



An
Bord
Pleanála

Inspector's Report

ABP-315431-22

Development	Installation of a new wastewater treatment system and surface water soakaway to serve two houses
Location	Nos. 1 and 3 Kilruddery Cottages, Ballynamuddagh Td., Windgates, Bray, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	22/1095
Applicant(s)	John Anthony Brabazon
Type of Application	Permission (s. 34)
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party (s. 37)
Appellant(s)	John Anthony Brabazon
Observer(s)	None
Date of Site Inspection	21 st August 2023
Inspector	Philip Maguire

1.0 Site Location and Description

- 1.1. The appeal site lies within the rural townland of Ballynamuddagh, southeast of the Kilruddery Demesne and some 3km south of Bray, Co. Wicklow. It is located along and to the eastern side of Ballynamuddagh Road (L10281), north of its junction with the Greystones Road (R761), which runs roughly parallel and west of this section of cul-de-sac. The surrounding area is characterised by agricultural uplands, tourism and leisure uses, and a pattern of ribbon development extending southwards towards 'Windgates', a rural cluster located along the R761 where a 50kph speed limit applies.
- 1.2. The appeal site is rectangular shaped with a stated area of 0.157ha and road frontage of some 40m. Site topography is elevated above road level and falls in a westerly direction towards the adjoining road. The roadside boundary is defined by a stone wall, access steps and hedgerow. The remaining boundaries are defined by post and wire fencing, trees and hedgerow. The appeal site consists of two residential properties, known as 'Kilruddery Cottages' (Nos. 1 and 3). These are a pair of semi-detached, storey and a half, workers cottages built in the neo-Gothic style with stone walls, brick reveals and quoins, and traditional sash windows to the front. The pitched roof is finished with natural slate, decorative ridge tiles and finials. Chimneystacks are brick with corbelled caps and clay pots. Private garden areas are to the side and rear. A corresponding pair of cottages (Nos. 4 and 6) lie some 30m south of the appeal site.

2.0 Proposed Development

- 2.1. Planning permission is sought for the installation of a new domestic wastewater treatment system (DWWTS) and surface water soakaway to serve both cottages on the appeal site. The existing combined sewer from Nos. 4 and 6 Kilruddery Cottages to the southeast, and traversing the appeal site, will be unaffected by the proposal save for the cottages on the appeal site disconnecting from this shared sewer line.
- 2.2. A Site Characterisation Report (Traynor Environmental Ltd.) was submitted with the application in addition to drawings illustrating the existing and proposed drainage systems. The existing foul and surface water discharges to a combined sewer, shared with Nos. 4 and 6 Kilruddery Cottages. This sewer travels in a north-westerly direction across the front of the cottages and discharges to a treatment plant and percolation

area beyond the site boundaries. A new DWWTS and surface water soakaway are proposed in the side garden of No. 1 Kilruddery Cottages and will serve both houses.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to refuse permission for the proposed development on 29th November 2022 for the following reasons:

1. *Having regard to the existing public sewerage services available, the proposal to divert the existing effluent discharges from the public system to a private treatment system would undermine the Core Objectives of the County Development Plan which seeks to support sustainable development, and to ensure ground water quality is protected. To permit this development would set a precedent for the proliferation of effluent treatment systems, would increase the likelihood of contamination of ground water/water courses, through malfunction, lack of maintenance or otherwise, and would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.*
2. *The installation of a single wastewater treatment system to serve 2 no. dwellings would be contrary to Objective CPO 13.17 of the Wicklow County Development Plan 2022-2028 which states that “Private wastewater treatment plants for multi-house developments will not be permitted” and would therefore be prejudicial to public health and contrary to proper planning and sustainable development etc.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planning Report (24/11/22): Basis for the Planning Authority decision. It stated that the applicant was seeking to disconnect the houses from the public foul and surface water drainage network and considered this a retrograde step. It also considered that the installation of a single DWWTS to serve both houses would be unacceptable on public health grounds. It concluded that the proposal undermines the core objectives of the Plan in supporting sustainability and ground water

protection and would be contrary to CPO 13.17 which resists private systems for multi-house developments. Refusal was recommended. No AA/EIA issues arose.

3.2.2. Other Technical Reports

- EHO (28/10/22): Refusal.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

4.1. None.

4.2. Adjacent sites:

'Mirador', c. 100m south

PA ref. 96/5034 – permission granted in July 1997 for a dwelling and septic tank.

'Pine Cottage' c. 175m south

PA ref. 96/4344 – permission granted in October 1996 for a dwelling and septic tank.

5.0 Policy Context

5.1. Wicklow County Development Plan 2022-2028

5.1.1. The current Development Plan, as varied, came into effect on 23rd October 2022. The Planning Authority decision of 29th November 2022 was made under this Development Plan. This appeal shall also be determined under the provisions of this Plan.

5.1.2. The main policy objectives relevant to the proposal are set out in chapters 8 (Built Heritage) and 13 (Water Services) of the Written Statement (Volume 1).

5.1.3. The following sections are relevant to the proposed development:

- 8.3.2 – Vernacular Heritage & Other Structures / Items of Heritage Value

- 13.1.2 – Water Quality

5.1.4. Summary of the relevant policy objectives:

CPO 8.18 Seeks the retention, conservation and appropriate repair of vernacular buildings through the development management process.

CPO 13.16 Notes that the protection of ground and surface water quality is the overriding priority for proposals involving DWWTSs and it must demonstrate that it will not have an adverse impact on water quality etc.

CPO 13.17 Notes that private wastewater treatment plants for multi-house developments will not be permitted.

CPO 13.20 Seeks to ensure the separation of foul and surface water discharges in new developments through the provision of separate networks.

CPO 13.21 Requires the implementation of Sustainable Urban Drainage Systems (SuDS) to ensure surface water runoff is managed for maximum benefit.

5.1.5. Appendix 1 of Volume 3 sets out relevant design standards. The following is relevant:

- Section 2.2.3 (Wastewater disposal) sets out the criteria for considering on-site effluent disposals systems for single houses including the EPA Code of Practice.
- Section 2.2.4 (Surface & storm water systems) notes that regard will be had to the standards set out in the Greater Dublin Strategic Drainage Study (GDSDS).

5.2. Other Guidance

5.2.1. Domestic Waste Water Treatment Systems (EPA, 2021)

Guidance relating to domestic wastewater treatment systems (DWWTSs) for single houses or equivalent development with a population equivalent (PE) of less than or equal to 10 is set out in this Code of Practice (CoP). It details methodology for site assessment and selection, installation and maintenance of an appropriate DWWTS.

5.2.2. Greater Dublin Strategic Drainage Study

Guidance relating to the design of drainage infrastructure is set out in the GDSDS, Regional Drainage Policies (RDP), Volume Two, New Development (March 2005). It notes Sustainable Drainage Systems (SuDS) are mandatory for all new development.

5.3. Natural Heritage Designations

Bray Head SAC (Site Code 000714) – 0.3km east

5.4. EIA Screening

- 5.4.1. The proposed development is not a class of development set out in Schedule 5, Part 1 or Part 2 of the Planning and Development Regulation 2001 (as amended) and therefore no preliminary examination is required. See Appendix 1.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A first-party appeal has been lodged by Thorsdalen Smyth Architects on behalf of the applicant, John Anthony Brazabon.
- 6.1.2. The main grounds of appeal can be summarised as follows:

1st Refusal Reason

- It is submitted that there is no public sewer within the vicinity of the appeal site and the proposal has therefore been incorrectly assessed on the basis that the applicant is seeking to disconnect from a public sewer. The proposal is for the disconnection from a private shared system with Nos. 4 and 6 Kilruddery Cottages.
- It is stated that this incorrect assumption has influenced the 2nd refusal reason.

2nd Refusal Reason

- It is submitted that the EHO would now consider the proposal acceptable following discussions with the Planning Authority after the decision to refuse was issued.
- The applicant has included a copy of correspondence from the Planning Authority (08/12/22) where it is indicated that the circumstances are changed if there is not an existing connection to mains drainage in the area and a 'non-compliant' shared DWWTS proposal is improving the public and environmental health situation. It also states that a condition requiring the cottages to remain in the same ownership would be recommended and any split in ownership would require permission.

- It is stated that the only practical area to accommodate a DWWTS, and a separate surface water soakaway, is that proposed, having regard to the existing site levels and minimum separation distances required. It is suggested that the building and curtilage are of significant historical interest and therefore the disruption caused by a second treatment system would be inappropriate on such a steep site.
- Referring to the aforementioned correspondence with the Planning Authority, the applicant notes that the trial holes are clearly illustrated in the Site Characterisation Report submitted with the application and have since been filled-in on safety grounds, as the occupants of the property are a family with young children.
- It concludes that the proposal should be permitted, subject to any relevant conditions and summarises the apparent misunderstanding that led to the decision.

6.2. Planning Authority Response

None.

7.0 Assessment

7.1. Preliminary Points

- 7.1.1. Having examined the application details and all other documentation on the appeal file, including the appeal submissions, and inspected the site, and having regard to relevant local, regional and national policies and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal. The issues can be addressed under the following headings:

- Public Health
- Appropriate Assessment

7.2. Public Health

- 7.2.1. Both Planning Authority refusal reasons consider that the proposal would be prejudicial to public health. Having regard to the apparent availability of a public sewerage system, the 1st refusal reason considers that the proposal to divert effluent discharges from a public to private treatment system would undermine the core objectives of the Development Plan which seeks to support sustainable development

and ensure ground water quality is protected. It further considered that it would set a precedent for the proliferation of effluent treatment systems and increase the likelihood of contamination of ground water or water courses, through malfunction and lack of maintenance. The 2nd refusal reason considers that the proposal would be contrary to objective CPO 13.17 of the Development Plan which prohibits private wastewater treatment plants for multi-house developments. I will address each issue separately.

Availability of a Public Sewer

- 7.2.2. The crux of the appeal centres on the availability, or otherwise, of a public sewer to serve Nos. 1 and 3 Kilruddery Cottages. The proposal, as described in section 2.0, seeks to disconnect from a combined waste and surface water sewer, shared with Nos. 4 and 6 Kilruddery Cottages, and install a proprietary DWWTs and soakaway.
- 7.2.3. The applicant submits that there is no public sewer within the vicinity of the appeal site and the Planning Authority erred in its assumption in that regard. On balance, and having specific regard to the documentation on file, I am satisfied that the existing wastewater system serving Nos. 1, 3, 4 and 6 Kilruddery Cottages is a private sewer which discharges to a treatment plant to the north of the appeal site boundary. The Site Characterisation Report (SCR) identifies the treatment plant as a conventional tank that requires upgrades. This aspect of the 1st refusal reason cannot be upheld.

Precedent and Proliferation

- 7.2.4. The appeal site is currently served by a private treatment system which also receives waste and surface water discharges from Nos. 4 and 6 Kilruddery Cottages. The proposal will divert such discharges from the appeal site to a DWWTs and soakaway within the appeal site boundary resulting in one additional effluent treatment system.
- 7.2.5. A review of the planning history suggests that other houses within the vicinity of the appeal site are served by proprietary treatment systems although the houses are relatively well dispersed. The appeal site is located at the end of the Ballynamuddagh Road (L10281) however, where there is limited scope for further residential development given the topography and road alignment of the L10281 and the R761.
- 7.2.6. I do not therefore consider that the proposal would set a precedent for the proliferation of treatment systems, particularly where deficiencies have been identified in the existing treatment plant. On balance, the provision of an additional treatment plant will

improve the public and environmental health conditions at, and around the appeal site, in the absence of any public mains alternative and subject to compliance with the CoP for DWWTs. Moreover, I note that the proposal would separate foul and surface water discharges in accordance with CPO 13.20, to which I attach reasonable weight.

Contamination of Groundwater etc.

- 7.2.7. The SCR identifies that the appeal site is located on a 'poor aquifer' where vulnerability is 'high'. EPA mapping identifies the bedrock here is generally unproductive and I note that the application form indicates that water supply is via a public mains connection. The SCR indicates that the trial hole was dug to 2.20mBGL. Neither water nor bedrock were observed in the trial hole. The latter is notable given the location of the appeal site in the foothills of the 'Bray Mountains Group'. The soil conditions found in the trial hole are described as clay intermixed with stone and sandy gravel. A Ground Protection Response of R2¹ is noted by the applicant. Accordingly, I note the acceptability of the appeal site subject to normal good practice with particular focus on the depth of subsoil over bedrock, so the minimum depths are met, and the likelihood of microbial pollution is minimised where domestic water supplies are located nearby.
- 7.2.8. Percolation test holes were dug and pre-soaked twice. The time of the pre-soaking has been indicated. A subsurface percolation value (PV) of 11.99 was recorded indicating good drainage in the subsoil. A surface PV of 8.78 was recorded indicating good drainage in the topsoil. The tests appear to have been carried out in accordance with Appendix D of the CoP and the results would be consistent with my observations of the area, albeit without an examination of the trial or percolation test holes which had been filled in and grassed over on the date of my site inspection. The SCR indicates that the ground is suitable for septic tank, secondary and tertiary systems.
- 7.2.9. Table 6.3 of the CoP requires a minimum depth of unsaturated soil and/or subsoil of 0.9m below the base of the polishing filters following secondary systems and infiltration areas following tertiary systems. Table 7.2 details the minimum percolation trench length e.g. 144m for 8 PE. Table 7.3 details percolation trench requirements including slope of trench from distribution device (1:200) and individual pipe lengths (18m max.). Table 10.1 details the infiltration/treatment area and trench length design for tertiary treatment, per PE e.g. ≥ 3.75 sq.m per person for tertiary infiltration for $3 \leq PV \leq 20$.

- 7.2.10. The applicant proposes to install an 8 PE capacity packaged treatment system with tertiary coconut husk media filter. The filter plant is roughly 2.4m long, 1.2m wide and 1.4m deep and will be bedded on 300mm of crushed stone. It is stated that this tertiary filter will ensure there is a minimum of 0.90m of suitable percolating material between the base of the lowest part of the gravel distribution bed and groundwater. The SCR states that the direct discharge surface area is 30sq.m with invert level of 0.90mBGL.
- 7.2.11. Noting the slope, indicated as 1:2, or 5%, and the generally restricted nature of the appeal site, where more conventional percolation trenches and polishing filters would be unfeasible, I am satisfied that the proposed system will provide the required depth of percolation material to treat effluent on the site. I am also satisfied that the proposal complies with the required separation distances set out in Table 6.2 of the CoP.
- 7.2.12. The SCR submitted with the application concludes that the appeal site is suitable for development. Based on the information submitted, I agree that the appeal site is suitable for the proposed DWWTS, including the size of the infiltration area having regard to Table 10.1 of the CoP, although I note that the proposed layout drawing indicates this area as 25sq.m. Concerns regarding the contamination of groundwater etc. can therefore be dismissed as the proposal complies with the EPA CoP. As this aspect of the 1st refusal reason cannot be upheld, the entire reason is set aside. I recommend that a DWWTS condition be attached in the event of a grant of permission.

Compliance with Policy

- 7.2.13. As noted, the 2nd refusal reason considers that the proposal would be contrary to policy objective CPO 13.17 of the Development Plan which prohibits private wastewater treatment plants for multi-house developments. As established, the appeal site and Nos. 4 and 6 Kilruddery Cottages are currently served by a private treatment plant.
- 7.2.14. The proposal does not materially alter the *status quo* other than to separate out the private wastewater treatment plants serving the appeal site and the adjacent cottages to the south. As outlined above, I am fully satisfied that the proposal will improve the public and environmental health conditions at, and around the appeal site in the absence of a public mains alternative. This, to my mind, is determinative on the issue having appropriate regard to policy objective CPO 13.16, which highlights that the 'overriding priority' in all cases is the protection of ground and surface water quality.

7.2.15. I do, however, recommend that a condition restricting any future sale of the cottages, resulting in subdivision of the appeal site, be attached should permission be granted.

7.2.16. I also note that the proposal is broadly compliant with CPO 8.18 by conserving the optimal viable use for these pair of cottages which are of significant vernacular merit.

Conclusion on Public Health

7.2.17. On balance, I am satisfied that that the proposal will not result in the diversion of effluent discharges from a public to a private treatment system, set a precedent for the proliferation of effluent systems, or increase the likelihood of contamination of ground water or water courses, which would adversely impact on public health. Accordingly, I am satisfied that the proposal is not contrary to policy objective CPO 13.17.

7.3. Appropriate Assessment

7.3.1. Having regard to the small scale and domestic nature of the development, which is for the installation of a new DWWTs and soakaway to serve two houses, the distance from the nearest European site, no Appropriate Assessment issues arise. Therefore, 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 permission be **granted** for the reasons and considerations below.

9.0 Reasons and Considerations

9.1. Having regard to the provisions of Wicklow County Development Plan 2022-2028 (as varied), the location of the proposed development within a cluster of rural houses at the periphery of a rural node, the relatively small scale nature of the proposal in the context of the appeal site and the prevailing pattern and vernacular character of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 13th day of October, 2022, 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 interests of clarity.</p>
2.	<p>Neither dwelling shall be individually sold or otherwise transferred or conveyed, save as part of the overall site unless otherwise agreed in writing with the planning authority.</p> <p>Reason: In order to comply with policy objective CPO 13.17 of the Wicklow County Council Development Plan 2022-2028 (as varied) and in the interest of public health.</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 13th day of October, 2022, and in accordance with the requirements of the document entitled “Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤10)” – Environmental Protection Agency, 2021. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.</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 date of installation and thereafter shall be kept in place at all times. Signed and</p>

	<p>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 installation of the system, 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 attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.</p> <p>Reason: To prevent flooding and in the interests of sustainable drainage.</p>

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.

Philip Maguire
 Planning Inspector
 27th October 2023

Appendix 1

Form 1 – EIA Pre-Screening

Case Reference	ABP-315431-22		
Proposed Development Summary	The installation of a new DWWTS and surface water soakaway to serve two houses		
Development Address	Nos. 1 and 3 Kilruddery Cottages, Ballynamuddagh Td., Windgates, Bray, Co. Wicklow		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No	X	N/A	No EIAR or Preliminary Examination required
Yes			Proceed to Q.4
4. Has Schedule 7A information been submitted?			
No			Preliminary Examination required
Yes			Screening Determination required

Inspector: _____

Date: _____