



An
Bord
Pleanála

Inspector's Report

ABP-305187-19

Development	House
Location	Castlekevin, Annamoe, Roundwood, Co. Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	181359
Applicant(s)	John Belton
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Ger Mullins
Date of Site Inspection	24 th October 2019
Inspector	Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.401 hectares, is located in the townland of Castlekevin approximately 4km to the south east of Annamoe and approximately 6.4km south of Roundwood. The appeal site is on the eastern side of the L5587, a lower category county road, which is 3m m in width. The appeal site is made up of two fields with an existing agricultural entrance off the public road. Adjoining lands to the east and south are agricultural in nature with the nearest dwelling located to the south. There is a partially built dwelling located on a site to the north. There are existing hedgerow boundaries defining the field areas the site is taken from.

2.0 Proposed Development

2.1. Permission is sought for the construction of a two-storey dwelling, garage, new vehicular entrance, new laneway, installation of a wastewater treatment system. The proposed dwelling has a floor area of 199sqm and a ridge height of 7.481m. The dwelling features a pitched roof with external finishes of rendered walls and a natural slate roof. The detached garage has a floor area of 50.4sqm and a ridge height of 4.588m.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to the following conditions. Of note is the following condition...

Condition no. 2: Revised site layout plan omitting the entrance driveway on the south end of the site and provision of a shared entrance with the entrance permitted under ref no. 15/1011.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (01/01/19): The proposal was considered to be contrary Development Plan settlement policy, constitute a traffic hazard and be prejudicial to public health. Refusal was recommended.

Planning report (19/07/19): The unsolicited further information and revised entrance arrangement were assessed with it still considered the applicant did not comply with rural housing policy. Refusal was recommended. This recommendation was overruled and a grant of permission was recommended subject to the conditions outlined above.

3.2.2. Other Technical Reports

Environmental Health Officer (18/12/18): Further information required including re-opening of trail holed to verify subsoil conditions.

Environmental Health Officer (18/12/18): No objection.

3.3. Prescribed Bodies

3.3.1 Inland Fisheries (14/01/19): No objection subject to conditions.

3.4. Third Party Observations

3.4.1 A submission was made by Ger Mullins, Castlekevin Lane, Annamoe, Co. Wicklow.

The issues raised cab summarised as follows...

- Issues with compliance with rural housing policy, adverse impact on rural character/visual amenity, public health concerns in regards to drainage and traffic safety concerns.

4.0 Planning History

4.1 No planning history.

Adjoining site...

15/1011: Permission granted for a dwelling, garage, wastewater treatment system and associated site works.

5.0 Policy Context

5.1. Development Plan

5.1.1 The relevant Development Plan is the 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.

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

5.3.1 None.

5.4 EIA Screening

5.4.1 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

6.1.1 A third party appeal has been lodged by BPS Consultants on behalf of Ger Mullins, Castlekevin Lane, Annamoe, Co. Wicklow. The grounds of appeal are as follows...

- The applicant does not comply with the Sustainable Rural Housing Guidelines for Planning Authorities with the site located within an area under strong urban influence. The applicant does not comply with criteria for rural housing set down under the County Development Plan and the applicant has failed to provide sufficient evidence that he qualifies for a rural house at this location.
- It is noted that there would be more suitable/appropriate sites on the landholding the site is taken from with the issue of the landlocked nature of

the site and the impact of such on the usability of lands adjacent the site raised.

- It is noted a further new entrance should not be permitted with three separate entrances in place to the landholding. The removal of vegetation to facilitate sightlines at the new entrance would have an adverse impact on rural character. The appellant notes that permitted development may provide for the applicant seeking a new entrance in the future despite proposal for a shared entrance. The appellant questions whether adequate sightlines can be achieved at this location.
- It is noted the design and scale of the dwelling would have an adverse impact on the rural character of the area and the landscape character objectives for the area.
- The appellant notes that the construction and operational traffic would have an adverse impact due to the narrow width and alignment of the public road.
- The appellant notes that soil characteristics and surface drainage on site may not be suitable for a wastewater treatment system and the proposal would be prejudicial to public health.
- The proposal would be injurious to the amenities of adjoining properties and depreciate the value of property.

6.2. Applicant's Response

6.2.1 A response was submitted by Vincent JP Farry & Co Ltd on behalf of the applicant John Belton.

- It is noted that the Sustainable Rural Housing guidelines facilitates those in non-farming sectors and that the applicant is eligible for a rural house in the area for cultural reasons.
- Development plan policy does facilitate rural housing. It is noted there are a number of criteria for qualifying for rural housing (16) and that the fact the applicant does not comply on the basis of occupation does not diminish the

applicant's links to the area. The applicant cites a number of planning cases and case law in regards to such.

- The applicant notes that criterion no. 9 under Section H23 applies with the applicant inheriting the land from his father and such land being in family ownership for a considerable period of time and meaning that the applicant satisfies at least one of the 16 criteria.
- It is noted that the applicant's occupation of place of work is not a reason to deny permission with examples of cases in which applicants were permitted dwellings in rural area regardless of the location of the workplace and their occupation.
- The applicant notes that the compliance with any one of the criteria set down under Section HD23 is sufficient.
- The issue of distance that the applicant is from the appeal site is not a relevant consideration.
- The applicant disagrees with the appellant's assertion the proposal represents overdevelopment in a rural area.
- The applicant notes that the design, scale and location of the proposed development would be satisfactory in the context of the visual amenities of the area.
- The ground conditions on site are satisfactory to cater for a proposed wastewater treatment system.
- The proposal would be satisfactory in the context of vehicular access and traffic safety.

6.3. Planning Authority Response

6.3.1 No response.

7.0 Assessment

7.1. Having inspected the site and examined the associated documents, the following are the relevant issues in this appeal.

Compliance with rural housing policy

Design, scale, visual amenity

Wastewater treatment

Traffic/access

Appropriate Assessment

7.2 Compliance with Rural Housing Policy:

7.2.1 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. 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”*. I would consider that the applicant needs to demonstrate a social or economic need to live in this area. HD23 states that *“Residential development will be considered in the open countryside only when it is for those with a definable social or economic need to live in the open countryside”*. It further outlines that *“residential development will be considered in the countryside in the following circumstances”* (list attached).

7.2.2 The applicant resides in Roundwood, which is approximately 6.4km from the site. The applicant resides in the urban area (within the town boundaries) according to

the information on file. The applicant's connection to appeal site is that it part of a landholding that is being inherited from the applicant's father and has been in family ownership for a considerable period of time. It is also noted that the applicant's grandparents resided in a now derelict dwelling a short distance to the south west of the appeal site. The applicant notes that he resided in his grandparents' house initially before his family moved to Roundwood. The applicant notes that the lands have been used by himself and his family for recreational purposes. It is indicated in the applicants documents that he is compliance with a number of the criteria set down under HD23 including no. 1, 9 and 16 (the list of criteria is attached). Particular focus is placed on criteria no. 9. In the case of criteria no. 1, the applicant indicates that they have lived the early part of their life in a now derelict house near the site, but moved to Roundwood with their family. I would consider that the applicant links to the site and the immediate locality are not strong enough in terms of residing at the location in question. In relation to criteria no. 16 it is noted that the applicant's family home was formerly in the rural area and the expansion of town boundary of Roundwood means it is now within the urban area. I would note that the appeal site is remote from Roundwood and that this criteria does not apply. Criteria no. 9 relates to a son or daughter who has inherited land for the purpose of building a on off rural house where the land has been in family ownership for at least 10 years prior to the application. Based on the information on file the land has been in family ownership for longer than 10 years. This is the only criteria under which I would consider that the applicant has a case for rural housing. Notwithstanding such it is noted under HD23 that "residential development will be considered in the countryside in the following circumstances".

- 7.2.3 This does not definitely state that applicant is entitled to rural housing. Development Plan policy clearly states that "residential development will be considered in the open countryside only when it is for those with a definable social or economic need to live in the open countryside". In this case the applicant has links to the area, I would however consider such are not strong enough in this case and the applicant has no definable social or economic need to live in the open countryside. I would also note that national policy set out under the Objective 19 of the National Planning

Framework and the guidance set out in the Sustainable Rural Housing Guidelines emphasises the requirement to demonstrate an economic, social or functional need to live in a rural area under strong urban influence such as this. In this case the applicant 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 be contrary to Objective HD1 and HD23 of the current Wicklow County Development Plan.

7.3 Design, scale, visual amenity:

7.3.1 The proposal is located in a rural area. The appeal site is located in the 'North East Mountain Lowlands' for the purposes of landscape character. This is an area identified as being an 'Area of High Amenity'. The appeal site itself is not a prominent site or landscape being located off a lower category road and on land that is low lying relative to the surrounding landscape. I would consider that the overall design, scale and siting of the dwelling if permitted would not have a significant or adverse impact on the visual amenities of the area.

7.4 Wastewater Treatment:

7.4.1 The proposal entails the installation of a proprietary wastewater treatment system. Site characterisation was carried out including trial hole and percolation tests. The trial hole test notes that the water table level was encountered at a depth of 1.5m from the top of the trial hole (2.0m deep). The percolation tests result for T tests carried out by the standard method and for deep subsoils and/or water table and P tests for shall soil/subsoils and/or water table, indicate percolation values that are within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The test results indicate percolation values that are within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The drawings submitted meets the required separation distances set down under the

EPA Code of Practice (based on site size and separation from site boundaries). Based on the information on file and subject to appropriate conditions requiring compliance with the EPA Code Practice, I would consider that the proposal would be acceptable in the context of public health.

7.5 Traffic/access:

7.5.1 The appeal site is located on the eastern side of the L5587, which is a lower category county road. The road is approximately 3m wide. The original proposal was for a new vehicular entrance to replace an existing agricultural entrance. Unsolicited further information was received which include a proposal to share the entrance with a permitted dwelling (applicant's sister's dwelling, which is partially constructed) on a site to the north. The public road is narrow, however is not a heavily traffic public road. I would consider having regard to the low traffic nature of the public road that the proposed access would be acceptable in the context of traffic safety and convenience. I would also consider that the proposal to share an access with the permitted dwelling to the north would also be satisfactory in the context of traffic safety and convenience.

7.6 Appropriate Assessment:

7.6.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend refusal based on the following reason.

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.

Colin McBride
Planning Inspector

22nd November 2019