



An
Bord
Pleanála

Inspector's Report ABP317871-23

Development	Single storey dwelling, new garage, secondary treatment system and percolation area, new well, entrance and associated site works.
Location	Ballinahinch Upper, Newtownmountkennedy, Co. Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	22/1286.
Applicant(s)	Glen McKenna.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party v Refusal
Appellant(s)	Glen McKenna.
Observer(s)	None.
Date of Site Inspection	29 December 2023.
Inspector	L. Gough.

1.0 Site Location and Description

- 1.1. The appeal site is located within a rural area c.4km northeast of Roundwood (Level 6 town) at Ballinahinch Upper in an Area of High Amenity (North East Mountain Lowlands) and c.4km southwest of Newtownmountkennedy (Level 4 town). It is currently part of a Coillte conifer plantation which forms the southern and eastern boundary of the Roundwood Golf Course and Club.
- 1.2. The site is generally rectangular in shape, measures 0.4ha and is elevated above the road, rising slightly uphill from front (west) to rear (east) and from south to north.
- 1.3. The site is accessed off the east side of the L5055 local road, just slightly to the south of its intersection with the R765 which provides access between Newtownmountkennedy and Roundwood.
- 1.4. Along the front boundary is a sod and sand bank and grass verge. The ground level of the site is raised approximately mid-way above the height of the road level and top of the bank
- 1.5. A dwelling is located on a neighbouring site to the north, and a further neighbouring dwelling is situated to the south.
- 1.6. There are extensive views of the countryside to the north, west and south and the subject appeal site would be highly visible from these upland areas.

2.0 Proposed Development

- 2.1. The proposal seeks permission for the construction of a single storey dwelling, garage, well, secondary treatment system and percolation area, entrance off the public road and associated site works.
- 2.2. The proposed 4-bedroomed dwelling will comprise a total floor area of 200m² with a ridge height of 5.785m and the garage a floor area of 49.8m² with a ridge height of 5.275m.
- 2.3. Materials and finishes would appear to comprise a combination of render and natural stone cladding for the principal elevations with a tile roof.
- 2.4. A new recessed vehicular entrance with a connecting tarmacadam driveway will provide access to the proposed dwelling and garage. Given the siting of the

proposed dwelling, the proposed driveway will run largely parallel to the northern site boundary and will have a total length of c. 70m. The area in front of the proposed dwelling is to be cleared of existing hedgerow and trees, with proposed new hedgerows planted and allowed to grow to a height of 1.8m, to the front (west) roadside boundary and part of the northern boundary to the south of the proposed driveway.

3.0 Planning Authority Decision

3.1. Decision

The Council's decision to **refuse** permission for the proposed development was based on the following reason:

The Council's settlement strategy is to require new housing to locate on designated housing land within the boundaries of settlements, and to restrict rural housing to 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 of the Wicklow County Development Plan 2022 -2028. It is considered that the applicants do not come within the scope of the housing need criteria as set out under Objective CPO 6.41 of the Wicklow County Development Plan 2022 -2028 as they have 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. 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. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Wicklow County Council Planning Report, dated 30/01/2023, forms the basis of the decision. The first report provides a description of the site and surrounds and an outline of the proposed development, including in terms of its design, visual and neighbouring amenities, access and services. In addition, it provides an overview of

the policy that is applicable to the development proposal and summaries the planning history of the site and nearby dwellings.

3.2.2. In terms of their assessment of the application, the Planning Authority notes that residential development proposed to be located in the open countryside, will be considered based on the core consideration of definable functional, social or economic need to live there. Accordingly, on the basis of information provided, which:

- indicates the Minister of Lands is the landowner of the site and not the applicant;
- seeks to motivate the requirement for specially adapted accommodation due to a family member's autism condition which is not regarded as a qualification for special housing consideration to move from an urban to a rural location;
- indicates the applicant as having been born and living initially in Newtownmountkenedy, prior to living in Ballinahinch for a short period of time,

the Planning Authority would not be satisfied that the applicant is intrinsically linked to the area or has a demonstrated housing need based on a functional, social or economic need to reside in the area. A refusal of permission was therefore recommended.

3.2.3. A second report is included on the planning file, prepared subsequent to the Applicant's request, dated 31st January 2023, for a six-month extension of time in relation to the application, and the submission of further unsolicited information, comprising a genealogical family tree and two letters from the applicant highlighting links to the area, on 3rd May 2023 in relation to establishing the applicant's housing need.

3.2.4. Notwithstanding the submission of the unsolicited further information and having examined same, the planning authority were not satisfied that the applicant had demonstrated an intrinsic linkage to the local rural area, nor a housing need based on a functional, social or economic need to reside in the area, and a recommendation to refuse the application was therefore made on the basis of the reason for refusal provided to the applicant.

3.2.5. Other Technical Reports

- Municipal District Engineer: No objection to the proposal, subject to conditions relating to sightlines and cutting back the existing hedge (extent to be agreed on site prior to commencement), surface water runoff and surfacing of the proposed access road.
- Environmental Health Officer: No objection subject to condition.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None

4.0 Planning History

- LA Ref. 17/777: Neighbouring site to the south – Permission granted for a new dwelling, garage, well, secondary treatment system, percolation area, entrance and all associated site works.
- LA Ref. 01/5122: Neighbouring site to the north – Permission granted for a new dormer type dwelling and septic tank with associated site works.

5.0 Policy and Context

5.1. National Policy

5.1.1. Project Ireland 2040 National Planning Framework (NPF) Local Policy

National Policy Objective (NPO) 19 states it is an objective to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere. In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and

siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.1.2. Sustainable Rural Housing Guidelines for Planning Authorities, 2005

The overarching aim of the Guidelines is to ensure that people who are part of a rural community should be facilitated by the planning system in all rural areas, including those under strong urban based pressures. To ensure that the needs of rural communities are identified in the development plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities is accommodated. Circular Letter SP 5/08 was issued after the publication of the guidelines.

5.2. Regional Policy

5.2.1. Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES)

Section 4.8 (Rural Places: Towns, Villages and the Countryside) of the RSES indicates that support for housing and population growth within rural towns and villages will help to act as a viable alternative to rural one-off housing, contributing to the principle of compact growth. Regional Policy Objective (RPO) 4.80 is relevant to the development proposal which notes that *'Local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements'*.

5.3. Local Policy

5.3.1. Wicklow County Development Plan, 2022-2028

The Wicklow County Development Plan (CDP), 2022-2028 came into effect on 23rd October 2022 and is the extant development plan for the area. The CDP indicates

that development within rural areas should be based on the core consideration of a demonstrable social or economic need to live in a rural area.

5.3.2 Section 6.3.8 (Rural Housing) of the CDP specifically highlights the fact 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”*.

5.3.3 Given the nature of the proposal and the location of the appeal site within a rural area, Policy Objective CPO 6.41 (Housing in the Open Countryside) is of direct relevance to the development proposal. The policy seeks to *‘Facilitate residential development in the open countryside for those with a housing need based on the core consideration of demonstrable functional social or economic need to live in the open countryside in accordance with the requirements set out in Table 6.3’*. A housing need *‘is defined as those who can demonstrate a clear need for new housing, for example:*

- *First time homeowners;*
- *Someone that previously owned a home and is no longer in possession of that home as it had to be disposed of following legal separation / divorce / repossession by a lending institution, the transfer of a home attached to a farm to a family member or the past sale of a home following emigration;*
- *Someone that already owns / owned a home who requires a new purpose built specially adapted house due to a verified medical condition and who can show that their existing home cannot be adapted to meet their particular needs; and,*
- *Other such circumstances that clearly demonstrate a bona fide need for a new dwelling in the open countryside notwithstanding previous / current ownership of a home as may be considered acceptable to the Planning Authority’.*

In terms of ‘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'.*

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.*

5.4. Natural Heritage Designations

There are no European designated sites within the immediate vicinity of the site. The nearest designated sites are:

- Vartry Reservoir pNHA (Site Code: 001771), approximately 1.9km to the west.
- Carriggower Bog SAC and pNHA (Site Code 000716), approximately 2.2km to the north.
- Devil's Glen pNHA, approximately 5.4km to the south.
- The Murrough pNHA (Site Code 000730), The Murrough Special Protection Area (SPA) (Site Code: 004186) and The Murrough Wetlands Special Area of Conservation (SAC) (Site Code: 002249), approximately 8.4km to the east. site.

5.5. EIA Screening

Having regard to the nature and scale the development which consists of a single house in a rural location and the absence of any significant environmental sensitivity in the vicinity of the site, 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

The following is the summary of the main grounds of the first party appeal, submitted by the applicant's agent, McAulay Rice Architects.

- Applicant was reared for the majority of his life (circa 18 years) in Ballinahinch, Newtownmountkennedy; with 10 years of this being in the family home and wishes to return to the rural area.
- Applicant's family have a long history of living in this rural area, with relatives in and around the area to support his family's needs.
- The mid-terrace dwelling, bought in Newtownmountkennedy in the mid-2000's, was a starter/ investment home bought by both the applicant and his

now wife. The rooms in this dwelling are extremely small and unsuitable for the family's needs.

- The family requires additional space and rooms to cater for their needs and specifically those of their son whose needs will only increase.
- The current dwelling cannot be extended or altered to suit the needs required in respect of a sensory room, toilet, spatial space, inside/ outside space.
- There are no current or new housing estate dwellings which would provide the specific facilities required for the family's needs, nor that of their son.
- Confirmation is provided of ownership of the subject appeal site by the submission of a copy of the transfer map.
- A copy of a letter from the Ashford Clinic has been submitted to support the appeal which confirms the appellant's son's medical condition, stating that the family's current accommodation is unsuitable for his needs. The son's condition is also confirmed by a letter from the Blackrock Clinic Paediatric Neurology Clinic.
- A map is provided which indicates distances from the subject appeal site to the applicant's family home and the dwellings of other relatives, specifically:
 - Applicant's house in Ballinahinch: 3.8km to the north-east in Newtownmountkennedy
 - Applicant's parent's home: 3.4km to the east on the outskirts of Newtownmountkennedy
 - Grandparent's home in Ballinahinch: 1.86km to the north-east
 - Uncle's home: 1.1km to the south-west
- Applicant is willing to make his current dwelling available for affordable housing in the area, prior to any commencement work on his own home in the event that planning permission is granted for the subject appeal dwelling.
- Reference is made to another planning application which was granted planning permission (L.A. Ref. 18/114), which in the agent's opinion constitutes very similar circumstances to the subject appeal application.

6.2. Planning Authority Response

None.

6.3. Observations

None.

7.0 Assessment

- 7.1. Having inspected the site and reviewed the file documents, I consider the principal planning issues are those raised in the grounds of appeal and no other substantive issues arise. As such the substantive issue relates to national guidance in relation to rural housing and the appellant's compliance with the planning authority's local housing need provisions.

Rural Housing Need

- 7.2. On the issue of functional social or economic local need, the appellant has sought to demonstrate a rural and social need to live in the local rural area by the submission of documentation both within the application submission documentation, unsolicited further information (on foot of the grant of an extension of time by the planning authority following a request for same from the appellant), and via the appeal documentation, to support local social ties and medical information pertaining to both the appellant and his son. Such documentation included:

- Appellant's birth certificate, with address of the appellant's parents being at Springfield Heights within Newtownmountkennedy.
- A cover letter from the Appellant's agent outlining their client's connection to the local rural area and their social need to live in this area.
- A letter from Newtownmountkennedy NS confirming that the appellant, from O'Neills Park and Ballinahinch, had been a pupil of St Josephs NS (amalgamated with St Brigid's GNS in 2007 to form the current school), between 1988 to 1996.
- Correspondence from the years 2002, 2003, 2005 to confirm the Appellant's address within this location.

- A map showing locations of the appellant's parent's home; appellants current residence; appellants grandfather's residence and appellant's uncle's residence.
- Medically related letters/ reports

7.3. I note that Table 6.3 of the County Development Plan, included within Policy CPO 6.41, outlines the core considerations of demonstrable functional social and economic need to live in the open countryside. In terms of demonstrating a housing need, the table provides examples, including *"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"*.

7.4. Also of pertinence to the subject appeal, and in relation to relevant considerations pertaining to demonstrating 'Social Need', the County Development Plan rural housing policy 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:*

- *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 who 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;*
- *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.*

7.5. In terms of demonstrating a housing need, the appellant could potentially be described/ defined as someone that already owns a home who requires a new purpose built specially adapted house. Nonetheless, whilst documentation has been submitted which confirms medical conditions relating to both the appellant and his son, no further information or details are provided in relation to their existing housing conditions and room/ outdoor sizes and spaces and how these cannot be adapted to meet their specific needs, nor what their specific needs are or how or why their existing home cannot be adapted to meet their particular needs.

- 7.6. As regards demonstrating social need, a review of the information and aerial maps submitted appears to indicate the location of the applicant's parents' home as being on the outskirts of Newtownmountkennedy, approximately 3.4km to the east of the subject appeal site. Further, the 2005 Heritage Maps (historical maps on www.Heritagemaps.ie, accessed on 13.01.2024), illustrate this location as being within a rural cluster of dwellings situated c.0.7km from the applicant's current dwelling, located just outside the outskirts of Newtownmountkennedy.
- 7.7. Notwithstanding the above, and in relation to the need to demonstrate compliance with either of the above-outlined provisions, no information has been submitted which corroborates the appellant's parents dwelling and his family home location, with the indicated dwelling location not correlating to the address indicated on the applicant's birth certificate, nor is a dwelling evident at the indicated location on the aerial photograph provided. In addition, other than uncorroborated dates when the appellant is stated to have lived at Ballinahinch whilst attending the local National School, the only other evidence of the appellant residing in Ballinahinch was over a three-year period between 2002-2005.
- 7.8. On the basis of the information submitted and having considered the documentation on the planning file in its totality, I'm therefore not satisfied that the appellant has provided demonstrable proof of his compliance with any of the core considerations relating to demonstrable functional social housing need to the local rural area, as provided and outlined within policy CPO 6.41 of the County Development Plan.

8.0 Recommendation

- 8.1. I recommend that permission for the proposed development be refused.

9.0 Reasons and Considerations

- 9.1. Having regard to the location of the site within an Area Under Strong Urban Influence, as identified in Section 6.3.8 of the Wexford County Development Plan 2022-2028, which seeks to manage the growth of areas that are under strong urban influence to avoid over-development and to ensure that the development of single dwellings in the countryside are provided based on the core consideration of demonstrable economic or social need to live in a rural area, and having regard to

the documentation submitted with the planning application and appeal, the Board is not satisfied that the Applicant comes within the scope of the housing need criteria as per the specific requirements of Policy Objective CPO 6.41 of the Wicklow County Development Plan, 2022-2028. 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.

L. Gough

Planning Inspector

14 January 2024