



An
Bord
Pleanála

Inspector's Addendum Report

ABP-317564-23A

Development	Removal of existing structure refurbish farmhouse building to provide new dwelling with a new wastewater treatment tank and percolation area and all other associated works.
Location	Tithewer, Newtownmountkennedy, County Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	22/1334
Applicant(s)	Audrey Nolan and Dara Cooke.
Type of Application	Permission.
Planning Authority Decision	Refused Permission
Type of Appeal	First Party v Refusal
Appellant(s)	Audrey Nolan and Dara Cooke.
Observer(s)	None.
Inspector	Susan McHugh

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1.0 Introduction

- 1.1. This report is an addendum report to the Inspector's report in respect of ABP-317564-23 dated 14th December 2023.
- 1.2. On 03/05/2024 the board decided to request an addendum report from the Inspector, assessing the rural housing need by reference to the material submitted at application and appeal stage.
- 1.3. This report considers the rural housing need of the applicant on foot of the request for an addendum report.

2.0 Policy Context

2.1. National Policy

2.1.1. Climate Action Plan 2024 (CAP24)

2.1.2. Project Ireland 2040 National Planning Framework (NPF)

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.

2.1.3. 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.

2.1.4. **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.

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

2.2. **Local Policy**

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

2.3.1. The Wicklow Dublin County Development Plan (CDP), 2022-2028 identifies the appeal site as 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.

2.3.2. Given the nature of the proposal and the location of the appeal site, **Policy Objective 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.

2.3.3. In terms of 'Social Need', The Planning Authority recognises the need of persons intrinsically linked to rural areas that are not engaged in significant agricultural or rural based occupations to live in rural areas. The policy notes that persons intrinsically linked to a rural area may include:

- Permanent native residents of that rural area (including Level 8 and 9 settlements) i.e. a person who was born and reared in the same rural area as the proposed development site and permanently resides there;
- A former permanent native of the area (including Level 8 and 9 settlements) who has not resided in that rural area for many years (for example having moved into a town or due to emigration), but was born and reared in the same rural area as the proposed development site, has strong social ties to that area, and now wishes to return to their local area;
- A close relative who has inherited, either as a gift or on death, an agricultural holding or site for his/her own purposes and can demonstrate a social need to live in that particular rural area, The son or daughter of a landowner who has inherited a site for the purpose of building a one off rural house and where the land has been in family ownership for at least 10 years prior to the

application for planning permission and can demonstrate a social need to live in that particular rural area,

- Persons who were permanent native residents of a rural area but due to the expansion of an adjacent town / village, the family home place is now located within the development boundary of the town / village;
- Local applicants who are intrinsically linked to their local area and, while not exclusively involved in agricultural or rural employment, have access to an affordable local site;
- Local applicants who provide care services to family members and those working in healthcare provision locally; and
- Other such persons as may have a definable strong social need to live in that particular rural area, which can be demonstrated by way of evidence of strong social or familial connections, connection to the local community / local organisations etc as may arise on a case-by-case basis.

Other relevant policy objectives of the CDP include:

- **CPO 6.42:** Where permission is granted for a single rural house in the open countryside, the applicant will be required to lodge with the Land Registry a burden on the property, in the form of a Section 47 agreement, restricting the use of the dwelling for a period of 7 years to the applicant, or to those persons who fulfil the criteria set out in Objective CPO 6.41 or to other such persons as the Planning Authority may agree to in writing.
- **CPO 6.43:** The conversion or reinstatement of non-residential or abandoned residential buildings back to residential use in the rural areas will be supported where the proposed development meets the following criteria:
 - the original walls must be substantially intact – rebuilding of structures of a ruinous nature will not be considered;
 - buildings must be of local, visual, architectural or historical interest;
 - buildings must be capable of undergoing conversion / rebuilding and their original appearance must be substantially retained; (a structural survey by a qualified engineer will be required with any planning application); and

- works must be executed in a sensitive manner and retain architecturally important features wherever possible and make use of traditional and complementary materials, techniques and specifications.
- **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.

3.0 **Assessment**

3.1. Having examined the material submitted at application and appeal stage in relation to the applicants rural housing need and having regard to the relevant local/regional/national policies and guidance, I consider the main issue relates to the applicant's compliance with the Rural Housing Policy.

3.2. **Compliance with Rural Housing Policy**

3.2.1. Reason for refusal no. 2 relates to the applicants housing need.

3.2.2. 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.

3.2.3. Clear policy is set out at both a national and local level regarding rural housing need. The 'Sustainable Rural Housing Guidelines for Planning Authorities' actively seeks to direct pressure for new residential development to the nearby established settlements. National Policy Objective 19 of the National Planning Framework (NPF) refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e. the commuter catchment of cities and large towns and centres of employment. National Policy Objective 19 also refers to the need to 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.

3.2.4. In support of the planning application, the following documentation was submitted by the Applicant;

- A Sworn Declaration dated 13/12/2022 stating that;
 - his father has retired from farming and has handed the farm over to him.
 - he originally received planning permission and built a home on a site on the land (Planning Ref. 02/7036).
 - he then moved to Meath in 2011, and then to Kildare with his wife and family in 2013.
 - he agreed as part of inheriting the farm from his father that his sister would receive the home previously granted to him under (02/7036).
 - this left him with the prefab/mobile home on the land subject of this application, which has been in use as a house for in excess of 10 years which he and his wife spend the summer.
 - he spends the winter months with his parents, which is unsuitable for his wife and family.

- A letter dated 29/11/2022 from the applicants' father Pat Cooke stating that he received planning permission in 1990 for the demolition of the existing stone farmhouse, now in ruins and the construction of a new house on the site for himself under (90/5842). He notes at that time he was living in his current house.
- A letter dated 07/10/2022 from local GAA Club confirming that the applicant played for the club for many years.
- A copy of an application form dated 30/03/2022 to a primary school in Kilcoole, Co. Wicklow in respect of the applicant's daughter with the family address at Tithewer, Newtownmountkennedy.
- A copy of a utility account in the applicant's name at the address of the subject application address.

3.2.5. The following documentation was submitted by the applicant by way of unsolicited additional information;

- A letter from the applicants' agent dated 11/04/2023 stating that the application should be considered on 2 grounds, firstly on the basis of compliance with CPO 6.41, and secondly on established use and planning precedent previously set.
- It is stated that the house permitted to the applicant under PRR 02/7036 has now been transferred to the applicant's sister. A letter dated 05/04/2023 is submitted from the applicant's solicitor outlining that the process of transfer of property from Dara Cooke to his sister is underway.
- It is also stated that precedent was set by the granting of a house on this site to Dara's father whilst he had his current residence on the farm, and that an established dwelling has existed on the site for in excess of 7 years.
- A letter from the applicant dated 11/04/2023 stating that the family farm is now transferred to him and he needs to farm full time. It is stated that the farm operation includes;
 - An extensive suckler herd (on the 360 acres) calving at least 150 cows per annum
 - Making about 120 acres of silage per year
 - Grow 40 acres of cereal

- Maintenance and repairing or machinery etc.
 - Letter dated 23/05/2023 stating that his son for health reasons would benefit from living in the open countryside.
- 3.2.6. The grounds of appeal were accompanied by the following documentation;
- A letter from the applicants agent dated 11/07/2023 which accepts that the existing building is in somewhat of a ruinous state and that Objective CPO 6.43 is not 'straightforwardly applicable', that the PA's conclusion that the applicant has not demonstrated a functional social or economic need to live in the open countryside in accordance with the requirements set out in Table 6.3 is flawed.
 - A letter from the applicants' sister's solicitor dated 26/06/2023 with attached Deed of Transfer signed by the applicants sister Eimear McCabe, and confirmation that the Deed of Transfer was lodged with the Property Registration Authority and provides reference details.
 - A letter from the applicants' accountant dated 20/06/2023 confirming the farm business is solvent, and that the most recent set of accounts year ended 31st March 2022 since the transfer to the applicant indicate a profit.
 - A letter from the applicants' accountant dated 04/07/2023 confirming that the house transfer to Eimear Cooke was to balance the inheritance from their parents Pat and Mary Cooke due to inheritance of the farm by Dara Cooke.
- 3.2.7. Within the assessment of the application, the Planning Authority considers that Objective 6.43 is not applicable because the building subject of the application is of a ruinous nature and not of local, visual, architectural or historical interest. The applicant also concedes this to be the case in the grounds of appeal, but effectively has presented this as an option in lieu of upgrading and extending the existing mobile home on site.
- 3.2.8. I have reviewed the submissions on file, and relevant CDP maps and objectives and would concur with the local authority that Objective 6.43 does not apply. I also concur with the applicant that the option to retain and upgrade the existing mobile home on site is not an effective solution either.
- 3.2.9. The grounds of appeal submit that the applicant has established a functional social or economic need to live in the open countryside in accordance with the

requirements set out in Table 6.3, and that the PA's conclusion that the applicant has not established same is flawed.

3.2.10. It is submitted that the applicant has previously been granted permission, and as is his right, has sold or otherwise transferred his property after a period of 7 years. It is submitted that as he has inherited the farm and now requires to live on the farm with his family is a clear demonstration of a functional social or economic need to live in the open countryside in accordance with the requirements set out in Table 6.3.

3.2.11. The Planning Authority notes that under that PRR 02/7036 the applicant was previously granted permission for a dwelling on a site within the family landholding, that the applicant moved to Meath in 2011 and then to Kildare in 2013.

3.2.12. The Planning Authority notes that it is unclear if the house permitted to the applicant under PRR 02/7036 is now in the applicants' sisters' ownership and if the applicant's sister previously owned her own dwelling. It was therefore considered that the Applicant does not qualify for a rural dwelling.

3.2.13. 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".

3.2.14. A sworn affidavit confirming that the Applicant built a home on the land (Planning Ref. 02/7036), moved to Meath in 2011, and to Kildare in 2013 accompanied the planning application. The affidavit also confirms that as part of inheriting the farm his sister would receive the home previously granted to him under (02/7036). The affidavit clearly states that during the summer he and his wife have used the prefab/mobile home on the land subject of this application, and in the winter months, he stays with his parents. The application was accompanied by a Land Registry Map created 26/09/2022 which outlines the extent of the family farm in blue, and the subject appeal site in red. The location of the parents' home, sisters' home, brother's home and applicants' current accommodation (mobile home) are all identified within the overall landholding. The Land Registry Map submitted does not however indicate the entire extent of the family farm which the applicant has referred

to as now being in his ownership. In any event it is clear that there are already at least three residential properties on the overall landholding.

- 3.2.15. When examining the Land Registry documentation submitted on appeal, I note that the overall farmlands with a stated area of 40.2030 Hectares, refers to lands outlined in red on the Registry Map, but copy of same does not accompany the appeal.
- 3.2.16. I note the applicant's case where he states that he has inherited the family farm and that he has a functional need to live on the farm with his family. I also note the nature of the farm activities outlined by the applicant, and confirmation that the farm is solvent, but the lack of detailed documentary evidence to support same. I am also not convinced that the applicant has and or intends to run the farm full time as his occupation as an electrician is included on the primary school enrolment form.
- 3.2.17. In terms of 'Social Need', 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.
- 3.2.18. I note no specific information has been provided with respect of the applicants wife Audrey Nolan, and the planning documentation submitted confirms that Dara Cooke does not permanently reside on the farm. I also note that the address of the applicant (indicated in Part 2 of the Land Registry details submitted with the appeal documentation) of Broomfield Cross, Moone, Athy, County Kildare dated 14/04/2022.
- 3.2.19. It is also unclear if their children currently attend the local primary school in Kilcoole or if the Applicant's current permanent address is in Tithewer, Newtownmountkenedy. I note that the settlement of Kilcoole is located c. 7.5km to the east of the appeal site. In the absence of documentary evidence clarifying that the applicant is a permanent native resident of this particular area, they cannot be defined as such.
- 3.2.20. Whilst I acknowledge that the Applicant has a strong desire to live at this rural location, (and has outlined the medical needs of one of his children), I am not satisfied that on the basis of the information submitted on file (i.e. absence of a letter from a medical practitioner) that a strong social need to live in this particular area has been demonstrated, as required by Table 6.3.

- 3.2.21. I note the letter from the applicants' sister's solicitor dated 26/06/2023 confirming that she is now the owner of the house permitted originally to the applicant, however it still remains unclear if the applicant's sister previously owned her own dwelling.
- 3.2.22. Although it is not a matter for the Board to address unauthorised development the applicant refers to the existing mobile home where he resides during the summer months, but the appellant has not submitted any documentary evidence to support the mobile home on the overall landholding has the benefit of an authorised permission.
- 3.2.23. In addition, I do not consider that the justification provided by the Applicant is sufficient to require an additional house on the family farm which is in a rural area under urban influence given, inter alia, local, regional and national policy support for the revitalisation of smaller towns, villages and rural settlements.
- 3.2.24. 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.
- 3.2.25. I am therefore, satisfied on the basis of the information on file that the applicant has not submitted adequate evidence to demonstrate compliance with the Rural Housing Policy as set out in the current Wicklow County Development Plan 2022-2028.
- 3.2.26. I recommend, therefore, that planning permission be refused on this basis.

4.0 Recommendation

- 4.1. I refer to the previous Inspector's Report and recommendation on this application dated 14th December 2023. Having regard to the further assessment of the rural housing need by reference to the material submitted at application and appeal stage I am satisfied that all matters have been addressed fully and no change to the recommendation arises.

5.0 Reasons and Considerations

1. Having regard to the location of the site within an "Area Under Strong Urban Influence" as identified in the 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 identified as a Level 10 rural area in the Wicklow County Development Plan 2022-2028, as set out in Table 6.3 of the said plan where housing is restricted to persons demonstrating local need, it is considered that the applicant does not come within the scope of housing need criteria for a house at this location. The proposed development 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 proposer 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.

Susan McHugh
Senior Planning Inspector

23rd August 2024