



**An  
Bord  
Pleanála**

**Board Order  
ABP-313830-22**

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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Kilkenny County Council**

**Planning Register Reference Number: P.22/129**

**Appeal** by Paul Drury of 20 Bondfiled Close, Tunbridge Wells, Kent, England against the decision made on the 22<sup>nd</sup> of April, 2022 by Kilkenny County Council to grant subject to conditions a permission to Jane and Gary McEvoy care of PBA Architects of Stoneyford, Kilkenny in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** Construction of a new two-storey dwelling, domestic garage, waste water treatment system, new residential site entrance, plus all associated site works at Bonnetsrath, County Kilkenny.

## **Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## Reasons and Considerations

In deciding not to accept the Inspector's recommendation to refuse permission, the Board considered the totality of the information on file in relation to the question of land ownership and had regard to the provisions of Section 34(13) of the Planning and Development Act 2000, as amended, whereby: "A person shall not be entitled solely by reason of a permission under this section to carry out any development.

The Board shared the Inspector's concern in relation to ensuring that the proposed development must successfully integrate into the receiving rural landscape and felt it appropriate to achieve this integration with the boundary treatment and landscaping conditions hereunder.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The dwelling design shall be amended as follows:
  - (a) The larger horizontal windows serving the first floor kitchen/living area on the front elevation shall be amended and reduced in size more similar to other dwelling design vertical windows;
  - (b) The first floor steel balcony, supporting concrete column and brick wall section extending out beyond the front of the dwelling shall be omitted.

Revised plans and elevation drawings shall be submitted to and agreed in writing with the planning authority prior to commencement of development

**Reason:** In the interest of visual amenity.

3. (a) The on-site wastewater treatment system proposed shall be constructed in accordance with the recommendations in the Environmental Protection Agency's Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses (EPA 2021). Prior to installation, the planning authority may, in the interest of public health and to facilitate best practice, agree in writing certain EPA compliant variations to the wastewater treatment system approved under this application. Such agreement shall be placed on file and deemed to officially substitute/vary the original granted system. Certification that the complete wastewater treatment unit and the associated disposal system has been satisfactorily installed to accord with the EPA's Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (EPA 2021) shall be submitted to the planning authority prior to occupation of the dwelling. The certificate shall be completed by a suitably qualified and indemnified person

indemnified person and shall include a site specific 'as constructed' plan detailing the length of percolation trench/pipe and cross sectional drawing through the effluent treatment system and associated percolation area. The generic cross-section is not acceptable. Proof of indemnification insurance shall be submitted with the certificate.

- (b) The complete on-site wastewater treatment system shall be installed and maintained in accordance with the manufacturer's instructions.

**Reason:** In the interest of public health and to provide for the protection of the environment.

- 4. The developer shall provide and arrange and indefinite maintenance of a supply of potable water for domestic and sanitary needs of the development.

**Reason:** In the interest of public health.

- 5. (a) The only access (vehicular or pedestrian) to the site from a public road shall be from the public road as shown on the Site Layout Plan submitted to the planning authority on the 3<sup>rd</sup> day of March, 2022. The entrance gates shall be set back not less than 4.5 metres from the roadside boundary within a splayed recess space of 9-11 metres wide along the line of the new roadside boundary. The entire area of the splayed recess shall be suitably structured, to cater for vehicular traffic and surfaced with a suitable bituminous macadam material. The walls forming the splayed recessed access shall not exceed one metre in height and where of block works shall be capped and plastered where exposed to public view.

- (b) The access and driveway shall be perpendicular to the road for a minimum distance of 10 metres and shall have a gradient of not greater than three per cent over this distance.
- (c) All works associated with the access and sightlines shall be carried out first prior to other works on site to ensure a safe access during construction works. The boundary along the road frontage of the site shall be set back as necessary to achieve the required sightlines and the visibility splay shall be kept clear of all obstructions.
- (d) Any service poles along the existing road frontage boundary shall be set back against the new boundary in consultation with the appropriate statutory body and at the applicants' own expense.
- (e) No surface water from the site shall be allowed to discharge onto the public road. A slotted drainage channel shall be provided at the entrance to prevent surface run-off from entering the road.
- (f) Road side drainage shall not be negatively impacted by the works. All surface water inlets off the public road shall be maintained and adequately protected.

**Reason:** In the interest of traffic safety.

6. (a) The roof of the proposed dwelling shall be blue-black in colour only.
- (b) The external wall finish of the proposed dwelling shall be in accordance with the plans and particulars lodged with the planning authority.
- (c) The front door of the proposed dwelling shall have a timber outer leaf.
- (d) The windows of the proposed dwelling shall be of timber or alternatively may consist of aluminium, woodgrain or uPVC. The use of the uPVC is however discouraged in favour of more sustainable materials. No Georgian glazing bars shall be permitted.
- (e) All rainwater goods shall be of treated/painted zinc, cast iron, aluminium or uPVC. Facias and soffits shall preferably be of timber. Where uPVC is used, all rainwater goods, including gutters, downpipes, fascia, and soffits shall be of black or dark coloured uPVC.
- (f) Where stone is proposed, only natural stone shall be allowed and no reconstituted stone shall be used.

**Reason:** To ensure a satisfactory appearance and in the interest of visual amenity.

7. All external finishes to the proposed garage shall match/harmonise with those of the dwellinghouse. The garage shall be used for purposes incidental to the enjoyment of the dwellinghouse and shall not be used for habitable or commercial purposes.

**Reason:** In the interest of residential amenity.

8. (a) Where boundaries are being set back/removed along the roadside to achieve the lines of sight, the area between the public road and the new boundary shall be suitably structured with stone so as not to lead to deterioration of the road edge. This area shall be finished with top soil to a level 200-300 millimetres above road level and seeded with grass.
- (b) The boundary along the road frontage of the site where required to achieve sightlines shall be set back parallel to the road. The hedgerow planted along this entire boundary shall be a minimum of one metre behind the visibility requirement, shall comprise a continuous double hedgerow and consist of a mix of deciduous shrubs suitable for hedging and common to the locality (e.g., hawthorn, field maple, holly, blackthorn, hazel) and/or shall match existing. Planting shall take place within the first planting season following commencement of construction and the hedgerow shall be indefinitely maintained and shall be supplemented or replaced should it fail.

**Reason:** In the interests of traffic safety and retaining visual amenity.

9. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:
- (a) A plan to scale of not less than 1:500 showing –
    - (i) The species, variety, number, size and locations of all proposed trees and shrubs [which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder] [which shall not include prunus species];
    - (ii) Details of screen planting [which shall not include cupressocyparis x leylandii];
    - (iii) Details of roadside planting [which shall not include prunus species];
    - (iv) Hard landscaping works, specifying surfacing materials, and finished levels.
  - (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment.
  - (c) A timescale for implementation [including details of phasing].



All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interests of residential and visual amenity.

10. Existing shrub and tree vegetation on the site shall be retained, particularly along the entire roadside boundary and to the front of the dwelling, except those strictly required to be removed to carry out the development and achieve sightlines.

**Reason:** In the interest of visual amenity and integrating the development into the landscape.

11. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicants, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter, unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000, as amended, to this effect.

- (b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

**Reason:** To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

12. The dwelling and garage shall be built into the site in such a manner that there shall be no build-up of ground levels.

**Reason:** In the interest of visual amenity.

13. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

**Reason:** In the interest of sustainable waste management.

14. All surface water run-off from roofs, driveways and paved areas shall be collected and disposed of within the curtilage of the site. Surface water run-off shall not be allowed to discharge onto the public road. All soakaways throughout the site shall be a minimum of five metres from the treatment system and associated percolation area/polishing filter and shall be designed and installed in accordance with BRE Digest 365 design standards.

**Reason:** In the interest of public health.

15. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Uisce Éireann.

**Reason:** In the interest of public health.

16. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

  
**Liam Bergin**

**Member of An Bord Pleanála**

**duly authorised to authenticate**

**the seal of the Board**

**Dated this 03<sup>rd</sup> day of October 2023**