



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309243-21

<b>Development</b>	Single storey house, bored well, wastewater treatment system and percolation area, entrance, boundary landscaping and associated site works
<b>Location</b>	Ballycrony, Glenmore, Co Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	20/380
<b>Applicant(s)</b>	Lynda Treacy & Paul Coughlan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Parties v Grant of Permission
<b>Appellant(s)</b>	<ol style="list-style-type: none"><li>1. Linda Kavanagh</li><li>2. Donal Kavanagh</li><li>3. Daniel Kavanagh</li></ol>
<b>Observer(s)</b>	<ol style="list-style-type: none"><li>1. Colm &amp; Anne Mackey</li><li>2. Cllr. Fidelis Doherty</li></ol>

**Date of Site Inspection**

08.06.2021

**Inspector**

Anthony Kelly

## **1.0 Site Location and Description**

- 1.1. The site is located approx. 3.8km north of Glenmore and approx. 5k west of New Ross, Co. Wexford in south east Co. Kilkenny.
- 1.2. The site comprises an agricultural field. Ground levels slope downwards from the roadside boundary. There are extensive views in a southerly direction. The site is located in the west of a larger field. There is a hedgerow/ditch along the relatively narrow roadside boundary and some vegetation along the north west and south west boundaries. There are detached one-off houses in the vicinity including a two-storey house adjacent to the south west of the site.
- 1.3. The site has an area of 0.3178 hectares.

## **2.0 Proposed Development**

- 2.1. Permission is sought for a single storey house, well, wastewater treatment system and percolation area, entrance, boundary landscaping and associated site works.
- 2.2. The proposed house has a floor area of 198.74sqm. It has a general height of approx. 5 metres. External finishes are render, slate stone and cedar cladding with a blue/black slate roof.
- 2.3. Further information was submitted in relation to, inter alia, sightlines, a slight revision in the location of the proposed house on site and a lower proposed finished floor level. Clarification of further information was submitted in relation to sightlines.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission was granted by Kilkenny County Council subject to 11 no. conditions including development contributions, wastewater treatment, potable water, sightlines and the vehicular entrance area, external finishes, landscaping, a seven-year occupancy condition and construction practices.

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

3.2.1. Three Planning Reports form the basis of the planning authority's decision. It was considered, having regard to the policies and objectives of the Kilkenny County Development Plan 2014-2020, the location and revised design of the proposed development, landscaping, submissions, the planning history and referral reports that the development would not seriously injure the visual or residential amenities of the area, would be acceptable in terms of traffic convenience and safety and if constructed in accordance with conditions would accord with the proper planning and sustainable development of the area.

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

**Area Engineer** – No objection to the application from a road viewpoint following the clarification of further information response.

**Environment Section** – No objection subject to conditions.

### 3.3. **Prescribed Bodies**

None.

### 3.4. **Third Party Observations**

3.4.1. Eight observations were received by the planning authority. The observations can be grouped as three observations which object to the proposed development, one which is 'an observation for consideration of the points raised, rather than an objection' and four observations are in support of the proposed development including from the applicants' agent and from the applicant, Lynda Treacy. The issues raised are largely covered by the grounds of appeal, the applicants' response and the observations received on foot of the grounds of appeal with the exception of the following.

#### Objections

3.4.2. Observations specifically objecting to the proposed development were received from Daniel Kavanagh, Donal Kavanagh and Linda Kavanagh. The issues raised are largely covered by the grounds of appeal with the exception of the following:

- There are sites for sale closer to Lynda Tracey's homeplace and queries why these were not considered and discounted.
- No letter of consent for sightlines submitted with the application.
- A social connection can easily be maintained with the area from any location.
- Protecting the area as a scenic amenity for long term residents of the road should be the priority of the planning authority. It should be protected from any development.
- The leased farm yard is not adjacent to the site and will still need to be accessed by road.
- Any deviation from 120 metres sightlines is unacceptable.

#### Observation

- 3.4.3. An observation was received from Colm and Anne Mackey. The issues raised are largely covered by the observation submitted on foot of the grounds of appeal.

#### In Support

- 3.4.4. Four separate observations were submitted in support of the proposed development from (i) the applicants' agent (PDS & Associates) in response to the objections received by the planning authority from Daniel, Donal and Linda Kavanagh. It appears the observation was made on their own behalf rather than on the applicants' behalf, (ii) Lynda Treacy, Kilbride, Glenmore, Co. Kilkenny (applicant) (iii) Hazel Treacy Coleman, Ballalog, Tullagher, Co. Kilkenny (applicant's sister) and, (iv) Alan Coleman, Ballalog, Listerlin, Tullagher, Co. Kilkenny.

- 3.4.5. The main points made in the PDS & Associates observation can be summarised as follows:

- With such a strong level of compliance with the rural housing policy the applicant is entitled to live in the area where she, her family and previous generations of her family have resided. Months of preparation has allowed the applicants to dramatically increase the paperwork to support the application compared to the previous application.
- The adjacent two-storey and one and a half storey houses sit proud of the landscape with large sheds visible and entrances towering over the road.

There is little or no landscaping to screen these units. The proposed single-storey house would sit below the road, be unobtrusive and with landscaping would be hidden unlike existing houses.

- The proposed sewage system is 60 metres from the adjacent well and the proposed entrance will have no interference with the adjacent access/egress.

3.4.6. The three observations received from Lynda Treacy, Hazel Treacy Coleman and Alan Coleman all support the proposed development including:

- Commentary has been provided in relation to statements made in the objections.
- Lynda Treacy's submission sets out her links to the area and the rationale for the proposed development.
- Hazel Treacy Coleman's submission also sets out the applicants' background and the rationale for the proposed development.
- The applicants' ties to the area could hardly be any stronger or they could hardly contribute any more fully to the local community.
- Aesthetic damage to the landscape is hardly a concern considering the industrial style sheds recently erected on the same road or the adjacent two-storey house.
- The appellants' sole aim is to prevent construction of the house.

## 4.0 Planning History

There has been one previous application on site:

P.A. Reg. Ref. 19/32 / ABP Reg. Ref. ABP-304837-19 – Permission was refused in 2020 for a house, garage, sewage treatment system and ancillary works because of (i) non-compliance with the rural housing policy and (ii) the development would seriously injure the visual amenities of the area. (See also Section 7.1).

## 5.0 Policy Context

### 5.1. Project Ireland 2040 National Planning Framework (NPF)

5.1.1. National Policy Objective (NPO) 19 states it is an objective to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere. In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

### 5.2. Southern Regional Assembly Regional Spatial & Economic Strategy for the Southern Region (RSES)

5.2.1. Section 3.7 (Rural Areas) states the countryside 'is and will continue to be, a living and lived-in landscape focusing on the requirements of rural economies and rural communities, based on agriculture, forestry, tourism and rural enterprise, while at the same time avoiding ribbon and over spill development from urban areas and protecting environmental qualities'.

5.2.2. The RSES, like the NPF, makes a distinction between areas under urban influence and rural areas outside these catchments. Development plans 'will set an appropriate rural housing policy response to avoid ribbon and over-spill development from urban areas, support revitalised towns and villages, achieve sustainable compact growth targets and protect the rural resource for rural communities, including people with an established local connection to the area'.

5.2.3. Regional Policy Objective (RPO) 27 is to support rural economies and rural communities through implementing a sustainable rural housing policy which provides a distinction between areas under urban influence and other rural areas through the implementation of NPO 19. Three requirements of the Local authorities are:

- a. Include policies for the protection of the viability of smaller towns and rural settlements as key priority within Development plans;

- b. Have regard for the viability of smaller towns and rural settlements. Core Strategies shall identify areas under urban influence and set the appropriate sustainable rural housing policy response which facilitates the provision of single housing in the countryside based on the core consideration of demonstrable economic, social or local exceptional need to live in a rural area and siting, environmental and design criteria for rural housing in statutory guidelines and plans;

...

- d. Provide for flexibility in zoning and density requirements to ensure that rural villages provide attractive easily developed options for housing.

### **5.3. Sustainable Rural Housing Guidelines for Planning Authorities, 2005**

- 5.3.1. These guidelines are relevant to the planning application. Circular Letter SP 5/08 was issued after the publication of the guidelines.

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

- 5.4.1. The site in an 'Area Under Urban Influence' as set out in Figures 3.1 (Core Strategy) and 3.17 (Rural Housing Strategy). Chapter 3 (Core Strategy) includes the planning authority's policy in relation to rural housing. Section 3.5.2.3 (Rural Generated Housing Need) sets out the stipulations where the Council will permit, subject to other planning criteria, single houses in areas under urban influence. There are five different stipulations set out including persons who are employed full-time in rural based activity, a fulltime farm owner or immediate family member, persons with no family land wishing to build their first home within a 10km radius of the original family home, returning migrants or historic landowners.
- 5.4.2. A Rural Design Guide was produced in 2008. This acts as an instrument to develop best practice in the design and siting of one-off rural housing.
- 5.4.3. Section 8.2 (Natural Heritage) of the Plan is also relevant to the planning application.



## 5.5. Natural Heritage Designations

- 5.5.1. The closest Natura 2000 site is River Barrow and River Nore SAC (Site Code 002162) approx. 2.6km to the north. Brownstown Wood NHA (Site Code 000827) is also at this location.

## 5.6. EIA Screening

- 5.6.1. Having regard to the nature and scale of the proposed development, which is for a single house, and the nature of the receiving environment, which is rural, 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 stage, and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Three separate grounds of appeal have been received from Linda Kavanagh, Ballycroney, Glenmore, Y34 V006 (opposite side of the road approx. 150 metres to the north east of the site), Donal Kavanagh, 17 Holywell, Kilmacud Road Upper, Dublin 14 and Daniel Kavanagh, Ballycrony, Glenmore who lives opposite the site. The main points made can be collectively summarised as follows:

#### Rural Housing Policy

- The applicants may have shown a social connection to the area however they have not fully demonstrated a social and economic need to live in the area. Both applicants will not have their economic wellbeing or income impacted based on residing at this site. Housing needs can be adequately provided for within a smaller town or rural development. The application continues to be contrary to national policy with respect to single housing in the countryside.
- The applicants' housing need should be met in villages/settlements in the local area under the development plan review.

- In terms of economic justification, no further substantial justification has been provided.
- The application does not overcome the Board's previous first reason for refusal. The only changes appear to be Lynda Tracey working from home because of Covid and Paul Coughlan declaring he is now also part farming in addition to his day job. No detail of what this part-time farming entails, where the farm is or what hours he works. It remains the case that no details and evidence of the applicants' residence has been provided. If detail of the applicants' current residence is provided Danial Kavanagh would be interested to comment as he believes they currently have the sole occupation of a family home in the vicinity of the site.
- If Paul Coughlan is involved in part-time farming, he must be managing the farm from his current remote residence. It is not uncommon for part-time farmers to live remote from the farm they work. If he was living on site, he would still be remote from the farm he claims to be operating part-time.
- Most of Lynda Tracey's local social connections are ties to surrounding rural settlements where housing opportunities exist.

#### Water

- The Site Characterisation Form indicates the site is in an area with a poor aquifer with extreme vulnerability. Access to water is an ongoing concern for residents. Private wells in the four surrounding houses have all run dry at different intervals during the last year. This has been dismissed previously as a point of concern but must be taken into account and investigated further as it may result in a significant outlay by the Council should a local water scheme be required.

#### Traffic & Sightlines

- With regard to sightlines, plans have been submitted of modifications to existing boundaries outside the applicants' ownership. The landowner, Seamus Cody, is not resident in the area, is elderly and has not been personally maintaining the boundary for many years. Upkeep and maintenance of sightlines would legally be the responsibility of the landowner and any promises of upkeep by

the applicants would not legally be their responsibility, leading to the possibility of sightlines deteriorating.

- The landowner to the east (Seamus Cody) did not consent to the applicants removing obstructions from his roadside boundary to achieve sightlines. He simply agreed that he would maintain the roadside hedges and embankment. The response fails to demonstrate the applicants have sufficient control to ensure indefinite unobstructed sightlines.
- Multiple entrances adjacent to each other and a dangerous bend.
- Concern about pedestrian safety on the road.

### Visual Impact

- The second reason for the Board's previous refusal has not been overcome.
- Notwithstanding the reduction in the height of the house and omission of the garage, the house footprint is broadly similar. The fact it cuts across contours will require deeper excavations and create greater scarring. The nearest point of the house is closer to the road which will negate the reduced height. The hardstanding is also a considerable excavation and significantly greater in area than the previous proposal. Landscaping could have been previously conditioned, but it is evident the Board did not consider the site suitable for a house in principle and no landscaping proposal would render one acceptable.
- The development would detract from and interfere with the scenic upland vista of the area. It directly contravenes the Council's own development policy and the Board's ruling. The landscape has not changed in status. This or any future development on site remains an injury to the visual impact of the area.
- Replacing and modifying boundaries to both sides of the road has a visual impact.

### Miscellaneous

- The proposed house would contribute to the existing pattern of ribbon development and should also be refused for this reason.
- The granting of other permissions, regardless of scale and design, does not set a precedent as implied.

- The applicants note Daniel Kavanagh previously tried to purchase the site. He attempted to purchase it to protect his amenity and services and had a concern that he could be accused of contaminating any new well downhill. His offer was declined. It is irrelevant that he has not objected to other developments in the vicinity. He has no axe to grind with the applicants but is merely protecting his amenity and the local environment.
- Photographs are attached to Linda Kavanagh's and Donal Kavanagh's grounds of appeal.

## 6.2. Applicants' Response

The main points made can be summarised as follows:

- The house plans are completely different than those submitted under the previous application. The scale is reduced, garage omitted, and the house has been moved to the lowest point of the site. The applicants paid for a visual impact assessment to be carried out.
- It is untrue to say Lynda Treacy is currently working temporarily from home due to Covid. A letter from TransferMate Global Payments is submitted with the applicants' response which states the applicant has the option to work remotely as part of her role.
- It is stated the applicants' address has not been provided but various addressed letters were submitted in the application. The applicants are living in Lynda Treacy's family home which houses four adults and two children.
- Seamus Cody has never put the field that the site is on for sale as suggested. He tried but failed to sell land on a different road. Daniel Kavanagh advised the applicants that he tried to purchase the site many years ago but was refused by the farmer at the time.
- The applicants own the site and have two children. It would not be sustainable to move to Kilkenny, Waterford, Mullinavat etc. and it would greatly infringe on their quality of life. Linda Treacy's father has severe ill health and her mother also has some health issues. Linda Treacy has one sister. To live one mile away on the same road would make both family lives easier.

- The applicants have a farmyard leased, as per detail submitted with the application, and this was done before the site was purchased. Paul Coughlan keeps beef livestock which have to be cared for daily. Living any further away than the applicants currently do would make it too difficult to work full-time and attend the animals daily. Being in close proximity to the farmyard will relieve stress and fatigue. This is a vital economic need for the applicants' family.
- Lynda Treacy has never lived away from the area, even while at college. One of the applicants' children goes to the local primary school as did the applicant and previous generations of the family. The applicants are active in the community unlike the appellants.
- Linda Kavanagh's and Donal Kavanagh's letter are the same. None of the appellants appealed against industrial sheds on the road which impede the skyline and injure the visual impact of the area.
- An OS map of the wider area has been submitted identifying various relations houses', the farmyard, school and childminder.

### 6.3. Planning Authority Response

The main points made can be summarised as follows:

- The applicants have demonstrated a social need to live in the area due to family connections. The planning authority is satisfied that the applicants comply with the Council's rural housing policy and satisfies NPO 19 of the National Planning Framework.
- The design of the dwelling has been considerably improved.
- The site is below the level of the public road and taking into account the position, form and scale of the dwelling and the landscape plan the dwelling will integrate sufficiently well into the landscape.

### 6.4. Observations

Two observations have been received from Colm & Anne Mackey, Ballycrony, Glenmore (immediately adjacent to the south west) and Cllr. Fidelis Doherty. The main points made can be summarised as follows:

### Colm & Anne Mackey

- Concern about the impact on water supply. The observers well ran dry in the summer of 2020.
- As the site is above the observers' house and well it is hoped the septic tank and soakpits would not pose a risk of contamination to the existing well.
- The observers would hope there is no impact on traffic safety.

### Cllr. Fidelis Doherty

- This observation supports the applicants. It sets out in some detail the applicants' links to the community.

## 6.5. **Further Responses**

None sought.

## 7.0 **Assessment**

The main issues are those raised in the grounds of appeal and the Planning Reports, 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:

- Previous Application – P.A. Reg. Ref. 19/32 / ABP Reg. Ref. ABP-304837-19
- Compliance with Rural Housing Policy
- House Design, Site Layout & Visual Impact
- Traffic & Sightlines
- Wastewater Treatment
- Well
- Appropriate Assessment

## **7.1. Previous Application – P.A. Reg. Ref. 19/32 / ABP Reg. Ref. ABP-304837-19**

7.1.1. The applicants previously sought permission for a house, garage, sewage treatment system and all ancillary works. The proposed single-storey house had a floor area of 224sqm and a height of 5.891 metres. The application was granted by the planning authority following further information and clarification of further information requests.

7.1.2. The grant of permission was subject of three separate third-party appeals. The application was refused for two reasons by the Board.

1. The site of the proposed development is located within an “Area Under Strong Urban Influence” as set out in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April 2005 and within an area that is designated as an ‘Area Under Urban Influence’ in the Kilkenny County Development Plan 2014-2020. Furthermore, the subject site is located in an area that is designated as an area under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, 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 and having regard to the viability of smaller towns and rural settlements. Having regard to the documentation submitted with the planning application and appeal, including the stated current employment of the applicants, the Board is not satisfied that the applicants have a demonstrable economic or social need to live in this rural area, or that the housing need of the applicants could not be met in a smaller town or rural settlement. It is considered, therefore, that the applicants do not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. The proposed development would be contrary to the Ministerial Guidelines and to the over-arching national policy, notwithstanding to the provisions of the Kilkenny County Development Plan 2014-2020 and would, therefore, be contrary to the proper planning and sustainable development of the area.

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 Figure 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 position, form and scale would result in serious injury to the visual amenities of the area by reason of visual intrusiveness and would contravene policy as set out at Section 8.2.10.6 of the Kilkenny County Development Plan 2014-2020, which relates to the protection of scenic amenity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

## **7.2. Compliance with Rural Housing Policy**

- 7.2.1. Compliance with rural housing policy is a core consideration for any planning application for a one-off house in the rural area. It was cited as a reason for refusal under the previous application and also forms one of the significant issues in the grounds of appeal.
- 7.2.2. The applicants submitted a substantial amount of documentation setting out their background in the local area and their continuing links to it in the initial planning application received by the planning authority, in the observation submitted by Lynda Treacy and in the applicants' response to the grounds of appeal. The applicant, Lynda Treacy's, family home is about a mile away and there are extensive family links in the vicinity. The applicants are active in the local community. Paul Coughlan is from Mullinavat and it is stated his family home is approx. 7km from the site. The applicants have two children and it is stated the applicants are currently living in Lynda Treacy's family home. Lynda Treacy works in financial services and Paul Coughlan works for Waterford City & County Council. The applicants own the site subject of the planning application. It is stated in the current application that Paul Coughlan leases a farm yard half a mile from the site. A lease agreement for a five-year period at €500 rent per annum between Paul Coughlan and Seamus Cody dated 14.10.2017 was submitted with the application. This lease agreement states that the premises are as described in the First Schedule. The First Schedule describes the premises being let as 'the farmhouse, outhouses and farm yard ... containing 0.23 Hectares or thereabouts ...' The full extent of Paul Coughlan's farming involvement is unclear. There is no indication as to any land that is being rented or farmed, no indication of the numbers of animals (the observation from Cllr. Doherty states Paul Coughlan 'has a herd



number which he shares with his uncle') or anything other than the lease agreement for farmhouse, outhouses and farm yard. Under the previous planning application, no mention was made of the applicants' involvement in farming. However, having regard to the documentation submitted with the application, I consider the applicants can be considered to comply with the third stipulation as set out in Section 3.5.2.3 (Rural Generated Housing Need) of the Kilkenny County Development Plan 2014-2020, i.e. 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 in which they have spent a substantial and continuous part of their lives.

7.2.3. Notwithstanding, the site is in an Area Under Urban Influence as set out in the County Development Plan 2014-2020. NPO 19 of the National Planning Framework, published since the adoption of the County Development Plan, states that, in such areas, single housing in the countryside should be facilitated based on the core consideration of demonstrable economic or social need, and siting and design criteria, having regard to the viability of smaller towns and rural settlements. The applicants' primary occupations do not require a rural house. The extent of the part-time involvement in agriculture has not been set out but it is not a primary occupation. The Sustainable Rural Housing Guidelines (2005) refers to people working part-time in rural areas where it includes, in illustrating the broad categories of circumstances that would lead the planning authority to conclude that a particular proposal for development is intended to meet a rural generated housing need, 'as well as part time occupations where the predominant occupation is farming/natural resource related' (Pages 23/24). The RSES, in RPO 27(c), reiterates facilitating the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need but also includes 'local exceptional need'. Having regard to the documentation submitted with the application I do not consider that an exceptional need exists in this application. While I acknowledge the applicants' links to the area, I do not consider that these alone are sufficient to require a house in a rural Area Under Urban Influence given regional and national policy supports the revitalisation of smaller towns, villages and rural settlements such as, within approx. 10km of the site, New Ross/New Ross Environs, Glenmore and Mullinavat.

7.2.4. I consider that the first reason for refusal set out under ABP-304837-19, which specifically acknowledges the provisions of the County Development Plan 2014-2020,

has not been overcome in the current application and I consider the same reason for refusal still applies. I do not consider there has been any material change in circumstances from those set out in the previous planning application and to permit the application would be contrary to national policy.

### **7.3. House Design, Site Layout & Visual Impact**

- 7.3.1. The visual impact of the development comprised the second reason for refusal in the previous application and is a significant basis for the grounds of appeal.

#### House Design

- 7.3.2. The proposed house type is of contemporary design with a staggered narrow plan form and external finishes including render, slate stone and cedar cladding. It is a very wide house, approx. 33 metres wide, and occupies most of the width of the overall site. I consider that the proposed house type is a more appropriate house type for the rural area than the house type proposed under the previous application and some of the houses in the vicinity. In general, I consider the proposed house, in itself, to be acceptable in terms of design.

#### Site Layout

- 7.3.3. Ground levels on site slope down from the public road in a southerly direction. The site comprises the north west corner of a larger field. There are no physical on-site boundaries to the south east or north east of the site. There is a ditch/hedgerow along the roadside boundary and some vegetation along the boundary with the adjacent property which contains, inter alia, a two-storey house. The north west boundary of the site is parallel to part of the vehicular access driveway for the adjacent property. There is only a narrow roadside boundary.
- 7.3.4. The proposed finished floor level is 100.50. The road level appears to be 106.50. Cutting and filling on site is proposed as shown in Section B-B on Drawing No. PL-003-LT-20 received as part of the clarification of further information response. The relatively short access driveway is slightly curved, and the side building lines of the house are quite close to the respective site boundaries.

### Visual Impact

- 7.3.5. The site is an exposed and visible site and there are extensive views in a southerly direction. It is located in the South Eastern Hills area of the county as set out in Figure 8.2 (Landscape character assessment) of the County Development Plan 2014-2020.
- 7.3.6. The applicants consider that the revised house type, and the provision of a landscape plan, has addressed the second reason for refusal under ABP-304837-19. I do not consider that this reason for refusal has been addressed. The reason for refusal stated that ‘the appeal site occupies an open and visually exposed site within a visually attractive and scenic landscape’. Changing the house design or making other, relatively minor amendments such as a slight 300mm reduction in the finished floor level, would not, in my opinion, make a material difference to the fact that the ‘proposed development by reason of its position, form and scale would result in serious injury to the visual amenities of the area by reason of visual intrusiveness’. It is stated in the applicants’ response to the grounds of appeal that they paid for a visual impact assessment to be carried out. It is unclear what this entailed as no such document was submitted with the application.
- 7.3.7. The main characteristic of this area is the expanse of the views in a southerly direction. Section 8.2.10.6 (Views and Prospects) of the County Development Plan 2014-2020 sets out a number of Development Management Standards. These include standards to, inter alia, protect the landscape character, quality and local distinctiveness of Co. Kilkenny, to facilitate appropriate development and require that developments minimise the loss of natural features such as trees and hedgerows, to ensure development in upland areas will not have a disproportionate visual impact due to, for example, inappropriate siting and will not significantly interfere or detract from scenic upland vistas. I consider that the proposed house would interfere with the view that currently exists and would be visually obtrusive. The provision of landscaping would likely interfere with the open vista as currently exists. Other concerns include the fact that the existing roadside boundary would be removed to accommodate the vehicular entrance which would further erode the rural character of the area as would the driveway area and the cut and fill proposed.

## Conclusion

- 7.3.8. I consider that the proposed development at this location would result in serious injury to the visual amenities of this area and would not be consistent with the Development Management Standards set out in Section 8.2.10.6 of the Plan. While there are other developments within the vicinity of the site, on both sides of the road, that are substantially larger and are not of the appropriate architectural design that is the case in this application, I consider the proposed development would further erode the rural fabric of the area and would significantly interfere with the visually attractive and scenic landscape that exists. I consider that the second reason for refusal as set out in ABP-304837-19 remains applicable.

## **7.4. Traffic & Sightlines**

- 7.4.1. Sightlines and other traffic issues was raised in the grounds of appeal and is a standard consideration in applications for one-off houses.
- 7.4.2. Effectively, the entire roadside boundary is to be removed to accommodate the vehicular entrance as the roadside boundary of the site is very narrow, approx. 15 metres. The entrance is proposed as a standard gate and block wing walls with piers. Further information was sought, inter alia, on sightlines. Sightlines of 120 metres are required on this local primary road with an 80kph speed limit. The further information response outlined 120 metres sightlines in both directions and stated that there is no requirement for any setting back of existing boundaries. The response was not considered acceptable (the Area Engineer recommended a refusal of permission), and clarification of further information was sought by the planning authority solely on the sightline issue. A revised sightline drawing was submitted in response to the clarification request. This response included a number of amendments to existing roadside boundaries to achieve the 120 metres sightline distances. These include 'setting back' 33 metres of hedgerow on the opposite side of the road to the north west and replacing the existing hedge with a grass verge, (a letter of consent was submitted from the landowner, John Ryan), removing an existing roadside boundary tree from the boundary east of the proposed access point and a 'roadside mound to be maintained as is in order to provide for 120m sightlines' also accompanied by a letter

of consent from Seamus Cody. The Area Engineer indicated no objection subject to conditions on foot of the clarification of further information response.

- 7.4.3. In order to achieve full unobstructed sightlines of 120 metres at this location, 33 metres of hedgerow has to be removed to the north west and an existing tree has to be removed from the roadside to the east of the entrance. This interference with existing roadside boundaries would increase the adverse impact on the visual amenity of the area as a result of the proposed development and should also be considered in the context of Section 7.3 of this assessment.
- 7.4.4. Section 7.3.3 (Conditions should be enforceable) of the Development Management Guidelines for Planning Authorities (2007) states, in relation to sightlines, that 'It is doubtful that a condition requiring the maintenance of sightlines by the removal or trimming of hedges or trees on a neighbour's property is within the applicant's power to fulfil: even where the neighbour has given consent that consent may subsequently be withdrawn'.
- 7.4.5. Sightlines was not cited as a reason for refusal under the previous application. Having regard to the documentation on file and further to a site inspection, I do not consider the proposed development would result in a traffic hazard. There are existing access points immediately to the west and on the opposite side of the road to the north east with good inter-visibility between them. Having regard to the character of the local road network in the vicinity of the site and further to the site inspection 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 not be warranted.

## **7.5. Wastewater Treatment**

- 7.5.1. Assessment of the wastewater treatment element of a rural one-off house is a standard consideration. This was not a concern under the previous application. The same Site Characterisation Form was submitted as submitted under ABP-304837-19.
- 7.5.2. The site is in an area with a poor aquifer of extreme vulnerability. Groundwater was not encountered in the 1.45 metres deep trial hole. Bedrock was encountered at a depth of 1.45 metres. The soil was silt/clay in the upper 700mm and silty shale below 700mm. Table B.2 (Response Matrix for On-Site Treatment Systems) of the EPA Code

of Practice Wastewater Treatment and Disposal Systems Serving Single Houses, 2009, identifies an R2<sup>1</sup> response category i.e. acceptable subject to normal good practice.

- 7.5.3. The T-test result was 10.28. A P-test was also carried out giving a result of 8.61. I consider the results to be consistent with the ground conditions observed on site. Section 3.2 of the Site Characterisation Form states the colour of the soil was brown indicating it is well aerated with good drainage. Though the trial hole and percolation test holes had been filled in the site comprises an agricultural field with no indication of, for example, water ponding. Table 6.3 (Interpretation of Percolation Test Results) of the Code of Practice states that, based on the T-test result, the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater. Section 5.0 (Recommendation) of the Site Characterisation Form recommends installation of a packaged wastewater treatment system and polishing filter. Due to the presence of rock the bottom of the percolation trenches should be at least 900mm above the rock which would require a raised topsoil cover.
- 7.5.4. The Site Plan indicates that relevant separation distances to soakpits, the proposed house and site boundaries, as set out in Table 6.1 (Minimum Separation Distances in Metres) of the Code of Practice, are achieved. The proposed well on site is located uphill of the wastewater treatment system. Table B.3 (Recommended Minimum Distance Between a Receptor and a Percolation Area or Polishing Filter) of the Code recommends a separation distance of 15 metres to an up-gradient domestic well. Approximately 40 metres is provided. There is a bored well on the adjacent site to the south west and concern was expressed by the residents in relation to possible contamination. The adjacent well appears to be at a similar ground level to the proposed wastewater treatment system. The recommended separation distance to an alongside/no gradient well is 25 metres. A separation distance of approx. 60 metres is provided. Table 10.1 (Minimum Soil Polishing Filter Areas and Percolation Trench Lengths Required for a Five-Person House) of the Code states that, where there is a T-value between 3 and 20, a trench length of  $\geq 30$  metres is required. For a six-person house this would be  $\geq 36$  metres which is what is proposed.
- 7.5.5. Having regard to the foregoing, I consider the proposed development would be acceptable in terms of wastewater treatment. This was not an issue in the previous

application and the planning authority's Environment Section had no objection subject to standard conditions.

## **7.6. Well**

- 7.6.1. The impact of the proposed development on existing wells in the area have been referenced in the grounds of appeal and observation received.
- 7.6.2. This issue was also raised in the previous application. The Inspector considered, in the report for ABP-304837-19, that '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'.
- 7.6.3. In the absence of any such compelling evidence having been submitted under the current application I consider, as with the previous application, that refusing the application on this basis would not be warranted.

## **7.7. Appropriate Assessment**

- 7.7.1. Having regard to the nature and scale of the development proposed, a single house and wastewater treatment system in the rural area, and to the nature of the receiving environment, remote from and with no hydrological or ecological pathway to any European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site

## **8.0 Recommendation**

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

## 9.0 Reasons and Considerations

1. The site of the proposed development is located within an “Area Under Strong Urban Influence” as set out in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April 2005 and within an area that is designated as an ‘Area Under Urban Influence’ in the Kilkenny County Development Plan 2014-2020. Furthermore, the subject site is located in an area that is designated as an area under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, 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 and having regard to the viability of smaller towns and rural settlements. Having regard to the documentation submitted with the planning application and appeal, the Board is not satisfied that the applicants have a demonstrable economic or social need to live in this rural area, or that the housing need of the applicants could not be met in a smaller town or rural settlement. It is considered, therefore, that the applicants do not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. The proposed development would be contrary to the Ministerial Guidelines and to the over-arching national policy, notwithstanding to the provisions of the Kilkenny County Development Plan 2014-2020 and would, therefore, be contrary to the proper planning and sustainable development of the area.
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 Figure 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 position, form and scale would result in serious injury to the visual amenities of the area by reason of visual intrusiveness and would contravene the provisions as set out at Section 8.2.10.6 of the Kilkenny



County Development Plan 2014-2020, which relates to the protection of scenic amenity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Anthony Kelly

Planning Inspector

15.06.2021