



An  
Bord  
Pleanála

## Inspector's Report ABP-314536-22

---

|                                     |  |
|-------------------------------------|--|
| <b>Development</b>                  | House, effluent treatment system, bored well, new entrance and associated works. |
| <b>Location</b>                     | Drumbawn, Newtownmountkennedy, Co. Wicklow.                                      |
| <b>Planning Authority</b>           | Wicklow County Council.  |
| <b>Planning Authority Reg. Ref.</b> | 22/672   |
| <b>Applicant</b>                    | Russell and Laura Gummerson.   |
| <b>Type of Application</b>          | Permission.  |
| <b>Planning Authority Decision</b>  | Grant of Permission.   |
| <b>Type of Appeal</b>               | Third Party v Grant of Permission  |
| <b>Appellant</b>                    | Bruce and Ann Phillips.  |
| <b>Observer(s)</b>                  | None.  |
| <b>Date of Site Inspection</b>      | 20/12/2022   |
| <b>Inspector</b>                    | Enda Duignan   |

## **1.0 Site Location and Description**

- 1.1. The address of the appeal site is Drumbawn, Newtownmountkennedy, Co. Wicklow, and is located c. 3.7km to the north-west of the existing settlement of Newtownmountkennedy. The appeal site accessed from a private laneway off the southern side of L-1041. The site forms part of a larger agricultural field and is currently under grass. In terms of its topography, the site itself contains a gentle slope towards its north-eastern corner with the lands further to the south containing a more pronounced slope upwards from the rear site boundary.
  
- 1.2. In terms of the site surrounds, there are a number of rural dwellings within the surrounds of the appeal site on the southern side of the L-1041. There is also an existing dwelling which is accessed from the same laneway as the appeal site and is located to the site's east. The remainder of the lands within the surrounds of the site are typically in agricultural use.

## **2.0 Proposed Development**

- 2.1. The proposal seeks planning consent to construct a new single storey dwelling on the subject site. The proposed dwelling has a stated floor area of c. 179sq.m. and will comprise an entrance hall, 4 no. bedrooms, sitting room, study, bathroom, utility and a kitchen/dining/family room.
  
- 2.2. The dwelling will be centrally located within the site and will be accessed via a new recessed vehicular entrance within the centre of its eastern boundary to the existing laneway. A new connecting driveway will lead to a car parking area to the front (south) of the dwelling. The dwelling will be served by an area of amenity space to its side (west). A new timber fence, back planted with hedging will form the new western and southern site boundaries.
  
- 2.3. The proposed gable sided pitched roof dwelling will have a maximum height of c. 5m and materials and finishes will comprise render for the principal elevations with a natural slate roof.

- 2.4.** The proposed development includes the installation of a wastewater treatment system and percolation area which is to be located within the south-western portion of the site.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Wicklow County Council granted planning permission for the proposed development, subject to compliance with 9 no. standard conditions.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Report**

The Wicklow County Council Planning Report form the basis of the decision. The report provides a description of the site and surrounds and outlines a description of the proposed development. The report provides an overview of the policy that is applicable to the development proposal and summaries the planning history of the site and surrounds that is relevant to the development proposal. The report also summaries the observation on file.

In terms of the assessment of the application and the Applicant's qualification for a rural house, the Planning Authority note that on the basis of the information on file, the Applicant was considered to qualify for a rural dwelling. However, concerns are raised with respect to the backland nature of the proposed development and the undesirable precedent the proposal may set. A refusal of planning permission was therefore recommended within the Planning Report.

However, commentary is included within the report from the Senior Engineer which stated that the location of the appeal site, as opposed to a previously proposed site under Ref. 21/740, would not result in the need to extend the existing laneway and it was stated the proposal would not constitute substandard backland development. A grant of planning permission was then recommended, subject to compliance with 9 no. conditions.

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

EHO: Report received stating no objection to the proposed development subject to conditions.

### 3.2.3. Prescribed Bodies

None.

### 3.2.4. Third Party Observations

One (1) no. observation from Bruce and Ann Phillips (Third Party appellant). The observations raised are also detailed within their grounds of appeal which I will set out in Section 6 of this Report.

## 4.0 Planning History

### 4.1. Appeal Site

None.

### 4.2. Site Surrounds

**21/740**: Planning application withdrawn for the 1) Construction of a new single storey dwelling. (2) On-site effluent treatment system. (3) Bored well. (4) New entrance and continuation of existing access laneway to proposed site from public road & (5) associated works.

The stated applicants were Russell & Laura Gummerson and the Planning Report on files indicates that this application was withdrawn following the planner's recommendation to refuse permission due to the visual impact of the proposal and issues concerning backland development. This site is located to the south-east of the appeal site, on the eastern side of the existing laneway.

**18/114**: Planning application granted by the Planning Authority for the construction of a dwelling, well, secondary treatment system to current EPA guidelines, percolation area, entrance, access lane and all associated site works. This dwelling has been constructed and is located to the east of the appeal site, on the eastern side of the existing laneway.

## **5.0 Policy and Context**

### **5.1. National Policy**

#### **5.1.1. Climate Action Plan 2023 (CAP23)**

#### **5.1.2. 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.

#### **5.1.3. 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.

#### **5.1.4. 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.

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

**5.2. Local Policy**

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

5.2.2. The Wicklow Dublin County Development Plan (CDP), 2022-2028 came into effect on 23<sup>rd</sup> October 2022. The appeal site is located within a Level 10 Rural Area. The policy contained with current CDP indicates 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. Protection of the environmental and ecological quality of the rural area is of paramount importance and as such, particular attention should be focused on ensuring that the scenic value, heritage value and/or environmental / ecological / conservation quality of the area is protected.

5.2.3. Given the nature of the proposal and the location of the appeal site, 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 '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 draft 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.
- **CPO 6.45** Subject to compliance with CPO 6.41 (rural housing policy), the Council will facilitate high quality rural infill / backland development in accordance with the design guidance set out in the Wicklow Rural House Design Guide provided that such development does not unduly detract from the residential amenity of existing properties or the visual amenities of the area, or the rural character and pattern of development in the area and does not result in a more urban format of development.
- **CPO 6.46** Subject to compliance with CPO 6.41 (rural housing policy), the Council will facilitate a new dwelling house that results in the creation of a rural cluster layout provided that such development is of a high quality design, meets all requirements in terms of public health and safety and does not unduly impact on the residential amenity of neighbouring properties.

In terms of the site's landscape category, Map No. 17.09C identifies the site as being located within The North East Mountain Lowlands. These are defined 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. Relevant polices of the plan include:

- **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 17.2** Ensure the protection of ecosystems and ecosystem services by integrating full consideration of these into all decision making.

#### Relevant Appendices

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

### **5.3. Natural Heritage Designations**

The nearest designated site is the Carriggower Bog Special Area of Conservation (SAC) (Site Code: 000716), c. 130m to the north of the site. The Proposed Natural Heritage Area: Carriggower Bog is also located c. 130m to the north of the 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 Third Party planning appeal has been prepared and submitted by Bruce and Ann Phillips with an address at Drumbawn, Newtownmountkennedy. The grounds of appeal can be summarised as follows:

- The proposed development is deemed to be contrary to the proper planning and sustainable development of the area, it constitutes backland development and is a material contravention of the County Development Plan.
- It is highlighted that the Planning Officer's recommendation of refusal was set aside by a Senior Engineer for the reason that the proposal was not considered to be backland development due to the presence of a laneway and a building line precedent. The justifications provided by the council official for overturning the recommendation of refusal are totally inadequate, unacceptable, spurious and without justification.
- Planning developments, and in particular backland proposals should be assessed and justified on many important criteria, not just two, as happened in this case. Other criteria should include precedent for further encroachment, sustainable land use, access to public infrastructure, residential amenity, siting and orientation, loss of privacy etc. It is stated that there was little or no attempt by the Applicant or the Planning Authority to address these important matters in the decision-making process. The appellant cannot see any justifiable precedent for any backland development that is not connected by family to adjoining dwellings, regardless of whether a building line exists.
- Concerns are highlighted with respect to the adequacy of the existing laneway to serve the proposed development. It is highlighted that this was a significant issue with the previous application (Ref. 21/740), whereby a refusal of planning permission was recommended given the inadequacy of the laneway in terms of width, alignment and structural condition. As there has been no change to the laneway, it is unclear how this previous issue has been addressed. There is a lack of consistency around the approach and decision making on two adjacent developments. These circumstances are a serious cause for concern and are considered to be an abuse of power in the statutory process that should be fair and reasonable to all parties. It is a clear example of ad hoc, local planning decisions that fall below the required standards of accountability and transparency. The presence of a laneway, that was deemed inadequate in 2021 (Ref. 21/740), is now being used by the Council as one of the two reasons to justify why this proposal is not backland development.

- It is stated that the policy of the County Development Plan is to protect agricultural land and therefore the granting of permission for this development is a material contravention. Whilst the applicant's eligibility to reside in a rural situation is acknowledged, there are many other options for a dwelling that does not involve backland development.
- It is stated that there is a long history of ad hoc. piecemeal and one off development on this landholding and the current application is a continuation of this undesirable pattern of development. Information has been submitted as appendices, which illustrate clearly that this is a speculative and opportunistic development. The rationale for such backland development cannot be justified given the size of the overall larger land holding and in particular the ample opportunities to locate housing development on land with public road access. There is no evidence to show that these opportunities have even been considered or examined. The appellant refers to the planning history of the larger landholding which includes a total of 45 planning applications.
- The appellant refers to planning precedents for refusal and it is stated that there is a lack of consistency in decision making in the planning process.
- Concerns are raised by the appellant that the quality of their well water will be affected by the effluent from this development. It is stated that there are significant surface and groundwater flows at the location of the proposed site and these flows will have a negative impact on the continued safe operation of the proposed effluent system and create an unnecessary and foreseeable risk to the appellant's well water supply.
- It is stated that the development of this site will remove permeable grassland and replace it with hard and nonporous surfaces. This will in turn lead to an increased risk of pollution from the proposed effluent system to the appellant's and their neighbor's drinking water supplies which are located downhill. There is no evidence on file to demonstrate that the concerns as highlighted at application stage have been considered by the Planning Authority around well water, catchment and the wider drainage and groundwater patterns.
- In terms of Appropriate Assessment, it is stated that the planning assessment is flawed and should not have made a recommendation that an environmental assessment is not required. The planning report should have made a

recommendation that this development should be screened by a competent person for an Appropriate Assessment. The following is also noted:

- It is stated that there is a direct pathway linking the site to a Natura 2000 site, given the siting of the proposed development in a 'bowl' shaped landscape at the lower corner of an agricultural field which attracts large volumes of groundwater and surface water from the upper levels. In winter months and in wet periods at other times of the year, large volumes of water flow across the site and the proposed wastewater treatment area.
- From here, there is a direct pathway to the Carriggower Bog SAC. The planning report states that there is an absence of a pathway linking the site to a Natura 2000 site. This is incorrect, as there is a direct pathway from the site and all the surrounding agricultural area into the site and over to the northeastern corner of the site where it flows down the existing laneway, across the public road and into the SAC.
- Concerns are also highlighted that the proposal will result in the creation of a traffic hazard. Reference is made to the specific reasons for refusal included under Ref. 21/740. It is stated that the proposal will generate additional traffic on the single carriageway public road. The public road that serves this development is narrow, with dangerous bends and the speed limit of 80kmph applies. Of particular note, is the quality of the public road. In the direction of Ballinastoe Bridge, this road is a single carriageway for about 300m, with no opportunities for safe passing. It is stated that there is no report on file or evidence that the Planning Authority's district engineer has undertaken a site visit to assess this application which is a source of concern for the appellant.
- The applicant has not demonstrated an economic need or dependency to live in this rural area. Whilst it is acknowledged that the applicant has a desire to reside in rural location, the applicants have not provided sufficient proof of an economic need or dependency to reside at this location. The applicants do not therefore meet the required policy standards for housing in the rural environments set out under the current County Development Plan.
- Appendices within the appeal submission include:
  - Planning history of the larger landholding of which the site belongs.

- Approximate outline of the larger landholding.
- Location of planning applications in the surrounding area.
- Site location map.
- Groundwater and surface water flows.
- Photo of laneway with discharge pipe from the proposed site on to the public road.
- Photo of laneway with discharge pipe from proposed site onto the public road.
- Photo of laneway showing volume of flood and surface water in period of rainfall.

## 6.2. Planning Authority Response

None.

## 6.3. Planning Authority Response

A response to the Third Party appeal has been submitted on behalf of the Applicant. This includes a letter and appendices from the Applicant and response has also been enclosed from the Applicant's Geoscientist and Environmental Consultant. The following commentary is provided by the Applicant in response to the concerns raised in the Third Party appeal:

- **Backland development:** To address the Planning Authority's concerns, the applicant notes that they decided to move the site further down the laneway, to form a cluster with the other houses and the adjacent dwelling to the laneway. The Applicant notes that they were in constant talks with local councillors who advised them that the Planning Authority would look favorably on the new site as it would no longer be substandard backland development. This point was confirmed by the Senior Engineer in the Planner's Report. It is stated that there will be no overlooking or overshadowing of neighbouring dwellings and the high boundary screening makes it impossible for the house to be seen from the public road or from other potential viewing points in the surrounding area from the north and east. It is stated that the lands to the south and west of the proposed development ranges in elevation from 255m to 288m and proposed

ridge height of the dwelling is c. 252m, which means the proposed house is not visible from any distinct viewing point from the south or west.

- **Impact on well water:** It is stated that the applicant has hired an extremely qualified environmental geoscientist, an expert in the field of hydrology and a certified site assessor for the installation of effluent treatment systems. The Applicant refers to the enclosed report in response to the appellant's claims and objections. It is also highlighted that the EHO no reservations regarding the installation of the effluent treatment system as proposed.
- **Appropriate Assessment:** It is stated that the environmental geoscientists has stipulated in his report that the site is not connected to the SAC. It is stated that the Planning Authority did not require an Appropriate Assessment as the separations distances to the SAC was sufficient.
- **Lack of transparency:** It is stated that a Planner's Report always goes to the senior officials before a decision is made. The Senior Engineer knew the history of the planning application where he was not happy with the extent of the laneway and the southern building line associated with the previous application (Ref. 21/740). It is stated that the Applicants have direct access to the site from a legal right of way and they are not creating an entrance through a garden or another dwelling or a field.
- **Traffic Hazard:** It is stated that the appellant's have not been forthcoming with the differences that exist between the Applicant's original application (Ref. 21/740) and the current application. The entrance previously proposed was 220m from public road. However, the entrance of the current application is 125m from the public road, greatly reducing the distance of travel. This distance is less than the distance to the entrance granted on the lands to the east of the site under Ref. 18/114. It is indicated that they previously upgraded the laneway by resurfacing and widening the lane and providing a passing bay. In the assessment of the further information (Ref. 21/740), this refusal reason was removed from the Planner's Report as the upper works were deemed acceptable.
- **Rural Housing Need:** The applicant has indicated that they have demonstrated their need to live in a rural area of Wicklow County Council. The Applicant notes

that the Planning Authority deemed the applicants to be suitable to build a rural dwelling in the area.

- **Planning History of Larger Landholding:** It is stated that the appellant's seem to think the Applicant owns the entire land holding. This is not the case and they don't have a free pick of where they want and can build. The appellants reference to precedence for refusal are not in any way related to the application site or situation and should not be considered relevant to this appeal.
- **Appendix 6, 7 and 8 of Third Party Appeal:** It is stated that these appendices, which provide photographs of the laneway with a drainage pipe to one side which was provided by the Applicants to Ref. 18/114 in accordance with the conditions of the permission.
- **Appendix 9:** It is stated that this photo shows the laneway in 2017 before any resurfacing works took place as permitted under Ref. 18/114 or the Applicant's during the previous application (Ref. 21/740). It is stated that the appellant's photos are misleading and do not reflect the current situation following the various upgrades to the laneway.
- Pictures have been attached of the laneway resurfaced in September 2022, after periods of extremely heavy rainfall.

#### **6.4. Observations**

None.

#### **6.5. Further Responses**

None.

### **7.0 Assessment**

The main issues are those raised in the Third Party's grounds of appeal and the Planning Report, 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
- Siting & Design
- Vehicular Access
- 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:

- A cover letter which notes that one of the Applicant's (Russell Gummerson) is originally from Sleamaine, Roundwood and their children currently attend school in Roundwood. A rationale is included as to why they need to live in the locality.
- A sworn declaration confirming that the Applicant has never owned a dwelling and confirmation that they are willing to enter into a Section 47 Agreement.
- Copy of Russell Gummerson's Birth Certificate.
- School reports.
- Documentation from 2011-2022, confirming the current address in Roundwood, Co. Wicklow.
- Letter of support from local GAA club.
- A map showing the location of Russell Gummerson's former family home in Sleamaine, Roundwood.
- A map detailing a right-of-way to access the appeal site.



- 7.1.3. Within their assessment of the application, the Planning Authority noted that one of the Applicant's (Russell) was born and raised in a rural area and has never owned a dwelling. It was therefore considered that the Applicant qualifies for a rural dwelling. I note that the County Development Plan has changed since the Planning Authority's determination on the application. In this regard, Policy Objective CPO 6.41 of the current CDP is relevant to the consideration of this appeal. 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 sworn affidavit confirming that the Applicant has never owned a dwelling has accompanied the planning application. Therefore, I am satisfied that the Applicant has demonstrated a need for housing as per Table 6.3 of the current CDP.
- 7.1.4. In terms of 'Social Need', upon which the Applicants are relying, I note that Table 6.3 of the current CDP contains an extensive list of persons who may be defined as being intrinsically linked to a rural area. The CDP defines a permanent native resident as a person who was born and reared in the same rural area as the proposed development site and permanently resides there. Although no specific information has been provided with respect to Laura Gummerson, the planning documentation confirms that the Russel Gummerson is originally from Sleamaine, Roundwood. Their children currently attend school in Roundwood and the Applicant's current address is in Roundwood. I note that the settlement of Roundwood is located c. 7km to south-west of the appeal site (former family home c. 6.2km from appeal site). It is therefore evident that they are not permanent native residents of this particular area and cannot be defined as such. Whilst I acknowledge that the Applicant has a strong desire to live at this rural location, I am not satisfied that on the basis of the information on file that a strong social need to live in this particular area has been demonstrated, nor are they intrinsically linked to this area as required by Table 6.3. In addition, I do not consider that the justification provided by the Applicant is sufficient to require a house in a rural area under urban influence given, inter alia, regional and national policy support for the revitalisation of smaller towns, villages and rural settlements. I note that the Application form indicates that the Applicants are the owners of the appeal site, a point

which is confirmed in the cover letter with the application. These lands are identified in red on the site location plan. However, when examining the documentation under Ref. 21/740, it is also confirmed in the application form and cover letter to that application that the Applicants are the owners of the lands to the south-east of the appeal site, within which the previous development was proposed. I note that the lands to the south-east (Ref. 21/740) have not been identified in blue on the current site location map, so it is unclear whether these lands have been sold or if they are still within the Applicant's control, a point which should have been clarified in the application documents.

- 7.1.5. 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. The Regional Spatial Economic Strategy – Eastern & Midland Region, 2019-2031 (RSES), acknowledges that for some rural areas, urban and commuter generated development has undesirably affected the character and cohesion of these locations. Under RPO 4.80, it is the policy 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'.
- 7.1.6. In relation to locations identified as being under strong urban influence, the National Planning Framework, NPO 19, 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. Although it is evident that the Applicant has a strong desire for a rural dwelling at this location, this in itself does not override the public good necessity for such applications to meet local through to national planning provisions. These provisions seek to safeguard such rural locations from the proliferation of what is essentially a type of development that planning provisions seek to channel to appropriate serviced land within settlements where they can be more sustainably absorbed whilst safeguarding the rural environment from further diminishment of its character and predominant rural land use based function, i.e.

agriculture. In keeping with this, I note that National Policy Objective 3a of the National Planning Framework seeks to deliver at least 40% of all new homes nationally within the built-up footprint of existing settlements. In addition, NPO 33 seeks to prioritise the provision of new homes at locations that can support sustainable development as well as at an appropriate scale of provision relative to location. There are settlements within the wider area, including those with infrastructural services such as mains drainage and potable water through to other services as well as amenities, where there is capacity to absorb additional residential development in a sustainable manner rather than at this location. In considering this appeal, I have also had regard to the recently published Climate Action Plan 2023 (CAP23) which acknowledges that decades of focus on dispersal of residential settlements, commercial zones, and workplaces in peripheral areas, instead of concentrating on central areas and locations served by public transport, has led to an over-reliance on the private car.

- 7.1.7. As per Section 6.3.8 of the current CDP, 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. To permit the proposed development sought under this application would result in a haphazard and unsustainable form of development in an un-serviced area, it would contribute to the encroachment of random rural development in the area, it would militate against the preservation of the rural environment that is sensitive to change, and it would give rise to inefficient and unsustainable provision of public services and infrastructure at remote from settlement locations. For these reasons the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area. This is reason in itself for the development sought under this application to be refused. Should the Board come to a different decision on this matter, I consider that an occupancy condition restricting occupancy of the house specifically to the Applicant should be attached to any grant of permission as set out in CPO 6.42 of the current CDP.

## **7.2. Siting & Design**

- 7.2.1. The proposal seeks planning consent for the construction of a single storey dwelling on the appeal site. The dwelling has a vernacular character with a pitched roof form and materials and finishes will comprise render for the principal elevations with a natural slate roof. The dwelling is accessed from the existing laneway and is located

c. 120m to the north of the existing public road. I note that there is a linear pattern of development, comprising one-off dwellings along the southern side of the L-1041 at this location. These dwellings would serve to block views of the proposed development from the public road. In addition, the lands to the south and west are significantly elevated relative to the appeal site. Within their assessment of the Planning Application, the Planning Authority raised no concerns with respect to the visual impact or design of the dwelling. I would concur with the Planning Authority and I satisfied that the design of the dwelling would substantially accord with the standards set out in the Design Guidelines for New Homes in Rural Wicklow and the proposal would not have a significant impact upon the visual amenities or the character of the rural area.

7.2.2. However, concerns were raised in the Planning Report that the proposal would represent and exacerbate backland type development. The Planning Authority indicated that they were concerned about historic backland development in the County and it was stated that such precedent should not be further encouraged. Although an initial refusal of permission was recommended by the Planning Officer, the application was granted following the commentary of the Senior Engineer. As per Policy CPO 6.45 of the current CDP and subject to compliance with CPO 6.41 (rural housing policy), the Council will facilitate high quality rural infill / backland development in accordance with the design guidance set out in the Wicklow Rural House Design Guide. This is provided that such development does not unduly detract from the residential amenity of existing properties or the visual amenities of the area, or the rural character and pattern of development in the area and does not result in a more urban format of development. As outlined in Section 7.1 of this report, I am not satisfied that the proposal represents a necessary dwelling at this location. The proposal is considered to be contrary to CPO 6.41 of the current CDP and would therefore contribute to the encroachment of random rural development in the area and it would militate against the preservation of the rural environment that is sensitive to change. For this reason, I recommend that planning permission be refused.

### **7.3. Vehicular Access**

7.3.1. In order to provide access to the appeal site, the proposal seeks to provide a new recessed vehicular entrance along its eastern site boundary which it shares with the

existing laneway. As per the site layout plan and contiguous elevations, the entrance is proposed to be gated and a new wall and piers shall be provided on either side of the entrance. A right-of-way has been identified on the submitted site layout plans along the existing laneway from the frontage (east) of the appeal site until it reaches the L-1041 to the north. Concerns have been raised by the Third Party appellant with respect to adequacy of the existing laneway to serve the proposed dwelling. In addition, concerns were highlighted that the proposal would represent a traffic hazard and the point was made that the application was not reviewed by the Planning Authority's municipal engineer. The Applicant has responded to this and confirmed that works had been undertaken by them to improve the surface of the existing laneway, in addition to the works carried out when the property to the east was constructed (i.e. under Ref. 18/114).

- 7.3.2. In terms of the adequacy of the existing laneway, I observed it to be in a good condition when inspecting the appeal site and I am generally satisfied that is of a suitable standard to serve the proposed dwelling. Notwithstanding this, a notation has been included on the Site Layout Plans which states that the sightlines at the junction of the laneway and the L-1041 are in accordance with Condition 4 of Ref. 18/114. I note that the Planning Authority have raised no concerns with respect to site access and it was considered within the Planning Report that adequate sightlines were achieved at this location. When examining the submitted documentation under of Ref. 18/114 and the relevant condition of this permission (i.e. Condition 4), it is evident that works were required to this junction, which at a minimum included the relocation of an existing pole and the removal of a number of trees to provide adequate sightlines in an easterly and westerly direction. From my inspection of the appeal site, it would appear that these works have not been carried and therefore, the existing arrangement does accord with relevant condition of the permission (i.e. Condition No. 4 of Ref. 18/114). Whilst I am satisfied that adequate sightlines can be achieved at this location subject to the carrying out of works, it is not appropriate in this instance for the Applicant to simply refer to works conditioned as part of another permission. As these works do not appear to have been carried out, proposals to provide adequate sightlines in each direction should have formed part of the development proposal. I also note that should a future application be forthcoming for these lands and if the existing conditions remain

unchanged, the Applicant will need to demonstrate that they sufficient legal interest to carry out these works which may currently be outside their control (i.e. outside the red line boundary).

#### **7.4. Wastewater Treatment**

7.4.1. Planning permission is sought for the installation of a wastewater treatment system (WWTS) and percolation area which is to be located within the south-western portion of the site. I note the Planning Authority has raised no objection to the Applicant's proposals for the disposal and treatment of wastewater on site subject to compliance with conditions. 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 aquifer of extreme vulnerability. The Site Characterisation Form notes that groundwater was not encountered in the 2.1m deep trial hole. Bedrock was also not encountered. The soil was stony silt top soil in the upper 300mm, sandy silt with stone to 500mm, stony silt with minor clay to 1.8m and silt with clay within the remainder of the hole. I note that the Site Characterisation Form identifies a Groundwater Response of R1. However, as per Table E1 (Response Matrix for DWWTSS) of the EPA Code of Practice Domestic Wastewater Treatment (Population Equivalent  $\leq 10$ ), 2021, a R2<sup>1</sup> response category appears to apply in this instance i.e. "Acceptable subject to normal good practice (i.e. Acceptable subject to normal good practice. Where domestic water supplies are located Nearby, particular attention should be given to the depth of subsoil over bedrock such that the minimum depths required in Chapter 6 are met and the likelihood of microbial pollution is minimised).

7.4.2. The T-test result was 22.19. 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 firm at the time of inspection. The site comprises an agricultural field with no indication of, for example, water ponding, outcrops etc. The Third Party appellant has raised significant concerns with respect to the potential impact of the proposed wastewater treatment system on the quality of their well water, which they contend will be affected by the effluent from this development. I note that the separation distances provided from existing private wells as indicated on the submitted documentation exceed those as set out in Table 6.2 (i.e. minimum

separation distance of 10m) of the Code of Practice. Section 4.0 (Conclusion of Site Characterisation) of the Site Characterisation form states that the site is suitable for development including a secondary treatment system. Having regard to the information on file and having inspected the appeal site, I do not consider the proposals for the disposal and treatment of wastewater to be prejudicial to public health and I am satisfied that they are acceptable in this instance. Should the Board be minded to grant permission for the proposed development, I would recommend the inclusion of a condition which shall require the design and installation of the proposed WWTS to comply with the EPA Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021.

## **7.5. Appropriate Assessment**

- 7.5.1. The nearest designated site is the Carriggower Bog Special Area of Conservation (SAC) (Site Code: 000716), c. 130m to the north and down gradient of the appeal site on the opposite side of the L-1041. Carriggower Bog is situated on Calary plateau at the eastern edge of the Wicklow Mountains. The site is an area of wet bog and poor fen, flanked by the Vartry River on the south-western side. The qualifying interests (7140) are identified as 'Transition mires and quaking bogs' and the Conservation Objective is 'To maintain the favourable conservation condition of Transition mires and quaking bogs in Carriggower Bog SAC'. Within their assessment of the planning application, the Planning Authority have noted that the possible risks identified to the SAC as a consequence of the proposed development relate to the emission of inadequately treated wastewater from the dwelling and/or lowering of the water table due to drainage attempts. Concerns have been highlighted by the appellant that there is a direct pathway linking the site to the SAC given its topography and its siting uphill of the SAC. Although uphill of the SAC, I note that there are no direct hydrological or ecological pathways to this European site. I am also satisfied that the Applicant's proposals for the disposal and treatment of wastewater are acceptable in this instance, as set out in Section 7.4 of this report.
- 7.5.2. Despite the concerns raised by the Third Party appellant, I am of the opinion that taking into consideration the modest nature, extent and scope of the proposed development, the nature of the receiving environment, with no direct hydrological or ecological

pathway to the European site 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 Recommendation**

I recommend that the planning application be refused for the following reasons and considerations.

## **9.0 Reasons and Considerations**

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 within an area that is designated as a Level 10 (The Rural Area) settlement in the Wicklow County Development Plan, 2022-2028. Furthermore, the subject site is located in an area that is designated as an area under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, to facilitate the provision of single housing in the countryside, based on the core consideration of demonstrable economic or social need to live in a rural area and having regard to the viability of smaller towns and rural settlements. Having regard to the documentation submitted with the planning application and appeal, the Board is not satisfied that the Applicant has a demonstrable economic or social need to live in this rural area as per the requirements of Policy CPO 6.41 of the Wicklow County Development Plan, 2022-2028, or that the housing need of the Applicant could not be met in a smaller town or rural settlement. It is considered, therefore, that the Applicant does not come within the scope of the housing need criteria as set out in the Guidelines and in local and national policy for a house at this location. The proposed development would result in a haphazard and unsustainable form of development in an un-serviced area, it would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural



environment that is sensitive to change. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

---

Enda Duignan  
Planning Inspector

28/02/2023