



An  
Bord  
Pleanála

## Inspector's Report 27.247353

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<b>Development</b>	Retention of mobile home as residential unit, retention of revised entrance and gates and proposed waste water treatment unit.
<b>Location</b>	Bridge Cottage, Kilmacullagh, Newtownmountkennedy, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority Reg. Ref.</b>	16/820
<b>Applicant(s)</b>	Joseph Delaney
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Joseph Delaney
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	16 <sup>th</sup> December 2016.
<b>Inspector</b>	Michael Dillon

## 1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.15ha, is located approximately 1.0km to the east of the village of Newtownmountkennedy in Co. Wicklow. Access to the site is from the Newtownmountkennedy to Kilcoole county road (L1048), on which the 80kph speed restriction applies. There is a single, unbroken white line in the centre of the road at this location. There is no public lighting on this road, and there are no public footpaths in the area. The site lies hard against an embankment carrying the N11 National Primary Route over the Newtownmountkennedy to Kilcoole road – the landscaped embankment forming the eastern boundary of the site. To the west and northwest, the site abuts agricultural land – the boundary with which is mixed fencing. The roadside boundary is a mixture of old stone wall, concrete block wall, old hedgerow and newly-planted fastigiated cypress trees. The 2.1m high gates to the site are supported by unplastered concrete block pillars and is recessed. Sight distance is good in the direction of Newtownmountkennedy, but restricted by the roadside boundary in the direction of Kilcoole.
- 1.2. There is a single-storey former forge building on the site – with stables building attached. The entire site is hard-cored. The mobile home on site has a ‘Portaloo’ to one side. There is a pylon, supporting high voltage electricity lines, within the field to the southwest of the site

## 2.0 Proposed Development

- 2.1. Permission sought on 27<sup>th</sup> July 2016, to retain mobile home (42m<sup>2</sup>) and entrance gates on this site. Permission is also sought to construct a wastewater treatment plant (Euro-Bio Sewage Treatment System) to serve the mobile home. Water supply is stated to be from the public mains.

## 3.0 Planning Authority Decision

### 3.1. Decision

By Order dated 8<sup>th</sup> September 2016, Wicklow County Council issued a Notification of decision to refuse planning permission for six reasons which are summarised below-

1. Development would be prejudicial to public health due to restricted site area for effluent treatment.
2. Substandard sightlines at the entrance.
3. Inadequate setback from the N11.
4. Development would contravene policy to maintain the landscape along a Corridor Area, and would be contrary to the Settlement Strategy of the Council.
5. Mobile homes are considered to be a substandard form of residential development, and to permit retention would set an undesirable precedent.
6. Insufficient evidence has been submitted in relation to impact of noise from N11 over-pass.

#### 4.0 Planning History

**Ref. 14/1216:** Relates to application by John Delaney for retention of revised entrance which was withdrawn.

**Ref. 13/8388:** Permission refused by Wicklow County Council to John Delaney for retention of renovations and extension to reinstated cottage and garage, and permission for proposed new wastewater treatment unit and entrance. On appeal to the Board by the First Party (**PL 27.242359**) permission was refused on 19<sup>th</sup> December 2013, for two reasons relating to rural housing need and proximity to the N11.

**Ref. 02/6836:** Permission refused by Wicklow County Council to Barry Smith for retention of replacement, alterations and extension to cottage and provision of septic tank and percolation area. On appeal by the First Party to the Board (**PL 27.200739**), permission was refused on 31<sup>st</sup> January 2003, for three reasons relating to housing need, zoning provisions of the Newtownmountkennedy Local Area Plan 2002, and proximity to the N11.

**Ref. 99/1186:** Permission refused for the demolition of existing dwelling, erection of a replacement bungalow and installation of sewage treatment system for three reasons relating to sporadic rural housing, prematurity in relation to layout of the N11 by-pass route for Newtownmountkennedy, and suburban sprawl out of the village.

## 5.0 Policy Context

### 5.1. County Development Plan

The relevant document is the Wicklow County Development Plan 2016-2022. This plan was adopted on 14<sup>th</sup> November 2016, and came into effect four weeks later. A Draft Ministerial Direction in relation to certain aspects of the Plan was issued on the 7<sup>th</sup> day of December – relating to retail warehousing at Kilpedder and generation of electricity from wind. The adopted Plan is on the County Council website described as an ‘Interim’ Plan due to the Draft Ministerial Direction. The proposed development is not impacted by the Draft Ministerial Direction.

- Section 1.3 refers to separate Local Area Plans being in place for a number of towns – amongst which is Newtownmountkennedy.
- Newtownmountkennedy is referred to in Table 2.1 Settlement Typology as being a ‘Moderate Sustainable Growth Town’ – Level 4.
- Policy HD23 states- “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”. There are 16 categories of persons who might be considered for residential development – including persons residing in a rural area for at least 10 years. The section goes on to state- “In the event of conflict of any other settlement strategy objective / Landscape Zones and categories, a person who qualifies under policy HD23 their needs shall be supreme, except where the proposed development would be a likely traffic hazard or public health hazard.
- Objective TR22 states- “To ensure that all new developments in proximity to National Routes provide suitable protection against traffic noise in compliance with S.I. No. 140 of 2006 Environmental Noise Regulations and any subsequent amendments to these regulations.
- The site is located within the Eastern Corridor Area Landscape Category.
- Map no. 10.15 identifies Prospects of amenity value. No. 14 refers to the N11 at Kilmullin (immediately adjacent to the site). However, the prospect referred to is towards Kilcoole and not towards Newtownmountkennedy.

## 5.2. Local Area Plan

The Newtownmountkennedy Local Area Plan 2008-2014 is also of relevance in this instance. The site is zoned 'AG' – "To protect and provide for agriculture and amenity in a manner that protects the physical and visual amenity of the area and demarcates the urban and rural boundary". Residential development is only permissible in the AG/F zones in accordance with the rural development policies of the County Development Plan.

## 5.3. Sustainable Rural Housing Guidelines 2005

The site is located within an 'Area Under Strong Urban Influence', arising from proximity to Dublin.

## 5.4. Natural Heritage Designations

The closest European site is The Murrough SPA – located some 3.7km to the east. There is no watercourse either on or immediately adjoining the site. The development will have no impact on the bird species which are to be conserved within the SPA.

# 6.0 The Appeal

## 6.1. Grounds of Appeal

The appeal from Vincent Farry & Co. Ltd, agent on behalf of the applicant, Joseph Delaney, received by the Board on 3<sup>rd</sup> October 2016, refers to policies contained within the then current Wicklow County Development Plan. This Plan has since been superseded by the Wicklow County Development Plan 2016-2022, and it is not proposed to summarise arguments based on now superseded development plan policies. The comments made in relation to the Draft Development Plan are noted. The appeal can be summarised in bullet point format as follows-

- The Board has already dismissed issues relating to traffic safety and public health in relation to this site.
- The 100m setback requirement from National Routes within the Development Plan will not be carried forward into the new Development Plan. The Council

is countenancing housing within 100m of the N11 at Kilmacanogue, at a point where the 100kph speed limit applies.

- The applicant is willing to accept a condition requiring noise insulation to be installed at the mobile home.
- The rural housing policy does not take account of the needs of the traveller community, and was drafted with the needs of the settled community in mind. The Council has previously deviated from the strictures of rural housing policy in dealing with housing applications for members of the travelling community in rural areas.
- A temporary permission would allow the applicant re-present proposals for the retention of works to the adjacent 19<sup>th</sup> century cottage – for the use of this building as a dwelling. The cottage is an existing building close to the N11 and not a new structure. The previous Board decision in relation to this building related to works, but not residential use at this cottage. The Development Plan expressly and explicitly encourages the restoration and use of vernacular buildings of this type. [The appellant refers to a number of Board decisions in relation to similar-type developments].
- The forge and associated cottage on this site appears on first edition OS maps for the area.
- The applicant is considered to be a person who is an intrinsic part of the rural community – as referred to in the Sustainable Rural Housing Guidelines 2005.
- The Wicklow County Council and Bray Town Council Traveller Accommodation Programme 2014-2018, is an integral part of planning policy. The document states- ‘...it is policy of Wicklow Local Authorities ...to provide group and standard housing options as well as halt temporary / emergency sites and one-off rural houses for the accommodation of Travellers who are indigenous to Co. Wicklow...These options are provided in recognition of Travellers’ cultural identity as a minority group...’ Travellers are more likely to live in the countryside than in rural areas. The Council was satisfied to allow that occupants of the Ballyhenry halting site could have resided in rural areas for five years, rather than the normal ten years required by the Development Plan. The Council does, therefore, discriminate between Travellers and non-

Travellers in relation to need to reside in a rural area. The Council acknowledges that some housing units for Travellers will be one-off sites in rural areas. The Council gave no consideration to lack of alternative accommodation for the applicant.

- The applicant was raised at Cooldross halting site outside Kilcoole (2.4km from the appeal site), and has lived at Old Long Hill Halting Site (8.5km from the appeal site). The applicant has returned home from Sweden, and is therefore, classified as a 'returning emigrant'.
- Residential development is permitted on 'AG' zoned lands in accordance with the rural housing policies of the County Development Plan.
- The applicant would prefer a permanent grant of planning permission, but would be willing to accept a temporary grant of planning permission (five years is suggested). Without this permission, the applicant and his family may be made homeless.
- The location of the effluent treatment plant complies with the EPA Code of Practice 2009. The Board was satisfied that this site could accommodate an effluent treatment plant. The proposed effluent treatment plant complies with the required separation distances. Whether the site is 0.14ha or 0.15ha is not a serious concern – the difference being marginal in relation to sites with a public water supply.
- Modular homes have been accepted by the Government as being appropriate forms of housing to meet the housing shortage. Therefore, the proposed mobile home should be acceptable. The EHO for the Council does not detail what sections of the Housing Act 1966, would be breached by the retention of this mobile home for residential use. A number of Travellers reside in similar-type accommodation in halting sites around the country, and the Council has granted planning permission for mobile home accommodation for at least one traveller in the county.
- The Area Engineer for the Council was satisfied that sight distances could be improved by setting back the roadside boundary. The Board has already indicated that entrance proposals to this site were acceptable, in that no reason for refusal relating to traffic safety was included in decisions to refuse

planning permission on this site in the past. Drivers on this road are forced to reduce speed due to the curve in the road at this location.

- The lands contained within this site are not likely to be needed for future road improvements, given the recent date of road construction for the N11.
- The Council is not required to give slavish adherence to policies contained within the Development Plan, but is required to 'have regard to' them. The Board is not required to rigidly apply housing policy contained within the Plan.

## 6.2. Planning Authority Response

The response of Wicklow County Council, received by the Board on 19<sup>th</sup> October 2016, can be summarised in bullet point format as follows-

- The N11 is a National Primary Route and not a National Secondary Route.
- The 100m setback from the N11 is included in the Draft County Development Plan 2016-2022 – Table 7.3.
- Lands identified within the Kilmacanogue Settlement Plan as being Tertiary Lands, which are within 100m of the N11 National Primary Road, have existing dwellings on them.
- The effluent treatment plant location does not comply with the Code of Practice of the EPA for sites of this nature in terms of required separation distances between houses and septic tanks and percolation areas.
- Sightlines for exiting traffic from this site are inadequate. In the absence of an engineering assessment of the design speed for the road, the appropriate sightlines for the entrance cannot be determined.
- The building on this site is not a dwelling. The matter of its use was the subject of Enforcement proceedings, which were a matter of public record, prior to the purchase of the subject site by the applicant.
- The issue of noise from the N11 was raised by reports from TII. No noise mitigation measures have been submitted by the applicant. Whilst the site is below the level of the road, the lack of screening at the railings carrying the



N11 over the Newtownmountkennedy to Kilcoole road, would result in the mobile home being subject to funnel noise from this opening.

## 7.0 Assessment

The principal issues of this appeal relate to housing need, Development Plan considerations and zoning, traffic safety, and wastewater treatment.

- 7.1. The application was lodged, adjudicated upon and appealed to the Board during the currency of the old Wicklow County Development Plan. The new Wicklow County Development Plan 2016 – 2022 was adopted on the 14<sup>th</sup> day of November 2016, and came into force four weeks after that date. A Draft Ministerial Direction in relation to certain aspects of the Plan was issued on the 7<sup>th</sup> day of December 2016 – relating to retail warehousing at Kilpedder and generation of electricity from wind energy. The adopted Plan is described on the County Council website as an ‘Interim’ Plan due to the Draft Ministerial Direction. Section 31 of the 2000 Act, under which the Minister issued the Direction to Wicklow County Council, states at subsection (4)(c)- “those parts of the plan that by virtue of the issuing of the notice under this subsection shall be taken not to have come into effect, been made or amended under subsection (6), and”. I would be satisfied that the new Development Plan 2016-2022 is the statutory Plan under which the Board should consider this planning appeal, as there are no issues within the appeal which are referred to in the Draft Ministerial Direction.
- 7.2. The Newtownmountkennedy Local Area Plan 2008-2014, would appear to remain in force. The appeal site is zoned for Agricultural use. Residential use is indicated as being ‘Not Normally Permitted’. The County Development Plan sets down policy in relation to ‘Housing in the Open Countryside’, at Objective HD23. The applicant argues that residency at halting sites in proximity to this rural area would entitle him to consideration under the category of persons who have lived for at least ten years in the rural area. Having regard to the separation distances involved, one of the halting sites being 8.5km distant, I would not consider that the applicant has established a particular connection with this rural area in proximity to Newtownmountkennedy. The applicant goes on to argue that he should be considered under the class ‘returning emigrants’ (having lived in Sweden), referred to in the sustainable Rural Housing Guidelines 2005. The site is located within an

'Area Under Strong Urban Influence' in the Guidelines (arising from proximity to Dublin). The Guidelines state- "Returning emigrants who lived for substantial parts of their lives in rural areas, then moved abroad and now wish to return to reside near other family members, to work locally, to care for elderly family members, or to retire should also be accommodated". The applicant has given no details in relation to his 'returning emigrant' status, or of being an 'intrinsic part of the rural community' in this area. The applicant argues that membership of the travelling community should be considered in relation to the housing need to reside on this site. The Development Plan would not appear to make any specific reference to one-off housing in rural areas for members of the travelling community, although the applicant argues that the Traveller Accommodation Programme 2014-2018 countenances one-off houses for Travellers in rural areas. I would not be satisfied that the applicant has demonstrated a need to reside in this particular rural area which would accord with the recommendations laid down in the Guidelines and the relevant development plans for the area.

- 7.3. There is an existing recessed entrance at this site. The site would always have had a vehicular entrance or some sort – particularly when it was operating as a forge. There is a single, unbroken, white line in the centre of the road at this this location. The overpass for the N11 is located immediately to the east of the site. Sight distance for exiting traffic is reasonable in the direction of Newtownmountkennedy, but is restricted by the roadside boundary treatment of the site in the direction of Kilcoole. This sight distance could be improved through setting back the roadside boundary. This was recommended in a Memo from the Area Engineer for Wicklow County Council – dated 24<sup>th</sup> August 2016. The existing entrance is already in use to serve the stables building on the site (as well as serving the mobile home). The applicant correctly points out that in two previous appeals, the Board did not include a reason relating to traffic safety in either of its Orders. On this basis it would appear reasonable to assume that the Board did not consider traffic safety to be an issue which would attract attachment of a reason for refusal on this basis. Nothing would appear to have changed in relation to the road – certainly since the second of the Board's decisions to refuse planning permission for development at this site. I would be satisfied that the entrance would not result in the creation of traffic hazard, if the roadside boundary to the east was set back to improve sightlines. This could be

done by way of a grant of planning permission with an appropriate condition attached. I would not accept the contention of the applicant that sight distances are acceptable due to traffic having to slow down because of the presence of a bend on the road. There is no evidence submitted to back up this assertion. The 80kph speed restriction applies on this road. Drawings submitted within the appeal documentation would appear to acknowledge that sight distance towards Kilcoole is restricted by the existing roadside boundary of the site.

- 7.4. The mobile home for retention is located within 100m of the edge of the northbound carriageway of the N11 National Primary Route – which route is carried on an elevated embankment above the site. The old Development Plan contained restrictive policies in relation to proximity to National Routes – policies which do not seem to have been carried forward into the new Development Plan. The applicant notes that the Draft Development Plan allowed for housing in Kilmacanogue (on the N11 to the north of the site) which immediately abuts the National Primary Route, and considers that a condition requiring planting could mitigate noise impacts. I would not consider that planting of trees/shrubs could mitigate the potential nuisance from such close proximity to a National Primary Route. I note that glare from headlights is not likely to be an issue given the setting of the site below the elevated carriageway of the N11. Notwithstanding this, noise, dust, pollution and, potentially, vibration could be an issue for occupants of the mobile home on site. I would consider that the location of a mobile home (approximately 50m from the edge of the northbound carriageway), as a place of temporary/permanent residence along an elevated section of National Primary Route, on which the 100kph maximum speed limit applies, and where there is limited vegetation screening and no solid screening, would be an inappropriate form of development, which would have a detrimental impact on the amenities of future occupants of the mobile home, and potentially lead to calls for mitigation measures to be put in place by the Council or Transport Infrastructure Ireland.
- 7.5. The existing mobile home is served by a ‘Portaloo’. There would not appear to be any wastewater treatment facilities serving the stables building on the site. It is proposed to install a proprietary effluent treatment system to serve the mobile home, with discharge to a polishing filter, and from thence to ground. There are no watercourses in the immediate vicinity of the site. The area of the proposed

wastewater treatment facilities is currently hard-core to the rear of the stables building. This area is accessible for vehicular traffic. The area is bounded by a 1.0m high concrete block retaining wall to the north. The Environmental Health Officer for Wicklow County Council considered it unlikely the proposed waste water treatment system and polishing filter would comply with table 6.1: Minimum Separation Distances, EPA Code of Practice 2009. It is further stated that the Council's Policy on Wastewater Treatment and Disposal Systems requires a minimum site area of 1,500m<sup>2</sup>. This latter requirement would appear to have been a policy from the old Development Plan which was not carried forward into the new Development Plan. The Code of Practice does include a list a recommended separation distances at Table 6.1. The Table refers to the proximity of a percolation area/polishing filter to a slope break/cut (4m) – in the instance of this appeal, in the form of a retaining wall for the embankment immediately to the north. The proposed percolation area/polishing filter is located hard against this retaining wall – sandwiched between it and the back wall of the stables building. Such a slope is likely to channel surface water down onto the percolation area/polishing filter. The location does not meet the requirements of the Guidelines. The applicant refers to the Board being satisfied in the past that the site could accommodate effluent treatment facilities. However, I would note that the most recent appeal on this site indicated the location of effluent treatment facilities in the vicinity of the mobile home, and not in the location now proposed. The applicant goes on to refer to a temporary permission being granted to allow for a future application for residential use of the stables building. The location of the proposed effluent treatment facilities would preclude the ability to grant permission in the future, requiring the consequent relocation of the treatment facility. [I would note, however, that such a proposal is not the subject of the current appeal].

- 7.6. It is proposed to discharge surface water to a soakpit, located in the eastern corner of the site. I would note that the hard-core surrounding the stables building is porous.
- 7.7. The application form stated that the proposed source of water supply is to be from the public mains. Irish Water had no objection to such a connection, subject to attaching the appropriate conditions to any grant of planning permission.

- 7.8. The proposed development will not impact on Prospect 14, identified in Map no. 10.15 of the Development Plan – this prospect being indicated as “Prospect of Kilcoole and the coast”. The appeal site is on the opposite side of the N11.
- 7.9. I calculate that the mobile home is located approximately 45m from the centre-line of the high voltage cables to the west. The issue of proximity to these cables is nowhere mentioned in the appeal, and I would be satisfied that the separation distance is sufficient to ensure that there would be no residential dis-amenity.
- 7.10. The Development Contribution Scheme for Wicklow County Council refers to rural development below 175m<sup>2</sup>, with three classes of infrastructure referenced. Should the Board be minded to grant planning permission for this development, it would be appropriate to attach a condition requiring payment of a development contribution in accordance with the Development Contribution Scheme in force at the time.
- 7.11. I note the concern of the Council in relation to the appropriateness of mobile home accommodation as a place of permanent residence. I further note that the applicant has indicated a willingness to accept a five-year temporary permission in order to allow him to pursue an application for a more permanent-type of residence in the form of the conversion of the stables building on this site to habitable use. The applicant has lived at halting sites within the county. Modular housing has been erected to deal with specific housing need elsewhere in the country. There are a number of people residing permanently in mobile homes – whilst a considerable amount more are used as holiday accommodation (with no restriction on times or dates of occupancy).
- 7.12. The applicant has suggested that the Board consider granting a temporary planning permission for a period of five years. Having regard to the reasons for refusal suggested in this Report, I do not consider it necessary to discourse on the merits of a permanent as opposed to a temporary planning permission.

## 8.0 Recommendation

- 8.1. I recommend that permission be refused for the Reasons and Considerations set out below.

## 9.0 Reasons and Considerations

1. The proposed development would be prejudicial to public health, arising from proximity of the proposed polishing filter to a retaining wall and embankment, which would be contrary to the recommendations contained within the Environmental Protection Agency Code of Practice – Wastewater Treatment and Disposal Systems serving Single Houses (2009).
2. Having regard to the fact that the site is located in an area classified as being under strong urban influence in the Sustainable Rural Housing Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government in April, 2005, to the agricultural zoning of the site in the Newtownmountkennedy Local Area Plan 2008-2014, and to the submissions made in connection with the planning application and the appeal, the Board is not satisfied that the applicant has demonstrated a rural-generated housing need, to justify retention of a mobile home at this location. The Board, therefore, considered that the proposed development would be contrary to the said Ministerial Guidelines and would be contrary to the proper planning and sustainable development of the area.
3. The mobile home for retention is located close to an elevated section of National Primary Route on which the 100kph speed restriction applies. In the absence of any barriers and screen planting, the proposed development would be subject to unacceptable levels of noise, dust, pollution and potentially, vibration, which would be detrimental to the residential amenity of future occupants and would be prejudicial to public health.

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Michael Dillon  
Planning Inspector

23<sup>rd</sup> December 2016