



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306673-20

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<b>Development</b>	Retention of house, effluent treatment system, vehicular entrance, permission to block up existing entrance, new vehicular entrance and associated ancillary works.
<b>Location</b>	Ballylusk, Ashford, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	191269
<b>Applicant(s)</b>	Paul and Natasha Doyle
<b>Type of Application</b>	Permission for retention
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Paul and Natasha Doyle
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	15 <sup>th</sup> June 2020
<b>Inspector</b>	Emer Doyle

## 1.0 Site Location and Description

- 1.1. The subject site with a stated area of 0.2 hectares, is located 200m south east of Ballylusk Quarry, c. 2.6km outside of the village of Ashford, Co. Wicklow.
- 1.2. There is an existing two storey dwelling on the site with a mature boundary to the roadside. A patio area together with new landscaping and flower beds has been constructed in the last number of weeks to the rear of the dwelling. The landholding as outlined in blue in the application includes another site to the north.

## 2.0 Proposed Development

Permission is sought for retention of:

1. dwelling and effluent system as constructed,
2. existing vehicular entrance,
3. revised site boundaries as approved under Planning Reg. Ref. 10/2622

Together with permission for:

4. blocking up existing vehicular entrance,
5. setting back of roadside boundary and construction of new vehicular entrance in order to provide 90m sightlines in both directions,
6. all associated ancillary works to facilitate the above.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission refused for one reason as follows:

- 3.1.1. It is an Objective of the Council as expressed in Section 4.4 of the County Development Plan 2016-2022 (Objective HD23) 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'. Having regard to the terms and conditions of the governing permission on site (PRR10/2622 refers) and the

details received in connection with this application, it is considered that the applicants have failed to demonstrate a 'definable social or economic need to live in the open countryside' in accordance with Objective HD23 of the County Development Plan 2016-2022.

The development as proposed would undermine the Rural Housing Objectives contained in the County Development Plan 2016-2022, would represent the consolidation of unauthorised development on this site and would set an undesirable precedent for similar proposals in County Wicklow. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

- The planner's report considers that the applicants do not comply with the provisions of Objective HD23 of the Development Plan. The proposal to close up the existing access and relocate it 15m to the east will achieve the necessary sightlines at this location.

### **3.2.2. Other Technical Reports**

- Area Engineer: Report considers that proposed new entrance will improve sightlines however, there appears to be room for further improvement by moving the proposed entrance further east.
- Environmental Health Office: Requires applicant to submit details showing full compliance with SH21 for the existing effluent treatment system.

## **3.3. Prescribed Bodies**

- No reports.

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

- None submitted.

## 4.0 **Planning History**

### **Enforcement: UD 4183C**

Legal proceedings underway at present.

### **PA 18/887 (Applicant Paul and Natasha Doyle)**

Permission refused by planning authority for retention of dwelling and effluent treatment system together with permission for change of access for one reason relating to rural housing policy.

### **PA 18/816 (Applicant Paul and Natasha Doyle)**

Permission refused by planning authority for retention of dwelling and effluent treatment system together with permission for change of access for three reasons relating to rural housing policy, inadequate sightlines, and unauthorised development on adjoining site.

### **PA 17/782 (Applicant JD Copeland)**

Permission refused by Planning Authority for retention of dwelling house, effluent treatment system, and entrance and driveway as constructed together with retention of revised boundaries from that granted under PRR10/2622 for three reasons relating to traffic safety, inadequate details regarding effluent treatment system, and consolidation of unauthorised development on the site.

### **PA 16/29 (Applicant JD Copeland)**

Withdrawn application seeking retention for dwelling and effluent system, site entrance and driveway as constructed together with permission for change to site boundaries from that granted under PPR 10/2622.

### **PA 10/2622 (Applicant JD Copeland)**

Permission granted for dwelling, garage and wastewater treatment system and associated site works.

## **5.0 Policy Context**

### **5.1. Development Plan**

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

5.1.2. Chapter 3 sets out the Settlement Strategy for the county. There are 10 levels of settlement ranging from a single 'Metropolitan Consolidation Town' (Level 1 – Bray) through various levels of growth towns and smaller towns/villages to the rural area outside of designated settlements, 'The Open Countryside' (Level 10). The site is located in the open countryside.

5.1.3. 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. Protection of the environmental and ecological quality of the rural area is of paramount importance and as such particular attention should be focused on ensuring that the scenic value, heritage value and/or environmental / ecological / conservation quality of the area is protected.

5.1.4. The Settlement Strategy Objectives include the following:-

SS4 – new housing development will be required to locate on designated housing land within the boundaries of settlements.

SS7 – seeks to strengthen the established structure of villages and smaller settlements to support local economics and to accommodate additional population in a sustainable manner.

Chapter 4 sets out the housing strategy and policies relating to residential development for the county, including the rural housing policy objectives.

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.

16 no. criteria are set out which relate to the circumstances that will be considered. The most relevant are considered to be Criteria 1, 2 and 3 the essence of which is:-

1. A permanent native resident seeking to build a house for his / her own family and not as speculation. A permanent native resident is defined as a person who has resided in a rural area in County Wicklow for at least 10 years

2. A son or daughter 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 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.

#### **5.1.5. 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.

#### **5.1.6 Sustainable Rural Housing Development Guidelines (DoECLG 2005)**

The site of the proposed development is located within an 'Area Under Strong Urban Influence'. The guidelines require a distinction to be made between 'Urban Generated' and 'Rural Generated' housing need. Although not specifically defined,

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'.

The guidelines state, in respect of rural areas under Strong Urban Influence, that "the housing requirements of the rural community should be facilitated on the one hand, while on the other hand, directing urban generated housing development to areas zoned for new housing in cities, towns and villages". It is further stated that "development driven by cities and larger towns should generally take place within their built up areas or in areas identified for new development through the planning process."

## **5.2. Natural Heritage Designations**

- 5.2.1. The site is located c. 4.8 km to the west of The Murragh SPA Site Code 004186 and The Murragh SAC Site Code 002249.

## **5.3. EIA Screening**

- 5.3.1. Having regard to the nature and scale of the development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the existing/proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The grounds of appeal can be summarised as follows:

- Mr. Paul Doyle has lived 70% of his life and more than 10 years in the rural area.
- Wicklow County Council have recently considered that an applicant with similar circumstances had a need to live in a rural area (Ms. Emma Van de Bergh as per WCC Reg. Ref. 17/1439).
- The applicant grew up in Milltown North, Ashford from 1971, before the family moved to Ballinahinch, Ashford in 1982. The applicant attended primary school in Ashford and secondary school in Wicklow Town. The applicant married in 2004 and lived in Rosanna Close, Ashford, prior to the occupation of the dwelling subject to the application. The property in Ashford Close was unsuitable due to the applicant's involvement in the haulage business.
- It is unclear why the application has been refused.

## 6.2. Planning Authority Response

- None submitted.

## 6.3. Observations

- None submitted.

## 7.0 Assessment

7.1. I have reviewed the proposal in light of the national planning guidelines, the CDP, relevant planning history, and the submissions by the parties. Accordingly, I consider that this application should be assessed under the following headings:

- Principle of Development and Compliance with Rural Housing Policy
- Appropriate Assessment



## 7.2. Principle of Development and Compliance with Rural Housing Policy

- 7.2.1. Permission was originally granted on this site under PA10/2622 to Mr. JD Copeland. As such, I consider that the principle of development has already been accepted on this site. The primary issues in this case are whether the current applicant complies with the Rural Housing Policy and whether the development as built, complies with traffic safety and public health requirements.
- 7.2.2. The access was not built in accordance with the original permission and has inadequate sightlines. It is proposed to remedy this under the current permission by relocating the access to the east so that sightlines of 90m can be provided in both directions. I am satisfied that the proposed relocation of the access would address the issue of traffic safety at this location.
- 7.2.3. I note from the planner's report that issues were previously raised by the Environmental Health Officer on history files at this location that inadequate evidence had been submitted that the effluent treatment system was suitable for the proposed development and that the site was suitable for the septic tank effluent and indeed this was part of the reason for refusal under PA 17/782. The report on this file from the Environmental Health Officer seeks full compliance details for the effluent treatment system. There is a note from the planner that such details were submitted under PA 18/816 and deemed to be acceptable. As such, I am satisfied that this matter has been satisfactorily addressed.
- 7.2.4. I consider that the main issue in this case is whether the current applicants can comply with the Rural Housing Policy. Condition 4 of the original permission restricted the use of the dwelling to the applicant or other persons who comply with the rural housing policies of the Local Authority for a period of 7 years. According to the report by the Planning Authority, this condition has not been complied with and is the subject of Enforcement Proceedings by the Council.
- 7.2.1. The site is located in an 'Area under Strong Urban Influence' as identified by the 'Sustainable Rural Housing, Guidelines for Planning Authorities, 2005. 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 demonstratable 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 whilst the Guidelines further state that the housing requirements of persons with roots or links in rural areas are to be facilitated and that planning policies should be tailored to local circumstances.

- 7.2.2. The current County Development Plan sets out criteria regarding housing in rural areas and notes that this will be strictly limited to proposals where it is proven that there is an economic or social need to locate in the area. Policy HD23 further notes that a permanent native resident shall be a person who has resided in a rural area in County Wicklow for at least 10 years.
- 7.2.3. The original permission was granted in April 2011 under PA 10/2622 to JD Copeland. According to information submitted with this application ‘up until the year 2000, Paul has spent 29 years of his life living in rural Wicklow. Paul then spent 16 years living in Urban Wicklow (11 Rosanna Close) from the years 2000 to 2014. Paul and his family moved to the dwelling in Ballylusk in December 2014 where they remain at present.’ It is stated that ‘because Paul is involved in haulage and heavy machinery, he was having to park vehicles on common areas when required.’ He has a haulage business which operates from Charvey Lane, Rathnew, Co. Wicklow. Whilst there are certainly difficulties in County Wicklow and around the country in terms of problems associated with the parking of large vehicles in housing estates, I have examined the criteria set out in HD23 of the Development Plan and employment in this industry does not come within the scope of the policy. The occupations set out in HD23 are predominately linked with agriculture or rural resource based.
- 7.2.4. The grounds of appeal consider that Mr Paul Doyle has lived for 70% of his life and more than ten years in the rural area. The grounds of appeal refer to other similar cases where applicants have similar circumstances and have been granted permission by the local authority. Such applicants lived substantial periods of their lives in rural areas, purchased houses in urban areas for a number of years and then were granted permission for new dwellings in rural areas.

- 7.2.5. I note that the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of Environment, Heritage and Local Government (2005) provided for the attachment of an occupancy condition to require that 'the dwelling shall be occupied for a specific period by the applicant, members of the applicant's immediate family or by other persons with similar links, Appendix 1 of that document indicates that seven years would be an appropriate period for such an occupancy condition.
- 7.2.6. As such, I consider that condition 4 of the original permission is reasonable and appropriate. I refer to Objective HD23 of the current Development Plan where it is stated that residential development will be considered in the open countryside only where it is for those with a definable social and economic need to live in the countryside.
- 7.2.7. From the information submitted on file together with the planning history, site inspection and appeal response, I am not satisfied that the applicant has demonstrated an economic or social need to live at this specific site in this rural area and that his housing needs could not be satisfactorily met elsewhere. Furthermore, the subject site is located in a rural area that is under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, to facilitate the provision of single housing in the countryside based on the core consideration of demonstratable economic or social need to live in a rural area. As such, I consider that the current applicant has not demonstrated that he comes within the scope of the housing need criteria as set out in the Sustainable Rural Housing Guidelines and in local and national policy for the area.

### **7.3. Appropriate Assessment**

- 7.3.1. Having regard to the nature and scale of the existing development, no appropriate assessment issues arise, and it is considered that the development would not 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 that planning permission should be refused for the reasons and considerations as set out below.

## 9.0 Reasons and Considerations

1. The site of the existing development is located within 'Areas 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 a definable social or economic need to live in the open countryside in accordance with the Wicklow County Development Plan 2016-2022. Furthermore, the subject site is located in a rural area that is under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, to facilitate the provision of single housing in the countryside based on the core consideration of demonstratable 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. Having regard to the proximity of existing settlements to the subject site and having regard to the documentation submitted with the planning application and appeal, the Board is not satisfied that the applicant has a demonstratable economic or social need to live in this rural area. It is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. Furthermore, it is considered that the development would materially contravene a condition attached to an existing permission, that is condition number 4 of 10/2622 which restricted the used of the dwelling to the applicant or persons who comply with the rural housing policies of the Local Authority. The development would be contrary to Ministerial Guidelines and to the over-arching national policy, and the provisions of the current Wicklow County development plan, and would, therefore, be contrary to the proper planning and sustainable development of the area.

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**Emer Doyle**

**Inspector**

**25<sup>th</sup> June 2020**