



An
Bord
Pleanála

Inspector's Report ABP-300978-18

Development	Change of use of part of former horticultural site to residential occupation of 2 no. caravans for a period of 5 years, connections to on-site septic tank system, change of use of horticultural utility building to non-habitable residential utility use and all associated site works.
Location	Ballygriffin, Kilmacow, Co. Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority Reg. Ref.	17/796.
Applicant(s)	Thomas & Gary McInerney.
Type of Application	Permission for Change of Use.
Planning Authority Decision	Refuse.
Type of Appeal	First Party v Refusal.
Appellant(s)	Thomas & Gary McInerney.
Observer(s)	None.
Date of Site Inspection	1 st June, 2018.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located in the southern area of Co. Kilkenny, approximately 3.5km to the north of Waterford City in the townland of Ballygriffin. The site fronts onto a local road which connects to the N24 approximately 500m to the north east. The N24 connects Mooncoin to the west and junction 12 on the M9 Motorway to the east. The N24 connects Waterford City to the south, to the M7 Motorway to the north at Newbridge, and onto Dublin. The River Suir is located approximately 300m to the south of the site.
- 1.2. The subject site lies almost adjacent to the zoned lands of the Ferrybank Belview Local Area Plan 2017-2023 and there are a number of one off houses in the vicinity as well as some disused commercial / industrial units to the north. The site itself, was previously used as a horticultural mushroom business location which appears to have ceased operations many years ago. The site has had the mushroom tunnels dismantled but the hard stands and an outbuilding remain in place on the site. The site is clearly a brownfield site and not a greenfield site.
- 1.3. The site has a stated area of 0.23ha, taken from a larger site of 0.36ha, and currently has services in place in terms of water and waste water facilities in the existing building on site. The applicant is the owner of the site. The site boundaries comprise trees which screen the site. On the date of my inspection, these trees had been cut back, but still provide screening.

2.0 Proposed Development

- 2.1. Permission is sought for the change of use of part of former horticultural site to residential occupation of 2 no. caravans for a period of 5 years, connections to on-site septic tank system, change of use of horticultural utility building to non-habitable residential utility use and all associated site works Ballygriffin, Kilmacow, Co. Kilkenny.
- 2.2. The development seeks to house two caravans, with stated floor areas of 17.28m² and 12.12m² on the site and to connect both to the existing septic tank on the site.

The site is already served via an existing connection to the public water main and a soakpit is proposed to deal with surface water.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for the proposed development for the following four stated reasons:

1. Having regard to the provisions of the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April 2005, to the location of the site within an area Under Urban Influence as set out in the Kilkenny County Development Plan 2014–2020, to the aims and objectives of the Planning Authority’s Rural Settlement Strategy in relation to housing in such areas, as set out in the Kilkenny County Development Plan 2014-2020 (Section 3.5) and on the basis of the submissions made in connection with the planning application, it is considered that the applicant does not come within the scope of the local housing need criteria set out in the Guidelines or the Kilkenny County Development Plan 2014-2020 for residential occupation at this rural location. It is the Council’s objective for areas of urban influence to facilitate the housing requirements of the rural community as identified in this section while on the other hand directing urban generated development to areas zoned for new housing development in city, towns and villages in the area of the Kilkenny County Development Plan 2014-2020. It is considered that the applicant in this case represents urban generated housing and have not demonstrated compliance with the Council Rural Housing Policy as set out in Section 3.5 of the Kilkenny County Development Plan 2014-2020. The proposed development would, therefore, be contrary to the provisions of the said Ministerial Guidelines, would contravene the objectives of the Kilkenny County Development Plan 2014-2020, would militate against the preservation

of the rural environment and would be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed development, by reason of, its design, location and proximity to adjoining residential property would be inconsistent with the pattern of development in the area and would detract from its landscape character and would negatively impact on its residential and visual amenities. The proposed development would therefore be contrary to provisions of the Kilkenny County Development Plan 2014-2020 and the proper planning and sustainable development of the area.
3. The proposed development would endanger public safety by reason of traffic hazard as required sightlines measured at the entrance and for right hand turning vehicles into the site have not been demonstrated in accordance with National Roads Authority –Design Manual for Roads and Bridges standards for this local county secondary road and is therefore contrary to proper planning and development.
4. The applicant has failed to demonstrate to the satisfaction of the Planning Authority that foul effluent associated with proposed development may be safely disposed of on this site without risk to ground and surface waters or to the environment. The development as proposed would therefore be prejudicial to public health and contrary to the proper planning and sustainable development of the area

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Report formed the basis for the decision of the Planning Authority in relation to the proposed development. The report considered all matters arising in relation to the proposal including rural housing policy, design and siting in the landscape, environmental issues and roads issues. The report also presented a

short commentary in terms of AA Screening as well as a planning history, including enforcement matters, for the site.

The report concluded that the proposed development is not acceptable in principle, and contravenes the County Development Plan. Refusal is recommended.

3.2.2. Other Technical Reports:

Kilkenny County Council internal department reports:

Environment Section: Request for further information on the design/capacity of the septic tank

Area Engineer: Request for further information on sightlines

Housing Section: Application is in line with government policy for accommodation option for travellers.

Neither family are included in the current Kilkenny Traveller Accommodation Programme 2014-2018.

Both families have made applications to be included on KCC housing list.

Fire Services: The existing commercial building requires the benefit of a Fire Safety Certificate before works commence on site

3.3. Prescribed Bodies:

Irish Water: No objection subject to conditions

4.0 Planning History

PA ref P93/560: Permission granted to William Doody for erection of 5 no. mushroom tunnels, conversion of garage to pack run at Ballygriffen, Kilmacow, Co. Kilkenny

PA ref P95/670: Permission granted to David Furlong to erect a packing room, canteen, and toilets at Ballygriffen, Kilmacow, Co. Kilkenny

Enforcement Action:

ENF 17013: On the 15th of March, 2017, the Planning Authority initiated enforcement proceedings by issuing a Warning Letter to the owners of the site, Thomas and Mary McInerney with regard to unauthorised development on site. A response was received by Kilkenny County Council on the 5th April 2017 committing to remove the caravans. The caravans were not removed and an Enforcement Notice was served on 27th May 2017 requiring removal of the caravans and for the owners to cease any building works on the site.

The Owners consulted with the Local Authority on two occasions in March and June 2017 but as the Enforcement Notice was not complied with, injunction proceedings were initiated by the County Council on 16th June 2017. The Circuit Court adjourned proceedings on 25th July 2017 until 27th September 2017 to allow the owners lodge a planning application for the site before 14th August 2017. A planning application however was not lodged within the relevant timeframe and on the 27th September 2017 the Circuit Court granted the order sought by Kilkenny County Council. On 27th October 2017 the court order was served on the owners who complied and moved from the site. The owners have continued to comply with the court order and the current appeal before the Board seeks permission to move their two caravans back onto their land.

5.0 Policy Context

5.1. National Policy.

Guidelines on Sustainable Rural Housing 2005.

5.1.1. The site is located in a rural area and in the context of the Guidelines would be in an area would be defined as a rural area under strong urban influence. The guidelines refer to the need for a development plan approach and to having similar defined the rural area types as set out in the NSS within the development plan. The guidelines also indicate that planning authorities must then tailor policies that respond to the different housing requirements of both urban and rural communities and the varying characteristics of rural areas.

5.1.2. The Guidelines also differentiate between rural and urban-generated housing. The guidelines refer to rural generated housing; to sustaining and renewing rural communities; to accommodating people of a rural area in their area of origin and to tailoring policies to local circumstances. Section 3.2.3 refers to rural generated housing and there is reference to “persons who are an intrinsic part of the rural community” and also reference in this regard to “members of an established rural community, and persons who wish to return to reside near other family members or to care for elderly family members”. There is in addition reference to working in rural areas including full and part time farming. The guidelines also indicate, however, that having defined rural generated housing needs, the development plan should make very clear that subject to satisfying normal considerations the planning authority will look favourably upon an applicant’s proposal for an individual house in a rural area where that applicant comes within the development plan definition of need.

Housing (Traveller Accommodation) Act, 1998

5.1.3. The Housing (Traveller Accommodation) Act, 1998 requires each local authority, following a consultation process, to prepare, adopt and implement 5 year rolling accommodation programmes to meet the existing and projected accommodation needs of Travellers in their areas. These programmes provide a road map for Local Authority investment priorities over the period of the Programme and form the basis for the allocation of funding from the Department of Housing, Planning, Community and Local Government.

5.1.4. The Housing Acts, 1966 to 1998, place responsibility on local authorities for the provision of accommodation for those in need, including the provision of serviced caravan sites, basic services and facilities for caravans* pending the provision of permanent accommodation, transient sites and standard and group housing for Travellers.

Guidelines for Traveller Accommodation – Basic Services and Facilities for Caravans Pending the Provision of Permanent Accommodation, DoELG, November 1998.

5.1.5. These Guidelines are intended to assist local authorities in providing a reasonable standard of services at reasonable cost and set out guiding principles on selecting suitable sites, formulating a design brief, making arrangements for site

maintenance and management, and meeting fire, safety and emergency requirements.

5.1.6. It is not the intention to impose uniform solutions since situations may vary considerably in character across the country. The Guidelines should be applied in a flexible manner. Proposals which depart from the Guidelines as a result of local circumstances and requirements will be considered on their merits.

5.1.7. In terms of situations covered by the guidelines, Section 5 notes that the following situations can arise:

- (a) the need during the construction or redevelopment of permanent sites for short term basic services and facilities where families have to move from an existing site to allow work to proceed,
- (b) the need in other circumstances for basic services and facilities either for short or longer term stays pending the provision of permanent accommodation e.g. under a 5 year accommodation programme.

In the case of the circumstances at (b) it would be expected that when accommodation programmes have been adopted that the duration of stays on such temporary facilities would not exceed 4/5 years.

5.1.8. The Guidelines, Part III, advise on the minimum basic services and facilities which should be provided for caravans pending the provision of permanent accommodation which includes a potable water supply, toilet and washing facilities, a waste collection service and sufficient hard stands for caravans.

5.2. Local Policy

Development Plan

5.2.1. The Kilkenny County Development Plan, 2014-2020 is the relevant and current Development Plan affecting the subject site. The site is located outside any specific zoned lands and in close proximity to the zoned land boundary of Ferrybank Belview LAP and in an area where the population has declined by 0 to -18% in the period 2006-2011.

5.2.2. Chapter 3 refers to core strategy. Figure 3.1 is a map of the county indicating the overall strategy for the county and identifies different rural areas largely

corresponding with the types of rural areas identified in the NSS and the guidelines on rural housing. The stated 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.

5.2.3. The County is divided into three broad categories:

- Areas under Urban Influence
- Stronger Rural Areas
- Peripheral Areas of Population decline

5.2.4. The appeal site is located in an area defined as a 'areas under urban influence'. Such areas are characterised by rapidly rising populations and/or considerable pressure for housing development. Occupancy conditions are required for rural housing in Areas of Urban Influence and Section 3.5.2.1 of the Plan deals with these areas.

5.2.5. Section 3.5.2.3 refers to Rural Generated Housing need and in relation to areas under urban influence and in stronger rural areas it is indicated that the Council will permit, subject to other planning criteria, single houses for persons where the defined stipulations are met. These include:

1. Persons who are employed full-time in rural-based activity such as farming, horticulture, forestry, bloodstock or other rural-based activity in the area in which they wish to build or whose employment is intrinsically linked to the rural area in which they wish to build such teachers in rural schools or other persons by the nature of their work have a functional need to reside permanently in the rural area close to their place of work.
2. Fulltime farm owner or an immediate family member wishing to build a permanent home for their own use on family lands.
3. Persons who have no family lands but who wish to build their first home on a site within 10km radius of their original family home in which they have spent a substantial and continuous part of their lives (minimum 5 years).

4. Persons who were born and lived for substantial parts of their lives (minimum 3 years) in the local area and wish to return to live in the local area (returning migrants)
5. A landowner who owned property prior to 14th June 2013 wishing to build a permanent home for his / her own use or a son or daughter.

5.2.6. Section 3.5.2.4 of the Plan deals with Peripheral Areas of Population Decline. The Plan states as follows:

‘In these areas it will be the policy of the Council to accommodate any proposals for individual rural or urban generated permanent residential development subject to meeting normal planning and environmental criteria.

In all cases the consideration of individual sites will be subject to normal siting and design considerations, which will include but not necessarily be limited to the following:

- Any proposed vehicular access would not endanger public safety by giving rise to a traffic hazard,
- That any proposed on-site waste water disposal system is designed, located and maintained in a way which protects water quality,
- That the siting and design of new dwellings takes account of and integrates appropriately with its physical surroundings and other aspects of the natural and cultural heritage and,
- That the proposed site otherwise accords with the objectives of the development plan in general.

5.2.7. Section 3.5.2.5 of the Plan deals with Refurbishment and Replacement Dwellings in rural areas and states that the Council will encourage and facilitate the appropriate refurbishment of existing housing stock and other structures in rural areas and in certain limited cases the replacement of existing dwellings subject to the criteria.

5.2.8. Section 3.5.3 of the plan refers to Rural House Design Guidance and that a rural design guide was produced in 2008 for County Kilkenny and acts as an instrument to develop best practice in the design and siting of one-off rural housing.

5.2.9. Chapter 5 of the Plan deals with Housing and Community while Section 5.3 of the Plan deals with Travellers. This section states as follows:

The Traveller Accommodation Programme (TAP) 2010-2013 which was adopted by Kilkenny County Council and Kilkenny Borough Council in January and February 2009 respectively outlines the key strategic areas for provision of Traveller accommodation.

A review of the programme has commenced in accordance with Section 17 (1) (a) of the Housing (Traveller Accommodation) Act, 1998.

Objectives:

- 5A To implement the Housing Strategy contained in Appendix B.
- 5B To require 20% of the land zoned for residential use, or for a mixture of residential and other uses, be made available for the provision of social housing.
- 5C To require that a mixture of residential unit types and sizes are developed to reasonably match the requirements of different categories of households within the city and county.
- 5D Complete the review of the Traveller Accommodation programme.
- 5E To implement the Kilkenny Travellers Horse project
- 5F To redevelop the Wetlands halting site as a group housing scheme.
- 5G To implement the provisions of the Traveller Accommodation programme

5.2.10. Chapter 12 of the plan refers to requirements for developments and section 12.10 outlines guidance in relation to rural housing in relation to siting design and services.

5.3. Ferrybank Belview Local Area Plan 2017

5.3.1. The subject site lies outside the development boundaries of the Ferrybank Belview Local Area Plan 2017.

5.4. Traveller Accommodation Programme 2014-2018 (Councils of the City and County of Kilkenny)

5.4.1. The Traveller Accommodation Programme was adopted by Kilkenny County Council on the 18th March, 2014 and seeks to be pro-active and flexible in the approach in meeting the challenge of providing accommodation for those in need and assisting others who can afford to obtain their own accommodation. In terms of implementation, the Programme will have regard to all relevant housing and other legislation and will take into consideration the requirements of relevant policies and departmental guidelines and circulars. Actions under the Programme will be implemented on the basis that they meet the accommodation needs of families having regard to local community needs and circumstances.

5.4.2. It is the aim of the programme that the Housing Authority will endeavour to meet the accommodation needs of the Travellers who are approved applicants for accommodation.

5.4.3. The Programme was reviewed in December 2016 notes that great progress was made in that 46 families were accommodated in the first three years of the Traveller Accommodation Programme. In spite of progress made, the review also acknowledges that Kilkenny County Council still faces a number of key challenges in addressing the accommodation needs of Traveller families living in its functional area. These challenges include increased numbers of families on the roadside, a trend which reflects the overall housing crisis and lack of available private rented accommodation in Kilkenny City and County, the spike in new family formations at a younger age and the ongoing difficulty in sourcing suitable houses for purchase.

5.5. Natural Heritage Designations

The site does not lie within or immediately adjacent to any Natura 2000 site. However, the Lower River Suir Special Area of Conservation, Site Code 000000, is located approximately 300m to the south of the site.

The site is a brownfield site with existing services.

6.0 The Appeal

6.1. Grounds of Appeal

This is a first party appeal against the decision of the Planning Authority to refuse permission for the proposed development. The appeal was lodged by Peter Thomson, Planning Solutions, on behalf of the applicants. At the outset, the appeal queried the cost of the appeal and the matter has been dealt with. The submission provides a background to the families involved, their circumstances and the subject site:

- The appellants purchased the subject appeal site in late 2016 following the destruction by fire, of their home in Kilbarry, Waterford, where they had lived since 2007.
- The subject site was last used as a mushroom farm which ceased in the early 2000s
- There have been no third party objections or submissions.
- Both families are now on the Kilkenny Housing List.
- Issues raised in relation to the planning assessment on the basis that;
 - The families currently live close to the site on the edge of the road.
 - The families do not have proper access to services, including water
 - No comment was made in terms of compliance with Government Policy for accommodation options for travellers.
 - The families have 7 children under 12, some of which are attending the local national school (letter from the principal submitted)
- Personal circumstances and Government Policy are relevant considerations that a Planning Authority is required to have regard to.

The grounds of appeal are summarised as follows:

- It is submitted that housing need is not relevant in this case as the building of a new one-off house is not proposed.

- The personal circumstances of the applicants have not been considered and their rights as members of the travelling community have been violated.
- The applicants have rights to reside in County Kilkenny, confirmed by the Housing Section of Kilkenny County Council including them on the housing list.
- While the applicants were not accounted for when the current Kilkenny Traveller Accommodation Programme 2014-2018 was prepared, it aims to meet a family's preferred option for housing, and where they can afford their own accommodation, to assist them to secure it, including residential caravan sites.
- It is considered that caravan sites and halting sites are an acceptable use in principle on un-zoned lands.
- In terms of reason for refusal 2, it is submitted that the proposed residential development adjacent to residential development is not inappropriate. There were no objections raised by third parties.
- In terms of impacts on the landscape, it is submitted that the site is a brownfield site, in an area which is not designated as 'Highly Scenic' or 'Visually Pleasing'. There are major large scale vacant industrial developments to the east and the proposal in this context, will have no adverse impact on the landscape or visual amenities of the area.
- The required sight lines can be achieved at the entrance to the site. The existing entrance has the benefit of planning permission associated with the mushroom farm which operated without incident.
- Percolation tests were carried out on the site and the proposal is to replace the existing septic tank.

It is requested that the Board overturn the Planning Authority's decision to refuse and grant permission for the proposed development.

6.2. Planning Authority Response

The Planning Authority has responded to the first party appeal. The submission is summarised as follows:

- Rural housing policy is designed to apply to all citizens in accordance with national policy.
- The subject site is located in a rural unzoned area and is within an area of Urban Pressure as designated in the Kilkenny County Development Plan. The current proposed development does not accord with the stated policy.
- The applicants are not part of the current Kilkenny Traveller Accommodation Programme and do not fall within any category under Section 3.5.2.3 of the Development Plan as the proposal is urban generated.
- The site is not for tourism related caravans and is not an official transient or permanent halting site.
- The Guidelines for Traveller Accommodation is not comprehensive and regard is required to be had to other relevant requirements, including planning.
- The development as proposed is inconsistent with the pattern of development in the rural area and would impact on the visual and residential amenity of the area.
- Sight lines have not been demonstrated and it is considered that the proposed development would represent a traffic hazard.
- The proposal to use one waste water treatment system to serve both caravans and clear details of the location of the trial holes, photographic evidence and population equivalents are not submitted.
- There are discrepancies in the information submitted and the applicant has failed to demonstrate that the site is suitable or that the proposal is in compliance with EPA guidelines.

6.3. Further Responses

The first party responded to the County Councils response to the first party appeal. The response seeks to address the issues raised by the County Council and restates those observations made in the appeal documents. The response seeks to counter the submission of the Planning Authority and includes a number of enclosures.

7.0 Assessment

7.1. Having regard to the nature of the proposed development, together with the information presented in support of the proposed development, I consider it appropriate to assess the proposal under the following headings:

- Principle of the proposed development, compliance with the Development Plan & Planning History
- Roads & Traffic Issues
- Site suitability Issues
- Other Issues
- Appropriate Assessment

7.2. Principle of the proposed development, compliance with the Development Plan & Planning History.

7.2.1. The Board will note that the first reason for refusal of the proposed development relates to the non-compliance with the settlement location policy of the Kilkenny County Development Plan 2014-2020. The subject site is located in an area identified as being under strong urban influence in both the rural housing guidelines and the Kilkenny County Development Plan. It is the policy of the County Council to facilitate the rural generated housing requirements of the local rural community and to direct urban generated rural housing to areas zoned for new housing development in Kilkenny City and the towns and villages across the county.

7.2.2. The applicants comprise two traveller families who lived for a number of years in Waterford City in accommodation provided by the local authority up to 2014. In that year, the house the applicants occupied was burned down after which, they purchased the subject appeal site in 2016. The two families are currently residing in two mobile homes which are parked on the roadside, a little to the north of the site, in the entrance to a disused industrial site, with their seven children. Both families are now on the Kilkenny Housing List, and the children attend the local national school in the area.

- 7.2.3. The planning history of the appeal site provided for the development of a mushroom farm and associated utility building. This business operation ceased in the early 2000s and the agricultural tunnels have been removed. The site has an extensive concrete hardstand area and the existing, and permitted, utility building includes a toilet and shower room with some cooking facilities. The applicants currently use this structure for their basic needs and water supply. While the site is located just outside the development boundaries of the Ballygriffin settlement in the Ferrybank/Belview Local Area Plan 2009 - 2015 (as extended), I am satisfied that the subject site could not be considered a rural greenfield site.
- 7.2.4. The appeal site is, however, located in an area defined as an 'area under urban influence' and it is the Council's objective to facilitate the rural generated housing requirements of the local rural community. Section 3.5.2.3 refers to Rural Generated Housing need and in relation to areas under urban influence, it is indicated that the Council will permit, subject to other planning criteria, single houses for persons who meet the stated criteria.
- 7.2.5. Section 3.5.2.4 of the Plan deals with Peripheral Areas of Population Decline. The Board will note that the subject site, notwithstanding its location within an area under urban influence, is also located in an area which experienced population decline. In these areas it is the policy of the Council to accommodate any proposals for individual rural or urban generated permanent residential development subject to meeting normal planning and environmental criteria.
- 7.2.6. The application before the Board acknowledges that the applicants do not comply with the stipulated criteria of the settlement location policy, but submit that given their special circumstances, together with the Council's policy towards meeting the needs of the Travelling Community, including permitting halting sites on agricultural lands around New Ross, Bennettsbridge and Kilmacow, it is incorrect to apply rural housing policy criteria to assess the subject appeal.
- 7.2.7. In terms of the above, I would have to concur with the conclusion of the Planning Authority that the applicants do not comply with the settlement location policies relevant to this area of County Kilkenny. However, I also would agree with the applicants agent in terms of the application of the settlement location policy alone in this instance for a number of reasons –

- a) the brownfield nature of the site
- b) the location of the site within an area of population decline,
- c) the requirements of the Housing (Traveller Accommodation) Act, 1998, together with national guidelines which places the responsibility on local authorities to provide accommodation for families in need.

The Guidelines for Traveller Accommodation, DoELG, November 1998, at Section 5, provide guidance in terms of the need to provide for basic services and facilities for short or longer term stays pending the provision of permanent accommodation. The guidelines suggest that the duration of such a stay would not exceed 4/5 years.

7.2.8. The application before the Board seeks a 5 year temporary permission to place the two caravans on the site. The submissions to the Board in response to the Planning Authority's response to the first party appeal advises that a 3 year permission would allow the applicants to remain in their preferred area for housing, allow their children to continue their education without further disruption and allow the applicants to engage with the planning and housing authorities to secure long term permanent housing in the area.

7.2.9. The Guidelines, in Part III, advise on the minimum basic services and facilities which should be provided for caravans pending the provision of permanent accommodation which includes a potable water supply, toilet and washing facilities, a waste collection service and sufficient hard stands for caravans. Overall, I consider that the principle of the application appears to be in accordance with National Policy as it relates to the provision of Traveller Accommodation, and while I acknowledge the opinion of the planning authority, I consider that the proposal is acceptable in principle at this specific location and for a 3 year period.

7.3. Roads & Traffic

7.3.1. The subject site is located on a local road which has a speed limit of 80km/p/h. The access to the site is long standing and has, in the past, supported a commercial mushroom farm enterprise. The boundaries of the site comprise trees, which have recently been trimmed back. The access to the site comprises a farm gate. The Board will note the opinion of the Planning Authority in relation to the proposed development in terms of roads and traffic.

7.3.2. It is proposed to construct a splayed entrance to the site which will widen the existing access and improve visibility in both directions. Having undertaken a site inspection, I am satisfied that the proposed development is acceptable in terms of roads and traffic.

7.4. **Site Suitability**

7.4.1. The site is currently serviced by an existing shower room, with WC, as well as a kitchen area within the existing, permitted utility building located to the north west corner of the site. The site has an existing water supply and waste water arising at the site is dealt with by an existing septic tank. This existing septic tank has been in situ for a number of years and I note the Planning Authority's concerns in this regard. This concern is compounded by reason of the lack of information provided in relation to the existing system.

7.4.2. The proposed development, following the appeal to the Board, will now include the replacement of the existing septic tank system, and the installation of a percolation area, on the site and it is proposed that both caravans will connect to the one system. The Planning Authority is not satisfied that the proposal for both caravans to connect to the single system is appropriate or acceptable. It is the argument of the appellants that the proposal does not provide for two permanent houses, rather a temporary 3-5 year permission for the placing of two mobile homes on the site to satisfy the immediate accommodation needs of both families.

7.4.3. In support of the appeal, the applicant submitted a site character assessment which advises that a T value of 36.56 was recorded, and there was no evidence of high water table in the trial hole. The depth from the ground surface to the water table is indicated at 1.9m bgl. The site lies over a regionally important aquifer which has a moderate level of vulnerability.

7.4.4. I have considered this issue very carefully and while I acknowledge the opinion of the applicant, I can also see the logic in the Planning Authority's argument. The proposal, while seeking a temporary permission to house two caravans on the site for a period of 3-5 years, would essentially provide for a 4 bedroomed house on the site.

7.4.5. In this regard, and in terms of the planning history of the site, I would consider that the temporary installation of an upgraded and new waste water treatment system would be acceptable in the circumstances. I am further satisfied that adequate information has been provided to conclude that if installed appropriately, the WWTP is unlikely to result in any significant environmental impacts. Should the Board be minded to grant permission in this instance, a suitably worded condition in relation to the installation of the new waste water treatment system should be included.

7.5. Other Issues

7.5.1. The Board will note the concerns of the Planning Authority in relation to visual impact associated with the proposed development. I would not concur that the level of impact will be so significant as to render the locating of two caravans on the site, for a temporary period of 3-5 years, would be so inconsistent with the existing pattern of development in the area as to detract from the landscape character, or impact on the existing residential and visual amenities. The site is adequately screened and as such, I have no objections in this regard.

7.5.2. In terms of a development contribution, the Board may consider that a charge is applicable in this instance. However, the most recent Kilkenny County Council Development Contribution Scheme, 2016-2017 provides under a section entitled 'Exemptions from the payment of Development Contributions' that 'where a planning permission is issued for a change of use, the Planning Authority may consider a waiver of the development charge or part thereof where the change of use does not lead to the need for new or upgraded infrastructure/services.'

7.5.3. I am satisfied, given the temporary nature of this proposal, together with the presence of existing facilities on the site which supported a commercial activity, the change of use from horticultural to temporary residential will not lead to the need for new or upgraded infrastructure or services.

7.6. Appropriate Assessment

The site does not lie within or immediately adjacent to any Natura 2000 site. However, the Lower River Suir Special Area of Conservation, Site Code 000000, is located approximately 300m to the south of the site. The site is a brownfield site with existing services.

Having regard to the nature and scale of the proposed development and the nature of the receiving brownfield site within the wider environment, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. It is recommended that the proposed development be granted for the following stated reasons and considerations and subject to the stated conditions.

9.0 Reasons and Considerations

Having regard to the brownfield nature, and the location of the subject site in proximity to existing services and facilities, together with the pattern of development in the area, and the information submitted in relation to the proposed development, the Board is satisfied that, subject to compliance with the following conditions, a grant of permission for a period of 3 years, would be acceptable in terms of the policy requirements of the Kilkenny County Development Plan, 2014-2020, servicing, traffic safety and would not injure the existing visual and residential amenities of properties in the vicinity of the site. It is further considered that the development would be acceptable in terms 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 and by the further plans and particulars submitted on the 1st day of December, 2017, and submissions to An Bord Pleanála on the 21st day of February and 15th day of May, 2018, 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. This permission shall be for a period of three (3) years from the date of this order. The caravans shall then be removed from the site unless, prior to the end of the period, permission for their retention has been obtained.

Reason: To allow for a review of the development having regard to the circumstances then pertaining and in the interest of the proper planning and sustainable development of the area.

3. (a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to An Bord Pleanála on the 21st day of February and 15th day of May, 2018, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) Within three months of the date of this order, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment

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.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place and no additional caravans shall be brought onto the site, without a prior grant of planning permission.

Reason: In order to ensure compliance with the temporary and limited nature of this planning permission and in the interests of the proper planning and sustainable development of the area.

A. Considine
Planning Inspector

11th June, 2018