



An
Bord
Pleanála

Inspector's Report ABP-304414-19.

Development	Permission for the construction of a house, garage, wastewater treatment system, entrance and all associated site works.
Location	Ballyda, Danesfort, Co. Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority Reg. Ref.	18/735.
Applicant(s)	Martin Brophy & Laura Maher.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party.
Appellant(s)	Martin Brophy & Laura Maher.
Observer(s)	None.
Date of Site Inspection	6 th August, 2019.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located in the townland of Ballyda, Danesfort, Co. Kilkenny, approximately 10km to the south of the city of Kilkenny. The N10 road is located approximately 0.6km to the east with Junction 9 on the M9 motorway, 2km to the south east of the site. The site is accessed over the LT-42001, a local tertiary cul-de-sac road which currently provides access to 15 houses plus 1 unoccupied house, and farms, including 5 one off houses immediately to the south of the subject site. The existing houses comprise a variety of sizes and styles including single storey and two storey houses, and primarily lie to the east of the road. The area is quite rural in character but the site is within walking distance of the existing community facilities at Danesfort, including the national school, church and GAA sports facility.
- 1.2. The site comprises the southern section of a larger field which has road frontage on two roads. The natural site levels provide for a generally level site which slopes slightly upwards from the public road towards the rear and south western corner of the site. The site has a stated area of 0.97ha².

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a house, garage, wastewater treatment system, entrance and all associated site works, all at Ballyda, Danesfort, Co. Kilkenny.
- 2.2. The proposed house is a 3 bedroom dormer house, with a stated floor area of 214m² over two floors and a single storey detached shed with a floor area of 52m². The house will rise to a total height of 6.892m and the application included the relevant plans and particulars.
- 2.3. It is proposed that the house will be serviced with a private well and a conventional septic tank system and 108 linear meters of percolation trench. The application included a Site Suitability Assessment.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for the proposed development, for the following stated reason:

1. Taking account of the evidence of groundwater contamination, with particular regard to nitrate contamination, and taking further consideration of recommended intervention levels, the Local Authority is not satisfied that the effluent from the proposed site can be discharged at the site without risk to public health or the environment. It is considered that further development will exacerbate the threat to groundwater quality which, in turn, will represent an unacceptable risk to public health and the environment.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report considered the detail and nature of the proposed development, together with submissions made in relation to the proposal, the planning history in the area and policy requirements. In addition the reports from the Environment Section of Kilkenny County Council were considered in the planning assessment. Following a request for further information, the final planning report formed the basis of the Planning Authority's decision to refuse permission.

3.2.2. Other Technical Reports:

Area Engineer: No objection subject to compliance with conditions.

Environment Section: Recommends refusal following the submission of further information in relation to ground water sampling results.

3.2.3. Prescribed Bodies:

None.

3.2.4. Third Party Submissions:

None

4.0 Planning History

None.

5.0 Policy Context

5.1. 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. In rural areas elsewhere, it refers to the need to facilitate the provision of single housing in the countryside based on 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 for Planning Authorities

The Guidelines refer to persons considered as constituting those with rural generated housing needs being persons who are an intrinsic part of the rural community or working full-time, or part-time, in rural areas. The Guidelines refer to persons who are an intrinsic part of the community as having 'spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes'.

Appendix 4 refers to Ribbon Development. It states:

These guidelines recommend against the creation of ribbon development for a variety of reasons relating to road safety, future demands for the provision of public infrastructure as well as visual impacts. Other forms of development, such as clustered development, well set back from the public road and served by an individual entrance can be used to overcome these problems in facilitating necessary development in rural areas.

And

...areas characterised by ribbon development will in most cases be located on the edges of cities and towns and will exhibit characteristics such as a high density of almost continuous road frontage type development, for example where 5 or more houses exist on any one side of a given 250 metres of road frontage.

Whether a given proposal will exacerbate such ribbon development or could be considered will depend on:

- The type of rural area and circumstances of the applicant,
- The degree to which the proposal might be considered infill development, and
- 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.

5.3. Development Plan

5.3.1. The Kilkenny County Development Plan 2014-2020 is the relevant policy document pertaining to the subject site which is located in the open countryside within Co. Kilkenny and in an area designated as an Area Under Urban Influence. Chapter 3 deals with the Core Strategy with Section 3.5 dealing with Rural Settlement Strategy, Section 3.5.2 dealing with Rural Housing Policies which deals with urban and rural generated rural housing and ribbon development. while 3.5.2.1 relates to Areas Under Urban Influence, including the requirements for occupancy conditions and sterilisation agreements. The full text of the development plan sections is provided in the appendix to this report.

5.3.2. The following sections are considered relevant:

- 3.5 Rural Settlement Strategy

The rural settlement strategy is based on the Sustainable Rural Housing Guidelines for Planning Authorities. The objective of the Council's rural housing strategy is to provide for sustainable rural communities without compromising the physical, environmental, natural or heritage resources of the county.

- Rural Housing Policies
 - Urban Generated Rural Housing: Housing in rural areas sought by persons living and working in urban areas, including second homes. The Council will endeavour to accommodate urban generated housing within the development limits of all towns and villages subject to appropriate servicing arrangements
 - Rural Generated Housing: Housing needed in rural areas within the established rural community by persons from that community or whose occupation is intrinsically linked with that particular rural area as defined in Section 3.5.2.3 below (of the CDP).
 - 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.

5.3.3. The site is located within an area classified as Area Under Urban Influence. The following sections of the Plan are relevant:

- 3.5.2.1 Areas under Urban Influence

Areas classified as under Urban 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 considerable 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, towns and villages.

- Development in such areas are subject to:

- Occupancy Condition

All permission granted for rural housing within the Areas of Urban Influence shall be subject to an occupancy condition restricting the use of the dwelling to the applicant or members of his/her

immediate family as a place of permanent residence for a period of seven years from the date of first occupancy.

- Sterilisation Agreements

In areas where significant levels of rural housing development have taken place on the edges of urban areas within the county and where the Council considers such areas are becoming over developed the council will seek agreement under Section 47 of the Planning Act (sterilisation agreement) if it considers it necessary to regulate development in the area.

- 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 as 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.

5.4. Natural Heritage Designations

The site is not located within any designated site. The site is located approximately 4km to the east (and 4.2km to the north) of River Barrow and River Nore SAC, Site Code 002162 and the River Nore SPA, Site Code 004233.

5.5. EIA Screening

Having regard to nature and scale of the development, there is no real likelihood of significant effects on the environment arising from the proposed 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 Appeal

This is a first party appeal against the decision of the Planning Authority to refuse permission for the proposed development. The grounds of appeal are summarised as follows:

- This is the only parcel of land available to the applicants within the family landholding.
- A site specific site suitability assessment and characterisation report was prepared and show that the site is suitable for the proposed development.
- A proprietary treatment plant will provide a significantly greater treatment than the existing historic and traditional septic tank systems installed in the area thereby reducing the potential of pollution.
- The area is reliant on on-site treatment systems as there is no public infrastructure in the area.
- The area continues to be an intensive agricultural area for tillage and livestock.

- The water samples taken from existing wells were found to be within the EU Drinking Water Regulations parameters and there is no obvious casual link from wwtps with groundwater quality. The main sources of nutrients such as phosphate and nitrate are agriculture – slurry and chemical fertilisers – and sewage.
- The site is located within 250m of the primary settlement area of Danesfort Village. Prohibiting suitably designed developments will have a negative and devastating long term future impact on the established community.
- Between 2017 and 2019 four developments were permitted, two of which are houses and all on on-site treatment systems. There has been no significant intensification which could be attributed to any alterations of groundwater concentration levels in the area.
- If Kilkenny Co Co decide to refuse permission where groundwater concentration levels are above the 10mg/l NO³ but below the national average of 37.5mg/l, this establishes a non-standard precedence for the south east area of the county.

6.2. Planning Authority Response

The Planning Authority has responded to this first party appeal referring the Board to the planning and environmental reports on file.

6.3. Observations

None.

7.0 Assessment

Having regard to the nature of this appeal, and having undertaken a site visit, as well as considering the information submitted, and proposed development, I suggest that it is appropriate to assess the proposed development under the following headings:

- The principle of the development and compliance with policy
- The site suitability for the proposed development
- Landscape and visual impacts
- Roads & Traffic
- Appropriate Assessment

7.1. The principle of the development and compliance with policy

7.1.1. The subject site is located within a rural area which is identified as being under strong urban influence for one-off housing, as defined in the Sustainable Rural Housing Guidelines and the Kilkenny County Development Plan. This is evident in the number of one-off houses in the vicinity of the subject site and is due to its proximity to the national primary road network and the M9 motorway, providing easy access to Kilkenny City and Dublin. The site lies within 300m of the settlement of Danesfort which includes a number of community facilities such as a church, primary school and GAA sports facilities. There is a presumption against development in such areas save for in instances where it can be demonstrated that an applicant complies with the Planning Authority's rural housing policy. Should the Board be minded to grant planning permission in this instance it should be satisfied that the appellant adequately complies with the requirements of these stated policies as detailed in Section 3.5.2.1 of the Plan, as well as National Policy Objective 19 of the National Planning Framework.

7.1.2. The Board will note that one of the applicants is the daughter of the landowner and grew up approximately 2km from the subject site. No details of the family land holding have been provided in the application, other than location of the family home and the inclusion of the larger field from which the subject site has been taken. I note

that the applicants have advised that this is the only land available to them and that no land has previously been sold for profit and no permission for housing has been sought. The landowner is satisfied to enter into a sterilisation agreement with the council for the remainder of the lands outlined in blue. The applicant advises that she has a strong interest in equine and keeps horses for shows and competitions as a hobby. Where the horses are currently housed or will be kept in the event of a grant of permission, is not indicated in the submitted application. I also note that the existing family home, as indicated on the submitted details, is a one-off house in the rural area. The second applicant resides 29km to the north of the site.

7.1.3. In terms of compliance with the Kilkenny County Council housing policy, I am generally satisfied that the applicant complies in that the site is located within 2km of her family home and no previous sites have been sold from the small landholding. The Board will also note that the Planning Authority has accepted the bone fides of the applicant. That said, the proposed development will result in the extension of an existing ribbon of development along the local cul-de-sac road to six one off houses. The NPF also seeks to avoid ribbon development and therefore, it might be reasonable to consider the proposed development inappropriate.

7.1.4. However, it must be noted that the access road to the site is a cul-de-sac which provides access to 15 habitable houses, and one further house which looks unoccupied, as well as farms. The field boundaries in the area provide extensive screening for the buildings from the wider road network in the area. Given the connections of the applicant to the local area, I am generally satisfied that the proposed development can be considered acceptable in principle, in this instance.

7.1.5. Having determined that the proposed development is acceptable in principle on the subject site, it is necessary to consider site specific issues including issues relating to site suitability, visual and landscape impacts and roads issues.

7.2. **Site suitability issues:**

7.2.1. In terms of site suitability, the Board will note that it is intended to install a septic tank and percolation area to serve the site. It is also noted that the house is to be serviced via a private well. Having considered the information provided on the planning authority file with regard to the proposed development, I am satisfied that

the applicant submitted a completed site suitability assessment regarding the suitability of the proposed site in terms of the treatment and disposal of wastewater generated on the site. I noted on the date of my inspection, that the trial hole area was still open, but covered.

7.2.2. The Board is advised that there are inconsistencies in the completed site characterisation assessment form, submitted as part of the planning application. The form indicates that the house is to be served by water from public mains rather than a private well, as indicated on the planning application form. In addition, the Board will note that the submitted plans fail to identify the location of the proposed well, or the location of the existing well and waste water treatment system for the house immediately adjacent to the south of the site.

7.2.3. The Site Assessment Report notes that the bedrock or the water table were not encountered in the trial pit, which was dug to 2.8m bgl. The assessment identifies that the site is located in an area where there is a Groundwater Protection Scheme and categorises the site as being a regionally important aquifer (Rk) with moderate vulnerability. A Groundwater Protection Repose of R1 is indicated. The top soil is described as Acid Brow Earths – Grey/Brown Podzolics and the subsoil as 'Limestone Till. The bedrock type is 'Dinantian Pure Bedded Limestones'. *T tests were carried out on the site at levels ranging from 920mm to 1,040mm bgl, yielding an average value of 57.00, and a *T result of 22.64. *P tests were also carried out at the site at a level of 0.4m bgl, yielding an average value of 45 and a *P result of 16.25. The report concludes, recommending a septic tank and percolation area comprising 108m of percolation trench at an invert level of -0.8m. The system will discharge to groundwater.

7.2.4. The submitted plans fail to identify any other private waste water treatment systems, or more importantly, private wells, which serve the existing houses in the vicinity of the site. Overall, and while I acknowledge the submission on file with regard to the treatment and disposal of waste water arising from the site, I have serious concerns regarding the existing density of housing in the immediate vicinity of the site given the lack of any piped water services.

7.2.5. In addition, I have concerns regarding the inaccuracies in the submitted details in terms of water supply. The Environment Section of Kilkenny County

Council raised concerns in terms of the high density of on-site treatment systems discharging to groundwater in the vicinity of the site. The impacts on the quality of the groundwater was questioned, and sampling of the resource was requested. Following the submission of a response to the further information request, the applicants' agent notes that 'a number of wells were identified within 1km of the site'. Of these wells, 2 were selected to be sampled and tested to establish the quality of the supply. The Board will note that previous sample results, dated 2007 and 2017, for one of the wells shows increases in a number of parameters including PH, Nitrate (as NO₃), Sodium, Potassium, Chloride and total coliforms. No details as to the location of the other wells identified within 1km of the site has been provided.

7.2.6. The Environment Section of the PA is not satisfied that the Nitrate levels in the samples are acceptable, notwithstanding that the maximum allowable concentration for drinking water is 50mg/l. It is noted that the EPA has prescribed an intervention level of 25mg/l as a guide level which, when exceeded, would indicate that there is an impact on groundwater quality. In response, the applicant suggests that the main sources of nutrients such as phosphate and nitrate are agriculture (slurry and chemical fertilisers) and sewage.

7.2.7. In light of the above, I am unable to conclude that the development will not impact further on the quality of the groundwater feeding any proposed well, or indeed, any existing well. In addition, the concentration of private systems in the area also needs to be considered. While I acknowledge the submissions of the applicant in this regard, the concentration of private effluent treatment systems in this area would have potential to result in a public health hazard and result in a further undesirable increase to nitrate levels in the groundwater body.

7.3. Landscape and visual impacts

7.3.1. The proposed development site is located within a rural area of Co. Kilkenny and within the Landscape Character Area F2, Kilkenny Western Basin. The Landscape Character Assessment is included as Appendix C to the Kilkenny County Development Plan 2008-2014. This, lowland area is noted as having extensive views of the Nore Valley and Slievenamon Hills into Co. Tipperary. The site itself is bound by high hedgerows and the existing landscape features in the vicinity of the site mean that the existing houses constructed adjacent to the site are not widely visible

from the surrounding road network. The main landscape feature associated with the subject site is the hedgerows.

7.3.2. Section 8.2.5.1 of the Kilkenny County Development Plan deals with Hedgerows and states that 'Hedgerows contribute significantly to the biodiversity and landscape character of County Kilkenny. They have an important farming function, they are wildlife habitats, and wildlife corridors between habitats, and they also have historical significance as townland and field boundaries.' The Development Management Guidelines of the Plan, section 12.10 Rural Housing, also seek to protect where possible, and to resist the extensive removal of hedgerows in order to achieve minimum standards to facilitate development. In addition Objective 8E is relevant and states that it is the objective of the council 'To protect and where possible enhance wildlife habitats and landscape features which act as ecological corridors/networks and stepping stones, such as river corridors, hedgerows and road verges, and to minimise the loss of habitats and features of the wider countryside (such as ponds, wetlands, trees) which are not within designated sites. Appropriate mitigation and/or compensation measures to conserve biodiversity, landscape character and green infrastructure networks will be required where habitats are at risk or lost as part of a development.'

7.3.3. In order to achieve the required sight distances at the proposed entrance to the subject site, it is proposed to remove 120m of hedgerow and set back 67m of hedgerow to the north of the entrance and a further 39m to the south of the proposed entrance. I find the level of hedgerow set-back excessive in the context of the site and note that no details as to the implications for the interference with the hedgerow have been submitted. The proposal seeks to achieve 90m of sight distance in both directions at the proposed entrance as the speed limit for the public road is 80km/h. In reality, I would not consider that this speed is advisable or achievable and I would advise that the road is very lightly trafficked. In the event of a grant of permission issuing, I recommend that revised proposals relating to the access to the site be requested from the applicant to include alternative access proposals to remove the necessity to interfere with such an extensive length of the hedgerow, as well as clear landscaping proposals for the site.

7.4. Roads & Traffic

The Board will note that the receiving road is a narrow local road which accommodates 15 one-off houses plus a number of farms. The road surface is approximately 3m in width and is generally in good condition. There is no footpath along the road and the proposed entrance is to be located approximately 100m from the junction with the L-42001 local road to the north. The footpath to the primary church, primary school and GAA facility starts close to this junction on the local road. In terms of the potential impacts associated with the proposed development, I am generally satisfied that the road network can accommodate the development of a house without any undue impacts to existing road users. The Board will note no objection from the Roads Section of Kilkenny County Council and in this regard, I have no objections to the proposed development.

7.5. Appropriate Assessment:

7.5.1. The site is not located within any designated site. The site is located approximately 4.5km to the west of River Barrow and River Nore SAC, Site Code 002162 and the River Nore SPA, Site Code 004233. Having considered the nature and scale of the proposed development, on an existing greenfield rural site, together with the separation distance between same and the Natura 2000 site, it is appropriate to conclude that this project should not proceed to Stage 2 of the AA process and that an Appropriate Assessment is not necessary as there is little or no potential for significant effects to Natura 2000 sites.

8.0 Recommendation

I recommend that permission be refused for the following stated reason.

9.0 Reasons and Considerations

It is recommended that planning permission be REFUSED for the proposed development for the following reasons and considerations:

1. It is considered that, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive concentration of development served by private effluent treatment systems and private wells. It is considered that the proposed development would exacerbate the threat to groundwater quality in the area and the proposed development would, therefore, be prejudicial to public health, resulting in a further undesirable increase to nitrate levels in the groundwater body.

A. Considine

Inspectorate

14/08/2018