



An  
Bord  
Pleanála

## Inspector's Report PL 27.249099

---

<b>Development</b>	House and associated works
<b>Location</b>	Easthill Farm, Easthill, Newtownmountkennedy, County Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	17/190
<b>Applicant(s)</b>	Alun Owens
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Robert & Anne Miller
<b>Observer(s)</b>	Sean and Ann Owens Anna Boch
<b>Date of Site Inspection</b>	22 <sup>nd</sup> November, 2017
<b>Inspector</b>	Kevin Moore



## **1.0 Site Location and Description**

- 1.1. The site of the proposed development is located in a rural area approximately 2.4km north-west of Newtownmountkennedy in County Wicklow. It forms part of a larger holding of 1.66 hectares which functions as an organic farming operation by the applicant. The site is located at the south-east corner of the holding, with lands sloping from west to east. There is an existing vehicular entrance along the frontage onto a local road at this location. The local road is narrow in width and cannot accommodate two-way vehicular traffic.
- 1.2. The site is bounded to the north, west and south by agricultural lands. Housing in the vicinity includes Easthill House to the north-east and a number of detached houses further east along the public road.

## **2.0 Proposed Development**

- 2.1. The proposed development would comprise a part single-storey, part two-storey three bedroom dwelling on a stated site area of 0.23 hectares. The floor area of the house would be 224 square metres. It would be served by a private waste water treatment unit and by a private well. The applicant is the stated owner of the site.
- 2.2. Details submitted with the application included a planning report, an architect's report, a site characterisation report, documents relating to the applicant's association with the area and residency status, and a letter from the applicant's parents, who are joint owners of the property, permitting the making of the application.
- 2.3. The applicant submitted that he qualifies for a rural dwelling under Circumstance 1 and Circumstance 16 of Objective HD23 of the Wicklow County Development Plan.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 4<sup>th</sup> August, 2017, Wicklow County Council decided to grant permission for the development subject to 10 conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planner referred to the site's planning history, interdepartmental reports received, and public submissions made. In relation to waste water and water supply, it was noted that the Environmental Health Officer had no objection. It was noted that the design of the dwelling and visual impact and the access arrangements had previously been determined to be acceptable. It was stated that, from the information provided, it appeared that the applicant purchased the site with his father in 2008 and that it is located approximately 3.1km from the family home as the crow flies. It was further stated that it was previously determined (Refs. PL 27.238428 and PL 27.242706) that the family home could not be described as being in the immediate vicinity of the proposed site, given its location on the other side of Newtownmountkennedy. On the issue of economic need, it was submitted that no business plan or details had been submitted to show the small land area farmed could provide a viable and primary source of income. It was considered that the applicant is a permanent native resident of Killadreenan and has a proven need for a new dwelling but that the site is not in the immediate vicinity of the family dwelling, the applicant has not resided in the immediate vicinity of the site, and has not demonstrated a viable economic need to reside at this particular location. A refusal of permission was recommended.

#### **3.2.2. Other Technical Reports**

The Environmental Health Officer had no objection to the proposal.

The Area Engineer had no objection to the proposal.

### **3.3. Prescribed Bodies**

An Taisce submitted that the proposal must be determined with regard to the rural housing and amenity provisions of the County Development Plan, the National Spatial Strategy and Sustainable Rural Housing Guidelines. It was further requested that regard is had to the impact of the effluent treatment system individually and cumulatively with other existing developments.

### 3.4. Third Party Observations

Submissions of support for the application were received from Emer Thompson and Peter, Ciara and Cillian Walker, from Simon and Max Cardale, from Mary Ann and Kevin Douglas, Siobhan O'Hanlon, Philip Emmet, and Sean and Ann Owens

An objection was received from Robert and Anne Millar. The grounds of appeal reflect the main planning concerns. The applicant made a submission to the planning authority in response to this objection.

Further objections were received from Christy Kavanagh and Marie O'Neill referring to non-compliance with the Development Plan and concerns about drainage and ribbon development.

Further to the Planner's recommendation, the applicant sought a four month time extension for the making of a decision. Unsolicited further information was then submitted to the planning authority on 30<sup>th</sup> May, 2017, which included details the applicant presented as demonstrating economic need to reside at the site location.

Following this submission, the Planner reported once again. The applicant's submissions on economic need were acknowledged. Reference was made to the change of wording in Objective RH14 of the 2010 County Development Plan to that in Policy HD23 in the 2016 Plan, which removes the clause 'immediate vicinity'. It was considered the farming activity constituted a full time occupation, based on details supplied by the applicant. It was concluded that the applicant would qualify for a rural dwelling on the site under Circumstance 7 of Objective HD23 of the County Development Plan. A grant of permission was recommended.

The Senior Executive Planner concurred with the recommendation.

The Director of Services ordered that condition 2 be amended to reflect the development contribution required for a rural area.

## 4.0 Planning History

### ABP Ref. PL 27.238428

Permission was refused by the Board in 2011 for a dwelling for two reasons relating to lack of rural housing need and visual impact.

### ABP Ref. PL 27.238429

Permission was refused by the Board in 2011 for a dwelling for two reasons relating to lack of rural housing need and visual impact.

### ABP Ref. PL 27.242706

Permission was refused by the Board for a dwelling for one reason relating to lack of housing need.

### ABP Ref. PL 27.246499

Permission was granted by the Board for the replacement of a reservoir for use in conjunction with the use of the land as an organic farm and construction of a polytunnel.

### P.A. Exemption Ref. 62/15

The planning authority issued a section 5 declaration that determined polytunnels, poultry and pig arcs and a shed constituted exempted development.

## 5.0 Policy Context

### 5.1. Wicklow County Development Plan 2016-2022

#### Housing Objectives

Objectives include:

**HD1** 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 to those with a housing, social or economic need to live in the open countryside.

**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:

1. 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 ...
7. A person whose principal occupation is in a rural resource based activity (i.e. agriculture, forestry, mariculture, agri-tourism etc.) can demonstrate a need to live in a rural area in order to carry out their occupation. The Planning Authority will strictly require any applicant to show that there is a particular aspect or characteristic of their employment that requires them to live in that rural area, as opposed to a local settlement ...
16. Persons who were permanent native residents of a rural area but due to the expansion of an adjacent town / village, the family home place is now located within the development boundary of the town / village.

**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.

### Landscape Characterisation

The site is located in the North East Mountain Lowlands, which is a designated Area of High Amenity.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal of the appellants, with an address at Glendarragh, Newtownmountkennedy, may be summarised as follows:

- The Board might wish to consider whether the Council's current decision to grant permission is justified, given the site history. The planning authority's decision is wholly at variance with its own previous conclusions in the past. There are grounds to query whether a change in circumstances has taken place.
- The Council appears to have placed little weight on the availability of existing accommodation, with reference to the Planner noting that the applicant's spouse owns a dwelling in Dublin.
- None of the changes in the 2016 Development Plan over that of the 2010 Plan affect the acceptability of the proposal, insofar as the juxtaposition of the site with the Owens' family home is concerned. The Board's previous objection on the basis of the site not being in the immediate vicinity of the family home remains valid. Furthermore, the availability of residential properties within Newtownmountkennedy, beside or close to the original family home is noted.
- A farm development must provide a certain income in order to justify the erection of a house in the countryside. The accounts which have been submitted subsequent to the initial report of the Planner do not warrant such a conclusion.
- Small-scale organic farming does not warrant a permanent presence in the same way as a farmer with responsibility for animals needs to live on the land.
- The associated reduction in the land area available for crop production by the development of the house on the 1.66 hectare holding would reduce the land area available for crop production and the applicant's farming role on the land could well decrease rather than expand.



- The applicant's spouse is employed full time in Dublin and the applicant could live in the property in Dublin and travel when required. This would not require another house to be built in County Wicklow.
- The Board is asked to critically review the issue of wastewater treatment, having regard to the topographical and drainage characteristics of the site.
- The Board is also asked to note the precedent that would result from the grant of a house based on a site of 1.6 hectares.

## 6.2. Applicant Response

The response may be summarised as follows:

- A central factor in the application is that the previous applications for a dwelling on the site were made and assessed under the 2010-2016 Wicklow County Development Plan, whereas the current application was assessed under the 2016-2022 Plan. The fundamental change is how a 'permanent native resident' is defined. The applicant was born and raised in a rural area of County Wicklow and he is eligible to qualify as a permanent native resident under Objective HD23, notably in accordance with Circumstances 1, 5, 7, 11, 14 and 16.
- The measure of distance between the application site and the homestead is no longer relevant.
- It is essential to maintain a full-time presence and live on an organic horticultural holding of such a scale.
- The applicant has become embedded in the local community, through school, GAA and the organic farming enterprise.
- The applicant has provided documentary evidence to demonstrate the viability of the organic farm.
- The applicant's wife owns an apartment in Dublin 10, an apartment which constituted a starter home but which is not conducive to raising three children.
- It is requested that the appeal be dismissed as it is defamatory to the applicant.

### 6.3. **Planning Authority Response**

There is no record that the planning authority made any response to the third party appeal.

### 6.4. **Observations**

Sean and Ann Owens, the applicant's parents, consider the appeal is vexatious and referred to other developments permitted and reasons to allow the permission.

Anna Boch, the applicant's spouse, provided details on property ownership, the nature of the farming activities, her current working pattern and her family's residential needs.

### 6.5. **Further Responses**

A representation was received by the Board from Andrew Doyle TD, supporting the application.

## 7.0 **Assessment**

7.1. I note that the Board has taken decisions on one-off houses on this site on a number of occasions. With regard to the Board's most recent decision (ABP Ref. PL 27.242706), the issues relating to waste water treatment, traffic safety and visual impact within a high amenity area were not found to be issues that merited a refusal of permission for a house on this site. For this reason, I am focusing solely on the issue that has been consistently a primary planning issue of concern for the Board, namely the applicant's rural housing need.

7.2. Fundamentally, the principle of permitting a dwelling in the countryside is about planning and environmental sustainability. The question that must first be posed when considering this current appeal is: Is it sustainable that a person who farms 1.66 hectares of land be permitted to have an entitlement to a house in the countryside? I cannot reasonably conclude that allowing the proposed development to proceed, based on the details before the Board, could be construed as sustainable development. I further acknowledge that it is clear that the development of a house on this plot would reduce the remaining plot for farming purposes to 1.43

hectares. Taking this to its logical conclusion, if there was a significant intensification of small farming enterprises (organic or otherwise), each based on 1.66 hectare farm holdings or similar sized holdings, farmed by persons who could demonstrate that they each are persons who resided in a rural area somewhere in County Wicklow for a period of at least 10 years, and where houses were then to be developed, I submit to the Board that the countryside of County Wicklow would be very significantly and detrimentally altered. The precedent that would arise for an extensive array of different farming enterprises is all too evident. This precedent cannot be ignored and would be utilised to support many other applications for one-off houses in the countryside in this area. The principle of this development, thus, cannot reasonably be accepted. The consequences of its acceptance are far-reaching and environmentally unsustainable.

- 7.3. Returning to the issue of housing need, I note that the applicant submits that he is a permanent native resident of the rural area, having been born and raised in Kildreenan, which is 3.18km to the south-east of the application site. He submits that he qualifies for a rural dwelling, having regard to Circumstance 1 of Objective HD23 of the current Wicklow Development Plan, which allows a person who has resided in a rural area in County Wicklow for at least 10 years in total prior to the application to be considered for a rural dwelling. In addition, he submits that he qualifies under Circumstance 16 of the same Objective, based on the fact that, while his parents' house is now located inside the boundary of Newtownmountkennedy, it was at the time of his birth and upbringing located in a rural area.
- 7.4. I acknowledge that the Board has adjudicated on a proposal for a one-off house on these lands on three occasions and on each occasion it has been determined that the applicant does not have a rural housing need to reside at this location. I put it to the Board that the actual circumstances of the applicant have not altered. He owns a small plot that he works as a small organic farm enterprise. He is not a native of this location but rather hails from the other side of Newtownmountkennedy. He has in recent years opted to rent in the vicinity of his plot. This does not determine that he has formed any entitlement to be allowed to seek permission for a house away from Newtownmountkennedy, a nearby town that would service his residential needs, while continuing to allow him to service his plot.

7.5. With regard to *Sustainable Rural Housing: Guidelines for Planning Authorities*, issued by the Department of the Environment, Heritage and Local Government, I note that the proposed site is located within an area designated an 'Area under Strong Urban Influence'. This is an area where urban generated development is to be directed to areas zoned for new housing in towns and villages. In Appendix 3 of the Guidelines, it is stated that development plan policies in these areas will normally include references to the measures to be adopted to ensure that development permitted to meet requirements of those with links to the rural community continues to meet the requirements for which it was permitted. I put it to the Board that the applicant does not have links to the rural community in which his organic enterprise is located and cannot comply with national planning guidance. He has no economic or social need to reside at this location and can reasonably service his small plot while residing in a town or village in the immediate vicinity and can meet all family housing and social needs similarly.

7.6. With regard to the Wicklow County Development Plan, I submit to the Board that the applicant does not comply with the requirements of Objective HD23 of the Plan. He has no definable social or economic need to live in the open countryside and, thus, fails to meet with this Objective before any consideration of any Circumstances that follow on from the objective. He is not from the rural area in which the proposed development would be located and the servicing of his small plot does not merit a requirement to reside at this plot.

## 8.0 Recommendation

8.1. I recommend that permission is refused in accordance with the following reasons and considerations.

## 9.0 Reasons and Considerations

1. The site of the proposed development is located within an "Area Under Strong Urban Influence" as set out in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage

and Local Government in April, 2005. Having regard to the location of the subject site, which is not in the immediate vicinity of the family home, and the lack of a demonstrated social and economic need to reside at this location, it is considered that, based on the submissions made in connection with the application and the appeal, the applicant does not come within the scope of the housing need criteria for a house at this location as set out in the said Guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the small size of the farming plot, compounded by the subsequent significant reduction in the area left for farming purposes after the omission of the site for the proposed house, it is considered that the proposed development, by the precedent which the grant of permission for it would set for other relevant development, would adversely affect the balanced, orderly development of rural areas in the vicinity of Newtownmountkennedy and would, thus constitute development that would be contrary to the proper planning and sustainable development of the area.

---

Kevin Moore  
Senior Planning Inspector

23<sup>rd</sup> November 2017