



An
Bord
Pleanála

Inspector's Report ABP-300880-18

Development	Construction of four bedroom house.
Location	Annamult, Bennettsbridge, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	17/640
Applicant(s)	Max Casey
Type of Application	Permission.
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party Appeal
Appellant(s)	Ger Walsh, Fintan Walsh.
Observer(s)	None
Date of Site Inspection	10 th of May 2018
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The subject site is located to the south of Bennetsbridge village in Co. Kilkenny, in a townland called *Annamult*. It is a rural area which runs alongside the River Nore. The site, 0.29Ha, is located at the end of a narrow breen which leads to an historic house called, Annamult House. The subject site is located at the entrance gates of Annamult House. There is a derelict house on the western side of the laneway, and a small ruin within the subject site on the eastern side of the laneway at the entrance gates to Annamult House.
- 1.2. The subject site is overgrown. It falls away eastwards from the laneway. There is an existing field entrance at the southern extremity of the road frontage. There is mature planting along the boundaries of the site, and a stone wall fronting the site.
- 1.3. To the immediate north of the site is a large one-off dwelling with stables. There are at least two other dwellings along the lane approaching the site. The laneway is less than 3metres in width. Sightlines at the junction with the main road off the laneway are adequate.

2.0 Proposed Development

- 2.1. The proposed dwelling is for a split-level dwelling, 288sq.m., with a contemporary featuring a green monopitch roof and a balcony at first floor level. The maximum ridge height of the dwelling to the rear (two storey elevation) is 6.4metres. The elevation facing the laneway is single storey and is 3.49metres.

3.0 Planning Authority Decision

3.1. Decision

Kilkenny Co. co. granted the proposed development subject to 7No. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Site location, site history and infrastructure were cited in the report. Having regard to the natural screening on the site and the design it is considered the proposed dwelling will assimilate sensitively into the landscape.

T- Value of 17.22

- The site is located in an Area Under Urban Influence. The applicant is a son of the landowners, John Shiels and Susan Casey, and is currently residing at Annamult House. It is considered the applicant complies with local housing needs policy

3.2.2. Other Technical Reports

Roads Section : No Objections

Environment Section : No objections

3.3. **Prescribed Bodies**

The case was referred by the planning authority to the Minister for Arts, Heritage and Gaeltacht. There was no response received.

3.4. **Third Party Observations**

Gerard and Fintan Walsh objected to the proposed development on the same grounds as their third party appeals.

4.0 **Planning History**

P09/281

Permission refused by the Board to the applicant's parents for a dwelling on the site on the basis of rural housing need. The application was made by the applicant's parents at the time. The Board considered the parents already owned a house in the area therefore did not require an additional dwelling, and was therefore contrary to the local needs policies.

P04/1869

Permission refused to Margaret Ryan to erect a dwelling with private well and effluent treatment system, new entrance and associated site works – non compliance with rural housing need

5.0 Policy Context

5.1 National Policy

Sustainable Rural Housing Guidelines 2005

Circular PL2/2017

Persons who are an intrinsic part of the rural community

Such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first home near their family place of residence.

Returning emigrants who lived for substantial parts of their lives in rural areas, then moved abroad and who now wish to return to reside near other family members, to work locally, to care for elderly family members, or to retire should be also be accommodated.

5.2.1 Development Plan

The relevant development plan is Kilkenny County Development Plan 2014-2020. The relevant sections are appended to this report. The Rural Housing policies are outlined under section 3.5 of the Plan.

3.5 Rural Settlement Strategy

The rural settlement strategy is based on the Sustainable Rural Housing Guidelines for Planning Authorities. The objective of the Council's rural housing strategy is to provide for sustainable rural communities without compromising the physical, environmental, natural or heritage resources of the county.

This broad objective is underpinned by the following detailed objectives:

- Promote the sustainable development of rural areas.
- Protect the quality and character of rural areas.
- Protect the quality of the environment, including the prevention, limitation, abatement and/or reduction of environmental pollution and the protection of waters, groundwater and the atmosphere.
- Protect features of the landscape and areas of major importance for wild fauna and flora.
- Protect the character of the landscape, including views and prospects listed in this Plan and the amenities of places and features of natural beauty or interest.
- Protect natural resources such as minerals and construction aggregates
- Protect areas where sustainable energy production is feasible, such as high lying areas where wind energy production is acceptable in principle.

Urban Generated Rural Housing: Housing in rural areas sought by persons living and working in urban areas, including second homes. The Council will endeavour to accommodate urban generated housing within the development limits of all towns and villages subject to appropriate servicing arrangements

Rural Generated Housing: 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.

The site is located within an area classified as Area Under Urban Influence.

3.5.2.1 Areas under Urban Influence

Areas classified as under Urban Pressure are located close to the immediate environs or commuting catchment of cities and towns or to major transport corridors with ready access to urban areas. They are characterised by rapidly rising populations and/or considerable pressure for housing development. It is the Council's objective for areas of urban influence to facilitate the rural generated housing requirements of the local rural community (as identified in this section) while on the other hand directing urban generated rural housing to areas zoned for new housing development in the city, towns and villages.

Areas under urban influence display the greatest pressures for development due to:

- Close commuting catchments of larger cities and towns,
- Population increases well above the average for the aggregate rural areas of the county.
- Ready access to a good road network with ready access to the larger urban areas.

Occupancy Condition

All permission granted for rural housing within the Areas of Urban Influence shall be subject to an occupancy condition restricting the use of the dwelling to the applicant

5.1. Natural Heritage Designations

Natural Heritage Designations

- 5.3 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

Mr. Ger Walsh and Fintan Walsh have taken this third party appeal against Kilkenny County council's decision to grant planning permission for the dwelling Annamult, Bennetsbridge. The following is a summary of the grounds of appeal:

- The site is located off a narrow laneway. The laneway is narrow and single carriageway. The lane is in poor condition and already carries a significant level of traffic from residents, farmers, a caravan park and two fishing clubs. The sightlines at Annamult Road are inadequate. Any additional traffic along the lane would compromise road safety and capacity.
- The site is located in an area of high amenity and overlooks the River Nore and the confluence of the River Nore and Kings River. The development will protrude above the skyline and be obtrusive when viewed from the River Nore.
- The development will diminish the rural character and environment of the laneway. It will consolidate haphazard development in a rural area.
- The Shiels family have made a number of planning applications for dwellings on the laneway. The most recent been P09/281/ PL01.235056 which was a refusal because the development would conflict with Sustainable \Rural Housing Guidelines.

6.2. Applicant Response

The appeal is vexatious and originates from an ongoing dispute over the right of access across adjoining Annamult House and Fintan Walsh.

Previously, Mr. Walsh objected to and appealed planning permission granted to the applicant's parents on the subject site. The appeal was successful, as the Board considered the applicant's parents already had a house and therefore the development was contrary to local needs. There was no reference to traffic or visual amenities in the Board's decision, and the dwelling assessed under 09/281 was of larger scale. There have been a number of permissions granted along the land since 2009, and Ger and Fintan Walsh have not objected to those applications.

Traffic Safety

There is no such road as Ballinmult Road, and it can only be assumed they meant Annamult Road. There is no caravan park along the laneway and this is factually incorrect. The laneway is used by a small number of dwellings and farmers.

P09/281 made no reference to traffic issues and recently permitted P15/545 along the lane made no reference to traffic safety issues.

Planning History

It is not clear the former use of the structure on the subject site. Enquiries suggest a family called Wemyss may have resided in the structure. There is an unoccupied dwelling also located on the opposite side of the lane to the subject site.

The applicant was schooled in the local N.S. school. He is the son of the local landowner, works and resides locally.

6.3. Planning Authority Response

There is no response from the planning authority to the appeal.

7.0 Assessment

7.1. I intended to examine the proposed development under the following headings:

- Development Plan Policies
- Impact on the Area
- Traffic Safety
- Sewage Treatment
- Appropriate Assessment

7.2 *Development Plan Policies*

In my opinion, compliance with current development plan policies relating to rural housing is the salient issue in appeal case. There was a planning application submitted on the subject site in 2009 by the applicant's parents, John and Susan Shiels. Kilkenny Co.Co. granted planning permission for a two storey dwelling on the site which was appealed by the same appellants as the current appeal, Ger and Fintan Walsh. On appeal, PL10.235056, the Board refused the proposal for one reason:

The proposed development would be located in a rural area regarded as under strong urban influence/stronger rural area in current development plan for the area, where it is the policy of the planning authority to restrict the development of one-off houses to those needed to meet locally based rural generated housing needs. On the basis of the information available to the Board, it is not satisfied that the applicants come within the scope of the rural generated housing need criteria for an additional house at this location. The proposed development would, therefore, conflict with the rural housing policies in the development plan and in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and would lead to the further erosion of the rural character of the area and would, therefore, be contrary to proper planning and sustainable development of the area.

Since the previous decision, a new development plan adopted for the County, **Kilkenny County Development Plan 2014-2020**. The site is located within a rural area designated *Area Under Urban Influence*. Rural generated housing will be considered favourably under section 3.5.2.1 of the Plan, subject to an occupancy condition. In these areas the Council's objective is to facilitate rural generated housing requirements to the local community, and urban generated housing will be directed into towns and villages.

According to the planning application, the applicant, Max Casey, is a son of the landowner. The landholding is indicated on Drawing sjs/1/06/17 and includes the house and curtilage of *Annamult House* to the south of the subject site. The subject site is positioned outside of the entrance gates to the main house. The applicant works in Kilkenny City as journalist, 11km from the site. He attended the local school in Bennetsbridge village. He is prepared to sign an occupancy agreement. The applicant currently lives with his parents at Annamult house. The file does not state the total landholding.

The case presented does not describe the 'need' of the applicant to reside in a rural area. The planning policy relating to rural housing in Area Under Urban Influence is

to facilitate rural generated housing, i.e. to persons whereby *'housing needed in rural areas within established rural community by persons from that community or whose occupation is intrinsically linked with that particular area'*. It would appear, a letter from the local national school stating Mr. Casey attended the school, was considered sufficient evidence for the planning authority to deem the applicant complies as a rural generated housing need. In my opinion, the policy is a somewhat relaxed for areas under development pressure. The deciding factor would also appear to be the applicant is the son of the landowner of a modest landholding associated with the curtilage of Annamult House. I am not satisfied the applicant complies with the policies of sustainable rural housing, and the information presented on file is very vague and uninformative. In my opinion, the Board's previous decision for refusal on the subject site is still relevant. The development should be refused because he fails to comply with policies relating to Rural Generated Housing, as his place of employment is Kilkenny city and this is not a form of sustainable rural development.

7.3 Impact on the Area

The subject site is .29Ha is currently overgrown, practically inaccessible, and screened by mature trees from the surrounding area. On appeal, the appellants expressed concern regarding the visual impact of the proposed development on the Area of High Amenity. They were also concerned with the obtrusive nature of the design and its impact on the skyline.

- 7.2. The house is a contemporary split-level design, reading as a single storey structure from the front/ laneway elevation, and a two storey dwelling to the rear. I consider the grounds of appeal in this regard to be unfounded. The proposed dwelling is low profile. The maximum ridge height of the dwelling to the rear (two storey elevation) is 6.4metres. The elevation facing the laneway is single storey and is 3.49metres. The structure is not obtrusive when viewed from the east or south. The site falls away from the laneway eastwards towards the banks of the River Nore. There is mature planting around the perimeter of the site which should be retained by condition. The general area and aspect of the laneway and approach to Annamult House is sylvan, and in my opinion the green monopitch roof and low profile scale of the dwelling, will blend into the setting.

7.4 Traffic Impact

This issue was examined in detail by the Roads section/ area Engineer of the planning authority, and there was no objection to the proposal. The sightlines at the entrance of the proposed development are acceptable and at the junction of the laneway with the main road. I do accept the laneway is narrow and single lane only, however there are only a small number of dwellings utilising the lane and a number of farms. The appeal submission is incorrect in stating there is a caravan park associated with the lane. I am satisfied the proposal will not result in a traffic hazard.

7.5 Sewage Treatment

The Site Suitability report deemed the soil acceptable for the discharge of effluent directly to the ground. The average T Value is 17 and there was no bedrock or seasonally high water table discovered in the subsoil assessment on site. The underlying soil type is fine loamy drift with limestones – free draining sands and gravels. The underlying aquifer is locally important with a high vulnerability rating. It was noted that the site is suitable for the discharge of effluent directly to the ground from an advanced wastewater treatment system. A variation of drainage conditions was discovered around the general area of the site, with gravelly clay material found in the deeper subsoil profiles, therefore a polishing filter will have a smaller footprint and lower nutrient loading on the e existing soils and subsoils of the area. It is considered that there is a low density of onsite systems in the general vicinity of the site. The Environment Section of the Planning Authority recommended the development be granted with one condition that the treatment system be in accordance with the EPA Guidelines for onsite treatment systems for single dwellings.

7.6 Appropriate Assessment

The site is not located in or within a 100metres proximity to any European site. The site is however located in close proximity to the River Nore SPA which runs downhill of the site along the eastern axis of the site within 500metres of the eastern boundary of the site. A tributary of the R. Nore, the King's River runs into the R. Nore 700metres south of the subject site. The site is also within the hydrological catchment of the Lower River Barrow/ River Nore SAC.

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 (*Alcedo atthis*).

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*
 - Twaite shad *Alosa fallax*
 - Atlantic salmon (*Salmo salar*) (only in fresh water)
 - 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.

The habitats to consider are Alluvial Wet Woodland, rivers and streams.

The proposed development is located uphill and circa 500metres from the banks of the River Nore. It would appear from the O.S. maps the river is located along the 90m contour line and the subject site is positioned along 190metres indicating a steep incline from the river to the site. There is extensive vegetation between the site and the river, it is considered the development is unlikely to discharge pollutants or nutrients of a significant nature into the surface water catchment of the SPA and SAC during the construction phase or the operational phase of the dwelling, which includes the installation of an on-site treatment system. There is no direct surface water link from the site to the river. Having regard to the underlying on-site soil conditions, the proposed secondary treatment system with polishing filter, and the low concentration of onsite treatment systems in the vicinity of the site. 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. I recommend the planning authority's decision to grant planning permission be overturned by the Board, and the proposal be refused for the following reason.

REASONS AND CONSIDERATIONS

The proposed development would be located in a rural area regarded as under strong urban influence/stronger rural area in current development plan for the area, where it is the policy of the planning authority to restrict the development of one-off houses to

those needed to meet locally based rural generated housing needs. On the basis of the information available to the Board, it is not satisfied that the applicant come within

the scope of the rural generated housing need criteria for a house at this location. The proposed development would, therefore, conflict with the rural housing policies in the development plan and in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and would lead to the further erosion of the rural character of the area and would, therefore, be contrary to proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

15th of August 2018