



An
Bord
Pleanála

Inspector's Report

ABP-314399-22

Development	House, effluent treatment and disposal system and associated site works.
Location	Ballintombay Lower, Rathdrum, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	211408
Applicant(s)	Kalim Bunn.
Type of Application	Planning Permission.
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party
Appellant(s)	Kalim Bunn.
Observer(s)	No Observers.
Date of Site Inspection	24 th of July 2023.
Inspector	Elaine Sullivan

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1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.28 ha and is located in the rural townland of Ballintombay Lower. It is approximately 4 km to the west of Rathdrum, Co. Wicklow and on the western side of a local road, known as Greenane Road. The road is narrow in nature and slopes upwards to the north. The site is undeveloped and is currently overgrown with mature trees and hedges along the boundary. A stream runs along the western side of the road and along the site boundary.
- 1.2. There is a dispersed pattern of development around the site with a one-off house directly to the north and south, and another directly across the road to the east. Two more houses are in place further along the road and to the north of the site. The site has its own access which was secured with a wooden gate on the occasion of the site visit.

2.0 Proposed Development

- 2.1. Planning permission is sought for the construction of a detached, four-bedroom bungalow of approximately 170 sq. m. It is also proposed to construct a new vehicular access and to install a wastewater treatment system comprising septic tank and percolation area with all ancillary works.
- 2.2. The layout of the house was altered slightly through unsolicited further information which was submitted to the Planning Authority.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority, (PA), refused permission for the development for two reasons.

- In the first reason for refusal the PA considered that the proposed development would not represent a necessary dwelling in the landscape which was designated as an Area of Outstanding Natural Beauty (Mountain Uplands) and is contrary to the provisions of Section 4.4 of the County Development Plan 2016-2022. The PA also considered that the applicant did

not come within the scope of the housing need criteria as set out under Objective HD23 of County Development Plan. Therefore, if permitted the development would result in urban generated rural housing and would be contrary to the proper planning and sustainable development of the area.

- The second reason for refusal related to the siting and design of the development. The PA considered that the development would require the removal of a significant level of mature vegetation from the site and that the dwelling failed to make the best use of the orientation of the site in terms of solar gain. In combination, this would result in an incongruous and intrusive feature in the landscape and would be contrary to Objective NH50, HD3 of the Development Plan.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer, (PO), dated the 24th of January 2022 included the following:

- The development is proposed on the basis that the applicant is a permanent native resident of the rural area. However, the PO notes that the applicant grew up on the outskirts of Rathdrum. On that basis, the applicant does not qualify as native to the rural area and does not have a definable and bona fide social or economic need to live in the open countryside.
- The PO considers that some elements of the proposed design would be more suited to an urban area, and that it does not make best use of the orientation of the site in terms of layout and solar gain. The development would not therefore, accord with Objective HD3 of the 2016-2022 Development Plan.
- The development would also require the removal of a significant level of vegetation in an area of outstanding natural beauty. As the development would have the potential to significantly adversely impact the landscape the applicant has not demonstrated how it accords with Objective NH50 of the Development Plan.

- The PO notes that the applicant has not demonstrated adequate sightlines from the access and a traffic survey would be required to determine the actual traffic speed on the road.
- The report of the PO recommended that permission be refused for the development.

On the 25th of January 2022 the applicant requested that the time period for the application be extended for six months. On the 9th of May 2022 the applicant submitted unsolicited further information which included the following:

- A Traffic Survey was carried out by the applicant and states that the mean traffic speeds on the road, in the direction of Greenan were found to be 36 km/ph with an overall very low level of traffic.
- The applicant states that his family home was originally in the rural area, (Ballygannon), but is now within the settlement boundary due to the expansion of Rathdrum.
- A clarification regarding the applicant's occupation is submitted. He stated that the application form was incorrect and that he has his own business as a tree surgeon and woodland management, which are rural based trades. As such he is in accordance with section NH19 of the Development Plan, 2016. His occupation also ties him to the site as it has a working coppice of Hazel, *Corylus avellarna*, which is used in woodland management and requires constant maintenance and attention.
- The applicant also contends that he is also in compliance with point 9 of the CDP as his father has owned the site for more than 20 years, (in accordance with HD23, Section 16).
- The house plans and layout have been altered in accordance with the suggestions of the PO.
- A tree survey was also submitted by the applicant and all native trees and vegetation will remain untouched as much as possible and invasive species will be removed. The existing hedgerow along the boundary will be retained and repaired using traditional methods.

A second report of the PO dated the 20th of July 2022 reviewed the additional information submitted and included the following:

- The PO acknowledges the applicant's profession but also notes that official documentation has been submitted to show that the business is in active operation.
- A review of the tree survey notes that details the extent and species to be removed was not supplied.
- The PO does not consider that the maintenance of the hazel on the site requires the applicant to live there and that the applicant's profession specifically ties him to this rural area.
- The PO states that the applicant is from a housing estate in Rathdrum which has been within the settlement boundary of the town since the 1989 CDP. This is not considered to be a rural area and the proposal would represent an urban to rural move.
- Alterations to the design of the dwelling are acknowledged and the report notes that the design of the dwelling has been improved. However, it will not benefit from solar gain and will still require a significant amount of vegetation removal from the site.
- The issue of sightlines has been addressed to the satisfaction of the PA.

3.2.2. Other Technical Reports

- Environmental Health Officer – No objection.
- Arklow Area Engineer – The report of the 7th of December 2021 recommends that a traffic survey be carried out to determine traffic speeds on the road.

3.3. Prescribed Bodies

- No responses.

3.4. Third Party Observations

- No observations.

4.0 Planning History

- No recent planning history for the site.
- **99/273** – Planning permission refused by the PA on the 21st of January 2000 for outline permission for a bungalow and septic tank.
- **92/7957** – Planning permission refused by the PA for a house.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is located within the administrative boundary of Wicklow County Council. The operative Development Plan for the area is the Wicklow County Development Plan, (WCDP), 2022-2028, which came into effect on the 23rd of October 2022.
- 5.1.2. The application was assessed by Wicklow County Council in accordance with the policies and objectives of the Wicklow County Development Plan 2016-2022, which was the operative Development Plan at the time.
- 5.1.3. On review of the contents of both plans I note that there are no material changes between the 2016 County Development Plan and the 2022 County Development Plan as they relate to the appeal site and the current proposal. In this regard I consider the proposal in accordance with the guidance and provisions of the operative Development Plan, namely the 2022 – 2028 Wicklow County Development Plan, (WCDP).
- 5.1.4. In the interests of clarity, I draw the Boards attention to the following objectives of the WCDP 2016-2022 were referenced in the assessment and decision of the PA.

Wicklow County Development Plan 2016-2022

Chapter 4 – Housing

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

Under Objective HD23, sixteen circumstances are listed where residential development will be considered. The following were relevant to the subject proposal:

- A permanent native resident seeking to build a house for his / her own family and not as speculation.
- A son or daughter, or niece/nephew considered to merit the same position as a son/daughter within the law of a permanent native resident of a rural area, who can demonstrate a definable social or economic need to live in the area.
- A son or daughter, or niece/nephew considered to merit the same position as a son/daughter within the law 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.
- 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.
- 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.
- 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.
- 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.

Objective 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 in this plan, which includes a Wicklow Single Rural Houses Design Guide.

Objective NH50 – Any application for permission in the AONB which may have the potential to significantly adversely impact the landscape area shall be accompanied by a Landscape / Visual Impact Assessment.....The Assessment shall demonstrate that landscape impacts have been anticipated and avoided to a level consistent with the sensitivity of the landscape and the nature of the designation.

Wicklow County Development Plan 2022-2028

5.1.5. The following sections of the **WCDP 2022-2028** are of relevance to the appeal:

- The subject site is located in settlement Level 10 - the rural area (open countryside).
- The surrounding landscape is categorised as an Area of Outstanding Natural Beauty – Mountain Uplands.

6.4 Housing Objectives

CPO 6.1 - 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 for those with a demonstrable housing social or economic need to live in the open countryside.

CPO 6.4 - 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 and the Wicklow Single Rural House Design Guide.

Housing in the Open Countryside

CPO 6.41 - Facilitate residential development in the open countryside for those with a housing need based on the core consideration of demonstrable functional social or economic need to live in the open countryside in accordance with the requirements set out in Table 6.3.

Table 6.3 – Rural Housing Policy -

Housing Need / Necessary Dwelling

This is defined as those who can demonstrate a clear need for new housing, for example: -

- first time home owners,
- someone that previously owned a home and is no longer in possession of that home as it had to be disposed of following legal separation / divorce / repossession by a lending institution, the transfer of a home attached to a farm to a family member or the past sale of a home following emigration,
- someone that already owns / owned a home who requires 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.

Economic Need

The Planning Authority recognises the rural housing need of persons whose livelihood is intrinsically linked to rural areas subject to it being demonstrated that a home in the open countryside is essential to the making of that livelihood and that livelihood could not be maintained while living in a nearby settlement. This may include:

- a. Those involved in agriculture,
- b. Those involved in non-agricultural rural enterprise / employment,
- c. Other such persons as may have definable economic need to reside in the open countryside, as may arise on a case by case basis.

Social Need

The Planning Authority recognises the need of persons intrinsically linked to rural areas that are not engaged in significant agricultural or rural based occupations to live in rural areas. In this regard, persons intrinsically linked to a rural area may include:

- Permanent native residents of that rural area (including Level 8 and 9 settlements) i.e. a person who was born and reared in the same rural area as the proposed development site and permanently resides there.
- A former permanent native of the area (including Level 8 and 9 settlements) who has not resided in that rural area for many years (for example having moved into a town or due to emigration), but was born and reared in the same

rural area as the proposed development site, has strong social ties to that area, and now wishes to return to their local area,

- A close relative who has inherited, either as a gift or on death, an agricultural holding or site for his/her own purposes and can demonstrate a social need to live in that particular rural area.
- 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 for at least 10 years prior to the application for planning permission and can demonstrate a social need to live in that particular rural area.
- 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.
- Local applicants who are intrinsically linked to their local area and, while not exclusively involved in agricultural or rural employment, have access to an affordable local site.
- Local applicants who provide care services to family members and those working in healthcare provision locally; and,
- Other such persons as may have a definable strong social need to live in that particular rural area, which can be demonstrated by way of evidence of strong social or familial connections, connection to the local community / local organisations etc as may arise on a case by case basis.

CPO 6.42 - Where permission is granted for a single rural house in the open countryside, 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 CPO 6.41 or to other such persons as the Planning Authority may agree to in writing.

CPO 6.44 - To require that rural housing is well-designed, simple, unobtrusive, responds to the site's characteristics and is informed by the principles set out in the Wicklow Single Rural House Design Guide. All new rural dwelling houses should demonstrate good integration within the wider landscape.

CPO 6.45 - Subject to compliance with CPO 6.41 (rural housing policy), the Council will facilitate high quality rural infill / backland development in accordance with the design guidance set out in the Wicklow Rural House Design Guide provided that such development does not unduly detract from the residential amenity of existing properties or the visual amenities of the area, or the rural character and pattern of development in the area and does not result in a more urban format of development.

Appendix 2 – Single Rural Houses Design Guidelines.

5.2. National Policy

5.2.1. National Planning Framework - 2040

National Policy Objective 19 - Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.3. Natural Heritage Designations

- No designations apply.

5.4. EIA Screening

- Having regard to the nature and scale of the proposed development there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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 grounds of appeal include the following:

- The applicant is currently living in the family home and wishes to build a house on the family land. He is a new business owner and is not in a position to get a mortgage. There are currently no houses to rent in Rathdrum.
- If permission to build a house was refused the applicant may have to go on the social housing list.
- The site can be considered as an infill site as there is development on either side and on the opposite side of the road. Such development is encouraged by the PA.
- The applicant's profession as a tree surgeon and hedge layer ties him to the rural area and to the site where a native hazel coppice requires ongoing maintenance. No mature vegetation will be removed from the site.
- The applicant is of the opinion that he complies with the requirements of the CDP as,
 - He is a native resident of the rural area but due to the expansion of Rathdrum town, his family home is now located within the development boundary of the town.
 - He has been resident within 3km of the site for his whole life.
 - As 90% of his work as a tree surgeon and hedge layer takes place within the country/rural area, the applicant is of the opinion that he comes within the scope of the housing need criteria set out in HD23 of the CDP 2016-2022.
- The house has been redesigned to take account of the PO's comments.

6.2. Planning Authority Response

- No response on file.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, inspected the site and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal relate directly to the reasons for refusal and can be assessed under the following headings:

- Principle of Development
- Design & Layout
- Drainage / WWTS
- Appropriate Assessment

7.2. Principle of Development

- 7.2.1. The subject site is located in an area which is defined as 'rural area, open countryside), in the settlement strategy of the WCDP. Persons wishing to build houses in the rural area must comply with the Rural Housing Policy which is set out in Objective CPO 6.41 and Table 6.3 of the WCDP 2022-2028. The application was assessed under the provisions of the Objective HD23 of the WCDP 2016-2022 which was the relevant rural housing strategy at the time of the application. I have reviewed both Development Plans as they relate to the rural housing strategy, and I have found no significant differences between both as they relate to the site and the subject application.
- 7.2.2. Under Table 6.3 of the WCDP 2022-2028, prospective applicants must first demonstrate a 'housing need' based on the core consideration of demonstrable functional social or economic need. To demonstrate his connections to the area, the applicant submitted documents which included a letter from the local national school in Rathdrum confirming his attendance, details of his family connections to the area,

a sworn affidavit stating that he does not own a house and his qualifications as a tree surgeon. I am satisfied that the applicant has demonstrated that he has a connection to the area and that he would be a first-time homeowner that lives in the area.

7.2.3. The applicant states that his housing need is based on an economic need to live in the area. His profession as a tree surgeon and hedge layer takes place mostly in the rural area. The subject site also has a hazel coppice on the site that requires constant maintenance and management for his to use in his work as a hedge layer. Furthermore, the applicant argues that his family home was originally in the rural area and has been subsumed by the expansion of Rathdrum and is now in the settlement boundary.

7.2.4. I would agree with the conclusion of the PO that the applicant's occupation does not intrinsically link him to the rural area or require him to live there. I accept that the majority of the work may take place in a rural environment, but this alone does not necessitate him to live in the area as this work would require travel to numerous locations. The applicant has also argued that his family home was originally located in a rural area which became urbanised due to the expansion of Rathdrum. No information was submitted to support this argument and the location of the family home has been within the settlement boundary of Rathdrum since 1989, (as evidenced in the 1989 Rathdrum Town Plan, which is publicly available on the website of the PA). In the absence of any information to the contrary, I am satisfied that the applicant is a native resident of Rathdrum and grew up within the settlement boundary.

7.2.5. The grounds of appeal also argue that the development of the site would represent infill development which is encouraged by national and local planning policy. I do not accept that the site is an infill site within the context of the WCDP and the NPF. The overarching objective to developing infill sites is to increase density by consolidating development to utilise existing services. The subject site is a greenfield, un-serviced site located in a rural area, the development of which would require the use of existing natural resources to service it and would contribute to a dispersed pattern of development rather than a consolidation.

- 7.2.6. On the basis of the information submitted, I am not satisfied that the applicant meets the requirements set out in Table 6.3 of the CDP 202-2028 as they have not demonstrated that they have a sufficient economic need which requires them to reside in the countryside.

7.3. Design & Layout

- 7.3.1. In the grounds of appeal, the applicant has sought to address the second reason for refusal in the PA's decision. The PA considered that the proposal was not in accordance with the design guidance set out the Single Rural Houses Design Guidelines, and when combined with the removal of vegetation from the site, would result in an intrusive feature on the landscape.
- 7.3.2. A tree survey was submitted by the applicant. It shows the location of the tree stands on the site and the layout of the proposed bungalow and wastewater percolation area. The survey indicates that only two trees require removal with the remaining to be retained. Details of how the remaining trees would be protected during construction have not been submitted and I would question the viability and practicality of retaining the trees in close proximity to the percolation area.
- 7.3.3. The site is located at the bottom of a slope and the topography of the site slopes slightly southwards. Given the nature and location of the site, I am satisfied that the house would not be overtly visible from the surrounding areas. The house has a deep plan with rooms on either side of an internal corridor, which is not recommended in the Rural House Design Guidelines. This layout results in long elevations to the front and rear with a large expanse of roof, which is also not supported in the Guidelines. Section 3 recommends breaking up the roof profile to avoid an overly dominant roof.
- 7.3.4. I would agree with the conclusion of the PO that the design of the house is not in accordance with the guidance set out in the Single Rural Houses Design Guidelines, (Appendix 2 of the WCDP). The deep floor plan and long roof profile is contrary to the guidance set out in Section 3 of the Guidelines and as such would not be in accordance with the WCDP.

7.4. Drainage / WWTS

- 7.4.1. The site would be serviced by drilling a new well on the site and by installing a wastewater treatment system, (WWTS), which would comprise a septic tank with percolation area.
- 7.4.2. A Site Suitability Assessment was carried out for the proposed on-site wastewater treatment system and a Site Characterisation Form from the *EPA Code of Practice, Wastewater Treatment and Disposal Systems (Population Equivalent ≤10) 2021*, (EPA CoP), was prepared and submitted with the application. The form states that the house would have four bedrooms with a maximum of six residents.
- 7.4.3. The site is located at the bottom of a slope and the topography of the site has a gentle slope to the north. A stream flows alongside the road and to the front of the site. It is located within a Locally Important (LI) Aquifer of high vulnerability. The underlying bedrock is 'Lower-Middle Ordovician slate, sandstone, greywacke, conglomerate'. The location of the trial hole was not visible on the occasion of the site visit but the ground underfoot was firm with no evidence of rushes or other species indicating poor drainage.
- 7.4.4. Groundwater was not encountered in the trial hole which was excavated to a depth of 2m during the site investigation works. Bedrock was encountered at a depth of 1.3m from the ground surface. The groundwater protection response matrix in Table E1 of the EPA CoP indicates that the site falls within the R1 response category whereby a WWTS is '*Acceptable subject to normal good practice, (i.e. system selection, construction, operation and maintenance...).*'
- 7.4.5. The trial hole uncovered topsoil which had a granular structure with a medium to firm density of brown colour. Subsoil was found to be 'Gravel Silt' with 'Threads, 4cm Ribbons, Dilant' and had a medium to firm density with a light brown colour. The Subsurface Percolation Test, (T-test), returned a T-value result of 12.47 min/25mm. The Surface Percolation Test for Soil, (P-test), returned a P-value result of 10.97 min/25mm. Based on the percolation values returned, the site was found to be suitable for a septic tank and percolation area. This conclusion is supported by the guidance contained in Table 6.4 of the EPA CoP. All separation distances shown are in accordance with the requirements of Section 6.3 of the CoP.

7.4.6. As noted, I did not view the trial hole or the location of the trial holes. However, I observed the nature and location of the site and the surrounding characteristics. I note that the PA had no objection to the proposed WWTS, and the issue was not raised in the comments from the Environmental Health Officer of the PA. I am satisfied that, based my observations on the character of the site and the information contained in the Site Characteristic Form, that the WWTS as proposed would be acceptable subject to a regular maintenance schedule.

7.5. Appropriate Assessment

7.6. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s). The closest designated sites are the Wicklow Mountains SPA, (Site Code 004040), and the Vale of Clara SAC, (Site Code 000733). There is no hydrological connection from the site to any of the Natura 2000 sites.

7.7. Having regard to the nature and scale of the proposed development, the absence of any hydrological connection and the separation distance to the nearest European site, 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.

8.0 Recommendation

8.1. I recommend that planning permission be refused for the proposed development.

9.0 Reasons and Considerations

1. Having regard to the location of the site within Level 10 – rural area (open countryside) as identified in the Wicklow County Development Plan 2022 - 2028 where housing is restricted to persons demonstrating local need based on their social and / or economic links to a particular local rural area, and the applicant's particular circumstances as set out in the documentation submitted with the application, it is considered that the applicant does not come within

the scope of the housing need criteria as set out in Table 6.3 of the Development Plan for a house at this location. The proposed development would not be in accordance with Objective CPO 6.41 of the Wicklow County Development Plan 2022 - 2028 and in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development by virtue of its design and layout is not in accordance with the provisions of the Wicklow County Development Plan 2012-2028 and the Wicklow Rural Houses Design Guidelines. It would result in an unsatisfactory standard of development within the open countryside and as such, would be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Elaine Sullivan
Planning Inspector

25th of September 2023