



An  
Bord  
Pleanála

## Inspector's Report ABP-304208-19

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<b>Development</b>	Split level dwelling house
<b>Location</b>	Annamult, Bennettsbridge, Co. Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	19/82
<b>Applicant(s)</b>	Max Casey
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Ger Walsh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	4 <sup>th</sup> August 2019
<b>Inspector</b>	Karla Mc Bride

## 1.0 Site Location and Description

- 1.1. The appeal site is located c.4km to the S of Bennettsbridge in Co. Kilkenny and the surrounding area is rural in character. The site is located to the S of Annamult Road and on the E side of a narrow cul-de-sac road (L4201) that terminates at Annamult House. (It is noted that site location has been wrongly identified as being on the W side of the cul-de-sac). The surrounding lands slope down from W to E towards the River Nore which forms a confluence with the Kings River to the S of Annamult House. The site comprises an overgrown field and the remains of an old stone structure, and the site boundaries are defined by a stone wall to the W and S with mature trees and hedgerows around all the boundaries. There is a noticeable change in level between the road and the SE section of the site where there are clear views towards the River Nore. There is one detached house on the opposite side of the lane which is being refurbished and another to the N of the site. Annamult House to the S of the site is a Protected Structure and the River Nore to the E is a designated European site.
- 1.2. Photographs and maps in Appendix 1 describe the site and surroundings in detail.

## 2.0 Proposed Development

- 2.1. Planning permission is being sought to erect a split-level detached house.
- The c.288sq.m. house would occupy a c. 0.29ha site.
  - The part single & part 2-storey “L” shaped house would be between c.3.5m and 6.4m high with a flat roof & contemporary design.
  - Vehicular access off the local road to the W.
  - Install a wastewater treatment system and private well.

## 3.0 Planning Authority Decision

### 3.1. Decision

The PA decided to grant permission subject to 7 standard conditions.

- Condition no.3 placed a 7-year occupancy restriction of the applicant.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports*

The report of the Planning Officer recommended a grant of planning permission.

#### 3.2.2. *Other Technical Reports:*

Area Engineer: No objections subject to conditions.

Environmental Services: No objections subject to conditions (P17/640).

Irish Water: No objections.

#### 3.2.3. *Submissions*

One letter of objection received which raised concerns in relation to traffic safety, visual & rural amenity, and uneconomic provision of services & community facilities.

## 4.0 Planning History

**ABP-300880-18:** permission refused for a house on the appeal site for 1 reason related to non-compliance with housing need criteria and encroachment of random rural development into a rural area (Reg. Ref. P17/640)

**PL.10.235056:** permission refused to applicants' parents (John Shiels & Susan Casey) for a house on the appeal site for 1 reason related to non-compliance with housing need criteria (Reg. Ref. P09/281)

**Reg. Ref. P04/1869:** O/L permission refused to Margaret Ryan for a house on the appeal site for 1 reason related to non-compliance with housing need criteria & speculative development (site would be sold to fund upkeep of Annamult House). Ms. Ryan was the stated owner of the site dating back to the 1950s.

## 5.0 Policy Context

### 5.1. National Planning Framework 2040 & National Development Plan 2018-2027

These documents set out a strategic vision for the future development of the country including the renewal of rural areas and strengthening of rural communities.

**National Policy Objective 19:** seeks to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere.....In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

### 5.2. Sustainable Rural Housing Guidelines, 2005

The site is located within an area that is Under Strong Urban Influence.

### 5.3. Kilkenny County Development Plan 2014- 2020

**Settlement Policy:** located within an area that is An Area Under Urban Influence.

**Occupancy Condition:** Applies to new houses in An Area Under Urban Influence.

#### ***Rural Housing Need (Areas Under Urban Influence)***

Section 3.5.2.3 states that 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 (farming, horticulture, forestry, bloodstock, etc.) 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 immediate family member (son, daughter, mother, father, sister, brother, heir) wishing to build a permanent home for own use on family lands.

3. Persons who have no family lands but who wish to build their first home, on a site within a 10 km radius of their original family home, (the local rural area) in which they have spent a substantial and continuous part of their lives (min. 5 yrs.).

4. Persons who were born & lived for substantial parts of their lives (min. 3 yrs.) 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.

### ***Refurbishment and Replacement Dwellings in rural areas***

Section 3.5.2.5 states that the Council will encourage and facilitate the appropriate refurbishment of existing housing stock & other structures in rural areas, in certain limited cases the replacement of existing dwellings subject to the following criteria:

- Emphasis should be on the retention, refurbishment & reuse of the structure as part of the development proposal.
- Works should be sympathetic to character of the original structure & environs.
- In the case of replacement dwellings, to require proof that the original structure was last used as a dwelling and was habitable so as not to invoke the policies under section 3.5.2 that applies to new dwellings.
- Where retention or reuse of the existing dwelling is not technically feasible, the size & scale of any replacement should reflect the site's characteristics & context and shall accord with best practice in rural house design.
- Where an original structure was not habitable, if an applicant can demonstrate that their proposals will ensure the sensitive restoration of vernacular and

traditional buildings in the rural area, thereby respecting and maintaining the integrity and scale of the original building, and does not compromise any other development management considerations, such proposals shall not be subject to the policies in Section 3.5.2 that applies to new dwellings.

***Heritage:***

*Landscape Character Areas:* Site located within the “F2” Kilkenny Western Basin & adjacent to the “H” River Valley South Nore Highly scenic / Visually pleasing LCAs (Fig. 8.2)

*Landscape Sensitivities:* Site located to the immediate N of a Broad-Leaved Forest (Fig. 8.3).

*Protected Structures:* Annamult House is a Protected Structure & listed in the NIAH.

#### **5.4. Natural Heritage Designations**

River Barrow and River Nore SAC c.500m to the E.

#### **5.5. Screening for Environmental Impact assessment**

Having regard to the nature and scale of the proposed development and the separation distance to any sensitive location, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### **6.0 The Appeal**

#### **6.1. Grounds of Third Party Appeal**

- Walsh family own c.300 acres of farmland with access via the laneway.
- Traffic hazard along narrow laneway that is in poor condition and heavily used by visitors to nearby caravan park & fishing clubs.
- Inadequate sightlines at junction of laneway with main road & traffic safety.

- Adverse impact on visual & scenic amenity close to River Nore & confluence with Kings River; visually obtrusive above the skyline; diminish rural character & environment of laneway.
- Cumulative impact, consolidate haphazard & incongruous suburban pattern of development, lead to demand for the uneconomic provision of public services & community facilities.
- Applicant's family have made several applications for a house along the laneway which were refused based on undemonstrated housing need.

## 6.2. Applicant Response

- Vexatious appeal without planning merit and based on an ongoing dispute over access rights along the laneway.
- Previous reasons for refusal related to undemonstrated housing need are now addressed, with no reference to traffic or visual impacts.
- Several other houses granted permission along the laneway which the appellants did not object to including P15/545 & P18/467.
- 1839 OSi maps indicate a building on the site & S.3.5.2.5 of the Development Plan applies as the remains of a structure with access off the lane remain, and the derelict house on the opposite side of the lane is being refurbished.
- Applicant complies with the local needs criteria (S.3.5.2.3), he attended the local national school, is the son of a resident landowner, works in the family business (Journalist) and wishes to construct his own home on family lands.
- Family landholding is c.24 acres of mixed woodland & paddocks, Annamult House (PS) requires ongoing maintenance which the applicant assists with.
- New house would have a high quality & environmentally friendly design.

## 6.3. Further Responses

The Planning Authority noted that the applicant had submitted sufficient evidence to demonstrate housing need which addresses the Board previous reason for refusal.

## 7.0 Assessment

- Principle of development
- Visual & residential amenity
- Vehicular access & traffic hazard
- Environmental services
- Appropriate Assessment

### 7.1. Principle of development

This is the fifth planning application for a house on the appeal site lands. Three applications were refused for reasons related to non-compliance with the housing need criteria as set out in the Development Plan (applicant, applicant's parents and previous landowner in 2004), and one application was withdrawn following a request for Further Information (applicant's parents).

#### ***Rural housing need:***

The applicant was refused planning permission for a house on the appeal site lands in 2018 under ABP-300880-18 for one reason related to non-compliance with the housing need criteria as set out in the Development Plan. The previous application stated that Annamult House and lands belong to the applicant's parents and a letter from the Principal of Bennettsbridge National School dated 01/09/2017 confirmed that the applicant attended this school.

Reason no.1 stated:

Having regard to the location of the site within an area under urban influence as identified in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the Kilkenny County Development Plan, 2014-2020, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in



the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

The current application seeks to address the Board's concerns under ABP-300880-18, however no new documentary evidence has been submitted to support the applicant's claim that he complies with the housing needs criteria above and beyond what was previously submitted (letter from school principal).

The proposed house would be located c.11km to the S of Kilkenny town and c.4km to the S of Bennettsbridge village within an Area that is Under Urban Influence. It would be located on family owned lands connected to Annamult House which is a Protected Structure that was refurbished following a fire in 2009.

In terms of national policy, National Policy Objective 19 of the National Planning Framework 2040 seeks to ensure that a distinction is made between areas under urban influence (within the commuter catchment of cities and large towns) and everywhere else. It states that in rural areas under urban influence, the provision of single housing in the countryside will be facilitated "on the core consideration of demonstrable economic or social need to live in a rural area". According to the Sustainable Rural Housing Guidelines, 2005 the site is located within an area that is Under Strong Urban Influence. In terms of local planning policy, the Settlement Strategy of the Development Plan locates the site within an area that is An Area Under Urban Influence which is subject to the Rural Housing Need criteria set out in Section 3.5.2.3 of the Plan.

In terms of local planning policy, Section 3.5.2.3 of the Development Plan states that in Areas Under Urban Influence the Council will permit single houses for persons: - who are employed full-time in rural-based activity or whose employment is intrinsically linked to the rural area; fulltime farm owners or immediate family members; who have no family lands but who wish to build their first home within 10 km of their original family home; returning emigrants; and the sons or daughters of landowners (prior to 2013).

**Criteria no 1** allows for persons who are employed full-time in rural-based activity (farming, horticulture, forestry, bloodstock, etc.) 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 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. The applicant, who is a Journalist in Kilkenny, is not employed full-time in rural-based activity and does not have a functional need to reside permanently in the rural area close to their place of work, and Criteria no.2 is therefore not applicable.

**Criteria no.2** allows for a fulltime farm owner or immediate family member (son, daughter, mother, father, sister, brother, heir) to build a permanent home for their own use on family lands. It is noted that the proposed house would be located on family owned lands (c.24 acres of woodland and paddocks at Annamult) and that the applicant's parents live in Annamult House. The applicant, who was born in 1995, attended Bennettsbridge National School, and the letter from the School Principal confirms that the applicant resided at Annamult House. Notwithstanding this, the applicant has still not submitted any documentary evidence to confirm that his parents are fulltime farm owners and Criteria no.2 is therefore not applicable. It is noted that under Reg. Ref. P04/1869 the stated landowner was Margaret Ryan dating back to the 1950s, and according to several accommodation websites Annamult House currently offers holiday accommodation in addition to being used as a family home.

The remaining three criteria (nos. 3 to 5) do not apply.

Having regard to the foregoing, the applicant has not submitted sufficient documentary evidence to confirm that he has a rural generated housing need over and above what was previously submitted for consideration under ABP-300880-18. However, if the Board is satisfied with all other aspects of the proposed development, it may wish to seek further documentation from the applicant.

### ***Replacement Dwelling:***

The applicant submits that the proposed house would replace the original house that occupied the site, there is evidence of a ruin on the site, the structure is visible on the 1839 OSi maps, and anecdotal evidence suggests that the structure was occupied by a local family, although the final use of the structure is not known.

Section 3.5.2.5 of the Development Plan states that the Council will encourage and facilitate the appropriate refurbishment of existing housing stock and other structures in rural areas, in certain limited cases the replacement of existing dwellings subject to several criteria (listed in section 5.3 above). In the case of replacement dwellings, proof is required that the original structure was last used as a dwelling and was habitable so as not to invoke the policies under section 3.5.2 that applies to new dwellings (rural housing need criteria).

I accept that there is evidence from historic maps that there was of a structure on the site, however on the day I carried out my site inspection the site was very overgrown, and it was not possible to locate the ruin of the original building. Furthermore, the applicant has not submitted any evidence to prove that the structure was last used as a dwelling house as required by section 3.5.2.5, and the exemption from the need to comply with the rural housing need criteria does not apply in this case.

## **7.2. Visual and residential amenity**

### ***Context:***

The proposed house would be located within an attractive rural area c.4km to the S of Bennettsbridge village and within c.500m of the River Nore. There are several existing and permitted houses of various ages and designs located along the narrow laneway which is bound by mature trees and hedgerows, and the lands on either site are mainly in agricultural use. Annamult House, which is located at the end of the laneway, dates from the 18<sup>th</sup> century and it is a designated Protected Structure. The house and surrounding c.24-acre landholding are owned by the applicant's parents. The proposed c.288sq.m. house would occupy a c.0.29ha on the E side of the laneway and the surrounding agricultural lands slope down towards the river.

### ***Visual amenity:***

The proposed development would be located within the “F2” Kilkenny Western Basin and adjacent to the “H” River Valley South Nore Highly scenic / Visually pleasing LCAs as identified in Figure 8.2 of the Development Plan. The Broad-leaved Woodland to the immediate S of the site and along the approach to and within the curtilage of Annamult House has been identified being a Sensitive Landscape in Figure 8.3 of the Development Plan.

The proposed part single and part 2-storey “L” shaped house would occupy a low-lying part of the site and it would be between c.3.5m and 6.4m high with a flat roof & contemporary design. It would be set back c.34m from the roadside boundary with the laneway and the vehicular entrance would be in the approximate centre of the boundary. The applicants propose to retain as much of the existing stone walls, hedgerow and tree lined boundaries as possible and Condition no.7 required that the existing site boundaries be retained, maintained and renewed as required in the interest of visual amenity.

It is noted that the overall design and position of the proposed house is similar to that previously proposed under ABP-300880-18 (Reg. Ref. 17/640), and that the Board did not consider the visual impact of the proposed development to be a serious concern. Any further consideration of the visual impact of the proposed house on the surrounding sensitive landscape and highly scenic Landscape Character Area would constitute a new issue.

Having regard to the sloping nature of the site and the dense character of the hedgerow boundaries, the varied pattern of existing and permitted house type along the laneway, and to the scale, design, height and set back from the roadside boundary, the proposed house would not be visually obtrusive or have an adverse impact on the visual amenities of the area subject to the retention and replacement of native tree and hedgerows.

The proposed house would be located c.500m to the N of Annamult House and this substantial separation distance would ensure that the character, setting and integrity of the Protected Structure would not be affected by the proposed works.

***Residential amenity:***

The proposed house would provide for an acceptable level of residential amenity with respect to floor area, room size, storage, amenity space and orientation.

The proposed split-level storey house would be set back c.40m from the neighbouring houses to the W and N which would not be overlooked or overshadowed to any significant extent, and the neighbouring houses would not overlook or overshadow the proposed house.

**7.3. Vehicular access and traffic hazard**

Access to the appeal site would be off Annamult Road to the N which connects Bennettsbridge with Stoneyford and via narrow laneway (L4201) that terminates at Annamult House to the S. There is adequate visibility in either direction along the Annamult Road at the junction of this local road with the laneway and this existing arrangement would not give rise to a traffic hazard or endanger the safety of other road users.

The proposed vehicular access would be in the middle section of the roadside boundary via the laneway to the W and the sightlines would be adequate in either direction. A 90m sightline would be achieved to the N along the laneway and a 22m sightline would be achieved between the proposed site entrance and the existing controlled access to the grounds of Annamult house to the S, which is considered acceptable having regard to the cul-de-sac nature of the laneway. It is also noted at the Council's Area Engineer did not raise any concerns in relation to this arrangement under the previous application, subject to compliance with standard conditions. The proposed vehicular access arrangements would not give rise to a traffic hazard or endanger the safety of other road users.

The concerns raised by the Appellant in relation to the narrow width of the lane, the condition of the surface and the sightlines at the junction Annamult Road are noted. However, I am satisfied that the proposed access arrangements would not give rise

to a conflict in vehicle movements with along the laneway or at the junction with Annamult Road. It is also noted that the vehicular access arrangements are similar to that previously proposed under ABP-300880-18 (Reg. Ref. 17/640), and that the Board did not consider them to be a serious concern.

#### **7.4. Environmental services**

The proposed development would occupy an elevated position within an overgrown field and the surrounding lands slope down moderately from W to E towards the River Nore c.500m to the E. Ground conditions are stable and dry underfoot with no indication of ponding or waterlogging and there are no rocky outcrops.

The applicant's Site Characterisation Form states that site is located over limestone bedrock (with granite till) and a Locally Important Aquifer of High Vulnerability with a groundwater response rating of rating of R1, the soils are mainly comprise free draining sands and gravels and no mottling or water was noted in the trial holes (which have been backfilled). The form states that are no drains or watercourses in the vicinity of the site and that the nearest river is located c.750m to the E, however it is noted that the site is located within c.500m of the River Nore. The T test recorded a value of 17.22 which indicate that the site is suitable for a secondary treatment system with discharge to ground water and the installation of a packaged wastewater treatment system and polishing filter for a PE Of 6 was recommended.

Based on my assessment of the site, the results of the Site Characterisation assessment and the report of the Environment Officer which raised no concerns subject to compliance with conditions, the proposed development would not give rise to ground water pollution or be prejudicial public health.

The surface water drainage arrangements are considered acceptable subject to compliance with council requirements. It is noted that the sloping site drains away the road and the proposed development would not pose a flood risk along the laneway.

The proposed development would be served by a private well is acceptable subject to compliance with Council requirements, and the proposal would not be prejudicial public health.

It is noted that the wastewater treatment, surface water drainage and water supply arrangements are similar to those previously proposed under ABP-300880-18 (Reg. Ref. 17/640), and that the Board did not consider them to be a serious concern.

### **7.5. Appropriate Assessment**

The site is located within c.500m of the River Nore to the E which is covered by 2 European Site designations. The site boundary of the River Barrow and River Nore SAC (Site code: 002162) is located within c.450m of the proposed development. This site is designated for a wide variety of habitats and species and the relevant Qualifying Interests along this section of the river may include several animal and plant species, whilst Alluvial Forests and White-tailed crayfish are located further downstream of the site. The site boundary of the River Nore SPA (Site code: 004233) is located within c.500m of the proposed development and Kingfisher is the Qualifying Interest. However, having regard to the nature and scale of the proposed development, the proposal to install a packaged wastewater treatment system and to the substantial separation distance between the proposed development to the European sites, I am satisfied that Screening for Appropriate Assessment would be not required for this case.

### **8.0 Recommendation**

Arising from my assessment of this appeal case I recommend that planning permission should be refused for the proposed development for the reasons set down below.

## 9.0 Reasons and Considerations

Having regard to the location of the site within an area under urban influence as identified in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the Kilkenny County Development Plan, 2014-2020, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Karla Mc Bride

Senior Planning Inspector

20<sup>th</sup> August 2019