



An  
Bord  
Pleanála

## Inspector's Report ABP-304442-19.

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<b>Development</b>	Detached house, treatment system, road entrance with associated services and site works.
<b>Location</b>	Ballyroberts, Burnchurch, Co. Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority Reg. Ref.</b>	19/10.
<b>Applicant(s)</b>	Michael & Katherine Rossiter.
<b>Type of Application</b>	Outline Permission.
<b>Planning Authority Decision</b>	Refuse Outline Permission.
<b>Type of Appeal</b>	First Party V. Decision.
<b>Appellant(s)</b>	Michael & Katherine Rossiter.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	30 <sup>th</sup> August 2019.
<b>Inspector</b>	Dáire McDevitt.

## 1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Ballyroberts, a rural area in the north east of County Kilkenny located c.3.1km east of the N76 and c.3.7km west of the M9. The site is located to the rear of the Applicant's house with access along the eastern side of the house via an existing agricultural gate.
- 1.2. The existing house is a dormer style dwelling, there is a single storey cottage to the west of this house and a recently constructed storey and a half house to the east.
- 1.3. The site itself has a stated area of c.0.44 hectares, is rectangular in shape with access via a narrow parcel of land that links the main body of the site to the public road (L5042). Access is proposed via a c. 160m long driveway. The site proposed for development is currently overgrown and is bounded by mature boundaries, with the exception of the eastern boundary which consists of a post and wire fence resulting in exposed views into the site from the eastern approach along the L5042. There is a shed associated with the applicants' house located to the north. The site is separated from the Rossiter house by mature boundaries.

## 2.0 Proposed Development

- 2.1. Outline permission is sought for the construction of a house.
- 2.2. It would be served by a c.160m long access driveway off the local road via an existing agricultural access.
- 2.3. It is proposed to connect to the public water main and provide an onsite waste water treatment system.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to **refuse** outline permission for the following reason:

1. *Having regard to the proposed location of the house to the rear of an existing dwelling along with the proposal to create a new vehicular laneway to gain access to the site, it is considered that the proposed development would give rise to a piecemeal and disorderly form of development in a rural area, which would set an undesirable precedence for similar type developments in rural areas in the County. The proposed development is therefore considered to be contrary to the policy of the Kilkenny County Development Plan 2014-2020 in relation to backland development and contrary to the proper planning, orderly and sustainable development of the area.*

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

#### **3.2.1. Planning Reports** (dated 12<sup>th</sup> April 2019)

Basis for planning authority decision. Includes:

- Site is located to the rear of existing house and a house at this location would constitute piecemeal, backland development.
- House would be set back in excess of 100m from adjoining properties, therefore overlooking is not an issue.
- Noting the information submitted it was considered that the applicant did not comply with the adopted rural housing policy. However, the transfer of the family home to their son would negate his need for a house. Compliance with rural housing policy was not included as a reason for refusal.
- The recommendation by the Area Engineer seeking further information was noted.

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

**Area Engineer** (10<sup>th</sup> April 2019). Further Information recommended relating to sightline drawings, removal of ESB pole/entrance piers, surface water details.

**Environment Section** (12<sup>th</sup> April 2019). No objections subject to conditions.

### **3.3. Third Party Observations**

None.

## 4.0 Planning History

None as per Planning Register for the application site or the Rossiter family home.

### **Adjoining site to the north east:**

**PA Ref. No. 14/190** refers to a 2014 grant of permission to Michael Power and Mary Shelly for a dwelling.

**PA File No. 87/582, 90/870, 91/364, 92/330** are noted on the Planning Authority Planning Register Map. The digital register does not show the associated links for these references.

## 5.0 Policy Context

### 5.1. **Kilkenny County Development Plan 2014-2020**

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 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.** 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. The site is located within an area classified as Area Under Urban Influence.

**Backland Development.** Where a development (most commonly associated with but not restricted to one off housing) is positioned loosely to the rear of another so as to create a piecemeal and disorderly form of development, which could potentially impact neighbouring residential amenities, and gives rise to negative environmental or traffic issues, such development will be classed as backland development and in general will be considered contrary to the proper planning and sustainable development of the area.

### **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 Conditions and 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 teachers in rural schools or other persons by the nature of the 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.

**Section 3.5.3** refers to Rural House Design Guidance

The Design Guide produced in 2008 sets out best practice in the design and siting of one-off rural housing, and offers advice on site choice, local design and landscaping.

**Chapter 11** of the plan refers to Transport and **Section 11.7.8.2** to Roads Development Management Standards.

**Chapter 12** of the plan refers to requirements for developments and **Section 12.10** outlines guidance in relation to rural housing in relation to siting design and services.

## **5.2 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.

## **5.3 Sustainable Rural Housing Guidelines, DoEH&LG 2005.**

The guidelines require a distinction to be made between ‘Urban Generated’ and ‘Rural Generated’ housing need. A number of rural typologies are identified including ‘stronger rural areas’ which are defined as those with generally stable population levels within a well-developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong agricultural economic base and the level of individual housing development activity in these areas tends to be relatively low and confined to certain areas.

Examples are given to the types of circumstances for which ‘Rural Generated Housing Need’ might apply. These include ‘persons who are an intrinsic part of the rural community’ and ‘persons working full time or part time in rural areas’.

## **5.4 Natural Heritage Designations**

The site does not lie within or adjacent to a designated site. The nearest designated sites are River Barrow & River SAC (site code 002162) and River Nore SPA (site code 004233) located c. 3km to the south.

## **5.5 Environmental Impact Assessment**

Having regard to the nature of the proposed 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**

A first party appeal against the decision to refuse outline permission by the planning authority has been lodged. It is summarised as follows:

- The Rossiter family have lived at this location for over 27 years. The applicants are seeking permission for a house that meets their needs and seek to build a house to the rear of their existing house which will be transferred to their son, Thomas. The applicants' circumstances are unique on health grounds and would not set an undesirable precedent.
- Access is via an established access with hardcore and blinded surface. The laneway provides access to the linear plot and has been in place for a number of years
- The development is not backland piecemeal rather the siting of the house is strategic to maximise solar gain, landscape integration, etc.
- Landscaping along the eastern boundary would screen the proposal from the public road.
- Reference to precedents in the county have been submitted.

### **6.2. Planning Authority Response**

The planning authority responded to the first party appeal on 06/06/19 and had no further comments to make.

### **6.3. Observations**

None.



## **7.0 Assessment**

The main issues in this appeal are those raised in the grounds of appeal. Appropriate Assessment also needs to be considered.

It is also considered that, although not included by the Planning Authority in the reasons for refusal but raised by the first party in the appeal, other substantive issues arise. I advise the Board that as these are new issues, if the Board agrees with the assessment and recommendation set out hereunder, they may wish to recirculate to the parties for comment prior to the decision as per the requirements set out under section 137 of the Planning and Development Act 2000, as amended. The issues are addressed under the following headings.

- Compliance with Rural Housing Policy (New Issue).
- Backland Development.
- Appropriate Assessment.

### **7.1. Compliance with Rural Housing Policy (New Issue)**

- 7.1.1 Section 3.2.5.2 of the current County Development Plan sets out the housing criteria for a single house in the rural area under urban influence. The applicants, Michael and Katherine Rossiter have stated that they have resided in the house to the north of the site for over 27 years. The applicants have stated that they need a suitable house to meet their medical needs. And that it is proposed to transfer their existing house to their son, Thomas which would remove the need to him to seek permission for a house. No supporting documentation has been submitted.
- 7.1.2 Based on the information on file, the applicants, Michael and Katherine Rossiter do not comply with Section 5.1.2.2 for a house in a rural area under urban pressure as their housing need is satisfied by their existing place of residence. The applicant's son, Thomas, is not the applicant. He would be entitled to lodge an application for a house which would be assessed on its own merits having regard to the policies and objectives of the County Development Plan and the relevant national guidelines.
- 7.1.3 Clear policy is set out at both a national and local level regarding rural housing need. The 'Sustainable Rural Housing Guidelines for Planning Authorities' actively seeks to direct pressure for new residential development to the nearby established settlements. National Policy Objective 19 of the National Planning Framework (NPF) 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. National Policy Objective 19 also 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.
- 7.1.4 I consider, based on the information on file, the applicants have not demonstrated compliance with the requirements set out under Section 5.1.2.1 and 5.1.2.2 for a house in the countryside. The applicants therefore, do not have a defined social or economic for a new house in this area of strong urban influence and this the development would be contrary to Objective 19 of the National Planning Framework, would be contrary to the guidance set out in the

Sustainable Rural Housing Guidelines and contrary to Section 5.1.2.1 and 5.1.2.2 of the current Kilkenny County Development Plan.

## **7.2. Backland Development**

- 7.2.1 The Planning Authority refused permission on the premise that the proposed development would constitute piecemeal backland development and set an undesirable precedent.
- 7.2.2 The location of the site to the rear of existing houses results in a means of access off the public road via a c.160m long driveway/lane proposed between two houses. I have concerns that the provision of this access would detract from the residential amenities of the existing houses by means of nuisance created by vehicles using this access and the excessive length of the proposed access lane/driveway.
- 7.2.3 Furthermore the development of lands to the rear of existing house is not a sustainable use of agricultural lands, results in the creation of an undesirable building line and constitutes adhoc piecemeal backland development. I consider that the proposed development, by the precedent which the grant of permission for it would set for other relevant development, would adversely affect the balanced, orderly development of rural areas in the vicinity.
- 7.2.4 I consider, having regard to the access arrangements associated with the site and its relationship to adjoining properties, the proposed development represents inappropriate backland piecemeal development, and would seriously injure the amenities of adjoining residential property. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

## **7.3 Appropriate Assessment**

Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in

combination with other plans or projects would not be likely to have a significant effect on a European Site.

## **8.0 Recommendation**

I recommend that outline planning permission be refused for the following reasons and considerations.

## **9.0 Reasons and Considerations**

1. 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 a local need in accordance with the Kilkenny County Development Plan 2014-2020, and to National Policy Objective 19 of the National Planning Framework, adopted by the Government, in relation to rural areas under urban influence, such as in the current case, which states that it is policy to “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...having regard to the viability of smaller towns and rural settlements”, it is considered that the applicant has not demonstrated that he comes within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location in the open countryside, and that they have not demonstrated an economic or social need to live in this rural area in accordance with national policy and Kilkenny County Development Plan, 2014-2020, Furthermore, the Board is not satisfied that the applicants housing needs could not be satisfactorily met in an established smaller town or village/settlement centre. The proposed development, in the absence of any definable or demonstrable 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, contravene the Ministerial Guidelines, be

contrary to national policy and conflict with the provisions of the current Kilkenny County Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the access arrangements associated with the site and its relationship to adjoining properties, it is considered that the proposed development represents inappropriate backland piecemeal development, and would seriously injure the amenities of adjoining residential property. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Dáire McDevitt  
Planning Inspector

16<sup>th</sup> September 2019