



An
Bord
Pleanála

Inspector's Report ABP-309597-21

Development	Permission for the construction of a dwelling, wastewater treatment system and percolation area, borehole, soakpits and associated site works.
Location	Glebe, Kells Road, Co. Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	20/500
Applicant(s)	David Walton & Sarah Tyrrell.
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	Third Party V Decision
Appellant(s)	Stephen & Regina Breen
Observer(s)	None
Date of Site Inspection	1st day of June 2021
Inspector	Fergal Ó Bric

1.0 Site Location and Description

- 1.1. The subject site is located in a rural area approximately 2.8 kilometres south of Kilkenny City within the townland of Glebe.
- 1.2. The site is surrounded by agricultural fields and a number of one-off dwellings to the north, south and west and the James Stephens GAA entrance and pavilion is located on the opposite side of the R697, to the east of the appeal site. The site has a stated area of 0.26ha, with hedging to the east and north and open to the field to the west and south. Access to the site would be from the R697, a regional route, linking Kilkenny City with Kells, where the 80 kilometres per hour speed control zone applies. There is a continuous white line along the site road frontage. Site levels fall gradually from south to north towards Kilkenny City.

2.0 Proposed Development

- 2.1. The development relates to the following:
 - Permission to construct a one and a half storey dwelling house and domestic garage
 - Permission for installation of a wastewater treatment system, percolation area, bored hole, soakpits and all associated site works.
- 2.2. The development is located on family lands, owned by the male applicant's mother.
- 2.3. Further Information was submitted by the applicant in relation to: Compliance with ribbon development policy; Sampling and analysis of groundwater in the vicinity of the site and the submission of a cross section of the percolation area.
- 2.4. Clarification of further information was submitted in relation to: Sampling and analysis of groundwater in the vicinity of the site.
- 2.5. Two reports prepared by a hydrologist providing details of groundwater quality sampling and testing were submitted to the Planning Authority as part of the planning documentation.

3.0 **Planning Authority Decision**

3.1. **Decision**

Kilkenny County Council granted planning permission for the development subject to twelve conditions. The following is a summary of the pertinent conditions:

Condition 3(a); Occupancy clause.

Condition 4: Sterilisation of remainder of field from further residential development for a period of ten years.

Condition 5: Installation and construction of wastewater treatment system and percolation area.

Condition 9: Entrance and sightline details.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

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

- The site is located in an Area under Urban Influence. The applicants are from the area. Their current place of residence is located immediately north of the appeal site within the overall family land holding.
- Site is suitable for effluent treatment
- Sightlines acceptable. The proposals provide for the removal and set back of the full extent of the roadside boundary hedgerow for approximately 60 metres in a southerly direction.
- The site is not located in an area of High Visual Amenity. The design of the dwelling house is considered to be acceptable.
- An Appropriate Assessment (AA) screening exercise concluded that given the separation distance between the source and receptor that no adverse impact is likely on any Natura 2000 site.

3.2.2. Other Technical Reports

Environment: No objections, subject to conditions.

Area Engineer: No objections, subject to conditions.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Submissions**

One submission was received, and the issues raised therein are similar to the issues raised within the third-party appeal submission.

4.0 **Planning History**

On appeal site:

I am not aware of any planning history pertaining to the appeal site.

On family land holding:

Planning Authority reference number: 00/1940 In 2000, Permission granted to Billy and Nuala Walton (parents of the male applicant) to construct a dwelling, garage, and associated site works.

Planning Authority reference number: 18/709: In 2018, Permission granted to Caroline Walton (sister of male applicant) to construct a dwelling further north of the family land holding.

5.0 **Policy and Context**

5.1. **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

In areas under urban influence and in stronger rural areas the Council will permit (subject to other planning criteria) single houses for persons where the following stipulations are met:

1. Persons who are employed full-time in rural-based activity such as farming, horticulture, forestry, bloodstock, or other rural-based activity in the area in which they wish to build or whose employment is intrinsically linked to the rural area in which they wish to build such teachers in rural schools or other persons by the nature of their work have a functional need to reside permanently in the rural area close to their place of work.
2. A fulltime farm owner or an immediate family member (son, daughter, mother, father, sister, brother, heir) wishing to build a permanent home for their own use on family lands.
3. Persons who have no family lands but who wish to build their first home, on a site within a 10 km radius of their original family home, (the local rural area) in which they have spent a substantial and continuous part of their lives (minimum 5 years).
4. Persons who were born and lived for substantial parts of their lives (minimum 3 year) in the local area and wish to return to live in the local area (returning migrants).
5. A landowner who owned property prior to 14th June 2013 wishing to build a permanent home for his/her own use or a son or daughter. (This provision is to deal with historical land issues which might arise close to existing settlements where families could be excluded from building a home for their own lands for their own occupation due to emerging development trends over previous plan periods. This cut off date is a definitive time frame which will not be revised in subsequent Development Plans.

5.1.3. Section 3.5.2 of the Plan addresses the issue of Ribbon Development as follows:

Ribbon Development: is defined as existing where there are 5 or more houses on any one side of a given 250 metres of road frontage. If four houses exist on any one side of a given 250 metres of road frontage, it is likely that ribbon development may be created with an additional house.

Ribbon Development is discouraged for a variety of reasons, including road safety, future demand for the provision of public infrastructure and visual impact. The Planning Authority will have discretion to allow well-spaced infill ribboning to complete a particular settlement pattern only, but not where it will lead to further gap infill sites or the coalescence of separate ribbons of development or, in combination with other ribbons, lead to the over proliferation of houses resulting in overdevelopment creating ribbon development, wastewater disposal difficulties, traffic or other serious planning issues in the immediate area.

Consideration will be given to granting permission for development for a house which would extend an undesirable pattern of ribbon development in an area provided:

- There is no other family land that can be put forward as a site for the applicant under planning considerations.
- That the applicant has not sold off sites to third parties (i.e., non-family members) or obtained planning permission for a dwelling previously, and
- That the applicant or the landowner has not obtained planning permission(s) previously for the houses which have contributed to the ribbon development adjacent to the proposed site.

If these criteria are met the Council may consider granting permission provided all other technical criteria are met and provided the further dwelling will not lead to over development of the area.

5.1.4. Section 11.7.8.2 of the Plan sets out the following Roads Development Management Criteria:

- Restrict new access points to a minimum on Regional Roads to preserve their strategic function and in the interests of traffic safety.
- To ensure that the required standards for sight distances and stopping sight distances are in compliance as far as possible, with current road geometry standards as outlined in the NRA document *Design Manual for Roads and Bridges 196* (DMRB) specifically Section TD 41-42/09 when assessing planning applications for individual houses in the countryside. Such standards

should not be achieved by the extensive removal of hedgerows, ditches, embankments, trees, or old walls, and should be in accordance with Section 2.8 of the Rural Design Guide.

5.2. **Draft Kilkenny County Development Pan 2021-2027**

Section 7.8.4 Categories of Rural Compliance and qualifying Criteria

It is the Council's objective for areas of urban influence to facilitate the rural generated housing requirements of the local rural community (as identified in this section) while on the other hand directing urban (non-rural) generated housing to areas zoned and identified for new housing development in the city, or towns and villages.

Areas under urban influence display the greatest pressures for development due to the commuter dependence of these areas on urban areas for reasons of employment and other social and economic functions.

In areas under urban influence the Council will permit (subject to other planning criteria) single houses for persons where the following stipulations are met:

1. Persons with a demonstrable economic need to live in the particular local rural area, being people who are for example:
 - a. employed full-time 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 in which they wish to build, such as teachers in rural schools or other persons who by the nature of their work have a functional need to reside permanently in the rural area close to their place of work, provided that they have never owned a house in a rural area.
2. Persons with a demonstrable social need to live a particular local rural area,
 - a. Persons who have lived a substantial period of their lives in the local rural area (minimum 5 years), who have never owned a rural house and who wish to build their first home close to the original family home.
 - b. Returning emigrants who do not own a house in the local area and wishes to build their first permanent home for their own use in a local rural area in which they lived for a substantial period of their lives (5

years), then moved away or abroad and who now wish to return to reside near other family members.

All applicants for one-off rural housing will need to demonstrate compliance with the qualifying criteria of one of the above categories unless otherwise specified as being located within an area where the Rural Housing Policy does not apply.

The Planning Authority shall have regard to the viability of smaller towns and rural settlements in the implementation of the policy.

5.3. Kilkenny Rural Design Guide

Section 3 of this document pertains to scale, form, massing, and proportion.

5.4. National Policy

5.4.1. Sustainable Rural Housing Planning Guidelines

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

5.4.2. 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.

5.5. **Natural Heritage Designations**

River Barrow & Nore Special Area of Conservation (SAC) side code 002162 and the River Nore Special Protection Area (SPA) are both located approximately four kilometres north-east of the appeal site.

5.6. **Environmental Impact Assessment-Preliminary screening**

Having regard to the modest scale of the development, and the separation from any environmentally sensitive sites, there is no real likelihood of significant effects on the environment arising from the 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. A third-party appeal by Stephen & Regina Breen, of Inchiholohan House, Kells Road, Kilkenny, neighbours of the applicants who reside approximately 100 metres west of the appeal site was received, and the following is a summary of the issues raised within their appeal submission:

Principle of Development:

- The site is located within an area under strong urban influence as defined within the Development Plan.
- As per Objective 19 of the National Planning Framework (NPF) residential development should only be permitted based on the core considerations of demonstrable economic or social need.
- In this area where the lands are unzoned and unserviced, is under urban influence and already has an excessive density of development, the proposed development does not satisfy the economic or social needs referred to in the NPF.

- The housing need of the applicants is already satisfied within the family land holding.
- The current proposal, if permitted would constitute ribbon development and contravene Section 12.10 of the Development Plan where ribbon development is strongly discouraged.
- The applicants are already residing on the family land holding and hold down full-time teaching jobs and the male applicant farms part-time on the family holding of approximately nine hectares.

Design, Siting & Layout:

- The proposal would result in the development of another wastewater treatment system in an area where there is a high concentration of these systems in existence.
- The proposed development would be located approximately 60 metres in front of the appellants property boundary.
- Inchiholahan House, although not a protected structure is of historical significance within the local landscape.
- The entrance would be immediately south of the entrance piers to Inchiholahan House and was not moved further south within their site as referenced within the planning documentation.

Residential Amenity:

- The proposed development would be injurious to the residential amenity, character and setting of Inchiholahan House.
- There are no landscaping plans to the rear of the proposed site.

6.2. Applicant Response

A summary of the applicants' response to the third-party appeal submission is as follows:

Background and Context:

- The applicants robustly meet the requirement of demonstrable economic and social need as set out within the NPF.
- They meet the criteria for rural generated housing as set out within the Development Plan as this was reflected in the Planning Authority decision.
- The applicants are happy to accept occupancy and sterilisation conditions in respect of the remainder of the lands within their control.
- The male applicant states that he works full time hours on the farm and that the family farm succession plan provides that the farm will pass to him.
- The applicants work in schools in the town of Callan.
- His job as a teacher qualifies him for a house in the local rural area under the provisions of the Development Plan.
- The male applicant took over the running of the family farm in 2012 upon the passing of his father. He has completed the Green Certificate in agriculture in 2019 and has undertaken farm machinery training
- The applicants are from the area, and both are members of the local GAA club.
- The Planner deemed that the development was appropriate in terms of compliance with the Rural Housing Policy, traffic, siting, and design considerations.

Design & Layout:

- The proposal would lead to the creation of ribbon development, but as per the provisions of the Development Plan they do not have other options available, have not sold sites to third parties or previously obtained planning permission.
- The applicants have submitted reports prepared by a Hydrologist which demonstrate that following water sampling in a number of local bored wells that no presence of contaminants was identified, and therefore that the local groundwater is not contaminated by either agricultural or human waste and that the site is deemed suitable for accommodating an additional discharge of treated domestic wastewater.

- Inchiholohan House and the appeal site are separated by mature trees and hedgerows and a separation distance of 116 metres would protect against overlooking or overshadowing.

Access:

- The Planning Authority deemed the access point to be safe.
- The applicants would be happy to open an access further south within their site if the Board deem appropriate.

6.3. Planning Authority Response

The Planning Authority stated that in addition to the Planners Report that the applicants have demonstrated compliance under criterion 2 of the Rural Housing Policy in terms of being an immediate family member and demonstrated compliance with National Policy Objective 19 of the NPF having demonstrated demonstrable economic and social need to reside at this location.

7.0 Assessment

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

- Compliance with Planning Policy
- Design and layout
- Other Issues
- Appropriate Assessment

7.2. Compliance with Planning Policy

7.2.1. According to the planning documentation submitted, Mr. David Walton, was born and reared in the Glebe area. He remains living in the local community. His current place of residence is stated to be in a dwelling, owned by the family on the family farm holding, north of which is his mother's dwelling and further north again is the dwelling of his sister, Caroline, permitted in 2018. The dwellings have been developed on the family farm holding which is stated to comprise 9.5 hectares. The applicant states that he is employed as a school teacher within the settlement of Callan and is

employed as a farmer on the family farm. He wants to remain in the area and living in proximity to his family. Given that the male applicants primary income is derived from his employment in education, it is not considered that the applicant has demonstrated an economic need to reside in the area.

- 7.2.2. In accordance with Section 3.5.2.3 (Rural housing policy) of the Kilkenny Development Plan, within bullet point two which states that “A fulltime farm owner or an immediate family member (son, daughter, mother, father, sister, brother, heir) wishing to build a permanent home for their own use on family lands”. I am satisfied that David Walton has demonstrated a social need to live in the area, as he is an immediate family member wishing to build a permanent home on family-owned lands. However, this policy is stated to be subject to other planning criteria, such as the extent of development on a land holding, ribbon development, design and layout, access, and wastewater treatment, which will be considered further within this report.
- 7.2.3. In terms of the level of development on the land holding to date, I note that three dwellings have been constructed on the land holding to date. One is occupied by the male applicant’s mother, one by his sister and the other is presently occupied by the applicants, but it is stated that this property is to be willed to another family member. Given that the appeal site is located within an area designated as being under urban influence and within 3 kilometres of Kilkenny City, and the modest extent of the family land holding, in an unserviced rural area, that has experienced significant residential development, the construction of a fourth dwelling could be considered excessive.
- 7.2.4. Ribbon development is defined within Section 3.5.2 of the Development Plan and the development of the proposed dwelling would result in the creation of ribbon development; it would be the fifth dwelling within a distance of approximately 200 metres on the western side of the regional route. There are a number of exemptions set out within the Plan where ribbon development would be acceptable, however these exceptions would be acceptable only where the development would not lead to an over development of the area. Given the designation of the area as an area under urban influence within the Development Plan and having regard to the provisions of objective 19 of the NPF, I consider that the current proposal would contribute to the over-development of this area, and therefore, would be contrary to

the provisions of Section 3.5.2 of the Development Plan, regarding contributing to ribbon development.

7.3. Access

- 7.3.1. The proposal is to open a new domestic access point directly onto the adjoining regional route, the R697, at a point where the 80 kilometre per hour speed control limit applies and where there is a continuous white line along the site frontage. The proposed access would be located directly opposite the entrance point to the James Stephens GAA complex. Section 11.7.8.2 of the Development Plan sets out that new individual access points onto regional routes should be restricted to preserve their strategic function and in the interest of traffic safety.
- 7.3.2. It is proposed to remove the full extent of the roadside boundary, comprising approximately 60 metres of hedgerow in order to achieve sightlines of 145 metres in each direction from the proposed access point. Section 11.7.8.2 sets out that these road safety standards should not be achieved by the extensive removal of hedgerows. I consider that the proposed access and the works required to achieve the requisite sightline standards would be contrary to the provisions of Section 11.7.8.2 of the Development Plan and that the proposed development would be contrary to the proper planning and sustainable development of the area.
- 7.3.3. I consider that the proposals would lead to the generation of traffic and turning movements which would interfere with the safety and free flow of traffic along this regional route, where individual access points are to be restricted in order to preserve the level of service and carrying capacity of the road and to protect the public investment in the road. Therefore, I consider that the proposals would result in the creation of a traffic hazard and would be contrary to the proper planning and sustainable development of the area.

7.4. Design and layout

- 7.4.1. The applicants are proposing to construct a storey and a half dwelling, with a floor area of 229 square metres and a maximum ridge height of 7.7 metres. A detached garage is proposed on the northern side of the dwelling. External finishes would comprise a sand cement render and natural stone with a blue/black natural slate on the roof. The established building line to the north would be respected within the proposals. The design is somewhat over complicated with two projections and a bay

window on the front elevation, however, the design as proposed would accord with the main principles of the Kilkenny Rural Design Guide.

7.4.2. The proposed dwelling would be located approximately 130 metres east of Inchiholohan House which has a north-south orientation. Given the separation distances between the two properties and the existence of mature screening east of Inchiholohan House, I am satisfied that the proposal would not adversely impact upon the amenities of residents of Inchiholohan House by reason of overlooking.

7.4.3. An on-site wastewater treatment system is proposed to serve the dwelling. Two hydrological reports were submitted as part of the planning documentation and in spite of the dense concentration of individual treatment systems in this area, serving the neighbouring one-off dwellings, the hydrological report concluded that the proposed system would not adversely impact upon the ground water quality in the area, following a sampling and analysis of water samples from a number of neighbouring bored wells. I am satisfied that the proposed wastewater treatment system would accord with the provisions of the EPA code of Practice 2009 (as amended). I would also concur with the findings of the hydrological assessment regarding the potential impact of the proposed wastewater treatment system upon local ground water quality.

7.5. Appropriate Assessment

Having regard to the nature and scale of the development 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 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

I recommend that planning permission be refused for the following reasons

9.0 Reasons

- 1 It is the policy of the planning authority as set out in the current development Plan to control urban sprawl and ribbon development. This

policy is considered reasonable. The proposed development would be in conflict with this policy because, when taken in conjunction with existing and permitted development in the vicinity of the site, it would consolidate and contribute to the build-up of ribbon development in an open rural area. This would militate against the preservation of the rural environment and lead to demands for the provision of further public services and community facilities. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 2 It is considered that the proposed development would endanger public safety by reason of traffic hazard because the site is located alongside the regional route, the R697, at a point where a speed limit of 80 km/h applies and the traffic turning movements generated by the development would interfere with the safety and free flow of traffic on the public road.

The proposed development would also contravene the objectives of the planning authority which are considered reasonable to restrict new access points to a minimum on regional roads to preserve the level of service and carrying capacity of the road and to protect the public investment in the road.

Fergal Ó Bric

Planning Inspectorate

15th day of June 2021.