



An
Bord
Pleanála

Inspector's Report ABP.302816-18

Development	Dwelling, garage and associated site works.
Location	Johnstown Farm, Johnstown, Kilpedder, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	18/904
Applicant(s)	Sinead Doyle
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	As above
Observer(s)	None
Date of Site Inspection	12 th December 2018
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The appeal site is located in the village of Kilpedder, Co. Wicklow.
- 1.2. The appeal site is a vacant site situated between two established houses and within a residential cul-de-sac on the outskirts of Kilpedder.
- 1.3. The overall size of the site is 0.1263 ha (0.311 acres) and the shape of the site is rectangular.
- 1.4. There are a number of existing houses located within the residential cul-de-sac, all detached houses on relatively large plots.
- 1.5. There is a house located to the immediate south of the appeal site which is a single storey attic conversion.
- 1.6. There is a vacant site situated to the immediate east of the appeal site.
- 1.7. The appeal site is relatively flat and there is a hedgerow located to the rear.

2.0 Proposed Development

- 2.1. Outline planning permission is sought for a new dwelling, garage and entrance.
- 2.2. As this is an outline planning application details such as floor area, floor plans, heights and elevations are not included.
- 2.3. An indicative site layout plan outlines a site layout for the proposed house.

3.0 Planning Authority Decision

- 3.1. Wicklow County Council decided to **refuse** planning permission for the following reasons;

1. The site of the development is located within an rural type '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 within a landscape area defined as Corridor Area, where it is the Council's settlement strategy 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. Based on the documentation submitted the applicant already owns a rural dwelling, accordingly it is considered that the applicant does not have any definable 'need' for a dwelling, insufficient information has been submitted to demonstrate the applicant's parents need for a dwelling, and therefore the applicant would not come within the scope of the housing need criteria as set out under Objective HD23 of the Wicklow County Development Plan, 2016 – 2022. The proliferation of non-essential housing in the rural landscape areas erodes the landscape value of these areas, and would result in the deterioration of the area's existing rural and scenic quality. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the

- Proposal to connect to the public sewer network which feeds into Kilpedder Waste Water Treatment Plant.
- The existing deficiencies in that network which has resulted in discharge from the storm water tank outlet resulting in 'sewage fungus' growth down stream of the plant.
- The increase in sewage from this proposed development which would further exacerbate the ongoing pollution.
- The connection of the existing stream adjoining the Kilpeddar Waste Wwater Treatment Plant to Murrough Wetlands SAC/Murrough Wetlands SPA (Natura 2000 sites).

It is considered that insufficient information has been submitted for the Planning Authority to screen out the potential impacts of the development on the Murrough Wetlands SAC / Murrough Wetlands SPA, and to determine the application in absence of full details would be contrary to the protection of the conservation objectives of the Natura 2000 sites, would materially contravene the Habitats

Directive, the AA Guidelines and Objectives NH2 of the Wicklow County Development Plan, 2016 - 2022. The development would therefore be contrary to the proper planning and sustainable development.

3.2. Planning Authority Reports

3.2.1. The main issues raised in the planner's report are as follows;

Area Planner

- The site is located outside the settlement boundary of Kilpedder and as such Policy HD23 must apply.
- Planning permission was granted for a house on the adjoining site for the applicant (L.A. Ref. 02/6965).
- The applicant claims that planning is for her elderly parents.
- The applicant owns her own home which is situated to the immediate south of the appeal site.
- No issues with the proposed new entrance.
- The increase in sewage from the proposed development would further exacerbate the ongoing pollution.
- Irish Water has raised the issue that the current proposal has the potential to pollute a watercourse. This pollution may have potential adverse impacts on the Natura 2000 sites.
- Further information would be required from the applicant to carry out an AA.
- In the absence of such information it would not be possible to conclude that the development individually or in combination with other plans or projects would not be likely have a significant effect on the Natura 2000 site network.

3.3. Internal Reports;

Area Engineer; - No objections subject to conditions.

3.4. **Third Party Observations**

There are no third party submissions.

4.0 **Planning History**

- L.A. 02/6965 – Sinead Doyle (current applicant) granted planning permission, subject to conditions, for dormer bungalow, garage and septic tank.

5.0 **Policy Context**

5.1. **Development Plan**

The operational Development Plan is the Wicklow County Development Plan, 2016 – 2022.

The relevant rural housing policy provisions include;

- HD20: Urban generated housing shall not be permitted in the rural areas of the County, other than in rural settlements that have been deemed suitable to absorb an element of urban generated development (see objective HD19).
- 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.

6.0 National Guidelines

6.1 Sustainable Rural Housing Guidelines

The subject site is located within an 'Area under Strong Urban Influence' as identified in Map 1: Indicative Outline of the NSS rural areas types in the DOEHLG Sustainable Rural Housing Guidelines for Planning Authorities, 2005. The Guidelines note that in these areas the objective should be on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.

7.0 The Appeal

7.1. The following is a summary of a first-party appeal submitted by the applicant;

Housing Need

- There are 5 no. houses within the ownership of the extended family.
- House no. 1 is the family home and the 4 no. remaining houses are in the children's names, i.e. the 4 no. children. House no. 1 was sold in 2007.
- House no. 2 is in the current applicant's name (Sinead Doyle).
- The applicant (Sinead Doyle) moved into house no. 2 following completion of the sale of house no. 1 in 2007.

- House no. 2 is on a long term lease to St. Catherine's Association Ltd.
- There are only 3 no. houses occupied by the family and due to a growing family an additional house is required.

Sewer

- House no. 1 and house no. 2 have permission to connect to the 150mm sewer.
- House no. 3, 4 and 5 are connected to existing 150mm sewer as per planning conditions.
- It is suggested to use the existing redundant septic tank from house no. 2 which is on the proposed site and transfer permission for the proposed connection from house 1 which has not currently been taken up.

8.0 Assessment

- Principle of Development
- Appropriate Assessment
- Vehicular Access
- EIAR

8.1. Principle of Development

8.1.1. A key consideration in this appeal relates to the applicant's rural housing need in this area and as such whether this housing need complies with the provisions of the Wicklow County Development Plan, 2016 – 2022, and the Sustainable Rural Housing Guidelines, 2005.

8.1.2. The site is unusual in that it is located within the urban footprint of Kilpedder but the site is situated outside the village settlement boundary in accordance with the provisions of the County Development Plan. As such the appeal site is defined as a

rural site in accordance with the settlement strategy of the County Development Plan.

- 8.1.3. The primary applicant has lived locally for 24 years and therefore would in theory be considered to be a local rural person. However an issue that arises is whether the applicant has a genuine housing need as the applicant already owns a house.
- 8.1.4. In summary there were 5 no. houses in use for the family and house no. 1 was built for the parents and planning was obtained for a house for each of the four children. It would appear from the appeal submission that the applicant obtained permission (L.A. Ref. 02/6965) for a house situated to the immediate south of the appeal site. This house permitted under L.A. Ref. 02/6965 is currently rented out on a long-term lease. In addition house no. 1 was sold in May 2007. Therefore only 3 no. houses remain within use by the family.
- 8.1.5. I would consider that a significant issue is that the applicant already owns a house and therefore would not have a genuine housing need.
- 8.1.6. Policy HD23 of the County Development Plan states that 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. In this regard paragraphs no. 1 and no. 12 of Policy HD23 are relevant to the current application. Paragraph no. 1 states as the applicant already owns a house then it can be considered that the proposed house is for speculation. Paragraph no. 12 accomodates persons who previously owned a home but no longer in possession of that home. However Paragraph 12 would not apply to the applicant as it relates to couples who have separated and no longer sharing the family home.
- 8.1.7. Accordingly, I would conclude that the applicant has not adequately demonstrated that they would comply with County Development Plan Policy Objective H23. Therefore, I would consider that the applicant fails to comply with the rural housing

need policies and provisions of the Wicklow County Development, 2016 – 2022, and as such I would recommend a refusal to the Board.

8.2. **Appropriate Assessment**

- 8.2.1. The Board will note that activities, plans and projects can only be permitted where it has been ascertained that there would be no adverse effect on the integrity of a Natura 2000 site, apart from in exceptional circumstances.
- 8.2.2. The Department of Environment, Heritage and Local Government Guidelines on ‘Appropriate Assessment of Plans and Projects in Ireland, 2009,’ recommend that the first step in assessing the likely impact of a plan or project is to conduct an Appropriate Assessment Screening to determine, on the basis of a preliminary assessment and objective criteria, whether a plan or project, alone or in combination with other plans or projects, could have significant effects on a Natura 2000 site in view of the site’s conservation objectives. The Guidelines recommend that if the effects of the screening process are ‘*significant, potentially significant, or uncertain*’ then an appropriate assessment must be undertaken.
- 8.2.3. There is an SAC and SPA located approximately 3.5km to the east of the appeal site. It is proposed that the proposed house would connect to the public sewer and public water services. However the proposed surface water discharge will flow towards a nearby watercourse.
- 8.2.4. The Local Authority has noted concerns in relation to the deficiencies with the existing waste water treatment plant and also surface water disposal as the watercourse provides a pathway to a Natura 2000 site.
- 8.2.5. The Natura 2000 sites situated east of the appeal site include;
 - The Murrough SPA (site code 004186)
 - The Murrough Wetlands SAC (site code 002249)

8.2.6. Overall I would share the concerns of the Local Authority. The guidelines are clear and Chapter 3, paragraph 3, states that '*if the effects are deemed to be significant, potentially significant, or uncertain, or if the screening process becomes overly complicated, then the process must proceed to Stage 2 (AA)*'. Based on the information available it is not possible to make a screening determination as such the impacts of the proposed development on a Natura 2000 is uncertain.

8.3. **Access**

8.3.1. It is proposed to provide a vehicular entrance to the front of the site. The Area Engineer has no objections to the proposal and I would note that there are established vehicular entrances onto the existing cul-de-sac.

8.3.2. I noted from my site inspection that the sightline provision in either direction of the proposed vehicular entrance was generally good.

8.3.3. Overall, I would consider, given the class of road, that the proposed sightline provision would be acceptable and would not give rise to a traffic hazard. I would consider that the proposed vehicular entrance is acceptable in terms of public safety.

8.4. **EIA Screening**

8.4.1. Based on the information on the file, which I consider adequate to issue a screening determination, it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development and an environmental impact assessment is not required.

9.0 Recommendation

- 9.1. I have read the submissions on the file, visited the site, had due regard to the County Development Plan, and all other matters arising. I recommend that planning permission be refused for the reasons set out below.

10.0 Reasons and Considerations

1. The proposed development would constitute random residential development in a rural area which is under strong development pressure from the Greater Dublin Area. It is the policy of the planning authority, as expressed in the current Wicklow County Development Plan, 2016 – 2022, to restrict development in rural areas to serve the needs of certain defined categories of person, including those engaged in agriculture or with strong ties to the area. The applicant already owns a house locally and as such the applicant does not come within the scope of the housing need criteria in the development plan or as set out in the document ‘Sustainable Rural Housing Guidelines for Planning Authorities’ issued by the Department of the Environment, Heritage and Local Government in April 2005. The proposed development would conflict with the policy Objective HD23 of the Wicklow County Development Plan, 2016 – 2022, would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. On the basis of the information provided with the application and appeal and in the absence of a AA Screening Determination the Board cannot be satisfied 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 (The Murrough SPA) and site no. 002249 (The Murrough Wetlands SAC) in view of the site’s Conservation Objectives. In such circumstances the Board is precluded from granting approval / permission.

Kenneth Moloney
Planning Inspector
9th January 2019