



An  
Bord  
Pleanála

## Inspector's Report

### ABP-317221-23

---

<b>Development</b>	House, new vehicle access off existing laneway, bored well, wastewater treatment unit, polishing filter and associated site works.
<b>Location</b>	Drummin East , Delgany , Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	22961
<b>Applicant(s)</b>	Conor Doyle
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Clement Wilson
<b>Observer</b>	None
<b>Date of Site Inspection</b>	10 September 2023
<b>Inspector</b>	Gillian Kane

## 1.0 Site Location and Description

- 1.1.1. The subject site is located in the townland of Drummin East, an agricultural area to the east of the N11 in Wicklow.
- 1.1.2. Drummin Lane runs south-east off a narrow exit of the N11 that provides access to the R762 and Drummin Lane, approx. 0.5km south of the main exit to Delgany (no. 10). Drummin Lane provides access to a number of properties and agricultural lands. The lane rises from the N11 (west) towards the east, with the result that the subject site and adjoining dwelling are elevated. The lane is surfaced for the first kilometre or so and then narrows at the point where the surfacing stops. An electronic gate, that was open on the date of my site visit provides access to two dwellings and an agricultural yard. A number of properties on the lane appear to be for sale.
- 1.1.3. The subject site is located to the immediate east of a detached dwelling, the penultimate dwelling on Drummin Lane. An agricultural gate provides access to the site, which on the date of my site visit housed two horses and was bound to the lane by post & wire fencing.

## 2.0 Proposed Development

- 2.1. On the 2<sup>nd</sup> September 2022, planning permission was sought for development comprising a new single storey family home (281sq.m.) to include a new vehicular access, a new bored well, a new wastewater treatment unit and soil polishing filter on a site of 0.4233ha.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 2<sup>nd</sup> of May 2023, the Planning Authority issued a notification of their intention to GRANT permission subject to 7 no. conditions.

### 3.2. Planning Authority Reports

- 3.2.1. **EHO:** No objection. Condition recommended.
- 3.2.2. **First Planning Report:** Notes that access could not be gained to the site due to locked gates. Notes the expired planning history on the site and the poor condition of the private lane. Recommends that the applicant clarify ownership of the laneway and proof of place of residence since 2012, evidence of intent to return to Ireland

permanently. Planner states that proposed design is acceptable, that further information should be requested on landscaping. Recommendation to request FI.

### **3.3. Prescribed Bodies**

3.3.1. None on file.

### **3.4. Third Party Observations**

3.4.1. One submission on the application was made. The issue raised mirror those raised in the appeal and are addressed in section 6.0 below.

### **3.5. Request for Further Information**

3.5.1. On the 20<sup>th</sup> October 2022, the applicant was requested to address the following items of FI:

- 1 Applicant required to verify consideration under rural housing policy Objective HD23
- 2 Landscape Plan
- 3 Planning status of access laneway

### **3.6. Response to Further Information**

3.6.1. On the 6<sup>th</sup> April 2023, an agent for the applicant responded to the Further Information request as follows:

- 1 Details of applicants residence remain the same as under previous planning history. Confirmation of applicants job offer within family business.
- 2 Landscape Proposals
- 3 Lane is outside the ownership and control of the applicant. Electronic gates were installed.

### **3.7. Reports on file after receipt of Further Information**

3.7.1. **Planning Report:** Notes that the applicant lives in Canada, will return to Ireland once planning permission is secured. Planner considers the response reasonable. Notes that the landscaping proposals are acceptable and that the matter raised regarding ownership of the lane are civil matters. Recommends a grant of

permission in accordance with the provisions of the 2022-2028 County Development Plan.

## 4.0 Planning History

- 4.1.1. **PRR14/1789:** Planning permission granted to Conor Doyle for a dwelling on the subject site. Extended in 2019 under **19/504**.

## 5.0 Policy Context

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

- 5.1.1. The 2022-2028 Wicklow County Development Plan was adopted on the 12<sup>th</sup> September 2022 and came into force on the 23<sup>rd</sup> October 2022.
- 5.1.2. The subject site is located in a Level 10 rural area (open countryside). The following housing policies apply.
- 5.1.3. **Section 6.3.8** provides details on the County Development Plans policies on rural housing. This section of the plan refers to NPO19 and 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 in addition to Gorey (Co. Wexford) and Naas (Co. Kildare). In rural areas under urban influence it is necessary to demonstrate a functional economic or social requirement for housing need. This is also subject to siting and design considerations”*.
- 5.1.4. **National Policy Objective 19** 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.

- 5.1.5. **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 Rural Housing Policy 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.

**Economic Need** The Planning Authority recognises the rural housing need of persons whose livelihood is intrinsically linked to rural areas subject to it being demonstrated that a home in the open countryside is essential to the making of that livelihood and that livelihood could not be maintained while living in a nearby settlement. In this regard, persons whose livelihood is intrinsically linked to rural areas may include:

- a. Those involved in agriculture The Planning Authority will positively consider applications from those who are engaged in a significant agricultural enterprise and require a dwelling on the agricultural holding that they work. In such cases, it will be necessary for the applicant to satisfy the Planning Authority with supporting documents that due to the nature of the agricultural employment, a dwelling on the holding is essential for the ongoing successful operation and maintenance of the

farm. In this regard, the Planning Authority will consider whether there is already a dwelling / dwellings on the farm holding when determining if a new dwelling can be justified.

b. Those involved in non-agricultural rural enterprise / employment The Planning Authority will support applications from those whose business / full time employment is intrinsically linked to the rural area that can demonstrate a need to live in the vicinity of their employment in order to carry out their full time occupation. The Planning Authority will strictly require any applicant to show that there is a particular aspect or characteristic of their employment that requires them to live in that rural area, as opposed to a local settlement.

Where an applicant's case for a new dwelling on the basis of economic need is based on establishing a new or alternative agricultural / non-agricultural rural enterprise and they have no previous experience in agriculture / rural enterprise, the Planning Authority shall not consider the above requirements met until the applicant can show that the new agricultural / non-agricultural rural enterprise has been legally and continuously ongoing for at least 5 years prior to the making of the application for a dwelling, and is the applicant's primary occupation and source of income. Applicants whose proposed business is not location-dependent will not be considered.

c. Other such persons as may have definable economic need to reside in the open countryside, as may arise on a case by case basis.

**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.

## **5.2. Natural Heritage Designations**

- 5.2.1. The nearest designated site is the Glen of the Downs Special Area of Conservation (SAC) (Site Code: 0007719), to the north of the appeal site. The 'Proposed Natural Heritage Area: Glen of the Downs' is also located to the north of the site.

## **5.3. EIA Screening**

- 5.3.1. Having regard to nature of the development comprising the construction of a single dwelling in a rural area, it is considered that 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 third-party states that he wishes to appeal against the decision of the Planning Authority to grant permission. He notes that he is the adjoining landowner and owns half the laneway in question. He requests that the application is assessed 'de novo' by the Board on the grounds that incomplete and incorrect information was deliberately submitted. He states that the application is invalid and the grant of permission contravenes the principles of sustainable development and the proper planning and sustainable development of the area.

The appeal is accompanied by the following:

- Copy of 1897 lease showing right of way
- Letter from Applicants Architect to solicitor 1991, Letter from Wicklow County Council to Architect 1991 and letter from solicitors
- Copy of drawing referenced in legal letters
- Letter from Property Registration Authority 2010

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

- In this and the previous application, there is a repeated distinction between a private laneway and a public laneway that leads to the R762. Any assessment of this laneway as private is incorrect.
- The public right of way over the laneway has been in existence since 1897. The route of the laneway was altered as part of a 1991 planning permission, ref. 917013. Drawing submitted that states it shows the original line of the laneway, submitted as part of the 1991 application. In 1991, the applicants solicitors, the applicants architect and the Planning Authority acknowledged the lane as a public right of way.
- Over time the lane became blocked by branches and material. Following clearing by the appellant it was blocked again. Vehicular access is not possible. Electric gates were installed in 2013. The appellant notes that the WCC planner was not able to gain access to the site.
- The applicants response to the Further Information request is insufficient. It does not clarify the planning status of the lane. Details on why access was restricted is



presented as an 'understanding' rather than statement of fact. The area planner noted that locked gates was 'unusual'. It is suggested that the applicant seeks to benefit from possession of the lane.

## 6.2. Applicant Response

6.2.1. An agent for the applicant responded to the third-party appeal, as follows:

- Access to the proposed house is via an existing lane, that serves a number of dwellings. It has not been taken in charge and is maintained by those who use it.
- The lane is outside both the ownership and control of the applicant.
- It is quite clear that the original lane was not interfered with . Additional surface area was provided through land owned by the Doyle family to provide better sightlines. The appellant has benefited from these upgrades.
- Maintenance of the lane is the responsibility of those using it.
- These matters are irrelevant to the application in hand.
- A notification to grant issued after a lengthy and comprehensive process.
- The applicant did not install gates or any other structures on the shared laneway.
- The gates were installed as a response to security incidences in 2012. All property owners on the lane have the key code to the gate. The appellant has been offered the code.
- The applicants allegation that the agent sought to deceive the Planning Authority is rejected and must be withdrawn.
- The application was assessed by the Planning Authority on its own merits, with full information before them.
- The applicant has had since 2012 to advise the Planning Authority of the gate.
- Access to the appellants property is not readily visible.
- The grounds of the appeal are an issue unrelated to the application.
- The applicant remains in Canada with future plans to manage the family business and subsequently his parents retirement plans stalled.
- The Board is requested to grant permission.

### 6.3. **Planning Authority Response**

6.3.1. None on file.

### 6.4. **Observations**

6.4.1. None on file.

### 6.5. **Further Responses**

6.5.1. The applicant responded to the applicants agent response, as follows:

- Half of the lane is in the appellants ownership.
- If access to the subject site is reliant on the goodwill of a third-party, the question of proper planning and development is raised. Land registry maps indicate there is no right of way across the entirety of the laneway, granted to the applicant.
- The appeal documents show the original path of the lane, with reference to the subsequent alteration. The applicants father fenced off the lane.
- The appellant is unable to maintain the area that has been fenced off.
- The planning report states that the current planner did not gain access to the site.
- The applicant seeks to build a house accessed by a laneway over which he has no ownership or control.
- Security concerns could have been addressed by other means. The planning status of the lane remains unclear.
- The appellant questions how it is possible to provide an access code to him if, as stated by the applicants agent, the laneway is outside the applicants control.
- The appellant had unrestricted vehicular access to the length of the laneway. There is a gate in the stone wall from the laneway into the rest of the appellants property. It is overgrown but clearly visible.
- The appellant has no objection to the development going ahead, but wishes to be able to maintain the path of the original laneway. This can be achieved by condition.
- It is submitted that the blocking of the lane is unauthorised development that materially changes the use of the land.

## 7.0 Assessment

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I note that the applicant has requested the Board to assess the appeal 'de novo'. I have assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and that these are not new issues. I will address each in turn as follows:

- Rural Housing Policy
- Access
- Appropriate Assessment

### 7.2. Rural Housing Policy

7.2.1. The 2022 Wicklow County development plan that was adopted during the assessment of the application. The Planning Authority's rural housing policy is set out in section 6.3.8 of the 2022 plan. This section of the plan notes that the policy is consistent with NPO 19 which seeks to ensure that a distinction is made between areas under urban influence and elsewhere. In rural areas under urban influence, single housing in the countryside is based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria. All of Wicklow's rural areas are considered to be areas under urban influence (section 6.3.8 refers).

7.2.2. The objective CPO 6.1 states that new housing development shall be required to locate on suitably zoned or designated land in settlements and will only be considered in the open countryside when it is for the provision of a rural dwelling for those with a demonstrable housing social or economic need to live in the open countryside. This is followed up by policy CPO 6.41 which 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.

7.2.3. The applicant has provided evidence that he has not ever owned, built or inherited a home. A declaration witnessed by a Notary Public in Canada is dated 01/09/2022. In relation to need, the applicant has indicated that he has been appointed managing

director of his parents property portfolio and farming interests. The solicitors letter dated 03 April 2023 states that once the applicant can return to Ireland, his parents will retire.

- 7.2.4. I note policy CPO 6.41 which states that where a house in the open countryside is required on economic need, it must be demonstrated that the home is essential to the making of that livelihood and that livelihood could not be maintained while living in a nearby settlement. No details of the applicants parents business is provided, nor details of the nature of the business or its location. I note that the subject site is approx. 150m from the boundary of the Greystones – Delgany boundary as per map A of the Greystones – Delgany LAP 2013-2019. Greystones / Delgany is a designated Level 3 'Large Growth Town II in the Metropolitan area' settlement. The applicant has not demonstrated that his livelihood, or that the business of his parents which he intends to takeover cannot be maintained while living in a nearby settlement. That the applicant must return from another country to take over a business also lends a degree of uncertainty. Should the applicant not return, or indeed not take over the business, on what grounds would a grant of permission for a dwelling in the open countryside stand?
- 7.2.5. Given the acknowledged need of the development plan to protect the open countryside from inappropriate development, and the objective of the development plan to locate new housing development on suitable zoned or designated land, it is considered the need for new one-off house in the open countryside must be robustly demonstrated. There are a number of issues that have not been clarified, namely the nature and location of the applicants business, that he is not currently resident in Ireland, that his taking over the business is an 'intention' in the future predicated on other matters, and the proximity of the site to a well established thriving urban settlement with a multitude of housing options.
- 7.2.6. It is considered that the applicant has not met the high bar of economic need required of policy CPO6.1, and policy CPO6.41. The applicant has not provided details of a social need to live in the area.

### 7.3. Access

- 7.3.1. The appellant provides much information regarding the ownership of the lane over which access is sought to the subject site. The applicants agent has categorically

stated that the laneway is out of the control or ownership of the applicant. She does not state, but I have inferred from the omission that it is the applicant parents that (amongst other parties) have ownership or control of the lane.

- 7.3.2. The appellant does not appear to object to the principle of providing access on the lane, only that his own access is unimpeded. The nature of his dispute with third parties is not germane to the subject application however. Should the proposed development go ahead or not, the appellants concern regarding his access will remain unchanged. The appeals process, nor the Board can be used as a means by which to resolve issues outside the remit of the appeal before the Board.
- 7.3.3. The applicants agent provided the Board with details of the access code to the lane. The gate was open on the date of my site visit. The lane is narrow, unsurfaced for much of its length and not entirely suitable for additional traffic that is not agricultural machinery.
- 7.3.4. The appellant notes that it is not good planning to grant permission to a site where vehicular access is not guaranteed and I am minded to agree. Should the Board require, the option of seeking further information to clarify this matter could be sought. I note that the Planning Authority sought to clarify the manner and that the response was to their satisfaction. I do not agree and consider it unreasonable to grant permission to a site where access is not clear.

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

- 7.4.1. Having regard to the nature and scale of the proposed development in a rural area, no appropriate assessment issues arise, and it is considered that the proposed development would not 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 permission be REFUSED for the following reasons and considerations:

- 1 The proposed development, comprising a single one-off house in the open countryside, in an area under urban influence and within 150m of a designated urban settlement, for which a demonstrable functional need as required by Policy CPO6.41 of the 2022-2028 Wicklow County Development Plan has not been demonstrated, is contrary to the policies and objectives of the plan which seeks to locate new housing development on suitably zoned or designated land in settlements, or within the open countryside for those who have a demonstrable housing social or economic need to live in the open countryside – policy CPO6.1 refers. The proposed development, is therefore contrary to the rural housing policies of the development plan, which are consistent with National Planning Objective 19 of the National Planning Framework and is considered 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.

---

Gillian Kane  
Senior Planning Inspector

11 September 2023