



An  
Bord  
Pleanála

## Inspector's Report PL10.246726

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<b>Development</b>	Dormer dwelling, garage, vehicular entrance.
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	16/80
<b>Applicant(s)</b>	Marion & Ger Carroll
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Appellant(s)</b>	Pat Counihan
<b>Observer(s)</b>	Hubert Daniels
<b>Date of Site Inspection</b>	8 <sup>th</sup> October 2016
<b>Inspector</b>	Sarah Moran

## 1.0 Site Location and Description

- 1.1. The subject site is located in a rural area c. 7 km west of Kilkenny City. It is accessed via a local road, on the northern side of a T junction of two local roads. This is a primarily agricultural area, with a significant amount of scattered one off houses associated with its location in close proximity to Kilkenny city. There is an existing derelict house and outbuilding to the immediate south of the site but no other houses in the immediate vicinity. There is a cluster of 5 no. houses to the south and west of the adjacent road junction and a further large, detached house nearby to the southeast.
- 1.2. The site has a stated area of 0.24 ha and comprises the southern end of a large field. The road frontage runs along the western site boundary and there are hedgerows along the southern and eastern boundaries. The site slopes gently down from the public road (northwards). There are unnamed streams nearby to the east and north of the site, which eventually lead to the Bregagh River, a tributary of the River Nore. The O.S. map indicates marshy ground conditions nearby to the west of the site. Conditions were dry underfoot on the day of site inspection.
- 1.3. The applicants have a contract to purchase the site subject to planning permission from Hubert Daniels, who has submitted an observation in response to the third party appeal. I noted a 'sale agreed' sign at the site on the day of inspection.
- 1.4. See enclosed maps, photographs and aerial photograph of the site.

## 2.0 Proposed Development

- 2.1. The proposed development comprises:
  - Dormer dwelling with a total stated floor area of 214 sq.m.
  - Detached garage to rear of house, stated floor area 25 sq.m.

- Vehicular access
- Landscaping works.
- Wastewater treatment system and private well.

2.2 The applicant submitted additional information to the PA on 27<sup>th</sup> April 2016, comprising a revised Site Characterisation Report and other site drainage details.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

3.1.1 The PA requested further information on 12<sup>th</sup> April 2016 in relation to (1) applicant to submit 'P' test results and (2) applicant to address third party concerns about flooding.

3.1.2 The PA granted permission on 19<sup>th</sup> May 2016, subject to 11 no. conditions. Condition no. 3 limited the occupancy of the permitted dwelling to the applicants for at least 7 years. The remaining conditions imposed are considered to be standard for this type of development.

#### 3.2. **Planning Authority Reports**

3.2.1 The first planning report, dated 13<sup>th</sup> April 2016, notes that the site is located in an 'Area Under Urban Influence' under the current County Development Plan. The proposed development is considered to be acceptable in principle with regard to development plan rural housing criteria. The house design, landscaping and vehicular access are considered acceptable. The report recommends a further information request relating to an additional 'P' test of site ground conditions and applicant to address third party concerns about flooding in the vicinity.

3.2.2 The second planning report dated 17<sup>th</sup> May 2016 considers the further information submission to be acceptable and recommends permission subject to conditions.

### **3.3. Other Technical Reports**

3.1 Executive Engineer, Environment Section Kilkenny County Council 16<sup>th</sup> May 2016;  
A/Senior Engineer, Kilkenny City & Environs 7<sup>th</sup> April 2016, both no objection.

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

3.4.1 There was one no. third party submission by the above named appellant, which objected to the development on grounds similar to those raised in the appeal. It also raises concerns about flooding in the vicinity.

## **4.0 Planning History**

### **4.1. Subject Site**

4.1.1 Permission was sought by Dave and Dee Robinson for a dwelling with vehicular access and wastewater treatment under reg. ref. 02/1139. The PA issued a further information request on 3<sup>rd</sup> October 2002 in relation to compliance with development plan rural housing policy, also further details of site access and wastewater treatment. The application was withdrawn. Hubert Daniels sought outline planning permission for a dwelling at the site under reg. ref. 02/1721. Permission was refused for one reason relating to housing in a rural area, contrary to policy of the planning authority to encourage development into existing settlements.

### **4.3 Site Opposite the Subject Site**

4.3.1 There has been a series of applications for outline permission on sites immediately across the road from the subject site, reg. ref. 02/1601,14/1276 and 04/1541. All were withdrawn following further information requests.

## **5.0 Policy Context DoEHLG Sustainable Rural Housing Guidelines for Planning Authorities (2005)**

5.1 The subject site is located within an area under strong urban influence as indicated in Map 1 of the National Spatial Strategy 2002-2020. The rural housing guidelines aim to manage pressure for overspill development from urban areas in rural areas closest to the main cities and towns. They distinguish between development needed to sustain rural communities and urban generated development which should be directed to areas zoned for new housing development in cities, towns and villages. Balanced assessments are to be made regarding the circumstances and merits of each application. Section 3.2.3 of the Guidelines deals with the definition of 'rural generated housing'. Suggested examples of rural generated housing need include persons who are an intrinsic part of the rural community, who have spent substantial periods of their lives living in rural areas and persons working full time or part time in rural areas. The assessment of individual sites will be subject to normal siting and design considerations. New development is to be guided towards sites where acceptable wastewater treatment and disposal facilities can be provided, avoiding sites where it is inherently difficult to provide and maintain such facilities.

## 6.0 **Kilkenny County Development Plan 2014-2020**

6.1 The site is not in a rural settlement and is located in an 'Area Under Urban Influence' as per figures 3.1 and 3.17 of the current Kilkenny County Development Plan 2014-2020.

6.2 Development Plan section 3.5.2.1 states an objective to facilitate the rural generated housing requirements of the local rural community in such areas, while directing urban generated rural housing to areas zoned for new housing development in the city, towns and villages. Rural generated housing is defined as follows:

*Housing needed in rural areas within the established rural community by persons from that community or whose occupation is intrinsically linked with that particular rural area as defined in Section 3.5.2.3 below. Subject to satisfying good practice in relation to site location and 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.*

All permissions granted for rural housing within the Areas of Urban Influence are to be subject to an occupancy condition restricting the use of the dwelling to the applicant or members of his/her immediate family as a place of permanent residence for a period of 7 years from the date of first occupancy. Development Plan section 3.5.2.3 provides criteria for applicants in areas under urban influence and in stronger rural areas.

- 6.3 Development Plan section 11.7.8.2 sets out development management standards for roads. There an objective to ensure that the required standards for sight distances and stopping sight distances are in compliance as far as possible, with current road geometry standards as outlined in the NRA document Design Manual for Roads and Bridges (DMRB) specifically Section TD 41-42/09 when assessing planning applications for individual houses in the countryside. Such standards should not be achieved by the extensive removal of hedgerows, ditches, embankments, trees or old walls, and should be in accordance with Section 2.8 of the Rural Design Guide.
- 6.4 Development Plan section 12.10 sets out development management standards for rural housing. A Rural Design Guide was produced in 2008 for County Kilkenny. Applicants must demonstrate that safe vehicular access to and from a proposed site is provided in terms of visibility from a proposed entrance, but also in terms of impact on road traffic on the adjoining public road, through generation of turning and stopping movements by vehicles leaving and entering the proposed site.

## **7.0 Natural Heritage Designations**

- 7.1 The subject site is not located within a Natura 2000 site and there are no such sites in the vicinity. Having regard to the lack of designated sites in the vicinity and to the nature and scale of the proposed development, no Appropriate Assessment issues

arise and it is 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.

## **8.0 The Appeal**

### **8.1. Grounds of Third Party Appeal**

8.1.1 The grounds of the third party appeal can be summarised as follows:

- The appellant farms the lands directly across from the subject site.
- The appellant has concerns regarding road safety. The site is directly across from the entrance to his lands. It is submitted that the proposed vehicular access is too close to the road junction to the south of the site.
- There is inadequate visibility at the proposed access.
- The road is regularly used by heavy agricultural machinery. The area in front of the site is used as a bus collection point for school buses, couriers, etc.
- The appeal is accompanied by photographs of the road in the vicinity of the site.

### **8.2. Planning Authority Response**

8.2.1 The PA submission dated 29<sup>th</sup> June 2016 states no further comment in relation to the appeal.

### **8.3. Applicant Response**

8.3.1 The main points made may be summarised as follows:

- Issues raised by the appellant in relation to flooding and sightlines were addressed in the applicant's response to the further information request, as submitted to the PA on 12<sup>th</sup> April 2016.
- The applicant met the Area Engineer at the site prior to lodging the application. The issue of the junction of the local roads did not arise and the Area Engineer

was satisfied that the sightlines of 65m to the south and 70m to the north could be achieved.

- The proposed entrance and the existing adjacent junction provide acceptable visibility and the Area Roads Engineer and planners are of a similar view.
- Sightlines of 70m will be achieved to the north of the proposed vehicular entrance to the subject site, with the removal of a section of hedgerow (30m) from the landowners field. A letter from the landowner consenting this is submitted with the appeal. Condition no. 5 of the permission allows for the proposed entrance and sight lines to be achieved and maintained.
- The appeal refers to 2 no. previous applications on the appellant's landholding close to the adjacent junction, reg. ref. 04/1276 and 04/1541.
- The use of the local road by slow moving agricultural vehicles does not represent a traffic hazard.
- The secondary road is not a school bus route and is not used by buses. Buses use the primary road and there is no collection or drop off point at the existing junction.
- There are not many existing houses on the local secondary road such as would generate a significant amount of traffic, including couriers.
- The applicants have demonstrated a housing need to the satisfaction of the PA in accordance with development plan policy.
- 'T' and 'P' tests were carried out by a qualified site assessor and found that the site was suitable for the treatment of waste water.
- The proposed house design takes into account best practice in rural design as advocated in the Kilkenny Design Guide.

#### 8.4. **Observation**

8.4.1 The site owner Hubert Daniels has submitted an observation in support of the proposed development. The main points made may be summarised as follows:



- Hubert Daniels farms at this location. His family have farmed here for several generations. The farmyard is next to the subject site. It is vital that the farm is not disturbed.
- The appellant Pat Counihan bought a site located to the rear of Hubert Daniels' farmyard in 2006. Mr Daniels objected to a planning application lodged by Pat Counihan, stating concerns about potential impacts to his farmyard. The Counihans succeed in obtaining planning permission.
- It is submitted that Pat Counihan lodged a complaint about Hubert Daniels' farmyard to the Environment Section of Kilkenny County Council. Officers of the Environment Section visited the farmyard and found no cause for complaint.
- Patrick and Fiona Counihan bought lands across the road from the subject site in 2014. The site of the current proposal is situated over a mile away from the Counihans' dwelling.
- The applicants are worthy of permission to build the proposed dwelling. The site is surrounded by hedgerows and has adequate visibility at the proposed entrance. There is adequate signage and road markings at the adjacent junction. There no bus stop at the location stated by the appellant.
- Photographs of the junctions are submitted in support of the observation.

## 9.0 **Assessment**

9.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Principle of Development
- Flooding, Drainage and Wastewater Treatment
- Vehicular Access
- Design and Landscaping

These issues may be considered separately as follows.

## 9.2 Principle of Development

9.2.1 The site is located in an 'Area Under Urban Influence' as per figures 3.1 and 3.17 of the current Kilkenny County Development Plan 2014-2020. The objective for such areas is to facilitate the rural generated housing requirements of the local rural community in such areas, while directing urban generated rural housing to areas zoned for new housing development in the city, towns and villages.

9.2.2 The documentation on file provides the following information regarding the applicants' local housing need:

- The applicants Marion and Ger Carroll have a contract to purchase the site from Hubert Daniels, subject to planning permission. They have a current address at Newtown, Bonnettsown, Co. Kilkenny, c. 3km east of the subject site.
- The applicants have lived in the area since they bought a cottage in Bonnettstown in 2002. Under reg. ref. 04/269, they were granted permission to convert the existing cottage into a workshop/garage and to construct a new dormer-style dwelling. The permission was subject to an occupancy condition. The original cottage was retained as linked ancillary accommodation to the new house.
- Neither of the applicants is employed in a local rural-based activity, e.g. farming, or work which is intrinsically linked to this local area.
- The applicants now wish to downscale due to changing family circumstances and to construct a more modest house on the subject site.
- The applicants have no objection to an occupancy condition if permission is granted for the proposed dwelling.

9.2.3 Development plan section 3.5.2.3 provides the following defining criteria for rural generated housing:

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 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 14<sup>th</sup> June 2013 wishing to build a permanent home for his/her own use or a son or daughter.

9.2.4 I have examined the documentation on file and carefully considered the points made with regard to both national policy as set out in the DoEHLG *Sustainable Rural Housing Guidelines for Planning Authorities* and the rural housing policies of the Kilkenny County Development Plan. There are no maps on file indicating any family lands in the area but the applicants have lived locally since 2002. While they already have a house in the area, the PA has considered them to have a local housing need on the basis that they were originally granted permission for a 'replacement' house under reg. ref. 04/269, rather than a new dwelling. The third party appeal does not raise issues in relation to compliance with Development Plan housing policy. However, the above Development Plan housing need criteria do not include any provision for this situation, only returning migrants and those wishing to build their

first home. The applicants are not farming or working in a local, rural-based activity. The Development Plan describes 'Areas Under Urban Influence' as being "*Characterised by rapidly rising populations and/or considerable pressure for housing development.*" I note that there is already a significant amount of scattered one off housing in this area, associated with its proximity to Kilkenny City. Development Plan housing policy must be carefully applied at such locations. On balance, I do not consider that the applicants have a local housing need in accordance with the County Development Plan criteria set out above.

### **9.3 Flooding, Drainage and Wastewater Treatment**

9.3.1 The proposed wastewater treatment system has been assessed with regard to the guidance provided in the EPA manual Treatment Systems for Single Houses (2009), to the Site Characterisation Form and documentation on file, to the planning history and to the site inspection.

9.3.2 The site was dry at inspection. There are no existing wells or treatment systems in the immediate vicinity. There is a drainage ditch 15m east of the site. The Site Characterisation Form indicates that the soil type is clay/silt, i.e. relatively low permeability. There is a 'T' test result of 30.19 and a 'P' test result of 29.58, within acceptable parameters. The trial hole encountered mottling at 0.8m (an indication of poor drainage) and the water table at 1.5m below ground level. The high 'water table' indicates low permeability, saturated subsoil. Such ground conditions are associated with a high risk of surface ponding as rainfall cannot drain freely through the soil, with an attendant risk of surface water contamination. There is a groundwater protection response of R2<sup>1</sup>, i.e. acceptable subject to normal good practice. The proposed wastewater treatment system includes a soil polishing filter, to create a sufficient depth of unsaturated soil. While I have concerns about the risk of surface ponding, on balance I consider that the proposed wastewater treatment system is acceptable given the satisfactory test results and the use of a polishing filter. I also note that the Environment Section of the PA has no objection.

9.3.3 The applicant states that flooding in the area is likely to have been caused by a blocked roadside drainage ditch. I note that the flooding in the photographs submitted by the appellant appears to be very localised. Surface water ponding is likely given the ground conditions, however OPW flood mapping does not indicate any records of flooding in this area. The applicant proposes to construct surface water drains to prevent excess surface water at the site and to drain to a soakaway. This arrangement is considered acceptable and I do not have any significant concerns regarding surface water flooding at this site.

#### 9.4 **Vehicular Access**

9.4.1 The proposed site access is to the local road along the western side of the site. There is limited visibility in both directions due to the presence of a bend c. 180m to the north and a road junction c. 60m to the south. There is an agricultural access to the field immediately across the road from the site. The applicant states that sight distances of 70m can be achieved to the north (with hedgerow removal) and 65m to the south, i.e. less than the DMRB requirement of 160m for a road design of 85 kph. I observed a significant amount of traffic on the Kilkenny to Tullaoran road to the south of the site. The junction has road markings and a 'Stop' sign at the minor road. On balance, having inspected the site, I note that the local road serving the site is lightly trafficked and that, aside from the T junction, there are no other vehicular accesses in the vicinity. On balance, I do not have significant concerns about the vehicular access such as would warrant a refusal of permission.

#### 9.5 **Design and Landscaping**

9.5.1 The proposed dwelling has a 1.5 storey design with a stated area of 214 sq.m. and a ridge height of 7.55m. The design is considered to be acceptable and suitable for this rural area, subject to satisfactory finishes, etc. While limited details of landscaping are provided, a landscaping scheme could be required by condition if the Board is minded to grant permission.

## 10.0 Recommendation

10.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

## 11.0 Reasons and Considerations

Having regard to the location of the site within "Area Under Strong Urban Influence" as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in a "Area Under Urban Influence" where housing is restricted to persons demonstrating local need in accordance with section 3.5.2.1 of the Kilkenny County Development Plan 2014-2020, it is considered that the applicant does not come within the scope of the housing need criteria as set out in section 3.5.2.3 of the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, 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 proper planning and sustainable development of the area.

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Sarah Moran  
Senior Planning Inspector

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11<sup>th</sup> October 2016.