



An
Coimisiún
Pleanála

Inspector's Report PL-500220-WW-25

Development	Removal of planning condition no. 2 of original planning ref 19/310.
Location	Ballysallagh East, Brittas Bay, Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	2560643
Applicant(s)	Karen Murphy
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party Normal Planning Appeal
Appellant(s)	Karen Murphy
Observer(s)	No Observers
Date of Site Inspection	16th of February 2026
Inspector	Elaine Sullivan

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	4
3.3. Third Party Observations	5
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations	7
5.3. EIA Screening	8
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Planning Authority Response.....	8
6.3. Observations.....	8
7.0 Assessment.....	8
8.0 Recommendation.....	11
9.0 Reasons and Considerations.....	11

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.65ha and is located in the townland of Ballysallagh East, approximately 11km to the north of Arklow town. The site is accessed from the L 16177 local road. There is a single storey detached bungalow and separate garage in place on the site and large double gates secure the vehicular access from the road. There are detached houses in place along the L 16177, although none in the immediate vicinity of the subject site. Adjacent lands are in agricultural use.

2.0 Proposed Development

- 2.1. Planning permission is sought for the removal of planning condition No. 2 of PA Ref 19/310 (from restricted use of dwelling to use by all classes of persons).

Condition No. 2 states the following,

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.

(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.

(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.

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 protect the rural landscape, in the interests of proper planning and sustainable development.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority refused permission to remove condition No. 2 for the following reason,

The council's settlement strategy is to encourage further growth of existing settlements and to restrict rural housing development to cases where there is a bona fide necessity to live in the rural area instead of existing settlements. Insufficient evidence has been submitted to demonstrate the applicant's occupancy of the subject dwelling as their principle private residence in accordance with Condition 2 of PRR 19/310 for a sufficient amount of time which includes a period of seven years. Therefore, the removal of the section 47 agreement would undermine the Councils rural settlement strategy, would lead to the proliferation of non-essential housing in rural areas, and would be contrary to proper planning and sustainable development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (PO) states that the subject application is a resubmission of a previous permission (PA Ref. 24/60699) which was refused. The PO notes that the applicant submitted documentary evidence stating that they need to sell the dwelling and move to a more suitable location due to medical needs. However, they were not satisfied that the documentary evidence submitted by the applicant demonstrated that the property was occupied by the applicant for a sustained period as required by Condition No. 2. For this reason, the PO considered that Condition No. 2 has not been compiled with and the removal of the Section 47 agreement would undermine the Council's rural housing strategy which would lead to the proliferation of non-essential housing in rural areas.

3.3. Third Party Observations

- No observers.

4.0 Planning History

PA Ref. 24/60699 – Planning permission refused by the PA for the removal of planning condition No. 2 of 19/310 from restricted use as a dwelling to use by all classes of persons. Planning permission was refused for the following reason,

The council's settlement strategy is to encourage further growth of existing settlements and to restrict rural housing development to cases where there is a bona fide necessity to live in the rural area instead of existing settlements. Insufficient evidence has been submitted to demonstrate the applicant's occupancy of the subject dwelling as their principle private residence in accordance with Condition 2 of PRR 19/310 for a sufficient amount of time which includes a period of seven years. Therefore, the removal of the section 47 agreement would undermine the Councils rural settlement strategy, would lead to the proliferation of non-essential housing in rural areas, and would be contrary to proper planning and sustainable development.

PA Ref. 19/310 – Planning permission granted by the PA for the construction of a new dwelling, garage and effluent disposal system, bored well, upgrade to existing entrance and all ancillary site works. Condition No. 2 of the permission was attached to ensure compliance with the rural housing strategy for the county and restricts occupation of the dwelling to the applicant for a period of 7 years.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The appropriate development plan is the **Wicklow County Development Plan 2022-2028**.

5.1.2. The subject appeal is to remove a planning condition that was attached to a permission granted under the previous development plan, the **Wicklow County Development Plan 2016-2022**.

5.1.3. As the appeal directly relates to the rural housing policy in place under the previous development plan, I have included the relevant policy under a separate heading for the Commission's information.

Wicklow County Development Plan 2016-2022

Rural Housing Policy –

Level 10 – Open Countryside – Objective H23 applies –

- **HD23** - Residential development will be considered in the open countryside only when it is for those with a definable social or economic need to live in the open countryside. Residential development will be considered in the countryside in the following circumstances:

Note – Objective H23 lists 10 separate circumstances where an applicant could qualify for housing need. The applicant was granted permission under the following circumstance,

A permanent native resident seeking to build a house for his / her own family and not as speculation. A permanent native resident shall be a person who has resided in a rural area in County Wicklow for at least 10 years in total (including permanent native residents of levels 8 and 9), or resided in the rural area for at least 10 years in total prior to the application for planning permission.

- **HD24** - Where permission is granted for a single rural house, 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 HD23 or to other such persons as the Planning Authority may agree to in writing.

Wicklow County Development Plan 2022-2028

5.1.4. The main policies/objectives that relate to the development proposal are set out below. This is not an exhaustive list and should not be read as such.

5.1.5. **Chapter 6 – Housing**

The subject site is in the open countryside, in an area designated as **Under Strong Urban Influence**

Housing in the Open Countryside Objectives –

- **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.
- **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. (Table 6.3 defines the requirements for 'Housing Need, Economic Need and Social Need').
- **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.

5.2. **Natural Heritage Designations**

5.2.1. The site is not within or adjoining a Natural Heritage Area (NHA) or a proposed Natural Heritage Area (pNHA).

5.2.2. It is approximately 250 metres from the western boundary of the Buckronev-Brittass Dunes and Fen pNHA, (Ref. 000729).

5.2.3. The closest European Site to the appeal site is the Buckroney-Brittass Dunes and Fen SAC, (Site Code 000729).

5.3. **EIA Screening**

5.3.1. Having regard to the nature of the application as a request to remove a planning condition relating to rural housing occupancy, I conclude that it is not within a class of development to which Schedule 5 of Planning and Development Regulations 2001, as amended, apply and that the requirement for the submission of an EIAR does not arise.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of appeal include the following,

- The applicant has submitted details that state she can no longer live in the rural area due to medical considerations.
- As there are no suitable properties to rent in the nearby areas, the applicant is left with no choice but to sell the house and move permanently.
- They have considered selling the house with the restriction attached but this would impact on the viability of a sale by limiting the available buyers.

6.2. **Planning Authority Response**

- No further comments on the appeal.

6.3. **Observations**

- No observations received.

7.0 **Assessment**

7.1. **Background**

7.1.1. Planning permission was granted for the development of a rural house on the basis that the applicant complied with the rural housing policy in the Wicklow County Development Plan 2016-2022, which was in place at the time of the application. Both the previous and current development plans contain specific objectives, (HD24 and CPO 6.42 respectively), that require applicants that obtain planning permission 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 rural housing criteria or to other such persons as the Planning Authority may agree to in writing.

7.2. The Present Case

7.2.1. This is a first party appeal against Condition No. 2 attached to the Planning Authority's notification of decision to grant permission. Condition No. 2 requires, inter alia, the occupation of the house by the applicant for a period of seven years unless the planning authority grant consent 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. It also obliges the applicant to register this requirement as a burden against the title of the land in the Land Registry or Registry of Deeds.

7.2.2. Planning compliance for PA Ref. 19/310 includes a commencement notice that states that construction commenced on the 18th of October 2019. Details submitted with the subject application demonstrate a definite first occupation of the subject property on foot of the evidence of charge for present and future payments from the 17/2/2021. This would indicate that the occupational clause in Condition No. 2 will be extant until February 2028, (i.e. for approximately 2 more years at the time of writing). Additional information submitted confirms the applicant's occupancy of the house and includes account/bills from Bord Na Móna dating from 10/07/2020 to 20/12/2024. Regional Broadband bills from 2022 to 2224, electricity bills from 2021-2024, bank statements showing mortgage payments and house alarm bills/invoices from 2022-2025. Having reviewed the information submitted by the applicant, I agree with the conclusion of the PA and am satisfied that the applicant has occupied the house. Furthermore, I am satisfied that the applicant has demonstrated that the house was occupied in 2021, and, as such has been occupied for a period of five years. The applicant has also submitted a letter from their solicitor stating that the

Burden on Title required under Condition No. 2 has been registered. However, the folio details submitted do not include a burden which relates to a restriction of occupancy.

- 7.2.3. Having lived in the house for a period of 5 years, the applicant has requested that Condition No. 2 is removed to allow her to sell the house and move due to medical reasons. The applicant has submitted documentary evidence to support this and has stated that selling the property is the last resort as rental properties are unavailable in nearby towns. A letter from a local Estate Agent confirming this was also submitted. Condition No. 2 is not absolute in its restrictions and allows for the sale or occupation of the house within the seven-year period, if the new occupants also comply with the rural housing policy. This is noted by the applicant who states that this would severely restrict the market for the sale of the house and could have impacts on the market value. Whilst this is true, the applicant has not submitted any evidence as to whether this avenue has been pursued prior to lodging the application to remove Condition No. 2.
- 7.2.4. Save from the clause as set out in the condition whereby the occupancy burden does not affect the sale of the dwelling by a mortgagee there is no guidance or policy set out in the Development Plan, the Sustainable Rural Housing Guidelines or the First Revision of the NPF indicating any other special circumstances where such a condition could be set aside in advance of its expiration. Therefore, the consideration of same is on a case-by-case basis.
- 7.2.5. I accept the bona fides of the applicant's reasons for the request. It is evident from the planning history, that construction work commenced on the house almost immediately after permission was granted and that the applicant moved in soon after. This demonstrates a genuine housing need in the first instance, and it is accepted that the applicant has spent five years living in the house. Whilst there is two years remaining on the occupancy condition I am inclined in this instance to recommend, on balance, that the condition be removed. This recommendation was arrived at through an assessment of the specific set of circumstances that apply to the application, and, for this reason, I do not consider that the removal of Condition No. 2 in this instance would undermine the Council's rural settlement strategy.

8.0 Recommendation

- 8.1. It is recommended that permission be **GRANTED** for the removal of Condition No 2 subject to the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the policies and objectives as set out in the Wicklow County Development Plan 2022 - 2028, the existing house on site, the length of time the applicants have occupied the house to date and the applicants particular circumstances, it is considered that, subject to compliance with the conditions set out below, the proposed development would not undermine the provisions of the Planning Authority's housing and settlement strategies as set out in the current Development Plan for the area and would not therefore, be contrary to the proper planning and sustainable development of the area.

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.

Elaine Sullivan

20th of February 2026