



An  
Bord  
Pleanála

## Inspector's Report ABP-304366-19

---

<b>Development</b>	Dwelling house
<b>Location</b>	Rathcusack, Bennettsbridge, Co. Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	18/829
<b>Applicant(s)</b>	David & Patricia Dowling
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Olivia Hamilton
<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.1km to the S of Bennettsbridge in Co. Kilkenny and the surrounding area is rural in character. The site is located on the W side of a local road (L8200) and the lands slope down from E to W towards the River Nore. The site occupies the NE corner of an agricultural field and the site boundaries to the N and E are defined by mature hedgerows whilst the remaining boundaries are undefined. There are several detached houses in the vicinity including a single storey bungalow to the immediate N and a 2-storey house to the E on the opposite side of the road. The site is traversed by overhead wires and there is an Eircom pole located along the road frontage.
- 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 single storey detached house.
- The c.148sq.m. house would occupy a c. 0.26ha site.
  - The house would be approximately 18.5m wide, 9m deep and 6m high.
  - Vehicular access off the local road.
  - Install a wastewater treatment system.
  - Connect to public water supply (changed to well by FI).

## 3.0 Planning Authority Decision

### 3.1. Decision

Following the receipt of Further information in relation to the: - future development intentions of the overall landowner; removal of the Eir pole; installation of a private well; and design revisions, the PA decided to grant permission subject to 11 standard conditions. Condition no. 3 imposed a 7-year occupancy restriction on the

applicant and Condition no.4 prohibited any further speculative development on the overall landholding for a 5-year period.

### 3.2. **Planning Authority Reports**

#### 3.2.1. **Planning Reports**

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

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

Area Engineer: No objections following receipt of FI (concerns about traffic safety & location of Eir pole addressed by FI)

Environmental Services: No objections subject to conditions.

Irish Water: No objections following receipt of FI (concerns about public water supply connection addressed by well)

DCH&G (DAU): No objections (verbal report).

#### 3.2.3. **Submissions**

One letter of objection received which raised concerns in relation to loss of privacy and traffic safety

## 4.0 **Planning History**

**Appeal site:** No planning history.

**Reg. Ref. 05/1549:** permission granted to the applicant's brother for a single storey house on adjoining site to N (James Dowling).

**Reg. Ref. 01/297:** permission granted to current applicants for a single storey house in the rear garden of an existing house at Marion Place, Bennettsbridge.

## 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.

**Sterilisation Agreements:** Applies to areas where significant levels of rural housing development have taken places on the edges of urban areas.

#### **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.

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

- River Barrow and River Nore SAC c.60m to the W
- River Nore SPA c.200m to the W.

## 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**

- Unestablished housing need as applicants have already built a house in the rear garden of parent's house in Bennettsbridge village(P01/297).
- Lack of capacity in group water scheme for any new connections & poor groundwater quality due to proliferation of septic tanks.
- Traffic hazard, proximity of proposed & existing access points & plans do not show rear entrance to appellants property.
- Impact on privacy of future occupants.
- Ribbon development along a rural road close to the River Nore.
- Impact on rural visual amenity because of hedgerow removal, difficult to enforce landscaping & tree planting conditions.
- Local road prone to flooding in vicinity of entrance after heavy rainfall.
- Relocation of Eir pole will affect telephone & internet connections.

### 6.2. **Applicant Response**

- This is the only site available for purchase from the landowner, who has financial problems after last summer's drought.
- Current house & garden are too small to accommodate growing family.
- Percolation tests were passed & approved by the council engineers as was the temporary well pending an improvement in public capacity.

- Proposed house would be lower than Appellant's house & set back c.58m with substantial screening, therefore no overlooking or privacy issues.
- Ribbon development concerns addressed by way of a condition which prohibits the landowner from developing any more sites in the future.
- Will comply with all landscaping conditions.
- Surface water run-off addressed by condition with no discharge to public road.
- Eir pole will be relocated on request of Area Engineer & at applicant's expense with minimum disruption to Appellant's service during works.

### 6.3. Further Responses

- The response of the Planning Authority raised no new issues.
- No Observations received.
- Circulated to DCH&G, Heritage Council & An Taisce, no responses received.

## 7.0 Assessment

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

### 7.1. Principle of development

The proposed development would be located c.8km to the S of Kilkenny town and within c.1km of Bennettsbridge village where the applicants own and occupy a house that was granted planning permission in 2001 under Reg. Ref. 01/297.

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.

Section 3.5.2.3 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). It is noted that both applicants were born and reared in Bennettsbridge and that their son attends Bennettsbridge National School where Ms. Dowling is a teacher, however her employment is not intrinsically linked to the rural area as the school is located within the village. The remaining criteria do not apply as neither applicant is an immediate family member of a fulltime farm owner, this would not be the applicants first home within 10km of the original family home, they are not returning immigrants and the June 2013 clause is not relevant. In relation to Housing Needs Criteria no.3 (no family lands but seek to build first home with 10km of original family home) as previously stated the applicants already own and occupy an existing house that is located within 1km of the appeal site, and the exceptions to the national and local policy presumption against one-off houses in rural areas that are Under Urban Influence do not apply in this case.

Furthermore, it is noted that the proposed development would be located along a rural road and there are several other existing houses on the W side of the road, and that some of these houses are separated by small plots (c.0.2 to 0.3ha). Given that the proposed house would be located at the S end of this line of houses, the proposed development, or the precedent it would set for future similar developments would ultimately give rise to undesirable ribbon development and an associated unsustainable demand for services along a rural road within An Area Under Urban Influence.



## 7.2. Visual and residential amenity

### ***Context:***

The proposed house would be located within an attractive rural area c.1km to the S of Bennettsbridge village and within c.200m of the River Nore to the W. There are several existing single and 2-storey houses of various ages and designs located on both sides of the narrow local road which is bound by mature trees and hedgerows. The proposed c.148sq.m. house would occupy a c. 0.26ha site in the NE corner of an agricultural field that slopes down towards the river, and the house would be adjacent to an existing house that was granted permission under Reg. Ref. 05/1549.

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

The proposed single storey house would be approximately 18.5m wide, 9m deep and 6m high and it would have a suburban style design. The house would be set back c.21m from the roadside boundary in line with the neighbouring houses to the N and the vehicular entrance would be in the approximate centre of the roadside boundary. The applicants propose to retain the existing hedgerow and tree lined boundary to the N and a significant proportion of the roadside boundary to the E whilst the new boundaries to the S and W would be planted with hedges and trees. Condition nos. 9 and 10 required that the existing site boundaries be retained, maintained and renewed, and that the new site boundaries be planted with native species trees and hedges. Condition no.11 required the use of blue/black slates, timber front door, timber or timber style windows, and the use of sustainable materials for the rainwater goods. Having regard to the sloping nature of the site, the varied pattern of house type in the surrounding area, 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 trees and hedgerows.

### ***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 single storey house would be set back c.10m and c.14m respectively from the site boundary and side elevation of the single storey house on the adjoining site to the N which would not be overlooked or overshadowed to any significant extent. There would be a c.55m diagonal separation between the SE corner of the proposed house and the NW corner of the existing 2-storey house on the opposite side of the road, which would not be overlooked or overshadowed. The concerns raised by the Appellant in relation the proposed kitchen and patio area being overlooked from their property are unfounded having regard to the relationship between the 2 houses which are not directly opposing, the substantial separation distance and the sloping nature of the site.

### **7.3. Vehicular access and traffic hazard**

The proposed vehicular access would be in the middle section of the roadside boundary via the local road to the E and the sightlines would be adequate in either direction subject to the relocation of the Eir pole at the applicant's expense and the appropriate replacement of hedgerows. The concerns raised by the Appellant in relation to the location of the proposed entrance on the opposite side of the road and in between their two entrances are noted, however I am satisfied that this arrangement would not give rise to a conflict in vehicle movements. Adequate off-road car parking would be provided within the site. The proposed development would not give rise to a traffic hazard or endanger the safety of other road users.

### **7.4. Environmental services**

The proposed development would occupy an elevated position within an agricultural field that slopes down moderately from E to W towards the River Nore, 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 and a Locally Important Aquifer of Moderate Vulnerability with a response

rating of R1. The form states that there are no drains or watercourses located within 250m of the site however it is noted that the River Nore is located c.200m to the W, and that no mottling or water was noted although bedrock was encountered at 1m. The T and P tests recorded values of 19.69 and 21.14 respectively which indicate that the site is suitable for a secondary treatment system with discharge to ground water. The installation of a packaged wastewater treatment system and raised bed with 36m of soil polishing filter to 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 from the road and the proposed development would not pose a flood risk.

There is no spare capacity in the Bennettsbridge public water supply facility and that the proposed development, as amended by way of Further Information, would be served by a private well until such time as additional capacity is provided. This arrangement is acceptable, and the proposal would not be prejudicial public health.

#### **7.5. Appropriate Assessment**

The site is located within c.250m of the River Nore to the W which is covered by 2 European Site designations. The site boundary of the River Nore SPA (Site code: 004233) is located within c.200m of the proposed development and Kingfisher is the Qualifying Interest. The site boundary of the River Barrow and River Nore SAC (Site code: 002162) is located within c.60m 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. Having regard to the proximity of the proposed development to these

European sites and the sloping nature of the site, I am satisfied that Screening for Appropriate Assessment would be required, and an AA Screening Report should have been submitted with the planning application.

## **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

1. National Policy Objective 19 of the National Planning Framework 2040 seeks to restrict the provision of single housing in the countryside in Areas Under Urban Influence to persons with a “demonstrable economic or social need to live in a rural area”. The proposed development would be located within a rural area that is designated as being Under Strong Urban Influence in the Sustainable Rural Housing Guidelines, 2005. It would also be located within An Area Under Urban Influence in the Settlement Strategy of the Kilkenny County Development Plan 2014-2020 and Section 3.5.2.3 of the Development Plan sets out five Rural Housing Needs criteria. Criteria no. 3 seeks to facilitate 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, in which they have spent a substantial and continuous part of their lives. Notwithstanding the applicant’s long-established connections with wider area, they do not qualify under Criteria no.3 as they already own and occupy an existing house that is located within 1km of the site. 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 proposed development along a rural road where there are several other existing detached houses, and its position at the south of these houses, the proposed development, or the precedent it would set for future similar developments, would give rise to undesirable ribbon development with an associated unsustainable demand for services along a rural road within An Area Under Urban Influence, as designated in the Settlement Strategy of the Kilkenny County Development Plan 2014-2020. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Having regard to the proximity of the proposed development to two designated European sites (River Nore SPA and River Barrow and River Nore SAC) a screening exercise for appropriate assessment is required. The applicant did not submit a Stage 1 Appropriate Assessment Screening Report to enable the Board to carry out an assessment of the likely effects of the proposed development on these European sites. In the absence of such information, the Board is not satisfied that the proposed development, individually or in combination with other plans or projects, would not adversely affect the integrity of the European site Nos. 004233 and 002162 or any other European site, in view of the site's Conservation Objectives.

---

Karla Mc Bride

Senior Planning Inspector

08<sup>th</sup> August 2019