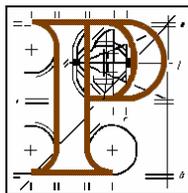


An Bord Pleanála



Inspector's Report

PL10.243292

DEVELOPMENT: Construction of house and all associated site works at Kilcross, Inistioge, County Kilkenny.

PLANNING APPLICATION

Planning Authority: Kilkenny County Council

Planning Authority Reg. No: 13/586

Applicant: John Tierney

Application Type: Permission

Planning Authority Decision: Grant Permission

APPEAL

Appellants: Marie Ashe-Doyle and Padraig Doyle

Type of Appeal: Third Party against Decision to Grant Permission

Date of Site Inspection: 8th July 2014

Inspector: Andrew Boyle

1.0 THE SITE

The site is located in a rural area in the townland of Kilcross in County Kilkenny. It is about 1.7 kilometres east of the village of Inistioge, 8 kilometres southeast of Thomastown and 23 kilometres southeast of the centre of Kilkenny city. The site consists of a field which is currently in rough pasture. This field is irregular in shape, but approaching rectangular. Its long axis runs for a distance of about 115 metres from northwest to southeast. It has an average width of about 28 metres. It has a stated area of 0.329 hectares. The site is approximately level over its length and slopes upwards by approximately 1 metre from southwest to northeast over its width.

On its northwest side, the site has a frontage of 31.3 metres onto a minor public road, on the opposite side of which is a detached two-storey 19th century house. To the northeast, the site initially adjoins that of another detached 19th century house, but for about two thirds of its depth, it adjoins further fields in agricultural use. On its southeast side it adjoins another field in agricultural use. On its southwest side it initially adjoins that of a 19th century cottage and associated outbuilding, beyond which, for about the remaining 50% of the depth of the site, it adjoins a field in agricultural use. The site boundaries are native hedgerows on all sides.

2.0 THE PROPOSED DEVELOPMENT

It is proposed to erect a single-storey house about 38 metres back from the existing road boundary of the site. It would be a simple three-bedroom design with a stated floor area of 121.49 square metres. It would be basically rectangular in plan measuring 14.198 metres by 8.533 metres. It would be orientated northeast - southwest to face towards the road. It would feature a shallow lobby and living area projection beneath the main roof centrally on the front elevation. To the rear there would be a gabled projection of about two metres from the main rear elevation and taking up approximately half the width of the house. Materials are not specified, but it appears that it would have a plain plaster finish and a tiled or slated gabled roof. Windows would be casement types.

A new recessed entrance would be opened in the southwestern boundary of the site onto the laneway which separates it from the cottage on the adjoining site in family ownership. The new entrance would lead, via a driveway, up to the front of the house and beyond it

on its southwest side to a detached garage. To the rear of the house, at a distance of about 28 metres there would be a proprietary wastewater treatment system and percolation area. Surface water would drain to soakpits. Water supply would be from the public mains. The existing boundary hedgerows would be reinforced with native species. Notional tree planting is shown on either side of the driveway.

3.0 THE PLANNING AUTHORITY'S DECISION

On 1st April 2014, Kilkenny County Council decided to grant permission for this development, subject to 11 conditions.

Condition 3 of the planning authority's decision stipulates a five year first occupancy by the applicant.

Condition 6 of the planning authority's decision specifies external finishes including blue/black slate on the roof, a front door with a timber outer leaf and, where stone is proposed, that this should be natural stone only, rather than reconstituted stone.

Condition 7 of the planning authority's decision requires the submission and agreement of a revised site layout drawing showing the proposed vehicular entrance moved further up the lane.

Condition 9 of the planning authority's decision requires that where hedgerow is to be removed to achieve the required sightlines to the west, a 1 metre high earthen berm is to be provided behind the visibility sightlines. This is to be planted with a double row of native hedgerow planting.

4.0 RELEVANT PLANNING HISTORY

Under the planning authority's reg. ref. 02/318, permission was refused to Dick Tierney for a single-storey house, septic tank with percolation area, entrance, garage and associated site works.

Under the planning authority's Reg. Ref. 13/390, an application for a house on this site was withdrawn following non-response to a request for further information.

The planning authority's planner's report notes three other permissions in the vicinity of the site under its Reg. Refs. 09/638, 00/1281 and

05/1491. Reg. Ref. 09/638 was a permission to extend the house on the site opposite to the northwest with a two-storey extension to be used as a self-contained family flat, only. Reg. Ref. 00/1281 refers to a permission granted to the present applicant and his then wife for the construction of a house on a site approximately 75 metres to the west of the present site. This house has been built. Reg. Ref. 05/1491 refers to a permission granted to Dick and Bridget Tierney for a single-storey house on a site immediately to the west of that under Reg. Ref. 00/1281. This house was for the applicant's parents and has been constructed.

5.0 THE SUSTAINABLE RURAL HOUSING GUIDELINES FOR PLANNING AUTHORITIES, 2005

These guidelines, published in April 2005, were foreshadowed in the National Spatial Strategy. They follow on from and elaborate on the guidance in the National Spatial Strategy.

The guidelines set out overarching policy objectives for planning authorities as follows: -

- The importance of supporting development needed to sustain and renew established rural communities.
- The need to ensure that the planning system guides development to the right locations in rural areas, in the interest of protecting natural and manmade assets in those areas.
- The need to analyse the different types of economic, social and physical circumstances of different types of rural areas and to tailor planning policies to respond to these differing local circumstances.

The guidelines repeat the need for planning authorities to identify and distinguish the four types of rural area categorised in the National Spatial Strategy namely, rural areas under strong urban influence, stronger rural areas, structurally weaker rural areas and areas with clustered settlement patterns. They continue to divide rural housing into that which is urban-generated and that, which is rural-generated. They advise that in defining persons with rural-generated housing needs, development plans should not be over-prescriptive, citing the

example of over-restricting the definition to persons engaged in full-time agriculture. They also counsel against an overly vague approach.

Map 1 of the guidelines is developed from a map in the National Spatial Strategy and gives an indicative outline of rural area types. However, Section 3.2 of the guidelines cautions that it is to be expected that all planning authority areas which are predominantly rural will contain, to varying extents, at least three of the rural area types defined in the National Spatial Strategy, namely: -

1. areas under strong urban influence,
2. areas with a traditionally strong agricultural base,
3. structurally weak areas.

On map 1 of the guidelines, the appeal site would be located in a stronger rural area. Appendix 3 of the guidelines sets out recommended development plan objectives and issues for rural areas. In relation to stronger rural areas, it recommends that the key development plan objective should be to consolidate and sustain the stability of the population and, in particular, to strike the appropriate balance between development activity and smaller towns and villages and wider rural areas. A reasonable balance should be struck between accommodating proposals for individual houses in rural areas, actively stimulating and facilitating new housing development in smaller towns and villages and carefully monitoring development trends to avoid areas becoming overdeveloped, e.g. with extensive ribbon development.

6.0 DEVELOPMENT PLAN PROVISIONS

The site lies within the functional area of Kilkenny County Council. It is thus affected by the provisions of the Kilkenny County Development Plan, 2014-2020.

Chapter 3 of the development plan is on its Core Strategy. At Section 3.4 entitled “Core Strategy Table” it is noted that the implementation of the National Spatial Strategy and the Regional Planning Guidelines at county level will, inter alia, allow the sustainable development of rural areas of the county.

Section 3.5, on Rural Settlement Strategy, notes that this is based on the Sustainable Rural Housing Guidelines for Planning Authorities. The objective of the planning authority's rural housing strategy is to provide for sustainable rural communities without compromising the physical, environmental, natural or heritage resources of the county. It is noted that this broad objective is underpinned by the following detailed objectives.

- Promote the sustainable development of rural areas.
- Protect the quality and character of rural areas.
- Protect the quality of the environment, including the prevention, limitation, abatement and/or reduction of environmental pollution and the protection of waters, groundwater and the atmosphere.
- Protect features of the landscape and areas of major importance for wild fauna and flora.
- Protect the character of the landscape, including views and prospects listed in this Plan and the amenities of places and features of natural beauty or interest.
- Protect natural resources such as minerals and construction aggregates
- Protect areas where sustainable energy production is feasible, such as high lying areas where wind energy production is acceptable in principle.

The development plan notes that 63% of the county's population lives in rural areas. It is recognised that the county has a long tradition of rural living. It is the planning authority's intention to support this in a sustainable manner.

At Section 3.5.2 of the development plan, on Rural Housing Policies, the problems arising from urban generated rural housing are recognised as follows:-

- creation of demands for the subsequent provision of public infrastructure (i.e. roads and utilities);
- proliferation of septic tanks in areas with poor soils that do not have the capacity to absorb effluent;
- contamination of local water supplies and a reduction in water quality;
- rising land values that push up prices for those with a genuine local housing need;
- higher energy consumption and transportation costs arising from increased car-based commuting;

- profound effects on landscape character, with potentially harmful effects on the tourism sector, which
- depends on high-quality landscapes;
- loss of investment in rural towns and villages, leading to dereliction and vacancy;
- relocation of younger and more affluent people from settlements to the surrounding rural areas.

Figure 3.17 is a Rural Housing Strategy Map. It divides the county into those areas under urban influence, stronger rural areas and areas of population decline. On this map, the appeal site falls within a stronger rural area. At Section 3.5.2.3, on Rural Generated Housing Need, it is stated that in such areas single houses will be permitted, subject to other planning criteria, for persons where the following stipulations are met.

1. Persons who are employed full-time in rural-based activity such as farming, horticulture, forestry, bloodstock or other rural-based activity in the area in which they wish to build or whose employment is intrinsically linked to the rural area in which they wish to build such as teachers in rural schools or other persons by the nature of their work have a functional need to reside permanently in the rural area close to their place of work.
2. A fulltime farm owner or an immediate family member (son, daughter, mother, father, sister, brother, heir) wishing to build a permanent home for their own use on family lands.
3. Persons who have no family lands but who wish to build their first home , on a site within a 10 km radius of their original family home, (the local rural area) in which they have spent a substantial and continuous part of their lives (minimum 5 years)
4. Persons who were born and lived for substantial parts of their lives (minimum 3 year) in the local area and wish to return to live in the local area (returning migrants).
5. A landowner who owned property prior to 14th June 2013 (the date of commencement of the review of the development plan) wishing to build a permanent home for his/her own use or a son or daughter. (This provision is to deal with historical land issues which might arise close to existing settlements where families could be excluded from building a home on their own lands for their own occupation due to emerging development trends over

previous plan periods. This cut-off date is a definitive time frame which will not be revised in subsequent development plans.)

At Section 3.5.2 it is stated that subject to satisfying good practice in relation to site location and to access, drainage and design requirements, rural generated housing need should be facilitated as close as possible to its origin to ensure that strong local ties are maintained and that the applicant remains an intrinsic part of the local community. At Section 3.5.2.1, on Areas under Urban Influence, it is noted that all permissions granted for rural housing will be subject to a seven year first occupancy condition.

Chapter 8 of the development plan is on Heritage.

Section 8.2.1.1 is on Protected Areas of International Importance: Natura 2000. The planning authority will ensure that an Appropriate Assessment, in accordance with Article 6 (3) and 6 (4) of the Habitats Directive 92/43/EEC is carried out in respect of any plan or project not directly connected with or necessary to the management of the site, but likely to have significant effect on a Natura 2000 site, either individually or in combination with other plans or projects, in view of the site's conservation objectives.

Section 8.2.10.1 of the development plan is on Landscape Character Assessment. This is noted to be a process which describes, maps and classifies landscapes objectively. It enables an understanding to be formed of the inherent value and importance of individual landscape elements and the processes that may alter landscape character in the future. It is an objective to protect and sustainably manage the landscape character of the county, having regard to the findings of the landscape character assessment and the development management standards as set out in Chapter 8 for the sustainable development of the county and appropriate conservation of its landscape character.

Section 8.2.10.2 subdivides the county into four Landscape Character Types. The appeal site is located in an Upland Area. Section 8.2.10.3 further subdivides the county into 14 geographically specific Landscape Character Areas. The appeal site is located in the Brandon Hill Landscape Character Area. Section 8.2.10.4 on Landscape Character Values places a special landscape value on several of the Landscape Character Areas, including the Brandon Hill Uplands, which are found to be highly scenic and visually pleasing with tourism potential. The development management standard is to ensure that development

within the Brandon Hill uplands is carefully sited and designed and can be successfully assimilated into the landscape.

7.0 THE APPEAL

This is a third party appeal against the planning authority's decision to grant permission for this development. The appellants are the owners of the house on the adjoining site to the northeast and that to the north of the appeal site on the opposite side of the road.

The appellants do not accept that the applicant has a housing need in accordance with the then county development plan Rural Housing Policy. The appeal refers to the relevant Section 3.4.2 of this development plan. It is noted that the applicant currently lives in an existing house located opposite the site. This is in the ownership of his family and would be vacated if this development is permitted. It could then be rented out. It is also believed that he may own another property in Inistioge village which is currently rented out. It is submitted that the last house constructed by the applicant under Reg. Ref. 00/218 less than 200 metres from the proposed site fulfils the requirements of the county development plan to facilitate the first housing of family members. It is implied that the preferable solution would be for the applicant to renovate and upgrade the house in which he is currently residing. The appeal expresses the suspicion that the present proposal, if granted, would be sold on to generate income. The Board is referred to a map prepared by a planning consultant in connection with an objection to the earlier proposal on this site from the appellants, prior to the withdrawal of that application. This shows the positions of the various houses referred to in the appeal.

The revised location of the proposed development, by comparison with that under Reg. Ref. 13/390 would result in the house being more exposed than would have been the case with the earlier application. The proposed development has been moved away from a backdrop of trees on this elevated site. The visual impact would be significant in an area of special control, roughly 2 kilometres from Inistioge village. The proposed development would represent ribbon development as defined in the county development plan, as it would be the fifth house within 250 metres of roadway, four of which were built by or are owned or occupied by the Tierney family.

The site suitability documentation is incorrect as it does not show the full extent of effluent treatment systems in the area, as is the requirement. The location of the trial holes was not as shown in the lodged drawings.

Access to the site is off a small side road with poor visibility. Permission was previously refused on this site under Reg. Ref. 02/318, inter alia, on traffic hazard due to the poor condition of the road network and increased traffic. Since that time, traffic has increased due to the construction of the house for Dick Tierney, the construction and sale of a house by John Tierney and the current occupation of an existing house by John Tierney. Contrary to the planning authority's report, the road is not a cul-de-sac, but a through road used mostly by farmers.

The appeal includes a copy of the five reason refusal of planning permission on this site under Reg. Ref. 02/318. It notes that the reasons related to

- Traffic hazard.
- Concentration of effluent treatment systems.
- Visually dominance/intrusive on the landscape.
- Ribbon development
- Lack of services.

It is submitted that none of these matters have been addressed in the present application. The reference to consolidation of an undesirable pattern of ribbon development in 2002 was before the construction of yet another house and the occupation by the applicant of his current house.

The appeal denies that the applicant has a functional need to live in the area as the family lands are let out to other farmers and have never been farmed by the applicant even though he has been resident in the area since 2002. While a grand uncle of the applicant previously farmed the holding, neither the applicant nor the present landowner has farmed this landholding for many years. The applicant is a builder and has no need to reside in the area.

The appeal queries the finding in the planning authority's planner's report that there was previously a house or outbuildings on the site. The 94 year old father of one of the appellants has no recollection of any house or farm buildings in the vicinity of the site.

The planner's report holds that the proposed development would be part of a cluster. However, Section 3.3.5 of the then development plan required all applications for cluster developments to be assessed against the capacity of the area to absorb development. This would include consideration of environmental issues, roads, water, services, etc. The previous refusal would suggest that the area is not suitable to absorb further development owing to its inappropriate road network and the proliferation of effluent treatment systems.

The appeal submits that the proposed dwelling is suburban in nature and that there is no functional link to the rural area. The applicant has no farmholding or farmyard and there is no agricultural activity associated with any of the houses built or occupied by the applicant in the vicinity. The planning history is indicative of a pattern of speculative development.

8.0 RESPONSE OF THE PLANNING AUTHORITY

The planning authority has responded to the grounds of appeal.

In relation to the applicant's housing need, it is stated that all applications for one-off housing in a rural area are assessed against the Rural Housing Policy as set out in the Kilkenny County Development Plan, 2008-2014. The applicant demonstrated compliance with this policy.

The design of the house has been significantly improved from that originally proposed under Reg. Ref. 13/390. The location of the house within the site would benefit from the existing mature hedgerow and trees to the northeast of the site and its setback from the roadside boundary. It would not impact on any neighbouring houses.

In relation to the site suitability and road access, the Board is referred to the reports from the planning authority's Environment Section and Area Engineer.

In relation to the previous refusal on site under Reg. Ref. 02/318 it is pointed out that this application was assessed against an older development plan, namely the Kilkenny County Development Plan 1996-2002. Development plan policies and objectives have changed since that time. In addition there are new development standards and guidelines such as the EPA's code of practice for wastewater treatment

systems, 2009 and the NRA's Design Manual for Roads and Bridges in relation to accesses under public roads.

In relation to the previous existence of structures on the site, a copy of the 6 inch First Edition Ordnance Survey map is enclosed with the response showing that there were two such structures adjacent to the road boundary on site.

9.0 RESPONSE OF THE APPLICANT

The applicant has responded to the grounds of appeal.

He does not own any house in the village of Inistioge or anywhere else for that matter. He had owned a house with his former wife, but this required to be sold for personnel reasons. The house would not be sold to generate income and he would welcome the inclusion of an occupancy condition.

In relation to foul drainage, a site suitability characterisation was carried out and the site was found to be suitable for a foul effluent treatment system and was acceptable to the planning authority.

In relation to road access, all requirements of the planning authority were taken into account in the submission of further information. The planning authority's condition 7 requiring the entrance to be relocated further along the laneway is acceptable to the applicant.

In relation to the earlier refusal of permission on this site, it is pointed out that the planning authority has produced and implemented two new development plans since that date. The applicant satisfies the criteria set out in the then current development plan. The proposed development does not constitute ribbon development as there are not five or more houses on any one side of a given 250 metres of road frontage.

The applicant never claimed to be engaged in agriculture. He does not own any land. The site of the proposed house is being given to him by his father, as was shown in the planning documents. It was farmed by his father and his uncle before him.

The house, of which the applicant has temporary use, is not a suitable family home. It is not his to determine its future use.

10.0 ASSESSMENT

The planning authority's planner's report notes that the site is located on the L82834 which it describes as a public roadway that is very narrow and poorly aligned. It is noted that the location of the site is at a point on this road where there is a number of dwellinghouses and the roadway appears to terminate approximately 40 metres northeast of the site. On site inspection, I noted at least six residential units in the immediate vicinity of the site. (The use of one building was unclear – it might or might not contain one or more separate residential units) The appeal questions the implication in the planner's report that the road is a cul-de-sac, stating that it is, in fact, a through road used mostly by farmers in the area. It appears that rather than terminating 40 metres northeast of the appeal site that this road continues for a further distance of about 250 metres to link up with the L82835 further to the northeast. This latter road continues for a further distance of about 800 metres, providing access to various fields, before terminating at an agricultural building.

To the east of the village of Inistioge the land rises quite steeply on the left bank of the River Nore and continues to rise as the lower slopes of Brandon Hill. Serving this area of hilly terrain, above the R700 linking Inistioge towards New Ross, is a network of very minor roads which are no more than single lanes which are substandard in vertical and horizontal alignment and lack footpaths or public lighting. The appeal site is linked by this network to the closest connection point on the R700 at a distance of about 1.3 kilometres. This link, when approaching from Inistioge, includes two acute bends on sloping junctions. Much of this network and the L82834, itself, have a carriageway width of just 2.7 metres. The prime concern of the area engineer, whose report is noted to have been received verbally, appears to have been the achievement of adequate sightlines at the entrance to the proposed development.

As noted earlier, permission was previously refused on this site under the planning authority's Reg. Ref. 02/318 on the basis, inter alia, that taken in conjunction with the existing and permitted developments in the area, the proposed development would have endangered public safety by reason of traffic hazard due to excessive concentration of development and the subsequent increase in trip generation and turning movements in an area in which the local tertiary road network is

severely substandard. It was held that the proposed development would, therefore, have interfered with the free flow of traffic on the public road and would have been contrary to the proper planning and sustainable development of the area. In my view having driven this difficult road access, this objection remains just as valid today and may have been exacerbated by increased vehicle ownership and further developments in the meantime. It might be argued that the number of potential residential units in the vicinity of the appeal site has been reduced through the sale of the applicant's dwelling under Reg. Ref. 00/1281 to his neighbours who had permission for a self-contained dwelling unit opposite, under Reg. Ref. 09/638 which remains unbuilt. However I do not consider this to be a sufficient mitigating circumstance. I also note that the applicant may well have the option of extending the existing cottage in which he is residing on the adjoining site.

In the recently superseded Kilkenny County Development Plan, 2008 – 2014, in stronger rural areas, it was the policy of the planning authority to consider development for single houses for two classes of persons namely

1. Those who were an intrinsic part of the rural community and
2. Those working full time or part time in rural areas.

Persons who were an intrinsic part of the rural community would normally have resided a minimum of three years in a rural area as members of an established rural community. They would have included people who had developed strong links in the rural area. They would have been required to be building their first homes.

Under the new development plan, a person hoping to build a single house in the countryside is expected to fall under one of the five categories set out earlier in this report. It is unclear whether or not the applicant would fall under any of these categories, but in any case, I am not convinced that the applicant, a plasterer/builder, has a need to live in a rural location.

Despite its location in the Brandon Hill Uplands Landscape Area of Highly Scenic and Significant Visual Amenity Value, as designated in the development plan, having regard to the concentration of houses in the immediate vicinity, including several at higher level than the proposed development, I consider that this relatively modest single-storey house would be acceptable from a visual standpoint. I note also

in this regard that it would be located against the backdrop of a substantial field hedgerow on its northeastern boundary.

Foul effluent would be treated by a proprietary wastewater treatment system. The T-test gave a result of 30.14. The planning authority's executive engineer, Environment Section, had no objection to this proposal subject to standard conditions, but he cautioned in his report that the density of development with on-site wastewater treatment system was starting to become of concern. Any additional development in the area might require some groundwater sampling to demonstrate that existing development is not impacting on groundwater quality.

The planning authority carried out a screening for appropriate assessment and concluded that given the nature of the development and its distance from the nearest Natura site, the River Nore at approximately 700 metres southwest, no impact was likely and that accordingly appropriate assessment was not required. As noted in the screening assessment the nearest Natura 2000 site is the River Barrow and River Nore Special Area of Conservation (Site Code 002162). It is at a closest distance of about 650 metres to the southwest of the appeal site and down slope. The River Nore Special Protection Area (Site Code 004233) is at a further distance of about 200 metres, relating to the river channel only, rather than the river and its banks at this location as in the case of the SAC. There is no obvious linkage between the appeal site and these European sites. Furthermore, the test results for the proposed proprietary wastewater treatment system had been satisfactory. Accordingly, having regard to the nature and scale of the proposed development, the nature of the receiving environment and the proximity to the nearest European site, no appropriate assessment issues arise and it not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

11.0 RECOMMENDATION

Having regard to the foregoing, I recommend that the planning authority's decision be reversed in this instance and that permission be refused for this development for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

1. Access to the proposed development would be gained from a private driveway off the L82834, a local tertiary road, which is effectively a public laneway. This road is substandard in width and vertical and horizontal alignment and is lacking in footpaths or public lighting. The site of the proposed development is linked via this road and a network of similarly substandard roads to the R700 regional road at a distance of more than 1 kilometre. This road is considered to be unsuited to any further new development and the traffic generated by the proposed development would endanger public safety by reason of a traffic hazard and the obstruction of road users. The proposed development would, accordingly, be contrary to the proper planning and sustainable development of the area.
2. On the basis of the submissions made in connection with the planning application and the appeal, the Board is not satisfied that the applicant has demonstrated a case of rural generated housing need, as defined under Section 3.5.2.3 of the current Kilkenny County Development Plan, 2014 – 2020. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Andrew C. Boyle,
Senior Planning Inspector.

17th July, 2014.

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