



An
Bord
Pleanála

Inspector's Report ABP 304432-19

Development	House and associated works.
Location	Easthill Farm, Easthill, Newtownmountkennedy, County Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	19/164.
Applicant(s)	Alun Owens.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party.
Appellant(s)	Alun Owens.
Observer(s)	Anne & Robert Miller.
Date of Site Inspection	30 th August 2019.
Inspector	Dáire McDevitt.

1.0 Site Location and Description

- 1.1.** The site of the proposed development is located in a rural area approximately 2.4km north-west of Newtownmountkennedy in County Wicklow. It forms part of a larger holding of 1.66 hectares which functions as an organic farming operation by the applicant. The site is located at the south-east corner of the holding, with lands sloping from west to east. There is an existing vehicular entrance along the frontage onto a single carriageway lane with signage indicating 'private road' at the junction with the L1037 local road. The width of the lane cannot accommodate two-way vehicular traffic.
- 1.2.** The site is bounded to the north, west and south by agricultural lands. Housing in the vicinity includes Easthill House to the north-east and a number of detached houses further east along the public road. There are a number of polytunnels on the holding with unsurfaced tracks to access the polytunnels located in the western corner of the field (landholding). Fencing has been erected to separate the site, where the house is proposed to be located on the eastern corner of the site. A stone wall that is partially obscured by vegetation runs along the roadside boundary to the south of the existing entrance.

2.0 Proposed Development

- 2.1.** The proposed development would comprise a part single-storey, part two-storey three bedroom dwelling (gfa of c. 172sq.m) on a site with a stated area of c. 0.142 hectares taken from a c.1.66 hectare landholding. It would be served by a private waste water treatment unit and by a private well.

Documentation included:

- Documentation outlining the applicant's compliance with rural housing policy.
- Architects Report.
- Planning Context Report.
- Site Characterisation Report.

- Letter from Teagasc.

2.2 **Unsolicited Additional Information (15th & 16th February 2019).**

This information sought to address the outstanding issues raised by the case planner in the report dated 8th November 2019. Documentation submitted included Architects Additional Information Report, revised Site Layout Plans and revised site characterisation report.

3.0 **Planning Authority Decision**

3.1. **Decision**

On the 16th April 2019 Wicklow County Council decided to refuse permission for the development for the following reasons:

1. *Having regard to the location of the site within “Area Under Strong Urban Influence as identified in 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 current Wicklow Development Plan 2016-2022, it is considered that the applicant does not come within in 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 mitigate 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.*
2. *Having regard to the small size of the farming plot, compounded by the subsequent significant reduction in the area left for farming purposes after the omission of the site for the proposed house, it is considered that the proposed development, by the precedent which the grant of permission for it would set*

for other relevant development, would adversely affect the balanced, orderly development of rural areas in the vicinity of Newtownmountkennedy and would thus constitute development that would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Report dated 8th November 2018

The Planner referred to the site's detailed planning history, interdepartmental reports received, and third party submissions made.

Recommendation to refuse permission on three grounds: 1) non compliance with rural housing policy, 2) size of the farming plot and 3) public health.

Report dated 10th April 2019

Unsolicited Information submitted on the 15th February 2019 and the 16th February 2019 sought to address the outstanding issues raised by the case planner in the report dated 8th November 2019. This included Architects Additional Information Report, revised Site Layout Plans and revised site characterisation report. The information was assessed by the Case Planner, The applicant's submissions on economic need were acknowledged. The Executive Planner noted that An Bord Pleanála had refused the applicant permission for a dwelling on this landholding on four previous occasions, and formed the opinion that the applicant, Mr Owens does not come within the scope of the housing need criteria as set out in the Sustainable Rural Housing Guidelines 2005 or the Development Plan. Therefore a recommendation to refuse permission was made.

The Senior Executive Planner and Director of Services concurred with the recommendation.

3.2.2. Other Technical Reports

Environmental Health Officer recommended refusal on the grounds of non compliance with SR6 (1991 guidance).

Municipal District Engineer had no objection subject to no surface water to enter onto public road.

3.3. Third Party Observations

Two submission were received supporting the application and three setting out objections to it. These included one from current observers to the appeal (Robert and Anne Millar). The issues raised are broadly in line with the observations lodged. The mains point of concern relate to the history of refusals for a house at this location No change in circumstances have occurred that address the fundamental reasons for refusal. Drainage issues and that the development would constitute sporadic development in an area of scenic amenity.

Correspondence on file notifying parties that a decision had been made includes correspondence to Deputy Andrew Doyle, Cllr Shay Cullen and D. Mitchell. I note that there are no copies on file of representations from these parties, nor did the Executive Planner refer to them in her reports.

4.0 Planning History

There is a substantial planning history associated with the applicant and the landholding. Permission has been refused on 5 occasions by the Board for a house on this holding. Details of which are summarised below:

PA Reference No. 17/190 (ABP Ref. PL. 27.249099). Alun Owens was refused permission by the Board in 2017 for a dwelling for the following two reasons:

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

PA Reference No. 13/8687 (ABP Ref. PL 27.242706). Alun Owens was refused permission by the Board in 2013 for a dwelling for one reason relating to lack of housing need.

PA Reference No. 10/2785 (ABP Ref. PL 27.238428). Alun Owens was refused permission by the Board in 2011 for a dwelling for two reasons relating to lack of rural housing need and visual impact.

PA Reference No. 10/2784 (ABP Ref. PL 27.238429). Jane Russell (applicant's sister) was refused permission by the Board in 2011 for a dwelling for two reasons relating to lack of rural housing need and visual impact.

Alun Owens & Jane Russell were refused Outline Planning Permission by Wicklow County Council for two houses under **PA Reference No. 08/2033**, no appeal lodged.

PA Reference No. 15/957 for a house was withdrawn.

Polytunnels:

PA Reference No. 15/1341 (ABP Ref. PL 27.246499). Permission was granted by the Board in 2015 for the replacement of a reservoir for use in conjunction with the use of the land as an organic farm and construction of a polytunnel.

P.A. Exemption Ref. 62/15. The planning authority issued a section 5 declaration that determined polytunnels, poultry and pig arcs and a shed constituted exempted development.

5.0 Policy & Context

5.1. Wicklow County Development Plan 2016-2022

The Wicklow Settlement Strategy has identified a hierarchy of 10 levels of Settlement for the County, ranging from Level 1 Metropolitan Consolidation Town to Level 10 Rural Area.

The application site is located within **Level 10. Housing in the Open Countryside**, where the policy is that *Development within the Rural Area should be strictly limited to proposals where there is a proven social or economic need to locate in the area.*

The area is identified as an Area Under Strong Urban Influence.

General Housing Objectives:

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.

HD 3 refers to the need for single rural houses to comply with certain design criteria as set out in Appendix 1 and Appendix 2.

Level 10 Housing in the Open Countryside Objective

HD23 sets out 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.

Residential development will be considered in the countryside under 16 circumstances as set out under HD23.

In the event of conflict of any settlement strategy objective/landscape zones and categories, a person who qualifies under objective HD23 their needs shall be supreme, except where the proposed development would be a likely traffic or public health hazard.

Appendix 1 refers to general development and design standards.

Appendix 2 The Single Rural Houses Design Guidelines for New Houses in Rural Wicklow.

The site is located within the **Area of High Amenity- North East Mountain Lowlands**, identified in the Landscape Character Assessment.

5.2 Guidelines

Department of Housing, Planning, Community and Local Government.

Circular Letter PL 2/2017:

The European Commission originally issued an infringement notice against Ireland in 2007 in relation to the “local needs criteria” in the 2005 Guidelines. This infringement notice was subsequently deferred pending the outcome of an infringement case taken against Belgium, now referred to as the Flemish Decree case and on which the European Court of Justice (ECJ) delivered its Judgement in 2013. In this Judgement, the ECJ ruled that the Flemish Decree constituted an unjustified restriction on fundamental freedoms under the Treaty on the Functioning of the European Union (the EU Treaty), in particular that it breached article 43 of the EU Treaty on the freedom of movement of citizens.

Further to the ECJ Judgement in the Flemish Decree case, the European Commission re-engaged with the Department regarding the 2007 infringement notice and its previously expressed concerns in relation to the “local needs criteria” in the 2005 Guidelines, particularly requirements incorporated in local authority development plans further to these criteria that persons wishing to apply for planning permission for a house in designated rural areas should fulfil a prior minimum residency requirement in the rural area in question or have familial ties to that specific rural area. Requirements that planning applicants have occupational or employment related ties to the rural area in question is not considered problematical in this context as such criteria are non-discriminatory between locals and non-locals.

Planning authorities were advised that the existing 2005 Guidelines remain in place and that pending the conclusion of the two national policy review processes (the Working Group deliberations and the publication of the NPF) and advised otherwise by the Department, they should defer amending their rural housing policy/ local housing need criteria in existing statutory development plans either by way of the cyclical review or variation procedures. This was considered prudent in order to avoid planning authorities adopting different approaches on the matter in the interim.

Sustainable Rural Housing Guidelines (2005):

The overarching aim of the Guidelines is to ensure that people who are part of rural community should be facilitated by the planning system in all rural areas, including those under strong urban based pressures.

To ensure that the needs of rural communities are identified in the development plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities is accommodated.

National Planning Framework – Project Ireland 2040, Department of Housing, Planning and Local Government (2018)

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 commute catchment of cities and large towns and centres of employment. This will be subject to siting and design considerations.

In all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitely demonstrate that the proposed development will not have an adverse impact on water quality and requirements set out in EU and national legislation and guidance documents.

Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009

Sets out guidance on the design, operation and maintenance of on site wastewater treatment systems for single houses.

5.3 Natural Heritage Designations

There are no European designated sites within the immediate vicinity of the site.

The nearest designated site is the Carriggower Bog SAC (site code 000716) c. 1.8km north west of the site.

5.4 EIA Screening

Having regard to the nature and scale the development which consists of single house in an unserviced rural location, 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 grounds of appeal seek to address the Planning Authority's reasons for refusal and can be summarised as follows:

- The applicant is involved on a fulltime basis in organic farming. He operates a business from the site (Easthill Organic Farm) and has submitted accounts and other documentation to support his argument that his business is a viable economic entity.
- The applicant is from the rural area and is currently living in rented accommodation adjoining the site, but that it is not suitable for his family's needs. He requires to live on site as his crops require 24hour surveillance for both security reasons and in the event of unforeseen circumstances.
- He is of the view that he clearly complies with the Council's rural housing policy and that his case is under more scrutiny than others before the planning authority.
- The grounds of appeal refer to a number of issues the applicant has with the assessment of his applications to date by both the Local Authority and An Board Pleanála.

Documentation submitted includes:

- Information supporting the applicant's compliance with the adopted rural housing policy, including details of places of residence, employment, schools attended, details relating to his children's attendance at preschool, sports clubs amongst other documentation
- Letter from Teagasc.
- Supporting documentation relating to his business affairs, including accounts, farm management plans, letter from other organic farmers, articles amongst other documentation.

6.2. Planning Authority Response

The Planning Authority refute various criticisms made by the applicant. The Planning Authority carried out a full assessment of all relevant planning matters and also had regard to the precedent of the previous Boards decisions.

The question of the need to live on a 5 acre farm because it is an Organic Farm can be assessed by a Planner using their own judgement and there is no requirement for them to be an 'expert' in organic farming nor should they take the opinion of Teagasc as 100% correct where it relates to non-technical/agricultural matters (i.e security). The opinion of Teagasc in relation to live on the farm is based on security needs, which could be argued for any enterprise.

6.3. Observations

One observation was received from Anne & Robert Miller, Glendarragh Newtownmountkennedy, Co. Wicklow and is summarised as follows:

- There has been no change in circumstances to warrant a grant of permission for a house at this location. There is an extensive history of refusal on this site/holding. The reasons for refusal remain and have not been overcome by the applicant.
- Random rural housing contravenes the protection of the natural environment.
- Newtownmountkennedy Local Area Plan addresses the housing requirement for the area.
- For nine years the applicant has attended the plot without residing at it, there are numerous properties for sale in the vicinity that would address his housing need.
- The applicant has recently relocated outside the area.
- The size of the plot and information on file would indicate there is no sustainable business over the long term

7.0 Assessment

I note that the Board has taken decisions on one-off houses on this site on four occasions. With regard to the Board's most recent decision (ABP Ref. PL 27.249099) in 2017, the issues relating to waste water treatment, traffic safety and visual impact within a high amenity area were not found to be issues that merited a refusal of permission for a house on this site. The Board refused permission for reason relating to non compliance with the adopted rural housing policy and given the size of the plot the impact the development would have on balanced rural development. For this reason, I am focusing solely on the issue that has been consistently a primary planning issue of concern for the Board, namely the applicant's rural housing need. The issue of appropriate assessment also needs to be addressed.

7.1 Compliance with Rural Housing Policy

7.1.1 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.

7.1.2 Furthermore, under the current County Development Plan, objective 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."* Therefore, in my view, the applicant needs to demonstrate a social or economic need to live in this area, in accordance with the requirements set out in objective HD23 of the current Plan.

7.1.3 The applicant is of the view that, based on his residency in rented accommodation, his organic farming enterprise that operates from the landholding (c.1.66hectares with an additional c.1.1 hectares leased)), his links

to Lowlands, Killadreenan, where the Owens family home is located. His shared ownership of the landholding with his father. That he qualifies for a house on the site. I note that the application and ground of appeal include extensive amounts of information to assist in demonstrating that the applicant complies with the adopted rural housing policy and address the Boards previous concerns.

7.1.4 The Board determined under PL.27.249099 that having regard to the small size of the farming plot, compounded by the subsequent significant reduction in the area left for farming purposes after the omission of the site for the proposed house, it is considered that the proposed development, by the precedent which the grant of permission for it would set for other relevant development, would adversely affect the balanced, orderly development of rural areas in the vicinity of Newtownmountkennedy. The Inspector at the time noted that the precedent that would arise for an extensive array of different farming enterprises on small plots would be all too evident and significantly alter the landscape. In this instance it was argued that a precedent could not be ignored and could be utilised to support many other applications for one-off houses in the countryside in this area.

7.1.5 In my opinion, notwithstanding the volume of information submitted, the issues remain the same as assessed in 2017 and that is whether the applicant complies with the rural housing policy and whether the use of the landholding as an organic farm constitutes a sustainable economic farming enterprise. The crux of the matter is whether or not that applicant has clearly demonstrated and economic or social need for a rural house at this location on the basis of the criteria set out under Objective HD23. The applicant is from a Lowlands, Killadreenan, c.3.18km from the site on the south eastern side of Newtownmountkennedy and located within the development boundary of Newtownmountkennedy as per the current Development Plan. The size of the landholding in the applicants family ownership is c.1.66hectares (of which 0.2hectares is the site for the house), with a lease on the adjoining 'The Paddock' and 'Walled Garden' (c.1.1hectares). The applicant current resides in rented accommodation adjoining the site.

7.1.6 The Board has adjudicated on a proposal for a one-off house on these lands on four occasions since 2011 and on each occasion it has been determined that the applicant does not have a rural housing need to reside at this location. Having examined the previous applications before the Board and the information contained on file I put it to the Board that the actual circumstances of the applicant have not altered. The facts before the Board are: The applicant owns a small plot that he works as a small organic farm enterprise. He is not a native of this location but has links to Lowlands, Killadreenan on other side of Newtownmountkennedy. He currently resides in rented accommodation at The Mews, Easthill which he has stated is not suitable for his family and their needs. This does not determine that the applicant has formed any entitlement to be allowed to seek permission for a house away from Newtownmountkennedy, a nearby town that would service his residential needs, while continuing to allow him to service his plot. Furthermore, I note the argument that he is required to reside near his parents as their health is failing. The site is c. 3.2km from his parents' house and is not considered adjacent to same.

7.1.7 Therefore I consider, based on the information on file, the applicant has not demonstrated compliance with the requirements set out under Objective HD23 for a house in the countryside. The application, therefore, does not have a defined social or economic need to live in this area of strong urban influence and this the development would be contrary to Objective 19 of the National Planning Framework, would be contrary to the guidance set out in the Sustainable Rural Housing Guidelines and contrary to Objective HD1 and HD23 of the current Wicklow County Development Plan.

7.1.8 I, therefore, consider that grounds of appeal should not be upheld and permission refused.

7.2 Appropriate Assessment

7.2.1 The nearest designated site is the Carriggower Bog SAC (site code 000716) c. 1.8km north west of the site.

7.2.2 Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude, 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 a European Site.

8.0 Recommendation

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

9.0 Reasons and Considerations

1. Having regard to the location of the site within an area under urban influence as identified 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 a local need in accordance with the Wicklow County Development Plan 2016-2022, and to National Policy Objective 19 of the National Planning Framework, adopted by the Government, in relation to rural areas under urban influence, such as in the current case, which states that it is policy to “facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area...having regard to the viability of smaller towns and rural settlements”, it is considered that the applicant has not demonstrated that he comes within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location in the open countryside, and that he has not demonstrated an economic or social need to live in this rural area in accordance with national policy and Wicklow County Development Plan, 2016-2022, Furthermore, the Board is not satisfied that the applicant’s housing needs could not be satisfactorily met in an established smaller town or village/settlement centre. The proposed development, in the absence of any definable or

demonstrable 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, contravene the Ministerial Guidelines, be contrary to national policy and conflict with the provisions of the current Wicklow County Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Dáire McDevitt

Planning Inspector
11th September 2019