



An
Bord
Pleanála

Inspector's Report

ABP-316284-23

Development	Retention of a timber framed chalet as short term rental
Location	Ballylug, Rathdrum, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	2375
Applicant(s)	Paul & Anouk O'Connell
Type of Application	Retention permission
Planning Authority Decision	Refusal for 3 no. reasons
Type of Appeal	First Party
Appellant(s)	Paul & Anouk O'Connell
Observer(s)	None
Date of Site Inspection	10 th October 2023
Inspector	Bernard Dee

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
4.0 Planning History.....	6
5.0 Policy and Context.....	7
6.0 The Appeal	9
7.0 Assessment.....	11
8.0 Recommendation.....	15
9.0 Reasons and Considerations.....	15
10.0 Conditions	16

1.0 Site Location and Description

- 1.1. The appeal site is located in the Vale of Clara approximately 5km NW of Rathdrum Village. The appeal site is located within a Coillte forestry plantation in the NE corner of the appellants property and is not visible from the public realm.
- 1.2. Access to the appeal site is off public road R755 and thereafter along the L-6086-27 and the road within the overall appeal site is forestry track and the family home is approximately 450m along this track. There is a barrier preventing public vehicular access to the forestry track set back from the entrance.

2.0 Proposed Development

- 2.1. The chalet for which retention permission is sought is a single storey timber construction with glazing on the south (main) elevation which faces toward the primary views. Its design could be described as minimal.
- 2.2. The chalet has an approximate footprint measuring 4.7m x 5m with an A-plan roof that is 3.m high at its highest point. The GFS measures c.30m² and the plan drawing shows rooms for a combined kitchen - living room, one bedroom and a bathroom.

3.0 Planning Authority Decision

3.1. Decision

Permission for the proposed development was refused on 22nd March 2023 for 3 no. reasons:

1. *Having regard to*

(a) the location of the development in a rural area, away from existing settlements and

(b) The siting of the self-catering unit, away from the existing dwelling/studio on site,

It is considered that the proposed development which is for a retention of a chalet for use as short term letting accommodation does not form part of a well-developed, integrated tourism and recreation development; would

materially contravene these objectives, would set a precedent for further haphazard development in these sensitive landscape areas, would erode the landscape quality of the area, would be contrary to the amenities of the area, and be contrary to proper planning and sustainable development.

2. *Insufficient information has been submitted:*

(a) to show that an adequate Wastewater Treatment System is present on site in accordance with relevant technical standards and to fully clarify the existing Wastewater Treatment System;

(b) in relation to the capacity of the existing well to serve the proposed development;

To permit the proposed development in the absence of such information would be prejudicial to public health, and to proper planning and sustainable development.

3. *Having regard to the inadequacy of the road network / forest track serving the site in terms of width, alignment, and structural condition, it is considered that the existing road network / forest track is only suitable to cater for traffic movements generated by existing permanent native residents, and therefore to allow this development would endanger public safety by reason of a traffic hazard.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report, in summary, states the following:

- The overall principle of development at this location is not acceptable and the dwelling represents a material contravention of the County Development Policy 11/13 which requires tourist accommodation to be located within existing settlements and the site is located within a level 10 rural area.
- The scale, design and construction materials of the chalet are considered acceptable. However, the chalet is remote from the main dwelling in a sensitive landscape area and is therefore considered haphazard development.

- The site is remote from neighbouring properties and is not visible from public roads so there is no adverse impact on neighbouring amenity.
- The access via the existing unpaved forestry track and the chalet will generate additional traffic on the track as well as on the linking public roads. No details regarding these movements has been submitted by the applicant or details with regard to the sightlines of the forestry track with the public road.
- In the absence of such information the application should be refused.
- There is no information in the application regarding how the WWTP (PE6) serving the existing four bedroom dwelling is to accommodate the addition potential PE2 which would be generated by the chalet. In the absence of such information a refusal is required.
- The Planner's Reports noted that neither AA nor EIA is required in respect of the development for which retention is sought.

3.2.2. Other Technical Reports

- The Environmental Health Office (EHO) notes the deficiencies in information in the application submission with regard to the capacity of the existing WWTP and also states that proof of capacity will be required or details of any necessary upgrades.

3.2.3. Prescribed Bodies

- The Planner's Report on file states that no submissions were made by prescribed bodies in relation to this application.

3.2.4. Observations

- The Planner's Report on file states that no Observations were made in relation to this application.

4.0 Planning History

4.1. On the Appeal Site

Ref. 102824 - permission was granted for an extension to an existing dwelling, a new entrance and an on-site effluent disposal system together with ancillary works subject to 9 no. conditions.

Of relevance to refusal reason 2(a) in the current appeal is Condition 7 of Ref. 102824. The Board should note that the condition requires greater or equal to PE10 and no reference is made to PE6 as the capacity of the WWTS as per the Planner's Report on file.

7. The effluent disposal system shall be laid out as proposed and constructed to the specification of Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10), Code of Practice, published by E.P.A 2009
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. Before the development is occupied, a certificate from a Chartered Engineer, Environmental Health Officer, or Hydrogeologist, (with professional indemnity insurance) stating that the effluent disposal system has been installed in accordance with this condition, shall be submitted to the Planning Authority.

REASON: To ensure the provision of an adequate sewage disposal system, in the interests of public health and residential amenity.

Also of interest to reason for refusal 2(b) is Condition 9 which relates to the water supply arrangements on site.

9. **Prior to the occupation of the extension**, the chemical results of testing of the water supply source shall be submitted to and agreed with the Planning

Authority. Where such results require any remedial measures these shall be carried out at the expense of the developer.

REASON: In the interests of public health.

4.2. In the Vicinity of the Site

- No planning history for similar developments in the vicinity of the appeal site.

5.0 Policy and Context

5.1. Wicklow County Development Plan 2022-2028

The most relevant section of the Plan and the most relevant policies are set down below. Other sections, policies and objectives are set down in the Planner's Report.

11.2.4 Accommodation

It is important to facilitate an adequate range of tourist accommodation options including hotels, self-catering, camping, glamping etc that will facilitate increasing the amount of overnight visitors to the county. All tourist accommodation should be primarily directed into existing settlements where existing services can be availed of and where the development will support the vibrancy of those settlements. All tourist development should be of a scale that the settlements can sustain.

The Planning Authority will carefully manage the development of accommodation in the rural area to ensure that the role of settlements as tourist hubs would not be undermined.

Exceptions to this include farm diversification proposals or tourist accommodation provided in association with the restoration of a historic structure including protected structures.

It is important that all applications for tourist accommodation are of a high standard of design and do not unduly detract from the character of the landscape or settlement in which they are situated.

CPO 11.10 To facilitate the development of a variety of quality accommodation types, at various locations, throughout the County.

CPO 11.13 To require new holiday home / self-catering developments to locate within either established settlements or at established tourism / recreation facilities, other than those developments involving the renovation / conversion of existing buildings.

CPO 11.15 Holiday home / self-catering developments on a farm holding shall be provided by farmhouse extension or by the utilisation of other existing dwellings / structures on the property. Only where it has been demonstrated that these are not viable options, will permission be considered for new build development. Any new build development shall be in close proximity to the existing farmhouse.

CPO 11.16 To facilitate modest camping / glamping facilities as part of farm diversification proposal. In such instances the farm should remain as the predominant land use on the landholding and documentary evidence shall be submitted to substantiate the proposed development

5.2. **Natural Heritage Designations**

- Vale of Clara SAC/NHA - 1.25km south of the site.
- Wicklow Mountain SAC - 2.5km north of the site.
- Wicklow Mountain SPA - 3.5km north of the site.

5.3. **EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. The relevant planning grounds of the First Party appeal are, in summary, as follows:

- The chalet was originally built as an artist's studio and so the locational relationship between the chalet and existing settlements was not a criterion in placing the chalet at its present location.
- Olanmhor, a duo designing and making handmade home décor and fashion in the purpose built chalet, was affected by the economic downturn and one partner left the company. Therefore, an alternative use had to be found for the chalet.
- The cabin being located on the Avonmore Way and in an area largely dependent on tourism was considered ideal for short term accommodation for tourist visitors to the area which in turn would benefit the local economy.
- Little benefit derives from concentrating tourist visitors into a small number of settlements and the Wicklow Uplands Council and the study 'Glendalough & Wicklow Mountains National Park Visitor Experience & Management Masterplan' (2022) agree that forcing visitor facilities into existing settlements has detrimental impacts on the actual visitor experience and puts pressure on the ecological and heritage resources of the local communities. Extracts from the Management Masterplan are included in the First Party appeal to which I draw the Board's attention and to which I have had regard in my assessment below.
- The County Wicklow Accommodation Study would indicate that this area of Wicklow is undersupplied with visitor accommodation which the chalet will address in a small but incremental way. This view is supported by a letter within the appeal submission from Wicklow County Tourism to which I draw the Board's attention.

- The 'County Wicklow Outdoor Recreation Strategy 2020-2025 as cited by the Wicklow Rural Recreation Officer places emphasis on both providing accommodation convenient to the walking trails, which the chalet does, and also on the role accommodation such as the chalet can play in drawing tourists away from pressure points and spreading visitors more widely through the park areas.
- Due to the design, construction materials and methodology the chalet has a minimal ecological footprint and has a positive benefit on the conservation of the area within which it is situated.
- The separation distance between the main dwelling and the chalet which was a reason for refusal of retention (Reason 1), the site was carefully chosen for studio light and so as not to interfere with the utilised field to the south of the chalet.
- With the backdrop of forest the building materials of the chalet were chosen to visually blend in by building in wood.
- Regarding the reason of refusal in relation to lack of sufficient information regarding the wastewater treatment system (Reason 2a), this information is supplied in the appeal submission for the Board's review.
- Similarly, the lack of sufficient information regarding the private water supply (Reason 2b) is addressed in the appeal submission for the Board's attention.
- Lastly, the refusal reason relating to access and associated traffic hazard (Reason 3), the access is existing and no new access points are proposed and the sightlines were deemed sufficient to serve the primary residence when permission was granted for an extension to same in 2010 - Ref. 102824.
- In addition, the local road, L-6086-27, is not heavily trafficked.
- The chalet has a minimal traffic generating capacity and the forestry track has multiple pulling in points and is well surfaced and does not represent a traffic hazard.

6.2. Applicant Response

- Not applicable.

6.3. Planning Authority

- The Planning Authority has not responded to this appeal.

6.4. Observations

- None received.

6.5. Further Responses

- Not applicable.

7.0 **Assessment**

Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise.

The main issues relate to each of the three reasons for refusal, therefore, the planning appeal issues are as follows:

- Principle of development/Development Plan policy – refusal reason 1.
- Insufficiency of information in relation to waste water treatment and water supply – refusal reason 2(a) & (b) respectively.
- Traffic hazard – refusal reason 3.
- AA Screening.

7.1. Principle of Development & Development Plan Policy

7.1.1. The first reason for refusal cited by the Planning Authority relates to the belief that the retention of the chalet would not form part of a “*well-developed, integrated tourism and recreation development*” and that its retention would materially contravene Development Plan objectives relating to integrated tourism development and create an undesirable precedent for haphazard development in sensitive landscape areas.

7.1.2. In cases where the Board may be minded to grant permission where a Planning Authority has refused permission on the basis of a material contravention of the Development Plan, the provisions of Section 37 of the Planning and Development Act 2000 (as amended) apply.

7.1.3. Section 37(2)(a) states that *“Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.*

7.1.4. (b) *Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—*

- (i) the proposed development is of strategic or national importance,*
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) permission for the proposed development should be granted having regard to the regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*

7.1.5. (c) *Where the Board grants a permission in accordance with paragraph (b), the Board shall, in addition to the requirements of section 34(10), indicate in its decision the main reasons and considerations for contravening materially the development plan”.*

7.1.6. Clearly parts (i), (iii) and perhaps (iv) do not apply to the appeal before the Board but I am of the opinion that the provision of part (ii) apply to the proposed conversion.

- 7.1.7. The Planning Authority are of the opinion, as evidenced by the refusal of permission in this instance, that the retention of the chalet would be contrary to Development Plan objectives promoting integrated tourism development. However, the reason for refusal does not cite any specific Development Plan objectives but rather vaguely makes a bald statement about the need for integrated tourism facilities. I do not believe that it is sufficient to make general remarks in a reason for refusal but that the specific objectives that the retention of the chalet would breach should be specified.
- 7.1.8. Given the ambiguity present in this reason for refusal, I believe that the Board can rely on Section 37(2)(b)(ii) of the Planning and Development Act 2000 (as amended) if it is minded to overturn the Planning Authority refusal in this case.
- 7.1.9. The Planner's Report speaks of the remoteness of the chalet from the family home and its adverse visual impact and haphazard placement in the sensitive landscape. Having visited the site, I can confirm to the Board that the chalet is approximately 70m from the dwelling and is invisible from the public realm due to screen planting. I do not consider a 70m separation distance qualifies as remote and would certainly not be classed as haphazard.
- 7.1.10. Being constructed of wood and being located against a backdrop of trees, the cabin is virtually invisible until the viewer is in close proximity. Likewise the family home is invisible in the landscape due to topography and planting and is not visible until in quite close proximity to the house. The cabin is even more invisible than the family home.
- 7.1.11. I conclude therefore that the development does not constitute haphazard development that is visually harmful to the landscape and that the chalet does not materially contravene Development Plan objectives in respect of integrated tourism development.

7.2. Waste Water & Water Supply

- 7.2.1. The second reason for refusal cites insufficient information regarding waste water treatment and the capacity of the well to supply water to occupants of the chalet. I would state at the outset that this issue should not be a reason for refusal but rather the subject of a further information request or the subject of a condition attached to a permission.
- 7.2.2. Notwithstanding this, the appellant has supplied information in the appeal documentation which I believe answers the queries of the Planning Authority to a degree that would render the second reason for refusal null and void.
- 7.2.3. Regarding the on-site WWTS, the BioCycle system approved on foot of Ref. 102824 (Condition 7) has a PE of ≤ 10 which is more than sufficient for the occupants of the family home and the chalet – see Appendix 8A-I of the appeal submission.
- 7.2.4. With regard to the capacity of the well to supply water to the family home and the chalet, the well produces 552 gallons per hour which is in excess of requirements for the occupants of the family home and chalet. In addition, a 10,000L rainwater harvesting system is used for purposes other than drinking water leaving the entire well production for human consumption.
- 7.2.5. Regarding the quality of the well water, this was approved on foot of Ref. 102824 by the Planning Authority - see Appendix 9A-C of the appeal submission.
- 7.2.6. Having regard to the above, I am of the opinion that the second reason for refusal is without basis in fact and would recommend to the Board that this reason for refusal be dismissed.

7.3. Traffic Hazard

- 7.3.1. The issue of sightlines at the entrance to the public road from the forestry track is, in my opinion, a non-issue. Having visited the site I can confirm to the Board that the sightlines currently existing are adequate in either direction. The question therefore remains regarding the traffic generating capacity of the chalet.
- 7.3.2. While no occupancy figures have been submitted with the appeal, I cannot envisage a high occupancy rate for such an isolated and niche form of accommodation. Even if 10-20 extra trips per week were generated regard must be had to the relatively low traffic flow on the L-6086-27 and the adequate sightlines in place. I do not believe

that the retention of the chalet for tourist accommodation would generate an amount of car trips that would approach a situation where traffic hazard becomes an issue.

7.3.3. I conclude therefore that the issue of traffic hazard is not the basis for a reason for refusal in this instance.

7.4. AA Screening

7.4.1. Having regard to the relatively minor development proposed within an existing housing estate and the fact that there are no European sites in the vicinity of the appeal 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.

7.5. Summary of Assessment

7.5.1. Having regard to the above, I recommend to the Board that the retention permission for the development be granted as the chalet does not represent haphazard development in the landscape and does in fact contribute to the development and dispersal of tourism in the county, the chalet would be serviced to a satisfactory level and the additional traffic associated with the chalet would not constitute a traffic hazard.

8.0 Recommendation

I recommend that retention permission be granted for the reasons and considerations set out below and subject to the conditions herein under.

9.0 Reasons and Considerations

Having regard to the provisions of the Wicklow County Development Plan 2022-2028,; it is considered that the development for which retention is sought would not materially contravene Development Plan tourism objectives, would not injure the visual or residential amenities of the area, or of property in the vicinity, would not, by virtue of the existing access constitute a traffic hazard and would provide an acceptable standard of amenity for tourist occupants. 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 on 30th 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>The existing dwelling and the tourist accommodation in the chalet shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.</p> <p>Reason: To restrict the use of the chalet in the interest of residential amenity.</p>
3.	<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 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,</p>

	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.
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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.

Bernard Dee
Planning Inspector

11th October 2023