



An
Bord
Pleanála

Inspector's Report ABP-301403-18

Development	Permission for two storey dwelling
Location	Tullamaine (Ashbrook), Callan, Co. Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	17/606
Applicant(s)	Sean Maher
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Sean Maher
Date of Site Inspection	28 th June 2018
Inspector	Colin McBride

1.0 Site Location and Description

1.1 The appeal site, which has a stated area of 0.295 hectares, is located in the townland of Tullamaine approximately 4km to the north east and of Callan 12km south west of Kilkenny. The site is on the southern side of the N76, national secondary route. The site forms part of a larger agricultural field with existing hedgerow boundaries along the roadside boundary (north west) and north eastern boundary, and no defined boundaries to the south west and south east. The field is in grassland and is relatively flat with a very gently increase in levels moving south west. Adjoining lands to the south west, south east and north west are agricultural lands. Further north east is an existing farmyard and dwelling.

2.0 Proposed Development

- 2.1. Permission is sought for a two-storey dwelling, detached garage, vehicular entrance, well, wastewater treatment system and all associated site works. The dwelling has a floor area of 225sqm, has a ridge height of 9.39m. The dwelling features a pitched roof and external wall finishes of smooth render with a portion in sandstone and blue/black roof tiles. It is also proposed to construct a detached garage with a floor area of 24sqm and a ridge height 4.55m. A new vehicular entrance was proposed off the N78.
- 2.2. The proposal was revised as a result of further information with proposals to use an existing entrance (currently serving a farmyard) to the north east of the site with an access driveway over lands to the north east.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 9 conditions. Of note are the following conditions.
Condition no. 3: The four (4) existing access points to permanently closed up prior to commencement of works.

Condition 4: Prior occupation of the dwelling a Road Safety Audi Stage 3 to be carried out and submitted.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Transport Infrastructure Ireland (17/10/17): The proposal is at variance with official policy in relation to the control of development on/affecting national roads as outlined in the document Spatial Planning and National Roads Guidelines for Planning Authorities (2012).

Planning report (01/11/17): Refusal recommended due to location of proposed access off the N76 and would be contrary Development Plan policy and national policy for national routes.

Planning report (01/11/17): Further information required including noting that in order to minimise impact of the proposal on the N76 further rationalisation of access points is required and the possibility of sharing the access with an existing access point. Revisions in this regard were sought.

Transport Infrastructure Ireland (29/01/18): The TII's position remains the same as outlined in the earlier submission.

Road design (30/01/18): The applicant has put forward a proposal that would yield a safety benefit with closure of 4 no. access points along the N76. Road design section has no objection subject to conditions.

Planning report (09/03/18): The proposal was considered to be acceptable in the context of design, siting and wastewater treatment. It was noted that the proposal would be a material contravention of Development Plan policy however it was considered based on the safety benefit of having 4 existing access points closed, that the proposal was satisfactory in the context of traffic safety. A grant of permission was recommended based on the conditions outlined above.

3.3. Third Party Observations

No observations

4.0 Planning History

16/855: Permission refused to Sean Maher for a two-storey dwelling, garage, vehicular access and associated site works. Permission was refused on two reasons...

1. Section 11.7.3 of the Kilkenny County Development Plan 2014-2020 addresses access to National Roads and states that it is policy of Kilkenny County Council, and as set out in the National Spatial Guidelines, to avoid the creation of any additional access points from new development or the generation of increased traffic from an existing accesses to National Roads to which speed limits greater than 60kph apply. This provision applies to all categories of development including houses in rural areas, regardless of housing circumstances of the applicant. It is therefore considered that the proposed development would conflict with this policy and would be contrary to the provisions of the Kilkenny County Development Plan and therefore be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the development site on a heavily trafficked and overtaking section of the N76 (National Secondary Road) where maximum traffic speeds apply it is considered that traffic movements arising from the proposed development would endanger public safety by reason of traffic hazard and would interfere with the safety and free flow of traffic on this National Route preserving its strategic function. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

The relevant Development Plan is the Kilkenny County Council 2014-2020.

The site is located in an area of urban influence.

Section 3.5.2.1 Areas under Urban Influence

Areas classified as under 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 considered 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, town and villages.

Areas under urban influence display the greatest pressures for developments 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.

Section 3.5.2.3 Rural Generated Housing Need

In areas under urban influence and in stronger rural areas the Council will permit (subject to other planning criteria) single houses for persons where the following stipulations are met:

1. Persons who are employed full-time in rural-based activity such as farming, horticulture, forestry, bloodstock or other rural related 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 permanent in the rural area close to their place of work.
2. A fulltime farm owner or an immediate family member (son, daughter, mother, father, sister brother, heir) 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, (the local rural area) 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 wish to build a permanent home for his/her own use or a son or daughter.

Access to National Roads:

Section 11.7.3 Access to National Roads states that it is policy of Kilkenny County Council, and as set out in the Department of the Environment, Community and Local Government's Spatial Planning and National Roads Guidelines, to avoid the creation of any additional access points from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kph apply. This provision applies to all categories of development including houses in rural areas, regardless of housing circumstances of the applicant.

5.2. **Natural Heritage Designations**

None in the vicinity.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A third party appeal has been lodged by Transport Infrastructure Ireland, the grounds of appeal are as follows...

- The proposal relies on direct access to the N76, national road where a 100kph speed limit applies and is at variance with the provision of official policy. The route is an important national route and the proposal would be at variance with policy to preserve level of service, safety and carrying capacity.
- It is noted that the proposal would entail an intensification of turning movements directly onto the N76, national route within the 100kph speed limit zone. It is noted that such additional turning movements are considered to be a safety risk under the Spatial Planning and National Roads guidelines.

- The proposal is inconsistent with Development Plan policy, namely Section 11.7.3, Access to National Roads and Section 11.7.8.2, Roads Management Standards with it noted that a material contravention was necessary to grant permission. It is noted that no exceptional reasons were put forward to justify contravention of policy. It is considered that the road safety benefits of closing existing access points in irregular use is not offset sufficiently by the additional traffic generated by the provision of an additional house.
- The TII note the safety issue caused by the generation of additional traffic directly off the N76. The appellants note that it is not apparent from the information available to them that revised site plan using an existing entrance has been submitted and the conditions of the permission do not clarify this.
- The appellants note the planning history at this location including a previous refusal under ref no. 16/855.
- The appellants note that granting permission conflicts with the objective to safeguard the strategic function of the national road network and safeguard investment made in the transport network.

6.2. Applicant Response

Response by Brendan Moore Architecture & Design on behalf of the applicant Sean Maher.

- The proposal utilise an existing entrance and closes up 5 no. entrances on the N76. The existing entrance to be used has good sightlines and it is considered the proposal would yield a significant safety benefit.
- It is noted that the proposal should not be considered a new access and is use of an existing access, the proposal would also not give rise to a significant increase in traffic as 5 existing access points will be permanently closed.
- It is noted that the TII have concerns about the precedent that granting permission would set, however there are number of county development plans, which recognise the need for consideration of dwellings for farming sons and daughters where no alternative for access other than a national road

exists. The applicant notes policies from the Limerick, Tipperary and Galway County Development Plans.

- The applicant clarifies that a revised site plan provided for use of an existing access was submitted and condition requires compliance with such.
- The applicant's background is outlined, with the applicant farming at this location and outlining the need to be located as proposed.

6.3. **Planning Authority Response**

Response by Kilkenny County Council

- It is noted that the applicant fulfils the rural housing policy set out under the County Development Plan.
- It is noted that proposal is not for direct access from the N76 with revisions in response to further information to access the dwelling through the existing farmyard entrance.
- It is considered the proposal, which entails the closure of 4 no. existing access points off the N76 (one of which is a farmyard access) will increase safety and enhance the carrying capacity and level of service at this location in accordance with the Spatial Planning and National Roads guidelines.
- The applicant is involved in the farm operation at this location and the existing farming operation has 7 no. entrances off the N76 with 4 of these to be closed. The Roads Design Section of the Council is fully supportive of the application on the basis it will yield significant benefits in terms of safety.
- It is considered that there is adequate justification for the material contravention due to the safety benefit attached to the closure of 4 no. existing direct access points from the N76.

7.0 **Assessment**

- 7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Development Plan policy

Design/visual impact

Traffic impact

Wastewater treatment

Appropriate assessment

7.2 Development plan policy:

7.2.1 The proposal consists of the construction of new dwelling, garage, wastewater treatment and associated site works. The approved dwelling include a revised entrance proposal using the existing entrance to the farmyard to the north east of the site. Under Development Plan policy the site is located in an area classified as an area under urban influence. In such areas rural housing will be under certain stipulations, which are outlined above. The applicant is from the location in question, the family home is located to the north east and the applicant is actively farming at this location. I am satisfied that the applicant complies with the criteria for rural housing set down under section 3.5.2.3.

7.2.2 The original proposal entailed direct access from the N76 (there is an existing agricultural access to the site), however such was revised to share an existing farmyard access located to the north east. Under Section 11.7.3, Access to National Roads states that it is policy of Kilkenny County Council, and as set out in the Department of the Environment, Community and Local Government's Spatial Planning and National Roads Guidelines, to avoid the creation of any additional access points from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kph apply. This provision applies to all categories of development including houses in rural areas, regardless of housing circumstances of the applicant. In the proposal and permitted development does allow for increased traffic generation from an existing access off the N76 and would be a material contravention of Development Plan policy.

7.3 Design, scale, visual impact:

7.3.1 The proposal is for a two-storey dwelling and a detached garage. The site is located on a relatively flat site and at a low level compared to adjoining lands with the site and adjoining lands to the north east within a natural hollow in the landscape. The site is not a prominent or highly visible location and the overall design of the proposed dwelling and associated garage would be acceptable in regards the visual amenities of the area.

7.4 Traffic impact:

7.4.1 The proposal originally entailed a direct access from the N76 (existing agricultural access at similar location to proposed entrance). Such was revised to provide for a shared access using the existing entrance to the farmyard to the north east of the site. In addition the applicant/appellant is proposing to close a number of existing entrances to the agricultural landholding at this location. The site is part of 95 hectares landholding on the southern side of the N76. It is proposed to close 4 existing entrances, one an existing entrance to the farmyard to the north east and three entrance to fields (one to the north east of the site and two to the south west). The proposal/permitted development also entails closure of the existing entrance serving the field the site is part off. The closure of the existing entrances is to offset the concerns regarding increased traffic generation and traffic safety concerns around the proposal.

7.4.2 The TII appeal seems to refer to the original layout in which the dwelling has direct access off the N76 and not the permitted one, which uses the existing farmyard access. The justification by the Local Authority for permitting the proposal is that the closure of the existing entrances proposed would offset safety concerns regarding the generation of additional turning movement at an entrance off the N76. The original proposal sought direct access off the N76 with there being an existing agricultural access to the site. This was revised to sharing the existing access to the farmyard to the north east. This proposal as noted earlier is contrary to Development Plan policy and national policy (Spatial Planning and National Roads Guidelines for Planning Authorities (2012)) as it entails increased traffic generation at an existing

vehicular entrance directly off a national secondary route. In relation to traffic safety it is notable that the entrance to facilitate the proposed development is located in the 100kph speed limit zone of the N76, which is a heavily trafficked route. According to the information submitted, sightlines of 240m are available in each direction at the existing vehicular entrance (requires relocation of utility poles in the north east direction). The use of the existing farmyard entrance would give rise to additional turning movements onto and off a heavily trafficked national secondary route, where the maximum speed limit applies and in this regard the proposal would constitute a traffic hazard, would interfere with the safety and free flow of traffic on this National Route and set an undesirable precedent. It is acknowledged that the applicant proposes to close a number of existing entrances off the N76, which include an existing entrance to the farmyard and 4 no. agricultural entrances as well as the existing agricultural entrance serving the appeal site. Despite this proposal, the development sought is a new dwelling, which is a physical development that would generate additional turning movements over and above the existing development at this location and lead to increased turning movements off a heavily trafficked national secondary route. I do not consider that the proposal offsets the safety concerns associated with the proposed development and the proposal should be refused on traffic safety grounds.

7.5 Wastewater treatment:

7.5.1 The proposal entails installation of a proprietary wastewater treatment system. Site characterisation was carried out including trial hole and percolation tests. The trial hole test notes that the water table level was not encountered in the trial hole (2.1m) with bedrock encountered at a depth 1.5m. The percolation tests result for T and P tests carried out by the standard method, indicate percolation values that are within the standards what would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The drawings submitted meets the required separation distances set down under the EPA Code of Practice (based on site size and separation from site boundaries). I am satisfied that there is adequate separation between the wastewater treatment and the proposed well on site and any existing wells on adjoining properties. I am satisfied based on the

information submitted that the site is suitable for the operation of a wastewater treatment system and would not be prejudicial to public health.

7.6 Appropriate Assessment:

7.6.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, 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. I recommend refusal based on the following reasons.

9.0 **Reasons and Considerations**

1. Under Section 11.7.3 of the Kilkenny County Development Plan 2014-2020 in relation to access to National Roads it is policy of Kilkenny County Council, to avoid the creation of any additional access points from new development or the generation of increased traffic from an existing accesses to National Roads to which speed limits greater than 60kph apply. This provision applies to all categories of development including houses in rural areas, regardless of housing circumstances of the applicant. This policy is in accordance with the recommendations of the Spatial Planning and National Roads Guidelines for Planning Authorities (2012). It is therefore considered that the proposed development would materially contravene Development Plan policy and be contrary national policy in regards to access to development along the national road network. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the development site on a heavily trafficked and overtaking section of the N76 (National Secondary Road) where maximum traffic speeds apply it is considered that additional traffic movements arising from the proposed development would endanger public safety by reason of traffic hazard and

would interfere with the safety and free flow of traffic on this National Route. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Colin McBride
Planning Inspector

18th July 2018