



An  
Bord  
Pleanála

## Inspector's Report ABP-304187-19

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<b>Development</b>	Construction of a house, wastewater treatment system and associated site development works.
<b>Location</b>	Rockmarshall, Jenkinstown, Dundalk, Co Louth.
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	1945
<b>Applicant(s)</b>	James Clark.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	James Clark.
<b>Observer(s)</b>	Fidelma Collins et al.
<b>Date of Site Inspection</b>	Thursday 19 <sup>th</sup> September 2019.
<b>Inspector</b>	Deirdre MacGabhann

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## 1.0 Site Location and Description

- 1.1. The 0.68ha appeal site lies c.4km to the north east of Dundalk town, and c.1km south east of Jenkinstown in the townland of Rockmarshall, County Louth. The site lies in the foothills of the Cooley Mountains and is situated c.500m to the north the R173. Access to the site is via Becks Lane from the R173 and via a minor lane beyond this.
- 1.2. Becks Lane and the minor road serving the appeal site are narrow rural roads, with large detached dwellings alongside. The site comprises an existing agricultural field with an old stone property towards the middle of the site (disused mill) and a small agricultural building to the south west of it. The site rises from south to north and has a backdrop of mature woodland. To the south of the site are Rockmarshall House, a barn and two detached properties. To the west is a minor laneway with two residential properties facing the site. Access to these is from the R174 to the west. At the time of site inspection, the appeal site was in agricultural use and grazed by horses.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a detached single storey residential dwelling (150.3sqm) and waste water treatment system. The proposed single storey property is contemporary in design and is situated to the north of the site. The waste water treatment system is proposed to the east of the site, south east of the dwelling. Water supply is from a private well, to the north of the dwelling, and surface water will be discharged of via soakaways. The existing mill building is to be retained. The planning application is accompanied by the following:
  - Appropriate Assessment Screening Report.
  - Site assessment.
  - Soakaway design.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On the 14<sup>th</sup> March 2019 the planning authority decided to refuse permission for the development on the grounds that :

- The development is located within Development Control Zone 2 of the Louth County Development Plan 2015 to 2021 where it is a requirement for applicants to comply with the Local Needs Qualifying Criteria (section 2.19.1) and demonstrate a rural housing need, and
- The applicant had not demonstrated a rural housing need as he has sufficient legal interest in two dwellings in the vicinity of the site, either of which could satisfy his housing need, consequently to permit the development would materially contravene Policy SS18 and SS19 of the County Development Plan.

### 3.2. Planning Authority Reports

#### Planning Report (7<sup>th</sup> March 2019)

- This report refers to the policy context for the development, submissions and technical reports made and matters discussed in pre-planning consultations. It makes the following comments on the development:
  - Having regard to the context, location of the dwelling on the application site and its design, the report considers that the development would not give rise to concerns regarding landscape or visual impacts or detract from the amenity of adjoining property by way of overlooking/overshadowing etc.
  - No significant effects on Natura 2000 site are considered to arise.
  - Arrangements for roads and parking are considered to acceptable.
  - The applicant has lived in Scotland for some time and wishes to return home to the area where he previously lived. Sufficient information has been submitted to demonstrate that the applicant lived at 'Rockmarshall House' for at least 10 years i.e. he satisfies the 'local'

portion of the Local Needs Qualifying Criteria (section 2.19.1 of CDP). The information submitted with the application indicates that the applicant owns the two properties adjacent to the site. He therefore fails to meet the second requirement of the Local Needs Qualifying Criteria (section 2.19.1).

- The proposed entrance to the site will materially impact on the residential and recreational amenity of the property to the south of it (in the ownership of the applicant), due to its location through a formal vegetable garden and proximity to central heating boiler/ tank and playhouse/swing set which would need to be relocated,
  - The site appears to be in the area of known surface water flooding which would have implications for the proposed wastewater treatment system.
- The report recommends refusing permission on the grounds that the applicant has not demonstrated a rural housing need.

#### Other Technical Reports

- Environment (5<sup>th</sup> February 2019) – Requests further information in respect of wells within 100m of the development and details of the person who will install the effluent treatment system.
- Infrastructure (27<sup>th</sup> February 2019) – No objections subject to conditions.

### **3.3. Prescribed Bodies**

- None.

### **3.4. Third Party Observations**

3.4.1. On file is an observation from local residents. It makes the following comments on the application:

- Applicant owns c.20acres, lives in Scotland (15+ years), owns two large detached houses adjacent to the proposed development which are rented out to third parties. Access has been denied to a copy of Rural Housing Needs form by the applicant's solicitor on the grounds of privacy. The applicant does

not qualify for a 'Local Needs' house. The applicant could live in one of his existing houses. Refuse trucks cannot access either of the existing houses and will not be able to access the proposed dwelling. The access road to the site is in a very poor condition and used by walkers. An increase in traffic on the narrow road raises concerns regarding the safety of walkers. More houses in the area detract from its designation as a place of Outstanding Beauty.

## 4.0 Planning History

- PA ref. 18260 – Application for permission for a dwelling on the appeal site and restoration of old mill ruin to domestic garage and garden store. Withdrawn.

## 5.0 Policy Context

### 5.1. National Planning Policy

- National Planning Framework, 2018.
- Guidelines on Sustainable Rural Housing, 2005

### 5.2. Louth County Development Plan 2015 to 2021

- 5.2.1. Chapter 2, Core Strategy and Settlement Strategy, of the current Louth County Development Plan refers to development in rural settlements/countryside in Section 2.7. It states that the County contains significant rural areas and it is recognised that there is a need to protect and support rural settlements and the countryside by accommodating limited growth in accordance with the needs of genuine rural dwellers whilst providing careful management of physical and environmental resources.
- 5.2.2. All of County Louth falls within 'rural areas under strong urban influence' as defined by the National Spatial Strategy (NSS) 2002 by reason of its proximity to Dublin and its strong urban structure. To facilitate the careful management of rural one-off housing 'Local Needs Qualifying Criteria' are set out in Section 2.19.1 of this Plan.

- 5.2.3. The appeal site lies in Development Zone 2 (see attachments), the objective of which is *'To protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community'*. Policy RD 33 in particular applies to development within the zone:
- RD 33 - *To permit only essential resource and infrastructure based developments and developments necessary to sustain the existing local rural community. Such development would include limited one-off housing....*  
*\*Refer to Section 2.19.1 for Qualifying Criteria*
- 5.2.4. Policy for one-off rural housing is set out in section 2.19 of the Plan. The overriding aim of the planning authority's approach to one-off houses in the countryside is guided by the governments *Sustainable Development Housing Guidelines, 2005* where rural generating housing relates to those who have spent a substantial period of their lives living in rural areas as members of the established rural community and which seeks to accommodate, within rural areas, people who are functionally or socially part of the rural community.
- 5.2.5. Policy SS 18 seeks to *'permit rural generated housing in order to support and sustain existing rural communities and to restrict urban generated housing in order to protect the visual amenities and resources of the countryside, subject to the local needs qualifying criteria as set out in Section 2.19.1 below'*.
- 5.2.6. Local needs qualifying criteria are set out in section 2.19.1 of the Plan. For Development Control Zone 2, local needs criteria include:
- '2. That the applicant(s) have lived for a minimum period of 10 years in the local rural area (including cross-border), they have a rural housing need, they do not already own a house or have not owned a house within the rural area of the county for a minimum of 5 years prior to making an application'*
- 5.2.7. Policy SS 19 requires *'that applicants for one-off rural housing demonstrate compliance with the Local Needs Qualifying Criteria relevant to the respective Development Zone as set out in Section 2.19.1 above'*.

### 5.3. Natural Heritage Designations

- 5.3.1. The appeal site lies c.600m to the north east of Dundalk Bay, a proposed Natural Heritage Area and designated Special Area of Conservation (joint site code 000455) and a Special Protection Area (site code 004026).

### 5.4. EIA Screening

- 5.4.1. The proposed development comprises a 'project' for the purposes of environmental impact assessment and falls within a class set out in Part 2, Schedule 5 of the Planning and Development Regulations 2001 (as amended), Infrastructure Projects, construction of dwelling units. However, the development is significantly below the threshold for the class and comprises a very modest development on lands which are removed from any sensitive site. Whilst surface water and wastewater will be discharged on site, neither will be of a scale to give rise to significant environmental effects on the environment. Having regard to the above, 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.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The applicant was a resident of Rockmarshall House, to the south east (*sic*) of the appeal site, between 1978 and 2006. Sensitive personal information and financial documentation was submitted with the application and demonstrated that the applicant has strong family ties to the area.
- In 2005 and 2006 the appellant gave his son and daughter development plots and they secured separate planning permission for the construction of the detached dwellings. Instead of obtaining mortgages from the bank, the applicant financed the construction of each dwelling. This was the extent of the appellant's involvement in the properties and does not constitute a legal interest in them. After construction of the properties, the son and daughter's



personal circumstances changed, and they relocated to the UK, where they remain. The two properties are rented out.

- In 1988 the appellant moved to the UK, leaving his family in Rockmarshall House and returning regularly. With his children grown the applicant sold Rockmarshall House in 2006 and made his residency permanent in the UK. The appellant, who is not well, recently retired and wishes to return home to an area with personal and family connections.
- The son and daughter's legal title to their dwellings lists the appellant as a trustee, but not the beneficial owner. The son and daughter's properties are legally owned by them. The sale of the family home at Rockmarshall in 2006 represented the last instance the applicant owned property in the surrounding local area.
- The planning authority's decision to refuse permission does not use the standard of assessment or the same language that is indicative of the qualifying criteria set out in Section 2.19.1. The refusal refers to the applicant having sufficient legal interest in two dwellings either of which could satisfy his housing need, not that he already owns or previously owned a dwelling.
- It is not strictly true that the appellant receives the rental income from the two properties. Rental income is collected in the name of the son and daughter who reimburse the appellant under a separate financial transaction for the cost of financing the construction of each dwelling.
- Each property is rented out on a long-term lease. The appellant is not entitled or empowered to evict the tenants or take up residency. The appellant has no direct pecuniary interest or connection to the
- The applicant, therefore, has no proprietary entitlement to his children's dwellings and the justification for the planning authority's decision to refuse permission is not applicable (see solicitor's letter in Appendix 3 of appeal).
- The planning authority's grant of permission was issued eleven days prior to the scheduled due date and prior to further information submitted by applicant's solicitor, setting out the above (see timeline in appeal).

- The extent of impact on the appellant's sons property (to facilitate the driveway) is inconsequential and acceptable to the appellant's son. No objections were raised by the Council's Infrastructure and Environment teams.

## 6.2. Planning Authority Response

6.2.1. The planning authority make the following comments on the appeal:

- There is no statutory requirement for a planning authority to accept unsolicited information. The unsolicited information was submitted almost three weeks after the planning authority took steps to inform the applicant's agents of an issue in relation to the planning application (see attached notes of telephone conversations).
- The Planning Officer's report in respect of the proposed development was made within the standard timescale for decision making on one-off rural houses in County Louth.
- The Proposed Site Layout Plan Drawing No. 3621-RPA-002 submitted with the application shows that the two houses to the east of the proposed entrance are within the lands outlined in blue '*other lands in the applicants ownership*'.
- The appellant has provided no evidence to support his assertion that he is a Trustee only in respect of his children's houses or of the financial arrangements referred to.
- As no new documentary evidence has been provided of the appellants genuine housing need, ask that the Board uphold the decision to refuse permission.

## 6.3. Observations

6.3.1. There is one observation on file from local residents. It makes the following additional arguments:

- Neither applicant (son or daughter) have lived in the houses for the last 10 to 12 years. Both have been living in the UK for over 20 years. Both houses are registered as being in the ownership of the applicant (see attached land

registry map). All correspondence and submissions to date on behalf of the applicant, with the exception of the appeal documentation, show that the two houses are in the applicant's ownership (within blue line). The applicant 'struggled' to provide any information in relation to the alternative ownership of the house other than an 11<sup>th</sup> hour statement by his solicitor which is not evidence based.

- The appeal should be rejected for either (a) the applicant owns two houses on his lands, or (b) he does not have ownership of the two houses and the two dedicated sites and strip of land shaded brown (over which access is proposed) and he has not provided evidence of consent from the owners to meet the normal requirement of a valid planning application.
- Critical information submitted with the current planning application, previously withdrawn application and appeal is contradictory.
- The two existing houses have been recently leased. Based on previous lease it is probable that this lease is for 5 years. Therefore, it will be at least 5 years before the access strip will be available which creates a serious doubt as to whether the construction of a new house and its access would be completed within the lifetime of the planning permission.
- The management of and dealings with the two houses over the past 10 to 12 years, since built, has been by the applicant and not his son or daughter.
- No evidence to demonstrate that the properties are held in trust e.g. regular transfers of rent to son and daughter.

#### **6.4. Further Responses**

6.4.1. The appellant makes the following further responses on the observations made on the appeal:

- Had the applicant been afforded the opportunity to present confirmation of his lack of proprietary entitlement to his children's dwellings, it could have had a material impact on the planning authority's consideration of the appellant's bone fides.

- In hindsight it would have been more accurate to exclude the children's properties from the Site Location and Site Layout Plans on the grounds that the appellant has no proprietary or legal entitlement to them.
- The appearance of the appellants name on a publicly available website regarding legal ownership is not a true or accurate reflection of his actual legal interest in the property.
- The veracity of the letters from the appellant's solicitors is sufficient verification from a reliable and credible source that the appellant has no property interest or claim over either child's dwelling. The form of such confirmation has been accepted by the planning authority in the past.
- The planning authority has used the appellant's parental duty of providing financial assistance in the construction of his children's dwellings against him in the consideration of the proposed development. The applicant has provided sufficient information to confirm that he has lived in the rural area for a period longer than 10 years and does not and has not owned a house in the last 5 years.

## 7.0 Assessment

- 7.1. Having regard to the information on file and my inspection of the appeal site, the key matter for this appeal is the extent to which the proposed development complies with the policies for one-off rural housing in Development Control Zone 2. I deal with this below.
- 7.2. Having regard to the single storey design of the proposed development, its location on site, backdrop of mature trees and proposals for landscaping, I do not consider that the proposed development would detract from the visual amenity of the area or give rise to any significant increase on traffic on the county roads serving the site (including walkers).
- 7.3. I note that the planning report states that the site appears to be in the area of known surface water flooding which would have implications for the proposed wastewater treatment system. There was no evidence of such flooding at the time of site inspection, no issues have been raised by the planning authority's Infrastructure Service or in the site assessment and there is no record of on-site flooding in the

OPW's flood maps ([www.floodinfo.ie](http://www.floodinfo.ie)). However, should the Board decide to grant permission for the development, they may wish to further address this matter.

#### **7.4. Compliance with Development Plan Policy for One-Off Rural Housing**

- 7.4.1. All of the rural areas of the County Louth fall within 'rural areas under strong urban influence' by reason of its proximity to Dublin. In such areas national planning policy on rural housing seeks to direct urban generated housing needs into towns and villages and to facilitate the provision of single houses in the countryside based on demonstrated economic or social need to live there (and siting and design criteria).
- 7.4.2. The appeal site lies in Development Control Zone 2 of the current Louth County Development Plan. One-off rural houses are permitted within the zone subject to compliance with the stated Local Needs Qualifying Criteria. Under section 2.10.1 (2) this includes that an applicant:
- has lived for a minimum period of 10 years in the local rural area,
  - have a rural generated housing need, and
  - does not already own a house or has not owned a house within the rural area of the county for a minimum of 5 years prior to making the application.
- 7.4.3. I would accept from the information on file that the applicant lived in Rockmarshall House, to the south west of the appeal site, for at least 10 years and has strong links to the local area. I also would accept that the applicant is now retired and seeks to return to reside in the area and that his rural housing need, in this regard, would be consistent with the requirements for the government's guidelines on Sustainable Rural Housing (section 3.2.3 – Persons who are an intrinsic part of the rural community).
- 7.4.4. The government's Guidelines on Sustainable Rural Housing state that development plans should include broad categories of circumstances that would lead the planning authority to conclude that a particular proposal for development is intended to meet a rural generated housing need. As stated above the current Development Plan for County Louth requires that an applicant for one-off rural housing does not already own a house or has not owned a house within the rural area for a minimum of 5 years prior to making the application. This requirement seems reasonable within the overall thrust of the policy to facilitate genuine rural housing needs.

- 7.4.5. In making the planning application the applicant has clearly indicated that the two properties to the south of the appeal site fell within his overall landholding. In seeking to clarify the matter, the applicant has stated that the properties are in the ownership of his children and that he is a Trustee with no proprietary entitlement.
- 7.4.6. No supporting material has been provided to demonstrate that the properties are legally owned by the applicant's children or of the financial arrangements referred to whereby rental income is made to the children and repaid to the father. Currently the folio map for the site indicates a single land ownership (LH26764F). As ownership of these two properties by the appellant would directly conflict with the requirements of development control policy for the appeal site, I consider that it is unsatisfactory the appellant has provided no evidence to support the stated nature of the ownership of these properties. The Board may wish, therefore, to gain further information from the appellant in this regard. However, in the absence of this information, I consider that the applicant has not demonstrated compliance with the rural housing policies of the current Development Plan.
- 7.4.7. I would also accept the observers point that the applicant, if he is not the owner of the adjoining lands, has not provided consent from the owner to provide access to the appeal site through the side garden of the western property (as stated in section 3.2 of the appeal).

## **8.0 Recommendation**

- 8.1. Having regard to the above, I recommend that permission for the proposed development be refused.

## **9.0 Reasons and Considerations**

Having regard to the location of the site within an 'Area Under Strong Urban Influence' and in an area where housing is restricted to persons demonstrating local need in accordance with the current Louth County Development 2015 to 2021 Plan, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or Section 2.19.1 of the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based 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 proper planning and sustainable development of the area.

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Deirdre MacGabhann

Planning Inspector

26<sup>th</sup> September 2019