



An
Bord
Pleanála

Inspector's Report ABP-302560-18

Development	Construction of a dwelling.
Location	Ballybeg, Rosbercon, Co. Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	18/158
Applicant(s)	Tom & Frances O'Sullivan
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	John Walsh
Date of Site Inspection	23 rd November 2018
Inspector	Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.26 hectares, is located approximately 2.5km to the west of New Ross in the townland of Ballybeg, Co. Kilkenny. The site is located to the south of the R704 and a short distance to the west of New Ross Golf Club. The appeal site is part of an existing field and is accessed from a laneway that is tertiary road, the L-74972. It is unsurfaced and currently serves agricultural lands, two dwellings and a farmyard located at the end of the lane. The site is relatively flat with existing hedgerow boundaries along the north eastern and north western boundaries. Adjoining lands are agricultural and similar in nature with nearest dwelling located to the west off the same laneway.

2.0 Proposed Development

2.1. Permission is sought to construct a two-storey dwelling, detached garage, wastewater treatment system and associated site works. The proposed dwelling has a floor area of 234.42 sqm and a ridge height of 8.203m. The site is accessed over an existing laneway that has a junction with the L-74972 public road to the north of the site. The laneway is an unsurfaced laneway that provides access to agricultural lands and two existing dwellings.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 12 conditions. Of note are the following conditions...

Condition no. 5 (b) The area between the road and the access shall be finished with a macadam surface.

3.2. Planning Authority Reports

3.2.1. Planning Report (26/04/18): Further information required including submission of evidence to demonstrate compliance with rural housing policy, proposals for

improvement of the laneway and revised proposal in regards to wastewater treatment as per the Environment Section's report.

Planning report (23/08/18): It was noted that the applicant complies with Development Plan rural housing policy, the proposal was deemed acceptable in the context of visual amenity, traffic safety and access, and public health. A grant of permission was recommended subject to the conditions outlined above.

3.2.2. Other Technical Reports

Senior Executive Engineer (10/04/17): Further information is required with details of improvements to the laneway to be submitted.

Environment Section (12/04/17): Concern is expressed regarding the level of works proposed to provide the waste water treatment system in regards to the level of material to be removed. A revised proposal was requested.

Environment Sections (20/08/18): No objection subject to conditions.

3.3. Third Party Observations

A submission was received from John Walsh, Ballybeg, Rosbercon, New Ross, Kilkenny.

- The observer notes that the existing laneway provides access to his farm. It is noted that the extra traffic associated with the proposed development would be dangerous from the point of existing users of the laneway.

4.0 Planning History

17/537: Permission sought for a dwelling, garage and associated site works.
Application withdrawn.

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.

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 John Walsh, Ballybeg, Rosbercon, New Ross, Kilkenny.

- It is noted that access to the site is down a narrow lane, which serves two farms and three dwellings with no capacity for extra traffic.
- The appellant notes that the laneway is the only access to his farm and that additional traffic would have implications in terms of safety. It is noted that laneway is in bad condition and additional traffic would worsen such condition.
- The appellant notes they own land along the laneway and have not given permission to anyone to alter such. It is noted the lands on both sides of the lane where it adjoins the R704 belong to him and not the applicant as claimed with no permission given to remove or cut hedges on either side of the lane.

- It is noted that the lane is a private land and the appellant has not given permission for anyone to use it as a right of way.
- It is noted that there was no site notice down the lane at the proposed entrance.

6.2. Applicant Response

Response by Peter J. McDonald Engineering Ltd on behalf of the applicants Tom & Frances O'Sullivan.

- It is noted that no private road or lane is involved in this application with north the R704 and the L-74972 being public roads and such is confirmed by the Council.
- The applicant note the appeal is without foundation and note that the proposal would have no impact on the appellant's farming activities or any of the other dwellings along the L-74972.

6.3. Planning Authority Response

Response by Kilkenny County Council.

- It is noted that a Community Involvement in Roadworks Scheme application has been submitted and the local contribution paid by the applicant. Such will assist in local tertiary road improvement at this location. The applicant is also proposing to improve sightlines existing onto the R704, which would benefit all road users.
- It is noted that a right of way in relation to use of the cul-de-sac road was submitted as part of the application including consent to set back boundaries along the Regional Road. The tertiary road (the L74972) is public and not private as suggested by the appellant. The traffic impact from the proposed development is considered low and the Area Engineer expressed no objection.

7.0 Assessment

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

7.1 Development Plan policy

Design/visual impact

Traffic impact/access arrangements

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 (Frances O'Sullivan is the daughter of the landowner and the family home is located in close proximity to the site). The applicants were deemed to comply with rural housing policy under the County Development Plan. I am satisfied based on the information on file that the applicant complies with the criteria for rural housing set down under section 3.5.2.3.

7.3 Design and 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 that is not visible from the public road due to its location and existing hedgerow and trees in the vicinity. 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/access arrangements

7.4.1 The main issue raised by the appellant concerns access to the site from the R704.

The appellant notes that the site is accessed over an existing laneway that currently serves his farm and that the laneway does not have the capacity for the additional traffic proposed and that such would have implications in terms of safety for the appellant and existing users of the laneway. The appellant notes that the applicant do not have a right of way over the laneway and do not have sufficient control over the lands adjoining the laneway to implement the improvement proposed including improving sightlines at the junction with the R704.

7.4.2 According to the information on file the laneway is not a private laneway, but a public tertiary road, the L-74972. It is noted that the road is to be subject to Community Involvement in Roadworks Scheme and that the application for such has begun and a laneway has been paid in respect of such. It is notable that condition no. 5(b) requires the area between the road and the access shall be finished with a macadam surface.

7.4.3 Based on the information on file the laneway is a public road, however such appears to have not been maintained and is currently of a poor standard in terms of alignment width and surface. As noted above the appellants notes that the laneway is a private laneway and the applicants' have no right of way. I would note based on the information on file the laneway does appear to be a public thoroughfare and regardless of such, issues of right of way are not a planning consideration.

7.4.4 Despite the fact the L-74972 is a public road, it is a very low level route that is in poor condition and narrow. Although the applicants are proposing improvements to the L-74972 including improved sightlines at the junction of it and the R704 and resurfacing of part of it, the L-74972 is substandard in width and alignment and unsuitable for additional traffic. I would note that although the applicant has consent from the landowner to improve the junction of the L-74972, such appears to be on only one side. Despite proposals to improve the junction, the visibility at the junction on the R704 is restricted particularly in a south eastern direction (due to a crest in

the road). I would consider that the existing road serving the site, the L-74972 is substandard in width and alignment and unsuitable to cater for the additional traffic that would be generated. I am not satisfied that the applicants have sufficient control to improve the layout of the junction between the L-74972 and the R704. The proposed development would endanger public safety by reason of traffic hazard and obstruction of road users, and set an undesirable precedent for further development at this location along the L-74972. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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 (1.10m) with bedrock encountered at a depth 0.7m. 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 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 a refusal based on the following reasons.

9.0 Reasons and Considerations

1. The site is located on a minor road (L-74972) which is seriously substandard in terms of width and alignment. The proposed development would, therefore, endanger public safety by reason of traffic hazard and obstruction of road users. The proposed development would also set an undesirable precedent for additional development along such a substandard road. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Colin McBride
Planning Inspector

18th December 2018