



An
Bord
Pleanála

Inspector's Report

ABP-309441-21

Development	Construction of a dwelling and domestic garage.
Location	Duninga , Goresbridge , Co. Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	20450
Applicant(s)	Criostal Hennessey and Patrick Healy
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Jerry Hennessy
Observer(s)	None
Date of Site Inspection	15 th of April 2021
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The subject site is located in a remote rural area north of Goresbridge village in Co. Kilkenny, on an elevated landscape overlooking the River Barrow and Co. Carlow to the east. It is set within a beautiful landscape with a number of old country house estates and on approach to the site on the Regional road, there are old industrial mill race buildings adding to the rural charm of the locality and architectural heritage.
- 1.2. The site has a stated area of 0.4033Ha, is located within a large field. There is a mature hedge fronting the site along the roadside boundary (south-eastern site boundary), and the other three site boundaries are the open field.
- 1.3. The site is accessed from the local road L-2640.. The sightlines to the north are restricted by the curvature of the road.
- 1.4. The site is exposed an open, and the located is elevated.

2.0 Proposed Development

- 2.1. The two-storey dwelling (277sq.m.) is proposed with a detached garage. A treatment plant with percolation pipes is proposed. There is landscaping proposals for the boundaries. The proposed entrance is located midway along the roadside boundary.
- 2.2. According to the planning application documentation the applicant is a niece of the landowner.
- 2.3. By way of further information the dwelling house was redesigned to reduce the height, massing and scale. The revised height is 7.4sq.m.
- 2.4. A T-Value of 17 was achieved on the site with tests carried out in accordance with the EPA Code of Practice 2009.
- 2.5. As part of the further information response the applicant submitted a letter from solicitor confirming Syl Hennessy is the landowner of the site.

3.0 **Planning Authority Decision**

3.1. **Decision**

Kilkenny Co. Co. decided to grant planning permission for the proposed dwelling on 19th of January 2021, subject to 9No. conditions which included financial contributions, an occupancy condition for seven years, sightlines, landscaping, wastewater treatment system, water supply and house design specifications.

3.2. **Planning Authority Reports**

3.2.1. ***Planning Reports***

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3.2.2. ***Other Technical Reports***

Environment: No objections

Traffic & Access: 46metres of hedgerow needs to be removed to achieve the 90metres sightline.

Area Engineer: No objection

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

An objections was submitted from Jerry Hennessey who disputed the ownership of the land.

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 DOE 2005

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 settlement

5.2. Natural Heritage Designations

The River Barrow and River Nore SAC (Site Code 002162) is located 1 KM to the south of the appeal site at its nearest point

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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

Mr. Jerry Hennessy has taken this third-party appeal against Kilkenny Co. Co's decision to grant permission for the proposed dwelling. The following is a summary of the grounds of appeal:-

- The land in question is the subject of a will that has yet to be probated since 2010 and this was not questioned.
- The land in question has been squatted on by Tom Hennessey, the applicants father.

- The land is not registered by the land registry, the solicitors letter on the planning file does not record official property ownership, and as a result does not guarantee title. No official documents were ever furnished to prove ownership.
- The field floods down towards the existing agricultural entrance.

6.2. **Planning Authority Response**

There was nothing further to add on appeal.

6.3 **Applicant's Response**

- The lands were transferred to the landowner when his father was still alive.
- No evidence has been provided regarding Tom Hennessy squatting on the lands
- The ground is suitable for sewage disposal.

7.0 **Assessment**

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

- Compliance with National Planning Policy
- Compliance with Development Plan Policy
- Land Ownership
- 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, Criostal Hennessy. The Hennessy family live in the area and the land (the field) is owned by her uncle, Sylvester Hennessey. The applicant works in Kilkenny City (23Km from the site), and her parents live next door to the subject site. She wants to remain in the area with her own family and

community. She works as a youth worker in rural Kilkenny, and the Goresbridge area falls within work remit, although this is not substantiated by any evidence from her employer. Therefore, I conclude, the applicant has not demonstrated an economic need to live in the area.

However she has demonstrated a social need to live there, as she is part of the existing community, and the land belongs to her wider family. The other applicant, Patrick Healy, is from the same local parish.

In accordance with the publication, **Sustainable Rural Housing Planning Guidelines for Planning Authorities 2005** the site is located within an area designated as being under strong urban influence .

I consider the applicant has made a social case to live in the area, and therefore complies with National Policy Objective 19, of the National Planning Framework 2020.

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 Duninga, 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 her family live in Duninga, and the subject site is owned by her uncle, with her parents living on the contiguous lands. I note the applicant is employed in Kilkenny city, 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 Landownership

On appeal the third party, a relative of the applicant, claims the subject site is part of lands that have been in probate since 20210. The appellant claims the lands are being squatted on by the applicant's father. There are no official documents on the planning file to prove ownership of the land.

In the letter of further information, the applicant was requested to submit legal documentation from Syl Hennessey (applicants uncle) that he is the landowner of the site. In response, a solicitors letter was submitted confirming Sylvester Hennessey is the owner of the site in question with registration occurring in the Registry of Deeds.

There was no evidence submitted to substantiate either the claim of probate by the appellant or land registry maps by the land owner. This issue of contention is a civil matter between the parties and beyond the remit of the Board.

7.5 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 locally important aquifer with high vulnerability. The groundwater flow direction is south easterly in accordance with the site contours. The Trial Hole revealed a silt/ clay subsoil with gravel and cobbles. The result of the T test was 54 and the result of the P test was is not stated.. A proprietary treatment plant and percolations pipes is proposed.

During my site inspection in April 2021, I noted the site was grassland and free draining. I saw no evidence of vegetation associated with waterlogged soils.

7.6 Traffic

Unfortunately, 46metres of mature hedgerow needs to be removed along the road frontage of the site in order to achieve the 90metre sightline in both directions. As the rural area is unspoilt in the general area of the site, and the mature hedges are a feature of the visual qualities of the rural area, it is necessary that a replacement indigenous hedge is provided along the new setback roadside boundary fence line.

7.7 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 road is pristine and unspoilt by one-off housing. The proposed dwelling is bland in design, part single storey, part two-storey, and I consider it to be a very bulky elevation statement on the landscape. The window design is ad hoc and crude. The constituted stone finish appears to be ill-conceived and bears no relationship to the architecture of the area. I consider the overall design to be poor and the dwelling will be obtrusive on the landscape.

In my opinion, the elevations of the dwelling in terms of layout, bulk and specification will militate against the rural qualities of the area and visual amenities of the immaculate countryside. As stated above, 46metres of the existing hedgerow of the entire field is to be removed and setback, including a feature tree, and replaced with a hedge and fence which again will militate against the preservation of the rural environment, and represent a discordant feature on the rural landscape.

7.8 Appropriate Assessment

The River Barrow and River Nore SAC (Site Code 002162) is located 1 KM to the south 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 overturn the planning authority's decision to grant planning permission for the proposed development and refuse it for the following reason:

9.0 Reasons and Considerations

The site of the proposed development is located within 'Stronger Rural Areas under Significant Urban Influence' as set out in the current Development Plan for the area, where emphasis is placed on the importance of designing with the landscape and of

siting of development to minimise visual intrusion on the open countryside. Having regard to the topography of the site, the elevated positioning of the proposed development, together with its scale, bulk and design, and the removal of the front hedging, it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area, would fail to be adequately absorbed and integrated into the landscape, would militate against the preservation of the rural environment and would set an undesirable precedent for other such prominently located development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

14/05/2021