



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315046-22

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<b>Development</b>	Proposed bungalow and effluent treatment system in accordance with EPA 2021 and associated site works.
<b>Location</b>	Kilmacurra West, Kilbride, Co. Wicklow,
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	22927
<b>Applicant(s)</b>	Vincent Mulvihill & Amy O'Neill
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Vincent Mulvihill & Amy O'Neill
<b>Date of Site Inspection</b>	24 <sup>th</sup> June 2023
<b>Inspector</b>	Colin McBride

## **1.0 Site Location and Description**

1.1. The appeal site, which has a stated area of 0.76 hectares, is located approximately 7km to the west of Rathdrum and in the townland of Kilmacurra West. The appeal site is located on the northern side of the L1113. The appeal site is a long narrow site running parallel with an existing vehicular access at its southern corner. The site is currently under grass with an existing laurel hedge along the road frontage and trees and hedgerow along the north/north western boundary. There is an existing watercourse along the northern/north eastern boundary of the site. The site is currently host to a cabin at the eastern end of the site and such is being used as a dwelling unit by the applicants/appellants (subject to enforcement). This structure is connected to an existing wastewater treatment system located on site. Adjoining lands include agricultural lands to the north and north east, to the south west a site with an existing tree house structure also being use as a dwelling unit and being served by the same vehicular access as the appeal site, and an existing two-storey dwelling to the north east.

## **2.0 Proposed Development**

2.1 Permission is sought for the construction of a single-storey dwelling and installation of an effluent treatment system. The proposed dwelling has a floor area of 144sqm and a ridge height of 6m. The dwelling features a pitched roof and external finishes of nap plaster and roof slates. The proposed dwelling is use an existing entrance off the L113. Water supply is to be from a private well.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission refused based on three reasons...

1. The proposed development would represent the consolidation of un-authorized development on this site having regard to the absence of a record by the Planning Authority of planning permission having been granted in respect of the existing cabin 'tree house' structure and the existing entrance to the site, the provision of such a

form of development unduly impacts on the amenities of the area, the amenities of adjoining properties, undermines the planning regulations and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the existing structure on site which is in use for residential accommodation and insufficient information regarding existing water and wastewater facilities for this structure, it is considered that to allow this development in absence of full details with respect to the system, its location and status would be prejudicial to public health, would set an undesirable precedent for shared water and wastewater services which are not sustainable, would consolidate this unauthorised development and would be contrary to Wicklow County Council's Policy for Wastewater Treatment & Disposal Systems for Single Houses (PE S 10).

3. Having regard to the scale of the propose development taken in conjunction with the existing structure on the site, the existing site character and its location in a rural area, it is considered that this development would alter the landscape character of the area as it would add to the suburbanisation of this rural area, would represent sporadic development in the rural area contrary to the settlement strategy as outlined in the Development Plan, and would set a precedent for similar footloose development which would undermine the policies of the County Development Plan and would therefore be seriously injurious to the visual amenities of the area and its proper planning and sustainable development.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

Planning Report (11/10/22): The applicant was considered to qualify for a rural dwelling, the existing entrance to be used to access the development was considered to be unauthorised, the visual impact of the dwelling was considered to be acceptable, the views of the EHO were noted, the presence of an existing unauthorised dwelling and wastewater treatment system were noted. Refusal was recommended based on the reasons outlined above.

### 3.2.2. Other Technical Reports

EHO (12/09/22): Further information required including submission of a section drawing of the wastewater treatment system showing inverts of soil polishing filter to be a minimum 0.9m above the water table.

### 3.3. Prescribed Bodies

None.

### 3.4. Third Party Observations

3.4.1 None.

## 4.0 Planning History

22/385: permission refused for a dwelling and associated site works, refused on based of failure to demonstrate necessity to live in the area, footloose development, consolidation of unauthorised development and prejudicial to public health.

20/24: Permission refused for a dwelling and associated site works, refused on based of failure to demonstrate necessity to live in the area, footloose development, consolidation of unauthorised development and prejudicial to public health.

On the adjoining site to the south west...

22/304: Permission refused for refused for a dwelling and associated site works, refused on based of failure to demonstrate necessity to live in the area, consolidation of unauthorised development, prejudicial to public health and visual impact.

18/276: Permission refused for a dwelling and associated site works, retention of summer house and existing wastewater treatment system, refused on based of failure to demonstrate necessity to live in the area, consolidation of unauthorised development, traffic hazard, prejudicial to public health and visual impact.

17/783: Permission refused for a dwelling and associated site works, retention of wooden building, permission to change use of poultry house to living accommodation, refused on based of failure to demonstrate necessity to live in the area, consolidation of unauthorised development, prejudicial to public health and visual impact.

## 5.0 Policy Context

### 5.1. Development Plan

The relevant Development Plan is the Wicklow County Development Plan 2022-2028.

Level 10 The rural area (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

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.

## 5.2 Sustainable Rural Housing Guidelines for Planning Authorities (2005):

The guidelines require a distinction to be made between 'Urban Generated' and 'Rural Generated' housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those within proximity to the immediate environs or close commuting catchment of large cities

and towns. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply. These include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

The site is located in an area classified as an Area Under Strong Urban Influence under Indicative Outline of NSS Rural Area Types.

### 5.3 National Planning Framework – Project Ireland 2040

NPO19 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;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

The proposal was assessed under previous Development Plan, Meath County Development Plan 2013-2019, which has superseded. The rural housing policies are unchanged from the previous plan.

### 5.4 **Natural Heritage Designations**

None within the zone of influence of the project.

## 5.5 EIA Screening

The proposed development is of a class but substantially under the threshold of 500 units to trigger the requirement for submission of an EIAR and carrying out of EIA. Having regard to the nature of the development, which is a new dwelling and associated site works, the absence of features of ecological importance within the site, I conclude that the necessity for submission of an EIAR and carrying out of EIA can be set aside at a preliminary stage.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 A first party appeal has been lodged by John Murphy on behalf of the applicant, Vincent Mulvihill & Amy O'Neill. The grounds of appeal are follows...

- The appeal outlines the history of existing structures on site and note that the structures constructed are temporary with the applicant/appellants intending to rectify the situation when they could afford to. The appellant highlight that they have provided sufficient evidence to demonstrate they are entitled to build a home in the area.
- The permission of graded would mean no further use for the existing temporary home and the applicant would demolish such which would regularise the situation.
- The applicants are prepared to demolish the existing temporary home immediately on completion of the new house. The appellant do not consider that bungalow on 0.6 hectares on site would add to suburbanisation of the area and would be in keeping with all other development in the area.

### 6.2. Planning Authority Response

6.2.1 No response.



## 7.0 Assessment

7.1 Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Rural Housing policy

Design, scale, pattern of development

Public Health

Traffic

Unauthorised development

7.2 Rural Housing policy:

7.2.1 The issue of rural housing policy was not a reason for refusal with the applicants/appellants considered to qualify under rural housing policy (Wicklow County Development Plan 2016-2022). The relevant Development Plan is the Wicklow County Development Plan 2022-2028. The criteria for individuals seeking permission for rural housing in Level 10, the open countryside is set out under Table 16.3 for persons intrinsically linked to rural areas that are not engaged in significant agricultural or rural based occupations to live in rural areas. In this case the appellants have been living on site in unauthorised wooden cabin structure that has been subject to enforcement action and such cannot be taken into account in terms of rural housing policy. The information on file is that the appellant has resided in the family home 3.5km from the site at Roscath, Glenealy since he was four years old (24 years ago). There is a number of documents submitted with the appeal that do demonstrate the applicant connection with Roscath, Glenealy and such is in the rural area. It would appear that the appellant would fall under the criteria set under table 16.3, specifically "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".

7.2.2 The applicant was deemed to qualify for rural housing based on Development policy by the Planning Authority and the applicant clearly meets the definition of persons

local to or linked to a rural area, who are not engaged in significant agricultural or rural resource related occupation, to live in rural areas but not a person who is an intrinsic part of the rural community. In terms of the Sustainable Rural Housing Guidelines and the NSS Indicative Rural Area Types, the appeal site is an Area Under Strong Urban Influence. The site is an area under urban influence. The site is located in commutable distance of Dublin City and in close proximity to Wicklow. Consideration must be given to national policy with the site located in an area under urban influence based on its classification under national policy. National policy set out under the Objective 19 of the National Planning Framework and the guidance set out in the Sustainable Rural Housing Guidelines emphasises the requirement to demonstrate an economic, social or functional need to live in a rural area under strong urban influence such as this. In this case the applicants (Vincent Mulvihill) clearly has links to the rural area and a desire to reside in the area but based on the fact their occupation is not intrinsically linked to the rural area (self-employed building contractor), the applicant does not have a defined social or economic need to live in this area under urban influence and the development would be contrary to Objective 19 of the National Planning Framework and would be contrary to the guidance set out in the Sustainable Rural Housing Guidelines.

7.2.3 The proposed development, in absence of any identified local based need for the house at this location, would result in a haphazard and unsustainable form of development in an unserviced area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.3 Design, scale and pattern of development:

7.3.1 The approved proposal is for a single-storey dwelling on a gently sloping site (falling west to east). The appeal site is in area classified as Corridor Area East, which is not one of the area of high amenity. I would be of the view that the overall scale and design of the proposed dwelling would be satisfactory in terms of visual impact as it

is low profile in design and not in an area that is prominent or visible in the surrounding area with a significant level of existing vegetation along the boundaries of the site. In relation to adjoining amenity the dwelling is single-storey and provision of adequate boundary treatment or landscaping (existing high level of boundary vegetation) would mean no adverse impact on adjoining amenities. I would be of the view that the overall design and scale of the dwelling is acceptable in the context of visual amenity.

#### 7.4 Public Health:

- 7.4.1 The proposal entails the installation of a new proprietary wastewater treatment system to serve the new dwelling. As noted above the existing structure on site is connected to wastewater treatment system located on site to the south west of the wooden cabin, which is unauthorised development subject to enforcement. The appellants note that the dwelling is to be connected to new system and the existing system is to be removed.
- 7.4.2 A site characterisation was submitted for the proposed development. The site is underlain by an aquifer classified as locally important with groundwater vulnerability indicated as being high. Site characterisation was carried out including trial hole and percolation tests. The trial hole test (1.9m deep) detected the water table at 1.6m from the ground surface. P tests (for deep subsoils and/or water table) and T tests (for shall soils/subsoils and/or water table) both by the standard method were carried out with percolation values that are within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses.
- 7.4.3 The proposed dwelling is to be served by a well (existing well at the northern corner of the site), which indicates a possible dependency on private water supplies in this area. Notwithstanding the results of the site characterisation tests indicating that soil conditions on site are suitable for wastewater treatment, the appeal site is in an area classified as having high groundwater vulnerability. It is also notable that water

supply to be from a private well and the site characterisation results submitted indicate that the water table level is high at this location. I would consider that having regard to the proliferation of domestic wastewater treatment systems (both proposed and existing) in this rural area, to the high level of the water table at this location, and to the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of Environment, Heritage and Local Government 2005 which recommend, in un-sewered rural areas, avoiding sites where it is inherently difficult to provide and maintain wastewater treatment and disposal facilities, I could not be satisfied, on the basis of the information on file, that the impact of the proposed development in conjunction with existing and permitted wastewater treatment systems in the area would not give rise to a risk of groundwater pollution in an area highly dependent on such for water supply. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

#### 7.5 Traffic:

7.5.1 The site has an existing entrance at the southern corner of the site and such is also proposed to be used to serve the adjoining site to the south west, where the appellant's brother has a proposal for a dwelling subject to appeal reference no., ABP-315081. The existing entrance is onto the L-1113 with the drawings submitted indicating that sightlines of 150m in each direction set back 2.4m are available. There are no specific standards for visibility set down under the CDP, however both the horizontal and vertical alignment of the public road is such that satisfactory visibility is available at the vehicular entrance. I am satisfied that the location of existing entrance is satisfactory in the context of available sightlines and in relation to overall traffic safety.

#### 7.6 Unauthorised development:

7.6.1 A significant proportion of the reasons for refusal refer to consolidation of unauthorised development with the PA noting that there are existing unauthorised structures/elements on the appeal site and the adjacent site to the south west. The

site is occupied by an unauthorised wooden cabin structure being used as a dwelling house and an unauthorised wastewater treatment system and what the PA describe as an unauthorised entrance onto the public road. In regards to this issue, I would highlight that the Board has no function in terms of enforcement or controlling unauthorised development. The proposal sought is being assessed on its merits and is for the provision of single-storey dwelling and wastewater treatment system with access through an existing vehicular entrance off the public road. The appellant has indicated that the intention to remove the unauthorised structures in the event of permission being granted. This is not an issue for the Board and the PA have ample powers under the Planning and Development Act in relation to enforcement. The only potential issue regarding unauthorised development is the planning status of the existing entrance to be used with the PA claiming such is unauthorised. In this regard such should have been subject to retention. Having viewed the google street view history of the site (earliest available is April 2009 and prior to the appellant's brother acquiring the site, stated as 2010 in the appeal submission), there was an existing agricultural entrance, however such has been widened, with the access surfaced and gates and fencing erected.

## **7.0 Appropriate Assessment**

8.1 Having regard to the nature and scale of the proposed development and its proximity 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 refusal based on the following reasons.

## 9.0 Reasons and Considerations

1. Having regard to the location of the site within an Area Under Strong Urban Influence in accordance with the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government 2005, National Policy Objective 19 of the National Planning Framework (February 2018) which, for rural areas under urban influence, seeks to 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, having regard to the viability of smaller towns and rural settlements, the Board could not be satisfied on the basis of the information on the file that the applicants come within the scope of either economic or social housing need criteria as set out in the overarching National Guidelines.

The proposed development, in absence of any identified local based need for the house at this location, would result in a haphazard and unsustainable form of development in an unserviced area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Notwithstanding the proposal to use a proprietary wastewater treatment system on site, the Board had regard to the proliferation of domestic wastewater treatment systems in this rural area, the high level of the water table on site, the dependency on groundwater for water supply, and to the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of Environment, Heritage and Local Government 2005 which recommend, in un-sewered rural areas, avoiding sites where it is inherently difficult to provide and maintain wastewater treatment and disposal facilities. The Board could not be satisfied, on the basis of the information on the file, that the impact of the proposed development in conjunction with existing wastewater treatment systems in the area would not give rise to a risk of

groundwater pollution. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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

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Colin McBride  
Senior Planning Inspector

26<sup>th</sup> June 2023