



An  
Bord  
Pleanála

## Inspector's Report PL10.249087.

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<b>Development</b>	Dwelling house with wastewater treatment plant.
<b>Location</b>	Listrolin, Mullinavat, Co. Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority Reg. Ref.</b>	16/511.
<b>Applicant</b>	Kenneth Phelan.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant with conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	James Delahunty.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	15 <sup>th</sup> January 2018
<b>Inspector</b>	Philip Davis.

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## 1.0 Introduction

This appeal is by a local resident against the decision of the planning authority to grant permission for a dwelling on a field in a remote part of south County Kilkenny. The grounds of appeal relate to design, landscape impact, public health and traffic safety.

## 2.0 Site Location and Description

### 2.1. *Listrolin*

Listrolin townland is located in the uplands of south Kilkenny, part of an extended area of low hills and upland heath and bog that runs along the north side of the Suir Valley from Slievenamon in south Tipperary to the uplands of north Waterford. The area is some 4 km west by road from the nearest town, Mullinavat. The area is characterised by conifer plantation and bog/heath on the 200-250 metre high local peaks with better quality grazing land below around 150 metres AOD and down to sheltered river valleys. The lands in the townland generally slope north and north-east to the valley of the Poulanassa River, a tributary of the Blackwater, which runs through Mullinavat in a valley which meets the Suir to the south close to Waterford City. The South Leinster Way long distance walk runs through the townland. The area is served by a complex network of quite narrow third class roads which mostly follow the contours around the irregular uplands. The area is relatively sparsely populated, with a mix of farms and individual dwellings dotted around the road network. On the lower slopes within the townland there is a loose cluster of dwellings which seems to have been a former agricultural village of a type unique to Kilkenny which once had a substantial population.

### 2.2. *Appeal site*

The appeal site is an irregularly shaped field in rough grass and scrub located on the northern side of a third class road running west from Mullinavat. The site area is given as 0.52 hectares. The land is uneven and seems to have been used for the storage of stone and other materials. It is bounded by ditches and low stone walls and rough hawthorn hedges. It has two entrances onto the main road – one older unused one to the east, another more modern one in the centre of the boundary with

the road. It is at the edge of a scarp slope which drops to the north and north-east to the Poulanassa River.

To the **south** of the site is the third class road. On rising ground further south is an extensive upland area of heath and conifer plantation. Across the road and less than 50 metres to the **south-east** is a single dwelling on high ground overlooking the valley. To the **east** are open fields, with another third class road running south just under 200 metres distant. There is a small well house in a corner on the **north-eastern** side of the site.

To the **north** are open fields on dropping levels. Some 30 metres to the north-west, is a farmhouse with stables. This farmhouse is served by another third class road which runs north some 75 metres west of the site. Immediately **west** of the site is a field, then the road junction, then small cottage on the north side of the road some 130 metres away and on lower ground. The former Listrolin village is approximately 500 metres to the north-west.

### 3.0 Proposed Development

The construction of a dwelling house, new entrance, wastewater treatment plant and percolation area. The original plans were revised during the application, and the applicant submitted slight revisions to these with the response to the appeal.

## 4.0 Planning Authority Decision

### 4.1. Decision

The planning authority decided to grant permission subject to 14 no. largely standard conditions. Condition no. 11 restricted occupation to the applicant for a period of seven years.

### 4.2. Planning Authority Reports

#### 4.2.1. Planning Reports

- States that 'Listrolin farm village' is to the north and identified as worthy of conservation protection.

- Noted that there were two previous refusals on nearby sites for dwellings.
- The area is considered to be an 'Area under Urban Influence'.
- States that the proposed design is unacceptable but may be considered if redesigned on a smaller scale – further information requested.
- Following the FI request the revised design was considered acceptable and permission was recommended.

#### 4.2.2. Other Technical Reports

The applicant submitted a **site characterisation form** indicating that the site has around 1.2 km of sandy silty soil over weathered rock.

An **AA screening report** indicated that there were no adverse effects on an EU site anticipated.

**Senior Roads Engineer** – specified the required sight lines and set back – expressed concerns that the required sight lines could not be achieved.

#### 4.3. Prescribed Bodies

None on file.

#### 4.4. Third Party Observations

- The appellant to this appeal submitted an objection on similar grounds to the appeal.
- A local political representative wrote in support of the application.

### 5.0 Planning History

None on file, but the planning report indicates that two applications were previously refused on adjoining sites – P07/853 and P05/1660, for reasons relating to visual amenity, traffic safety, and public health.

## **6.0 Policy Context**

### **6.1. Development Plan**

The site is in open countryside without a specific designation in the Kilkenny County Development Plan 2014-2020. It is indicated as an 'area under urban influence' in the Rural Housing Strategy. The Rural Housing Strategy is set out in Chapter 3 of the CDP. Rural house design standards are set out in section 12.10 and in the County Kilkenny Rural Design Guide. Relevant extracts are set out in the appendix to this report.

### **6.2. Natural Heritage Designations**

There are no EU designated sites in the immediate area. The site is within the overall catchment of the Lower Suir River, which is a designated SAC.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

James Delahunty of Listolín

- It is argued that the revised plans do not adequately address concerns about the visual impact on the area and on the South Leinster Way – it is suggested that the revised plans cannot be built as submitted as they would not be compliant with the minimum floor to ceiling heights set out in Part F of the Building Regulations.
- It is argued in some detail that the scaling off the plans is incorrect and that it is not possible to achieve the required 120 metres sight line as indicated on the submitted revised plan.
- It is argued that the proposed dwelling would impact on the nearby wells – it is submitted that the planning authority did not take account of the difference in levels, and that no site suitability assessment was provided for the percolation area indicated in the revised submission.

- It is argued that the site levels as submitted do not appear to be accurate and reasonable – it is submitted that the driveway would be unacceptably steep and alterations would have to be made on site in order to construct the dwelling.
- It is submitted that the proposed dwelling would overlook his property (the house to the north-west).

## 7.2. Applicant Response

- The applicant responded to state that the elevations and internal features can be constructed in full compliance with the Building Regulations. A number of minor alterations in this regard are outlined (and drawings submitted).
- It is noted with regard to the submission by the appellant that the proposed access is 15 metres further west than the existing access. It is submitted that the full 120 metre sightline can be achieved in both directions.
- With regard to public health, a revised plan is submitted to indicate the polishing filter moved to the original site location to the north of the site. It is submitted that the proposal is fully in line with EPA Guidelines.
- It is confirmed that the dwelling will be constructed at the specified floor level of 164 metres.
- It is stated that the driveway will have a gradient of 1:12.5 over a distance of 50 metres.
- It is argued that with appropriate landscaping it would be possible to screen views of the appellant's garden.

## 7.3. Planning Authority Response

The planning authority state that they have no further comments to make on the appeal.

## 7.4. Observations

None on file.

## 7.5. Further Correspondence

- Further issues are raised with regard to the Building Regulations – it is argued that the house would have to be approximately 500mm higher to comply with the Regulations.
- It is argued that the plans submitted by the applicant do not reflect the undulating, and winding nature of the adjoining road.
- It is submitted that the revised details on the wastewater treatment system do not adequately address the concerns raised in the original appeal.
- It is questioned whether the driveway is 50 metres in length – it is submitted that it is in effect 35 metres.
- The accuracy of the levels of the submitted drawings are questioned.

## 8.0 Assessment

Having inspected the site and reviewed the file documents, I consider that this appeal can be addressed under the following broad headings:

**Principle of development**

**Design issues**

**Visual impact**

**Residential Amenity**

**Traffic safety**

**Public health**

**Conservation issues**

**Appropriate Assessment**

**Other issues**

### 8.1. Principle of development

The site is located in a relatively sparsely populated upland rural area, but it is within 30 minute drive of Waterford City and 35 minute drive from Kilkenny City, so is subject to some urban commuting pressures. The **Kilkenny County Development**



**Plan 2014-2020** identifies this southern part of the County as being 'under urban influence' as defined in the Sustainable Rural Housing Guidelines 2005, and I would agree with this assessment. It is stated that in such areas rural housing shall be subject to an occupancy condition restricting the use of the dwelling (section 3.5.2.1 of the CDP).

It is stated elsewhere in the plan that it is general policy to direct development to established settlements and zoned lands. The nearest designated settlement is Mullinavat.

There is no planning history for the site, but it is indicated in the planners report that in recent years two proposed dwellings have been refused on nearby sites.

The adjoining road is part of the South Leinster Way, which stretches from Graiguenamanagh to Piltown and the Nore Valley Walk. It is indicated in Figure 7.1 of the CDP, but there are no relevant policies in the CDP specific to this walk.

The planning authority states that they are satisfied that the applicant, who lives with his parents approximately 1 km from the site, has sufficient local links to the area and so complies with the Council's rural housing policy.

Having regard to the applicant's local links, I would consider that subject to an occupancy condition in accordance with the CDP requirements, there is no objection in principle to a dwelling in the general area, subject to normal planning and environmental considerations.

## 8.2. **Design issues**

The appellant has raised a number of concerns about the revised drawings as submitted on the 29<sup>th</sup> of June 2017. The drawings, it must be said, are somewhat ambiguous with regard to levels within the site. The site is uneven and drops about 8 metres from the high point on the south-eastern corner to the lowest corner to the low point at the north-western corner. The eastern side (where the proposed access is to be located), is at the 168 metre contour, while at its lowest, the site adjoins the road at the 164 metre contour. The proposed floor level of the dwelling is 164 metres. This will, as the appellant submits, leave a requirement for a very steep driveway, with a drop in levels of at least 10%. The applicant has responded that over the driveways 50 metre length it would equate to 1:12.5 slope. There are no guidelines on such slopes in the Kilkenny CDP, but I note that a number of other

counties (such as Wicklow) have a standard such that gradients of no more than 1:40 (2.5%) are permitted for the first 6 metres from the public road carriageway edge. I note that this was an issue in a similar appeal – PL27.248528 in Wicklow. In this case the Board refused permission, although not specifically referring to the gradient, but to the necessary earthworks in order to create a safe driveway.

I would question whether a 1:12.5 gradient is really achievable. By my calculation, an average gradient of approximately 10% would be the best that could be achieved. This seems unavoidable if the combined requirement for lowering the level of the dwelling to reduce its visual impact, while providing a 6 metre wide, relatively flat entrance at the junction with the main road to allow for sight lines is to be achieved.

There are certainly clear ambiguities in the design as submitted, although I would consider that there is sufficient detail to allow a full assessment. If the Board is minded to grant permission, I would recommend a condition such that cross-sections through the site be submitted for planning authority approval prior to the commencement of works to ensure there is no ambiguity about the final landform and design.

With regard to the house design and the Building Regulations, there are a number of ambiguities in the drawings, and a certain amount of discretion would have to be given to allow for possible alterations if it was granted permission. With the level of detail in the drawings I do not consider that it is possible to unambiguously state that the levels can be achieved if the house is to be built in accordance with the Regulations, but any alterations are likely to be quite minor and I do not think are likely to be significant in planning terms.

### 8.3. **Visual impact**

The site is in an attractive area of relatively unspoilt countryside. The adjoining road is a designated long distance walk, the South Leinster Way, although there are no policies in the CDP specific to the walk apart from an objective to improve the overall network of walks within the County (**section 7.3.2**). It is unclear as to how popular the walk is, as this road is 80kph and frequented by regular heavy vehicles. The site is open and exposed, with good views (partially blocked by vegetation) over the Poulanassa valley to the north and north-east. Although details are not on file, it seems that at least one proposed dwelling along this stretch of road was previously

refused planning permission because of the impact on views, and the overall visual prominence of the site. Along this stretch of road, the most prominent house is just east of the appeal site and on the opposite side of the road. The dwelling to the west of the site sits low in the landscape and is not particularly intrusive. Nearly all other dwellings in the townland are on lower ground, in sheltered ground deeper into the valley and are well hidden from most viewpoints.

The revised dwelling submitted to the planning authority would still be above the level of the road and would be a very significant feature on the landscape when viewed from public areas. While it could be partially screened by reinforcing the existing hedge, in reality it is hard to avoid the conclusion that this is not an appropriate site for a dwelling, as it would have a disproportionate impact on the local landscape due to its elevated and exposed nature. **I would recommend a refusal for this reason.**

#### 8.4. **Amenity**

The closest dwelling – belonging to the appellant – is approximately 60 metres north-west of from the proposed dwelling, but at a much lower level. Due to the separation distance and the alignments of the dwelling, I would not consider that it would represent an unacceptable impact on the direct amenity of the appellants dwelling, although it would significantly overlook the rear field/garden of the house, which appears to be used as a horse paddock. I do not consider that the overlooking would be sufficient in itself to justify a refusal.

#### 8.5. **Traffic safety**

The appeal site is on a third class country road, although in some respects it has some characteristics of a regional road as it is the primary link between Mullinavat and some small villages in the uplands and across to the Suir valley. The CDP does not have any specific policies relating to such roads. It is the normal rural speed limit (80kph), and is lightly trafficked, although during my site visit I noted a significant number of commercial vehicles used the road. Traffic speeds appeared high despite the sometimes tortuous route and many dips and troughs. There is no traffic calming despite its designation as a leisure walk.

The appeal site is just west of a local high point in the road, where it dips and turns just west of the dwelling on the opposite side of the road. To the east, there are clear views as the road is more or less straight as it runs down a slope.

The planning authority state that the required sight lines at this point are 2.4 x 120 metres. This is achievable to the west, but more difficult to the east. The applicant sent revised plans showing what appears to be an adequate sight line to the east, where the road turns just past the nearest dwelling. There is also a distinct rise in level at this point. I am somewhat sceptical that the sight line is achievable in reality at this point due to the levels change, but on the basis of the submitted plans I would consider that the minimum requirement is reached.

However, I would consider a more fundamental issue to be the safety of allowing additional accesses on a road such as this. The road is more than just a local service road for farms and dwellings, it is a link between Mullinavat and areas west, down to the Suir Valley. While it is not a national road, I would consider it inappropriate to permit additional accesses on this road when there are local networks of minor roads that just serve dwellings and farms (in particular around Listol village). **I conclude that it is inappropriate to permit additional accesses along this road in the interest of public safety.**

#### 8.6. Public health

The original proposal included a wastewater treatment system and polishing/percolation area on the northernmost and lower part of the site. The revised plans move it to the south-western corner, at a point roughly level or slightly above the 164 metre base of the proposed dwelling. The plans were revised a third time in the appellant's response, moving the polishing filter back down to the north of the site. There is an existing well-house (apparently part of the land ownership) immediately adjoining the site, on significantly lower ground (I note that the actual well house is probably well below the 164.5 metre level that is implied on the submitted plans, as there is a significant drop in levels across the boundary wall).

The site characterisation form submitted indicates that the site is on till derived from Devonian Sandstones, over a locally important aquifer of 'extreme' vulnerability, with an R2 groundwater response. The GSI website indicates that the site is primarily bedrock with little quaternary deposits, although there is clearly some heavy till

material on the site – the site assessment pits and trial hole were not visible during my site visit, and the photos submitted are somewhat ambiguous.

The new location for the polishing filter is 55 metres from the appellants well, and some 50 metres from the adjoining well (apparently on the landholding, although the application documents are not specific on this point). It is significantly upslope from both. I note that in section 6.2.3 of the EPA Guidelines it states that the trial holes should be next to the proposed site of the percolation area – as the location was moved substantially with the revised plans, this is not the case, although with the final revision submitted to the Board, it has reverted back to where the trial holes were dug.

I note that while the site assessment indicates till at 1.2 metres above what is described as ‘weathered rock’, and 2.2 metres above bedrock, but it is difficult to confirm this from the submitted photos and other information. From my observations of the site and the surroundings, the site is likely to have a very variable geology, and is likely to be subject to outcropping. I would therefore not consider that an assessment of the lower levels, where there is likely to be a higher level of till, to be necessarily indicative of the suitability of the site. I further note evidence around the site of made ground.

The percolation tests indicate an average t-value of 32, but again, this is highly variable. Table B3 of the EPA Guidance document on such systems indicates that there should be a 40 metre separation distance between a down-gradient well if there is a t-value above 30 and there is a depth to bedrock of at least 1.2 metres. But the notes in annex B3 indicate it may be substantially more than this if there are indications of greater flows, such as bedrock fractures.

Given the very close proximity of two down gradient wells used for human consumption I am not convinced on the basis of the submitted information that the site is suitable for a wastewater treatment system as there is a significant level of ambiguity in the submitted information. If the Board is minded to grant permission I would recommend that a new test be requested, on the specific site of the percolation area and the location of the septic tank/proprietary treatment system), in line with EPA guidelines. **But I would conclude that there is insufficient information on file to be satisfied that the site is suitable for a wastewater treatment system.**

## 8.7. Conservation Issues

There are no recorded ancient monuments or structures on the NIAH on or close to the appeal site. The nearby farm cluster at Listrolin is part of a distinct south Kilkenny settlement type known as Kilkenny Farm Villages, dense rural settlements which, unlike west of Ireland clachans, had a more detailed social structure and a wider number of functions (section 8.3.8.1 of the CDP). According to the CDP Listrolin was apparently known locally as 'Little London' due to its high density. The CDP states, with regard to these settlements:

New developments in or adjacent to these villages should not dominate their surroundings but should sit comfortably in their setting, respecting the local character, and should be of good quality contemporary design using a palate of good quality materials which complement the traditional setting.

The site is within view of the old village, but I do not consider that it would have a significant impact on the overall setting.

## 8.8. Appropriate Assessment

There are no SPA's or SAC's within 5 km of the appeal site. The closest designated habitat is the Lower Suir Valley SAC, a complex system of riverine habitats along most of the route of that river. The site is within the watershed of the Suir, via the Poulanassa and Blackwater Rivers, which joins the Suir (and the SAC), just under 10km to the south. Due to the small scale of the proposed development and the attenuation distance I do not consider that there would be any adverse effects on the conservation objectives of this, or any other, European Site, so no NIS would be required.

## 8.9. Other issues

The site is not subject to flooding and I do not consider that the proposed development would have any flooding impacts. The planning authority did not set a S.48 or other financial contribution. I do not consider that there are any other significant planning issues raised by this appeal.

## 9.0 Recommendation

I recommend that the proposed dwelling be refused planning permission for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

1. The site of the proposed development is located within 'Areas under Significant Urban Influence' as set out in the current Development Plan for the area, where emphasis is placed on the importance of designing with the landscape and of siting of development to minimise visual intrusion as set out in Section 12.10 of the County Development Plan and the County Kilkenny Rural Design Guide, which Guidelines are considered to be reasonable. Having regard to its location on the South Leinster Way long distance walk, the topography of the site, the elevated positioning of the proposed development, together with its depth and scale, the resulting extensive driveway and the removal of the front boundary wall and hedging, it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area, would fail to be adequately absorbed and integrated into the landscape, would militate against the preservation of the rural environment and would set an undesirable precedent for other such prominently located development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The site is located on a minor road which is seriously substandard in terms of width and alignment. The traffic generated by the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users.
3. Having regard to the lack of information on the soil conditions on the revised location for the proposed polishing filter and percolation area and the proximity of two down gradient wells on adjoining lands, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and

the appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

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Philip Davis  
Planning Inspector

15<sup>th</sup> February 2018