planning search facility on the Wicklow County Council website indicates that no dwelling has been permitted during the current development plan period. Therefore, the provision of a dwelling for the applicant in this Level 8 settlement is acceptable in principle.

7.4. The site area is stated as 0.151 ha on the application form. It includes areas outside the original physical boundary treatments of the site, to the north to the road edge and to the east to the lands in the curtilage of the public house and the field to the southeast. Like the planning authority, I have scaled the site plan by hand. I have found the area of the site to generally coincide with the measurements shown. I estimate that the site area is over 1,440 square metres. However, hand scaled measurements will not be as accurate as the GPS Survey submitted in the applicant's response. There are some anomalies between the site plan and the GPS survey provided by the applicant at appeal stage, but the differences are not significant.

7.5. The Wicklow County Development plan generally requires that a site area of 1,500 square metres is needed for a dwelling on public water supply. However, there are no minimum sizes set out in the EPA Code of Practice. Instead, the focus is on separation distances and reaching particular parameters. In this case, the proposed treatment unit is 8.524 metres from the proposed dwelling house, which complies with the EPA

distances. The polishing filter is an additional 2 metres from the proposed treatment unit. A polishing filter that is higher than the finished floor level of the house is not unusual, as the treated effluent is required to filter downwards. The edge of the polishing filter is some 46 metres from the appellants well. It is circa 22.5 metres from the party boundary to the east, so easily meets the separation distance with any adjacent tank. It is 4 metres from the metalled edge of the road. The proposed polishing filter is more than 3 metres from the boundary fence to the west. Therefore, I am satisfied that notwithstanding any dispute over the size of the site, the key metrics for the DWWTs are achieved. The proposed development will not, therefore have an adverse impact on water quality.

- 7.6. Furthermore, the removal of the existing septic tank, which is circa 15 metres from the appellants' well, is a significant public health gain for the appellants and constitutes the removal of a threat of pollution to their well.
- 7.7. In relation to the design of the proposed dwelling house, it is a modest dormer bungalow of 195 square metres, with a roof ridge height of 6 metres and has simple, clean lines. It would not be out of character for this rural area, in general. The removal of the ruined structure would significantly improve the visual amenities of the area. I am satisfied that the proposed dwelling will not detract from the visual amenities of the area, notwithstanding the absence of a contiguous elevation.
- 7.8. The proposed dwelling is centrally located within the site, roughly in line with the appellant's dwelling and circa 5 metres from the party boundary to the east. There is a ground floor en-suite with a window on the eastern elevation and an additional east facing window in the front porch. I do not consider that the rooflights at dormer level will give rise to serious overlooking of the appellants' property. The proposed dwelling has a northern orientation and combined with the limited roof ridge height and distance from the appellant's dwelling, will not give rise to significant overshadowing. The proposed development will not give rise to serious injury the residential amenities of the appellant. I therefore do not consider that a 2.5 metre high wall is necessary to protect the residential amenities of the appellants.
- 7.9. In relation to procedural matters, I consider that the applicant was correct to refer the demolition of a structure on the lands, instead of a dwelling house. As the dwelling house was unauthorised, the correct approach is to refer to the last authorised use of

the lands, which presumably was agricultural in nature, so there is no inferred benefit. The application form included details of the applicant in terms of his current address, place of employment and date of commencement of the employment. The unsolicited further information submitted included a correcting Eircode, an agreement to accept a Section 47 occupation condition, and evidence to substantiate the applicant's place of employment and residence. This information is of a non-contentious nature. I do not consider that there is any matter contained in the unsolicited information that would warrant a new public notice. The appellants' rights were not prejudiced by their inability to view the information during the application process. The issue of ownership of adjoining lands has not been substantiated. The absence of providing the location of the appellants' septic tank is not ideal, but the location of appellants' well, which is more critical, is provided. The septic tank appears to be outside the curtilage of the appellant's dwelling. In relation to the condition on landscaping, this is a point of detail and third party input is not appropriate.

- 7.10. Article 23 deals with the requirements to provide particulars with a planning application. Article 23 (1) (d) of the Planning and Development Regulations requires that drawings of elevations of any proposed structure shall show the main features of any buildings which would be contiguous to the proposed structure if it were erected, whether on the application site or in the vicinity. Such a drawing was not provided in this application. The planning authority deemed the application as valid. It is not within the remit of An Bord Pleanála does to invalidate a planning application. That is a matter for the courts, in my opinion.

8.0 Recommendation

- 8.1. I recommend that the application be granted, subject to condition.

9.0 Reasons and Considerations

Having regard to the policies of the Wicklow County Development Plan 2016-2022, the location of the site within the Level 8 settlement of Donaghmore and the applicant's compliance with the housing policy, HD22, for a dwelling at this location, it is considered that the proposed development would not seriously injure the visual or residential amenities of the area, would not give rise to public health issues or pollution

and would be acceptable in terms of traffic safety and convenience. 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, 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>(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]. 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.</p> <p>(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.</p>

	<p>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.</p> <p>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.</p>
3	<p>(a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority [on the 19th day of November, 2021], and in accordance with the requirements of the document “Wastewater Treatment Manual: Treatment Systems for Single Houses”, Environmental Protection Agency (current edition). No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>

	<p>(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.</p> <p>Reason: In the interest of public health.</p>
4	<p>The existing septic tank shall be decommissioned and removed from the site, by an authorised contractor to a licenced facility, during enabling works.</p> <p>Reason: In the interest of public health to protect groundwater.</p>
5	<p>The developer shall enter into a water connection agreement with Irish Water.</p> <p>Reason: In the interest of public health.</p>
6	<p>Surface water from the site shall not be permitted to drain onto the adjoining public road.</p> <p>Reason: In the interest of traffic safety.</p>
7	<p>The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.</p> <p>Reason: In the interest of visual amenity.</p>

8	<p>The external walls shall be finished in neutral colours such as grey or off-white.</p> <p>Reason: In the interest of visual amenity.</p>
9	<p>The site shall be landscaped, using only indigenous deciduous trees 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. This scheme shall include the following:</p> <p>(a) the establishment of a hedgerow along all side and rear boundaries of the site, and</p> <p>(b) planting of trees at 2 metre intervals along the <i>southern</i> boundary of the site.</p> <p>Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 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.</p> <p>Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.</p>
10	<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</p>

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. 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.

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.

Mary Mac Mahon
Planning Inspector

31 May 2022