



An
Bord
Pleanála

Inspector's Report ABP-300703-18

Development	Construction of dwelling, entrance, bore well and install waste water treatment system.
Location	Ballyspellan, Johnstown, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	17/731
Applicant(s)	Lloyd Bassett.
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Patrick Hughes
Observer(s)	None
Date of Site Inspection	17 th May, 2018
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The site is located in a rural area c.3km to the north east of Johnstown in County Kilkenny. The site is accessed via a narrow local road that runs to the east off the R639 regional road that connects Johnstown to the south west with Cullahill to the north east. The M8 motorway is located approximately 2km to the west of the appeal site and runs north south roughly parallel to the R639.
- 1.2. The site access is via a local road that is narrow in the vicinity of the appeal site. There is a low density of existing dwellings in close proximity to the site though there is an existing bungalow located immediately to the north east of the site and a further dwelling accessed via a laneway that runs along the northern boundary of the site.
- 1.3. The stated area of the site is 0.32 ha. and the site is currently unoccupied and was not in agricultural use or used for grazing at the time of inspection. There is an existing field access at the north east corner of the site which accesses the site and a wider agricultural area to the west and south. The site is relatively flat and is bounded to the east and north by mature hedgerow and tree planting.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a dormer dwelling with a stated floor area of 237.5 sq. metres. The dwelling is proposed to be accessed via a recessed entrance that is in the same location as the existing field entrance. Access required the removal of a section of the existing front (east facing) boundary and the setting back of a new planted hedgerow boundary on this frontage.
- 2.2. The dwelling is proposed to be served by an on site effluent treatment system and water supply is proposed to be via a bored well.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission subject to 10 no. conditions, the most notable of which are considered to be as follows:

Condition No.3 requires that the on site waste water treatment system be constructed in accordance with the recommendations of the EPA Code of Practice and that compliance of the installation of the system in accordance with the requirements of the EPA Guidelines would be submitted to the Planning Authority.

Condition No.4 requires that during construction operations on site shall not be such that air emissions, noise or odours impact on the environment or amenities beyond the site boundary.

Condition No.7 specifies finished and materials for the dwelling.

Condition No.8 specifies the treatment of site boundaries and requires that the front (east facing) boundary shall be a sod and stone wall back planted with a double row of native hedgerow species.

Condition No.9 is an occupancy condition for a period of 5 years.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer notes the contents of the third party observations received and internal reports. Considered that the applicant meets the requirements of the rural housing policy and a grant of permission consistent with the Notification of decision which issued is recommended.

3.2.2. Other Technical Reports

Environment Section – Initial report recommends grant of permission subject to conditions relating to the installation of the effluent treatment system. Second report

notes the third party submissions and recommends a further condition limiting noise, air emissions and odours during the construction phase.

Area Engineer – No objection subject to conditions relating to the proposed vehicular entrance.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

Three third party submissions received by the Planning Authority (two from Mr Patrick Hughes). The following are the main issues raised in these submissions:

- Obstruction of view and sunlight,
- Creation of an excessive number of entrances that will impact on safety of walkers and those exercising horses in particular.
- Accessing the site will require the occupants to encroach onto adjoining lands that are not in their ownership.
- That the development will impact on Ballyspellan stables which is located on the far / opposite side of the local road from the appeal site.
- The development will result in additional noise that will impact negatively on the horses.

4.0 Planning History

The following planning history relates to the appeal site:

Kilkenny County Council Ref. 13/62 – Extension of duration of permission Ref. 08/670 on the basis that the appropriate time period for making the application had expired.

Kilkenny County Council Ref. 08/670 – Permission granted to Michael and Brenda Tynan for the construction of a dwelling to a revised design from that permitted under

Ref. 07/203. Garage, store and boiler room previously permitted omitted from the layout.

Kilkenny County Council Ref. 07/203 – Permission granted to Michael and Brenda Tynan for the construction of a single storey dwelling, garage, bored well and pura flo effluent treatment system on the site.

5.0 Policy Context

5.1. Development Plan

The site is located in a rural area outside of any settlement. The site is identified in the Kilkenny County Development Plan, 2016-2020 as a stronger rural area.

Within areas identified as being under urban influence or stronger rural areas there are a number of categories of person who will be permitted rural houses in principle.

These categories include

1. Persons employed full time in agriculture or other rural based activity,
2. Full time farm owners or immediate family members,
3. Persons with no family lands but who wish to build their first home within a 10km radius of their original family home in which they have spent a significant period of time (minimum 5 years),
4. Persons who were born and lived for substantial parts of their lives (minimum 3 years) in the local area and want to return (returning migrants),
5. A landowner who owned property prior to 14 June, 2013 and who wishes to build a home for a son or daughter.

Section 12.10 of the plan sets out design guidance for rural houses.

5.2. Natural Heritage Designations

The closest European site to the appeal site is the Spahill And Clomantagh Hill SAC (site code 000849) which is located approximately 1km to the east of the appeal site at the closest point. This SAC site comprises three individual parcels of lands one

c.1km to the east of the appeal site, a second smaller area a further c1.5km to the east and an area approximately 2 km to the south east of the site.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the third party appeal submission received:

- That the proposed dwelling is only 50 metres from the appellant's property and is too near.
- That the entrance to the proposed house / site is only 18 metres from the appellant's house and 10 metres from his property.
- That the first party will have to encroach onto the appellant's property (driveway) in order to access or exit the proposed dwelling. Construction traffic will not be able to access the site without encroaching on the appellant's property and potentially damaging his driveway.
- That the road is narrow (only 4 yards) and that the proposed site access is only 10 metres from the agricultural access to the appellants lands. 24 hour access to the agricultural access is required.
- That there are 5 existing entrances in close proximity to the appeal site and all of these are used on a frequent basis.
- That the public road is used on a frequent basis by persons walking, exercising horses and the road is used by horses from Ballyspellan stables opposite the site. There is far too much traffic on the road as it is without an additional house.

6.2. Applicant Response

There is no record of a response to the third party appeal being received from the first party. A copy of the grounds of appeal was sent by letter dated 19th January, 2018.

6.3. Planning Authority Response

The Planning Authority have responded to state that they have no further comment to make on the grounds of appeal.

7.0 Assessment

The following are considered to be the main issues in the assessment of this appeal:

- Principle of Development and Rural Housing Policy
- Site Servicing and Drainage,
- Traffic and Access
- Design and Impact on Amenity
- Appropriate Assessment,

7.1. Principle of Development and Rural Housing Policy

- 7.1.1. The appeal site is located in a rural area outside of any identified settlement. As per Figure 3.17 of the Kilkenny County Development Plan, the site is located in a Stronger Rural Area, and the provisions of paragraph 3.5.2.3 of the County Development Plan regarding rural generated housing need within areas under strong urban influence and stronger rural areas are therefore applicable. Within areas identified as being under urban influence or stronger rural areas there are a number of categories of person who will be permitted rural houses in principle. Of particular relevance to the circumstances of the subject application, these categories include

- Persons with no family lands but who wish to build their first home within a 10km radius of their original family home in which they have spent a significant period of time (minimum 5 years),
- Persons who were born and lived for substantial parts of their lives (minimum 3 years) in the local area and want to return (returning migrants),

- 7.1.2. I note that the Schedule of documents submitted with the application makes reference to a birth certificate, school attendance record, utility bill and landowners consent. The school attendance record, in the form of a letter from the principal of Galmoy NS, states that the first party (Mr Bassett) attended the school from junior infants to 6th class. Galmoy NS is approximately 5.5km to the north west of the appeal site on the western side of the M8 and the R639.
- 7.1.3. On the basis of the submitted information, the applicant does not have any employment connection with the local area or with the rural area and his stated employment is as an electrical contractor in Dublin.
- 7.1.4. It is not completely clear from the available information where the applicant is residing at the moment. The application form does not confirm his current address and there is no copy of the utility bill referred to in the Schedule of documents submitted with the application. The submitted Site Location Map and Site Layout Plan both indicate that the parents of the first party reside in a dwelling located immediately to the north west of the application site and accessed via a laneway that adjoins the northern boundary of the site. By virtue of the fact that the applicant attended the local national school I consider that he meets the requirement of the rural housing policy being a person with no family lands but who wish to build their first home within a 10km radius of their original family home in which they have spent a significant period of time (minimum 5 years) and it is therefore considered that the applicant meets the circumstances set out at section 3.5.2.3 of the Development Plan. I note that the Notification of Decision to Grant Permission issued by the Planning Authority includes an occupancy condition (Condition No.9). Given the circumstances of this case where the applicant does not have any employment or other economic ties to the local area it is recommended that a similar condition be attached in the event of a grant of permission.

7.2. Site Servicing and Drainage,

- 7.2.1. The appeal site is relatively level and does not display any clear evidence of poor drainage. The recorded P and T test results from the submitted Site Suitability Assessment indicate a T test result of 4.95 and P test result of 6.22 and no water was recorded in the 2.2 metre deep trial hole. There is not in my opinion any clear indication from an examination of the site that would indicate that these recorded results are not reflective of site conditions.
- 7.2.2. The site is proposed to be served by a bored well and the on site system proposed is a standard septic tank. The layout of the septic tank and extent of percolation trenching proposed is consistent with the separation distances set out in Table 6.1 of the EPA Code of Practice. The recorded T test result of 4.95 is also within the range of 3-50 set out in Table 6.3 of the Code of Practice where a septic tank system or secondary treatment system discharging to groundwater is suitable. The groundwater protection response for the site is R2¹ on the basis of an extreme vulnerability rating and a locally important aquifer. On site treatment systems are acceptable on such site subject to normal good practice. Given the relatively low T test result recorded it would be preferable if a proprietary treatment system rather than a septic tank system was used on this site and I note that the wording of Condition No.3 attached to the Notification of Decision to Grant Permission by the planning authority provides for alternative EPA compliant treatment systems, different to that approved under this application, being agreed. In the circumstances of the case the proposed septic tank system is considered to be acceptable.
- 7.2.3. In the event of a grant of permission it is recommended that certification regarding the installation of the system would be required by way of condition.

7.3. Traffic and Access

- 7.3.1. The third party appellant has raised concerns with regard to the impact of the proposed development in terms of traffic generation and potential conflict with existing road users, both agricultural, other residents and recreational users. The site is located on a narrow very lightly trafficked local secondary road and in an area where there are a limited number of existing dwellings and development in the

vicinity. The appellant makes reference to the fact that there are five other entrances located in close proximity to the site and that there is already far too much traffic using the road. From my inspection of the site and observation of the existing pattern of development in the vicinity I do not consider that the road, while narrow, can be stated to be heavily used. The presence of Ballyspellan stables to the south east of the site is noted and I note the fact that horses are therefore likely to use the road on a relatively frequent basis. I do not however consider that the proposed additional dwelling would be such as to result in a traffic hazard or exacerbate an existing traffic issue in the local area.

7.3.2. The access to the site is proposed to be via an entrance to the local road at the position of the existing field entrance. The entrance is proposed to be recessed and a section of the front boundary of the site for a distance of approximately 40 metres to the south of the entrance is indicated as being re aligned to facilitate the achievement of a 70 metre sight line to the south. Given the restricted width of the road it is likely that a 70 metres sight line is not required however the removal of the c.40 metre of roadside boundary proposed is considered acceptable in this instance and the existing roadside hedgerow is such that it can be readily replaced on realignment of the site boundary.

7.3.3. I note the concerns raised by the appellant with regard to encroachment onto his property by vehicles accessing the proposed site. The entrance to the appellant's house to the north east of the site is open such that there is not a very clear distinction between the road and the private property in this location. Given the 4 metre wide width of the public road at the location of the proposed vehicular entrance and the fact that the new entrance is proposed to be set back c.3 metres from the existing road edge in a splayed entrance I do not consider that access to the site for either construction or ordinary traffic would result in encroachment onto the appellants property.

7.3.4. Given the extent of the site and the availability of parking for vehicles within the site I do not consider that there would be any issues arising regarding the blocking of the appellants existing accesses on the opposite side of the local road. I do not see how the proposed development would result in the obstruction of the access to either the appellants dwelling or adjoining agricultural lands.

7.4. Design and Impact on Amenity

- 7.4.1. The design of the proposed dwelling is a single storey form with an overall height of c. 6.7 metres. Accommodation at first floor level is proposed with windows in the gable ends and also a part gable fronted element. The basic form and scale of the dwelling proposed is considered to be acceptable.
- 7.4.2. The third party appellant has raised concerns regarding the proximity of the proposed dwelling to his property and the impact on amenity. The separation distance between the proposed dwelling and that of the appellant would be c.60 metres. In addition, the orientation of the proposed dwelling parallel to the road and its location on the southern part of the site is such that it would not be directly facing the appellant's property and would not overlook his property.
- 7.4.3. I note the fact that in submissions to the Planning Authority the occupant / operator of Ballyspellan Hill Gallops refers to the potential impact on the stables arising from noise and disturbance both during construction of the dwelling and when completed. The separation to the nearest buildings within the gallops and the proposed dwelling is c. 60 metres and subject to restrictions on the hours of construction as proposed by Condition No.10 attached to the Notification of Decision to Grant Permission I do not consider that the proposed development of a single dwelling would be such as to generate disturbance that would significantly impact on the operations of Ballyspellan Hill Gallops.

7.5. Appropriate Assessment,

- 7.5.1. The site is located within c.1km of the Spahill and Clomantagh Hill SAC (site code 000849) which is located to the east of the appeal site. This SAC site comprises three individual parcels of lands one c.1km to the east of the appeal site, a second smaller area a further c1.5km to the east and an area approximately 2 km to the south east of the site. The qualifying interest of this SAC site is Orchid-rich Calcareous Grassland (priority species).
- 7.5.2. The direction of groundwater movement recorded in the Site Suitability Assessment is east to west away from the European site and there is no evident surface pathway

between the appeal site and the European site. Notwithstanding the lack of a clear pathway, the nature of the qualifying interest present on the European site is such that it would not be likely to be significantly effected by any slight reduction in water quality arising from the proposed development.

- 7.5.3. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, 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 granted based on the following reasons and considerations and subject to the attached conditions:

9.0 Reasons and Considerations

Having regard to the location and characteristics of the site, to the pattern of development in the area and to the circumstances of the applicant, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 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 roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.

Reason: In the interest of visual amenity.

3. The external walls shall be finished in neutral colours such as grey or off-white.

Reason: In the interest of visual amenity.

4. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

Reason: To ensure adequate servicing of the development, and to prevent pollution

6. The following shall be complied with in the development:

(a) The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009.

(b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the drainage system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

7. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

8. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details 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) the establishment of a hedgerow along all side and rear boundaries of the site, and
- (b) the reinstatement of the front roadside boundary following the set back for sight lines.

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 order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

9. The following shall be complied with in the development:

- (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, 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 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.

10. The developer shall pay to the planning authority a financial contribution of €4,760 (four thousand seven hundred and sixty euro) 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. The application of any indexation required by this condition 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.

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.

Stephen Kay
Planning Inspector

29 May 2018