



An
Bord
Pleanála

Inspector's Report

ABP-316022-23

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| Development | Retention permission of foundations and rising walls constructed onsite and Permission for completion of dwelling with alterations and associated works |
| Location | Site Ballinatone lower, Greenane, Co. Wicklow |
| Planning Authority | Wicklow County Council |
| Planning Authority Reg. Ref. | 22800 |
| Applicant(s) | Kerrin Geoffrey Buck |
| Type of Application | Permission and Retention |
| Planning Authority Decision | Grant Permission |
| Type of Appeal | Third Party |
| Appellant(s) | Brendan and Eileen Buck |
| Observer(s) | None |
| Date of Site Inspection | 26 th February 2024 |

Inspector

Emma Nevin

1.0 Site Location and Description

- 1.1. The appeal site, (site are not indicated), is located in the townland of Ballinatone lower and is accessed via a laneway off the Local Road.
- 1.2. Two existing sites are accessed off the laneway, the subject site and the appellants site shared an access off the lane, a right of way has been indicated. The adjoining lands are in use for agriculture and are in separate ownership.
- 1.3. The site is positioned close to the laneway and on site is an existing structure constructed above foundation level, a store to the southwest corner and a temporary structure to the east do the site, which is currently occupied by the applicant (this is subject to ABP 316125 - 23).

2.0 Proposed Development

- 2.1. The development comprises the retention of the existing foundations and rising walls on site, which were granted under Planning Reference 05/3286 (as extended by Reg. Ref. 11/4667).
- 2.2. Permission is sought for the completion of the detached two-storey dwelling, with some modifications proposed under the most recent application (Reg. Ref. 22/800) to include a two-storey conservatory to the southern elevation.
- 2.3. The dwelling as proposed has a stated floor area of 229 sq. m. (with 131.6 subject to retention) and comprises a three-bedroom two storey dwelling located to the southwest of the site and is set back some 33 metres from the shared access (north). The dwelling as proposed is traditional in design and form with dormer windows and gable fronting elevations with glazing. The dwelling will be finished in slate and plaster. The dwelling has an overall height of 7.5 metres. The principle elevation would be northwest facing.
- 2.4. The dwelling house would be accessed via the shared lane, which is accessed of the laneway. Not details of the entrance have been submitted.
- 2.5. Several of the existing trees and hedgerows on site will be retained and it is proposed to supplement these with additional tree planting on site comprising native hardwood fruit trees.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority granted permission, following further information request, on 14th February 2023, subject to 8 conditions, which included the following:

- Condition 2 relates to the occupation of the dwelling.
- Condition 5 & Condition 6 relates to finishes.
- Condition 7 & Condition 8 related to vegetation and a tree planting and landscaping scheme for the site.

3.2. Planning Authority Reports

3.2.1. Planning Reports dated 6th September 2022 and 7th February 2023 have been provided.

3.2.2. This planning application was assessed under both the Wicklow County Development Plan, 2016 – 2022 and the Wicklow County Development Plan, 2022 – 2028.

3.2.3. The original planning report considered it necessary to seek further information on the following items:

- To request the applicant to submit particulars to show that they qualify for a rural dwelling, having regard to the provisions of Objective HD23 of the County Development Plan 2076-2022.
- With respect to the existing septic tank on site, the applicant was requested to confirm exactly what has been installed and whether it accords with permitted proposal under PRR 05/3286.
- To provide details in respect of the effluent system to service the dwelling in accordance with Domestic Waste Water Treatment Systems (Population Equivalent (L0) Code of Practice published by the EPA2021.

3.2.4. The planners report concluded that the development is in accordance with the Wicklow County Development Plan 2022 – 2028, subject to 8 no. conditions.

3.2.5. Other Technical Reports

Municipal District Engineer: Report received stating no objection.

Environment Health Officer: Reports received stating no objection.

3.3. Prescribed Bodies

3.3.1. The Planning Authority indicated that the following prescribed bodies were consulted.

- Fáilte Ireland: No report received by the local authority.
- An Taisce: No report received by the local authority.

3.4. Third Party Observations

3.4.1. One third party submission was received, the issues raised can be summarised as follows:

- Section 35 should be applied for past failures to comply.
- No family justification for new planning permission.
- Concerns of the welfare of the applicant's parents.
- Applicant is not entitled to planning permission and could purchase his parent's property.
- Proposed development contrary to planning policy.
- Incorrect information submitted by applicant.
- Proposed revision to original permission is unacceptable.
- No AA screening carried out.
- No site suitability carried out under EPA COP 21 o Environmental and ecological concerns.
- Precedent.
- Depreciation of value of adjoining properties.

3.4.2. Following the submission of revised public notices and following a period of further consultation, one additional observation was received. New issues raised can be summarised as follows:

- Since further information further unauthorised works have been carried out on site.
- Ongoing enforcement pertaining to the site.
- Planning Law difficulties regarding the application, i.e. details submitted with the application are no longer correct.
- Ombudsman investigation regarding the validation of the application.
- Not a permanent resident and non-compliance with Table 6.3 of the Development Plan.
- The applicant has not clarified what has been installed on site in respect to item 2.

4.0 Planning History

11/4667 – Extension of duration of permission was granted by Wicklow County Council on 14th November 2011 for the development permitted under PRR 05/3286. The extension of duration was granted for 2.5 years.

05/3286 - Permission was granted by Wicklow County Council on 9th August 2006 for a dwelling and septic tank.

Other:

Section 5 Referral

Ex25/2022 - A question has arisen as to whether or not the construction of residential chalet built in September and October 2022 on land is exempted development.

Wicklow County Council determined that: the construction of residential chalet built in September and October 2022 is development and is not exempted development.

Ex39/2022 - A question has arisen as to whether or not 1) Existing substantially incomplete works toward building a rural house started under a now lapsed planning

permission. 2) Whether upon lapsing of permission for rural house the future use of lands for residential. 3) New development works carried on an incomplete rural house after the lapsing of 5 years planning permission. 4) Erection of and inhabitation of 2 tents on with no planning permission. 5) Storage of waste and construction materials on lands. At Ballinatone Lower, Co Wicklow is or is not exempted development.

Wicklow County Council determined that:

- Existing substantially incomplete works toward building a rural house started under a now lapsed planning permission is development and is permitted development.
- The future use of lands for residential is not development within the meaning of the Planning and Development Acts 2000 (as amended).
- New development works carried on an incomplete rural house after the lapsing of 5 years planning permission is development and is not exempted development.
- Erection of and inhabitation of 2 tents on with no planning permission is development and is not exempted development.
- Storage of waste and construction materials on lands is development and is not exempted development.

Ex07/2023 - ABP 316125 - 23 – current referral with An Bord Pleanála following declaration from the local authority pertaining to “whether the erection of a temporary living accommodation on construction site at Ballinatone Lower, Greene, Co. Wicklow is or is not exempted development – **the decision is pending on this referral.**

Enforcement

UD File: 5592 - Alleged unauthorised development consisting of (a) Site clearance works, (b) Construction of block work / walls and (c) Placement of tents on lands without the benefit of planning permission.

5.0 Policy Context

5.1. Wicklow County Development Plan 2022 – 2028

- 5.1.1. The Wicklow County Development Plan 2022 – 2028, came into effect on 23rd October 2022.
- 5.1.2. Wicklow Settlement Hierarchy – Level 10, Open Countryside – *“This is the ‘rural area’ of County Wicklow. Put simply, it forms the ‘open countryside’ and includes all lands outside of the designated settlement boundaries”.*
- 5.1.3. Chapter 6: Housing Objectives.
- 5.1.4. 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”.*
- 5.1.5. 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”.*
- 5.1.6. 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”.*
- 5.1.7. The following are of relevance:
- Appendix 1 – Development Design Standards.
 - Appendix 2 – Single Rural Houses Design Guidelines.

5.2. National Planning Framework (NPF)

- 5.2.1. National Policy Objective (NPO) 19 states it is an objective to 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.

5.2.2. NPO 15 seeks to support the sustainable development of rural areas by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

5.3. **Regional Spatial and Economic Strategy (RSES) - Eastern and Midland Regional Assembly (EMRA)**

5.3.1. The NPF and RSES make a distinction between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and rural areas outside these catchments. In such areas a more flexible approach based primarily on siting and design will apply.

5.3.2. For some rural areas, urban and commuter generated development has undesirably affected the character and cohesion of these locations. Simultaneously, in less accessible rural locations, population levels have declined, and it has been difficult to sustain basic services and community facilities at these locations.

5.3.3. Regional Policy Objective (RPO) 4.80 states that 'local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory

guidelines and plans, having regard to the viability of smaller towns and rural settlements.

- 5.3.4. RPO 4.81 states that ‘in rural areas outside the Rural Areas Under Strong Urban Influence local authorities shall encourage sustainable growth in areas that have experienced decline or stagnation, facilitate the provision of single houses 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.

5.4. Section 28 Ministerial Guidelines

- 5.4.1. Sustainable Rural Housing Guidelines for Planning Authorities, 2005
- 5.4.2. The subject site is located within a rural area. The Guidelines note that in these areas the objective should be on the one hand to facilitate the housing requirements of the rural community, as identified by the Planning Authority in the light of local conditions, while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns, and villages in the development plan.
- 5.4.3. Circular Letter SP 5/08 was issued after the publication of the guidelines on 30th September 2009. The letter states that all planning applications for houses in rural area, regardless of where the applicant comes from, or whether they qualify under specific criteria, must continue to be determined on the basis of proper planning and sustainable development of the area, in accordance with Development Plan policies regarding overarching environmental concerns, including the protection of natural assets, landscape, siting and design, traffic safety, etc.

5.5. Natural Heritage Designations

- 5.5.1. The subject site is not located within a designated European Site. The closest such site is the Proposed Natural Heritage Areas: Ballinacor Wood (Site Code 001749), which is approx. 1.4km to the northwest of the site.

5.6. EIA Screening

5.6.1. I refer the Board to the completed Form 1 and Form 2 in Appendix 1. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third-party appeal has been received from Brendan and Eileen Buck. The grounds of appeal are summarised below:

- A detailed timeline has been submitted in respect to the planning enforcement, enforcement history, and planning history pertaining to the site.
- Wicklow County Council did not assess the application in light of Section 34(2)(va) and (vb) of the Planning and Development Act, 2000, as amended, in this regard the local authority has failed to consider the fact that the applicant has failed to complete a development and that multiple warning letters and enforcement notices pertain to the applicant and this site.
- The applicant is required to prove compliance with the Wicklow County Council rural housing policy and yet the Council have granted permission in circumstances where non-compliance is clear.
- Retention permission is sought yet works requiring retention changed during the Wicklow County Council assessment.
- There was significant new unauthorised development on site at the time of the Wicklow County Council decision.
- The Wicklow County Council decision accepted that it was consolidating unauthorised development.
- Ombudsman investigation open at the time of the Wicklow County Councils decision.

- Non-compliance with NPO 19 of the national planning framework.
- Case Law quoted by the appellant as precedent An Bord Pleanála refusals for failure to comply with NPO 19 of the NPF.
- The proposals are contrary to national policy objective 15 of the national planning framework.
- The proposals are contrary to the Regional Spatial Economic Strategy for the Eastern and Midland region.
- Failure to prove compliance with the Wicklow County Council Development Plan 2022-2028 rural housing policy.
- The applicant's response made a further information stage regarding rural housing policy is not acceptable. Detailed information regarding the applicant has been provided as part of the appeal.
- Depreciation of property value.
- Negative visual impacts. The last planning permission saw a mobile home installed and an unauthorised dwelling was built.
- Negative impact on residential amenity, in particular the structures for retention and the impact on the appellants.
- Negative impact on established privacy and the appellants privacy should be protected.
- The development is not screened.
- Proliferation of septic tanks in the vicinity, the location of the well.
- Contamination of surface water.
- The development is permitted would set undesirable precedent.
- No tree survey and no landscaping plan was submitted – queries how Condition No. 7 of Wicklow County Council grant enforceable.
- Following a review of the planning application, and following the preparation of the appeal, the appellant includes recommended reasons for refusal.

6.2. Applicant Response

6.2.1. A first party response to the appeal was received dated 4th April 2023, prepared by the applicant.

6.2.2. The submission responds to the issues raised within the third party appeal as follows: -

- Dispute that there are material and substantiative ground against the decision of Wicklow County Council.
- The NPF and RSES are not relevant to the application.
- The County Development Plan takes precedence. The application was originally assessed under the 2016 – 2022 Development Plan. The same policy applies to under the 2022 Development Plan.
- The appeal claims unaccountability of the individuals, as appeal made under BPS.
- The appeal contains libelous and vexations statements and criminal false statements.
- Compliance with County Development Plan proven.
- Attempts in the appeal to mislead An Bord Pleanála.
- Dwelling is designed in line with traditional design.
- Applicants' privacy continually breeched by the appellants.
- No impact on established privacy.
- No proliferation of septic tanks in the vicinity based on expert reports and tests accompanying the application.
- Would not set undesirable precedent.
- The recommended reason for refusals exaggerated fictional points and bias.
- The applicant has provided a parallel table in response to the table provide by the appellant to illustrate the bias and inaccuracy of the appellants version of events.

- Understands the appellants concerns regarding construction works, will complete the development in a timely manner.
- The statements in the appeal are exaggerated, misleading and often contradictory.
- An Bord Pleanála are asked to consider why the appellants are concerned with the economic status of the applicant.

6.3. **Planning Authority Response**

None received.

6.4. **Observations**

None received.

6.5. **Further Responses**

None received.

7.0 **Assessment**

7.1. Having inspected the site and considered the contents of the appeal, I consider the main issues which arise in relation to this appeal are as follows:

- I. Compliance with Development Plan and National Policy
- II. Design, Form and Visual Impact
- III. Traffic and Access
- IV. Wastewater
- V. Precedent
- VI. Appropriate Assessment, and
- VII. Other Matters.

7.2. **Compliance with Development Plan and National Policy**

- 7.2.1. The application under Reg. Ref. 22/800 was assessed under the 2016 – 2022 Wicklow County Development Plan. My assessment will be based on the policies and objectives of the 2022 – 2028 Wicklow County Development Plan.
- 7.2.2. Chapter 6, Sections 6.4 Housing Objectives and Housing in the Open Countryside of the County Development Plan details the compliance in relation to rural housing requirements. Specifically, housing will be facilitated based on the applicant's genuine housing need, compliance will be demonstrated by means of economic or social need in the context of the rural housing policy and this is a key consideration for any planning application for a single one-off house in a rural area. The appellant has also queried the applicant's compliance in this regard.
- 7.2.3. From the outset I note the planning history pertaining to this site, where the applicant was granted permission to construct a dwelling under Ref. 05/3286. I also note that Wicklow County Council in the assessment of the instant planning application requested further information in respect to the applicant's qualification including a sworn declaration that he never owned a dwelling.
- 7.2.4. The applicant submitted documentation in relation to economic and/or social need and rural housing policy, to the planning authority, however no further details have been submitted as part of the first party appeal, as such I must base my assessment on the requirements of the Development Plan and the information submitted as part of the planning application.
- 7.2.5. CPO 6.41 and in particular Table 6.3 Rural House Policy of the Development Plan specifies the housing need, economic need and social need required for an individual to reside in the open countryside. The Planning Authority following their assessment of the information submitted, considered that the information provided demonstrated that the applicant qualifies for a rural dwelling.
- 7.2.6. In examining the information received and the requirements of the Development Plan, I note that the applicant has clarified that he is local to the area and does not currently have a dwelling house in the locale. As such, I am satisfied that the applicant has adequately demonstrated that he qualifies under CPO 6.41, and, therefore, has demonstrated a bona fide need for a dwelling house on this landholding in accordance with the County Development Plan requirements.

- 7.2.7. The appellant also states that the application does not comply with NPO 19 and NPO 15 of the National Planning Framework or the Regional Spatial and Economic Strategy (RSES) - Eastern and Midland Regional Assembly (EMRA).
- 7.2.8. Noting NPO 19, Wicklow's rural areas are considered to be 'areas under urban influence', due to their catchment of Dublin, Bray, Wicklow-Rathnew and Arklow, Section 6.3.8 of the Development Plan relates. In this regard it is necessary to demonstrate a functional economic or social requirement for housing need, in addition to siting and design considerations. Having regard to the instant appeal, which is within the Wicklow-Rathnew catchment, I do not consider that the proposal is contrary to NPO 19, as the applicant has demonstrated his bona fide need to live in the locale. In a similar vein, NPO 15, seeks to manage the growth of areas under strong urban influence to avoid over-development, noting the location of the subject site, on a private lane which accommodates two existing dwellings. I do not consider that the proposed development results in overdevelopment of this rural area and, therefore, is not contrary to NPO 15

The RSES requires that local authorities manage urban generated growth in rural areas under strong urban influence by ensuring that the provision of housing is based on compliance with statutory plans. In this regard, the applicant complies with the requirements of the Development Plan and as such is not contrary to the to the RSES.

- 7.2.9. Based on the above, I consider that the applicant has demonstrated an economic and/or social need to live in this location and as such is in accordance the rural housing policies of the County Development Plan in particular policy CPO 6.1, policy CPO 6.41 and the requirements of Table 6.3, and would, therefore, be in accordance with to the proper planning and sustainable development of the area.

7.3. **Design, Form and Visual Impact**

- 7.3.1. As set out above, the proposed development will result in the retention of the foundations and rising walls and the construction of a new dwelling in this rural area and as such is subject to all normal siting and design considerations, set out under policy CPO 6.4 of the Development Plan. The Development and Design Standards (Appendix 1) and the Wicklow Single Rural House Design Guide (Appendix 2), provides an emphasis on siting and sustainable design for single one-off houses.

- 7.3.2. The proposed development is a detached two storey dwelling, consisting of 3 bedrooms and 7.5metres in height and is of traditional design with dormer windows, balcony to the southeast and northwest elevation and glazing to all elevations. The external finishes are Plaster/Slate. Having regard to the dwelling previously permitted on site (Reg. Ref. 05/3286), the main difference in the instant application is the addition of a conservatory and the size and shape of the proposed balcony.
- 7.3.3. In line with the view of the Planning Authority in their assessment, I consider that having regard to the location of the dwelling and the scale and design of the proposal I am satisfied that the development can be integrated into the rural landscape and will not have a negative impact on the adjoining visual amenities.

7.4. Traffic and Access

- 7.4.1. The site is currently accessed via an existing entrance to the north, which is accessed via a shared lane, which serves one adjoining dwelling. The applicant has indicated a right of way across the shared lane. This entrance is splayed and will be retained to serve the proposed dwelling. Parking is proposed on site to the front of the dwelling.
- 7.4.2. At the point where the shared lane joins the laneway the road widens which allows for adequate sightlines for oncoming traffic on the laneway. Moreover, I do not consider that the intensification of the existing shared lane to provide access to the proposed single dwelling would result in a traffic hazard and would be acceptable in principle.
- 7.4.3. No details have been submitted in respect to the proposed entrance to the site, i.e. pillars, entrance gates, etc. in the event that the Board considers that the proposed development should be granted, a condition should be included, which details the proposed entrance to the site.

7.5. Impact on amenities

- 7.5.1. The grounds of appeal express concerns regarding the impact on the amenities of the adjoining dwelling to the northwest of the site in terms of privacy and visual amenity associated with the development to be retained.
- 7.5.2. The proposed dwelling will be positioned further south to that of the adjoining dwelling to the northeast, and noting the setback of both the existing dwelling to the

northwest, set back some 30 metres from the shared site boundary, and the proposed dwelling set back some 6 metres from this shared boundary. While there is a first floor balcony and conservatory proposed to the dwelling, I do not consider that the proposed dwelling would result in a loss of privacy of the adjoining site to the northeast by reasons of overlooking.

In terms of loss of light, nothing the aforementioned separation distances, I do not consider that the proposed dwelling would result in a significant loss of light to the adjoining site to the northwest.

- 7.5.3. Having regard to the foundations and walls subject to retention as part of the application, I note that the site is screened by existing planting and as such the elements to be retained are not fully visible from the appellants site or adjoining shared lane.

7.6. Wastewater

- 7.6.1. Concerns were raised by the appellant in relation to the proliferation of septic tanks in the area. The site is served by an existing septic tank and related puraflo pods. Further information was requested by the local authority in respect to the type of system installed on site, which was clarified by the applicant as a 5-person tank and a 90-metre percolation area. The applicant has submitted a site characteristic report. As such, I consider that the wastewater treatment system and percolation area to be acceptable and does not result in a proliferation of septic tanks in this area.

7.7. Precedent

- 7.7.1. The appellant has presented precedent case studies as precedent An Bord Pleanála refusals for failure to comply with NPO 19 of the NPF.
- 7.7.2. These are noted, however all appeal cases are assessed and determined on their own merits having regard to the sensitivity of the receiving environment and the specifics of the proposed development.

7.8. Appropriate Assessment

- 7.8.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment and the 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.

7.9. Other Matters

7.9.1. Landscaping

No landscaping plan has been submitted, however, the site plan indicated existing trees to be retained and the proposed new tree planting within the site. I consider that the siting, size, and design of the proposed dwelling house within the context of the proposed landscaping would ensure that this dwelling house would be capable of being accommodated in a visually satisfactory manner within the landscape.

The appellant has queried the conditions attached pertaining to landscaping and trees, however, I consider these conditions to be reasonable given the rural context of the proposal. In the event that the Board considers that the proposed development should be granted, a condition should be included in this regard.

7.9.2. Construction

Having regard to the location of the subject site along a single rural local road, which is a cul-de-sac, in the event that the Board considers that the proposed development should be granted, a condition regarding a construction management plan for the proposed development should be included, which details construction traffic, waste material, etc.

7.9.3. Unauthorised development/Enforcement/Miscellaneous Issues

In response to other matters raised in the appeal and observation, and the items raised as part of this appeal concerning the failure to complete the development within 7 years, and the extensive planning enforcement pertaining to this site, and works on this site without the benefit of planning permission, I consider that such works and activity fall outside of the Board's remit in deciding this application.

In addition Section 34(2)(va) and (vb) of the Planning and Development Act, 2000, (as amended) pertains to the planning authority in making its decision in relation to a planning application, and that the planning authority is restricted to considering the proper planning and sustainable development of the area, specifically previous developments by the applicant, which have not been satisfactorily completed and

previous convictions for non-compliance with the Planning and Development Act and other related Acts, are a matter for the Planning Authority and not for An Bord Pleanála.

I note the concerns raised in the grounds of appeal in respect of the devaluation of neighbouring property. However, having regard to the assessment and conclusion set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.

This assessment represents my de novo consideration of all planning issues material to the proposed development.

8.0 Recommendation

- 8.1. I recommend that planning permission should be granted, subject to conditions, as set out below, for the following reasons and considerations.

9.0 Reasons and Considerations

- 9.1. Having regard to the rural zoning which applied to the site under which new residential development is subject to demonstrating housing or economic need, subject to the conditions set out below the proposed development would be an appropriate form of development in terms of design and form, would not seriously injure the character or the visual amenities of the area, would not seriously injure the amenities of residential property in the vicinity and would be acceptable in terms of wastewater. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

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| 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 to the local authority on the 19th day of January 2023, 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 the place of permanent residence by the applicant and shall remain so occupied for a period of seven years thereafter, unless consent is granted by the planning authority for its occupation by other persons who comply with the provisions of the Settlement Strategy for Rural Areas as set out in the County Development Plan. This requirement shall be embodied by a legal undertaking that shall be registered as a burden against the title of the land in the Land Registry or Registry of Deeds and shall be of seven years duration from the date of the first occupation.</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>(c) The Planning Authority will consent to any sale of the completed dwelling by a lending institution in exercise of its powers as Mortgager in possession of this property and likewise consent to any sale by any person deriving title from the lending institution.</p> <p>Reason: To ensure that the proposed dwelling is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted in accordance with the rural settlement strategy, to</p> |

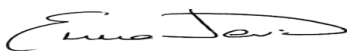
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| | <p>protect the rural landscape, in the interests of proper planning and sustainable development.</p> |
| <p>3.</p> | <p>(a) The septic tank drainage system existing on site shall be in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2021.</p> <p>(b) Prior to the occupation of the dwelling the developer shall submit, details of which shall be and agreed in writing with, the planning authority, a report from a suitably qualified person with professional indemnity insurance certifying/including photographic evidence of the installation of the septic tank/secondary treatment unit, distribution chamber, and percolation trenches/ polishing filter and pipes shall be submitted on completion of the system, stating that the effluent disposal system has been installed in accordance with this condition.</p> <p>Reason: To ensure the provision of an adequate sewage disposal system, in the interests of public health and residential amenity.</p> |
| <p>4.</p> | <p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, prepared by a qualified landscape architect details of 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) Contoured drawings to scale of not less than [1:500] showing –</p> <p>(i) a survey of all existing trees and hedging plants on the site, their variety, size, age, and condition, together with proposals for their conservation or removal.</p> <p>(ii) proposals for planting within the site consisting of both hedge planting of indigenous species (e.g. holly, hawthorn, beech or field maple) and native trees, incorporating species, variety, size, type, number and location of all trees and shrubs.</p> |

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| | <p>(iii) any hard landscaping works, including car parking layout, enclosed areas, lighting, and outdoor seating, specifying surfacing materials</p> <p>(b) Specifications for mounding, levelling, cultivation, and other operations associated with plant and grass establishment</p> <p>(c) Proposals for the protection of all existing and new planting for the duration of construction works on site, together with proposals for adequate protection of new planting from damage until established</p> <p>(d) A timescale for implementation [including details of phasing], which shall provide for the planting to be completed before the dwelling/building is first made available for occupation</p> <p>Deciduous trees shall be planted at not less than two metres in height and evergreen species at not more than 750 millimetres in height. Species to be used shall not include either cupressocyparis x leylandii or grisellinia. Any plants which die, are removed, or become seriously damaged or diseased, within a period of five 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> |
| 5. | <p>Site development and building works shall be carried out only between the hours of 0700 and 1800 Mondays to Fridays inclusive, between 0800 to 1300 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the amenities of properties in the vicinity.</p> |
| 6. | <p>That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble, or other debris on adjoining roads during the course of the works.</p> |

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| | Reason: To protect the amenities of the area. |
| 7. | <p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health and surface water management.</p> |
| 8. | <p>Details of the vehicular entrance and front boundary finishes shall to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development and shall accord with the Development and Design Standards (Appendix 1) and the Wicklow Single Rural House Design Guide (Appendix 2).</p> <p>Reason: In interest of visual amenity, to protect the character of the area.</p> |
| 9. | <p>All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.</p> <p>Reason: In the interest of visual amenity.</p> |
| 10. | <p>Details of the materials, colours, and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p> |
| 11. | <p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including construction parking, hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p> |
| 12. | <p>The developer shall pay to the planning authority a financial contribution of in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the</p> |

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| <p>Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to 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. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.</p> |
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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.



Emma Nevin
Planning Inspector

4th March 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

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|---|--|----------------------------------|----------------------------------|
| An Bord Pleanála Case Reference | 316022-23 | | |
| Proposed Development Summary | Retention permission of foundations and rising walls constructed on site (granted under 11/4667 & 05/13286) and Permission for completion of dwelling with some alterations to same with associated site works | | |
| Development Address | Ballinatone Lower, Greenan, Rathdrum, Co. Wicklow | | |
| 1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small> | | Yes | X |
| | | No | |
| 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 | X | Rural Development – new dwelling | |
| No | | | |
| 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 | | N/A | |
| Yes | X | Rural Development – new dwelling | |

4. Has Schedule 7A information been submitted?

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| No | X | Preliminary Examination required |
| Yes | | Screening Determination required |

Appendix 1 - Form 2

EIA Preliminary Examination

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| An Bord Pleanála Case Reference | 316022-23 | |
| Proposed Development Summary | Retention permission of foundations and rising walls constructed on site (granted under 11/4667 & 05/13286) and Permission for completion of dwelling with some alterations to same with associated site works. | |
| Development Address | Ballinatone Lower, Greenan, Rathdrum, Co. Wicklow | |
| The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations. | | |
| | Examination | Yes/No/ Uncertain |
| <p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p> | <p>Proposal for permission for 1 no. detached dwellings on residential zoned land located in an rural area. However, the proposal is not considered exceptional in the context of the existing urban environment.</p> <p>No, the proposal will be connected to an existing well for water supply and will be connected to an existing septic tank on site.</p> | No |
| <p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p> | <p>The proposed floor area is stated at 229 sq. m. The proposal is not considered exceptional in the context of the existing urban environment.</p> <p>There are no other developments under construction in the proximity of the site.</p> | No |

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| <p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p> | <p>The appeal site is located c. 1.4km to the southeast of the Proposed Natural Heritage Areas: Ballinacor Wood (Site Code 001749), however, it is not considered that the development would have a significant impact on the ecological site.</p> <p>The other nearest European site is located above 1km from the site and therefore can be excluded in terms of the potential for effects on other European sites during construction and operational phases of the proposed development.</p> | <p>No</p> |
| <p>Conclusion</p> | | |
| <p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p> | | |

Inspector: 

Date: 04/03/2024

DP/ADP: _____ Date: _____
 (only where Schedule 7A information or EIAR required)