



An
Bord
Pleanála

Inspector's Report

ABP-312401-22

Development	Construction of a dwelling house and garage.
Location	Curraghlane Upper, Skeaghvasteen, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	21295
Applicant(s)	Kevin Kirwan & Lorraine O'Grady
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Kevin Kirwan & Lorraine O'Grady
Observer(s)	None
Date of Site Inspection	23 rd November 2022
Inspector	Mary Crowley

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1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.21ha is located in a rural area c 4.5km south of Goresbridge. There is a crossroads junction located c50m to the north west of the site entrance. The appeal site is an infill site between two modest single storey dwellings. The applicants parents house is located immediately to the north of the site and which has been subdivided to accommodate this application. The site is an elevated open site that affords uninterrupted views of the surrounding rural area. A set of photographs of the site and its environs taken during the course of my site inspection is attached. These serve to describe the site and location in further detail.

2.0 Proposed Development

2.1. Planning permission was sought on the 16th April 2021 to construct a predominantly single storey / part two storey dwelling house (230.2 sqm), with garage (48 sqm), entrance, effluent treatment system, polishing filter percolation area, and all associated site works and services.

2.2. The application was accompanied by a Site Characterisation Form, details of wastewater treatment system, letter from the applicant setting out why they want to build at this location and a letter of consent from the landowner.

2.3. Further information was submitted on the 12th November 2021 summarised as follows:

- Proposed to sink a new well to service the dwelling
- Due to Covid restrictions and the necessity to interfere with existing wells to take water samples, the applicant has been refused permission to enter onto any third-party properties to take any such samples. The applicant intends to treat his proposed water supply by removing all lime and soluble salts from the supply and also intends to use ultraviolet to sterilize the water before entering the domestic water pipework
- Revised site suitability test submitted together with dimensioned cross sectional and longitudinal layout of proposed wastewater treatment system
- Contiguous elevation detailing how the proposed dwelling house will integrate with the adjacent single storey dwelling
- The following additional supporting documentation was submitted:

- 1) A letter from the national school confirming that the applicant (O'Grady) went to school there and that her daughter is currently a pupil at this school
- 2) A letter from the applicants' current landlord confirming their address and renting of same from 1st September 2016 to date
- 3) A letter from the applicants confirming that they never applied for any other planning permission, that they do not own any other property, that the land is in family ownership for the last 4 generations and that the applicants' parents (O'Grady) live directly adjacent to this site and the long term proposal is to help out with their care as they get older.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Kilkenny County council issued a notification of decision to refuse permission for the following reason:

Taking account of the absence of groundwater quality information, the Planning Authority is not satisfied that on site well and wastewater disposal system proposed will be fit for purpose and will not pose a risk to public health as a result of the location of the site in an area of extreme vulnerability to a locally important aquifer and concentration of surrounding on site waste water systems. It is considered that further development could exacerbate the threat to groundwater quality which, in turn, will represent an unacceptable risk to public health and the environment. The proposed development is therefore contrary to the proper development and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** in their first report and having considered the report of the Environment Section and the Area Engineer (summarised below) requested further information in relation to the following as summarised:

- 1) Revised sightline drawing together with proposals for the existing field gate to the site
- 2) Public water is at capacity. Location of private water supply complying with all separation distances
- 3) Sampling and analysis of groundwater in the vicinity of the proposed site
- 4) Specific engineering works required to render the site suitable for development
- 5) Contiguous elevation to show relationship between the proposed house and the adjoining single storey dwelling
- 6) In order to comply with rural housing policy, submit proof of address, if the application has been granted planning permission before and applicants housing need.

3.2.2. Further information was requested on the 2nd June 2021. Please note that the FI request was not made available with the appeal file. I have printed same from the Council website and is available to view on the file.

- The **Case Planner** in their second report and having considered the further information submitted recommended that permission be refused in accordance with the recommendation of the Environmental Engineer as the Planning Authority was not satisfied that on site well and wastewater disposal system proposed will be fit for purpose and will not pose a risk to public health. The notification of decision to refuse permission issued by Kilkenny County Council reflects this recommendation.

3.2.3. Other Technical Reports

- **Environmental Engineer** – In their first report raised concerns exist regarding the on-site treatment systems discharging to groundwater in the vicinity of this site. In particular the impact of such discharges on groundwater quality is of concern. Further information was requested.
- **Environmental Engineer** – Having considered the further information recommended that permission be refused *in the absence of groundwater quality information*.

- **Area Engineer** – In their first report requested further information in relation to sightlines, location of this road sign to see if it falls within the visibility splays and proposal for existing flied gate.
- **Area Engineer** – Having considered the further information submitted had no objection to the proposed development subject conditions.

3.3. Prescribed Bodies

3.3.1. None

3.4. Third Party Observations

3.4.1. None

4.0 Planning History

4.1.1. No planning history has been provided with the appeal file and there is no evidence of any previous appeal at this location.

5.0 Policy Context

5.1. National Policy

5.2. National Planning Framework – Project Ireland 2040 (DoHP&LG 2018)

5.2.1. The *National Planning Framework – Project Ireland 2040* (NPF) is a high-level strategic plan for shaping the future growth and development of Ireland to 2040. A key objective of the Framework is to ensure balanced regional growth, the promotion of compact development and the prevention of urban sprawl. It is a target of the NPF that 40% of all new housing is to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites with the remaining houses to be delivered at the edge of settlements and in rural areas.

5.3. **National Policy Objective 19** refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e., the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations. In rural areas elsewhere, it

refers to the need to 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. In all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitely demonstrate that the proposed development will not have an adverse impact on water quality and requirements set out in EU and national legislation and guidance documents.

5.4. Sustainable Rural Housing Development Guidelines 2005

- 5.4.1. The *Rural Housing Guidelines* seek to provide for the housing needs of people who are part of the rural community in all rural areas and makes a distinction between 'Urban Generated' and 'Rural Generated' housing need. Chapter 4 of the guidelines relates to rural housing and planning applications and states that in areas under significant urban influence, applicants should outline how their proposals are consistent with the rural settlement policy in the development plan. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply, including 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.
- 5.4.2. The Guidelines further require that new houses in rural areas be sited and designed in a manner so as to integrate well with their physical surroundings and generally be compatible with water protection, roads, traffic and public safety as well as protecting the conservation of sensitive areas
- 5.4.3. **Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)"** – Environmental Protection Agency, 2009 – Sets out guidance on the design, operation and maintenance of on-site wastewater treatment systems for single houses.

5.5. Development Plan

- 5.5.1. The operative plan for the area is the **Kilkenny City and County Development Plan 2021-2027**. Figure 7.1 Rural Housing Strategy identifies the appeal site as within an area under urban influence.

5.6. Natural Heritage Designations

- 5.6.1. The appeal site is not located in or immediately adjacent to a European Site. The River Barrow and River Nore SAC is 2.5 km to the north east of the site. There are no watercourses at or adjacent to the site

5.7. EIA Screening

- 5.7.1. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment. 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

- 6.1.1. The first party appeal has been prepared and submitted by Michael Reilly Consulting Forensic & Litigation Engineer on behalf of the applicant and may be summarised as follows:
- The request for additional information necessitated access to private property in order to obtain water samples during the Covid lockdown. Due to the covid restrictions and the applicant was refused permission to enter third party lands to take samples. The only comfort offered was that such wells were in daily use and that the water was uncontaminated.
 - The request for additional information was prejudicial to the applicant. Submitted that the only manner in which the information sought could be obtained was for the applicants agents to disobey the lockdown requirements.
 - The applicants have demonstrated that they have an abiding need to reside at this location. The applicant (O'Grady) is her parents sole support, an obligation that will become more onerous and demanding as time progresses and therefore has a requirement to reside at this location.
 - Submitted that the Local Authority are cognizant that there is no problem with water quality in this area.

- Planning permission should have been granted and that to safeguard the ground water that a suitable waste water treatment system with sand polishing filter could have been conditioned. Submitted that they could have also conditioned that the existing septic tank (O'Grady) be upgraded to a similar standard if they were concerned about water quality.

6.2. Planning Authority Response

6.2.1. The Planning Authority submitted the following in response to the first party appeal:

- The applicant did not provide any technical details on background raw ground water quality (Lab Results) in the locality. The applicant did not even identify any well locations on a map or drawing for consideration on foot of the FI.
- The existing properties within the adjacent agglomeration are essentially served by domestic wastewater treatment systems, with a considerable number it is believed also served by domestic wells.
- The Local Authority are statutorily obliged to protect groundwater and groundwater sources in line with the Water Framework Directive, having regard to existing pressures such as Agriculture and Domestic Wastewater Treatment Systems.
- Given the date of receipt of the further information the local authority are essentially time barred from seeking clarification of further information on this particular application
- Submitted that the Planning Authority requested similar groundwater quality data on multiple planning application sites within the County under similar circumstances in 2021 and all applicants returned some level of groundwater quality data for consideration. Consequently, it is not accepted that the level of Covid restrictions precluded the gathering of groundwater data in this instance and within the period for responding to the further information request.
- In the absence of background groundwater quality information in the locality the Planning Authority does not feel that a contingency submission is appropriate in this case. For example the existing background nitrate levels could already be in excess of the EPA intervention limit or indeed the drinking water standards limit.

6.3. Observations

6.3.1. None

6.4. Further Responses

6.4.1. The first party having considered the Planning Authority response to the appeal submitted the following:

- It is agreed that the applicants did not provide any technical details as they were unable to gain access to any third party properties as Ireland was in lockdown at the time, and they were denied entry to third party lands.
- Both neighbours were unwilling to allow water samples to be taken from their wells but both parties assured the writer that their water was in daily use and was potable but advised the use of a water softener.
- The County Council had any number of options open to them including the following:
 - a) Requesting further particulars by pointing out that they were not satisfied with the replies to the original further information request (as they regularly do) or
 - b) Requesting the applicants to grant them more time to consider the application because they were unable to decide on the application without water samples
 - c) The County Council could have granted the permission with a condition that stipulated that a wastewater treatment system with sand polishing filter to an agreed design before any works commenced be provided on the site.
- For the duration of the Covid lockdown period Ms O'Grady and her daughter lived at home with Ms O'Grady parents and Mr Kirwan joined them at weekends. The applicants daughter attends the local National School and is minded by Ms O'Grady's parents before and after school and spends most weekends at her grandparents' home with her parents as her friends and after school activities are all local to Ms O'Grady's parents home.
- A planning permission properly conditioned to protect existing water quality, would not result in unsuitable development or improper planning of the particular areas in this instance, especially when all other planning criteria are clearly satisfied.

7.0 Assessment

7.1. This assessment is based on plans submitted to the Planning Authority on the 16th April 2021 as amended by further information submitted on the 12th November 2021 together with details and particulars submitted to An Bord Pleanála.

7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Groundwater Quality
- Other Issues
- Appropriate Assessment

7.3. Principle

7.3.1. Planning permission was sought on the 16th April 2021 to construct a two storey dwelling house (230.2 sqm), with garage (48 sqm), entrance, effluent treatment system, polishing filter percolation area, and all associated site works and services.

7.3.2. The rural settlement policy for Kilkenny County is set out in Chapter 7 of the 2021 – 2027 Development Plan. Figure 7.1 Rural Housing Strategy identifies the appeal site as within an area under urban influence. I refer to Section 7.8.4 where it states that in areas under urban influence the Council will permit (subject to other planning criteria) single houses for persons where either an economic or social need is met. All applicants for one-off rural housing will need to demonstrate compliance with the qualifying criteria of one of these categories unless otherwise specified as being located within an area where the Rural Housing Policy does not apply.

7.3.3. Having regard to information on file I consider that the applicant should be assessed under the following economic criteria:

- Persons with a demonstrable economic need to live in the particular local rural area – 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 does not therefore meet an economic need to develop at this location.

- Persons with a demonstrable social need to live a particular local rural area – I refer to Appendix 1 of the Planning Application Form (Supplementary Information) where it states that the second named applicant (O’Grady) is the daughter of the owner of the proposed site. The first named applicant (Kirwan) works as an Engineer in Dublin (50km away) and that the second named applicant works as a buyer in Borris, Co Carlow (10km). There is a letter from the applicants confirming that they never applied for any other planning permission, that they do not own any other property, that the land is in family ownership for the last 4 generations and that the applicants parents (O’Grady) live directly adjacent to this site. The dwelling is for the applicants’ own occupation and the applicants’ are willing to accept an occupancy condition restricting first occupancy of the house as a permanent place of residence for the applicants.
- I also refer to a letter submitted with the application from the second named applicant and daughter of the owner of the proposed site (O’Grady) where she outlines the following reasons of why she needs to build in this area:
 - 1) Her daughter is attending the local primary school and wants to access the secondary school for Borris Vocational School
 - 2) Mother and daughter are heavily involved in the local Blacks and Whites GAA Club (training, matches, community games)
 - 3) Need to provide future care and support to her elderly parents who live next door

7.3.4. Having regard to the information available on file I am satisfied that the applicant has demonstrated a social need to reside permanently in this rural area.

7.3.5. Section 71 of the Development Plan also requires that all permission granted for rural housing within the Areas of Urban Influence shall be subject to an occupancy condition restricting the use of the dwelling to the applicant or members of his/her immediate family as a place of permanent residence for a period of seven years from the date of first occupancy. It is recommended that should the Board be minded to grant permission that such a condition be attached. A sterilisation agreement is not necessary in this case.

7.3.6. I am satisfied that the applicant meets the social need criteria set out in Section 7.1 of the Development Plan. As set out above it is recommended that should the Board be minded to grant permission that an occupancy condition be attached.

7.4. **Groundwater Quality**

7.4.1. Kilkenny County Council issued notification of decision to refuse as it was not satisfied that on site well and wastewater disposal system proposed will be fit for purpose and will not pose a risk to public health as a result of the location of the site in an area of extreme vulnerability to a locally important aquifer and concentration of surrounding on site wastewater systems.

7.4.2. I refer to the report of the KCC Environmental Engineer. There is a water main in the vicinity of the proposed dwelling, but it is at capacity. Irish Water has confirmed that they are at capacity for a water connection. As such the new dwelling is to be served by an onsite well.

7.4.3. The site in question is located in a locally important aquifer and in an area of "X" extreme vulnerability, which returned a "T" value of 1.94 min / 25 mm and a "P" value of 17.86 min / 25 mm. The Environmental Engineer noted that the adjoining property has a water supply provided by a well. Concerns exist regarding the on-site treatment systems discharging to groundwater in the vicinity of this site. I agree with the Environmental Engineer that the impact of such discharges on groundwater quality is of concern.

7.4.4. Consequently, further information was sought requiring the submission of sample and analysis of groundwater in the vicinity of the proposed development (300 – 500m of the site), a report outlining the specific engineering works required to render the site suitable for development, compliance with the EPA Code of Practice, Wastewater Treatment and Disposal System Serving Single Houses (p.e. < 10) 2009 and a detailed report confirming the Treatment System Performance Standards and the Hydraulic Loading. I consider this request is pertinent and reasonable in this case.

7.4.5. The applicant in their response to the FI request stated that due to Covid restrictions and the necessity to interfere with existing wells to take water samples, the applicant has been refused permission to enter onto any third-party properties to take any such samples. This is where the primary difficulty has arisen in this case. While there may

have been some reasonable merit in the response given the restrictions in place at the time it remains that the applicant has not taken the opportunity as part of the appeal process to address the serious concerns raised and provide the information as requested.

- 7.4.6. Having regard to the quick percolation rates noted on the site characterisation report, there is a serious concern that a prevalence of waste water treatment systems in the locality may have an impact on groundwater quality, and in turn may impact on the proposed new well to serve the proposed dwelling. I agree with the KCC Environmental Engineer that in the absence of background groundwater quality (raw water sampling from boreholes) with the added low percolation values, a decision on the feasibility of the dwelling with regard to onsite well with domestic wastewater treatment system cannot be made. Refusal is recommended in line with the reason for refusal issued by Kilkenny county Council.

7.5. **Other Issues**

- 7.5.1. **Development Contributions** – I refer to the Kilkenny County Council Development Contribution Scheme 2018. The development is not exempt from the requirement to pay a development contribution. It is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000

7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the development and its distance to the nearest 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**

- 8.1. Having considered the contents of the application the provision of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my

assessment of the planning issues, I recommend that permission be **REFUSED** for the following reason.

9.0 **Reasons and Considerations**

The public water mains in this area are at full capacity. The proposed dwelling is therefore to be served by an onsite bore well. Taking account of the absence of groundwater-quality information presented with the application and subsequent appeal, the Board is not satisfied that the on-site bore well and wastewater disposal system proposed will be fit for purpose and will not pose a risk to public health as a result of the location of the site in an area of extreme vulnerability to a locally important aquifer together with the concentration of on site waste water systems proximate to the appeal site. It is therefore considered that the proposed development could exacerbate the threat to groundwater quality which, in turn, will represent an unacceptable risk to public health and the environment. The proposed development is therefore contrary to the proper development and sustainable development of the area.

Mary Crowley

Senior Planning Inspector

24th November 2022