



To: The Board

From: Planning Inspector – Stephanie Farrington

Re: Board Direction – BD-011840-23

Date: 28th of July 2023

Development House, Garage, Waste-Water Treatment system and percolation area.

Location Shellumsrath, Kilkenny.

1.0 Introduction

- 1.1. This report is an addendum to an original report dated the 26th of September 2022, in respect of an appeal against a Notification of Decision to Grant Permission issued by Kilkenny County Council for the construction of a house, garage, waste water treatment system and percolation area at Shellumsrath, Kilkenny.
- 1.2. The original Inspector's Report recommended permission be refused for the development in accordance with the following reasons and considerations:

“Having regard to the location of the site within an area under strong urban influence as identified in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005, the location of the site within an Area under Urban Influence as identified within the Kilkenny City and County Development Plan 2021-2027, and to National

Policy Objective 19 of the National Planning Framework, adopted by the Government, in relation to rural areas under urban influence, such as in the current case, which states that it is policy 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...having regard to the viability of smaller towns and rural settlements”, the Board is not satisfied that the applicant has provided sufficient justification for a rural housing need to live in this rural area, or that the applicant’s housing need cannot be satisfied in a designated settlement within the County Settlement Hierarchy.

The proposed development, in the absence of any definable or demonstrable need for the house, would contribute to the encroachment of random rural development in the area, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, contravene the Ministerial Guidelines and be contrary to national policy and be contrary to the proper planning and sustainable development of the area”.

- 1.3. The above was a new issue in the appeal and the Inspectors Report noted that the Board may wish to seek the view of parties.
- 1.4. The submissions on this file including the original Inspector's Report were considered at a Board meeting held on the 25th of January 2023. The Board decided to defer consideration of this case and to issue a Section 137 notice to the applicant regarding the following:
 1. *“Having regard to the location of the site within an area under strong urban influence as identified in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005, the location of the site within an Area under Urban Influence as identified within the Kilkenny City and County Development Plan 2021-2027, and to National Policy Objective 19 of the National Planning Framework, adopted by the Government, in relation to rural areas under urban influence, such as in the current case, which states that it is policy 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...having regard to the viability of smaller towns and rural settlements”, the Board might not be satisfied that the applicant has provided sufficient justification for a rural housing need to live in this rural area, or that the applicant’s housing need cannot be satisfied in a designated settlement within the County Settlement Hierarchy.

The proposed development, in the absence of any definable or demonstrable need for the house, might contribute to the encroachment of random rural development in the area, and militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development might, therefore, contravene the Ministerial Guidelines and be contrary to national policy and be contrary to the proper planning and sustainable development of the area”.

2. *“Having regard to the information on file and notwithstanding the submission of a Site Characterisation Form with the application, the Board noted the submissions on file from the appellant which showed considerable flooding in the area and within the excavated trial hole, and might be concerned that the proposed waste water treatment system including polishing filter would be prejudicial to public health”.*

1.5. The Section 137 request was issued to the applicant, the appellant and Kilkenny County Council on the 1st of February 2023. The applicant, appellants and Kilkenny County Council all provided a response to the Section 137 notice. A summary of the responses is provided below.

1.6. The submissions on file and the Inspector’s report were considered at a Board meeting on the 02/03/2023. Following the issuing of a S137 notice and subsequent submissions received, the Board directed that the file be forwarded to the reporting inspector for the preparation of an addendum report that takes account of the Section 137 notice and the responses received.

2.0 Responses

2.1. Applicant Response

- 2.1.1. A response to the Section 137 request was provided by Billy Moran, Architectural Design and Health and Safety Services on behalf of the applicants Matthew and Fabiana O' Brien. The following provides a summary of the key points raised:

County Development Plan Compliance

- The applicants live with their parents Nicholas and Maura O'Brien at "Glountha", Drakelands, Kilcreen Road, Kilkenny. The property consists of a dwelling, outbuildings and 17.39 ha of land and a further 17.17ha in Garringreen, Kilkenny. The lands at Drakelands are subject of a Section 47 Agreement and sterilized for a period of 7 years and cannot be built on.
- Matthew works on the farm and grows organic food. The family herd number is provided.
- Fabiana has a part-time business based from Drakelands (Fabiana O'Brien – Terapias Integradas).
- Matthew's parents are both in their late 60's and not enjoying good health. A letter from Matthew's parents is attached to the appeal response.
- The site is located 2km from Glountha and ideal for farm management and is near to Matthew's parents dwelling.
- The submissions relate to the following qualifying criteria of the Kilkenny City and County Development Plan 2021-2027:

"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 function 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".

- The applicant's response outlines that Matthew complies fully with this criteria for the following reasons:
 - He is engaged in farming activity and his work on the farm is a full-time occupation to manage and maintain. He attends on the farm daily. It is stated that the farm on its own will not provide a sufficient income and therefore he has other interests to supplement his income.
 - Matthew and his wife Fabiana have not owned a rural house at any time in the past and have a demonstrable need of housing.
 - The proposed site is located less than 10km (2km) from the family home and lands.

Matthew and Fabiana now have a daughter born last September and this reinforces their need for a family home.

Flood Risk – Site Suitability

- The applicant's response cross refers to the photographs submitted with the 3rd party appeal which illustrates flood in the trial holes in part of the site. The response outlines that these photographs were taken in December 2020. It is stated that this was taken into consideration in advance of the planning application being made and new trial holes were excavated in a different location outside of the flooded area.
- The applicant's response outlines that there is no evidence of the site being flooded since. The testing was done in March 2021 and the test location did not show evidence of water ingress or mottling of the soil at the test location and the proposed location for the effluent treatment system. The response cross refers to the Site-Specific Flood Risk Assessment carried out by IE Consulting attached as Appendix 3 of the appeal.
- The trial holes remained open during the period of assessment and were inspected by the Environment Section of the Council.

2.2. Third Party Response

2.2.1. A response to the Section 137 request was provided by the appellant's Dan and Elaine Comerford, Brookfield, Shellumsrath, Kilkenny. The following provides a summary of the response received:

- The response makes cross reference to the appeal submitted in respect of the notification of decision of Kilkenny County Council to grant permission for the proposed development which raised issues of site suitability in relation to ground water and flooding issues. It is stated that other issues raised within the appeal included traffic volumes, ribbon development and road safety.
- The appellant outlines that since the initial appeal on the 15th of September 2021, there have been further significant flooding events within close proximity to their home. The appellant's response includes photographs of significant flood events on their property and across the appeal site. It is stated that these illustrate the reality on ground of the unsuitability of the development site to be able to cater for surface waters and storm waters within the development site.
- The appeal response cites guidance from the Sustainable Rural Housing-Guidelines for Planning Authorities which relates to ensuring minimal impacts on water quality and particularly groundwater quality.
- The appellant's response furthermore includes reference to the guidance set out within "The Planning System and Flood Risk Management – Guidelines for Planning Authorities 2009" which seek to avoid inappropriate development in areas at risk of flooding.
- The appellant's response questions the local need of the applicants in light of the site characteristics and the recent housing developments within the local area which would offer adequate housing options within the local area without encroaching on further random rural development within the area and further impacting the rural environment.

- In conclusion, the third-party response outlines that in the intervening period between the initial appeal it is considered that the site is unsuitable due to increase pressure on ground waters and the appellants property. Granting planning permission will cause risk of further impact on the appeal site and on ground waters.

2.3. **Planning Authority Response**

- 2.3.1. Kilkenny County Council confirmed that they had no further comments to make in respect of the appeal.

3.0 **Assessment**

- 3.1. Having regard to the Section 137 Notice and subsequent submissions, this assessment shall only consider matters relating to the following:

- Compliance with Rural Housing Policy
- Site Suitability - Flood Risk / Waste Water proposals

3.2. **Compliance with Rural Housing Policy**

- 3.2.1. The site is located in an area that is identified as being under strong urban influence in the Sustainable Rural Housing Guidelines and is classified as being within an Area under Urban Influence within Figure 7.1 “Rural Housing Strategy” of the Kilkenny City and County Development Plan 2021-2027. The first issue raised within the Section 137 request related to the demonstration of sufficient justification for a rural housing need to live within the rural area identified in accordance with national and Development Plan policy.
- 3.2.2. Section 7.8.4 of the Kilkenny City and County Development Plan sets out qualifying criteria for Rural Housing within Areas Under Urban Influence. The following qualifying criteria are identified.

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 born within the local rural area, or 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. Persons born in the area without having lived for the minimum of 5 years must be able to demonstrate strong family and social connections to the area to demonstrate a demonstrable social need.*
 - 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.

- 3.2.3. The applicant's response to the Section 137 request outlines that the applicants are applying on the basis of compliance with Criteria 1 above. It is stated that Matthew O' Brien complies fully with this criteria for the following reasons:
 - He is engaged in farming activity and his work on the farm is a full-time occupation to manage and maintain. He attends on the farm daily. It is stated that the farm on its own will not provide a sufficient income and therefore he has other interests to supplement his income.
 - Matthew and his wife Fabiana have not owned a rural house at any time in the past and have a demonstrable need of housing.

- The proposed site is located less than 10km (2km) from the family home and lands.

3.2.4. On the basis of the information submitted in conjunction with the application and Section 137 response I am not satisfied that the applicant's are employed full time in a rural based activity. The applicants are not employed full-time in a rural-based activity or other rural-based activity or whose employment is intrinsically linked to the rural area in which they wish to build. The applicants do not therefore meet an economic need to develop at this location. The applicant's response to the Section 137 request outlines that the applicant has other interests to supplement his income. I do not consider that the applicants satisfy the requirements of Criteria 1.

3.2.5. I refer to the requirements of Qualifying Criteria 2 (a) which relates to a social need to live in a particular rural area. The applicant's Section 137 response outlines that both Matthew and Fabiana live with Matthew O' Brien's parents located at Drakelands c. 2km from the appeal site and have lived there for the past 6 years. The applicant's have not provided any evidence to this effect.

3.2.6. An OS map illustrating the location of the appeal site relative to the applicant's family home is provided. The Section 137 response outlines that the applicants have never owned a rural house and want to build their first home close to the family home. The lands at Drakelands are subject of a Section 47 Agreement and sterilized for a period of 7 years and cannot be built on.

3.2.7. On review of the information submitted I am not satisfied that the applicants have demonstrated a social need to live in the area or demonstrated that the applicant's housing need cannot be satisfied in a designated settlement within the County Settlement Hierarchy.

3.2.8. The appeal site is located c.2km from the applicant's family home. Kilkenny City is also located within 2km of the applicant's family home. I also refer to the designated small towns/ villages and rural nodes as illustrated in Figure 4.1 of the County Core Strategy set out within the Kilkenny City and County Development Plan. These are designated as an alternative to the provision of single houses in un serviced rural areas. Objective 4J of the Kilkenny City and County Development Plan seeks to "*To develop a programme for 'new homes in small towns and villages' in conjunction with, public infrastructure agencies such as Irish Water and local communities for the*

provision of serviced sites with appropriate infrastructure to attract people to build their own homes and live in small towns and villages”.

3.2.9. The Development Plan supports the sustainable development of rural areas and sustainable settlement patterns. The Strategic Aim for Rural Development as set out within Chapter 7 of the Kilkenny City and County Development Plan seeks: *“To manage rural change and guide development to strengthen the rural economy and community through the network of towns and villages ensuring vibrant, sustainable and resilient rural areas whilst conserving and sustainably managing our environment and heritage”.*

3.2.10. I am not satisfied that the applicant’s housing need cannot be satisfied in a designated settlement within the Kilkenny City and County Settlement Hierarchy.

Conclusion

3.2.11. Based on the information submitted in conjunction with the application and the Section 137 request, I am not satisfied that the applicants have demonstrated a local need to live within the area or demonstrated compliance with the qualifying criteria for Rural Areas Under Urban Influence as set out within the Kilkenny City and County Development Plan 2021-2027. I recommend that permission is refused for the development on this basis.

3.2.12. The proposed development, in the absence of any definable or demonstrable need for the house, would contribute to the encroachment of random rural development in the area, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, be contrary to the settlement hierarchy as set out within the Kilkenny City and County Development Plan and be inconsistent with the proper planning and sustainable development of the area.

3.3. Site Suitability – Flood Risk/ Waste Water

3.3.1. The Section 137 request raised concern in relation to flooding within the area, as illustrated on the submissions on the file from the appellant, and whether the proposed wastewater treatment system would be prejudicial to public health. The applicant’s response outlines that these photographs were taken in December 2020 in advance of the planning application being lodged and new trial holes were excavated in a different location outside of the flooded area. Cross reference is

made to the Site Characterisation Form which does not show evidence of water ingress or mottling within the trial hole.

- 3.3.2. I refer to the appellants response to the Section 137 request which includes photographic evidence of flooding in the vicinity of the appeal site. The appellants response outlines that the photographs were taken on the 23rd of October 2022. The submitted photographs illustrate flooding on the field behind their home and directly adjacent to the proposed development site and the River Breaghagh (Photo 1) and flooding in front of their house (Photo 2).
- 3.3.3. On review of the appellants Section 137 response, I note that the photographs illustrate flood risk within the vicinity of the appeal site and not on the appeal site. I refer to the Site-Specific Flood Risk Assessment submitted in support of the planning application which identifies fluvial flooding within the vicinity of the site along the banks of the River Breaghagh and in the vicinity of the appellants vehicular entrance. This corresponds with the photographic evidence submitted by the appellant in the Section 137 response. The appeal site does not extend to include this area.
- 3.3.4. The third-party appeal refers to presence of pluvial flooding and ponding of surface waters on the appeal site in November 2020 as illustrated in Photo 3 of the appeal. However, I note that the Site Characteristics Form did not show evidence of water ingress or mottling of the soil at the test location and the proposed location for the effluent treatment system.
- 3.3.5. Having regard to the information submitted in conjunction with the application including the Site-Specific Flood Risk Assessment and site levels, I am satisfied that applicant has demonstrated that the risk of flooding to the proposed development is low and will not exacerbate flood levels within the site or surrounding area. On this basis I have no objection in principle to the siting of the proposed waste water treatment system and polishing filter and do not consider that it would be prejudicial to public health.

4.0 Recommendation

- 4.1. I recommend that permission should be refused for the development in accordance with the following reasons and considerations.

5.0 Reasons and Considerations

1. Having regard to the location of the site within an Area under Urban Influence as identified within the Kilkenny City and County Development Plan 2021-2027, and to the Qualifying Criteria for Rural Housing within Areas under Urban Influence as set out within the Development Plan, the policies, objectives and strategic aims of the Kilkenny City and County Development Plan which promote sustainable rural settlement patterns and guide development to the existing network of towns and villages the Board is not satisfied that the applicant has provided sufficient justification for a rural housing need to live in this rural area, or that the applicant's housing need cannot be satisfied in a designated settlement within the Kilkenny City and County Settlement Hierarchy.

The proposed development, in the absence of any definable or demonstrable need for the house, would contribute to the encroachment of random rural development in the area, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, be contrary to the settlement hierarchy as set out within the Kilkenny City and County Development Plan 2021-2027 and be inconsistent with the proper planning and sustainable development of the area.

Stephanie Farrington
Senior Planning Inspector

28th of July 2023