



An
Bord
Pleanála

Inspector's Report ABP318246-23

Development	Permission for the replacement of mobile home with single storey log cabin and associated site works.
Location	Farmerene, Gap Road, Lacken, Blessington, County Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	22618.
Applicant	Willem Van Der Westhuizen.
Type of Application	Planning permission.
Planning Authority Decision	Refusal of permission.
Type of Appeal	First Party
Appellant	Willem Van Der Westhuizen.
Observer(s)	None.
Date of Site Inspection	7th February 2024.
Inspector	Derek Daly.

1.0 Site Location and Description

- 1.1. The proposed site is located in a relatively elevated rural area approximately one kilometre to the east of the village of Lacken. The site which is extensive in area with a stated area of 6.88 hectares rises in level in a northerly direction with a varying gradient from the public road, referred to in correspondence as the Gap Road, and which defines the site's southern boundary. The site is a rough uneven terrain with rock outcrops and area of vegetation associated with wet and poorly drained land.
- 1.2. The site is partly open in particular in the northern area of the site and there is also wooded areas on the site in particular in the southern area of the site close to the road and eastern boundaries comprising of broadleaves and conifer species. There are extensive views from the site over the surrounding landscape and Poulaphouca Reservoir to the south. There is a vehicular access serving the site at the southwestern corner of the site and a rough unpaved track which leads up to two mobile homes which at the time the site inspection were located on the site. There was also a caravan and materials on the site.
- 1.3. There is a drain/watercourse located along the eastern boundary of the site which flows southwards to the Poulaphouca Reservoir. To the west of the site is the site of a dwelling and there are a number of dwellings located in the wider area fronting onto the local road network.

2.0 Description of Development

- 2.1. The proposed development is for;
 - (1) the replacement of mobile home with a single storey log cabin
 - (2) a new wastewater treatment plant and polishing filter and
 - (3) associated site works.
- 2.2. The single storey log cabin has a pitch roof and an overall height to ridge level of a stated 3466mm with external finishes of pine boards and a metal roof. The dwelling has a stated area of 68m² and the gross area of existing mobile home is stated as 24m².

- 2.3. The proposal also provides for a new wastewater treatment plant with a Population Equivalent (PE) of 6 located to the south of the proposed log cabin. A Site Characterisation Report (SCR) was submitted recommending a tertiary treatment system with a percolation area of 250m². No specific details of the treatment plant are on file.
- 2.4. It is noted that in the grounds of appeal alteration to the external finishes of the log cabin are indicated.
- 2.5. Water supply is supplied from a spring and stream.

3.0 Planning History

3.1. P.A. Ref. No. 91/7737

Permission refused for a bungalow on the site.

P.A. Enforcement File UD5620

An enforcement file in relation to mobile homes and a plastic wastewater settlement tank.

4.0 National/Local Planning Policy

4.1. National Guidance

4.1.1. Sustainable Rural Housing Guidelines 2005

The guidelines make clear distinction between urban and rural generated housing and to differentiate between development needed in rural areas to sustain rural communities and development tending to take place principally in urban areas. The guidance defines rural area types and the subject site is within an area defined as an Area Under Strong Urban Influence. The guidelines in terms of housing need distinguish between urban generated housing need and rural generated housing need.

Section refers to 3.2.3 Rural Generated Housing Persons who are an intrinsic part of the rural community and that such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community which would include farmers, their sons and daughters and or any

persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes or wish to care for elderly family members. Having defined rural generated housing needs, the development plan should make very clear that subject to satisfying normal planning considerations relating to siting and design, such as those outlined in section 4 of the guidelines, the planning authority will look favourably upon an applicant's proposal for an individual house in a rural area where that applicant comes within the development plan definition of need.

Rural housing policies will normally be linked to other sections of the plan dealing with landscape character; protection of key natural assets such as surface and ground water resources and that the consideration of individual sites will be subject to normal siting and design considerations.

4.1.2. National Planning Framework 2040

In Section 5.3 National Policy Objective 19 provides for;

“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”.

4.1.3. EPA Code of Practice Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10) 2021.

The Code of Practice (CoP) provides guidance on domestic waste water treatment systems (DWWTSs) for single houses or equivalent developments with a population equivalent (PE) of less than or equal to 10 and sets out a methodology for site assessment and selection, installation and maintenance of an appropriate DWWTS.

The CoP in the various chapters sets out in detail requirements and guidance on site characterisation, site suitability assessment, determining site suitability and the appropriate design solution in relation to an appropriate DWWDT. It also refers to designing an on-site DWWTS to treat and dispose of the waste water addressing

can the soil and/or subsoil accommodate the waste water volumes, can the soil and/or subsoil treat the waste water sufficiently and can all minimum separation distances be met.

4.2. Local Policy

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

Chapter 4 refers to Settlement Strategy and the site is within Level 10 of the strategy the rural area forms the 'open countryside' and includes all lands outside of the designated settlement boundaries and that development within the rural area should be strictly limited to proposals where it is proven that there is a social or economic need to locate in the area. Protection of the environmental and ecological quality of the rural area is of paramount important and as such particular attention should be focused on ensuring that the scenic value, heritage value and/or environmental / ecological / conservation quality of the area is protected. Reference is also made to Housing Occupancy Controls Rural housing policy applies as outlined in Chapter 6.

Chapter 6 refers to Housing and refers to in objective CPO 6.4 that *all new housing developments (including single and rural houses) shall achieve the highest quality of layout and design, in accordance with the standards set out in the Development and Design Standards (Appendix 1) and the Wicklow Single Rural House Design Guide (Appendix 2).*

Objective CPO 6.29 refers to mobile homes and *that temporary residential structures (e.g. mobile homes, caravans, cabins, portacabins etc) form a haphazard and substandard form of residential accommodation and generally have poor aesthetic value and can detract from the overall appearance of an area. Therefore, permission will generally not be granted for such structures.*

Housing in the Open Countryside is referred to in objective CPO 6.41 with the objective *to facilitate residential development in the open countryside for those with a housing need based on the core consideration of demonstrable functional social or economic need to live in the open countryside in accordance with the requirements set out in Table 6.3.* Table 6.3 Rural Housing Policy outlines requirements in relation to Housing Need / Necessary Dwelling, with criteria outlined in relation to economic need and social need and demonstrate a clear need for new housing, for example: - first time home owners and other such circumstances that clearly demonstrate a

bona fide need for a new dwelling, that a home in the open countryside is essential to the making of that livelihood and that livelihood could not be maintained while living in a nearby settlement, the need of persons intrinsically linked to rural areas largely reflecting national guidance.

Chapter 13 refers to water services and in relation to private wastewater treatment systems and private water supplies that through the planning process the Council will assess applications for the provision of private waste water treatment systems and water supplies in order to ensure proposals put forward are in accordance with the standards set out in EU/national legislation, EPA guidance and would not be prejudicial to public health.

Objective CPO 13.1 has as an objective to ensure the protection, improvement and sustainable use of all waters in the County, including rivers, lakes, ground water, coastal and estuarine waters, and to restrict development likely to lead to a deterioration in water quality.

Objective CPO 13.16 indicates that permission will be considered for private wastewater treatment plants for single rural houses where:

- the specific ground conditions have been shown to be suitable for the construction of a treatment plant and any associated percolation area;
- the system will not give rise to unacceptable adverse impacts on ground waters / aquifers and the type of treatment proposed has been drawn up in accordance with the appropriate groundwater protection response set out in the Wicklow Groundwater Protection Scheme (2003);
- the proposed method of treatment and disposal complies with Wicklow County Council's 'Policy for Wastewater Treatment & Disposal Systems for Single Houses (PE ≤ 10)' and the Environmental Protection Agency "Waste Water Treatment Manuals"; and
- in all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitively demonstrate that the proposed development will not have an adverse impact on water quality standards and requirements set out in EU and national legislation and guidance documents.

Chapter 17 refers to Natural Heritage and Biodiversity and section 17.3 to Landscape. Table 17.1 outlines Wicklow Landscape categories and in Hierarchy 1 to Mountain and Lakeshore AONB which includes The Mountain Uplands The Blessington Lakes Area and Map No. 17.09A identifies the subject site as within the Blessington Lakes Area.

Objectives CPO 17.4, 17.5 and 17.6 refer to the protection of protected sites and species and protection of European sites

Objective CPO 17.36 refers to any application for permission in the AONB which may have the potential to significantly adversely impact the landscape area shall be accompanied by a Landscape / Visual Impact Assessment and shall demonstrate that landscape impacts have been anticipated and avoided to a level consistent with the sensitivity of the landscape and the nature of the designation.

5.0 Natural Heritage Designations

The site is not within a Natura/European Site. The watercourse at the east of the site has a direct hydrological link to the Poulaphouca Special Protection Area (SPA) site code 000463 which has qualifying conservation interests indicated as Greylag Goose (*Anser anser*) and Lesser Black-backed Gull (*Larus fuscus*) with the objective to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA. There are no other links hydrological or otherwise to any other European Site.

6.0 Planning Authority Decision

- 6.1. The decision of the planning authority was to refuse planning permission and six reasons were stated.
- 6.1.1. The first reason refers to the location of the site in a Mountain and Lakeshore AONB and would not represent a necessary dwelling in this rural area and is contrary to the settlement strategy outlined in chapter 4 of the CDP 2022-2028 and meeting the criteria of housing need set out in objective CPO 6.41.

The second reason refers to refers to the location of the site in an AONB, the respecting of more traditional and vernacular building patterns and materials

assimilating into the existing landscape, the elevated nature of the site reliant on forestry for screening, the temporary nature of the structure, the absence of a site specific Visual Impact Assessment, and lack of information on the level of site works and as a consequence the proposal would form an incongruous feature in the rural area.

The third reason refers to consolidating unauthorised development of the overall site.

The fourth reason refers to issues of public health as the site is within the catchment of the Liffey and an important feeder stream to the Poulaphouca Reservoir.

The fifth reason refers to traffic hazard and insufficient details submitted in relation to the access and run off of surface water to the public road

The sixth reason refers to a direct hydrological link to the Poulaphouca Reservoir SPA and significant effects cannot be excluded.

6.2. Planning Authority Reports

6.2.1. Planning Reports

The planning report dated the 13th September 2023 refers to the provisions of the current County Development Plan, refers to other reports of the planning authority and Uisce Éireann. The report assesses the current proposal and refusal of the development is recommended.

6.2.2. Other Reports

Uisce Éireann in a response indicated no objection.

The roads inspections report dated the 11th August 2023 requests further information in relation to the entrance and surface water drainage.

Water Services department report dated 9th August 2023 recommended clarification in relation to the proposed percolation noting water was in the percolation hole at a depth of 38cm below ground level.

The report of the chemist dated the 22nd August 2023 indicates that the site does not satisfy the requirement of 100m separation from watercourses flowing into the Poulaphouca Reservoir, percolation holes were slow to drain, the site appears to have poor drainage and reference is made to the slope on the site.

7.0 First Party Appeal

7.1. Grounds of Appeal

The main grounds of appeal can be summarised as follows:

- The appellant refers to no third party submission was made in relation to application.
- The grounds stress the issue of replacement dwelling.
- There are no other houses on the holding.
- The replacement dwelling does not constitute overdevelopment in the area and does not add to the rural housing quantity in the area.
- The proposal provides for the replacement of an old leaking sewage system installed in 1999 with a new system and is an upgraded system. There is sufficient distance from the plant to the stream and a suitable solution to any poor percolation can be achieved. In relation to the environment report of the local authority the planning authority should have requested further information to enable the applicant to comment.
- If permission is not granted the appellant proposes to carry out refurbishment works to the existing dwelling.
- The caravan on the site is not a storage caravan.
- The mature planting provides screening from the public road.
- Similarly, the applicant should have been requested to comment by further information to the roads report. It is noted that the vehicular entrance is as existing and can be modified to create the required sightlines if required.
- In relation to issues raised in the planning report the applicant could have responded to issues in relation to external finishes and the appellant now proposes a more traditional masonry finish details of which are submitted with the grounds of appeal.
- The replacement dwelling the appellant proposes can be occupied by a farm worker who will maintain the appellant's lands.

- The subject property was occupied by the previous owner and lived in three mobile homes on the property permanently for over 35 years. The works require minimal earth moving and the dwelling is simple in shape and proportion and does not dominate the landscape.
- The site has electricity and mains water

8.0 **Appeal Responses**

No Responses received.

9.0 **EIA Screening**

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the immediate vicinity of the site, 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 it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

10.0 **AA Screening**

Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, if carried out to the highest standards it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on the nearest European site given its qualifying conservation interests

11.0 **Assessment**

11.1. The main issues in this appeal are those raised in the planning authority's reasons for refusal. I am satisfied that no other substantive issues arise.

The issues are addressed under the following headings:

- Principle of the development.

- The reasons for refusal.

11.2. Principle of the development.

11.2.1. The proposal as submitted is for the replacement of mobile home with a single storey log cabin, a new wastewater treatment plant and polishing filter and associated site works.

It is noted that the public notices, documentation associated with the development and the grounds of appeal refer to replacement of an existing mobile home, however, there also appears to be an enforcement file in relation to the mobile home and there is no documentary evidence presented that the mobile home on the site is authorised development. The planning report refers to *“no permission for the existing mobile(s) appear to exist on the subject site and therefore the proposed development is considered to be for a new dwelling”*.

Based on the information available and presented with no documentary evidence presented that the existing mobile is authorised I consider that the current development be considered on the basis of a new dwelling and not a replacement and therefore requires to be considered in the context of the provisions of the current Wicklow County Development Plan 2022-2028 as they apply in relation to new dwellings in the open countryside, national guidance, the designations which apply to the site and other site specific considerations and standards as outlined in the CDP many of which are specifically referred to in the stated reason for refusal in the Planning Authority decision.

11.3. Reasons for refusal.

11.3.1. The decision of the planning authority was to refuse planning permission. Six reasons were stated which refer to housing need in a rural area, consolidation of unauthorised development, landscape designation and visual amenity, public health and matters relating to the treatment of foul effluent, traffic hazard and appropriate assessment.

11.4. Housing need in the rural area.

11.4.1. As already indicated the current development is considered on the basis of a new dwelling and not a replacement dwelling and therefore to be considered in the

context of the provisions of the current Wicklow County Development Plan 2022-2028 as they apply in relation to new dwellings in the open countryside.

11.4.2. The provisions of the CDP as outlined in largely reflect national guidance and are set out in Table 6.3 reflecting requirement of housing need and a necessary dwelling and which are based on criteria outlined in relation to economic need and social need and also demonstrate a clear need for new housing as for example first time home owners and other such circumstances that clearly demonstrate a *bona fide* need for a new dwelling, that a home in the open countryside is essential to the making of that livelihood and that livelihood could not be maintained while living in a nearby settlement, the need of persons intrinsically linked to rural areas which largely reflecting national guidance as they relate to rural generated housing need.

11.4.3. The first party appellant has not given any indication of such need, has not indicated that the dwelling is for his own use and occupation and has stated that the dwelling can be occupied by a farm worker who will maintain the appellant's lands. Based on the information as submitted the appellant has not demonstrated a *bona fide* functional, social or economic need for a dwelling in the open countryside based on the provisions as set out in table 6.3 of the CDP or national guidance.

11.4.4. The proposal to amend the external finishes to a more permanent finish with a more traditional masonry finish details of which are submitted with the grounds of appeal does not address the matter of housing need.

11.5. Consolidation of unauthorised development.

11.5.1. As already indicated although it is not a matter for the Board to address unauthorised development the grounds of appeal refers to a replacement dwelling unit but the appellant has not submitted any documentary evidence to support the position that the mobile home(s) on the site have the benefit of an authorised planning permission.

11.6. Landscape designation and visual amenity.

11.6.1. The site is located within an area with the highest category of landscape amenity designation which is elevated and affords views over the reservoir and countryside and forms part of a relatively unspoilt landscape. Specifically in relation to the site itself the presence of trees and other planting at the lower area of the site and the western and eastern boundaries does provide a visual screening which does

ameliorate any visual impact in the immediate vicinity of the site and along the road with only fleeting views of the existing development on the site.

11.6.2. The proposed dwelling as submitted with the application would represent an increase in relation to floor area from 24m² to 68.2m², a longer axis of elevation with an increase from 8700mm to 12540mm and an increase in overall height from 2332mm to 3466mm. No assessment of visual impact is submitted or any landscape plan in relation to retention of existing screening or additional screening but any increase over what currently exists increases potential visual impact which given the overall visual sensitivity of the site and wider area would not be in the interest of safeguarding this visually important scenic landscape.

11.7. Public health and matters relating to the treatment of foul effluent

11.7.1. In relation to the treatment of foul effluent the proposal as submitted provides for a new wastewater treatment plant with a Population Equivalent (PE) of 6 located to the south of the proposed log cabin. A Site Characterisation Report (SCR) was submitted recommending a tertiary treatment system with a percolation area of 250m² and this percolation area is indicated as being located to the south of the treatment plan on drawing 491/04. The percolation area is indicated as a hatched area on sloping ground and within 5 metres of a drain/watercourse which flows southwards towards the reservoir and can be considered to be a feeder watercourse to the reservoir.

11.7.2. The Site Characterisation Report (SCR) submitted with the application indicates percolation testing with T values which recommended a tertiary treatment system with a percolation area of 250m². The SCR outlines site specific conditions requiring a Soil Polishing Filter to ensure a minimum of 1.2m of suitable percolating material between the base of the lowest part of the percolation area/soil polishing filter and winter groundwater level/bedrock at all times. The details submitted with the SCR it is noted however indicate a percolation area which differs in location and orientation to that indicated in drawing 491/04 indicating a separation distance from the drain of 10457mm and also indicates a schematic diagram of an intermittent soil filter based on the EPA CoP publication and a longitudinal section referring to section through typical installed percolation trench constructed as per EPA CoP.

- 11.7.3. I note the references of internal reports of the planning authority in relation to foul drainage assessment which recommended clarification in relation to the proposed percolation noting water was in the percolation hole at a depth of 38cm below ground level, that the site does not satisfy the requirement of 100m separation from watercourses flowing into the Poulaphouca Reservoir, that percolation holes were slow to drain, the site appears to have poor drainage and reference is made to the slope on the site.
- 11.7.4. The appellant in response to the matters raised has indicated that the proposal provides for the replacement of an old leaking sewage system installed in 1999 with a new system and is an upgraded system. There is sufficient distance from the plant to the stream and a suitable solution to any poor percolation can be achieved. In relation to the environment report of the local authority the planning authority should have requested further information to enable the applicant to comment.
- 11.7.5. From an inspection of the site, it is clearly evident that the site slopes generally in a southerly direction, the vegetation present on the site exhibits an indication of poor drainage and rock outcropping occurs on the site indicating variation in soil depth.
- 11.7.6. An upgraded system of effluent treatment to what currently exists if installed to EPA CoP would represent an improvement in the treatment of effluent if designed installed and maintained in accordance with the CoP. It is however noted that the CoP is a guidance document which requires that site specific measures be considered and proposed based on detailed site evaluation and testing.
- 11.7.7. It is not clear from the documentation submitted as to why the location of the percolation was chosen in relative close proximity to a drain/watercourse which feeds directly into a reservoir providing a public water supply given the large extent of the site in relation to area. While noting that it was open to the planning authority to seek further clarification it is reasonable to consider that the applicant on the basis of the tests carried out on the site could and should have provided more detail in particular having identified the size/area of percolation required to have submitted more details in relation to how the treatment of effluent would technically occur.
- In this regard applying the CoP guidance details specific to the actual proposal including levels and cross sections of the percolation area as related to the level of the WWTP, actual site specific and not schematic details of the percolation area,

whether the percolation area is raised or otherwise, whether a specific form of filter was required for the percolation area determined by the prevailing site conditions, details relating to level, type and depth of imported media required for the percolation area to ensure clarity in relation to separation depth to bedrock levels in the percolation area and to ensure optimum percolation conditions for the treatment of effluent should have been submitted and also clarity in relation to precisely what type of wastewater treatment plant was proposed.

11.7.8. Based on the above and the importance of protecting groundwater and discharge to watercourses and in particular that there is a watercourse which feeds onto a reservoir it cannot be stated based on the details submitted that the proposed development would not adversely impact on receiving waters ground and surface and not be prejudicial to public health. Any proposal where it to be permitted would require satisfactory evidence that it would not adversely impact on a source of public water supply.

11.8. Traffic hazard

11.8.1. In relation to the proposed access and the stated reason which refers to an absence of detail in relation to sightlines and potential discharge of run off onto the public road the existing access is onto a narrow public road which is on a straight section of road which reasonable horizontal and vertical alignment. I consider that an access can be provided to meet satisfactory sightlines in both directions and also that measures can be put in place to prevent runoff and in a manner which minimises disruption and removal of the existing roadside boundary.

11.9. Appropriate Assessment.

11.9.1. Appropriate Assessment is referred to in the reasons for refusal and is addressed in sections 5.0 and 10.0 of this report.

12.0 Recommendation

12.1. I recommend that permission be refused.

13.0 Reasons and Considerations

- 1 Having regard to the location of the site within "Area Under Strong Urban Influence" as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area defined as a level 10 rural area where housing is restricted to persons demonstrating local need in accordance with the current Wicklow County Development Plan 2022-2028 as set out in Table 6.3 of the said plan, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 2 The site of the proposed development is located in an area designated as an Area of Outstanding Natural Beauty in the current Wicklow County Development Plan 2022-2028 for the area. The policy and objective of the planning authority for the area, as expressed in the Development Plan, to protect and improve high amenity areas and to control development in order to maintain the scenic values, recreational utility and existing character of the area. The provisions as stated are considered reasonable. Having regard to the topography of the site, the elevated positioning of the proposed development, it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this high value amenity location, would seriously injure the visual amenities of the area, would militate against the preservation of the rural environment and would set an undesirable precedent for other such prominently located development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 3 Having regard to the soil conditions, the presence of rock outcropping, a high water table and the gradient of the site, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent arising from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The site and proposed effluent treatment plant and associated percolation area is also located close to a feeder drain/watercourse of the Poulaphouca Reservoir, and in the absence of sufficient information submitted with the application to indicate otherwise there is a potential likelihood of pollution of the reservoir which is a major source of public water supply arising from the proposed treatment of effluent. It is considered, therefore, that the proposed development would be prejudicial to public health.

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.

Derek Daly
Planning Inspector

16th February 2024