



An  
Bord  
Pleanála

## Inspector's Report ABP-302680-18.

---

<b>Development</b>	House and garage
<b>Location</b>	Prospect Lower, Newtownmount-kennedy, Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority Reg. Ref.</b>	18/836.
<b>Applicant</b>	Ross O'Kane.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refusal.
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Ross O'Kane.
<b>Observer</b>	None
<b>Date of Site Inspection</b>	9 <sup>th</sup> December 2018.
<b>Inspector</b>	Philip Davis.

## Contents

1.0 Introduction .....	3
2.0 Site Location and Description .....	3
3.0 Proposed Development .....	4
4.0 Planning Authority Decision .....	4
4.1. Decision .....	4
4.2. Planning Authority Reports .....	4
4.3. Prescribed Bodies .....	5
4.4. Third Party Observations .....	5
5.0 Planning History.....	5
6.0 Policy Context.....	5
6.1. Development Plan.....	5
6.2. Natural Heritage Designations .....	8
7.0 The Appeal .....	8
7.1. Grounds of Appeal .....	8
7.2. Planning Authority Response .....	8
7.3. Further Responses.....	8
8.0 Assessment.....	9
9.0 Recommendation.....	12
10.0 Reasons and Considerations .....	12

## 1.0 Introduction

This appeal is by the applicant against the decision of the planning authority to refuse permission for a single dwelling in a rural area south of the town of Newtownmountkennedy in County Wicklow.

The decision was refused for two reasons – one for visual impact, the second for policy reasons.

## 2.0 Site Location and Description

### 2.1. Prospect Lower, Wicklow

The townland of Prospect Lower is located in gently countryside on the eastern side of the Wicklow Mountains, south of Newtownmountkennedy. The latter town, the closest settlement, is 3km directly north of the townland, about 4.5 km by road. The small medieval settlement of Newcastle is approximately 3.5 km to the east. The townland is on the south-east side of a shallow valley with a stream at its base which flows east to Newcastle and the sea. The area is characterised by large open fields in pasture, bounded by well tended hedgerows, with a scattering of dwellings along the minor road network and heath and forestry on higher ground. The townland is served by a single third class road running along the upper side of the valley with another similar road to the north on the opposite valley side – the latter is the main road between Newtownmountkennedy and Roundwood. The M11 motorway is around 1 km to the east. To the west the land rises to a ridge before falling again to the Vartry Valley.

### 2.2. Appeal site.

The appeal site, with a site area given on the planning application as 1.9 hectares in extent, is a large roughly square shaped field on the north-western side of the road running through Prospect Lower. It is in pasture use, with ditches on three sides, two of these with hedgerows. It is part of a significantly larger agricultural holding that extends to the north-east. The site drops in level to the north and north-east to the valley floor.

On the **north-west** side of the field is a ditch with a watercourse which runs north-east to drain into the stream at the valley floor. There are open agricultural fields to the **west, north** and **north-east** of the site. The road – at this point a very narrow third class country road - is on the **south-western** side. Opposite this is a small dwelling, with open agricultural land and forestry on rising levels to a ridge.

### 3.0 **Proposed Development**

The development is described on the site notice as a new dwelling house and garage, on-site treatment system and all associated site works.

### 4.0 **Planning Authority Decision**

#### 4.1. **Decision**

The planning authority decided to refuse for two reasons, which I would summarise as follows:

1. The site would be visually intrusive in a designated Area of High Amenity.
2. The proposed development would be contrary to the designation of the area as of high amenity (Section 4.4. of the County Development Plan) and would not be in accordance of Objective HD23 to restrict rural housing development and direct such housing to existing settlements.

#### 4.2. **Planning Authority Reports**

##### 4.2.1. **Planning Reports**

- Notes site is in a 'Level 10' (rural open countryside) area as defined in the development plan.
- Notes policies HD3 and HD23 on rural housing.
- Notes a previous permission on the site for a 4 bed dormer bungalow (09/814), which was time extended (14/2130).
- Notes family owns the land and previous permission. States that it is unclear if the applicant was considered to qualify under then Policy SS9. States that

the applicant has not submitted evidence that he qualifies under Objective HD23.

- States that the site is in an attractive landscape and is very open and visible.
- Refusal recommended.

#### 4.2.2. Other Technical Reports

**EHO:** No objection.

#### 4.3. Prescribed Bodies

None on file

#### 4.4. Third Party Observations

None.

### 5.0 Planning History

**09/814** – permission granted for a 4 bed dormer bungalow.

**14/2130** – Extended above permission.

### 6.0 Policy Context

#### 6.1. Development Plan

The appeal site is within what is considered a 'level 10', i.e. open countryside, in the Wicklow County Development Plan 2016-2022. The area is designated an 'Area of High Amenity' in the Landscape section of the Plan (chapter 10). Relevant policy for single housing is set out in Chapter 4 of the Plan. Relevant policies 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.*

**HD2** *New housing development, above all other criteria, shall enhance and improve the residential amenity of any location, shall provide for the highest possible standard of living of occupants and in particular, shall not reduce to an unacceptable degree the level of amenity enjoyed by existing residents in the area.*

**HD3** *All new housing developments (including single and rural houses) shall achieve the highest quality of layout and design, in accordance with the standards set out in the **Development and Design Standards** document appended to this plan, which includes a **Wicklow Single Rural Houses Design Guide**.*

### **Housing 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.*
- 2. A son or daughter, or niece/nephew considered to merit the same position as a son/daughter within the law (i.e. when the uncle/aunt has no children of his/her own), of a permanent native resident of a rural area, who can demonstrate a definable social or economic need to live in the area in which the proposal relates and not as speculation.*
- 3. A son or daughter, or niece/nephew considered to merit the same position as a son/daughter within the law (i.e. when the uncle/aunt has no children of his/her own), of a permanent native resident of a rural area, whose place of employment is outside of the immediate environs of the local rural area to which the application relates and who can demonstrate a definable social or economic need to live in the area to which the proposal relates and not as speculation.*
- 4. Replacing a farm dwelling for the needs of a farming family, not as speculation. If suitable the old dwelling may be let for short term tourist letting and this shall be tied to the existing owner of the new farm dwelling were it is considered appropriate and subject to the proper planning and development of the area.*
- 5. 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.

6. An immediate family member (i.e. son or daughter) of a person described in 5, who is occupied in agriculture and can demonstrate that the nature of the agricultural employment is sufficient to support full time or significant part time occupation.

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.

8. A close relative who has inherited, either as a gift or on death, an agricultural holding or site for his/her own purposes and not for speculation and who can demonstrate a definable social and / or economic need to live in the area to which the proposal relates.

9. The son or daughter of a landowner who has inherited a site for the purpose of building a one off rural house and where the land has been in family ownership as at 11th October 2004 for at least 10 years prior to the application for planning permission and not as speculation.

10. An emigrant who qualifies a permanent native resident, returning to a rural area in County Wicklow, seeking to build a house for his/her own use not as speculation.

11. Persons whose work is intrinsically linked to the rural area and who can prove a definable social or economic need to live in the rural area

12. A permanent native resident that previously owned a home and is no longer in possession of that home (for example their previous home having been disposed of following legal separation / divorce / repossession, the transfer of a home attached to a farm to a family member or the past sale of a home following emigration) and can demonstrate a social or economic need for a new home in the rural area.

13. Permanent native residents of moderate and small growth towns, seeking to build a house in their native town or village within the 60kph / 40mph speed limit on the non national radial roads, for their own use and not as speculation as of 11th October 2004.

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.

15. Permanent native residents of the rural area who require a new purpose built specially adapted house due to a verified medical condition and who can show that their existing home cannot be adapted to meet their particular needs.

*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.*

## 6.2. **Natural Heritage Designations**

There are no EU designated habitats in the immediate vicinity of the site. The area drains to a watercourse which after about 4 km drains to the coast where there are two coastal designated habitats, The Murrough SPA site code 004186 and The Murrough Wetlands SAC, site code 002249.

## 7.0 **The Appeal**

### 7.1. **Grounds of Appeal**

The applicant submitted a series of drawings and visualisations in support of the appeal against the decision to refuse.

- It is submitted that the site is on a lower level than the road with the roof level just 1.3 metres above the road level – it is argued in some detail, with illustrations, that it will be unobtrusive in the landscape from any adjoining road.
- A number of letters and attachments are submitted with respect to an argument that the applicant was brought up in the area and is currently living with his parents in the family home 650 metres from the site and hence qualifies under policy HD23.

### 7.2. **Planning Authority Response**

The planning authority did not respond to the grounds of appeal.

### 7.3. **Further Responses**

An Taisce in a submission to the Board dated 14<sup>th</sup> November 2018 wrote to support the decision to refuse for the reason of an impact on an Area of High Amenity. It is



also stated that more appropriate sites may be available on the landholding. An Taisce requests that the decision to refuse is upheld.

## 8.0 **Assessment**

Having inspected the site and reviewed the file documents I consider that this appeal can be assessed under the following general headings:

- **Principle of Development**
- **Landscape and amenity**
- **Traffic**
- **Public health**
- **Flooding**
- **EIAR and Appropriate Assessment**
- **Other issues.**

### 8.1. **Principle of development**

The proposed dwelling is within a farmholding on pastureland in an attractive rural area without a specific zoning designation – open countryside is described as ‘Level 10’ for policy in the Wicklow County Development Plan 2016. I would consider that the general area would, due to its close proximity to the town of Newtownmount-kennedy and a junction on the M11, be characterised as being under ‘strong urban pressure’, as defined in the Sustainable Rural Housing Guidelines 2005. In this regard I would consider the policies set out in the Wicklow County Development Plan 2016-2022 to be consistent with national and regional guidelines.

The stated policy is, in summary, to discourage rural housing, especially when relatively close to towns and residentially zoned lands – the appeal site is within 4 km of Newtownmountkennedy which has significant areas of zoned serviced land available for residential development. The exceptions are set out in detail in policy HD23 - essentially allowing for people with strong local connections and with a demonstrated need to live in the area.

The applicant has submitted information to support his contention that his family have strong local links – he was raised in the area and lives on the family farm nearby. I do not question in any way the local family links to the area.

Notwithstanding this, the stated policy also requires a demonstration for a housing need to be within the rural area having specific regard to HD1 - it is not clear to me that the applicant qualifies under this requirement.

I note that the applicant had planning permission for a dwelling on the site, a permission extended later. I would note that this permission was set out under a previous development plan. While this does have some relevance, I would consider that the overall national and policy presumption set out in HD1 overrides this precedent.

I therefore recommend that the Board uphold the decision of the planning authority to refuse for reasons relating to settlement policy.

## **8.2. Landscape and amenity**

The site is in a very attractive area of countryside, albeit not within the most visited parts of Wicklow. The location on an open slope running down to the shallow valley, and between the road and the valley, ensures it is a very open and exposed site when viewed both from the adjoining road and from opposite the valley. The design of the dwelling is contemporary and quite high quality and generally in accordance with the councils' rural design guidance, although it is quite large, 2-storeys in height and with a floorspace of 286 sqm with an additional 32sqm for the garage.

The proposed dwelling would be located at a significantly lower level than the road, but it is difficult to see how any dwelling on this site could be anything but intrusive on this the landscape, even with significant screening planting, both when viewed from the adjoining road and from the wider views from the road on the opposite side of the valley. While the designation for 'Area of High Amenity' is one which applies over significant areas of the county so is not of special significance in this regard, having regard to the overall thrust of stated policy both with regard to settlement in open countryside and the protection of sensitive landscapes in Wicklow, I would concur with the planning authority in their reason for refusal due to the exposed and sensitive nature of this particular site.

## **8.3. Traffic**

The site is on a very narrow third class road with little room for passing. This does have the merit of ensuring traffic levels are low and speeds would appear to be very low. The proposed access is in the centre of the boundary and would require a significant levels drop from the road level to the parking area, but it would seem this is achievable without an excessive slope. Sight lines appear adequate at the entrance, although to achieve these a substantial loss of hedgerow is required.

#### **8.4. Public health**

The proposed development requires a wastewater treatment system and private well. The well is proposed for the highest part of the site, at the south-western corner.

A site characterisation report submitted with the application indicated that the site is over an aquifer characterised as poor, with extreme vulnerability. A stream was identified along the northwestern boundary. The trial hole indicates quite permeable gravels and silts with deeper clay based silts. It is not unambiguously stated as to whether groundwater or bedrock was encountered in the trial hole, but it would appear from the evidence that it was dry with no bedrock down to 2 metres. From my observations, the site would appear to be quite well drained, so having regard to its size and notwithstanding the proximity of a stream, it would appear suitable for the discharge of wastewater to groundwater.

#### **8.5. Flooding**

Although the site is next to a watercourse and there is some history of flooding downstream at the village of Newcastle, the site itself is elevated well above the floodplain so would not likely be subject to flooding. The relatively small scale of the proposed development should not significantly increase downstream flood risks although of course any increase in paved area upstream has some potential to increase run-off.

#### **8.6. EIAR and Appropriate Assessment**

Having regard to nature of the development comprising a single structure, and the location of the site some significant distance from sensitive habitats or other receptors there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment

can, therefore, be excluded at preliminary examination and a screening determination is not required.

There are no SPA's or SAC's in the immediate vicinity. The closest is The Murrough SPA and SAC on the coast. There is a watercourse next to the site and this ultimately drains to the coastal wetlands associated with The Murrough designated habitats some 5 km downstream. But due to the small scale of the proposed development and the attenuation distance between the designated sites and the appeal site, I would consider that there would be no significant effects on this or other designated habitats in the vicinity.

I would therefore consider that it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 004186, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

#### **8.7. Other issues**

I do not consider that there are any other substantive issues raised in this appeal. There is no evidence on file of historic features or archaeological remains on the site or the immediate vicinity or any other features of particular environmental sensitivity. If the Board is minded to grant permission the proposed development would be subject to an occupancy condition and a Section 48 development contribution under the adopted Scheme.

#### **9.0 Recommendation**

I recommend that the board refuse permission for this proposed dwelling for the reasons and considerations set out below.

#### **10.0 Reasons and Considerations**

1. It is the policy of the planning authority as set out in policy objectives HD1 and HD23 of the Wicklow County Development Plan 2016-2022 that 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. The proposed development, which it is considered does not cater for locally derived housing needs and is in a sensitive landscape designated as an Area of High Amenity, would conflict with the policies of the Development Plan and would thus be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the site in an area of Area of High Amenity as set under the Wicklow County Development Plan 2016-2022, the size of the proposed dwelling, and the sensitive and exposed nature of the site, it is considered that the proposed development, by virtue of the topography of the site and extent of proposed excavations, would set an undesirable precedent for further development along this road and would form an incongruous and intrusive feature on the landscape and would, therefore, be injurious to the visual amenities of the area would be contrary to the proper planning and sustainable development of the area.

---

Philip Davis  
Planning Inspector

10<sup>th</sup> December 2018