



An  
Bord  
Pleanála

## Inspector's Report ABP-315115-22

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<b>Development</b>	House, garage, site entrance, proprietary treatment system and associated percolation area and ancillary site works and services
<b>Location</b>	Winetavern, Stratford-on-Slaney, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	21/1420
<b>Applicant(s)</b>	Emma Cronin
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Emma Cronin
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> March 2023
<b>Inspector</b>	Philip Maguire

## **1.0 Site Location and Description**

- 1.1. The appeal site comprises part of an agricultural field near the western foothills of the Wicklow Mountains, within the townland of Winetavern, northeast of Stratford-on-Slaney, a rural village some 7km north of Baltinglass. The site is along and accessed via a local road (L8302), northwest of its junction with the L8314 which runs parallel and west of the N81. The surrounding area is characterised by undulating farmland with a distinctive pattern of ribbon development along both local roads near the site.
- 1.2. The appeal site is rectangular shaped, under grass and relatively dry underfoot. It has a stated area of 0.40ha and road frontage of some 52m. Site topography is generally consistent with road level and falls in a south-easterly direction, albeit elevated above the adjacent L8314. The roadside boundary is defined by an earth bank, some trees, hedging and a field gate. The north-eastern and north-western boundaries are defined by concrete post and chain-link fencing. The south-eastern boundary is undefined. There is single-storey house under construction and substantially complete to the southeast. Single-storey houses adjoin the respective northern boundaries.

## **2.0 Proposed Development**

- 2.1. Planning permission is sought for a single-storey house, domestic garage, vehicular entrance, domestic wastewater treatment system (DWWTS) and ancillary site works.
- 2.2. The proposed house is sited roughly 35m from the road edge and orientated to the southwest, addressing the adjoining local road. This reflects the established building line. It would be accessed via a shared entrance with the adjacent house to the southeast. The proposed house has a finished floor level of 163.00mAOD and a stated floor area of 180.44sq.m. The ridge height is illustrated as 5.672m and spans 16.60m. The garage is sited to the northwest of the house and gabled towards the road. It has a stated floor area of 37.44sq.m and ridge height of 4.945m. The DWWTS and surface water soakaway would be sited to the rear of the house. Water supply would be via connection to the public mains. Additional landscaping is also proposed.
- 2.3. The Planning Authority sought Further Information on 26<sup>th</sup> January 2022 in respect of the applicant's rural housing need. Requested information included a map identifying the applicant's residence for the previous 10 years and a sworn declaration in respect

of any purchased, inherited or built houses or apartments. The applicant was also asked to indicate whether she was willing to enter into an occupancy agreement under s. 47 of the Planning and Development Act 2000 (as amended).

- 2.4. The applicant responded on 23<sup>rd</sup> September 2022 and indicated that she has lived in Kiltegan, Co. Carlow since 2001 but meets the relevant rural housing policy tests. The applicant also indicated that she is amenable to an occupancy clause.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. By Order dated 19<sup>th</sup> October 2022, the Planning Authority refused planning permission for the proposed development for the following reason:

- 1. The proposed development would not represent a necessary dwelling in this Landscape designated Western Corridor Area, contrary to the provisions of Section 4.4 of the County Development Plan 2016-2022. These provisions are required to maintain scenic amenities, recreational utility, existing character, and to preserve views of special amenity value and special interest and to conserve the attractiveness of the county for the development of tourism and tourist related employment. The Council's settlement strategy is to encourage further growth of existing settlements and to restrict rural housing development to cases where there is a bona fide necessity to live in the rural area instead of existing settlements. It is considered that the applicant does not come within the scope of the housing need criteria. The proliferation of non-essential housing in rural landscape areas erodes the landscape value of these areas and seriously detracts from views of special amenity value.*

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

##### **3.2.1. Planning Reports**

- Planning Report (24/01/22): Outlines a general concern regarding the applicant's compliance with the relevant rural housing policy, specifically regarding her housing need. Further Information was sought as outlined above.

- Planning Report (20/09/22): Basis for the Planning Authority decision. The applicant was not considered to have a housing need in accordance with policy objective HD1 notwithstanding her accepted connections to the local area.

### 3.2.2. Other Technical Reports

- Roads (08/12/21): No objection subject to condition.
- EHO (12/01/22): No objection subject to condition.

### 3.3. Prescribed Bodies

- Irish Water (17/12/21): No objection.

### 3.4. Third Party Observations

3.4.1. A 3<sup>rd</sup> Party submission was received from Aine O'Toole of Kiltegan. Kiltegan, Co. Wicklow is a village situated on the Carlow-Wicklow county bounds and some 10km southeast from the appeal site.

3.4.2. The issues raised can be summarised as follows:

- Applicant resides with her family in Kiltegan.
- Applicant's children go to local school.
- Reference to the applicant's signature on Data Protection Consent Form submitted under PA ref. 20/989 (noted as 'Emma Furlong').

## 4.0 Planning History

4.1. Appeal site:

**PA ref. 20/989:** Permission **refused** in 2021 for a single-storey house, domestic garage, vehicular entrance, domestic wastewater treatment system (DWWTS) and ancillary site works. It was considered that the applicant, Emma Cronin, did not provide sufficient information to demonstrate that she was a permanent native resident having resided in a rural area of the county for at least 10 years in order to come within the scope of the housing need criteria as set out under Objective HD23 of the Development Plan.

#### 4.2. Sites in vicinity:

##### Immediately southeast

**PA ref. 20/988:** Permission **granted** in 2021 for single-storey house, domestic garage, vehicular entrance, domestic wastewater treatment system (DWWTS) and ancillary site works. Conditions of a standard nature including occupancy (Condition 2) and effluent disposal (Condition 4). Condition 5(b) required confirmation of the finished floor level. This house is indicated as the applicant's brother's house (Diarmiad Cronin).

##### Immediately northwest

**PA ref. 12/6034:** Permission **granted** in 2012 for bungalow, domestic garage, effluent treatment system, new entrance and ancillary site works. This house is indicated as the applicant's brother's house (Patrick Cronin).

##### Immediately northeast

**PA ref. 03/9095:** Permission **granted** in 2003 for bungalow, septic tank and percolation area, domestic garage ancillary site works. Amended under PA ref. 04/905 in 2004. This house is indicated as the applicant's sister's house (Hillary Cronin).

## 5.0 Policy Context

### 5.1. Wicklow County Development Plan 2022-2028

- 5.1.1. The current Development Plan came into effect on 23<sup>rd</sup> October 2022. The Planning Authority decision of 19<sup>th</sup> October 2022 was made under the previous Plan for the period 2016-2022. This appeal shall be determined under the current Plan.
- 5.1.2. The main policy objectives relevant to the proposal are set out under Chapter 6 (Housing), Chapter 12 (Sustainable Transportation), Chapter 13 (Water Services) and Chapter 17 (Natural Heritage and Biodiversity) of Volume 1 (Written Statement). Relevant standards (Appendix 1) and rural housing design guidelines (Appendix 2) are set out in Volume 3.
- 5.1.3. The following sections are relevant to the issues raised in this appeal:
- Section 6.4 – Housing Objectives (General)

- Section 6.4 – Housing Objectives (Housing in the Open Countryside)
- Section 17.3 – Landscape

5.1.4. I consider the following policy objectives particularly relevant:

**CPO 6.41** 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.

Table 6.3 sets out the following requirements relevant to the subject appeal:

### **Housing Need / Necessary Dwelling**

This 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.

### **Social Need**

The Planning Authority recognises the need of persons intrinsically linked to rural areas that are not engaged in significant agricultural or rural based occupations to live in rural areas.

In this regard, persons intrinsically linked to a rural area may include:

- Permanent native residents of that rural area (including Level 8 and 9 settlements) i.e. a person who was born and reared in the same rural area as the proposed development site and permanently resides there;
- A former permanent native of the area (including Level 8 and 9 settlements) who has not resided in that rural area for many years (for example having moved into a town or due to emigration), but was born and reared in the same rural area as the proposed development site, has strong social ties to that area, and now wishes to return to their local area;
- A close relative who has inherited, either as a gift or on death, an agricultural holding or site for his/her own purposes and can demonstrate a social need to live in that particular rural area,
- The son or daughter of a landowner who has inherited a site for the purpose of building a one off rural house and where the land has been in family ownership for at least 10 years prior to the application for planning permission and can demonstrate a social need to live in that particular rural area,
- Persons who were permanent native residents of a rural area but due to the expansion of an adjacent town / village, the family home place is now located within the development boundary of the town / village;
- Local applicants who are intrinsically linked to their local area and, while not exclusively involved in agricultural or rural employment, have access to an affordable local site;
- Local applicants who provide care services to family members and those working in healthcare provision locally; and
- Other such persons as may have a definable strong social need to live in that particular rural area, which can be demonstrated by way of evidence of strong social or familial connections, connection to the local community / local organisations etc as may arise on a case by case basis.

**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.

The Key Development Considerations for the Corridor Area landscape are:

1. To protect views and prospects from the corridor area towards the surrounding landscape areas from development that would either obstruct the views / prospect from the identified vantage point or form an obtrusive or incongruous feature in that view / prospect. Due regard will be paid in assessing development applications to the span and scope of the view / prospect and the location of the development within that view / prospect.
2. Development proposals within this area should aim to locate within existing clusters of structures / tree stands and avoid locating new development in open fields.

## **5.2. Sustainable Rural Housing Guidelines**

- 5.2.1. In respect of rural generated housing, section 3.2.3 of the Sustainable Rural Housing Guidelines for Planning Authorities (2005) sets out the following general criteria for considering whether a person is an intrinsic part of the rural community:

*Such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first home near their family place of residence. Returning emigrants who lived for substantial parts of their lives in rural areas, then moved abroad and who now wish to return to reside near other family members, to work locally, to care for elderly family members, or to retire should be also be accommodated.*



### 5.3. National Planning Framework

#### 5.3.1. National Policy Objective 19 of the NPF seeks 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;*
- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.*

### 5.4. Natural Heritage Designations

Slaney River Valley SAC (000781) 0.8km

Lowtown Fen pNHA (001764) 4.8km

### 5.5. EIA Screening

- 5.5.1. Having regard to the nature and scale of the proposed development, which is for a single dwelling unit with a DWWTs in a rural area, and its proximity to the nearest sensitive 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

6.1.1. A 1<sup>st</sup> Party appeal has been lodged by Joe Bonner, Town Planning Consultants Ltd., on behalf of the applicant, Emma Cronin.

6.1.2. The main grounds of appeal can be summarised as follows:

- Emma Cronin is the only applicant, and her husband is not an applicant or party to the application. Applicant's mother is registered landowner and transferred the site to the applicant in 2021. Site in family ownership in excess of 10 years.
- Planning Authority's Further Information request sought irrelevant information in respect of the Supplementary Application Form – this information must be relevant to the Development Plan and application, not applicant or family.
- Board specifically requested to review concerns regarding the Planning Authority's assessment of the proposal with particular concern over reference to "special considerations" and misapplication of policy – decision is *ultra vires*.
- Applicant has not denied living elsewhere but complies with three (of sixteen) categories of need under policy objective HD 23 of the Development Plan 2016-2022, nos. 1, 2 and 9, and demonstrated a social need to live in the area on family lands in accordance with NPF (NPO 19).
- Applicant is a permanent native resident of the area with strong social links having grown up in the immediate area, evidence of which was submitted to the Planning Authority.
- Refusal reason not based on the wording of the Development Plan 2016-2022. Particular concern in relation to the first sentence – the word "necessary" does not appear in the context of houses in the countryside.
- Site is in an area of low landscape sensitivity – this is not evident in the Planning Authority decision and no views of special amenity value have been identified. No concerns were expressed in respect of siting, design, access or impact on residential amenities or the landscape.

- Applicant complies with the six criteria under the Social Need heading of CPO 6.41 of the current Development Plan (Table 6.3). Proposed house complies with CPO 6.44 in terms of design. Applicant willing to sign Section 47 occupancy agreement.

## 6.2. Planning Authority Response

None.

## 6.3. Observations

None.

## 7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the submission received in relation to the appeal, and inspected the site, and having regard to relevant local, regional and national planning policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal. The issues can be addressed under the following headings:

- Landscape and Visual Impact
- Rural Housing Policy
- Appropriate Assessment

## 7.2. Landscape and Visual Impact

7.2.1. The appellant has raised specific concerns in respect of the Planning Authority's reason for refusal, including reference to a 'necessary' dwelling in a defined landscape character area i.e. the Western Corridor Area. Section 17.3 of the Plan notes that the Landscape Assessment undertaken for the previous Plan in 2016 has not been updated for the purposes of the current Plan and is considered to remain a robust and up to date reflection of the landscape character zones of the County. Thus, the issues raised by the appellant are applicable to both the Planning Authority's decision under the previous Plan and the subject appeal under the current Plan 2022-2028.

- 7.2.2. As noted, the appeal site is located in the 'Corridor Area' landscape category and specifically the 'N81 Corridor', or 'Corridor Area West' on Map 17.09D of the current Plan and 'Western Corridor' on Map 10.13(d) of the previous Plan (Vol. 3, Appendix 5 – Landscape Assessment). The Corridor Area is Tier 4 (of 6) in terms of landscape hierarchy, and this reflects its low sensitivity classification in the Landscape Assessment. The Key Development Considerations for the Corridor Area include the protection of views and prospects from development that would result in obstruction or incongruous features and the avoidance of development in open fields through the promotion of clustering with existing structures and stands of trees.
- 7.2.3. I agree, to an extent, with the applicant that there is limited correlation between the Planning Authority's core concern regarding their housing need and any associated landscape or visual impacts. The only obvious reference being at section 4.3.5 of the previous Plan which sought to manage rural housing in order to protect the County's landscapes and ensure the needs of those with a *bona fide* necessity to live in the rural area are facilitated. This is replicated in section 6.3.8 of the current Plan where it is noted that the Planning Authority will continue to manage demand for housing in the countryside in order to *inter alia* protect the environment and rural landscape etc.
- 7.2.4. The appeal site is elevated above the adjacent local road (L8314) to the southeast with no critical views when travelling in a south-westerly direction owing to adjoining ribbon development. Views are also restricted when travelling in the opposite direction by roadside boundaries including a belt of trees and hedging at the junction with the adjoining L8302. Views along this road are similarly restricted by existing trees and hedging and whilst some of these will require removal to accommodate sightlines, replacement planting could be conditioned to provide a similar robust screening.
- 7.2.5. The appeal site is bounded by houses on three sides and represents a suitable gap site capable of accommodating the proposed house within that cluster without further eroding rural landscape, creating or exacerbating ribbon development or impinging on any views or prospects in the area. Having regard to policy objective CPO 17.35 and the Key Development Considerations for the Corridor Area, I am satisfied that the proposal will not adversely impact on landscape character or amenity, irrespective of whether it is deemed a 'non-essential' house. This ground should be upheld.

### **7.3. Rural Housing Policy**

- 7.3.1. The core ground of appeal relates to the appellants purported compliance with the rural housing policy in the previous and current Development Plans. The submission also highlights areas of concern in respect of the Planning Authority's assessment of the application including the Further Information request. It is not relevant or indeed particularly appropriate to look behind the Planning Authority's decision-making process. It is relevant to look at the applicant's housing circumstances in the context of the current Development Plan 2022-2028 and the Rural Housing Guidelines.
- 7.3.2. The appeal site is located in the rural area or 'open countryside' which includes all lands outside the designated settlement boundaries. Section 6.3.8 of the Development Plan notes that all Wicklow's rural areas are considered to be 'areas under urban influence'. In relation to housing in the open countryside, policy objective CPO 6.41 seeks to facilitate residential development for those with a housing need based on the core consideration of demonstrable functional social or economic need in accordance with the requirements of Table 6.3. Table 6.3 sets out various requirements under the headings of 'Housing Need / Necessary Dwelling', 'Economic Need' and 'Social Need'. Thus, an applicant for a house in the open countryside must firstly have a defined housing need and this need, if established, will thereafter be assessed on the basis of a social or functional economic need to live there.
- 7.3.3. The appellant has outlined why they consider they complied with policy objective HD 23 of the previous Plan and more importantly CPO 6.41 of the current Plan under the heading of 'Social Need' in Table 6.3. The submitted documentary evidence includes financial statements, utility bills, school letters and other letters linking the applicant to the adjacent rural townland of Randalstown for a period in excess of 10 years. The submitted evidence also includes a Statutory Declaration in relation to the application where the appellant claims not to have any interest in other property in the state. The appellant's Further Information response confirmed that they have lived in Tynock, Kiltegan, Co. Carlow since 2001, a period in excess of 22 years. The response also includes a map which indicates that this house is in a rural area outside a settlement.
- 7.3.4. I do not dispute the appellants ties to this rural area of Co. Wicklow and she may well comply with some aspects under the heading of 'Social Need' in Table 6.3 i.e. a former permanent native of the area etc. I do not accept that she has cleared the first policy

hurdle however and demonstrated a clear need for a new house as set out under the heading of 'Housing Need / Necessary Dwelling' in Table 6.3. I note this heading includes circumstances where homes are disposed of through legal separation or repossession, or new homes are required on the basis of a verified medical condition. Significantly, it does not explicitly include someone who has a home in a rural area and wishes to relocate to another rural, within a relative proximity, based on social ties alone and setting aside the social ties established in their current rural community or indeed the viability of their nearest rural settlement as espoused in the NPF.

- 7.3.5. Whilst the heading of 'Housing Need / Necessary Dwelling' in Table 6.3 also provides for 'first time home owners' there is no independent evidence to corroborate their Statutory Declaration in this regard. Moreover, I note that there is evidence on file that contradicts the applicant's stated address in the Statutory Declaration and I am not in a position to place significant or determining weight on it. On balance, I do not consider the proposed development is consistent with CPO 6.41 of the Development Plan or comes within the scope of housing need as set out in the Rural Housing Guidelines.

#### **7.4. Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the proposed development, which is for a house with DWWTs, and the distance from the nearest European site, no Appropriate Assessment issues arise. Therefore, it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

### **8.0 Recommendation**

- 8.1. I recommend that planning permission be refused for the reasons and considerations set out below.

### **9.0 Reasons and Considerations**

1. Having regard to the location of the site within an "Area Under Strong Urban Influence" as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where residential development is

restricted to persons demonstrating housing need in accordance with policy objective CPO 6.41 of the Wicklow County Development Plan 2022-2028, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

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Philip Maguire  
Planning Inspector  
5<sup>th</sup> April 2023