



An
Bord
Pleanála

Inspector's Report ABP-301037-18.

Development	Dwelling house, garage, entrance and all associated site works.
Location	Boherduff, Ballydonnell, Thomastown, Co. Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority Reg. Ref.	17/787.
Applicant(s)	John and Breda O'Sullivan
Type of Application	Outline permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	John and Breda O'Sullivan.
Observer(s)	None.
Date of Site Inspection	30 th May 2018.
Inspector	Susan McHugh.

1.0 Site Location and Description

- 1.1. The appeal site is located approx. 2km to the west of the centre of Thomastown in County Kilkenny. The overall site has an area of 1.19 hectares and has a roadside frontage of approx. 115m onto a local road the L820203-18 which is defined by dense hedgerow.
- 1.2. It is in close proximity to a junction of the local road and Station Road which provides access to the Mount Juliet Estate. The road is extremely narrow with a width of approx. 3m with room for one car to pass only. The area is characterised by ribbon development. The existing family home is located along Station Road to the southwest.
- 1.3. The site is bounded to the north, north east and south west by single storey dwellings with access to the local road to the north of the site. The site is currently in agricultural use and gently rises in a southerly direction. There is mature planting along the north eastern and northern boundaries while the eastern and southern boundaries are not defined.

2.0 Proposed Development

- 2.1. Outline permission is sought for the construction of a single storey dwelling house and garage, effluent treatment system and percolation area. The development would be located in the southern area of the site i.e. on the higher part of the site.
- 2.2. It would be served by an access driveway off the local road. It is proposed to remove approx. 16m of ditch/hedgerow at the new entrance and to infill the existing field gate with a new section of hedgerow.
- 2.3. The percolation area would be to the north of the dwelling. The means of water supply is a private well.
- 2.4. A site suitability assessment was submitted and based on the results of the assessment the site was considered suitable for a septic tank and percolation area.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to **refuse** outline permission for two reasons:

1. Taken in conjunction with the excessive amount of existing development in this rural area of urban influence close to Thomastown urban area, where it is considered no genuine housing need exists, the proposed development would exacerbate an excessive concentration of houses in this rural area and lead to further erosion of the rural landscape by virtue of extending, strengthening and consolidating this existing haphazard and unsustainable pattern of development.
2. Having regard to;
 - The existing deficiency in the road network serving the site.
 - The extremely restricted width of the road serving the site where two cars are unable to pass safely.
 - Failure to demonstrate adequate sightlines in accordance with *Design Manual for Roads and Bridges*.
 - The precedent that a grant of permission for the proposed development would create for other similar developments in the vicinity, it is considered that the additional traffic movements generated by the proposed development would endanger public safety by reason of traffic hazard.

3.2. Planning Authority Reports

3.2.1. Planning Report (dated 25th January 2018)

Basis for the planning authority decision. Includes:

- The site is located in an area of urban influence as designated in the current county development plan.
- The land is currently in the applicant's ownership and they currently reside in the dwelling house outlined on the map submitted which they purchased in

2011. Considered that the applicants have demonstrated compliance with the rural housing policy.

- The proposed development does not come within the definition of ribbon development, acknowledges the applicant's willingness to enter into a section 47 sterilisation agreement, but considers that there is no genuine housing need for an additional house by the applicants in this area of pressure.
- The proposed development would result in excessive development of this area and will set precedence for further infill houses in this area. This rural area which is in close proximity to the settlement of Thomastown has reached saturation point with the level of houses. To further permit housing in this area would seriously affect the rural character of this area devoid of services and facilities and is therefore not in accordance with the proper planning and sustainable development of the area.

3.2.2. **Other Technical Reports**

Area Engineer - Verbal report recommended refusal. Notes that the proposed access is through the L8203-18 which is extremely narrow in width and where 2 cars cannot pass safely, that the applicant has demonstrated sightlines of 70m to the left and side and 50m to the right side which do not comply with standards set out in the NRA Design Manual for Roads and Bridges. Therefore, the proposed development is considered to constitute a traffic hazard.

Environment Section – Recommends further information, noting that the public sewer is available in this area and request that the applicant investigate the feasibility of connection to same.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

None.

4.0 Planning History

No history in relation to the site.

5.0 Policy Context

5.1. Kilkenny County Development Plan 2014-2020

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 guidelines on rural housing. (See map attached)

Section 3.5 refers to *rural settlement strategy* and it is indicated that '*the objective of the Council's rural housing strategy is to provide sustainable rural communities without compromising the physical, environmental, natural or heritage resources of the county*'.

The county is divided into three broad categories;

- 1. Areas Under Urban Influence
- 2. Strong Rural Areas
- 3. Peripheral Areas of Population decline

The site is located in an area defined as an 'area under urban influence'.

Ribbon Development is defined as existing where there are 5 or more houses on any one side of a given 250 metres of road frontage. If four houses exist on any one side of a given 250 metres of road frontage, it is likely that ribbon development may be created with an additional house.

Section 3.5.2.1 refers to *Areas under Urban Influence* and that the Council's objective for areas of urban influence to facilitate the rural generated housing requirements of the local rural community. In areas under urban influence there is a requirement of an occupancy condition.

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. There are five criteria, the most relevant are;

3. *'Persons who have no family ties but who wish to build their first home, on a site within a 10km radius of their original family home, (the local rural area) in which they have spent a substantial and continuous part of their lives (minimum 5 years).'*
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. (This provision is to deal with historical land issues which might arise close to existing settlements where families could be excluded from building a home for their own lands for their own occupation due to emerging development trends over previous plan periods. This cut-off date is a definitive time frame which will not be revised in subsequent Development Plans).'*

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.

Chapter 11 of the plan refers to Transport and Section 11.7.8.2 to Roads Development Management Standard which states that

'to ensure that the required standards for sight distances and stopping sight distances are in compliance as far as possible, with current geometry standards as outlined in the NRA document Design Manual for Roads and Bridges (DMRB) specifically section 41-42/09 when assessing planning applications for individual house in the countryside. Such standards should not be achieved by the extensive removal of hedgerows, ditches, embankments, trees or old walls, and should be in accordance with Section 2.8 of the Rural Design Guide.'

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.

5.2. Thomastown Local Area Plan 2009-2015 (Amendment 2 as extended)

The appeal site is located outside the land-use zoning map of Thomastown Local Area Plan, 2009 - 2020, and therefore outside the development boundary.

Policy 9 relates to housing location.

5.3. National Policy

5.3.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e. the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations.

5.3.2. Sustainable Rural Housing Guidelines, DoEH&LG 2005.

The guidelines require a distinction to be made between ‘Urban Generated’ and ‘Rural Generated’ housing need. A number of rural typologies are identified including rural areas under strong urban influence which are defined as those with proximity to the immediate environs or close commuting catchment of large cities and towns. Examples are given to the types of circumstances for which ‘Rural Generated Housing Need’ might apply. These include ‘persons who are an intrinsic part of the rural community’ and ‘persons working full time or part time in rural areas’.

5.4. Natural Heritage Designations

There are no designated areas in the vicinity, the following European sites are within a 15km radius of the appeal site.

Site Name	Designation	Site Code	Distance
River Barrow and River Nore	SAC	002162	0.6km W
Thomastown Quarry	SAC	002252	1.6km E

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal against the decision to refuse outline permission by the planning authority has been lodged by Peter Thomson Planning Solutions acting on behalf of the appellants Jon and Brenda O'Sullivan, may be summarised as follows;

- Asserts on the basis of only two recent planning applications in the vicinity that the area has not been the subject of development pressure in recent years.
- Outlines the appellants background, that they are financial software consultants which until recently ran their business from their home office in Leeson Park, Dublin. In 2007 they purchased a house in the Walled Garden development in Mount Juliet Estate, which following an action against the owners the property was returned and a settlement agreed.
- In 2011 they purchased the house they now own on Station Road, and since then have been living mainly in Thomastown but also in Dublin while they scale down their business. While they conduct some business from their home in Thomastown they find the house unsuitable for their business and living needs. Redeveloping the existing house is not an option due to its layout, configuration, and poor efficiency, while a total rebuild is not economically viable.
- Intention is to remain living in the existing house, build their new home and office space and then rent or sell on the existing house.
- Assert that they have demonstrated compliance with the rural housing need criteria on the basis that they wish to construct their first house, on a site within 10km radius of their original family home, (the local rural area) in which they have spent a substantial and continuous part of their lives (minimum five years).
- Reference criteria 5 which may also be of relevance in this case as they acquired their house in 2011 prior to the 14th June 2013 cut-off date.

- The planning officer made specific reference to downscaling in her report and concluded that the appellants had demonstrated how they had complied with the rural housing policy, which is inconsistent with the reason for refusal.
- Cites a recent planning decision P.A. Reg. Ref. 16/366 where permission was granted to a person who wanted to downsize which was deemed to satisfy rural housing need.
- New house design also affords the opportunity to provide a purpose-built respite room for aging relatives of the appellants.
- Contends that the proposed development could not be described as overdevelopment or that the area has an overconcentration of housing. Notes that Station Road is heavily developed with housing as is the area to the north west of the site along local road LS82021.
- Notes that the planning officer did not consider that the proposed development would exacerbate 'Ribbon Development', but that it could set a precedent for infill house development.
- Argues that the proposed development will have a negligible impact on the landscape due to the single storey house type, its location set well back from the road edge in the centre of the site. Very little hedgerow needs to be removed to achieve sightlines.
- With minor repositioning of the entrance, sightlines of 70m (left) and 60m (right) can be achieved which should be amply having regard to the design speed of the road.
- No objection to connecting to the public sewer located 125m away as recommended by the Environment Section of Kilkenny County Council. This could be dealt with by way of condition.

6.2. Planning Authority Response

No further comments.

6.3. Observations

None received.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings.

- Compliance with Rural Housing Policy
- Haphazard/Ribbon Development
- Access and Road Safety
- Appropriate Assessment
- Other Matters

7.2. Compliance with Rural Housing Policy

7.2.1. Reason for refusal No. 1 relates in part to the applicants housing need.

7.2.2. The current settlement strategy for Co. Kilkenny is clearly set out in the County Development Plan (2014-2020) and summarised in section 5.1 above. The appeal site is located within a rural area designated as under urban influence as identified in Figure 3.1 of the development plan. The site is located within close proximity to Thomastown. This is designated as a District Town in the settlement hierarchy. The plan notes that '*District Towns have well developed services and community facilities and have the capacity to accommodate additional growth (subject to certain physical infrastructural investments).*'

7.2.3. Clear policy is set out at both a national and local level regarding rural housing need. it is considered that the policy framework including that set out in the 'Sustainable Rural Housing Guidelines for Planning Authorities' actively seeks to direct pressure for new residential development to the nearby established settlements. National Policy Objective 19 of the National Planning Framework refers to the necessity to

demonstrate a functional economic or social requirement for housing need in areas under urban influence.

7.2.4. Section 3.5.2.3 of the county development plan identifies the categories of housing need criteria which are deemed eligible for a one-off rural house in this rural area. In this regard the applicants are claiming a local need on the basis that they meet category 3 criteria i.e. persons who have no family ties but who wish to build their first home, on a site within a 10km radius of their original family home, (the local rural area) in which they have spent a substantial and continuous part of their lives (minimum 5 years).

7.2.5. They also claim a local need on the basis that they meet category 5 criteria i.e. 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.'

7.2.6. The applicants have indicated in their application that they -

- Intend to construct a single storey dwelling house for their own use to facilitate 'downsizing' from their current dwelling house.
- Purchased their current family home in 2011 and have resided there from that date.
- Are currently employed as a company director and accountant for Sunville Alpha Consultant, with an address at 24 Leeson Park, Dublin 6.
- Work both from 24 Leeson Park, Dublin and Station Road address, but work remotely on most occasions.

7.2.7. In their appeal the applicants detail that they –

- Are financial software consultants who until recently ran their business from their home office in Leeson Park, Dublin.
- Since 2011 that have been living mainly in Thomastown but also in Dublin while they scale down their business.
- Conduct some business from home in Thomastown but find the house unsuitable for their needs.
- Hope to remain living in the existing house, build their new home and office space and then rent or sell on the existing house.

- Acquired the house at short notice to provide them with a short-term housing solution following the unfortunate and unforeseeable collapse of the house purchase in Mount Juliet, and that it was the land associated with the house which they saw as solving their housing need and not the house itself.

7.2.8. I am not satisfied on the basis of the information on file that the applicants have submitted adequate evidence to show compliance with the Rural Housing Policy set out in the current Development Plan. No documentation has been submitted as proof of address, either at Station Road or Dublin to substantiate that they have lived in the rural area for 5 years. I also note that no land registry details were submitted in respect of the landholding to confirm that it was purchased prior to 14th June 2013.

7.2.9. Notwithstanding I also consider that the applicants have not demonstrated a housing need, as they have indicated that they already own a house on the landholding. I would consider that the onus is on the applicant to adequately demonstrate to both the planning authority and the Board that they have a genuine rural housing need in this rural area.

7.2.10. The case that the applicants have outlined in respect to redeveloping the existing house, it not being an option due to its layout, configuration, poor efficiency and dated wiring and plumbing in my opinion is not convincing. While I also note that the applicants wish to downsize, it is also their intention to either rent or sell on the existing house. As such, I consider the applicants need for an additional dwelling in this area has not been justified.

7.2.11. I note also the reference by the applicant to a recent planning decision P.A. Reg. Ref. 16/366 where permission was granted to a person who wanted to downsize which was deemed to satisfy rural housing need. I have had regard to this application and would note that in that instance the person had demonstrated a local connection to the area and had sold his house.

7.2.12. I would also note that while the applicant states they wish to remain a part of the local community they have become part of over the years, no evidence of the applicant's involvement with the local community or social connections with the area have been provided. There is no evidence of any economic necessity to live in this area. The applicants could reasonably operate their business while residing in a town or village in the immediate vicinity. I consider that there is a complete paucity of

information to demonstrate that the applicants have any defined economic or social need to reside in the area.

- 7.2.13. I do not consider that the applicants come within the scope of the rural generated housing need criteria for an additional dwelling at this location. In light of the fact that the site is located in an Area Under Urban Influence, wherein the policy framework seeks to strictly control single houses in the countryside, to direct urban generated housing to established settlements, it is considered that the proposed development would contravene the Rural Housing policies set out in the current Kilkenny County Development Plan.
- 7.2.14. I consider the proposal, therefore, is not in compliance with the rural housing policies of the Kilkenny County Development Plan 2014-2020 as they do not have a local housing need in accordance with the criteria 3 or criteria 5 set out in Section 3.5.2.3 of the plan. The development would also be contrary to Objective 19 of the NPF, and to the guidance set out in the Sustainable Rural Housing Guidelines.
- 7.2.15. I recommend, therefore, that reason for refusal No. 1 be upheld in so far as it relates to housing policy.

7.3. Haphazard / Ribbon Development

- 7.3.1. Reason for refusal No. 1 also refers to the excessive amount of existing development in the area and that the proposed development would exacerbate an excessive concentration of houses and lead to further erosion of the rural landscape by virtue of extending, strengthening and consolidating this existing haphazard and unsustainable pattern of development.
- 7.3.2. I noted from a visual inspection of the area there is a high concentration of rural houses in the immediate area of the appeal site. I would therefore strongly disagree with the applicant's assertion that on the basis of only two recent planning applications in the vicinity that the area has not been the subject of development pressure in recent years and in particular ribbon development.
- 7.3.3. The Sustainable Rural Housing Guidelines, 2005, recommend against the creation of ribbon development due to road safety, future demands for provision of public infrastructure as well as visual impacts. The guidelines state that ribbon development is referred to as that which is '*located on the edges of cities and towns and will exhibit*

characteristics such as high density of almost continuous road frontage type development, where 5 or more houses exist on any side of a given 250 metres of road frontage'. The Guidelines further state that whether a given proposal will exacerbate such ribbon development will depend on (a) the type of rural area and the circumstances of the applicant, (b) the degree to which the proposal might be considered infill, (c) the degree to which existing ribbon development would be extended or whether distinct areas of ribbon development would coalesce as a result of the development.

- 7.3.4. Should the proposed development be permitted it would result in 7 houses within a 250m stretch of public road on either side. However, the proposed development, which I am satisfied can be considered infill development, would further contribute to the excessive concentration of houses in the area.
- 7.3.5. The applicants contend that the proposed single storey house set well back in the centre of the site, would have a negligible impact on the landscape. They also note that very little hedgerow needs to be removed to achieve sightlines at the proposed entrance and that the existing roadside stone walls will be repaired and reinstated where appropriate.
- 7.3.6. I would consider that, given the existing concentration of housing in the area, including that along Station Road, the proposed development would constitute random residential development in a rural area under strong development pressure and essentially detract from the character of the area. The proposed development, in conjunction with existing development, would exacerbate an undesirable pattern of development.
- 7.3.7. I recommend, therefore, that reason for refusal No. 1 also be upheld in relation to this matter.

7.4. Access and Road Safety

- 7.4.1. Reason for refusal no. 2 refers to the proposed development giving rise to a traffic hazard. Specifically, it refers to the existing deficiency in the road network, whereby the width of the road serving the site is extremely restricted and two cars are unable to pass safely. It also refers to the failure to demonstrate adequate sightlines in accordance with Design Manual for Roads and Bridges.

- 7.4.2. The road serving the site is a local secondary Road LS8203-18. The speed limit on this road is 50km/hr.
- 7.4.3. Sight visibility to the left is 70m and to the right is 50m which is constrained by a boundary wall and hedge within third party ownership.
- 7.4.4. I note the relevant guidance documents are Section 11.7.8.2 of the Kilkenny County Council and the Design Manual for Roads and Bridges (DMRB). It is noted that the DMRB is primarily a guidance document dealing with the geometric design of new major/minor priority junctions. The guidance notes that the desirable distance back (referred to as the 'x' distance) from a direct access from a simple junction is 2.4 to 3 metres.
- 7.4.5. The guidance sets out the minimum sightline distances ('y' distance) that will be required to be able to see clearly points to the left and right.
- 7.4.6. The required sight distance associated with the various design speeds as set out in Table 7/1 of the DMRB. A 'y' sight distance/sight line of 70m is required for a road with a design speed of 50kph.
- 7.4.7. If the required sightlines cannot be achieved there are some measures that can be taken. For example, if the applicant has control over boundary ditches or heavy vegetation which restrict visibility, these can be removed. If this is not possible or does not significantly increase the sightlines, then the possibility of reducing actual sightlines required must be explored. The required sightline or sight distances can be reduced by proving that 85% of the vehicles passing the proposed site, travel slower than the legal speed limit. In order to demonstrate this and implement a reduced sightline, then a speed survey needs to be carried out.
- 7.4.8. The applicants in the appeal have proposed to address the issue with a minor repositioning of the entrance which would achieve sightlines of 70m to the left and 60m to the right. While I do acknowledge that speed limits are reduced along this section of road, I would also note the very narrow width of the road, which facilitates one car to pass at any one time. In my opinion the road network in the area is basically unsuitable for the level of development both existing and proposed. I also note the concerns of the Area Engineer of the planning authority.

7.4.9. Notwithstanding the minor amendments proposed and having regard to the above, I am not satisfied that the proposed access arrangements would not give rise to a traffic hazard or endanger the safety of other road users.

7.4.10. I am satisfied therefore, in this instance, that reason for refusal no. 2 should be upheld.

7.5. **Other Matters**

7.5.1. *Effluent Disposal* – The applicants have noted in their appeal that they would be willing to connect to the nearest public sewer in lieu of providing a waste water treatment plant on site. If the Board are minded granting outline permission this could be dealt with by way of condition.

7.6. **Appropriate Assessment**

7.6.1. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, the intervening distances and to the lack of a hydrological connections, 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 that outline planning permission be refused for the following reasons and considerations

9.0 **Reasons and Considerations**

1. The subject site is located in a rural area which is identified as an Area Under Urban Influence in the Kilkenny County Development Plan 2014 – 2020 and identified as being under strong urban influence in the ‘Sustainable Rural Housing Guidelines for Planning Authorities’ issued by the Department of the Environment, Heritage and Local Government (2005). On the basis of the documentation submitted in support of the application and the planning appeal,

the Board is not satisfied that the applicant would come within the scope of the criteria for a house in this rural location, as set out in the said development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development, which would be located in an unzoned, unserviced rural area outside the development boundary of Thomastown, would constitute random residential development in a rural area that is under strong development pressure, and which already has an excessive density of housing development. It is the policy of the planning authority, as set out in the Kilkenny County Development Plan 2014-2020, to channel housing into suitably zoned land in areas where the appropriate social, community and physical infrastructure either exists or is planned, and to restrict development in rural areas. It is considered that the proposed development would exacerbate the haphazard and unplanned form of development in this rural area, would intensify urban sprawl on the road, would exacerbate ribbon development, would militate against the preservation of the rural environment, would represent an undesirable precedent for further such development in the area, and would be contrary to the policies set out in the said development plan for the area and the Thomastown Local Area Plan 2009 - 2020. The proposed development would, therefore be contrary to the proper planning and sustainable development of the area.

3. It is considered that the proposed development would endanger public safety by reason of a traffic hazard by reason of the additional turning movements the development would generate on a narrow and substandard road network at a point where sightlines are restricted in an easterly direction. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Susan McHugh
Planning Inspectorate

18th June 2018