



An  
Bord  
Pleanála

## Inspector's Report ABP-304837-19

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<b>Development</b>	Planning Permission for a Dwelling House, Detached Garage, Sewage System and ancillary works.
<b>Location</b>	Ballycrony, Glenmore County Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	1932
<b>Applicants</b>	Lynda Treacy & Paul Coughlan
<b>Type of Application</b>	Planning Permission
<b>Planning Authority Decision</b>	Grant Planning Permission
<b>Type of Appeal</b>	Third Parties
<b>Appellants</b>	(1) Daniel Kavanagh (2) Linda Kavanagh (3) Donal Kavanagh
<b>Date of Site Inspection</b>	11 <sup>th</sup> , November 2019
<b>Inspector</b>	Paddy Keogh

## **1.0 Site Location and Description**

- 1.1.1. The site of the proposed development which has a stated area of c 0.33ha. is located on the southern side of a local primary road (80 kph speed limit zone) situated to the north of Glenmore Village. The site is located within an upland area (upper reaches of the valley of the River Barrow). The site itself is relatively exposed and contains little vegetation. Levels across the site fall away in a southerly direction from the public road towards Ballycrony.
- 1.1.2. There is a light scattering of rural housing in the vicinity of the site including a two-storey house to the immediate south-west of the appeal site and a further five houses on the opposite side of the public road within 1 km. of the appeal site.
- 1.1.3. The first named third party appellant's property is located on the opposite side of the road to the appeal site.

## **2.0 Proposed Development**

- 2.1.1. The proposed development involves the construction of a bungalow and detached garaged (stated floor area 224 sq.m.), sewage treatment system and all ancillary works.
- 2.1.2. The proposed bungalow will be setback c. 25 m. from the carriageway of the public road.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Notification of a decision to grant planning permission for the proposed development subject to 12 (standard) conditions was issued by the planning authority per Order dated 13<sup>th</sup>, June 2019.

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

Planning Reports

3.2.1. A report from the planning authority Area Executive Planner dated 20<sup>th</sup>, March 2019 includes:

- Proposed sightlines to the site are substandard (cannot provide 120 m in each direction as required under the National Roads Authority Design Manual for Roads and Bridges).
- The site is located within an uplands area as designated in the Development Plan. It is Development Plan policy to ensure that development in upland areas or on steep slopes will not have a disproportionate or dominating visual impact (due to excessive bulk, scale or inappropriate setting) and will not significantly interfere or detract from scenic upland vistas, or when viewed from public areas, scenic routes, viewpoints or settlements.
- The proposed dwelling is sited on an exposed unsuitable area of the landscape with a limited screening and limited setback from the public road and would, if permitted, block and interfere with an expansive scenic prospect view looking south towards the Barrow River Valley and into County Wexford and County Waterford and detract from its rural character and injure the visual amenities of the area.

3.2.2. The report from the Area Executive Planner, dated 20<sup>th</sup>, March 2019, recommended that planning permission for the proposed development be refused for 2 reasons. Briefly, these related to (i) Traffic Hazard and (ii) Impact on scenic amenities of the area.

3.2.3. A memo from the Senior Planner dated 20<sup>th</sup>, March 2019 directed that a request for 4 items of further information issue to the applicant. Briefly, these items related to (i) full details of sight lines achievable at the proposed site entrance, (ii) details regarding separation distance between the proposed wastewater treatment system percolation area and a neighbouring well, (iii) a revised landscaping plan (iv) cross sectional drawing showing neighbouring two storey dwelling to the south west.

3.2.4. The applicant was subsequently requested to provide clarification of further information in respect of maximum achievable sightlines. A response to the request for clarification of further information was submitted on behalf of the applicant per letter dated 17<sup>th</sup>, May 2019. This letter states that the maximum achievable right

hand turning movement on exiting the site is 109 m. and requests that the planning authority allow for a relaxation in the normal 120 m. requirement.

3.2.5. A subsequent report from the Senior Planner (undated) recommends that planning permission for the proposed development be granted subject to conditions.

3.2.6. The decision of the planning authority reflects the recommendation of the Senior Planner.

#### Other Technical Reports

**Senior Executive Engineer** – Report dated 12<sup>th</sup>, June 2019 (following the receipt of further information and clarification of further information) states that sight lines of 109 m. only (rather than the normally required 120 m.) can be achieved in a right hand direction for vehicles exiting the site a reduction in the normal standard is acceptable in this instance in circumstances where the proposed entrance will facilitate improved visibility for vehicles exiting from the neighbouring site. The report indicates no objection to the proposed development subject to conditions.

**Assistant Engineer, Environment Section** – Report dated 10<sup>th</sup>, May 2019, following the receipt of further information, indicates no objection to the proposed development subject to conditions.

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

3.3.1. Observations from four parties objecting to the proposed development were received by the planning authority. The grounds of objection are reflected in the submitted grounds of appeal.

## 4.0 **Planning History**

#### Appeal Site:

4.1.1. There is no record of recent planning history on the subject site.

#### Adjoining Site – South-west:

- 4.1.2. **Reg. Ref. 13/570** – Planning permission granted to Colm Mackey for the erection of a two-storey dwelling, raised bed effluent treatment system and all associated works per Order dated 13<sup>th</sup>, August 2014.

## 5.0 Policy Context

### 5.1. Kilkenny County Development Plan 2014-2020 ('the Development Plan')

- 5.1.1. The site of the proposed development is located within an area designated as an '*Area Under Urban Pressure*'.

#### 5.1.2. **Section 3.5.2.3 (Rural Generated Housing Need) states:**

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 criteria are met:

1. Persons who are full-time employed in rural-based activity such as farming, horticulture, forestry, bloodstock or other rural-based activity in the area in which they wish to build or whose employment is intrinsically linked to the rural area....
2. A full-time farmer or an immediate family member (son, daughter, mother, father, brother, sister or 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 10 km radius of their original family home, (the local rural area) in which they have lived for a substantial and continuous part of their lives (minimum five years)..
4. ...etc.

- 5.1.3. Figure 8.2 of the Development Plan – 'Landscape Character Assessment' indicates the site as being located within an upland area known as the 'South-eastern Hills'.

#### 5.1.4. **Objective 8H states:**

*To preserve and improve places or areas from which views or prospects of special amenity value exist as identified in Appendix H and on Figure 8.2*

5.1.5. Development Management standards (as identified under Section 8.2.10.6 of the Development Plan) in relation to the protection of scenic amenity, include:

- *To ensure that development in upland areas or on steep slopes will not have a disproportionate or dominating visual impact (due to excessive bulk, scale or inappropriate siting) and will not have a disproportionate or dominating visual impact and will not significantly interfere with or detract from scenic upland vistas when viewed from public areas, scenic routes, viewpoints or settlements.*
- *To have particular regard to the potential impacts of new development in sensitive uplands areas, and materially consider the difficulty of establishing and maintaining screening vegetation, when assessing development proposals in these areas.*

5.1.6. **Section 12.10 (Rural Housing)** states:

*Sites which lead to ribbon development are not considered to be in the interest of the proper planning and sustainable development and is strongly discouraged.*

## 5.2. **National Policy**

### 5.2.1. **Sustainable Rural Housing Planning Guidelines**

The site of the proposed development is located within an area designated as being under strong urban influence.

The Guidelines distinguish between 'Urban Generated' and 'Rural Generated' housing need. Examples of situations where rural generated housing need might apply as set out in the Guidelines include rural houses for 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'

### 5.2.2. **National Planning Framework (NPF)**

National Policy Objective No. 19 states

*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.*

### **5.3. Natural Heritage Designations**

5.3.1. The River Barrow & River Nore Special Area of Conservation (SAC) (Site Code 002162) is located c. 3km to the north of the appeal site at its nearest point.

### **5.4. EIA Screening**

5.4.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment 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**

Three separate third party appeals have been lodged namely (i) Daniel Kavanagh – living in the existing house directly opposite the appeal site, (ii) Donal Kavanagh (now living in Dublin) but reared in the dwelling opposite the appeal site (son of Daniel Daniel Kavanagh) and (iii) Linda Kavanagh living in Ballycrony (daughter of Daniel Kavanagh). There is a considerable degree of overlap in the issues raised in all three appeals. The overall grounds of appeal include:

- The proposed development does not comply with the housing strategy advocated in the NPF. The NPF promotes planning authorities planning for the provision of low density serviced sites in towns and villages as an alternative to one-off un-serviced sites in rural locations. There is currently

potential for the applicants to have their housing need met elsewhere in serviced settlements in the local area while still obtaining the rural lifestyle that they seek.

- Concern that the concentration of new houses in the area is impacting on the quality and supply of groundwater in the area (in an area characterised by a poor aquifer and extreme vulnerability). Appellant (in dwelling opposite the appeal site) has had to sink 3 wells in the past 43 years, including two in the last 8 years.
- The proposed development will interfere with road safety along the public road serving the site. There are a number of accesses serving houses built in recent years (including an access immediately adjoining the appeal site which is used by domestic traffic and agricultural machinery). There are already nine residential accesses and five agricultural accesses within a 500m stretch of this road. Sightlines to serve the proposed development are inadequate. No public bus serves the area (as an alternative to car dependency).
- Testament concerning the increased traffic volumes using the road in recent years leading to concerns in relation to road safety.
- The proposed development will result in injury to the visual amenities of the area. The Development Plan designates the views to the south-east as 'Highly Scenic/Visually Pleasing' and are afforded protection in the Landscape Character Assessment.
- It will be necessary to remove the majority of shrubs and hedgerows to the front of the site in order to achieve the (substandard) sight lines proposed at the proposed new vehicular entrance.
- The proposed development would be contrary to Section 12.10 of the Development Plan in relation to protecting the countryside from ribbon development.



## 6.2. Applicants' Response

6.2.1. A submission from Lynda Tracey (applicant) on behalf of both applicants, received by the Board on 26<sup>th</sup>, July 2019, in response to the submitted grounds of appeal, includes:

- The proposed development falls for assessment under the rural housing policy as set out in the current Development and not under possible criteria that may be included in the, as yet, unpublished Development Plan review.
- The applicants, one of whom was born and reared in the area, attended a local primary school, was married in the area, whose parents still live nearby and has extended family living in the area fully comply with Development Plan policy in relation to rural housing.
- The need for new wells on the appellant's property was as a consequence of contamination from his own oil tanks and not due to problems with groundwater supply in the area. Many local residents have had the same well for extended time periods which have operated without problems.
- The use of entrances for both domestic and agricultural traffic is common practice in rural areas.
- The proposed entrance will provide for safe entry to and exit from the appeal site. The proposed development will not significantly increase traffic volumes in the area.
- The applicants have opted to build a bungalow instead of a two-storey house, in order to reduce visual impact on the amenities of the area. The proposed bungalow will be setback into the site and down gradient of the public road.

## 6.3. Planning Authority Response

6.3.1. A submission from the planning authority pre letter dated 22<sup>nd</sup>, July 2019 included:

- There are no protected views and prospects affected by the proposed welling. Landscaping on the site is required by way of condition which will ensure that the proposed dwelling is assimilated into the landscape.

- The planning authority Area Engineer is satisfied with the design of the proposed entrance from a road safety perspective.
- The applicants comply with Development Plan policy in relation to rural housing

## 7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Rural Housing Policy
- Access & Traffic
- Visual Amenity
- Appropriate Assessment.

### 7.1. Rural Housing Policy

- 7.1.1. The submitted grounds of appeal argue that the proposed development does not comply with the rural housing strategy as promoted in the National Planning Framework. It is submitted that the applicants' desire to live in proximity to the countryside could be adequately met through securing housing in a nearby town or village.
- 7.1.2. The applicants' claim to comply fully with the rural housing policy as set out in the Development Plan. In this regard, it is pointed out that one of the applicants was born and reared in the rural area in the vicinity of the site, went to school locally (supporting documentation submitted) and was married in the local church.
- 7.1.3. Based on the documentation on file, the applicants have made a strong case for compliance with the planning authority rural housing policy as set out in the Development Plan. The eligibility criteria for a rural dwelling as set out at Section

3.5.2.3 of the Development Plan include *'A full-time farmer or an immediate family member (including daughter) wishing to build a permanent home for their own use on family lands'* and *'Persons who have no family lands, but wish to build their first home, on a site within 10 km radius of their original family home, (the local rural area) in which they have lived for a substantial and continuous part of their lives (minimum five years).'*

- 7.1.4. Notwithstanding an assertion in the applicants response to the submitted grounds of appeal that one of the applicants (Lynda Tracey) has *'lived all her life in the area'* and that her family home and the homes of members of her extended family are within 1 mile of the site, the applicants have failed to state where they are currently living. I can find no address stated for the applicants on the completed application from lodged with the planning authority and no address has been given in the applicants' response to the submitted grounds of appeal. It is stated that one of the applicants (Lynda Tracey) has worked in Kilkenny City for the last 8 years and that the other applicant (Paul Coughlan) has worked in Waterford City/Dungarvan for the last 5 years.
- 7.1.5. Based on the documentation on file, it appears that the applicants are not proposing to build a house on a family farm (daughter/son of a farmer). Thus, it appears that the basis of compliance with the planning authority rural housing policy rests upon social connection to the area (building a house within 10 km of the original family home and having lived for a substantial and continuous period in the area etc.).
- 7.2. It is possible that the applicants comply with the planning authority rural housing policy. However, given that both of the applicants state that they work in cities and in the absence of satisfactory details in relation to where the applicants currently live, I consider that, based on the documentation on file, the applicants have not satisfactorily demonstrated that they have sufficient social connection to the local area (or that a past connection has not been lost). Furthermore, as has been highlighted in the submitted grounds of appeal, National Policy as set out in the National Planning Framework seeks to provide for the provision of single houses in the countryside (in areas under urban influence) based on the core consideration of a demonstrable economic or social need to live in a rural area having regard to the viability of smaller towns and rural settlements. The applicants have established no economic need for a dwelling at this location and again I consider that they have not

satisfactorily demonstrated a social need to live at this location. Furthermore, they have not satisfactorily demonstrated why their housing need cannot be met within a smaller town or rural settlement.

- 7.2.1. Based on the above analysis, the Board may deem it appropriate to seek further information from the applicants to clarify their current address and further details of their current social ties to the area together with a statement as to why the applicants housing need cannot be met within a smaller town or rural settlement. However, based on the documentation on file, I recommend that planning permission for the proposed development be refused for the reason stated at 'Reason No. 1' below.

### **7.3. Visual Amenity**

- 7.3.1. The submitted grounds of appeal highlight that the site of the proposed development is located within an area designed in the Development Plan as an area that is 'Highly Scenic/Visually Pleasing' and afforded protection in the Landscape Character Assessment at Figure 8.2 of the Development Plan. It is submitted that the proposed development would be visually intrusive in this landscape.
- 7.3.2. It has been submitted by the applicants, in response, that the applicants have opted to build a bungalow, rather than a two-storey dwelling, in order to reduce the impact on the visual amenities of the area. Furthermore, the proposed bungalow will be setback on site down gradient from the public road.
- 7.3.3. The planning authority have pointed out that no protected views or prospects (as identified in the Appendix H of the Development Plan) will be affected by the proposed dwelling.
- 7.3.4. Based on my inspection of the site and the surrounding area, I consider that the site (as has been identified in the Development Plan Landscape Character Assessment) is located in a highly scenic area. The site itself is located within an area on the upper reaches of the River Barrow valley characterised by open landscape.
- 7.3.5. The existing two-storey dwelling on the adjoining site is visually highly prominent in the landscape. Notwithstanding the fact that the current proposal is for a bungalow only, I consider that the proposed dwelling will be visually intrusive within this scenic landscape. I consider that the proposed entrance and driveway will result in further scarring of the landscape. Given the open character of the landscape at this location,

I consider that it will be difficult to visually screen the proposed development by means of satisfactory landscaping of the site.

- 7.3.6. I note that the Development Management standards as set out at Section 8.2.10.6 of the Development Plan seek (i) to ensure that development in upland areas or on steep slopes will not have a disproportionate or dominating visual impact due to excessive bulk, scale or inappropriate siting and (ii) to consider the difficulty in establishing and maintaining screen vegetation when assessing proposals in sensitive upland areas. The application of these Development Management standards applies to all scenic landscapes and is not restricted only to Views & Prospects included in Appendix H of the Development Plan.
- 7.3.7. On balance, I consider that, having regard to the open and exposed character and scenic qualities of the upland area in which the site is located, the proposed development would constitute a highly visually intrusive feature in the landscape which would seriously injure the scenic amenities of the area and would be contrary to Development Plan policy as set out in Development Management standards included in Section 8.2.10.6.

#### **7.4. Access & Sightlines**

- 7.4.1. The submitted grounds of appeal highlight shortcomings in terms of the proposed vehicular entrance to the site including the multiplicity of vehicular entrances already in existence along a relatively short stretch of carriageway in the vicinity of the site and increased traffic volumes along the road in recent years.
- 7.4.2. The applicants refute the appellant's claims. It is stated that the proposed development provides for a safe means of access to the site. Furthermore, it is stated that a single additional dwelling will not make a significant contribution to traffic volumes on the local road network.
- 7.4.3. I note that the planning authority, in considering the proposed development, sought further information in relation to the provision of adequate sightlines (120 m. in both directions) at the point of access. The applicant demonstrated adequate sightlines in one direction only. However, sightlines of 109 m. can be provided in the other direction. The planning authority were satisfied to allow for this marginal reduction in sightlines in circumstances where the proposed entrance would provide for some element of gain insofar as it would help improve sightlines to the existing entrance

serving the existing dwelling on the site adjoining the appeal site. I would share the conclusions of the planning authority (Area Roads Engineer) in this regard. Furthermore, the character of the local road network in the vicinity of the site (incorporating a number of bends) helps to ensure that road users travel at a relatively slow pace below the maximum of the speed limit. In these circumstances, I consider that the proposed development would not endanger public safety by reason of a traffic hazard and that refusal of the proposed development based on traffic safety grounds would be unwarranted.

## **7.5. Ribbon Development**

- 7.5.1. The submitted grounds of appeal argue that the proposed development would contribute to ribbon development in the vicinity of the site and, thus, would be contrary to Section 12 of the Development Plan which seeks to protect the countryside from ribbon development.
- 7.5.2. The proposed development would be the ninth house located along a c. 1 km. strip of road frontage at this location (six of which are on the opposite side of the road to the appeal site). In this context, I consider that the proposed development would contribute to a concentration of undesirable ribbon development in the vicinity of the site. I consider that the main adverse impact of such ribbon development in this instance stems from the consequent injury to the visual amenities of the area given the open and scenic character of the surrounding landscape.

## **7.6. Well**

- 7.6.1. The submitted grounds of appeal refer to past problems encountered by the appellant in relation to a wells serving the appellant's house. The grounds of appeal argue that the proposed development will jeopardise ground water supply to the appellant's well.
- 7.6.2. It has been submitted by the applicant, in response, that problems experienced by the appellant in the past were as a consequence of oil contamination of the appellant's well which necessitated the sinking of new wells. It is submitted that

there has been no issue in the area generally with regard to accessing adequate ground water supply for wells.

- 7.6.3. On the basis of the documentation on file, and in the absence of any compelling evidence in relation to deficiencies in groundwater supply in the area or problems with wells in general, I consider that refusal of planning permission for the proposed development for reasons relating to potential impact on the well serving the appellant's property would be unwarranted.

## **7.7. Appropriate Assessment**

- 7.7.1. The River Barrow and River Nore SAC (Site Code 002162) is located c. 3 km to the north of the appeal site at its nearest point. The appeal site is downhill of the SAC at its nearest point.

- 7.7.2. Having regard to the nature and scale of development proposed and to the nature of the receiving environment and separation distance from the nearest designated site, no appropriate assessment issues arise and it is considered that the proposed development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European site.

## **8.0 Recommendation**

- 8.1. I recommend that planning permission for the proposed development be refused for the reasons and considerations as set out below.

## **9.0 Reasons and Considerations**

- (1) Having regard to the location of the site in an area under urban influence, and to National Policy Objective 19 of the National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018 which, for rural areas under urban influence, seeks 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, on the basis of the documentation submitted by the applicants that they have not satisfactorily demonstrated how they come within the scope

of the housing need criteria as set out in the Guidelines and do not, therefore, comply with National Policy Objective 19. 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.

(2) The site of the proposed development is located within an upland area forming part of the 'South-eastern Hills' as designated in the Landscape Character Assessment set out at Fig. 8.2 of the Kilkenny County Development Plan 2014-2020. The appeal site occupies an open and visually exposed site within a visually attractive and scenic landscape. It is considered that the proposed development by reason of its height and scale would result in serious injury to the visual amenities of the area by reason of visual intrusiveness and would be contrary to Development Plan policy as set out in the Development Management Standards included at Section 8.2.10.6 of the Development Plan which seek to ensure that that development in upland areas or on steep slopes will not have a disproportionate or dominating visual impact, due to excessive bulk, scale or inappropriate siting and will not have a disproportionate or dominating visual impact and will not significantly interfere with or detract from scenic upland vistas when viewed from public areas or viewpoints. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Paddy Keogh  
Planning Inspector

16<sup>th</sup>, December 2019