



An
Bord
Pleanála

Inspector's Report ABP312001-21

Development	Erect a house, construct a DWWTs and associated works.
Location	Easthill Farm, Easthill, Newtownmountkennedy, County Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	18/1218
Applicant(s)	Alun Owens
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	Applicant V refusal
Appellant(s)	Alun Owens
Observer(s)	None
Date of Site Inspection	13 th January 2003.
Inspector	Hugh Mannion

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1.0 Site Location and Description

- 1.1. The site has a stated area of 0.142ha and is located at Easthill, Newtownmountkennedy, County Wicklow. The site is a mixture of pasture and organic vegetable farming in a number of poly-tunnels. The site has a slope towards the east and the boundaries are generally of mature native species shrubs and trees. The southern boundary runs along a minor local road, the western and northern boundaries adjoin agricultural land and the eastern boundary is with Easthill House.

2.0 Proposed Development

- 2.1. The proposed development comprises the erection of a houses with a domestic wastewater treatment system and associated works at Easthill Farm, Easthill, Newtownmountkennedy, County Wicklow.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission

1. The site is located in an area under strong urban influence, the applicant has not met the housing need criteria for rural housing in the County Development Plan and the proposed development would, therefore, comprise random rural development, militate against the preservation of the rural environment and the efficient provision of public services and infrastructure.
2. The site is too small to serve as a as a farming plot. The proposed development would, therefore, adversely affect the balanced development of the Newtownmountkennedy area and the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report recommended refusal as set out in the manager's order.

3.2.2. Other Technical Reports

Environmental Health Officer reported that the site is below the recommended area for the safe disposal of domestic effluent where an on-site well is proposed.

The **Area Engineer** reported no objection subject to preventing surface water draining onto the public road.

4.0 Planning History

ABP304432-19 – the Board refused permission on this site for a house to the current applicants. The decision was quashed on judicial review and has been reconsidered as this current case (ABP312001-21).

PL27.249099 permission was refused for a house on this site for reasons as follows.

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

ABP Ref. PL 27.238428 Permission was refused by the Board in 2011 for a dwelling for two reasons as follows.

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. On the basis of the submissions made in connection with the planning application and the appeal, it is considered that the applicant does not come within the scope of the housing need criteria for a house at this location as set out in the said Guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The site of the proposed development is located in a landscape identified in the current Wicklow County Development Plan 2010-2016 as an 'Area of Special Amenity', which is stated in the plan to have a high vulnerability and within the vicinity of which there are protected structures such as Atlidore Castle which have wide range views of the surrounding landscape. The proposed development would be located in an elevated position within this special landscape on a sloping site, with little established development in the vicinity. The proposed dwelling, on its own and when considered in combination with the proposed adjoining development of another dwelling within the same field would comprise an inappropriate scale of development on the site with a layout which would be contrary to orderly development and would result in a visually obtrusive development resulting in a serious deterioration of the landscape quality. The proposed development would, therefore, be contrary to the policies, as detailed in the development plan for

the area, which seek to emphasise the need for sensitive development in rural area in the siting and design of one-off housing. The proposed development would, therefore, seriously injure the amenities of the area and be contrary to the proper planning and sustainable development of the area.

ABP Ref. PL 27.238429 Permission was refused by the Board in 2011 for a dwelling for the same two reasons as PL 27.238428 above.

ABP Ref. PL 27.242706 Permission was refused by the Board for a dwelling for one reason as follows.

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. Having regard to the location of the subject site which is not in the immediate vicinity of the family home and the lack of a demonstrated economic need to reside at this location, it is considered that, based on the submissions made in connection with the application and the appeal, the applicant does not come within the scope of the housing need criteria for a house at this location as set out in the said Guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

ABP Ref. PL 27.246499 Permission was granted by the Board 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.

5.0 Policy and Context

5.1. National Planning Framework.

5.2. National Policy Objective 19

Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

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;

In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.3. Sustainable Rural Housing Guidelines for Planning Authorities (2005).

5.4. The guidelines require that planning authorities on drawing up County Development Plans make a distinction between urban generated and rural generated housing needs. The guidelines (see section 3.2.3) make the point that in areas under pressure for substantial urban generated housing development that it is important to continue to distinguish between the two sources of housing demand. Development plans should set out circumstances where rural generated housing need would apply. Examples of such categories of applicants would include framers, their sons or daughters, persons who have lived most of their lives in rural areas, people seeking to build a home close to their parents in rural areas, people who work locally or may care for elderly relatives. Part time occupations in agriculture or forestry may also fulfil a local rural housing need.

5.5. **Development Plan**

5.6. The **Wicklow County Development Plan 2022-2028** is the relevant County Development Plan for the area. Chapter 4 sets out a settlement strategy for the County wherein Newtownmountkennedy is designated a Level 4 settlement which are “self-sustaining towns are towns that require contained growth, focusing on driving investment in services, employment growth and infrastructure whilst balancing housing delivery. There is a strong emphasis on aligning population growth with employment growth to make these towns more self-sustaining and capable of accommodating additional growth in the future. Some of these settlements have experienced significant housing growth in recent years and are now in need of catch-up facilities and employment growth. Delivering compact growth, regeneration and revitalisation of the town centres is a key priority.

5.7. The settlement strategy will be given effect by a set of objectives that include.

CPO 4.1 To implement the County Wicklow Core Strategy and Settlement Strategy, having regard to the availability of services and infrastructure and in particular, to direct growth into key towns, self-sustaining growth towns, self-sustaining towns and small towns.

CPO 4.2 To secure compact growth through the delivery of at least 30% of all new homes within the built-up footprint of existing settlements by prioritising development on infill, brownfield and regeneration sites and redeveloping underutilised land in preference to greenfield sites.

CPO 4.3 Increase the density in existing settlements through a range of measures including bringing vacant properties back into use, reusing existing buildings, infill development schemes, brownfield regeneration, increased building height where appropriate, encouraging living over the shop and securing higher densities for new development.

Chapter 6 of the CDP deals with housing and rural housing and quotes National Policy Objective 19 of the NPF and states that “the NPF states that it is important ‘to differentiate, on the one hand, between rural areas located within the commuter catchment of the five cities and our largest towns and centres of employment and, on the other hand, rural areas located outside these catchments’. Wicklow’s rural areas are considered to be ‘areas under urban influence’ due to their location within the

catchment of Dublin, Bray, Greystones, Wicklow-Rathnew and Arklow in addition to Gorey (Co. Wexford) and Naas (Co. Kildare). In rural areas under urban influence, it is necessary to demonstrate a functional economic or social requirement for housing need”.

5.8. In relation to housing in the open countryside the CDP includes the objective (CPO 6.41) to facilitate residential development in the open countryside for those with a housing need based on the core consideration of demonstrable functional social or economic need to live in the open countryside in accordance with the requirements set out in Table 6.3.

5.9. Table 6.3 sets out a number of criteria that may fulfil rural housing policy standards and these include.

- Economic Need - The Planning Authority recognises the rural housing need of persons whose livelihood is intrinsically linked to rural areas subject to it being demonstrated that a home in the open countryside is essential to the making of that livelihood and that livelihood could not be maintained while living in a nearby settlement.
- In this regard, persons whose livelihood is intrinsically linked to rural areas may include:
 - a.** Those involved in agriculture - The Planning Authority will positively consider applications from those who are engaged in a significant agricultural enterprise and require a dwelling on the agricultural holding that they work. In such cases, it will be necessary for the applicant to satisfy the Planning Authority with supporting documents that due to the nature of the agricultural employment, a dwelling on the holding is essential for the ongoing successful operation and maintenance of the farm. In this regard, the Planning Authority will consider whether there is already a dwelling / dwellings on the farm holding when determining if a new dwelling can be justified.
 - b.** Those involved in non-agricultural rural enterprise / employment The Planning Authority will support applications from those whose business / full time employment is intrinsically linked to the rural area that can demonstrate a need to live in the vicinity of their employment in order to carry out their full time occupation. The Planning Authority will strictly require any applicant to

show that there is a particular aspect or characteristic of their employment that requires them to live in that rural area, as opposed to a local settlement.

Where an applicant's case for a new dwelling on the basis of economic need is based on establishing a new or alternative agricultural / non-agricultural rural enterprise and they have no previous experience in agriculture / rural enterprise, the Planning Authority shall not consider the above requirements met until the applicant can show that the new agricultural / non-agricultural rural enterprise has been legally and continuously ongoing for at least 5 years prior to the making of the application for a dwelling, and is the applicant's primary occupation and source of income. Applicants whose proposed business is not location-dependent will not be considered.

c. Other such persons as may have definable economic need to reside in the open countryside, as may arise on a case-by-case basis.

Social Need the Planning Authority recognises the need of persons intrinsically linked to rural areas that are not engaged in significant agricultural or rural based occupations to live in rural areas. In this regard, persons intrinsically linked to a rural area may include:

- Permanent native residents of that rural area (including Level 8 and 9 settlements) i.e. a person who was born and reared in the same rural area as the proposed development site and permanently resides there;
- a former permanent native of the area (including Level 8 and 9 settlements) who has not resided in that rural area for many years (for example having moved into a town or due to emigration) but was born and reared in the same rural area as the proposed development site, has strong social ties to that area, and now wishes to return to their local area.
- A close relative who has inherited, either as a gift or on death, an agricultural holding or site for his/her own purposes and can demonstrate a social need to live in that particular rural area,
- 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 for at least 10 years prior to the application for planning permission and can demonstrate a social need to live in that particular rural area,

- Persons who were permanent native residents of a rural area but due to the expansion of an adjacent town/village, the family home place is now located within the development boundary of the town/village.
- Local applicants who are intrinsically linked to their local area and, while not exclusively involved in agricultural or rural employment, have access to an affordable local site.
- Local applicants who provide care services to family members and those working in healthcare provision locally; and
- Other such persons as may have a definable strong social need to live in that particular rural area, which can be demonstrated by way of evidence of strong social or familial connections, connection to the local community / local organisations etc as may arise on a case-by-case basis.

5.10. Natural Heritage Designations

Not relevant.

5.11. EIA Screening

Having regard to the nature and scale of the proposed development

6.0 The Appeal

6.1. Grounds of Appeal

- The applicant is an organic farmer who carries on a farming business at Easthill, Newtownmountkennedy, County Wicklow.
- The applicant lives in rented accommodation nearby and needs to live on this farm for security reasons, protection of polytunnels and farm maintenance reasons.

- The farm has been improved (see application PL27.246499) and the applicant has invested in the business.
- Teagasc deems the farm to be viable.
- This application arises from a rural generated housing need. The applicant meets the rural house needs criteria set out in the County Development Plan. (see in particular HD23 in Chapter 4 of the Plan).
- The applicant meets the criteria set out in the Sustainable Rural Housing Guidelines.
- The size of the application site has been increased to ensure compliance with the relevant standards for the safe disposal domestic effluent.
- The applicant has demonstrated connections to the local community and the proposed house will allow the applicant to live close to his retired parents.

6.2. **Planning Authority Response**

- The grounds of appeal do not undermine the core planning principles in this case.
- The planning authority has carried a full assessment of the cases.
- The planning authority is competent to assess the need to live on a 5 acre farm and does not have to accept the views of Teagasc on this matter.

6.3. **Observations**

6.4. Anne & Robert Millar made an observation as follows.

- There is a long history of planning applications on these lands.
- The Newtownmountkennedy LAP makes provision for significant housing growth in the village.
- Random rural housing undermines the natural environment and the achieving of climate change objectives.

- The applicant has been able to carry out his farming activities without a house on the site for 9 years.
- The farming model associated with the application is unviable. The landholding site (after excising the house plot) is unviable.

6.5. **Further Responses**

6.6. The further additional submissions were made to the Board after the High Court decision and the invitation by the Board to the parties/observer for comment.

6.7. **Observers.**

- This application is the 7th application for planning permission on these lands.
- The proposed development would give rise to traffic hazard.
- The site is unsuitable for the safe disposal of domestic effluent.
- The scale of farming activity does not justify a house on site.
- There is accommodation available close by.

6.8. **Applicant.**

- The applicants farming activity started in 2010 and has continued since.
- The applicant has moved to County Offaly from where his wife continues to work remotely at her job.
- The farm business has suffered from the necessity to find suitable accommodation and the poor health of the applicant's parents prevents them fully working the farm.
- Organic farming is a specialised area of agriculture, and the EU seeks to raise the area of organically farmed agricultural land to 25% by 2030.
- The applicant has a demonstratable social and economic need to live on his farm.

6.9. **Planning Authority**

6.10. No submission.

7.0 Assessment

7.1. Policy Provisions.

- 7.2. The National Planning Framework requires as an overall objective in relation to rural housing that a distinction be made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere. The Sustainable Rural Housing Guidelines recommends that the rural areas type maps attached to the NSS be taken as a guide to the various rural area types. The application site is in County Wicklow in an area designated as an “area under strong urban influence”. These areas are described in the Guidelines as exhibiting characteristics such as proximity to the immediate environs or close commuting catchment of large cities and towns, rapidly rising population, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network. The NSS map of indicative rural area types is intended to guide planning authorities in developing rural housing policy. The application site is within close proximity to a number of urban areas and major transport links which subject it to pressure for housing in the countryside.
- 7.3. The NPF requires that a core consideration of demonstrable economic or social need to live in a rural area should be applied in considering applications for housing in the open countryside. The Rural Housing Guidelines also highlight the necessity “to differentiate between development needed in rural areas to sustain rural communities and development tending to take place principally in the environs of the gateways, hubs and other large towns which would be more appropriately located in cities, towns and villages or in well planned extensions to these urban areas”. The Wicklow County Development Plan 2022 – 2028 sets out a settlement strategy which envisages that the bulk of new housing will be concentrated in the identified settlements and references the NPF strategic objective in relation to demonstrable housing need for applications for houses in the open countryside. Additionally, it is an objective set out in the CDP (Objective 6.41) to “facilitate residential development in the open countryside for those with a housing need based on the core consideration of demonstrable functional social or economic need to live in the open

countryside in accordance with the requirements set out in Table 6.3". In relation to these involved in agriculture the plan states that "the Planning Authority will positively consider applications from those who are engaged in a significant agricultural enterprise and require a dwelling on the agricultural holding that they work. In such cases, it will be necessary for the applicant to satisfy the Planning Authority with supporting documents that due to the nature of the agricultural employment, a dwelling on the holding is essential for the ongoing successful operation and maintenance of the farm. In this regard, the Planning Authority will consider whether there is already a dwelling/dwellings on the farm holding when determining if a new dwelling can be justified".

- 7.4. The appeal makes the related points that the application meets the criteria set out in the Rural Housing Guidelines, that the farm is a small organic farm which is viable, and this position is supported by Teagasc who deems the farm to be viable, and that living on the farm is necessary, *inter alia*, for security reasons.
- 7.5. The applicant has a landholding of 1.66ha with an additional area of 1.1ha leased from an adjoining owner of for a total of 2.76ha. The CSO gives an average farm size in Ireland of 33.4ha which includes farms with another source of income. Tillage farms are, on average, larger at 42ha. The grounds of appeal make the case that Teagasc considers that this farm is economically viable. In support of this position the applicant included a number of papers with the application; one was a letter from the Revenue Commissioners stating that the applicant had no PAYE income in the period 1st January 2010 to May 2017 and balance sheets for a limited company trading as Easthill Farms records losses of €4,778 in 2012 and €6,142 in 2013. I conclude that these records do not establish that this is an economically viable farming enterprise or "a significant agricultural enterprise (that) requires a dwelling on the agricultural holding that they work" as required by the County Development Plan.
- 7.6. There are several objectives in the County Development Plan which seek to encourage new housing into zoned and serviced lands within identified settlements and only as an exception would permission be granted for single houses in un-serviced rural areas. The application does not adequately demonstrate that these objectives should be set aside in this case.

- 7.7. It may be noted that a very significant number of houses have been built within about 1.5km of the site in Newtownmountkennedy, which is a designated settlement in the County Development Plan, in recent years which would give convenient access to the farm. I conclude on this point that the application has not met the threshold for demonstrable economic need to live on the landholding nor does the farm comprise a significant agricultural enterprise that requires a dwelling on the agricultural holding as required by the County Development Plan. Furthermore, meeting the other criteria set out in table 6.3 is dependent on first of all meeting the test for demonstrable economic or social need to live in a rural set out first in the NPF and reinforced by the County Development Plans requirement that the application be related to a “significant agricultural enterprise”.
- 7.8. The applicant makes the point that proximity to his elderly parents would facilitate caregiving. Having regard to the policy in relation to location of new houses in the countryside as set out in the NPF, the Sustainable Rural Housing Guidelines and the County Development Plan I conclude that the first option for new housing must be in serviced settlements designated in the settlement strategy set out in the Plan. Whereas it may be convenient or desirable on behalf of applicants to live in the countryside such convenience or desire does not rise to the standard of demonstrable social need as required by the relevant policy provisions.
- 7.9. Having considered the policy context and the points raised in the application and appeal as summarised above I conclude that the application has not established a demonstrable economic or social need to live on the application site.
- 7.10. **Road Safety.**
- 7.11. The planning authority raised no objection on the point of road safety.
- 7.12. The application site is accessed from a narrow local road which is without footpaths, pedestrian crossings, public lighting or a median line. Passing vehicles on this road would find it difficult to do so safely. The road has a long steep fall to the east from the site towards Newtownmountkennedy village. This road has a junction with the R765 to the west as there is a sign stating that it is a private road with no parking. There are no such signs at its western end closer to Newtownmountkennedy village. Additional houses on this road will give rise to additional vehicular traffic.

7.13. The proposed development would give rise to additional traffic turning movements on an inadequate road which would endanger public safety by reason of traffic hazard.

7.14. Domestic Effluent

7.15. The planning authority's EHO reported that the application site was below the minimum site size required to safely treat septic tank effluent. This report referenced an outdated standard (NASI:SR6 of 1991). The applicant increased the size of the site, and this issue was not raised by the planning authority in its decision. The applicant correctly applied the EPA code of practice for DWWTS 2009¹. The material submitted with the application indicates that the site is suitable for the discharge of treated effluent to subsoil.

7.16. Appropriate Assessment

7.17. Having regard to the modest nature of the proposed development and the foreseeable emissions therefrom I conclude that no Appropriate Assessment issues arise and the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.18. Recommendation

7.19. I recommend that permission be refused.

¹ This COP has been superseded by a new COP for assessments carried out after 7th June 2021.

8.0 Reasons and Considerations

It is an objective set out in the National Planning Framework to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere. In rural areas under urban influence, single houses in the countryside will be assessed based on the core consideration of demonstrable economic or social need to live in a rural area. It is a requirement of the Sustainable Rural Housing Guidelines for Planning Authorities (Department of the Environment, Heritage and Local Government 2005) that planning authorities distinguish between urban generated housing need and rural generated housing need. It is an objective of the planning authority set out in the Wicklow County Development Plan 2022 – 2028 to facilitate residential development in the open countryside for those with a housing need based on the core consideration of demonstrable functional social or economic need to live in the open countryside. The application has not established a demonstrable economic or social need to live in this rural area and therefore, the proposed development would contribute to the encroachment of random rural housing in an area under urban influence, would militate against the preservation of the rural environment, and the efficient provision of public services and infrastructure and would materially contravene the provision of the National Planning Framework, and the current County Development Plan and would therefore be contrary to the proper planning and sustainable development of the area.

Hugh Mannion
Senior Planning Inspector

18th January 2023