



An  
Bord  
Pleanála

## Inspector's Report ABP 304982-19.

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<b>Development</b>	Construction of a dwelling, septic tank and percolation area.
<b>Location</b>	Blakestown, Hollywood, Co. Wicklow.
<b>Planning Authority</b>	Wicklow Co. Council
<b>Planning Authority Reg. Ref.</b>	19115
<b>Applicant</b>	Claire Burke
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	Irena & Gerry Twomey
<b>Observers</b>	None
<b>Date of Site Inspection</b>	18/11/19
<b>Inspector</b>	Siobhan Carroll

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## **1.0 Site Location and Description**

- 1.1. The subject site is located in the townland of Blakestown, which is located to the north-west of Co. Wicklow. The village of Hollywood lies 2.4km to the south of the site. Ballymore Eustace is situated circa 2.8km to the north-west and the town of Blessington is approximately 5.7km to the north.
- 1.2. The N81 national secondary road is 240m west of the site. Pollaphuca reservoir lies to the 600m to the north-west. There is a cluster of circa twenty dwellings along the local road to the north and north-east of the site.
- 1.3. The appeal site is greenfield in character with existing trees and hedgerow located along the roadside site boundary. The site lies between the 150m and 100m contour and it slopes gradually to the west. To the north there is a single storey dwelling. Agricultural lands are located to the south.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises a single storey dwelling with a mezzanine floor a floor area of 243.46sq. metres on a site is 0.995ha. The house design is contemporary. The height of house ranges between 5m and 6.5m. A septic tank waste water treatment system is proposed with connection to a group water supply.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission was granted subject to 13 no. conditions. Condition no. 3 requires the applicant to enter into an occupancy agreement.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

Report dated 25<sup>th</sup> of March 2019 – It was concluded that the applicant did not overcome the reason for refusal issued by the Board under ABP 300887-18 in

respect of compliance with rural housing policy and a refusal of permission was recommended on that basis.

Report dated 10<sup>th</sup> of July 2019 – The applicant submitted unsolicited further information which the Planning Authority had regard to. It was concluded that the applicant had made a clear case that based on current circumstances, she is required to be involved in the farming of the lands. The lands in family ownership are c. 40 hectares and based on the applicant's father's current status it would not be feasible that he would be able to undertake such an operation without help. The applicant is involved in part-time work however it would represent a substantial part of her day to day life. This combined with strong ties to the area was considered sufficient evidence of both social and economic need to live in the area. Permission was recommended.

### 3.2.2. Other Technical Reports

Municipal District Engineer – No objection subject to condition

Environmental Health Officer – No objection subject to condition

Environment Section – Concern raised in relation to connection to the Blakestown Group Water Scheme.

### 3.3. **Prescribed Bodies**

Transportation Infrastructure Ireland – The Authority will rely on the Planning Authority to abide by official policy in relation to development on/affecting national roads, as outlined in the DoELG Spatial Planning and National Roads Guidelines for Planning Authorities (2012)

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

- 3.4.1. The Planning Authority received one observation/submission in relation to the application. The issues raised are similar to those set out in the third party appeal.

## 4.0 **Planning History**

PA Reg. Ref 17/4 & ABP 300887-18 – Permission was granted by the Planning Authority and refused on appeal for the construction of a single storey dwelling with

small mezzanine space, carport, shed, septic tank and percolation area, recessed entrance and all associated site works. Permission was refused for two reasons.

The first reason referred to the conclusion that the applicant did not come within the scope of the housing need criteria for a dwelling at this location as set out in the “Sustainable Rural Housing Guidelines for Planning Authorities” and in the Development Plan and that 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.

The second refusal reason referred to the results of the Archaeological Impact Assessment which identified significant archaeological remains within the proposed development site and the Board considered that the proposed development would interfere with features of significant archaeological interest, the disturbance/removal of which would be contrary to the proper planning and sustainable development of the area.

## **5.0 Policy Context**

### **5.1. Wicklow County Development Plan 2016-2022**

5.1.1. 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.

5.1.2. 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.

## **5.2. 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.

### **5.3. Sustainable Rural Housing Development Guidelines**

- 5.3.1. The guidelines require a distinction to be made between ‘Urban Generated’ and ‘Rural Generated’ housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those with proximity to the immediate environs or close commuting catchment of large cities and towns and Stronger Rural Areas which are defined as areas where population levels are generally stable within a well-developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong agricultural economic base and the level of individual housing development activity in these areas tends to be relatively low and confined to certain areas. Examples are given of the types of circumstances for which ‘Rural Generated Housing Need’ might apply. These include ‘persons who are an intrinsic part of the rural community’ and ‘persons working full time or part time in rural areas’.

#### 5.4. **National Planning Framework – Project Ireland 2040, DoHP&LG 2018**

5.4.1. National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e. the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations. In rural areas elsewhere, the provision of single housing in the countryside will be subject to siting and design considerations, having regard to the viability of smaller towns and rural settlements

#### 5.5. **Natural Heritage Designations**

The nearest Natura 2000 sites are;

- The Poulaphouca Reservoir Special Protection Area (Site Code: 004063), located c. 600m north-east of the site.
- The Wicklow Mountains Special Area of Conservation (Site Code: 002122), located c. 6.8km south-east of the site.
- The Wicklow Mountains Special Protection Area (Site Code: 004040), located c. 6.8km south-east of the site.
- The Slaney River Valley Special Area of Conservation (Site Code: 000781), located c. 11.9km south-west of the site.
- The Red Bog, Kildare Special Area of Conservation (Site Code: 000397), located c. 9.4km north-east of the site.

#### 5.6. **EIA Screening**

5.6.1. 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

A third party appeal was lodged by Hughes Planning and Development Consultants on behalf of the appellants Irena and Gerry Twomey. The issues raised concern the following;

- The grounds of appeal relate to the appellant's contention that the applicant does not have sufficient local housing need.
- The previous refusal of planning permission to applicant for a dwelling on a site to the north under PA Ref: 17/4 and ABP 300887-18 is cited. The first reason for refusal issued by the Board stated that the applicant did not have a locally based housing need. The second reason related to the results of the Archaeological Impact Assessment.
- The site falls within categories 9 and 10 of the Economic Settlement Hierarchy, that it is a rural location outside the development boundary of any settlement.

It is considered that the following Development Plan Objectives are relevant in respect of the proposed development.

Objective 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.

Objective 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).

HD21 – To implement the following housing occupancy controls for each Level, as set out in the Settlement Strategy.

- It is submitted that the applicant does not have a sufficient local housing need and that the proposed dwelling is an example of urban generated rural housing.
- Objective 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.
- It is noted that the applicant claims to qualify for a rural dwelling under circumstances no. 1 and no. 2. In requiring the applicants to have resided in the rural area or have familial ties in the rural area, this is considered to be unjustified as it imposes restrictions on the fundamental freedoms under the Treaty on the functioning of the European Union (the EU Treaty).
  - However, as per ‘Circular Letter PL2/2017 – Sustainable Rural Housing Guidelines for Planning Authorities 2005 – Local needs Criteria in Development Plans distributed in May 2017; it is acceptable for an applicant to demonstrate occupational or employment ties to the rural area in order to secure planning permission for a rural dwelling. It is considered that the applicant has failed to demonstrate an economic need to reside on the application site and permission for the proposed development should be refused.

- The appellants note the Board have previously disregarded policies relating to one-off housing which give priority to those seeking permission based on having resided in the rural area and having familial ties.
- As per the provisions of Circular Letter PL2/2017 consideration of occupational and employment ties are not problematic. The appellants contend that the applicant does not have an economic need to reside at the application site as she owns a dwelling in Naas, Co. Kildare. They consider that the location provides the applicant with access to her place of employment and the family home.
- Reference is made to the report of the Planning Inspector in respect of ABP 300887-18,

“Whilst I would accept that the applicant would appear to have previously spent a substantial period of her life residing in this rural area and thus could be considered to form an ‘intrinsic part of the rural community’, it is of relevance to note that the Guidelines aim to facilitate persons who building their ‘first homes’. In this regard I would have reservations that as the applicant owns her current place of residence in Naas town she is not developing her ‘first home’ and does not have a ‘housing need’. By way of further consideration, it is appropriate to consider whether the applicant’s housing need is ‘urban’ or ‘rural’ generated and in this respect it is of relevance to note that her principle place of employment is in Naas town and thus it would seem reasonable to suggest that the subject proposal would give rise to a notable daily commuting distance, although I would accept that this is countered somewhat by her role in assisting her wider family circle. Therefore, on the basis of the foregoing, whilst the applicant would appear to satisfy the eligibility criteria set out in Objective No. HD 23 of the Wicklow County Development Plan, in my opinion, she does not have a sufficient ‘definable social or economic need’ which would warrant the development of a further dwelling house in this ‘area under strong urban influence’ as defined by the ‘Sustainable Rural Housing, Guidelines for Planning Authorities, 2005’.

- The appellants submit that the applicant has failed to overcome the previous reason for refusal and has not had regard to the commentary from the previous application.
- An application PA Ref: 17/170 and the subsequent appeal PL27.249099 for a dwelling and on-site wastewater treatment system at Easthill farm, Newtownmountkennedy, Co. Wicklow is also cited. Permission was granted by Wicklow Co. Council. The applicant lived within 5km of the family home and was engaged in farming activities. The Board refused permission for the following 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.

- In assessing that appeal the Board noted that the applicant was a native resident of the rural area, however, that this does not provide a reason to construct a dwelling at this location specifically stating the following stated in the Inspectors report.
- “This does not determine that the has formed any entitlement to be allowed to seek permission for a house away from Newtownmountkenedy, a nearby town that would service his residential needs, while continuing to allow him to service his plot.”
- This decision would suggest that planning permission should not be granted for a house located outside of a nearby town in order to serve the applicant's needs. It is argued this should inform the decision of the Board and particularly having regard to the fact that the applicant owns and resides in a dwelling in a nearby town.
- The issue of proposed water supply is also raised in the grounds of appeal. The report of the Planning Officer dated 25<sup>th</sup> of March 2019 referred to the internal from Environmental Services Section. It stated that the proposed water supply is unacceptable. It is submitted that the concerns of the Environmental Services Section have not been considered by the Planner who recommended a decision to grant permission.
- In conclusion, the proposed development is not in the interests of the proper planning and sustainable development of the area. The appellants request that the Board have regard to issues raised in the appeal and overturn the decision of the Planning Authority.

## 6.2. Applicant Response

A response to the third party appeal has been submitted by the applicant Claire Burke. The issues raised concern the following;

- In relation to the third party appeal it is noted that no issues were raised in relation to visual impact, impact on residential amenities, traffic safety or public health.

- The appeal refers to an appeal case PL27.249099. It is stated in the cited appeal that the applicant in that case was proposing to build 3.1km from where they originally lived. The applicant submits that the site currently under consideration is 20m from her family home. In appeal case PL27.249099 the applicant was farming a 1.66 hectares land holding. The applicant states her family's farm holding is 40 hectares. She submits that due to her parents current health situation which is detailed in her submission that this demonstrates her definable social and economic need to work on the farm.
- It is stated that Wicklow Co. Council on two occasions have granted the applicant Claire Burke permission for the construction of a dwelling beside her parent's home. The Planning Authority determined that the applicant had a definable social and economic need.
- The applicant submits that she would qualify under four out of the sixteen categories as set out under policy HD23 of the Wicklow County Development Plan 2016-2022.
  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.

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.
- The applicant submits that she was born and raised on the family farm in Blakestown and lived there for 28 years and then lived there part-time. She submits that due to her family's ill health that she requires to help and support her parents running the family farm.
  - While the applicant states that her place of employment is outside the environs of Blakestown, however it is necessary that she live beside her parents and sister to support them. The site is being gifted to the applicant by her father and the family.
  - The applicant notes that Policy HD24 applies and she agrees to entering into a Section 47 agreement.
  - Reference is made to two decisions of Wicklow County Council to grant permission for rural houses. Under PA ref: 18/802 permission was granted for a dwelling at Vallemount. It is noted that the applicants place of employment was Tallaght. Under PA ref: 18/1238 permission was granted for a dwelling at Easthill Newtownmountkennedy. It is noted the appeal response that the applicant in that case had a house in Dublin.
  - The applicant states that having lived for 28 years full time at Blakestown that she is an intrinsic part of the rural community. She submits that she has not previously built a dwelling near her family home and therefore considers that she would comply with the provisions of the 'Sustainable Rural Housing Guidelines, 2005'.
  - In relation to Project Ireland 2040, Objective 19 states;  
"In rural areas under urban influence, 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 and siting and design criteria for rural

housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.”

- The objective refers to demonstrable economic or social need. The applicant submits that she has a demonstrable social and economic need based on her parents medical conditions that she requires to help work and manage the farm.
- Regarding the issue of water supply. The applicant notes the concerns from the Environmental Services Section. The applicant's parents have their water supply from the same group water scheme. The boil water notice was temporary. The most recent test results provided by the trustees indicated that the water quality was free from contamination. The other options is to drill a private well on site should the Board determine this appropriate. Under the previous application PA Ref: 17/4 and ABP 300887-18 the Environmental Services Section had no concerns in relation to the same water supply. The trustees of the group water scheme have provided their consent to connect to the group scheme.
- The applicant requests that the Board uphold the decision of the Planning Authority to grant permission for the proposed development.
- The applicant submits that her current housing situation is unsustainable and that she requires to live in Blakestown permanently. The applicant has engaged the services of an estate agent to sell her two-bedroom terrace house in Naas, Co. Kildare. She is currently seeking a place to rent close to her parent's home in Blakestown, Co. Wicklow and if a suitable place is not available she states then she and her family would have to move into her parents home and live with them and her sister.
- In conclusion the applicant submits that she has an essential need to build her first family home on the family farm at Blakestown.

### 6.3. Planning Authority Response

- None received



## 7.0 Assessment

Having regard to the above, and having inspected the site and reviewed all documents on file, the following is my assessment of this case. Issues to be considered in the assessment of this case are as follows:

- Compliance with Rural Housing Policy
- Siting and Design
- Services
- Appropriate Assessment

### 7.1. Compliance with Rural Housing Policy

- 7.1.1. With regard to compliance with rural housing policy the proposal should be in accordance with the provisions of the Sustainable Rural Housing Guidelines and the provisions of the Wicklow County Council Development Plan 2016 – 2022, as it relates to settlement in rural areas. The appeal site is located in an area identified as an Area Under Strong Urban Influence on Map No.1 – Indicative Outline of NSS Rural Area Types in the Sustainable Rural Housing Guidelines. These areas are typically close to larger urban centres which are under pressure for housing in the countryside and have road networks which are heavily trafficked. The guidelines suggest that certain classes of persons e.g. those occupied full time or part-time in agriculture, forestry, those who are an intrinsic part of the rural community, sons/daughters of farmers and returning emigrants, may be considered for housing in the countryside.
- 7.1.2. The National Planning Framework ('Project Ireland 2040: Building Ireland's Future') states that it will be necessary for applicants to demonstrate 'a functional economic or social requirement for housing need' (with National Policy Objective No. 19 stating that the provision of single housing in rural areas under urban influence is to be based on the core consideration of a demonstrable economic or social need to live in a rural area and the siting and design criteria for rural housing contained in statutory

guidelines and plans, having regard to the viability of smaller towns and rural settlements).

- 7.1.3. The subject site of the proposed development is located on rural land outside a defined settlement. Objective HD1 of the County Development Plan restricts rural dwellings to those with a housing, social or economic need to live in the countryside. Therefore, the applicant is required 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.
- 7.1.4. The applicant is of the view that she would qualify based on four out of the sixteen criteria of Objective HD23. She submits that she should be considered under criteria no.1, 2, 3 and 9 on the basis that she is a permanent native resident seeking to build a house for her own use, that she is a daughter of a permanent native resident of a rural area with a social and economic need to live in the area and that she is the 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.
- 7.1.5. I note that the application and first party appeal response includes extensive amounts of information to assist in demonstrating that the applicant complies with rural housing policy.
- 7.1.6. The applicant Claire Burke is the daughter of the landowner Mr. Patrick Burke. Her family home is located immediately to the north of the appeal site. Ms. Burke states in her submissions that she resided at the family home at Blakestown for 28 years until 2008. In 2008, Ms. Burke purchased her home in Naas, Co. Kildare which is close to her place of work at Naas, General Hospital. She has resided there for the past 11 years. The applicant submits that she has a definable social and economic need to build a house and live at Blakestown based on her requirement to assist her parents running the 40 hectare family farm, having regard to the current health circumstances of her family which are detailed in submissions with the application and appeal response.
- 7.1.7. The matter of compliance with rural housing policy was assessed by the Inspector in the previous third party appeal made against a grant of permission to the applicant

Claire Burke for a dwelling on a site to the north-west of the under PA Ref. 17/4 & ABP 300887-18. The Inspector in that appeal considered that while the applicant would appear to have spent a substantial period of her life residing in this rural area and therefore could be considered to form an 'intrinsic part of the rural community', however he noted that the 'Sustainable Rural Housing Guidelines for Planning Authorities' aim to facilitate persons who are building their first home. Therefore, he concluded that as the applicant owned a home in Naas town that she did not have a housing need and that her principle place of employment is in Naas town and that the location of the dwelling at Blakestown would generate a notable daily commute. The Inspector did note that the applicant would be assisting her family locally and that it would therefore counter some of the commuting to the area. The Inspector concluded that while it would appear that the applicant satisfied the eligibility criteria set out in Objective HD23 of the Development Plan, however that she did not have a sufficient definable social or economic need. The Board in their determination of the appeal agreed with the assessment and recommendation of the Inspector and refused permission on the applicant did not come within the scope of the housing need criteria for a dwelling at this location as set out in the 'Sustainable Rural Housing Guidelines for Planning Authorities'.

- 7.1.8. In my opinion, notwithstanding the information submitted with the application and appeal response, the issues remain the same as assessed by the Board under ABP 300887-18 and that is whether the applicant complies with the rural housing policy and whether they have a definable economic or social need for a rural house at this location. The applicant is a permanent native resident of Blakestown as she was born and raised at her family home there and she lived there for 28 years. She is also the daughter of a permanent native resident and owner of the family's farm. In relation to the requirement to demonstrate a definable social or economic need I would concur with the assessment of the Inspector in respect of ABP 300887-18 whereby he determined that while the applicant would appear to have previously spent a substantial period of her life residing in this rural area and therefore could be considered an 'intrinsic part of the rural community' the determining factor in this case is whether the applicant has a definable social or economic housing need. The Sustainable Rural Housing Guidelines in the section 3.2.3 which refers to 'persons who are an intrinsic part of the rural community' specifically refers to persons who

are building their first home. The applicant owns a home in Naas town and therefore is clearly not seeking to build a first home. In respect of a definable economic or social need, the applicant's place of full-time employment is in Naas town and therefore not in the rural area at Blakestown. While I note that the applicant states that she requires to build a house at this rural location to assist her parents on the family farm, this is only on a part-time basis and I also note that the farm holding contains the existing family home located to the north of the appeal site.

- 7.1.9. Furthermore, I would also note the provisions of Circular Letter PL 2/2017: Sustainable Rural Housing Guidelines for Planning Authorities 2005 – Local Needs Criteria in Development Plans, whereby Planning Authorities are advised by the Department will provide revised guidance on rural generated housing following a review. The Circular Letter advises that having regard to the ECJ Judgement in the Flemish Decree case, that 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. Therefore, I would consider that the definable economic or social need is the primary consideration in the context of current rural housing policy.
- 7.1.10. Therefore, based on the documentation submitted as part of the application and appeal response, including the location of the applicant's employment at Naas, Co. Kildare, that the applicant owns a home in Naas and the location of existing dwelling on the 40 hectare family farmholding, I am not satisfied that the applicant has demonstrated that they come within the scope of the rural-generated housing need criteria for a house in this rural location, having regard to the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government in April 2005, wherein it is indicated that it is policy to distinguish between rural-generated housing need and urban-generated housing need in Areas under Strong Urban Influence (such as applies in this instance) and therefore it is considered that the proposed development would represent urban-generated rural housing.
- 7.1.11. In conclusion, I consider, based on the information on file, the applicant has not demonstrated 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 Objective HD1 and HD23 of the current Wicklow County Development Plan.

## 7.2. **Siting and design**

- 7.2.1. The applicant is seeking permission for a single storey house with a mezzanine area and with an overall gfa of c. 243.46sq m. The house design features three sections and the ridge height of dwelling ranges between 5m and 6.5m. The proposed house design features a pitched roof with a slate/tile finish and the lower sections with a zinc coated metal roof. The houses in the immediate vicinity are a mix of single storey and two-storey dormer. The proposed dwelling would be sited relatively close to the public road with a setback of circa 24m at the close point. It is set marginally forward of the front building line of the neighbouring dwelling to the north.
- 7.2.2. As indicated on the Site Layout Plan additional tree and hedge planting is proposed along the northern and southern site boundaries. New planting is also proposed to the west of the dwelling. The proposed finished floor level within the three sections of the dwelling are 180.80, 180.91 and 181.25. Therefore, the finished floor level would be circa 2.6m below the road level to the east.
- 7.2.3. I do not consider that the site is prominent and exposed vis a vis the N81 to the west. The proposed dwelling would be primarily visible from close range views along the local road in the vicinity. Additional landscaping is proposed along the southern and western boundary which will screen the proposed dwelling. I consider that the proposed siting of the house would be acceptable, as it uses the existing roadside and field boundaries. Accordingly, having regard to the foregoing, and in light of the site context, including the screening offered by the surrounding landscape and other features, I am satisfied that the proposal will not unduly impact on the visual amenity of this rural area.

## 7.3. **Services**

### Effluent treatment

- 7.3.1. It is proposed to install a septic tank wastewater treatment system and percolation area. It is proposed to locate the septic tank circa 7.4m to the west of the dwelling and the percolation is located on the layout plan circa 11m to the west of the dwelling. Table 6.1 of the EPA Manual – Treatment Systems for Single Houses sets out the minimum separation distances, the minimum distance from a watercourse or

stream to a percolation area is stated as 10m and the minimum distance from a road to the percolation area is stated as 4m. There is no watercourse/stream located within 250m of the proposed percolation area. The percolation area is located a minimum distance of circa 55m from the public road. The trial hole was dug to a depth of 2.30m and no bedrock or water table was encountered up to the depth of the trial hole during the site testing.

- 7.3.2. The site suitability assessment indicates that a T value of 3 was recorded on site. A T value of greater than or equal to 3 and less than or equal to 50, means that the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater. P tests were also carried out and a P value of 15 was recorded. Table 6.3 of the EPA Manual advises that where the P value is greater than 3 and less than 75 then the site is suitable for a secondary treatment system with polishing filter at ground surface or overground.
- 7.3.3. The site is located within an area classified by GSI as having a poorly productive groundwater aquifer except for local zones, however the vulnerability rating of the aquifer is high. The groundwater protection response is R1. As per the EPA manual, in a R1 protection zone, on site effluent treatment would be acceptable subject to normal good practice.
- 7.3.4. Having regard to the information submitted including the site characterisation report and the report of the Environmental Health Officer, I would consider that site is suitable for the proposed septic tank effluent treatment system subject to the system being constructed and maintained in accordance with the details submitted.

#### Water supply

- 7.3.5. It is proposed to connect to the Blakestown Brittonstown Group Water Scheme. A letter signed by the Trustees states that there is capacity to provide water supply to serve the proposed dwelling and that the water quality of the Group Water Scheme is monitored regularly in accordance with EU guidelines.
- 7.3.6. The matter of the water quality from the Blakestown Brittonstown Group Water Scheme was raised in the appeal, particularly with reference to the report from the Environmental Services Section of the Council. The report from Environmental Services Section raised concern in relation to the water quality. In response to the matter the applicant confirmed in the appeal submission that her parent's home is

served by the group water scheme and there was previously a temporary boil water notice. A copy of the report on the water quality following testing in April 2019 confirms that the water quality complies with the microbiological and chemical requirements of S.I. No. 122 of 2014. Therefore, having regard to the details provide I am satisfied with the proposal to connect to the Blakestown Brittonstown Group Water Scheme.

**7.4. Appropriate Assessment**

7.4.1. The site is situated circa 600m Poulaphouca Reservoir Special Protection Area (Site Code: 004063). In relation to determining the effects of a development on a European site are likely and whether or not the effects are significant this is done in light of the Conservation Objectives for the site. It should also be determined if there are cumulative effects with other projects.

7.4.2. The current conservation objectives for Poulaphouca Reservoir SPA (Site Code: 004063) is to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:

<b>Bird Code</b>	<b>Common Name</b>	<b>Scientific Name</b>
A043	Greylag Goose	<i>Anser anser</i>
A183	Lesser Black-backed Gull	<i>Larus fuscus</i>

7.4.3. Accordingly, the possible impacts of the proposal on the conservation status of the designated sites include loss/reduction of habitat, disturbance of key species, habitat or species fragmentation, reduced species density and decrease in water quality and quantity.

7.4.4. I note that the appeal site is located outside a European site and therefore the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of any Natura 2000 site. Having regard to the Source-Pathway-Receptor model, I note that the site is not connected to any culverts or streams and therefore there is no direct pathway from the site via surface water flows to Poulaphouca Reservoir SPA (Site Code: 004063). Accordingly, I do not consider there is any potential “source-pathway” to connect the appeal site with SPA or any other European Designated Site.

7.5. 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. 004063, or any other European sites, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## 8.0 Recommendation

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

## 9.0 Reasons and Considerations

1. Having regard to the location of the site within an area under strong 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 the 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 on the basis of the documentation submitted with the planning application and the appeal, including the applicant's current housing circumstances that the applicant has not demonstrated that she comes within the scope of the housing need criteria as set out in the Guidelines or in accordance with the County Development Plan for a house at this location in the open countryside, and that she has not demonstrated an economic or social need to live in this rural area in accordance with national policy and the current County Development Plan. The proposed development, in the absence of any



definable or demonstrable need for the house in this rural area, 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 these Ministerial Guidelines, to the provisions of County Development Plan, to national policy, and contrary to the proper planning and sustainable development of the area.

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Siobhan Carroll  
Planning Inspector

4<sup>th</sup> of December 2019