



An
Bord
Pleanála

Inspector's Report ABP-314486-22

Development	House, new site entrance and access lane way, relocation of agricultural entrance, new effluent treatment system and associated site works.
Location	Carrignamuck Upper, Ballyduff, Ashford, Co. Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	21/1496
Applicant	Sophie Nicol and Gary Melady.
Type of Application	Permission.
Planning Authority Decision	Refusal of Permission.
Type of Appeal	First Party v Refusal of Permission
Appellant	Sophie Nicol and Gary Melady.
Observer(s)	None.
Date of Site Inspection	08/03/2023
Inspector	Enda Duignan

1.0 Site Location and Description

- 1.1.** The address of the appeal site is Carrignamuck Upper, Ballyduff, Ashford, Co. Wicklow. The appeal site comprise a portion of an agricultural field which is taken from a larger landholding and is located on the northern side of the L1051, c. 420m to the north of the junction of the L1051 and the R764. The appeal site has an irregular shape with a total area of c. 0.8ha. and is located within the north western corner of the larger landholding. In terms of topography, the lands are undulating and there is a level difference of c. 9m between the roadside boundary and the north western corner of the site. There is an existing agricultural entrance at the western end of the landholding's roadside boundary which serves the appeal site.
- 1.2.** In terms of the site surrounds, there is a linear pattern of residential development to the west of the appeal site. A detached dwelling and associated outbuildings, known collectively as Windrush Farm is located to the east of the appeal site and contained within the Applicant's Blue Line boundary. The remainder of the lands within the surrounds of the site are predominantly in agricultural use.

2.0 Proposed Development

- 2.1.** The proposal seeks planning consent for the construction of a single storey dwelling on the appeal site. The pitched roof dwelling has a stated floor area of c. 179sq.m. and will comprise an entrance hall, 3 no. bedrooms, kitchen/dining area, family room, pantry, utility/boot room and office. The proposed dwelling has a maximum height of c. 6.5m and materials and finishes would appear to comprise render for the principal elevations with a tile roof.
- 2.2.** A new recessed vehicular entrance with a connecting driveway will provide access to the proposed dwelling. Given the siting of the proposed dwelling, the proposed driveway will adjoin the western boundary of the larger landholding and will have a total length of c. 320m. A section of the existing roadside boundary which comprises an embankment and a hedgerow is proposed to be removed and set back in order to provide sightlines in an easterly direction. This is located outside the application red line boundary but is identified as being within the control of the Applicant. The proposal also includes the provision of a new agricultural entrance to the immediate east of the

dwelling's vehicular entrance.

- 2.3.** The proposed development includes the installation of a wastewater treatment system and percolation area which is to be located to the north of the proposed dwelling. A surface water soak pit is also proposed within the dwelling's rear amenity space. Existing boundaries are proposed to be retained and reinforced with indigenous planting.

3.0 Planning Authority Decision

3.1. Decision

Wicklow County Council refused planning permission for the proposed development for the following 1 no. reason:

1. Having regard to the location of the site within an Area Under Strong Urban Influence in accordance with the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government 2005, National Policy Objective 19 of the National Planning Framework (February 2018) which, for rural areas under urban influence, seeks 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 does not come within the scope of either economic or social housing need criteria as set out in the overarching National Guidelines. The proposed development, in absence of any identified local based need for the house at this location, would result in a haphazard and unsustainable form of development in an unserved area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. 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 Report

The Wicklow County Council Planning Reports form the basis of the decision. The first report provides a description of the site and surrounds and an outline of the proposed development. In addition, it provides an overview of the policy that is applicable to the development proposal and summaries the planning history of the site and the larger landholding.

In terms of their assessment of the application, the Planning Authority noted that the Applicant would not qualify for a dwelling in this rural area as they were not a permanent native resident of a rural area and the overall size of the family's landholding would not justify a rural enterprise such that the need to live in a rural area is supported. In terms of the diversification and expansion of the farm, it was considered that the farming operation on site is not viable to support the Applicant and her mother and the Applicant's occupation does not require them to live in a rural area. It was therefore considered that the Applicant did not qualify for a rural house. A refusal of permission was therefore recommended.

A second report is included on the planning file in response to the Applicant's unsolicited further information. This documentation included a detailed rationale setting out how the Applicant complied with Objective HD23 of the County Development Plan (2016-2022) and how they therefore qualify for a rural dwelling at this location. Notwithstanding the submission of unsolicited further information, the Planning Authority refused planning permission using a modified reason for refusal which referred to National Policy for rural housing.

3.2.2. Other Technical Reports

EHO: No objection subject to compliance with a condition.

Municipal District Engineer: No objection.

3.2.3. Prescribed Bodies

Irish Water: No objection.

3.2.4. Third Party Observations

None.

4.0 Planning History

4.1. Appeal Site

18/1336: Permission sought for the construction of a new part single, part two storey dwelling, closing of the existing agricultural site entrance and creating a new domestic and new relocated agricultural site entrance, new domestic access lane and new sewage treatment system together with all necessary ancillary site works. The application was withdrawn following a recommendation for refusal by the Planning Authority.

4.2. Larger Landholding

21/603: Planning permission granted in December 2021 for the construction of an agricultural building (44m²) for use as a learning space, ancillary to the existing agricultural programmes provided on site, together with planning permission for the upgrade of existing effluent treatment system, all together with associated site works.

19/900: Retention permission granted in November 2011 for dwelling as constructed on foot of the previous grant of planning permission Register 99/887. The proposal sought the retention of the development to be granted in the absence of the burden placed against the entire site by condition 1 of Planning Reg Reference 99/887 which prohibits the subdivision of the applicants 45.88 acre land holding

99/887: Planning permission granted in October 1999 to demolish the cottage, the provision of new dwelling, septic tank & ancillary works.

5.0 Policy and Context

5.1. Local Policy

5.1.1. Wicklow County Development Plan (CDP), 2022-2028.

The Wicklow Dublin County Development Plan (CDP), 2022-2028 came into effect on 23rd October 2022 and after the decision of the Planning Authority to refuse permission. The policy contained with current CDP indicates that development within rural areas 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.

Given the nature of the proposal and the location of the appeal site within a rural area, Policy Objective CPO 6.41 (Housing in the Open Countryside) is of direct relevance to the development proposal. The policy seeks 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'. A housing need is defined as those who can demonstrate a clear need for new housing, for example:

- First time home owners;
- Someone that previously owned a home and is no longer in possession of that home as it had to be disposed of following legal separation / divorce / repossession by a lending institution, the transfer of a home attached to a farm to a family member or the past sale of a home following emigration;
- Someone that already owns / owned a home who requires a new purpose built specially adapted house due to a verified medical condition and who can show that their existing home cannot be adapted to meet their particular needs; and,
- Other such circumstances that clearly demonstrate a bona fide need for a new dwelling in the open countryside notwithstanding previous / current ownership of a home as may be considered acceptable to the Planning Authority.

In terms of '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.

In terms of '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. The policy notes that 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.

Other relevant policy objectives of the CDP include:

- **CPO 6.42:** Where permission is granted for a single rural house in the open countryside, the applicant will be required to lodge with the Land Registry a burden on the property, in the form of a Section 47 agreement, restricting the use of the dwelling for a period of 7 years to the applicant, or to those persons who fulfil the criteria set out in Objective CPO 6.41 or to other such persons as the Planning Authority may agree to in writing.
- **CPO 6.44** To require that rural housing is well-designed, simple, unobtrusive, responds to the site's characteristics and is informed by the principles set out in the Wicklow Single Rural House Design Guide. All new rural dwelling houses should demonstrate good integration within the wider landscape.

In terms of the site's landscape category, the site is located within the North East Mountain Lowlands Area of High Amenity. These lands are described as transitional lands located between the corridor zone and the AONB, comprising of Trooperstown Hill, large tracts of forestry lands, including Devil's Glen (a listed County Geological site) and a number of views and prospects in particular those surrounding the Vartry Reservoir.

- **CPO 17.1** To protect, sustainably manage and enhance the natural heritage,

biodiversity, geological heritage, landscape and environment of County Wicklow in recognition of its importance for nature conservation and biodiversity and as a non-renewable resource.

- **CPO 17.35** All development proposals shall have regard to the County landscape classification hierarchy in particular the key landscape features and characteristics identified in the Wicklow Landscape Assessment (set in Volume 3 of the 2016 County Development Plan) and the 'Key Development Considerations' set out for each landscape area set out in Section 5 of the Wicklow Landscape Assessment.

Relevant Appendices

- Appendix 1: Development and Design Standards; and,
- Appendix 2: Single Rural Houses Design Guidelines.

5.2. National Policy

5.2.1. Climate Action Plan 2023 (CAP23)

5.2.2. Project Ireland 2040 National Planning Framework (NPF) Local Policy

National Policy Objective (NPO) 19 states it is an objective 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, 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.

5.2.3. Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES).

Section 4.8 (Rural Places: Towns, Villages and the Countryside) of the RSES indicates that support for housing and population growth within rural towns and villages will help to act as a viable alternative to rural one-off housing, contributing to the principle of compact growth. Regional Policy Objective (RPO) 4.80 is relevant to the development

proposal which notes that 'Local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2.4. Sustainable Rural Housing Guidelines for Planning Authorities, 2005.

The overarching aim of the Guidelines is to ensure that people who are part of a 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. Circular Letter SP 5/08 was issued after the publication of the guidelines.

5.2.5. Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021.

5.2.6. EPA Wastewater Treatment and Disposal Systems Serving Single Houses, Population Equivalent ≤ 10 (2009).

5.3. Natural Heritage Designations

There are no European designated sites within the immediate vicinity of the site. The nearest designated sites are The Murrough Special Protection Area (SPA) (Site Code: 004186) and The Murrough Wetlands Special Area of Conservation (SAC) (Site Code: 002249), c. 7.1km to the east of the appeal site.

5.4. EIA Screening

Having regard to the nature and scale the development which consists of a single house in a rural location, there is no real likelihood of significant effects on the

environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A First Party planning appeal has been prepared and submitted on behalf of the Applicant. The grounds of appeal can be summarised as follows:

- The appeal submission refers to the policies of the draft County Development Plan which states that the Planning Authority will continue to avoid urban generated rural housing and ensure the needs of those with a bonafide necessity to live in the rural area are facilitated. It is stated that it is a central tenet of the appeal that the Applicant has a bonafide necessity to live on the subject site farm and that this has already been clearly demonstrated in the documentation submitted as part of the planning application. The submission notes that it is obvious from a site visit that the area in question has not experienced high levels of urban generated development. With the exception of the existing dwellings to the south of the site, there are very few other dwellings within a 1km radius of the subject site. The Board is asked to consider this, at a strategic level, when considering the grounds of appeal.
- In terms of Objective HD23, this contains 16 circumstances which define social or economic need. It is stated that the prospective Applicant need only meet one to prove need and it is contended that the Applicant is an intrinsic part of the rural community, meets several of the criteria and that need is established beyond any reasonable doubt. The Board is referred to the documentation submitted to the Planning Authority as part of the application.

The appeal submission sets out how the Applicant complies with Objective HD23 of the CDP and provides a rationale as to how they accord with Qualifying Criteria Nos. 1, 2, 5, 6, 7, 9, 11 & 14 of the Plan. A summary of which is included as follows:

- (1) The Applicant has lived in the area, at the family home within 250m of the subject site for 22 no. years. The Applicant is a permanent native resident seeking to build a house for her own family and not for speculation.

- (2) The Applicant is the daughter of a permanent native resident (i.e. her mother), her mother retired from the farm. The Applicant is now solely responsible for the running of the farm and also runs an agri-tourism business on site. The farm requires her to be in daily attendance, the nature of which is such that she needs residency, not a daily visit from elsewhere.
- (5, 6 & 7) The documentation submitted with the application clearly shows that the Applicant's principal occupation is in agriculture and is more than sufficient to constitute a full time occupation. It is confirmed that the Applicant submitted additional documentation from professional external sources with the application to demonstrate her need to live on site to carry out her occupation.
- (9) The Applicant has been gifted the subject site by her mother, who has been the landowner since 1999. The proposed house is for her own purposes, and she has supplied documentation to show that neither she, nor her husband, has ever owned a home. In addition, she has demonstrated her social and economic need to live on the farm.
- (11) It is stated that the Applicant's work is intrinsically linked to the area in question i.e. the farm. It is of interest to note that she recently opened the agri-tourism enterprise which was the subject of Planning Permission Ref 21603 for an agricultural learning space, which is an extension of her existing farm activities. This project is to enhance the viability of the farm and will diversify the farming activities.
- (14) The Applicant submitted documentation which demonstrated the adequacy of her business proposals to support her full time. It is stated that the Applicant was surprised to see that the only meaningful assessment of her need was contained in a handwritten note at the end of the typed reports. It is stated that this consisted of a very brief mention of four/five points with an even briefer and erroneous conclusion.
- The appeal submission provides a critique of the Planning Authority's assessment of the application. It is highlighted that the Planner incorrectly claims that the Applicant is not a permanent native resident of the rural area. Concerns are also highlighted with respect to the Planning Authority's comments that that the landholding could not be classified as a farm and that the projected income as set out in the submitted business plan is not viable to

cater for the Applicant's family and her mother. It is contended that these claims are unsubstantiated, and it is confirmed within the submitted documentation that the Applicant's mother is financially independent. Furthermore, the documentation submitted with the application included evidence of multiple professional assessments of the businesses viability, all of which conclude that the farm is economically viable. It is contended that the Planner's conclusion on viability is incorrect and unsubstantiated and should therefore be disregarded.

- It is concluded that the nature of the assessment undertaken, and the conclusions drawn by the Planning Authority do not merit a refusal of planning permission. It is stated that the Applicant has demonstrated a need which fulfills several of the criteria required. In assessing the application de novo, the Board is asked to re-evaluate the extensive documentation submitted, reach the conclusion that the Applicant has a need to live on the farm and that she fulfills the need criteria of the development plan and as required by NPO 19 of the National Planning Framework.

6.2. Planning Authority Response

None.

6.3. Observations

None.

6.4. Further Responses

None.

7.0 Assessment

The main issues are those raised in the appellant's grounds of appeal, and I am satisfied that no other substantive issues arise. The issue of Appropriate Assessment also needs to be addressed. On the basis of the foregoing, the items to be addressed within the assessment will be considered under the following headings:

- Compliance with Rural Housing Policy
- Visual Impact & Design
- Wastewater Treatment

- Appropriate Assessment

7.1. Compliance with Rural Housing Policy

7.1.1. Compliance with rural housing policy is a core consideration for any planning application for a one-off house in a rural area. As indicated earlier in this report, the site is located in a Level 10 settlement (i.e. The Rural Area) as defined in Chapter 3 the current CDP. This is the 'rural area' of County Wicklow and forms the 'open countryside' and includes all lands outside of the designated settlement boundaries. The policy of the current CDP notes 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. Policy Objective CPO 6.41 of the current CDP sets out a series of circumstances where residential development can be considered.

7.1.2. In support of the planning application, the following documentation was submitted by the Applicant:

- Applicant's birth certificate.
- A cover letter from the Applicant explaining her connection to this rural area and her social and economic need to live in this area.
- A letter from Saint Andrews college, Dublin confirming that the Applicant was their student between the years of 1998 to 2000.
- Correspondence from the years 2000 to 2022 confirming the Applicant's address at this location.
- Voter's slip confirming the Applicant's address (2020).
- Copies of the Applicant's driving license from 2010 and 2020 confirming the Applicant's address.
- Letter of support from the Applicant's mother consenting to the proposed works.
- Statutory declaration confirming that the Applicant has never owned a dwelling.
- A business plan for the farm to demonstrate the viability of the operations.
- Letter of support from personal accountant confirming the viability of the farm.
- Cover letter from the Applicant's agent, explaining that the Applicant is a permanent resident of the rural area and has taken over the family farm/business.
- Confirmation from revenue the Applicant has not been in receipt of mortgage interest relief.

- Letter of support from Teagasc confirming that the Applicant's mother has been their client since 2002 and includes details of their herd number.
- Further correspondence including bank statements and tax certificates for the years 2002 to 2020 confirming the Applicant's address.

Within their assessment of the application, the Planning Authority formed the view that the Applicant was not a permanent native resident of the area as the Applicant moved to the area when she was 18 years old, and her mother built the home on lands she bought. In terms of the Applicant's economic need, it was considered that the c. 45-acre family landholding would not justify a rural enterprise such that the need to live in a rural area is supported. Further to this, the scale of the landholding was not classified as being viable and it was considered that the farming operation on site was not viable to sustain the Applicant's family and her mother. The application was refused by the Planning Authority as it was considered that the Applicant did not come within the scope of the housing need criteria as set out under Objective HD23 of the County Development Plan (2016-2022)

7.1.3. As detailed in the second Planner's Report on the file, permission was refused for the proposed development, a time extension was sought and granted and unsolicited further information was submitted to the Planning Authority. The additional information included a further rationale as to how the Applicant qualified for a rural dwelling and how they complied with a number of the qualifying criterion as set out under Objective HD23 of the Plan. This documentation included:

- A cover letter from the Applicant providing further clarification and information in relation to the Applicant's qualification as a permanent native resident.
- Updated sworn affidavits confirming that the Applicant is a full time farmer and that they have resided within the family home for over 22 years. An additional sworn affidavit is included from the Applicant's mother confirming that she has lived at this location since 2000 and has retired from farming activities and does not take any income from the farm business.
- Correspondence from the Applicant's accountant providing a confirmation and summary of the Applicant's income streams, arising from revenue generated from farm based activities on the farm.

- Correspondence from County Wicklow Partnership with details of Leader grant funding as awarded to the Applicant.
- Correspondence from Teagasc which provides details of the farm enterprise, including an economic review of the current and future plans to ensure the continuation of the farm.
- Letter of support from the Irish Farmers Association.
- Letter of support from Roundwood Veterinary Practice and Horse Happy Veterinary Services confirming that the Applicant needs to reside at this location.
- A case study analysis which serves to demonstrate how farms of a similar size to Windrush Farm (i.e. c. 46 acres) continue to thrive and are indeed justifiable in terms of a rural enterprise.
- Letter from the Department of Agriculture, Food and Marine confirming that the Applicant is an active farmer attending to the needs of her stock.

In their assessment of the Applicant's additional submission, it was considered by the Planning Authority that the diversification and expansion of the Applicant's farming business which is currently being implemented is still not viable to cater to the Applicant's family. Furthermore, it was considered that the Applicant's occupation does not require them to live in a rural area and the Applicant would therefore not qualify for a rural house. A modified refusal reason was then provided by the Planning Authority which referred to the location of the appeal site within an Area Under Strong Urban Influence as set out in the Sustainable Rural Housing Guidelines for Planning Authorities (2005) and National Policy Objective 19 of the National Planning Framework (2018). It was considered therefore that the Applicant did not come within the scope of either the economic or social housing need criteria as set out in the overarching National Guidelines.

7.1.4. I note that the County Development Plan has changed since the Planning Authority's determination of the application. In this regard, Policy Objective CPO 6.41 of the current Plan is relevant to the consideration of this appeal which sets out a series of circumstances where residential development can be considered in rural areas. The policy seeks 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'. The application and appeal documentation confirm that the Applicants live in the family home on the larger landholding and do not currently and have never owned a home. I am therefore satisfied that the Applicant has demonstrated a need for housing as per the requirements of Table 6.3 of the current CDP.

7.1.5. As noted, the Applicant has put forward a detailed rationale as to how they qualify under a number of criteria of the previous CDP (2016-2022) and it is contended that both an economic and social need has been established. I would agree with the Appellant that one would only need to satisfy one of these criteria to qualify for a rural house as per the specific wording of the Plan. Under the current CDP, many of the qualifying criterion are similar to those included within the previous plan. In terms of 'Social Need', I note that Table 6.3 of the Plan contains an extensive list of persons who may be defined as being intrinsically linked to a rural area. Notwithstanding the Applicant's contention, a permanent native resident is defined as a person who was born and reared in the same rural area as the proposed development site and permanently resides there. As the Applicant and her mother moved to this area in the year 2000 when the Applicant was 18 years old, I would concur with the Planning Authority that the Applicant could not be defined as a permanent native resident. However, Table 6.3 does allow consideration of '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'. It is evident that from the documentation on file that the Applicant has lived in this rural area for well in excess of 10 years. As per the specific wording of the current CDP, it is my view that the Applicant would satisfy this criteria and can therefore be considered as a person who is intrinsically linked to this rural area.

7.1.6. In terms of 'Economic Need', upon which the Applicant is also relying, Table 6.3 of the CDP notes that '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'. The Applicant has submitted an extensive range of documentation and supporting information to demonstrate the viability of the existing agri-tourism business (i.e. Windrush Farm). Although the Planning Authority have formed the position that the farm enterprise is not viable sustain the Applicant's family, it is apparent that for a number of years now, the farm has been the Applicant's full time occupation and there is evidence on the file to demonstrate that this can be sustained into the future. Although I acknowledge the relatively modest size of overall landholding, the nature of the existing agri-tourism operations (i.e. rural diversification project) is such that it has the potential to be revenue generating beyond which a typical farm of a similar size may experience. Notwithstanding this, I have considered the documentation on the planning file in its totality, and I am not satisfied that an additional dwelling on the landholding is essential for the ongoing successful operation and maintenance of the farm as specifically required by Table 6.3 of the Plan. For this reason, I am not satisfied that an economic need has been established by the Applicant for an additional dwelling at this location.

- 7.1.7. In terms of regional and national planning guidance, the site's identified location in a rural area is consistent with the Sustainable Rural Housing Guidelines for Planning Authorities, 2005, which similarly identifies the site and its wider rural setting. It is policy Under RPO 4.80 of the RSES for Local Authorities to 'manage growth in rural areas under strong urban influence by ensuring that in these areas, the provision of single houses in the open countryside is based on the core consideration of demonstratable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements'. In addition, NPO 19 of the NPF requires developments like this to demonstrate a functional economic or social requirement for housing need in areas under urban influence, with this being stated as a necessity. It is evident that the Planning Authority in their assessment of the application and their reason for refusal had regard to the National policy provisions. I note that the CDP (2016-2022) in place at the time of the Planning Authority's decision was adopted prior to the publication of the NPF. It is noteworthy to mention that in the High Court case of *Murtagh v An Bord*

Pleanála (2023), it is highlighted that in instances such as this (i.e. CDPs predating the publication of the NPF), that ‘... in cases of conflict between provisions of the development plan and the NPF, the former will prevail’. The judgement also notes that ‘where a development plan has been prepared in accordance with ministerial guidelines and the NPF, conflict between the provisions of the plan and the Guidelines or the NPF is unlikely to arise’. Under Section 6.3.8 (Rural Housing) of the current CDP, specific regard is given to the provisions of the NPF, and in particular NPO 19. As the Applicant has demonstrated a ‘social need’ (Table 6.3) for a house in this rural area, I am satisfied that the proposal would therefore comply with local through to national policy for a development of this nature. In this regard, it is my view that the Applicant has demonstrated a rural housing need in accordance with Policy Objective CPO 6.41 of the current CDP. As per Policy Objective CPO 6.42, I recommend the inclusion of an occupancy condition restricting occupancy of the house specifically to the Applicant.

7.2. Visual Impact & Design

- 7.2.1. As noted, the appeal site is taken from an overall landholding of c. 46 acres. The existing dwelling on the landholding, within which the Applicant currently resides, is accessed from the L1051 and there are a number of additional outbuildings associated with Windrush Farm located within this area of the farm. I note that the existing buildings associated with Windrush Farm are largely screened from the public road by existing trees and landscaping. The proposal seeks planning consent to close up an existing agricultural entrance at the western of the landholding’s roadside boundary to the L1051 and provide a new relocated shared entrance to serve both the proposed dwelling and the agricultural field. A driveway, with a total length of c. 320m, will adjoin the western boundary of the farm and will lead to the proposed dwelling which is located in the farm’s north-western corner.
- 7.2.2. In terms of site selection, Appendix 2 (Single Rural Houses, Design Guidelines for New Homes in Rural Wicklow) of the current CDP acknowledges that criteria such as the openness and visibility of the site in the surrounding landscape, the sensitivity or vulnerability of the landscape to new development and the existence of protected views or prospects in the area are factors that must be considered. In this regard,

prominent and exposed sites should be avoided as well as those that would impinge on a protected landscape or view. In this instance, there is a level difference of c. 7m between the entrance on the L1051 the location of the proposed dwelling. Therefore, the proposed dwelling is located downhill and will not be clearly visible from the public road to the south. Although the dwelling will be exposed to a degree from the agricultural lands to the north and north-east, the site is screened to the south west by forestry lands and the proposal includes additional landscaping along its boundaries. Overall, I am satisfied that the siting of the proposed dwelling is appropriate and will have a negligible impact on the receiving landscape.

7.2.3. The proposed dwelling has a single storey form with a maximum height of c. 6.5m and a total floor area of c. 179sq.m. The dwelling has a traditional architectural expression with a restricted palette of materials comprising rendered walls with a tiled roof. Overall, I am satisfied that the scale, height and form of the dwelling is in keeping with the vernacular character of the surrounding area and generally accords with the design guidelines contained within Appendix 2 of the current CDP. In this regard, the proposal is considered to be acceptable having regard to the visual amenity of the surrounding area.

7.2.4. As noted in the foregoing, a new shared access is proposed to serve the farm and the proposed dwelling. A section of the existing roadside boundary which comprises an embankment and a hedgerow is proposed to be removed and set back in order to provide 90m sightlines in an easterly direction. This is located outside the application red line boundary but is identified as being within the control of the Applicant. I am conscious of CPO 17.23 of the current CDP which seeks 'To require the retention, wherever possible, of hedgerows and other distinctive boundary treatment in the County. Where removal of a hedgerow, stone wall or other distinctive boundary treatment is unavoidable, provision of the same type of boundary will be required of a similar length and set back within the site in advance of the commencement of construction works on the site (unless otherwise agreed by the Planning Authority)'. I note that there are no trees located within the existing roadside boundary and the Applicant proposes to reinstate a new hedgerow which is set back from the roadside so that the sightlines can be maintained. Overall, I am satisfied that the Applicant's

proposals are acceptable in this instance, and I note that the Planning Authority have raised no concerns with respect to this element of the proposal.

7.3. Wastewater Treatment

- 7.3.1. Planning permission is sought for the installation of a wastewater treatment system (WWTS) and percolation area which is to be located to the north of the proposed dwelling. I note that the Planning Authority has raised no objection to the Applicant's proposals for the disposal and treatment of wastewater on site. Assessment of the wastewater treatment element of a rural one-off house is a standard consideration. The site is in an area with a poor (PI) aquifer of high vulnerability. The Site Characterisation Form notes that groundwater was not encountered in the 2.1m deep trial hole. Bedrock was also not encountered at a depth of 2.1m. The soil was loam in the upper 400mm, silt with occasional stone to 1m below ground level and compact silt/clay with some broken stone within the remainder of the hole. I note that the Site Characterisation Form identifies a Groundwater Response of R1. I note that the trial hole was examined on 29th August 2018 and proposed wastewater treatment system is designed in accordance with the EPA Code of Practice 2009.
- 7.3.2. The T-test result was 83.33. I consider the results to be generally consistent with the ground conditions observed on site. Section 3.1 of the Site Characterisation Form states the ground condition was very dry and firm underfoot at the time of inspection. The site comprises an agricultural field with no indication of, for example, outcrops, rushes etc. Section 4.0 (Conclusion of Site Characterisation) of the Site Characterisation form states that the site is suitable for a secondary treatment system which will discharge to ground water. As noted, the packaged wastewater treatment system and polishing filter is proposed to be located to the north of the dwelling within a relatively flat area of the site. A site plan showing the wastewater treatment system in the context of the proposed house and the site is enclosed within the Applicant's documentation. I note that the Planning Authority's Environmental Health Officer has raised no concerns with respect to the proposed development subject to compliance with a condition. Having regard to the documentation on file, including the Site Characterisation Form and having inspected the appeal site, I am generally satisfied that the Applicant's proposals for the disposal and treatment of wastewater are

acceptable. I would recommend the inclusion of a condition which requires the design and installation of the proposed WWTS to comply with the EPA Wastewater Treatment and Disposal Systems Serving Single Houses, Population Equivalent ≤ 10 (2009).

7.4. Appropriate Assessment

- 7.4.1. I note the un-serviced nature of this rural location which means that the site does not benefit from access to public mains drainage or water supply. I also acknowledge the prevalence of agricultural activities in the immediate vicinity of the appeal site. There is an existing stream located c. 40m further north of the site's north-western boundary. This stream runs into the Varty River which flows through The Murrough SPA (Site Code: 004186) and The Murrough Wetlands SAC (Site Code: 002249) which is located c. 7.1km downstream.
- 7.4.2. Despite these factors, I am nonetheless of the opinion that taking into consideration the modest nature, extent and scope of the proposed development and based on best scientific information, including the submitted Site Characterisation Report, that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Reasons and Considerations

- 8.1. Having regard to the provisions of the Wicklow County Development Plan, 2022-2028, and the specific characteristics of the site and surrounds, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential and visual amenities of the area and would constitute an acceptable form of development at this location. In addition, based on the documentation submitted with the application and appeal, the Board is satisfied that Applicant has demonstrated a 'social' rural housing need as per the specific requirements of Policy Objective CPO 6.41 of the Wicklow County Development Plan, 2022-2028. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions

1.	<p>The proposed development shall comply with the plans and particulars lodged with the application 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>a. The proposed dwelling, when completed, shall be occupied as place of permanent residence by the Applicant and shall remain so occupied for a period of at least seven years thereafter. The Applicant shall enter into a written agreement with the planning authority under Section 47 of the Planning and Development Acts 2000, (as amended) to this effect.</p> <p>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.</p> <p>c. This condition shall not affect the sale of the dwelling by a mortgage in possession or the occupation of the dwelling by any person deriving title from such a sale.</p> <p>Reason: to ensure that the proposed house is used to meet the applicant 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.</p>
3.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
4.	<p>The design and layout of the vehicular entrance shall comply with the requirements of the Planning Authority.</p>

	Reason: In the interest of proper planning and sustainable development.
5.	Existing hedgerows, trees and shrubs on site shall be preserved, except where required to be removed to accommodate the entrance. Reason: In the interest of proper planning and sustainable development.
6.	The design and installation of the proposed waste water treatments system shall comply with the EPA Wastewater Treatment and Disposal Systems Serving Single Houses, Population Equivalent ≤ 10 (2009). Reason: In the interest of public health.
6.	Site development and building works shall be carried out only between the hours of 8am to 7pm Mondays to Fridays inclusive, between 9am to 1pm hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority. Reason: In order to safeguard the amenities of property in the vicinity.
7.	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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme. Reason: It is a requirement of the Planning and Development Act 2000 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.

I confirm that this report represents my professional planning assessment,

judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Enda Duignan

Planning Inspector

23/08/2023