



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313017-22

---

<b>Development</b>	Construction of house
<b>Location</b>	Callystown, Clogherhead, Co. Louth.
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	21/1503
<b>Applicant(s)</b>	Richard Kirwan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Richard Kirwan
<b>Date of Site Inspection</b>	09 <sup>th</sup> April 2022
<b>Inspector</b>	Colin McBride

## 1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.411 hectares, is located approximately 1km west of Clogherhead. The appeal site is on the southern side of a local road and is currently agricultural lands. Part of the site includes a gate access to an adjoining dwelling to the west. Adjoining the south western corner of the site is a shed associated with the adjoining dwelling. There is two-storey dwelling on opposite side of the road to the north west. Lands to the south and east are agricultural lands. There is no clearly defined boundary along the eastern boundary with the site taken from a larger field area. The roadside boundary is defined by a post and wire fence and there is existing hedgerow along the south western boundary of the site where it adjoins the existing dwelling to the west.

## 2.0 Proposed Development

- 2.1. Permission is sought for a storey and a half style dwelling with attached garage, wastewater treatment system and all associated site works. The proposed dwelling has a floor area of 286sqm (dwelling 254sqm and garage 32sqm) and a ridge height of 7.227m. The dwelling features a pitched roof and external finishes that include render, natural stone and blue/back roof slates.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission refused based on five reasons....

1. The proposed site, by reason of its location in an area characterised by a proliferation of one-off rural dwellings, would further expand and exacerbate the already excessive pattern of overdevelopment. In addition, the lack of natural boundaries and screening to the site would not have the ability to absorb further development into the landscape and would instead result in an intrusive encroachment of physical development into the open rural landscape, would militate

against the preservation of the rural environmental and would set an undesirable precedent for other similar inappropriate development by reason of site selection. Accordingly, the development is considered to be contrary Section 13.9.4 (Site Selection) of the Louth County development plan 2021-2027 which requires that applications consider the ability of a dwelling to integrate into the surrounding landscape as well as the ability of landscape to absorb further development of one-off housing. As such, the proposed development would contravene rural housing policy objective HOU 42 and HOU 47 of the Louth County Development Plan 2021-2027 which seeks to manage development of rural housing in the open countryside by requiring any new dwelling to be 'appropriate design and located so it integrates into the local landscape and does not negatively impact or erode the rural character of the area in which it would be located', and Policy Objective HOU 47 which requires applications for one-off rural housing to comply with the standards and criteria set out in Section 13.9 of Chapter 13 "Development Management Guidelines", namely Section 13.9.4 of the Development Plan relating to 'Site Selection'. Such development would be contrary to the proper planning and sustainable development of this area.

2. The design of the proposed dwelling by reason of overall size and design, in particular the numerous front projections, together with the attached garage is considered to result in an excessively bulky feature which cannot be absorbed into landscape as a result of the lack of natural screening and as such would adversely impact on the visual amenities of the area. The overall design of the proposed dwelling and garage is not considered to accord with the provision of Section 13.9.9 or 13.9.10 of the Louth County Development Plan 2021-2027 and accordingly the overall design is considered to be contrary to Policy Objective HOU 47 which requires applications for one-off rural housing to comply with the standards and criteria set out in Section 13.9 of Chapter 13.

3. The applicant has submitted a surface water design proposal which relates to the design and layout submitted under Reg Ref 20/762. According the submitted surface water design proposals does not relate to the site layout proposed under this

application and in its current form, is contrary Policy Objective IU 19 of the Louth County Development Plan 2021-2027.

4. The applicant has a submitted as site characterisation form which relates to the design and layout submitted under ref Ref 20/762 and which is not in compliance with the EPA Code of Practice 2021. Accordingly the applicant has failed to demonstrate that the proposed wastewater treatment system and polishing filter is in compliance with the EPA Code of Practice 2021. Accordingly, in its current form, the proposed development is contrary to Policy Objective IU18 of the Louth County Development Plan 2021-2027. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

5. The applicant has a submitted a Site Layout Plan which indicates sight line provision of 75m in each direction x 2.4m set back at the existing vehicular entrance. This falls short of the minimum requirement of 75m x 3m setback for a residential entrance, or where the yard to which this existing access relates is used for agricultural or commercial purposes, a setback of 4.5m is required (as indicated within Table 13.13). Accordingly, in its current form the proposed development is contrary to Section 13.16.17 Entrances and Sightlines and Table 13.13 of the Louth County Development Plan 2021—2027. The proposed development would endanger public safety by reason of traffic hazard and would be contrary to the proper planning and sustainable development of the area.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

Planning report (10/02/22): A number of issues of concern were identified including design/visual impact, surface water design, inadequate sightlines at the entrance and lack of an updated site characterisation report. Refusal was recommended based on the reasons outlined above.

### 3.2.2. Other Technical Reports

Environment Section (18/01/22): Further information required including site characterisation form. .

Infrastructure (20/01/22): Further information required including demonstration of adequate sightlines.

Irish Water (20/12/22): No objection.

EHO (24/06/21): No objection.

Area Engineer (22/06/21): No objection.

### 3.3. Prescribed Bodies

None.

### 3.4. Third Party Observations

None.

## 4.0 Planning History

21/196: Permission refused for a two-storey dwelling and associated site works.  
Refused based on visual impact.

20/762: Permission refused for a two-storey dwelling and associated site works.  
Refused based on visual impact.

## 5.0 Policy Context

### 5.1. Development Plan

The relevant Development Plan is the Louth County Development Plan 2021-2027.  
Section 3.17 Housing in open countryside.

The appeal site is within a Rural Policy Zone 2: Area Under Strong Urban Influence.

### 3.17.4 Rural Generated Housing Need

Applicants will be required to demonstrate to the Planning Authority that they qualify with one of the criteria in the relevant Rural Policy Zone. For clarification any persons from Rural Policy Zone 1 who are native residents of the area and have demonstrated a rural housing need but are not engaged in full time agricultural activities will be deemed to qualify to build on a suitably located site in Rural Policy Zone 2. The application site shall not normally be a distance of more than 6kms from the qualifying family residence.

#### Qualifying Criteria in Rural Policy Zone 2-Area Under Strong Urban Influence

1. Persons engaged in full time agriculture. This includes livestock, poultry, dairy, and tillage farming, bloodstock and equine related activities, forestry, and horticulture. The nature of the agriculture activity shall, by reference to the landholding, livestock numbers, or intensity of the use of the land, be sufficient to support full time or significant part time occupation. Depending on the activity the documentation available will vary however the onus will be on the applicant to demonstrate the viability of the enterprise. Information to be provided shall include:

- The size of the landholding
  - The nature of the operations
  - Buildings and storage associated with the operations
  - Number of persons employed
  - Livestock numbers (if applicable)
- i. Participation in government schemes/ programmes e.g. Bord Bia Quality Assurance, Basic Payment Scheme (BPS), GLAS, or any similar or replacement programmes or schemes.
- ii. Any other information that would support the application.

Or

2. A person whose business requires them to reside in the rural area. The nature of the operations of the business shall be specific to the rural area. Any application shall demonstrate the viability of the business and clearly set out the nature of activities associated with the business and why it requires the owner to reside in the vicinity.

Or

3. Landowners including their sons and daughters who have demonstrable social or economic ties to the area where they are seeking to build their home. Demonstrable social or economic ties will normally be someone who has resided in the rural area of Louth for at least 18 years prior to any application for planning permission. Any applicant under this category must demonstrate a rural housing need and shall not own or have sold a residential property in the County for a minimum of 10 years prior to making an application.

Or

4. A person who is seeking to build their first house in the area and has a demonstrable economic or social requirement to live in that area. Social requirements will be someone who has resided in the rural area of Louth for at least 18 years prior to any application for planning permission. Any applicant under this category must demonstrate a rural housing need and shall not own or have sold a residential property in the County prior to making an application.

#### Section 13.9.4 Site Selection

“When identifying a site for a rural dwelling, it is recommended that an appraisal of the subject site and its surroundings be carried out. This includes the physical features such as the topography of the site and surrounding area, soils, existing boundaries, prevailing wind direction and proximity to water bodies”.

HOU 42

To manage the development of rural housing in the open countryside by requiring that any new or replacement dwelling is appropriately designed and located so it

integrates into the local landscape and does not negatively impact or erode the rural character of the area in which it would be located.

#### HOU 47

To require applications for one off rural housing to comply with the standards and criteria set out in Section 13.9 of Chapter 13 Development Management Guidelines 'Housing in the Open Countryside' or Section 13.19.9 if the site is located within the Brú na Bóinne UNESCO World Heritage Site, the Tentative World Heritage Site of Monasterboice, or the Battle of the Boyne Sites.

#### IU 18

To require that private wastewater treatment systems for individual houses where permitted, comply with the recommendations contained within the EPA Code of Practice Domestic Waste Water Treatment Systems, Population Equivalent  $\leq 10$  (2021).

#### IU 19

To require the use of Sustainable Drainage Systems to minimise and limit the extent of hard surfacing and paving and require the use of SuDS measures be incorporated in all new development (including extensions to existing developments). All development proposals shall be accompanied by a comprehensive SuDS assessment including run-off quantity, run off quality and impacts on habitat and water quality.

Table 13.13: Minimum visibility standards for new entrances

Local 75m set back 3m.

## 5.2 Sustainable Rural Housing Guidelines for Planning Authorities (2005):



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 within proximity to the immediate environs or close commuting catchment of large cities and towns. 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'.

### 5.3 **National Planning Framework – Project Ireland 2040**

NPO19 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.

### 5.4 **Natural Heritage Designations**

None within the zone of influence of the project.

### 5.5 **EIA Screening**

The proposed development is of a class but substantially under the threshold of 500 units to trigger the requirement for submission of an EIAR and carrying out of EIA.

Having regard to the nature of the development, which is a new dwelling and associated site works, the absence of features of ecological importance within the site, I conclude that the necessity for submission of an EIAR and carrying out of EIA can be set aside at a preliminary stage.

## **6.0 The Appeal**

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

6.1.1 A first party appeal has been lodged by Richard Kirwan, No 1 The Gardens, Clogherhead, Co. Louth. The grounds of appeal are as follows...

- The applicant/appellant states that they wish to build adjoining their family home. The applicant is a fisherman with two boats operating out of Port Oriel with a need to be located in the area due to occupation.
- The applicant/appellant refutes the first reason for refusal and notes that permission has been granted for two one-off dwellings in close proximity to the site in recent times (ref no. 201097 and 211002).
- The design of the dwelling is similar to a dwelling granted on a nearby site in 2019 (2.7km) from the site with the applicant questioning why the proposed design is inappropriate. The applicant/appellant was not given the opportunity to address this issue and is open to an alternative design to comply with Section 13.9 of the Development Plan.
- In relation to refusal reason no. 3, it is noted that the proposal does not impose any additional surface water burden over the previous proposal on site and the applicant was no given the opportunity to address this by way of further information.
- In relation to refusal reason no. 4, the applicant/appellant considers that such could have been addressed by way of further information. The determination regarding public health is unfair as the site previously complied with EPA Code of Practice standards and would have if the applicant was given the opportunity to carry out the tests.

- In relation to refusal reason no. 5, the applicant acknowledges that the entrance does not meet Development Plan requirements, however it is noted that the applicant was not given the opportunity to address such and that the required sightlines can be achieved that proposed entrance.
- The applicant/appellant outlines the fact that the Planning Authority determined they complied with rural housing policy and that there are limited availability of housing in the area.

## 6.2. Planning Authority Response

### 6.2.1 Response by Louth County Council

- The PA states in relation to other permissions granted that all permissions are assessed on their merits and that requesting further information would be contrary the Development Management Guidelines that recommends against requesting further information where a refusal is likely anyway. The PA request that the Board uphold the decision to refuse.

## 7.0 Assessment

7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Rural Housing policy

Design, scale, pattern of development

Traffic

Public Health

Other Issues

7.2. Rural Housing Policy:

7.2.1 The appeal site located in a Rural Policy Zone 2-Area Under Strong Urban Influence. The criteria for such is outlined above. The applicant and his family reside in

Clogherhead (1 The Gardens, Clogherhead). The appeal site is located beside the applicant's parents' home. The applicant is fishermen with two boats operating out of Port Oriel, Clogherhead, which is located 2.42km to the north west of the site is in the rural area of the county. The information on file also indicates that the applicant uses the existing shed/yard area attached to his parents dwelling for storage of equipment relating to his fishing operation. The Planning Authority deemed that the applicant complied with Rural Housing policy, specifically qualifying criteria 4. Criteria 4 appears to be the most relevant with the requirement for residence in the rural area 18 years under the new Development Plan.

7.2.3 Consideration must be given to national policy with the site located in an Area Under Strong Urban Pressure. I would consider that in this case that although the applicant has a defined economic need to reside in the area with the site a short distance from Port Oriel, where his fishing boats operate out of and the site adjacent a shed where equipment is stored for such enterprise. I would 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 have a defined social or economic need to live in this area of strong urban influence and the development would be contrary to Objective 19 of the National Planning Framework and would the proposal would be in accordance with the guidance set out in the Sustainable Rural Housing Guidelines.

7.3 Design/visual impact, scale, pattern of development:

7.3.1 The first two reasons for refusal relate to design and siting with the proposal deems to be on a site with a lack of adequate screening, contributing to the over-proliferation of one-off housing and the design of the dwelling considered to be bulky and poor in architectural quality. The refusal reason refers to Section 13.9 of the Development Plan relating to site selection.

7.3.2 Having inspected the site I would note that the site is a level site and is not an elevated or prominent site widely visible in the surrounding area. The site is near the coast but would not be visible from the coastline or any scenic routes. The design of the dwelling is not of great architectural merit but in terms of form and scale is not significantly different to any other dwellings permitted in the surrounding area in recent times and is not excessive in scale relative to such. I would consider that refusal on the grounds of design issues is not merited. In terms of over-proliferation of one-off dwellings, I would refer to the previous section regarding rural housing and note that the applicant has demonstrated compliance with Local Planning policy and National Planning policy and has a rural generated need at this location.

#### 7.4 Traffic:

7.4.1 The proposed entails use of an existing vehicular access. The existing access is one of two access points serving the dwelling on the site to west (applicant's family home) and serve the existing dwelling (not the main access, it is located further east) and a shed within the curtilage of the adjoining dwelling. The proposal was refused on the basis that inadequate sightlines are available at the entrance point with 75m setback 2.5m from the public road available and not 75m setback 3m from the public road as required for local roads under Table 13.13 of the County Development Plan. Having inspected the site, it is my view that the sightlines at the existing entrance are of an acceptable standard to facilitate access based on the design speed of the road and the level of traffic on such. I would be satisfied that the existing entrance is more than capable of facilitating the turning movements associated with a dwelling without causing any obstruction of other road users or constituting a traffic hazard. I do consider that there is scope to improve sightlines to the required standard if deemed necessary, however I would question whether such is absolutely necessary in this case.

#### 7.5 Public Health:

7.5.1 The proposal entails the installation of a proprietary wastewater treatment system. The proposal was refused on the basis that the applicant submitted a surface water drainage design and site characterisation forms that were submitted for a previous

application on the appeal site that was refused. Based on examination of the layouts previously submitted the proposed layout in terms of siting of the dwelling and location of wastewater treatment is much the same as the previous proposal on site with the main change being the design of the dwelling.

7.5.2 The site characterisation submitted includes trial hole and percolation tests. The trial hole test (2.0m) did not detect the water table within the trial hole. T tests for deep subsoils and/or water table and P tests for shallow soil/subsoils and/or water table were carried out by the standard method with 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 site is underlain by an aquifer category identified as poor with a groundwater vulnerability classified as extreme. 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).

## **8.0 Appropriate Assessment**

8.1 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.

## **9.0 Recommendation**

9.1. I recommend a grant of permission subject to the following conditions.

## **10.0 Reasons and Considerations**

Having regard to the nature and scale of the proposed development and to the fact the applicant has demonstrated a rural generated housing need, it is considered that subject to the conditions set out below, the proposed development would be in

accordance with the policies and objectives of the Louth County Development Plan 2021-2027, Objective 19 of National Planning Framework – Project Ireland 2040 and the recommendations of the Sustainable Rural Housing Guidelines, and would not seriously injure the visual or residential amenities of the area or the amenities of property in the vicinity of the site. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2.

(a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter [unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant]. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

**Reason:** To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted [to meeting essential local need] in the interest of the proper planning and sustainable development of the area.

3. All external finishes shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

4. The site development and construction works shall be carried out such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.

**Reason:** To protect the residential amenities of property in the vicinity.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

6. The applicant shall comply with the requirements of Irish Water.

**Reason:** In the interest of public health.

7. A landscaping plan shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. All landscaping shall be



carried out no later than the first planting season following commencement of development on site. All native hedgerows in place on the site shall be retained in situ and where their removal is unavoidable, mitigation by provision of the same boundary type is required.

**Reason:** In the interests of visual amenity and to protect the natural heritage in the area.

8. (a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 20th day of December, 2021], and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

**Reason:** In the interest of public health.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning

authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

---

Colin McBride

Senior Planning Inspector

19<sup>th</sup> April 2022