



An  
Bord  
Pleanála

## Inspector's Report

### ABP-310238-21

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<b>Development</b>	Construction of a single storey dwelling.
<b>Location</b>	Mungan, The Rower, Co Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	21118
<b>Applicant(s)</b>	Eilis Mernagh & Owen Lennon
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission with Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Patricia Cantlon.
<b>Observer(s)</b>	Michael Doyle
<b>Date of Site Inspection</b>	10/11/2021
<b>Inspector</b>	Caryn Coogan

## 1.0 Site Location and Description

- 1.1. The site, 0.28ha, is located in a rural area north-west of The Rower village in Co. Kilkenny in a townland called Mungan.
- 1.2. The site is a portion of a green field and is accessed from a local road. The field is grazing land with mature hedgerows. The local road is narrow fronting the site.
- 1.3. There is a mature hedge along the southern site boundary, and beyond that there is a two-storey dwelling. The roadside boundary is the western site boundary, consists of a sod and stone mound with a mature hedge.
- 1.4. The two remaining site boundaries are the open field. The site is relatively flat with a gentle slope from east to west.

## 2.0 Proposed Development

- 2.1. The proposed dwelling is a four-bedroom single storey dwelling with a ridge height of 5.8metres.
- 2.2. A package wastewater treatment system and soil polishing filter is proposed. A private well is proposed.

## 3.0 Planning Authority Decision

### 3.1. Decision

Kilkenny Co. Co. granted planning permission for the proposed development on 19<sup>th</sup> of April 2021, subject to 12No. standard planning conditions associated with rural housing.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports*

The applicants comply with the local needs policy of the development plan.

The design and scale of the dwelling is acceptable.

The sight lines and access are acceptable with 70metres provided in both directions.

Drainage proposals are acceptable.

### 3.2.2. Other Technical Reports

***Environment Section*** :- No objection

***Area Engineer***: No objection.

### 3.2.3 Third Party Submissions

The third party submission cited the following concerns:-

- A number of previous refusals associated with the subject site;
- The area should be kept tranquil and free from development as it is unspoilt countryside
- The road is narrow and a new entrance will create a traffic hazard

## 4.0 Planning History

There were no previous planning applications on the subject site. There is a planning history associated with the field where the site is located.

### ***Planning References 02330, and 021033***

Miriam Kavanagh applied for planning permission for a dwelling in the field in 2002. The planning permission was granted by Kilkenny Co. Co. but refused on appeal by the Board.

### ***Planning Reference 072092***

Denis and Bernadette Savage were granted planning permission for a house in the field in 2007. The decision was appealed to the Board who subsequently refused it because the applicants did not meet local needs policy requirements.

## 5.0 Policy Context

### 5.1 National Policy

#### 5.2.1 Sustainable Rural Housing Planning Guidelines DOE 2005

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

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;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on 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 Development Plan

### 5.2.1 Kilkenny County Development Plan 2014-2020

5.1.1 The site of the proposed development is located within an area designated as an ‘*Stronger Rural Area*’.

#### 5.1.2 3.5.2.2 Stronger Rural Areas

In stronger rural areas of the county, it is a key objective of the Council to consolidate and sustain the stability of the population and in particular to strike a balance of activity in the smaller towns and villages and the wider rural area thereby ensuring that these areas maintain a stable population base.

In stronger rural areas, the Council will endeavour to:

Accommodate proposals for individual rural generated houses subject to compliance with the rural housing policy and normal siting and design criteria.

Promote the development of houses in the designated settlements and villages in the county subject to appropriate servicing.

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

Planning permission granted for rural housing within Stronger Rural Areas shall be subject to a condition restricting the permission (until completed and ready to occupy) to the applicant/s only for a period of five years. The permission can, within this five year period, be transferred to another person only with the written consent of the Planning Authority where the prospective purchaser complies with the applicable rural housing policies.

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

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

1. Persons who are 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)
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).

#### 5.1.4 **Kilkenny Rural Design Guide, 2008**

## 5.1. Natural Heritage Designations

The closest Natura 2000 site is River Barrow and River Nore SAC (Site Code 002162) approx. 5km to the west and 2Km to the east.

## 5.2. EIA Screening

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

The appellant Patricia Cantlon lives at Cullintra House, The Rower. Her grounds of appeal can be summarised as follows:

- **Planning History:** Permission has been refused on several occasions for a dwelling house in the subject field where the current proposal is located.
- **The Area:** The general rural area is unspoilt unlike a lot of rural areas in Kilkenny. The appellant runs Cullintra House an animal and bird sanctuary where people come from worldwide to enjoy the peace and tranquillity of the area. The unspoilt countryside should be protected.
- **Privacy:-** The development would spoil the privacy of the neighbouring dwelling.
- **Local Needs:** The applicants are not from the area, and they are just buying the site to build on. There are other sites and houses for sale in the area they originated from.
- **Traffic :** The narrow lane is known as Church Lane, and is a hazard for walkers and cyclists enjoying the unspoilt countryside.

## 6.2. Applicant Response

One of the applicants Eilis Mernagh submitted a response to the appeal.

- The planning permission currently been sought is on a different road to previous refusals. The previous refusals do not apply to the subject site.
- There is no animal or bird sanctuary on the site or beside it. The appellants lands are at Cullintra, Inistioge. The site is located at Mangan, the Rower
- There has been no objection from the neighbouring family to the proposed dwelling.
- The applicant was born and reared in The Rower and has lived there 27 of her 34 years. The site is within 1mile, as the crow flies, from her family home. Her mother and her three brothers live in The Rower. Her daughters are at the local creche and enrolled in the local school.
- The dwelling complies with Sustainable Rural Housing – Guidelines for Planning Authorities' 2005.

## 6.3. Planning Authority Response

There were no further comments by the planning authority on appeal.

## 6.4. Observations

Michael Doyle made an observation stating the applicant is local to the area and has lived in The Rower all her life. They have a housing need and want to live in the area. The applicant enables the community to sustain the creche, schools and shop. There is no animal or bird sanctuary at the subject site. The appellant has a long history of objecting to planning applications in the area.

## 7.0 Assessment

7.1 The appeal will be assessed under the following headings:

- Compliance with National Planning Policy
- Local Planning Policy

- Design
- Traffic
- Waste Treatment
- Other Issues
- Appropriate Assessment

## 7.2 **Compliance with national and local Planning Policy**

### ***Compliance with National Planning Policy***

According to the appeal file, the applicant, Eilis Mernagh, was born and raised in Raheenduff, The Rower, and she returned to live at home in 2019 while saving for a mortgage. She works in New Ross town which is 8km south of The Rower. The other applicant Owen Lennon is engaged to Ms Mernagh and works as a plasterer for a local building company in The Rower. In my opinion, neither applicant has established an economic need to live in a rural area.

- 7.3 Ms Mernagh states her mother, and two brothers live in The Rower area, and her two daughters are enrolled in Mary Mount National School, The Rower. The subject site is owned by a third party and a non-family member. There have been previous refusals for one off housing in the residual field area where the site is located. The landowner has attempted to sell a site in the field since 2002 and again in 2007. Ms Mernagh has demonstrated in the planning application, a social need to live in the area as she is a long-term resident of the area. Her immediate family still resides in the area. The other applicant, Mr. Lennon, has no links to the area.

In accordance with the publication, **Sustainable Rural Housing Planning Guidelines for Planning Authorities 2005** the applicants are considered to be rural generated housing. I consider the applicant has made a social case to live in the area, which will assist in sustaining a more fragile rural community 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 3.5.2.2 (Rural Generated Housing Need) of the County Kilkenny Development Plan:-



In stronger rural areas, the Council will endeavour to accommodate proposals for individual rural generated houses subject to compliance with the rural housing policy and normal siting and design criteria. It is the Council's objective for stronger rural areas to facilitate the rural generated housing requirements of the local rural community while on the other hand directing urban generated rural housing to areas zoned for new housing development in the city, towns and villages. Planning permission granted for rural housing within Stronger Rural Areas shall be subject to a condition restricting the permission (until completed and ready to occupy) to the applicant/s only for a period of five years.

*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).*

- 7.4 The documentation on the planning file demonstrates how Eilis Mernagh is from Raheenduff, the general The Rower area, which is within the 10km radius as prescribed by the development plan. Her immediate family still live in the area. She has demonstrated that she has lived a considerable portion of her life in the area and currently resides at the family home with her two daughters. I note the applicant is employed in New Ross, which is an urban based employment 8km from the site. The other applicant, Mr. Owen Lennon, has not demonstrated any social or economic need to live in the area, however he is engaged to Ms Mernagh.

Based on the above development plan planning policy, I conclude, the applicant complies with the local needs policy of the county development plan because she has demonstrated strong social and community connections to the area.

#### 7.5 **Design**

The proposed dwelling is a basic single storey dwelling, 195sq.m. with a detached garage 40sq.m. The dwelling includes four bedrooms. It is positioned at the southern extremity of the site alongside a two-storey dwelling.

The area is not a designated landscape. There are no scenic routes affecting the site. The proposed dwelling is less than 6metres in height.

Due to it's modest scale and low profile, the proposed dwelling is unlikely to negatively impact on the visual amenities of the area.

The site layout and house design is consistent with *Kilkenny Rural Design Guide, 2008*.

#### **7.6 Traffic**

The proposed access to the development is a splayed entrance off a local road at the northern extremity of the roadside boundary. The sightlines from a 2.4metre setback, will be 70metres in both directions providing the roadside boundary ditch is setback in compliance with the submitted documentation.

The local road fronting the site is narrow and has extensive mature hedgerows along both sides.

There are relatively few dwellings in the vicinity of the subject site utilising the road. Having regard to the adequacy of the sightlines being provided at the proposed entrance and the low volume of traffic associated with the local road, I consider the proposed development would not constitute a traffic hazard.

#### **7.7 Waste Treatment**

A site suitability test was carried out on site. The underlying aquifer is of local importance. The vegetation on the site would suggest free draining percolative capabilities. The average T Value was calculated at 29 and the average P value was 27. It is proposed to install a packaged wastewater treatment system and soil polishing filter (raised percolation area). The Environment Section in the report dated 12<sup>th</sup> of April 2021 had no objections to the proposed development and recommended five conditions to be attached to the permission. The proposed development complies with the *E.P.A Guidelines for Waste Treatment for Single Dwellings*.

#### **7.7 Other Matters**

The third-party appellant mentioned an animal and bird sanctuary, which is located at her residence Cullintra House and estate. I accept her description that the site is located in an unspoilt countryside. I do not accept that the development of the site will impact on her animal and bird sanctuary which is located a considerable distance from the site.

#### **7.8 Appropriate Assessment**

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. 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

8.1. I recommend the planning authority's decision to grant permission be upheld by the Board.

## 9.0 Reasons and Considerations

Having regard to the provisions of the National Planning Framework, and the Kilkenny County Development Plan 2014 – 2020 and that the site is located in an area that falls within the category 'Stronger Rural Areas', as set out in the *Sustainable Rural Housing Guidelines for Planning Authorities, 2005*, it is considered that the applicant satisfies the relevant policies and guidelines for a rural dwelling in this area, and that, subject to the conditions set out below, the proposed dwelling on this site would be compatible with the amenities of the area, would not give rise to a traffic hazard, and is consistent with the relevant design and siting requirements, including that of the Kilkenny Rural Design Guide, 2008. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.
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	<p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter, unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.</p> <p>(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.</p> <p>This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.</p> <p><b>Reason:</b> To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.</p>
3.	<p>Prior to commencement of development, the developer shall enter into water connection agreement(s) with Irish Water.</p> <p><b>Reason:</b> In the interest of public health.</p>
4.	<p>The site shall be landscaped, using only indigenous deciduous trees and hedging species, with details which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with</p>

	<p>others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p><b>Reason:</b> In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.</p>
5.	<p>Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
6.	<p>The proposed domestic garage shall be used for domestic storage purposes ancillary to the proposed dwelling and shall not be used for any commercial or habitable use without a prior grant of planning permission.</p> <p><b>Reason:</b> In the interest of proper planning and sustainable development.</p>
7.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

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**Caryn Coogan**  
**Planning Inspector**  
6<sup>th</sup> of December 2021