



An
Bord
Pleanála

Inspector's Report

ABP-318551-23

Development	4 no. two storey detached houses and ancillary site works
Location	Walsheslough, Rosslare, Co. Wexford
Planning Authority	Wexford Co. Co.
Planning Authority Reg. Ref.	20230757
Applicant(s)	Gerard and Margaret Doyle
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Gerard and Margaret Doyle
Observer(s)	None
Date of Site Inspection	14 th March 2024
Inspector	Bernard Dee

1.0 Site Location and Description

- 1.1. The appeal site is located in Walsheslough in Rosslare village, Co. Wexford within and accessed via an existing housing estate called 'The Cove'. The appeal site is located east of the R740 (Station Road) and is accessed from Maruitius Road to the south where the entrance to 'The Cove' is located. The site is encompassed by residential developments on all sides including a site to the NW of the appeal site where a housing estate is currently being constructed.
- 1.2. The appeal site itself has an area of 0.35ha and is currently vacant and overgrown. The front of the site facing onto the estate road (NE boundary) is defined by a hedge and part by wooden fencing (where the vehicular access is proposed). A ditch defines the SE boundary of the appeal site with the estate under construction to the NW. The SW boundary is open to a house located within the field which the appeal site is located within.

2.0 Proposed Development

- 2.1. The proposed development is comprised of the erection of 4 no. dwelling houses, entrance onto the existing estate road together with ancillary site works. The design of the proposed dwellings is contemporary and the design proposed is for two storey (dormer style), four bedroom houses with a ridge height of approximately 7.9m. The GFS of each house is approximately 180m². The houses are finished in painted render and metal cladding.
- 2.2. Vehicular access is proposed onto the existing estate road and parking for 2 no. cars per house is also proposed. An internal road running parallel to the estate road fronting the site will provide access to each individual house and landscaping is also proposed.
- 2.3. Mains water supply and connection to the mains sewer are proposed to service the site.

3.0 Planning Authority Decision

3.1. Decision

Permission for the proposed development was refused on 1st November 2023 for one reason:

Uisce Eireann have stated that the proposed development is likely to cause overloading at the wastewater treatment plant, potentially impacting on receiving waters. The proposed development is therefore likely to be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial Planner's Report was dated 22nd August 2023 and led to the issuing of a Further Information request on 23rd August 2023 in relation to additional information on surface water discharge from the application site, details on the hammer head turning area for large service vehicles and information on the proposals for EV charging points to serve the proposed houses.

I note that the Further Information request did not make any reference to capacity constraints at the Rosslare WWTP. A response to Further Information request was received on 5th October 2023.

A supplementary report on the appeal file by the Senior Planner dated 22nd August 2023 stated that infill/brownfield permanent residential development of a maximum of 10 no. houses could proceed without risk in terms of the capacity of the Rosslare WWTP and potential pollution risks.

The Planner's Report on file following the Further Information response and dated 26th October 2023, in summary, had regard to the following planning issues:

- The proposal for a residential development at this location is acceptable in principle.
- The contemporary design of the proposed houses is appropriate to its context and the external finish proposed for the houses is acceptable.

- Landscaping proposals submitted with the application are deemed acceptable and the provision of private open space is satisfactory.
- Access proposals are acceptable following the receipt of Further Information.
- The current proposal has been significantly scaled back from previous proposals for the site which were refused permission by the Planning Authority.
- Neither AA nor EIA is required in relation to the proposed development.
- Recommend a grant of permission subject to conditions.

Subsequent to the Planner's Report dated 26th October 2023, and following the receipt of Further Information on 5th October 2023, a supplementary report by the Senior Planner dated 1st November 2023 stated the following:

I have been asked to review this recommendation by the Director of Services having regard to the Uisce Eireann report which categorically states that the development is likely to cause overlading potentially impacting on receiving waters and as no assessment of the Combined Approach Assessment has been carried out by that the application should be refused.

The assessment referred to relates to responsibilities that have been assigned to local authorities and that have not been transferred to Uisce Eireann as part of the transfer of powers and resources from Local Authorities which were water authorities (these assessments will have to be completed despite the resource deficit).

Therefore, I can see no other option at this time other than to refuse in accordance with the Uisce Eireann recommendation.

Recommendation Refuse

Uisce Eireann have stated that the proposed development is likely to cause overlading at the wastewater treatment plant potentially impacting on receiving waters. The proposed development is therefore likely to be prejudicial to public health and contrary to the proper planning and sustainable development of the area. /

3.2.2. Other Technical Reports

- Roads Section – recommended a grant subject to conditions following receipt of Further Information.
- The Disability Access Officer – no objection to the proposed development.

- Senior Executive Scientist (Environment) – recommended that permission be granted subject to conditions.

3.2.3. Prescribed Bodies

- Irish Water – in a response 7th September 2023 confirms that a connection of the proposed development to the sewage system is still feasible but that a condition should be attached to any grant of permission.

3.2.4. Observations

- Observations were received from John O'Connor and John & Mary Cooney generally in support of the proposed development at the appeal site. The Observers wanted the Planning Authority to have regard to the following issues: rear gardens sizes, adequacy of parking spaces dimensions, construction traffic disturbance, roof tile colour, boundary treatment, surface water flooding and the capacity of the sewage system to accommodate the proposed development.

4.0 Planning History

4.1. On the Appeal Site

- Ref. 20220579 – on the current appeal site permission was refused on 28th June 2022 for two reasons for the construction of 7 no. detached houses.
 1. Given the paucity of information, detail and non-compliant proposals to connect to the public foul and stormwater networks and ongoing concern over the capacity in the wastewater treatment plant to cater for the proposed development, it is considered that the proposal would represent a public health hazard and is premature at this time.
 2. While it is accepted that infill development is necessary to deliver compact sustainable growth, it is considered that the development as proposed fails to deliver a high-quality design in terms of functionality and visual appeal and does not provide for a high level of residential amenity. The submitted documentation fails to provide sufficient detail on site layout and service provision, adaptability and permeability, and is substandard in terms of pedestrian access, public open space, public lighting, landscaping and boundary treatment, and construction and environmental management plans. The proposed development is therefore considered to be contrary to Section 18.10 of the Wexford County Development Plan 2013-2019 (as extended) and to the proper planning and sustainable development of the area.
- Ref. 20211309 – on the current appeal site permission was refused on 16th August 2021 for two reasons for the construction of 8 no. detached houses.

1. There is insufficient capacity in the wastewater treatment plant to cater for the proposed development. Therefore, the proposed development is considered premature pending the upgrade of the wastewater treatment infrastructure in the village.
 2. While it is accepted that infill development is necessary to deliver compact sustainable growth, it is considered that the development as proposed fails to deliver a high-quality design in terms of functionality and visual appeal and does not provide for a high level of residential amenity. The submitted documentation fails to provide sufficient detail on site layout and service provision, adaptability and permeability, and is substandard in terms of pedestrian access, public open space, public lighting and boundary treatment. The proposed development is therefore considered to be contrary to Section 18.10 of the Wexford County Development Plan 2013-2019 (as extended) and to the proper planning and sustainable development of the area.
- Ref. 20032073 – on the current appeal site permission was sought for the construction of 4 no. detached houses but following a request for Further Information issued by the Planning Authority no response was received within the appropriate period and this application was deemed to be withdrawn.

4.2. In the Vicinity of the Appeal Site

- Ref. ABP-304443-19 (20190109) – on the site adjacent to the NW boundary of the appeal site permission was granted by the Planning Authority on 30th July 2019 for the construction of 7 no. two storey dwellings together with overall site ancillary works previously granted under planning reference numbers 20090849, 20080876 and 20064077. This permission was appealed to the Board by a Third Party but the appeal was dismissed by the Board under the provisions of subsections (1)(b)(i) and (ii) of section 138 of the Planning and Development Act, 2000 (as amended). This development is currently nearing completion.

I would also refer the Board to my report on file Ref. ABP-319004-24 (20231481) in relation to a single house development discharged on the same day as this appeal file (21st March 2024) which has an extensive planning history section relating to the capacity of the WWTP in Rosslare. Ideally the two files should be read and presented together by the assigned Board Member for a broader picture of the capacity issue in Rosslare.

5.0 Policy and Context

5.1. Development Plan

The Wexford County Development Plan 2022-2028 is the relevant Development Plan for the area.

The following policy objectives are of relevance when assessing the proposed development. Development Plan polices regarding housing design and other development management standards have not been reproduced below as the primary issue in this appeal relates to wastewater treatment.

Volume 1: Written Statement

Section 9.6 Wastewater

Table 9-3 Overview of Public Wastewater Infrastructure - Level 3a Service Settlements - Rosslare Strand – Capacity = 8,500PE and Headroom = 2,826PE. (Source: Irish Water Wastewater Capacity Register 29th April 2020 but subject to change).

Table 9-4 which lists EPA Urban Wastewater Areas of Concern does not include Rosslare on the list.

Table 9-5 which lists Irish Water Investment Plan Public Wastewater Projects 2020-2024 does not include Rosslare on the list.

- Objective WW04 - To facilitate Irish Water in the delivery of public wastewater services which address the residential, commercial and industrial needs of the county subject to compliance with all relevant EU and national legislation and guidelines and normal planning and environmental criteria.
- Objective WW05 - To work alongside Irish Water to facilitate the wastewater projects identified in Table 9-5 and any other projects that may arise during the lifetime of this Plan subject to compliance with all relevant EU and national legislation and normal planning and environmental criteria.
- Objective WW06 - To ensure that proposals in the coastal and maritime area do not significantly adversely affect existing and planned wastewater management and treatment infrastructure (where a consent, authorisation or lease has been granted to or formally applied for by Irish Water) unless

compatibility with such infrastructure can be satisfactorily demonstrated or there are exceptional circumstances.

- Objective WW07 - To work with Irish Water, other public infrastructure agencies and local communities to develop the programme for 'new homes in small towns and villages' as set out in NPO 18b of the National Planning Framework for the settlements listed in Table 9-6. This programme will provide serviced sites with appropriate infrastructure to attract people to build their own homes and live in small towns and villages in the county and is subject to complying with the Habitats Directive and normal planning and environmental criteria.
- Objective WW08 - To facilitate the connection of existing developments to public wastewater services wherever feasible and subject to connection agreements with Irish Water and to ensure that any future development connects to the public wastewater infrastructure where it is available.
- Objective WW13 - To protect existing wastewater infrastructure, including way leaves and buffer zones, from inappropriate development and zoning.

5.2. Natural Heritage Designations

The following natural Heritage designations are located in the vicinity of the appeal site:

- Seas off Wexford SPA (004237).
- Wexford Harbour and Slobs SPA (004076).
- Wexford Slobs and Harbour pNHA (000712).

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. Grounds of Appeal

The relevant planning issues raised by the First Party are, in summary, as follows:

- The Planning Authority have no issue with the principle of the development of 4 no. houses on this site nor with the layout, design or materials proposed. Aside from the reason for refusal relating to the insufficient capacity at the Rosslare WWTP, all other elements of the proposed development were favourably assessed by the Planning Authority.
- The proposed low density residential development proposed is in line with compact growth policies, government guidance and complies with the policies and objectives of the Wexford County Development Plan 2022-2028 and with the development management standards contained in the Development Plan.
- Section 4.3.6 of the Wexford County Development Plan 2022-2028 states that capacity at the Rosslare WWTP is 8,500PE and that some headroom exists at the plant to accommodate new residential development.
- The proposal for 4 no. dwellings is a considerably scaled back development from previous applications on site (8 no. and 7 no. houses) which were refused on the basis of insufficient capacity being available in the WWTP.
- Irish Water have confirmed to the applicant the feasibility of connection to the sewage infrastructure system on 15th March 2023 (Figure 19 in the appeal submission).
- The Irish Water response to the Planning Authority dated 7th September 2023 confirms that a connection of the proposed development to the sewage system is still feasible but that a condition should be attached to any grant of permission requiring that the applicant receive a connection agreement from Irish Water prior to the commencement of development (Figure 20 in the appeal submission).
- The 'Amber' status of the Rosslare WWTP does not mean a prohibition of new residential but in fact means that there is some limited capacity at the plant remaining to be utilised for small infill developments in serviced urban

areas. Applications for residential development are to be dealt with on a case by case basis and there is no blanket ban on new connections to the wastewater system in place.

- A connection agreement can be sought from Irish Water post planning permission on foot of a condition specifying such a requirement and this is standard planning practice. Indeed, the Board has on several occasions previously overturned this type of reason for refusal and included a connection agreement condition in a grant of permission for residential development in Rosslare.
- The initial report from the Senior Planner dated 22nd August 2023 stated that while the Planning Authority would have serious concerns about potential risks of environmental pollution but that it had been agreed with the Water Services Section of Wexford County Council that infill/brownfield residential development of up to 10 no. units would be permitted despite capacity issues at the Rosslare WWTP.
- The supplementary report from the Senior Planner dated 1st November 2023 stated that permission should be refused for capacity reasons at the WWTP. The planning assessment of this case has been contradictory and confused and has resulted in a needless refusal of permission of a badly needed residential development.
- Neither EIA nor AA is required in relation to the proposed development.
- The Observers to the application are generally in support of the proposed development.

6.2. Planning Authority Response

- The Planning Authority has not responded to this appeal.

6.3. Observations

- No Observations received.

7.0 Assessment

- 7.1. Having examined all the application and appeal documentation on file, 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.
- 7.2. The assessment issue therefore relates to the capacity of the Rosslare WWTP to accommodate additional connections having regard to its current 'Amber Status'.
 - 7.2.1. The issue of AA Screening is also addressed in this assessment.
- 7.3. Rosslare WWTP Capacity
 - 7.3.1. The status of the Rosslare WWTP is 'Amber' which means that potential spare capacity is available and applications are to be considered on an individual basis considering their specific load requirements.
 - 7.3.2. The initial planning report by the EP dated 22nd August 2023 recommended that Further Information be sought on 4 no. items none of which related to capacity constraints at the Rosslare WWTP.
 - 7.3.3. The Further Information request issued on 23rd August 2023 in relation to additional information on surface water discharge from the application site, details on the hammer head turning area for large service vehicles and information on the proposals for EV charging points to serve the proposed houses. A response was received on 5th October 2023.
 - 7.3.4. I note the Supplementary Report by the SEP dated 22nd August 2023 who recommends a refusal of permission for the proposed development due to capacity constraints at the Rosslare WWTP.
 - 7.3.5. The initial supplementary report from the Senior Planner dated 22nd August 2023 stated that while the Planning Authority would have serious concerns about potential risks of environmental pollution but that it had been agreed with the Water Services Section of Wexford County Council that infill/brownfield residential development of up to 10 no. units would be permitted as such developments would not represent a risk with respect to capacity issues at the Rosslare WWTP.

7.3.6. The Irish Water response to the Planning Authority dated 7th September 2023 confirms that a connection of the proposed development to the sewage system was feasible but that any grant of permission should be subject to conditions including an upgrade of the existing 'The Cove' WWPS to provide additional emergency storage to cater for the additional connected foul loading associated with the proposed development.

7.3.7. This Irish Water response of the 7th September 2023 also stated that:

Rosslare Strand WWTP has 'amber' status, as it does not consistently meet the requirements of its EPA Wastewater Discharge Licence, therefore under Regulation 43 of the Wastewater Discharge Authorisation Act the Planning Authority must complete a Combined Approach Assessment for this application. Given that this assessment has not yet begun, it may be prudent to refuse planning accordingly.

7.3.8. The Irish Water response to the Planning Authority recommended both a grant of permission with conditions attached (including a specific requirement with regard to 'The Cove' WWPS) and also advised the Planning Authority that it may be prudent to refuse permission for the proposed development in the absence of a Combined Approach Assessment. This conflicting advice from Irish Water to the Planning Authority, extraordinary in its own right, then led to confusion regarding the capacity of the Rosslare WWTP within the decision making levels of the Planning Authority which is outlined below.

7.3.9. A planning report by the EP dated 26th October 2023 and signed by the SEP on the same date recommended that permission be granted subject to 18 no. conditions including that a connection agreement be sought from Irish Water prior to the commencement of development – Condition No. 7.

7.3.10. A supplementary report from the Senior Planner dated 1st November 2023 makes reference to (an undated but presumably the 7th September 2023 response to referral) an Irish Water submission which states:

"The Uisce Eireann report which categorically states that the development is likely to cause overloading potentially impacting on receiving waters and as no assessment of the Combined Approach Assessment has been carried out by [sic] that the application should be refused.

The assessment referred to relates to responsibilities that have been assigned to local authorities and that have not been transferred to Uisce Eireann as part of the transfer of powers and resources from Local Authorities which were water authorities (these assessments have to be completed despite the resource deficit).

Therefore, I can see no other option at this time other than to refuse in accordance with the Uisce Eireann recommendation.”

- 7.3.11. On foot of this supplementary report a Notification of Decision to refuse permission for the proposed 4 no. houses was issued by the Planning Authority on 1st November 2023.
- 7.3.12. The issues around the capacity of the Rosslare WWTP to accommodate the proposed development seem to be reasonably clear. At no point in either the application documentation on file or in the documentation available online in relation to the history files detailed in Section 4.0 of my report above have I discovered a statement or opinion from Irish Water explicitly stating that permission should be refused for the proposed dwelling on the grounds there is insufficient capacity in the Rosslare WWTP to service the proposed development.
- 7.3.13. On the contrary, documentation on file confirms in my mind that the policy of Irish Water in relation to servicing residential development within Rosslare village is that individual houses or even small developments can be accommodated but that large scale residential development cannot be accommodated as such developments would reduce capacity at the Rosslare WWTP to minimal levels. The Planning Authority itself has decided that schemes of up to 10 no. residential units in infill/brownfield sites will be looked upon favourably with respect to the capacity issues at the Rosslare WWTP – see for reference the initial supplementary report from the Senior Planner dated 22nd August 2023.
- 7.3.14. In addition, Table 9-3 Overview of Public Wastewater Infrastructure of the Wexford County Development Plan 2022-2028 confirms a capacity of 8,500PE and headroom of 2,826PE at the Rosslare WWTP (Source: Irish Water Wastewater Capacity Register 29th April 2020 but subject to change). This Development Plan information further underlines the position of Irish Water in respect of applications for individual

houses on infill sites in Rosslare and should have informed the Planning Authority decision in this case.

- 7.3.15. I note also that the Senior Executive Scientist (Environment) recommended that permission be granted subject to conditions including obtaining a connection agreement with Irish Water prior to the commencement of development. No reference to capacity issues at the Rosslare WWTP are made in this report.
- 7.3.16. Having regard to the above, it is inexplicable why the Senior Planner's two separate reports moves from a positive to a negative recommendation with respect to the proposed development and the capacity issues at Rosslare WWTP in the context of Irish Water's submission being advisory and not a direction to the Planning Authority to refuse permission.
- 7.3.17. Having regard to the above, I would advise the Board that there is no obstacle with respect to capacity issues at the Rosslare WWTP in granting permission for the proposed development if it is minded to do so. I have examined other aspects of the proposed development such as layout, design, access arrangement, overlooking potential, overshadowing, standard of amenity and potential impacts on the visual and residential amenity of the area and I find that all planning aspects of the proposed development are satisfactory.
- 7.4. AA Screening
- 7.4.1. Having regard to the relatively minor development proposed within an existing housing estate and the distance from the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that planning permission be granted for the proposed 4 no. dwellings for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the Wexford County Development Plan 2022-2028, especially those regarding the treatment of waste water, it is considered that the proposed development would not seriously injure the visual or residential amenity of the area or have an adverse impact on the receiving environment. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 30th day of June 2023, as amended by the further information received on the 5th day of October 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 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 noise, dust and vibration management measures, rock breaking/excavation methodologies and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
3.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public</p>

	<p>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 residential amenities of property in the vicinity.</p>
4.	<p>Details of the materials, colours and textures of all the external finishes to the proposed dwellings 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>
5.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
6.	<p>Prior to commencement of development, the developer shall enter into a water and sewage connection agreement with Irish Water.</p> <p>Reason: In the interest of public health.</p>
7.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, 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> <ul style="list-style-type: none"> (a) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment (b) 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 (c) A timescale for implementation, including details of phasing, which shall provide for the planting to be completed before the dwelling is first made available for occupation. <p>Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.</p>
8.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the</p>

	<p>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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.</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.

Bernard Dee
Planning Inspector

21st March 2024