



An
Bord
Pleanála

Inspector's Report ABP-300213-17

Development	To construct a new four bedroom house with detached garage and all associated site works.
Location	Earlsbog Leugh, Three Castles, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	17/605
Applicant(s)	David McCartan.
Type of Application	Permission.
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	David McCartan.
Observer(s)	None
Date of Site Inspection	7 th March, 2018.
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located in a rural area between the towns of Freshford, 3 km to the north west and Kilkenny City located approximately 11 km to the south east. The road on which the site is located is a secondary road. The vicinity of the site is characterised by a significant number of one off dwellings and the appeal site is effectively an infill site with two existing dwellings located to the east and a further two immediately to the west.
- 1.2. The site is relatively level and is fronted by a high hedgerow, ditch and roadside grass verge. At the time of inspection, the site displayed signs of an elevated water table in the form of rushes growing on the site and the site was wet underfoot.
- 1.3. The site is relatively flat with a slight fall from south to north towards the public road. The stated area of the site is 1.03 ha.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a two storey detached dwelling and detached garage with a combined floor area of 282 sq. metres. The dwelling design proposed has two gable fronted elements to the front elevation and dormer windows in the rear elevation. The materials indicated on the drawings are a mixture of render and stone with slate to the roof.
- 2.2. The dwelling is proposed to have an on site well water supply and an on site effluent treatment system with polishing filter. The well is proposed to be located close to the front roadside boundary of the site and the treatment system and filter to the rear of the dwelling. Surface water is proposed to be disposed of on site via four soakaways.
- 2.3. A new vehicular access to the site is proposed to be created close to the western end of the road frontage and sight lines in excess of 100 metres are demonstrated on the submitted drawings.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Refuse Permission for two reasons which can be summarised as follows:

1. That the applicant has not demonstrated compliance with the requirements of Kilkenny County Council's rural housing policy for a dwelling in this rural area which is identified as a Stronger Rural Area in section 3.5.2.3 of the *Kilkenny County Development Plan, 2014-2020*. The proposed development is urban generated and is contrary to development plan and national policy and therefore contrary to the proper planning and sustainable development of the area.
2. That the applicant has failed to demonstrate that the site is suitable for the safe on site treatment and disposal of effluent and that the development would not be a risk to public health and the environment.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer notes the planning history of the site and the previous refusals of permission. The report of the Environment Section which recommends refusal of permission on the basis of high water table is noted. The report concludes that on the basis of the information provided the applicant has not demonstrated how they would comply with the provisions of the development plan relating to rural housing in a strong rural areas. Refusal of permission consistent with the Notification of Decision which issued is recommended.

3.2.2. Other Technical Reports

Environment Section – Notes the conditions observed on site with a high water table and waterlogging and also that similar conditions were observed during two previous site inspections. Noted that the information submitted and proposed system is the same as that which was previously refused. Refusal of permission recommended on

the basis that it has not been demonstrated that effluent from the proposed development can be treated and discharged without a risk to public health or the environment.

Area Engineer – No objection subject to conditions relating to the site access and surface water discharge.

3.3. **Third Party Observations**

None on file.

4.0 **Planning History**

The following planning history relates to the appeal site:

- Kilkenny County Council Ref. 17/239 – Permission refused to David McCartan for the construction of a dwelling and detached garage on the basis of failure to demonstrate that the site can cater for on site treatment and disposal of effluent and that the applicant has not demonstrated compliance with the rural housing policy in the development plan.
- Kilkenny County Council Ref. 16/742 – Permission refused to Sarah McCartan for the construction of a dwelling and detached garage on the basis of failure to demonstrate that the site can cater for on site treatment and disposal of effluent and that the applicant has not demonstrated compliance with the rural housing policy in the development plan.
- Kilkenny County Council Ref. 01/536 – Permission granted for the development of a house on a site that comprises the current appeal site and a large part of the adjoining site to the west which has subsequently been independently developed.
- Kilkenny County Council Ref. 98/949 – Outline permission granted for a dwelling.

The following planning history relates to adjacent sites or applications referred to in the report of the Planning Officer:

- Kilkenny County Council Ref. 06/1739 – Permission granted for dwelling house on lands to the east of the current appeal site.
- Kilkenny County Council Ref. 06/1682 – Permission granted for a dwelling on lands that are located further to the east of the current appeal site.
- Kilkenny County Council Ref. 04/1373 – Permission refused for the construction of a single storey dwelling on a site located approximately 350 metres to the east of the current appeal site. Permission was refused for reasons relating to over development of a restricted site and an excessive concentration of development served by private effluent treatment systems.

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the *Kilkenny County Development Plan, 2014-2020*. The site is located close to the boundary between an area under strong urban influence and a Stronger Rural area and the Planning Authority have assessed the application on the basis that the site is located within the latter area.

The policy with regard to rural generated housing is set out at paragraph 3.5.2.3 of the development plan and a copy of the complete text is attached with this report. In summary, this paragraph states that in areas under strong urban influence and in stronger rural areas the council will permit (subject to other relevant criteria being met) single houses for the following classes of persons:

- Persons employed full time in a rural based activity,
- A full time farm owner or their immediate family members,
- Persons with no family lands but who wish to build their first house within 10km of their original family home in which they have spent a substantial part of their lives (minimum 5 years),

- Persons who were born and lived for substantial part of their lives (minimum 3 years) in the local area and who wish to return to the local area.
- A landowner who owned land prior to 14 June, 2013 and who wishes to build a home for himself or a son or daughter. (this is to address situations that may arise close to existing settlements where families may be excluded for developing a home due to emerging patterns over previous plan periods.

Paragraphs 3.5.2 and 12.10 relate to ribbon development.

5.2. **Natural Heritage Designations**

The site is not located in or in close proximity to any European site. The site is however located within approximately 3km of the River Barrow and River Nore SAC site which is located to the north east of the appeal site at the closest point.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The following is a summary of the main issues raised in the first party grounds of appeal:

- That the person who undertook the site suitability assessment assures the appellant that the site is suitable for the safe treatment and disposal of effluent. It is proposed that the percolation would be excavated such that it extends down to a sandier layer below ground level.
- That the applicant's family home is Jerpoint West, Thomastown, a rural area. The current proposal is not therefore urban generated. The site is the only one available to the applicant and while it is appreciated that it is 25km from the family home it is not considered to be a long distance.
- The site has been in family ownership for 16 years and is not of any use for a purpose other than building a dwelling.

- That the proposed development would not have any impact on landscape or rural quality in the area.

6.2. **Planning Authority Response**

Response received stating the following:

- That the site has been inspected on three occasions over the last number of years and on each occasion council staff have determined that it had not been demonstrated that effluent could be adequately treated and disposed.
- Based on inspections of the site it is considered that discharge to a permeable layer under the clay layer is not feasible.
- That there is also a concern with regard to the density of septic tanks in the area of the site and the combined impacts of these systems on groundwater.

7.0 **Assessment**

7.1. The following are considered to be the main issues arising in the assessment of the subject appeal:

- Rural Housing policy
- Design and visual impact
- Site access and drainage issues
- Appropriate Assessment,
- Other issues

7.2. Rural Housing Policy

- 7.2.1. Under the provisions of the *Kilkenny County Development Plan, 2014-2020* the site is located close to the boundary between an area under strong urban influence and a Stronger Rural area. In the report of the Planning Officer, the Planning Authority assessed the application on the basis that the site is located within a stronger rural area. On the basis of the information presented in the application and the development plan I would agree with this conclusion and propose that the assessment would be undertaken on the basis that the site is located in a stronger rural area. I also note that the criteria as set out at paragraph 3.5.2.3 of the Plan with regard to rural generated housing need for areas under strong urban influence and stronger rural areas are the same.
- 7.2.2. Paragraph 3.5.2.3 of the plan sets out the cases in which the council will permit single houses in rural areas identified as being under urban influence or in stronger rural areas. These circumstances include situations where persons are employed full time in a rural based activity, fulltime farmers and immediate family members, persons without family lands but looking to build within 10 km of the area their family home and returning migrants. The circumstances set out by the first party in the application are that he is from Jerpoint West which is close to Thomastown and c.24 km from the current site. The site is in the ownership of the father of the first party however it is not part of a farm or larger land holding. The first party is employed as a web designer and it is stated that he works from home.
- 7.2.3. On the basis of the information provided with the application and in the appeal submission, I do not see how the first party meets the criteria for a rurally generated house as set out in 3.5.2.3 of the County Development Plan. He does not have any employment connection with the rural area and while his father is the owner of the site there is no family connection to the local rural area in terms of being raised in the area or having family connections. The first party appeal states that it is considered unreasonable that the applicant would be forced to live in a town where the keeping of horses would not be possible and that the 25km separation between the family home and the site is not a long distance. No information regarding any equine activity has been submitted and I do not agree that a 25km separation is such that it can reasonably be argued that there is a family need to reside in the area. In this

regard I also note the definition of local area cited in 3.5.2 of the development plan which cites a distance of 10km.

- 7.2.4. In terms of compatibility with the principles set out in the Sustainable Rural Housing Guidelines for Planning Authorities, section 3.2.3 of these guidelines relate to rural generated housing and set out the broad classes of persons who should be facilitated. These include persons who are an intrinsic part of the rural community and those working full or part time in rural areas. As set out above, the first party in this case does not have any family connection with the rural area where he proposes to build in terms of residing in the general area or having family members in the local area such that he would be considered an intrinsic part of the rural community. Similarly, the first party has not demonstrated an employment related connection with the local area.
- 7.2.5. On the basis of the information submitted I do not consider that the first party meets the requirements set out in Chapter 3 of the Kilkenny County Development Plan where an applicant shall be favourably considered for a house in a rural area. Similarly, on the basis of the information presented, I do not consider that the proposal is consistent with the provisions of the Sustainable Rural Housing Guidelines as they relate to rural generated housing. It is therefore recommended that permission would be refused for the proposed development on the basis of lack of rural housing need and compatibility with the rural housing policy set out in Chapter 3 of the County Development Plan and along similar lines to the wording of Reason for Refusal No.2 included in the Notification of Decision to refuse Permission issued by the Planning Authority.

7.3. Design and Visual Impact

- 7.3.1. The design of the proposed dwelling is a substantial two storey four bedroom dwelling centrally located on the site. The siting proposed is c.22 metres back from the road edge and the proposed building line is consistent with the existing dwelling to the west. To the east, the adjoining dwelling is located significantly forward of the building line of the proposed dwelling however the separation distance between the proposed dwelling and the existing to the east is almost 20 metres and the mature

hedgerow boundary would mitigate any potential overlooking or loss of residential amenity.

- 7.3.2. The proposed dwelling is large however in principle the design is not particularly visually intrusive or incompatible with the existing adjoining two storey and dormer dwellings.
- 7.3.3. As noted in the report of the Planning Officer, the location of the proposed dwelling is such that there would be a run of 5 no. dwellings in a row on the southern side of the road were the proposed dwelling to be permitted. The proposed dwelling would therefore lead to the creation of ribboning in this location and, taken in conjunction with an additional dwelling located on the northern side of the road and the significant concentration of dwellings a short distance to the east, would result in a significant concentration of development in this area. The concentration of development is referenced below in the context of site drainage however the avoidance of ribbon development is referred to in section 3.5.2 of the plan under the heading of rural housing policies and also 12.10 Rural Housing. 12.10 states that *'sites which lead to ribbon development are not considered to be in the interests of proper planning and sustainable development and is strongly discouraged'*. Ribbon development is defined in 3.5.2 of the plan as *'existing development where there are five or more houses on any one side of a given 250 metres of road frontage'*. The situation with the appeal site is that its development would result in a run of five houses albeit over a slightly longer distance than 250 metres (c.260 metres). I would not agree with the first party appellant that this layout would not result in any adverse impact on rural or landscape quality. Rather I am of the opinion that to permit the proposed development would result in a continuous frontage of development extending over c. 260 metres and the loss of the existing break in development afforded by the mature roadside frontage of c.75 metres on the appeal site.

7.4. Site Access and Drainage Issues

- 7.4.1. Access to the site is proposed to be via a new entrance to be opened close to the western end of the site frontage. The site Plan submitted indicates a sight line of 120 metres to the west and c.100 metres to the east and appears to indicate that this would be available without the construction of a large recessed entrance. The set

back of the existing hedgerow from the roadside boundary is such that it would appear possible that sightlines could be achieved without the removal of significant amounts of the existing roadside frontage though this is not clearly indicated on the submitted Site Plan. I also note that the sight line to the east indicated on the submitted plan shows it measured to the far rather than the near side of the road.

- 7.4.2. Reason for refusal No.1 attached by the Planning Authority to the Notification of Decision to Refuse Permission relates to site drainage and states simply that the applicant has failed to demonstrate that effluent from the proposed development can be treated and discharged at the proposed development site without risk to public health and the environment. At the time of inspection of the site the ground conditions were observed to be wet with the ground significantly waterlogged. The high water level on the site is reflected in the fact that the trial and percolation test holes that remain open on the site were almost completely full of water at the time of my visit. I also observed the fact that there were rushes growing on the site, particularly in the half closest to the road (northern area) and that there was water in the drain fronting the site. Allowing for the time of year, the overall impression generated was a wet site with a high water table and poor drainage.
- 7.4.3. The results of the site assessment indicate a T test result of 224 and a modified T test of 63. I also note that the site assessment results which accompany the application date from 2012 and appear to have been prepared in respect of a previous application for permission on the site.
- 7.4.4. The site is not located within a source protection area or within a known Karst area. On the basis of the information presented in the Site Suitability assessment as verified by the GSI website the vulnerability classification of the site is E (extreme) and the aquifer category is regionally important. These give a categorisation of R2³ from the response matrix which states that development would be acceptable subject to normal good practice and where *'the authority must be satisfied that, on the evidence of the groundwater quality of the source and the number of existing houses the accumulation of significant nitrate and / or microbiological contamination is unlikely'*. In the case of the appeal site, given the very high T test result obtained there is obviously very wet ground conditions evident on the site. The T and P test results combined with the observed wet ground conditions on site and the concentration of houses in the vicinity, both adjoining the appeal site and to the east

in areas of extreme and high vulnerability are such that it is not possible to be satisfied that the proposed development would not have a significant adverse impact on groundwater quality in this area. Having regard to the above and to the proposed water supply source via a bored well it is therefore considered that the proposed development would have a potentially significant adverse impact on public health and would be contrary to the proper planning and sustainable development of the area. It is therefore recommended that permission would be refused on the basis of poor on site drainage and a proliferation of existing drainage systems and wells leading to a potential risk to public health.

7.5. Appropriate Assessment,

- 7.5.1. The site is not located in or in close proximity to any European site. The site is however located within approximately 3km of the River Barrow and River Nore SAC site and the River Nore SPA site both of which are located to the north east of the appeal site at the closest point.
- 7.5.2. The conservation objectives for the R. Nore SPA site (Code 004233) is To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA, namely Kingfisher.
- 7.5.3. The conservation objectives for the River barrow and River Nore SAC site (site code 002162) are to maintain the favourable conservation condition of the following species and habitats:
- Desmoulin's whorl snail *Vertigo moulinsiana*
 - Freshwater pearl mussel *Margaritifera margaritifera*
 - White-clawed crayfish *Austropotamobius pallipes*
 - Sea lamprey *Petromyzon marinus*
 - Brook lamprey *Lampetra planeri*
 - River lamprey *Lampetra fluviatilis*
 - Twait shad *Alosa fallax*
 - Atlantic salmon (*Salmo salar*) (only in fresh water)

- Estuaries
- Mudflats and sandflats not covered by seawater at low tide
- Salicornia and other annuals colonizing mud and sand
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
- Otter *Lutra lutra*
- Mediterranean salt meadows (*Juncetalia maritimi*)
- Killarney fern *Trichomanes speciosum*
- Nore freshwater pearl mussel *Margaritifera durrovensis*
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and
- *Callitriche-Batrachion* vegetation
- European dry heaths
- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
- Petrifying springs with tufa formation (*Cratoneurion*) – priority habitat
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* – priority habitat.

7.5.4. Notwithstanding the potential for the proposed development to impact adversely on groundwater quality in the vicinity of the site and to combine with existing developments to impact adversely on groundwater, it is considered that the scale of the proposed development and the separation of the site from the River Barrow and River Nore SPA and SAC sites is such that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that permission be refused based on the reasons and considerations set out below:

9.0 Reasons and Considerations

1. Having regard to the information provided by the applicant relating to his family and employment circumstances and connections to the local rural area in which the site is located, in particular his family home being in Thomastown and the absence of any employment or other connection with the local area, the location of the site in a Stronger Rural Area as identified in the Kilkenny County Development Plan, 2014-2020 (Figure 3.17) and the circumstances set out in paragraph 3.5.2.3 of the Plan where in principle rural generated housing need will be accommodated, the Board is not satisfied that the requirements of Kilkenny County Councils Rural Housing Policy have been met. The proposed development would therefore be contrary to the rural housing policy as set out at section 3.5 of the development plan, would be contrary to the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities and would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the results of the Site Suitability Assessment undertaken on the site, the observed conditions on site indicating wet ground conditions and a high water table, the location of the site in an area of extreme groundwater vulnerability and a regionally important aquifer and the proliferation of existing dwellings served by on site treatment systems in the vicinity of the site, the board is not satisfied on the basis of the information presented that the site is suitable for the safe treatment and disposal of effluent. The proposed development would therefore be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

16th March 2018