



An
Bord
Pleanála

Inspector's Report ABP316084-23

Development	New dwelling, and associated site services
Location	Ballyvolan, Newcastle, Co Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	221385
Applicant(s)	Kevin Smith
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	None
Observer(s)	None
Date of Site Inspection	28 th June 2023
Inspector	Andrew Hersey

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1.0 Site Location and Description

- 1.1. The proposed development is located in the townland of Ballyvolan, Newcastle, Co. Wicklow. The site which is located in a rural area is set between the L5400 to the west and the L54001 to the southeast. The site is a triangular shaped agricultural field with a field entrance to the northeast. To the north of the entrance there is a large electricity pylon which appear to be the 220v type. The route of the electric line runs north – south.
- 1.2. There are mature boundaries along the two roadside boundaries and there are some mature trees within the site. The site is elevated over the road. There are a number houses across the road to the west.
- 1.3. Development in the area generally consists of sporadic one off houses with very varied designs. The surrounding landscape is generally characterised by gently undulating rural countryside interspersed with instances of one-off housing and agricultural outbuildings.

2.0 Proposed Development

- 2.1. The proposed development comprises of the following: Permission for
 - Dwellinghouse - 3 bedroom single storey house with a floorspace of 110sq.m. Ridge height 5.3 metres
 - Wastewater Treatment Plant and percolation area to serve this house
 - Effluent Treatment System and new soil polishing filter
 - Upgrade of existing entrance to the site

3.0 Planning Authority Decision

3.1. Decision

Refuse Permission

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (dated 15th February 2023) reflects the decision of the Planning Authority. In summary the reasons for refusal are as follows:

- Visual Amenity
- Traffic Hazard – local road network is deficient in terms of width alignment and lack of pedestrian facilities
- That the proposed development would not represent a necessary dwelling and is there contrary to Section 6.4 of the Wicklow County Development Plan 2022-2028

3.2.2. Other Technical Reports

3.2.2.1. Environmental Health Officer (17th January 2023)

- No objection subject to conditions

3.3. Submissions/Observations

- None received

4.0 Planning History

4.1. Subject site

- 22/378 in the name of Kevin & Clancy Smith for 2 dwellinghouses refused for 3 reasons Reasons for refusal relate to traffic safety, visual amenity, and rural housing need
- 21/1295 in the name of Kevin & Clancy Smith for 2 dwellinghouses refused for the same three reasons above
- 20/1179 in the name of Kevin & Clancy Smith for 2 dwellinghouses refused for the same three reasons above
- 19/663 in the name of Kevin & Clancy Smith for 2 dwellinghouses refused for the same three reasons above

- 18/1124 in the name of Kevin & Clancy Smith for 2 dwellinghouses refused for the same three reasons above

4.2. Adjacent applications (same landholding)

- To the north of the current application 14/1027 in the name of Barry Smith and Bernie Synott for a dormer bungalow - application withdrawn
- To the north of the current application - 07/976 in the name of a William Synnott for a single storey dwelling - application withdrawn
- To the north of the current application - 06/5554 in the name of a William Synnott for a single storey dwelling withdrawn

5.0 Policy and Context

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

5.1.1. Rural Housing Policy is set out in Section 6.3.8 This section states that:

- 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
- Policy CPO 6.41 - Facilitate residential development in the open countryside for those with a housing need based 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.
- Policy CPO 6.42 Occupancy Clause for 7 years in the event a rural house is granted permission
- Policy 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

- The site is located in an area designated Landscape Category 4 Eastern Corridor
- CPO 17.20 - Development that requires the felling of mature trees of environmental and/or amenity value, even though they may not have a TPO in place, will be discouraged.
- CPO 17.21 - To strongly discourage the felling of mature trees to facilitate development and encourage tree surgery rather than felling if such is essential to enable development to proceed.

5.2. **National Planning Framework 2040**

- 5.2.1. National Policy Objective 19 states that ‘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

5.3. **Section 28 Guidelines – Sustainable Rural Housing Guidelines 2005**

- 5.3.1. The guidelines require a distinction to be made between ‘Urban Generated’ and ‘Rural Generated’ housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those with proximity to the immediate environs or close commuting catchment of large cities and towns. Examples are given of the types of circumstances for which ‘Rural Generated Housing Need’ might apply. These include ‘persons who are an intrinsic part of the rural community’ and ‘persons working full time or part time in rural areas’.

5.4. **Natural Heritage Designations**

- 5.4.1. There are no designated areas in the immediate vicinity of the site. The Murrough SPA, the Murrough Wetlands SAC and the Murrough NHA are located 2.8km to the east of the said site. The Devils Glen NHA is located 5km to the south west. The Vartry Reservoir NHA is located 9km to the west.

5.5. EIA Screening

Having regard to the nature and scale of the proposed development it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1.1. A first party appeal prepared by David Mulcahy Planning Consultants on behalf of the applicant was lodged on the 20th March 2023

6.2. Grounds of Appeal

- That the site is sufficiently screened at present by way of a mature hedgerow and that the proposed house will not be visible in the wider landscape including views from the N11
- Detailed section drawings submitted by Kinta Oakes Landscape Architecture illustrate this
- A revised landscape proposal has been prepared to alleviate Wicklow County Councils concerns with respect of visual amenity issues.
- In terms of traffic safety, a report from the councils road engineer on a previous file 20/1179 states the proposed entrance will have little impact on the road or road safety
- That the applicant satisfies a local need to live in this rural area

6.3. Planning Authority Response

- None

6.4. Observations

- None

6.5. Further Responses

- None

7.0 Assessment

7.1. Introduction

7.1.1. I have examined the application details and all other documentation on file and I have inspected the site and have had regard to the relevant local development plan policies, history files and other relevant guidance documents.

7.1.2. I am satisfied the substantive issues arising from the grounds of this first party appeal relate to the following matters-

- Principle of Development/Rural Housing Policy
- Traffic Safety
- Visual Amenity
- Wastewater

7.2. Principle of Development

7.2.1. The proposed development is located in an area which the development plan states is an 'Area under Urban Influence'

7.2.2. Policy CPO 6.41 of the Wicklow County Development Plan 2022-2028 seeks to facilitate for residential development in the open countryside for those with a housing need based 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.

7.2.3. Table 6.3 sets out three criteria which must be met by potential applicants for a rural house in rural Wicklow. These three criteria are as follows:

- Housing Need / Necessary Dwelling - applicant must demonstrate a clear need for housing
- 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.
- 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.

7.2.4. I refer to the details submitted with the planning application which states that the applicant was born in Wicklow Town but then moved to his parental home a rural area outside Newcastle in 1998 when he was one years old. The parental home is located at Leabeg Lane (Eircode A63 PK85). He lived here for 18 years. He now lives in Gorey Co. Wexford. His place of employment is Kilcoole in an electrical contracting business. The following documentary evidence is submitted with the application;

- Letter from Kevin himself which sets out his family history of the area
- Affidavit from Kevin stating that he does not own a house in the area
- Letters of support from the applicants grandmother and uncles stating that it would be helpful to them for Kevin to live in the area
- Birth Certificate
- Letters from primary and secondary school verifying his address at Leabeg Lane in Newcastle.
- Letter from the Parish Church verifying his address at Leabeg Lane in Newcastle.
- Letter from GAA Club in support of application
- Payslip dated 2022
- Copy of share certificate stating his address at Leabeg Lane
- Letter from revenue stating his address at Leabeg Lane (dated 2021)

- A map showing the locations of the family home in conjunction with the site, the family landholding and the locations of other family members in the area.

7.2.5. I note the planners report on file which states that based on the information submitted that the applicant would not qualify for a rural dwelling in the area

7.2.6. I refer to Table 6.3 of the Wicklow County Development Plan 2022-2028, as set out in paragraph 7.2.3 above which sets out three criteria that an applicant must comply with in order to qualify in principal to get permission for a rural house. These three criteria are: housing need, economic need and social need.

7.2.7. In terms of housing need, I am satisfied based on the information submitted with the application that the applicant does not currently own a house and therefore has a housing need

7.2.8. In terms of economic need, the plan supports 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. I note that the applicant works in an electrical contracting business in Kilcoole. In this respect, the applicant has no economic need to live in the area

7.2.9. In terms of social need, the plan recognises the need of persons intrinsically linked to rural area. The plan states that persons intrinsically linked to the 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,
- 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

7.2.10. The applicants family home is located to the north of Newcastle and 6km to the site in question. The site has been in the family ownership since 2005 based on the information submitted with the application. There is a long running planning history on the site which in summary relates to the applicant and his brother seeking permission for a house each on the site. The first application in this regard was submitted in 2018. This current application relates to a single house for Kevin and the appeal states that the applicant is willing to enter into a Section 47 sterilisation agreement with the local authority preventing further development of the lands.

7.2.11. I note that while the parental home is located in the rural area most of the applicants family are located in the village of Newcastle. I would consider that the applicant could live in the village of Newcastle and still fulfil his social needs. The only justification for residing in Ballyvolane is on the basis that it is family land purchased 18 years ago. There are no family members living in the immediate vicinity of the site.

7.2.12. On the basis of the above, I would consider that the applicant social needs can be met by living in the settlement of Newcastle or closer to his parental home. There are no family connections within the immediate vicinity of the site. In this respect it is considered that the applicant does not have a social need or economic need to live in this area and therefore the proposed development would not comply with NPO19 of

the National Planning Framework 2040 nor CPO 6.41 of the Wicklow County Development Plan 2022-2028.

7.3. Traffic Safety

- 7.3.1. The proposed development site is located between two a local rural roads the L5400 and the L54001. There is an existing agricultural access off the L54001 which the applicant proposes to upgrade for the purposes of the vehicular access to the site.
- 7.3.2. There is no report from the Area Roads Engineer on file.
- 7.3.3. I note a report from a Cormac O'Brien Civil Engineer on file which states that 90 metres of sight visibility is available at the existing agricultural entrance. Visibility splays are taken to the centre of the road as the road is not sufficiently wide for overtaking.
- 7.3.4. In terms of traffic safety at the proposed entrance I would consider the same acceptable.
- 7.3.5. With respect of the carrying capacity of the local road network I do have some concerns. The roads in the area are only wide enough for one car and so passing traffic has to pull in to allow the other car to pass. Allowing further housing development will therefore exacerbate this issue.
- 7.3.6. Details with respect to trip generation as set out in the report from the Civil Engineer on file is unclear. However, the proposed development will result in at least 2 trips per day based on the applicant going to and from work. This does not include for any social visits or trips to the shops etc that he will make. If the applicant has a partner living with him now or in the future then these trips will increase and if he has any children then there will be many more trips.
- 7.3.7. The more trips will result in further pressure on the local road network which is deficient in width and alignment. In this respect, I agree with the planners report which states that the roads in the area do not have the carrying capacity to cater for the existing permanent population of the area.

7.3.8. There are also concerns that the proposed development if granted would set a precedent for further development in this rural area which will add to the existing housing stock in the area which I consider is already overly developed.

7.3.9. On this basis I would recommend that the proposed development be refused.

7.4. Visual Amenity

7.4.1. The proposed development is located in an area designated as Landscape Category 4 – Eastern Corridor. In terms of importance, this landscape category is rated the fourth of six categories of landscape in the Wicklow County Development Plan 2022-2028, the first and most important being Mountains and Lakeshore and the sixth being the urban areas., The proposed development site is therefore located in an area which is deemed to be moderate in terms of landscape importance.

7.4.2. I note that the case planner and the recommendation for refusal is on the basis that the site is open and exposed and the visibility of the site from the N11.

7.4.3. With respect of the open and exposed nature of the site I note that the same is located on the southern slopes of a small hill in the landscape. There are views from the site to the east towards the sea over the existing hedgerows. The hedgerows along the boundary are very mature and will serve to block views into the site from the surrounding area including the N11. In this respect drawings showing section drawings of the house as viewed from surrounding vantage points including the N11 which I note is located only 400 metres to the west. These drawings illustrate that the proposed house is not visible. Further landscape drawings have been submitted with the appeal to further reinforce screening along the boundaries. I do not consider these landscape drawings to be material.

7.4.4. The concern is that these boundaries can be removed/cut back in the future if the house is built - leaving it exposed. I note in this respect that according to the site layout plan submitted with the application the FFL 80.10m is only marginally above the ground levels on the site. However the road to the south of the junction is marked with a 77m height and so there is a 3 metre differential between the road levels and the FFL. Without the hedgerow boundary therefore the site would be left very exposed.

- 7.4.5. Policy CPO 6.44 of the Wicklow County Development Plan 2022-2028 requires 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
- 7.4.6. The proposed house is a simple pitched roof building of vernacular proportions linked to an section with a haybarn type roof. In terms of design is considered acceptable at this location.
- 7.4.7. Having regard to the above, and having regard to the landscape category applicable to the area, it is considered that the proposed development is acceptable in terms of design and siting subject to strict conditions been imposed with respect of:
- Retention of mature site boundaries
 - Landscaping as proposed
 - Section 47 sterilisation agreement being put in place

7.5. **Services**

- 7.5.1. The proposed development includes a new treatment plant and percolation area to serve the proposed house
- 7.5.2. I note the Environmental Health Officers report on file whom is satisfied with the proposed wastewater solution. I would consider therefor that the proposal is acceptable from a wastewater perspective.
- 7.5.3. I note that a well is proposed which is located upslope from the proposed percolation area.

7.6. **Appropriate Assessment Screening**

- 7.6.1. Having regard to the nature and scale of the proposed development, the distance from any European site and the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS.

8.0 Recommendation

I recommend that permission be refused for the following reasons:

9.0 Reasons and Considerations

1. Taken in conjunction with existing and permitted development in the area, the proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities and served by a poor road network. It is an objective of the planning authority, as expressed in the current Development Plan for the area, to encourage further growth of existing settlements and restrict rural housing where there is a bone fide necessity to live in the rural area instead of existing settlements. This objective is considered reasonable. It is considered that the applicant has not proven an economic or social need to live in this rural area and as such the proposed development would contravene the objective of the planning authority and would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The local road network because of its narrow width and poor alignment is only capable of serving traffic associated with the existing housing stock in the area. The proposed development by reason of the extra traffic movements that would be generated and by reason of the precedent it would set for other such development would result in increased traffic on these narrow rural roads and would therefore endanger public safety by reason of traffic hazard.

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

Andrew Hersey
Planning Inspector

1st August 2023