



An
Bord
Pleanála

Inspector's Report

ABP-308161-20

Development	Construction of a new part single storey and part two-storey dwelling with effluent treatment system/percolation area and domestic garage
Location	Luffany , Mooncoin , Co. Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	20391
Applicant(s)	Mark Fitzgerald
Type of Application	Planning Permission.
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Eamon Delahunty, Paddy Delahunty.
Observer(s)	Eddie Doyle
Date of Site Inspection	16 th of December 2020
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The subject site is located in a rural area in south Co. Kilkenny close to the Waterford County boundary. The townland is Luffany, Mooncoin.
- 1.2. The site is contained within a large agricultural field,, and surrounded by agricultural fields. The Luffany village is located 500metre north of the site.
- 1.3. The site, 0.779Ha with a western orientation and a flat configuration.

2.0 Proposed Development

- 2.1. The proposed development is a two storey dwelling (218sq.m.) and detached garage (40sq.m.).
- 2.2. The applicant is purchasing the site from his aunt.

3.0 Planning Authority Decision

3.1. Decision

Kilkenny Co. Co. granted the prosed dwelling subject 11No. standard conditions.

3.2. Planning Authority Reports

3.2.1. *Planning Reports*

The salient issues addressed in the report can be summarised as follows:

- Site located in an Area under Urban Influence, and rural generated housing will be facilitated. The applicant is from the area. His family home is 1Km form the site, he has strong local ties.
- Site suitable for effluent treatment
- Sightlines acceptable, public road is narrow. The setback is to be tarmacadamed to allow for safe passing movements.
- The site is not located in a Visual High Amenity area. The house is considered to be an acceptable design and would not injure the amenities of the area.

3.2.2. **Other Technical Reports**

Environment: No objections

Area Engineer: No objections

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

The appellants objected to the proposed development:

- It is difficult to herd cows along narrow lane
- Daily routine of farming will be impacted upon
- Negatively impact on farm incomes

4.0 **Planning History**

There is no relevant planning history.

5.0 **Policy Context**

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

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 permitted (subject to other planning criteria) single houses for persons where the following criteria are met:-

1. Persons who are fulltime 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 family use on family lands;
3. Persons with 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 lived for a substantial and continuous part of their lives (minimum five years)

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. Example 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 19

In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstratable 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. Natural Heritage Designations

SITECODE 002137

SITE_NAME Lower River Suir SAC

5.3. EIA Screening

Having regard to the small scale of the proposed development, the proposed connection to public water and drainage infrastructure and the separation from any environmentally sensitive sites, 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

There are two appeals with similar grounds. The following is a summary of each appeal.

Paddy Delahunty

- The dwelling is to be located on a narrow lane used by cows for hundreds of years. Its impossible for cows to turn and go back of they encounter a car on the road, and there is no room to pass.
- Farming is the families livelihood for generations, and the general area if unspoilt rural countryside.
- There are alternative locations in the area for the applicant without opening up these agricultural land for development .
- Luffany village is a unique faming village, isolated from development.

Eamon Delahunty

- Laneway is too narrow
- The house will generate traffic onto the narrow land, delivery vans, bin lorry, cycles, etc
- An alternative site was offered to the applicant but this was not explored.

6.2. Applicant Response

A summary of the applicant's response to the appeal is as follows:

- Born and reared in the area, and has strong family connections in the area.
- Involved in the local G.A.A. club.
- The immediate family live in the area.
- It is a 30minute commute to his work.
- The road is 4metres in width and 5metres in parts.
- The road is a council road and it is common for motorists and pedestrians to use the road.
- There are 7No. passing points on the 300metres stretch up to the site, which include lanes and gaps into fields. There is adequate room for cows and cars to pass .
- He has no alternative sites, and if planning permission is refused he will be forced to leave the area.
- There were discussions regarding a land swapping agreement with a local land owner, Eddie Doyle, but the applicant was advised he would not obtain planning permission due to ribbon development.
- It is not his intention to interfere with any farming in the area, he just wants to live in the area beside his family, and this is his only option.
- There are letters of support form a number of residents in Luffany to the proposed development.

6.3. Planning Authority Response

Item 1

The site is located on one of many narrow county roads whereby dwellings and farmers carry out their livelihoods together. Condition No. 5(a) of Planning Reference P20/391 stipulates that the area between the public road and the new boundary will be suitability structured with stone and tarmacadam , and will enable

traffic to pass. Passing bays could also be installed between the site entrance and Luffany village.

Item 2

Rules of the road state, 'if you are in charge of animals on a roadway, you must take reasonable steps to make sure the animals do not block other traffic or pedestrians.

Item 3

The development will not introduce pedestrians to the lane, but may result in an increase in pedestrian usage. The current use of the lane by pedestrians does not impact on the livestock.

6.4. Observations

Eddie Doyle

A summary of his submission is as follows:

- The land around Luffany is set in a radial pattern each owning land in several directions for protection many generations ago.
- The applicant's family approached hi for a suitable site for the applicant and his brother in exchange for the field where planning permission is been sought. The field is owned by the applicant's aunt. The access lane is very narrow to the subject site.
- A 2.5acre site was offered which they declined because they felt the planning authority would not look favourably on the site. They were told if planning was refused and alternative site would be offer, one Mr. Doyle has earmarked for his own daughter.
- The lane serving the site is a cul de sac. There are 80-90 cows on it in calf most of the summer, and they get stressed been delayed.
- The planners in Kilkenny Co. Co. have dismissed their concerns
- School times and milking times will clash.

7.0 **Assessment**

7.1. The appeal shall be assessed under the following headings:

- Compliance with National Planning Policy
- Compliance with Development Plan Policy
- Effluent Treatment and Disposal
- Traffic/ Impact on Farming
- Visual Impact
- Appropriate Assessment

7.2 ***Compliance with National Planning Policy***

According to the appeal file, the applicant, Mr. Mark Fitzgerald, was born and reared in the immediate area. He remains living in the local community and his immediate family live in Luffany, which is in South Kilkenny. The subject site is in a field owned by the applicant's aunt. The applicant works in New Ross town, which is stated to be a 30minute commute from Luffany. He wants to remain in the area with his own family and bring up his own family in the area. The applicant has not demonstrated an economic need to live in the area, however he has demonstrated a social need to live there, as he is part of the existing community. Therefore, I consider the applicant complies with National Policy Objective 19, of the National Planning Framework.

7.3 ***Compliance with Development Plan Policy***

In accordance with Section 3.5.2.3 (Rural Generated Housing Need) of the County Kilkenny Development Plan,:

In areas under urban influence and in stronger rural areas, which is the case in Luffany, the Council will permitted single houses for persons where the following criteria are met:-

Persons with 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 lived for a substantial and continuous part of their lives (minimum five years).

Although there is very little documentation on the planning file to demonstrate how the applicant meets with the criteria, it is clear from the appeal submissions, that the applicant is from the area and his family live in Luffany, and the subject site is owned by his aunt. I note the applicant is employed in New Ross, Co. Wexford, which does not represent sustainable commuting to work from the rural area. However, based on the above planning policy, I conclude, the applicant complies with the local needs policy of the county development plan.

7.4 Effluent Treatment and Disposal

According to the Site Characteristics Report on file, a private borehole is proposed to provide water to the proposed development. The site overlies a regionally important aquifer, and the groundwater flow direction is south westerly in accordance with the site contours. The Trial Hole revealed a silt/ clay subsoil with gravel and cobbles and occasional boulders. The result of the T test was 37.64 and the result of the P test was 53.61 deeming the site suitable for a septic tank system and percolation area.

During my site inspection in December 2020, I note the site was waterlogged. I saw no evidence of vegetation associated with waterlogged soils, however, it would appear the soil is not as free draining as the test report on file would suggest. If the Board were mindful of granting the development I would advise a second trial hole and percolation test, as I would be concerned about permitting a standard septic tank and percolation tank on the lands. (Please note the accompanying photographs of the site with excessive water on the surface.)

7.5 Traffic/ Impact on Farming

This issue would appear to the crux of the appeal. It has been submitted on appeal by three farmers in the village that the system of farming in Luffany is unique as it is a small farming village. I did note the significant cluster of farming buildings 500metre north of the subject site, and it is stated the farms were built together generations ago with the land scattered at different locations creating a unique radial farming pattern. It is submitted the road where the subject site is located was a rough cow lane up to ten years ago. The local farmers contributed to the Council to have it surfaced, and the farmers also contributed towards the costs of the works and the provision of an open drain to clear surface water. The farms are dairy farms,

and the cows are brought along the lane for milking twice a day from February to November. The farmers have submitted that up to 80 No. cows are moved along the lane which is considered to be narrow and currently free of rural housing and associated traffic (cars, refuse trucks, post man, etc). The traffic will stress the cows as they have no room to pass. The lane has been used for the cows for generations. (Photographs are submitted of cows and machinery on the lane by the appellants.)

The planning authority and the applicant responded to the appeal on this issue. The applicant has submitted the lane is not 2.8 metres but is 4 metres wide, and there are passing points along the lane to avoid livestock. This is common situation in rural Ireland whereby cars and livestock meet on narrow rural roads. It is also submitted by the applicant that there is nothing unique about the farming in the area, that Luffany is similar to other areas in rural Ireland.

The planning authority has submitted the site location is one of many cul de sacs with dwellings and farms who simultaneously carry out their livelihoods. Condition No 5 (a) stipulates that the area between the public road and the new boundary is to be suitably structured to provide a setdown area which will enable for safer passing movements. The planning authority also states the location of the development along is a public road and not a private lane and is open to public traffic without restriction, and while it is a narrow road, there is adequate forward visibility for traffic to see if cattle are being driven up the road.

I consider the appellant's concerns to be valid. I accept that agriculture and rural housing occupy rural roads, and that livestock are moved along public roads everyday safely. However, the public road the subject of this appeal, is a narrow cul de sac which provides access to only fields. There is no one off housing along the road. In my opinion, the agricultural use of the road is the primary and long established use. For that reason, the road is narrow. Luffany farm village is an unusual cluster of farm buildings which are historically linked to the lane. I note the public road to the west of the farm cluster contains a high density of one-off housing, and to the north east of farming complex also. I believe to grant the proposal will negatively interfere with historic farming practices along the cul de sac by introducing unrelated domestic traffic, in addition to creating an undesirable precedent for further one-off housing along the narrow road. I note the proposal to surface the

setback between the edge of the road and the new roadside boundary to create a setback area to enable livestock to pass. However, this will look unsightly and is an excessive measure (125m of hedgerow removal) to accommodate one dwelling which will militate against the preservation of the rural environment and countryside qualities of the area. I consider the case presented by the farmer's on appeal is warranted, and the proposed dwelling should be refused.

7.6 Visual Impact

The area is not governed by any landscape or amenity policies in the development plan. Yet, the countryside on both sides of the lane is pristine and unspoilt. It is quite unique and special to look south, east and west along the laneway and to view the well-preserved agricultural fields and sheer rural landscape, uninterrupted or punctuated by haphazard housing or farm buildings.

The proposed dwelling is contemporary in design, part single storey, part two-storey, and I consider it to be an attractive architectural design. However, it will create an obvious statement on the unspoilt landscape that will militate against the rural qualities of the area and visual amenities of the immaculate countryside. As stated above, the existing hedgerow of the entire field is to be removed and setback, and be replaced with a new stone and sod wall for a distance of 125metres which again will militate against the preservation of the rural countryside.

7.7 Appropriate Assessment

The River Suir SAC (Site Code 002137) is located 1 KM to the west of the appeal site at its nearest point. Having regard to the nature and scale of the 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 sites.

8.0 Recommendation

- 8.1. I recommend the Board refuse the proposed development for the following reasons and considerations.

9.0 Reasons and Considerations

1. The proposed development would constitute a random one off house in an unspoilt and pristine rural area lacking certain public services and community facilities and served by a poor narrow road network which currently caters for agricultural use only. The proposed development would, therefore, give rise to demands for the provision of further public services and community facilities, the need for road widening, and would militate against the preservation of the rural environment and accordingly would be contrary to the proper planning and sustainable development of the area.
2. The proposed development constitutes haphazard development, being situated and accessed from a public laneway that is substandard in width to cater for additional traffic associated with the one off rural dwelling. The proposed development would set an undesirable precedent for further dwellings along the laneway, and therefore be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

02/02/21