



An
Bord
Pleanála

Inspector's Report ABP-300644-18

Development	Permission for (a) 2 storey, 4 bedroom house, (b) provision of a new wastewater treatment system and (c) alteration to an existing agricultural entrance.
Location	Tinnapark Demesne, Kilpeddar, Co. Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	17/1253
Applicant(s)	Andrew King
Type of Application	Permission
Planning Authority Decision	To Refuse Permission
Type of Appeal	First Party
Appellant(s)	Andrew King
Observer(s)	No observers
Date of Site Inspection	26.06.2018
Inspector	Erika Casey

1.0 Site Location and Description

1.1. The subject site with an area of c.1.86 ha is located in a rural area at Tinnapark Demesne, approximately 1.5 km to the west of Kilpeddar village centre. The site forms part of a larger agricultural landholding with an area of 12.9 hectares. The site is accessed via an existing agricultural laneway off the L1037 route. There is an existing two storey dwelling and outbuilding located to the south of the site.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a split level, 4 bedroom dwelling with an area of 292 sq. metres. The design of the house incorporates a curved grass roof and has a maximum height of c. 6.7 metres. It is also proposed to provide alterations to the existing agricultural entrance with new entrance piers and splayed walls. The dwelling would be served by a private waste water treatment unit and well. The dwelling is located centrally in the site, set back considerably from the laneway to the south and accessed via a long drive way.
- 2.2. It is stated that the applicant needs to live on the subject lands for farming purposes as it is planned to develop a horticultural business on the site.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 To Refuse Permission for 3 no. reasons:

1. *The proposed dwelling would not represent a necessary dwelling in this Landscape Designated Corridor Area, contrary to the provisions of Section 4.4 of the County Development Plan 2016-2022. These provisions are required to maintain scenic amenities, recreational utility, existing character, and to preserve views of special amenity value and interest and to conserve the attractiveness of the county for the development of tourism and tourist related employment.*

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. It is considered that the applicant does not come within the scope of housing need criteria as set out under Objective HD23 of the County Development Plan as the applicant has failed to demonstrate a social or economic need to live in the rural area. The proliferation of non essential housing in rural landscape areas erodes the landscape value of these areas and seriously detracts from views of special amenity value.

2. *The proposed development would endanger public safety by reason of serious traffic hazard because the applicant has failed to show that adequate sight lines are achievable at the entrance onto the public road from the subject site.*
3. *Having regard to the small size of the landholding, compounded by the subsequent significant reduction in the area left for the applicants nursery planting 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 in the rural vicinity of Kilpeddar and would, therefore constitute development which would be contrary to the proper planning and sustainable development of the area."*

3.2. Planning Authority Reports

3.2.1. Planning Report (08.12.2017)

- The applicant currently rents a dwelling in Delgany and purchased 32 acres of land in Kilpedder in 2013. The applicant has operated a wholesale nursery in Kilcoole for over 10 years. He also has a 10 acre nursery in Kildare which he intends to move to Kilpedder. Applicant has stated he is required to be in close proximity to the nursery in case of theft and to monitor stock.
- It has been established that the applicant is not originally from County Wicklow, was not born or reared in the area and, therefore, his qualification to build in the rural area is based on his economic tie to the area and his involvement in a rural resource based activity in the County.

- The subject site and lands is a relatively recent purchase/venture for the applicant and he has failed to provide documentary evidence to show his existing business is viable to sustain an income. The applicant has no long term history of agricultural practice on the site that would warrant a dwelling on the site. The applicant would not qualify for a dwelling under HD23.
- Reference to decision under ABP Ref. PL27.249099. The land holding is not considered to be significant in size to require somebody to live permanently on the site for a rural resource based activity and having regard to the Boards recent decision would set a precedent for similar development in the area.
- It is noted that the dwelling would not be highly visible from the surrounding area, and therefore, the proposed dwelling is considered acceptable in terms of design and visual amenity.
- Sightlines have been shown at the entrance onto the public road at 50 metres to the south and 78 metres to the north. The applicant has submitted no proposals for improving sightlines to the south which are inadequate. It is considered the entrance is not acceptable in terms of traffic safety

3.2.2. Other Technical Reports

Municipal Engineer (29.11.2017): Raises concerns regarding the adequacy of the sightlines, stating that they should be as close as possible to 90 metres.

Environmental Health Officer (08.11.2017): No objection subject to condition.

3.3. Prescribed Bodies

An Taisce (03.11.2017)

- Application should be determined with regard to the provisions of the Wicklow County Development Plan, National Spatial Strategy and the Sustainable Rural Housing Guidelines for Planning Authorities.
- The proposed effluent treatment plant must have regard to both the individual and cumulative impact and comply with the EU Groundwater Directive.

3.4. Third Party Observations

Colin Johnson, The Lodge, Tinnapark, Kilpeddar

- Concerns regarding potential future use of the lands for business purposes and the consequent impacts that this would have in terms of traffic on the existing access laneway. States that laneway is unsuitable for increased intensification of use and objects to potential loss of security.
- Note inaccuracies regarding existing property boundaries.
- States that to achieve the necessary sightlines from the proposed access that the boundary of their garden will be impacted on.
- Objects to the scale of the dwelling and notes concerns regarding potential overlooking and noise and light impacts.
- Concerns regarding the intensification of the land for a commercial enterprise and the associated infrastructure that this would generate.
- Notes legal issues regarding rights of access across existing laneway.

4.0 Planning History

Planning Authority Reference 16/1021

- 4.1 Permission refused in March 2017 for a split level, three storey, 4 bedroom dwelling. The reasons for refusal related to failure to comply with housing need criteria, landscape and visual impact and traffic hazard.

5.0 Policy Context

5.1. Development Plan

- 5.5.1 The operative development plan is Wicklow County Development Plan 2016-2022. Relevant policies include:

Section 4.3.6: Relates to the *Design of New Developments* and it is stated that all new housing including rural housing shall achieve the highest quality of layout and design.

Appendix 2: Sets out guidelines regarding single rural house design.

The subject application would be considered a house in the Rural Area – Level 10. It is stated in the plan regarding Level 10 areas that:

“Development within the rural area should be strictly limited to proposals where it is proven that there is a social or economic need to locate in the area. Protection of the environmental and ecological quality of the rural area is of paramount importance and as such particular attention should be focussed on ensuring that the scenic value, heritage value and/or environmental/ecological/conservation quality of the area is protected.”

Housing Objectives: Policy HD1

“New housing development shall be required to locate on suitably zoned or designated land in settlements, and will only be considered on the open countryside when it is the provision of a rural dwelling to those with a housing, social or economic need to live in the open countryside.”

Housing in the Open Countryside Policy HD23: 16 criteria are set out which relate to the circumstances that will be considered regarding residential development in the countryside.

Criteria no. 15 states: A person whose principal occupation is in agriculture and can demonstrate that the nature of the agricultural employment is sufficient to support full time or significant part time occupation.

Criteria 7: states: A person whose principal occupation is in a rural resource based activity (e.g. agriculture, forestry, mariculture, agri-tourism etc.) and 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.

Criteria 14: A person whose business requires them to reside in the rural area and who can demonstrate the adequacy of the business proposals and the capacity of the business to support them full time.

Landscape Characterisation: Corridor area east.

5.2. Other Policy

Sustainable Rural Housing Development Guidelines

5.2.1 The guidelines require a distinction to be made between 'Urban Generated' and 'Rural Generated' housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those with proximity to the immediate environs or close commuting catchment of large cities and towns. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply. These include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'. This latter category is described as:

“Such circumstances will normally encompass persons involved in full-time farming, forestry, inland waterway or marine related occupations, as well as part time occupations where the predominant occupation is farming/natural resource related.”

National Planning Framework – Project Ireland 2040, DoHP&LG 2018

5.2.2 National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e. the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations.

5.3. Natural Heritage Designations

5.3.1 The nearest Natura 2000 sites are the Glen of The Downs SAC located c. 2.3 km to the north of the site and the Carriggower Bog SAC located 2.1 km to the west.

6.0 The Appeal

6.1. Grounds of Appeal

- States that the applicant has a long career in nursery stock production. In order to upscale production, the 32 acre tract at Kilpeddar was purchased. The applicants existing operation in Kilcoole is to be managed by the applicant's brother and the new land holding will be worked exclusively by the applicant.

The Planning Authority have not queried the commercial viability of the development.

- Reference to Circular SP5/08 and Clause 14 under Policy HD23 of the County Plan. Notes that Clause 14 does not require the applicant to demonstrate a social or economic need to live in the rural area.
- Consider that the applicant's family history is not a relevant consideration. Clause 14 seeks to specifically accommodate individuals who would not otherwise be covered by the remaining compliance categories. Furthermore, the period of time within which Mr. King has owned the site and the fact that the business has not yet begun are considered irrelevant considerations.
- The viability of the applicants existing business in Kilcoole is not relevant. The business plan submitted with the application indicates that no part of the proposed development relies on funding from the Kilcoole operation. The business plan has not been queried by Wicklow County Council.
- States that the plants to be propagated are high value and the applicant must be on site for 5-7 hours per day, due to the hypersensitivity of the chosen plants and that the Planning Authority has not assessed the applicants need to cater for these species. With reference to the previous precedent under PL27.249099, state that the subject landholding is ten times the size of the site in this appeal. State that the Planning Authority should have regard to the nature of the planned agricultural operation, rather than on the farm size. The application is supported by Teagasc.
- The Planning Authority oppose the proposal in the basis that the appellant has not needed on farm accommodation in the past. Notes that the applicants other operations are managed by staff members, whereas the subject nursery will be farmed personally by the applicant. Also the other centres are nearer urban centres and that the proposed nursery can only be managed by an individual with a high level of expertise on plant production such as Mr. King, living on the land. The Council have failed to apply clause 14 of policy HD23. Reference to Porter and Anor – v – An Bord Pleanála.
- The Councils concerns relate to the southerly sightline at the intersection of the private lane with Tooman Road. Notes that the applicant already has an

existing agricultural access from the laneway and that if he is residing on the site, the number of vehicular trips will be reduced and new domestic trips would simply replace existing agricultural journeys.

- The Council's objections relate to the southerly sightline. Consider that 90 metre sightlines are not necessary having regard to the traffic survey submitted. The junction is on land outside the applicant's control. The Planning Authority's approach is unreasonable having regard to the absence of any recorded collision at this location and the lightly trafficked nature of Tooman Road and low vehicular speeds. Having regard to the road and traffic characteristics, the visibility from the junction of Tooman Road with the private lane is entirely satisfactory. Note that if the Board concludes the preferred means of access is unsatisfactory, there is an alternative agricultural entrance that could be considered.

6.2. **Planning Authority Response**

- No further response.

6.3. **Observations**

- No observations.

7.0 **Assessment**

7.1. The main issues are those raised in the grounds of appeal and it is considered that no other substantive issues arise. Appropriate Assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Rural Housing Need
- Access
- Appropriate Assessment

7.2 **Rural Housing Need**

7.2.1 The applicant's case for residing in this rural area is based on the premise that he intends to operate a horticultural venture on the subject lands. It is detailed in the

application and appeal documentation that the overall site comprising of 32 acres was purchased in 2013. The applicant is not from the area and has no social or familial connections with Kilpeddar. The applicant has lived in the Greystones/Kilcoole area and operates a wholesale nursery business in Kilcoole. It is also detailed that he runs a nursery in Naas and it is proposed to move this to the subject site. It is noted that there is currently no horticulture business on the subject site. The applicant has submitted a business plan to support his proposal. It is further detailed that he will have a necessity to live on site to manage the new business due to the high value and hypersensitivity of the plants to be cultivated.

7.2.2 It is detailed in the appeal that the justification for a house at this location is based on clause 14 of policy HD23 which states a circumstance that will be considered regarding residential development in the countryside is *“a person whose business requires them to reside in the rural area and who can demonstrate the adequacy of the business proposals and the capacity of the business to support them full time.”* It is argued that that it is not necessary for the applicant to provide a social or economic need to reside at this location.

7.2.3 Clear policy is set out at both a national and local level regarding rural housing need. With regard to the Sustainable Rural Housing Development Guidelines, the subject site is located in an area designated as ‘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. National Policy Objective 19 of the National Planning Framework refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence.

7.2.4 Furthermore, under the current County Plan, Policy HD1 restricts rural dwellings to those with a housing, social or economic need to live in the countryside. In addition under the Settlement Strategy, for Level 10 – rural areas it is clearly stated that *“Development within the rural area should be strictly limited to proposals where it is proven that there is a social or economic need to locate in the area.”* Having regard to the foregoing, I am of the view that the onus is on the applicant to demonstrate a social or economic need to live in this area.

7.2.5 As already noted, the applicant has no social connections with Kilpeddar and is not from this locality. The case in support of their application, therefore, rests solely on

whether there is an economic need to reside at this location and whether their business requires them to reside in this rural area as per clause 14 of policy HD23. Based on the information submitted with the application and appeal, I am not satisfied that the applicant has any economic need to reside at this location nor does he have a viable business in operation which requires him to live in this area.

7.2.6 The applicant's entire case rests on a purported horticultural venture that does not exist. It is set out in the appeal submission that Clause 14 is prospective rather than retrospective and the development is based on a business plan submitted by the applicant. It is stated that it is proposed to re-locate an existing business to the site, however, with the exception of some limited planting, there is no existing business in situ. The applicant is, therefore, not currently engaged in any business that requires them to reside in the rural area. I do not consider a business plan setting out an intent to operate such a business at this location sufficient to justify a rural dwelling at this location. I do not concur with the view that the wording of Clause 14 implies that the applicant can rely on a prospective business to justify a rural dwelling. It is my view that the wording of this clause requires an individual to have a tangible and bona fide business interest that has an explicit requirement to reside in a rural location due to the nature of that business.

7.2.7 Furthermore, the applicant's requirements to live on site to manage such a business should it come to fruition are tenuous at best. It is detailed that due to the particular varieties of species to be cultivated at the nursery, that it will be necessary for the applicant to be on site for 5 to 7 hours per day. However, the subject site is located in close proximity to Kilpeddar – designated as a Level 7 Large Village and the large urban centre of Newtownmountkennedy. These existing settlements in my view would serve the applicant's residential needs, should this venture proceed. I do not accept that on site accommodation is essential to manage a business of this nature.

7.2.8 As highlighted by the Planning Authority, the applicant currently operates nursery businesses at other locations. It is evident that none of these existing enterprises, regardless of their location, have a full time on site caretaker. Much weight is put on the submission by Teagasc. However, it is considered that regard must be had to the overarching policy objectives at a national and local level regarding rural housing need and the principles of environmental sustainability. Furthermore, notwithstanding the submitted business plan, as the horticultural business is not in

existence or currently operational, there is no evidence that it has the capacity to support the applicant on a full time basis. In this context, in my opinion, the applicant does not meet the criteria set out under Clause 14.

7.2.9 Reference is made in the Planner's Report to a previous decision by the Board – Appeal Reference PL27.249099. One of the key tenets of the Inspectors' assessment related to the principle of sustainability and it was set out that to permit a dwelling in association with a very small agricultural holding would set an undesirable precedent and would be utilised to support many applications for one off houses in the countryside, with potential far reaching consequences.

7.2.10 It is argued by the applicant that this is not a relevant precedent as the land holding in question is a much larger site and is for a different type of agricultural activity. However, having regard to this previous decision, I note that in this instance, there is in fact no existing horticultural business on the site. The applicant is justifying the proposal on a future proposition that does not exist. As per the scenario under appeal reference PI 27.249099, if the Bord were to grant a house on the basis of a future potential small scale limited horticultural venture, the consequences would be far reaching and environmentally unsustainable in terms of the precedent it would set.

7.2.11 In conclusion, the applicant has no social links to the Kilpeddar area. This is acknowledged by the applicant in their application documentation. The applicant has no social or economic need to reside in this area. The horticulture business is not in place, and even if the venture comes to fruition, the applicant could reasonably service this limited business venture while residing in a town or village in the immediate vicinity. The applicant, therefore, does not have a defined social or economic need to live in this area of strong urban influence and thus the development would be contrary to Objective 19 of the NPF, would be contrary to the guidance set out in the Sustainable Rural Housing Guidelines and contrary to objective HD1 and HD23 of the Wicklow County Development Plan.

7.3 Access

7.3.1 It is proposed to access the dwelling via an existing agricultural laneway that connects to the L1037 route. Drawing Reference 09 – Road Entrance Elevation and Plan indicates the sightlines achievable. A sightline of 47 metres can be achieved in

a southerly direction and 78.5 metres in a northerly direction. Significant concerns regarding the access were raised by the Council Municipal Engineer who noted that no improvements were proposed to the existing entrance. It is noted that the applicant has acknowledged that the lands that would be required to improve sightlines are outside of their control and in this context, no improvements to the entrance is proposed. It is detailed by the applicant that in their opinion, the access is satisfactorily having regard to existing vehicular traffic speeds (based on a traffic survey submitted) and existing traffic volumes.

7.3.2 The Design Manual for Roads and Bridges sets out guidance regarding sightlines. The guidance notes that the desirable distance back (referred to as the 'x' distance) from a direct access for a simple junction is 2.4 to 3 metres. The guidance further sets out the minimum sightline distances ('y' distance) that will be required to be able to see clearly points to the left and right. Table 7.1: 'y' Visibility Distances from the Minor Road sets out that the 'y' distance within a 50 kph design speed is 70 metres. For a road with a design speed of 60 kph the 'y' distance increases to 90 metres. Notwithstanding the fact that this is an existing road, and that it is characterised by lower traffic speeds, the existing sightlines are clearly well short of the required sightline standards. I am not satisfied, therefore, that the proposed intensification of use of this access point would not give rise to a traffic hazard.

7.3.4 The applicant also suggests that the Board should give consideration to an alternative access to the lands, as the site is also served by a separate entrance off Tooman Road. This potential access does not form part of the application and I would consider such an amendment a material change to the nature and extent to the development proposal and thus outside the scope of this assessment.

7.4 **Appropriate Assessment**

7.4.1 Having regard to the nature and scale of the proposed development, a single rural house, and the distance to 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

- 8.1 It is recommended that permission be refused permission for the reasons set out below.

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 and in an area where housing is restricted to persons demonstrating social and economic local need in accordance with the Wicklow County Development Plan 2016-2022. It is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based social and economic need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the “Sustainable Rural Housing Guidelines for Planning Authorities” and to the proper planning and sustainable development of the area.
2. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a road at a point where sightlines are restricted. The proposed development would, therefore, not be in accordance with the proper planning and sustainable development of the area.
3. Having regard to the limited scale of the proposed horticultural business and associated plot and the fact that no such business is developed on the site and is thus speculative, 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 Kilpeddar and would, therefore constitute development which would be contrary to the proper planning and sustainable development of the area.

Erika Casey
Senior Planning Inspector

27th June 2018