



An
Bord
Pleanála

Inspector's Report ABP-312892-22

Development	Construction of a 3 bedroom two storey dwelling house with car garage.
Location	Barnaviddaun South, Gaignamanagh, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	21932
Applicant(s)	Michael Cullen
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Sharon & Darragh Kelly
Observer(s)	None
Date of Site Inspection	1 st September 2021
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.293 ha comprises agricultural land located between 2 no two storey dwellings c1.4km to the north of the town of Graiguenamanagh. The immediate area is characterised by traditional farm dwellings with associated agricultural buildings and more recent linear housing development. The area is accessed by means of a network of narrow, winding roads with significant bends, few passing places and restricted forward visibility. 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 is sought to erect a 3 bedroom two storey dwelling house (226 sqm) with car garage, new entrance, sewage treatment system with partially raised soil polishing filter and associated site works. The application was accompanied by a cover letter, letter of consent from the land owner, letter from the applicant, supplementary information for a rural house application, DEAP Report and a site characterisation form.
- 2.2. Further information was submitted on the 20th January 2022 and 24th January 2022 comprising a site layout plan indicating the location of the neighbouring wells and a site layout plan indicating the existing hedgerow to be removed and replaced with a timber post and rail fence. The submission was accompanied by a letter of consent from the landowner to replace the existing boundary with a timber post and rail fence.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Kilkenny County Council issues a notification of decision to grant permission subject to 11 no conditions summarised as follows:

1.	Compliance with plans and particulars submitted
2.	Section 48 Development Contribution

3.	Wastewater Treatment
4.	Stormwater
5.	Construction waste recovery / disposal
6.	Construction noise / dust emissions
7.	Water supply
8.	Access & Sight Lines
9.	Boundary treatment
10.	Finishes
11.	Garage for residential enjoyment only

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** in their first report requested further information in relation to (1) location of neighbouring wells and (2) roadside boundary treatment. Further information was requested on the 12th January 2022
- The **Case Planner** in their second report and having considered the further information submitted recommended that permission be granted subject to conditions. The notification of decision to grant permission issued by Kilkenny County Council reflects this recommendation.

3.2.2. Other Technical Reports

- **Area Engineer** – Requested that the applicant submit proposals for the replacement of roadside boundary with a timber post and rail fence, or similar to be agreed.
- The **Environmental Engineer** had no stated objection to the proposed development subject to condition in relation to wastewater treatment, stormwater, construction management and operations and supply of potable water supply.

3.3. Prescribed Bodies

3.3.1. None

3.4. Third Party Observations

- 3.4.1. There is one observation recorded on the planning file from Darragh and Sharon Kelly. The issues raised relate to local need, removal of hedgerow and traffic safety.
- 3.4.2. There is a further letter from Cllr Michael Doyle on the planning file stating that the applicant is from the parish, has no other lands suitable for development, is committed to supporting his community and hopes to be able to build a family home in his community where he works and has lived all his life.

4.0 Planning History

- 4.1. I note from the application form that there was a previously granted planning permission on this site, Reg Ref 081114 refers. I further note from the applicants response to the appeal that planning permission has been granted on three previous occasions with the last being in 2008. However, no details pertaining to these previous planning decisions have been provided with the appeal file
- 4.2. There was a previous appeal on this site that may be summarised as follows:
- **PL10.222308 (Reg Ref P062279)** – Kilkenny County Council granted planning permission for the erection of dwellinghouse, domestic garage/store and associated siteworks at Barnaviddaun South, Graiguenamanagh subject to conditions. Following a third party appeal the Board refused permission for 3 reasons relating to (1) housing need, (2) erosion of rural character and scenic qualities of the area of high amenity and (3) traffic hazard.

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 “**other area**” and not an area under urban influence and is therefore subject to the criteria set out in Section 7.84 of the Development Plan.

5.6. Natural Heritage Designations

- 5.6.1. The appeal site is not located in or immediately adjacent to a European Site. The Special Area of Conservation: River Barrow And River Nore SAC is c800m to the east of the appeal 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 third-party appeal has been prepared and submitted by Darragh & Sharon Kelly, Barnaviddaun South, Graiguenamanagh (adjoining site) and may be summarised as follows:
- There was a previous appeal on this site where permission was refused (PL10.222308 (Reg Ref P062279) refers) for 3 no reasons relating to (1) housing need, (2) erosion of rural character and scenic qualities of the area of high amenity and (3) traffic hazard. These refusal reasons and considerations remain valid and have become more relevant in the intervening period with respect to the changes in policy and in the demographic on the residents living within the immediate area.
 - **Refusal Reason No 1** - Having regard to the current Development Plan the site is within an area identified as an area under urban influence where the applicant must

demonstrate an economic or social need to live at this location. Submitted that the applicant operates a cleaning and maintenance service “Brandon Maintenance Exterior Cleaning Service” with two addresses that are removed from the site at Lucan, Dublin and New Ross, Co Wexford.

- **Refusal Reason No 2** – The Boards findings in this reason for refusal remain undiluted. The provision of a new development at this location will require significant hedgerow removal which is at odds with Section 9.2.5.1 of the Development Plan.
- **Refusal Reason No 3** – Additional traffic volumes on this very narrow local secondary road (circa 3m wide) is of grave concern. Although the blind hair-pin bend to the south referred to in the previous inspector’s report is part of the conditions of approval in this case, its replacement by a post and rail fence will not alleviate the real danger that the road is not wide enough to accommodate increased traffic. Additional traffic will negatively impact the local road network, creating increased safety risks to users, particularly local children and walkers.
- **Conclusion** – Additional development within this area will have a severely negative impact, resulting in increased traffic and greater road safety risks. If permitted it would result in a ribbon development of 3 no houses and a suburban pattern of development that would erode the rural character and scenic qualities of this Area of High Amenity. The applicant has not demonstrated a compelling and genuine rural generated need to live in the area.

6.2. Applicant Response

6.2.1. The first party response to the appeal has been prepared and submitted by the applicant Michael Cullen and may be summarised as follows:

- **Planning Background** – The applicant originally engaged in pre-planning about building a house on a field in family ownership adjoining the applicant parents’ house. However, it overlooks the River Barrow, is in a scenic area and there is a history of multiple planning refusals in the area. It was decided not to pursue the site.
- **Applicant** – They were born and grew up in Ballavarra, Graiguenamanagh c 3.5 miles from the appeal site. The applicant’s parents live there in the family home

and the applicants three uncles also live in the Graiguenamanagh catchment area. The applicant's family has lived in Ballavarra for over 250 years.

- **Overcoming Site Planning History** – The site is not within an “Area Under Urban Influence”. The site is within an area designated “Other Rural Areas” and therefore the housing restrictions do not apply in this rural countryside area. The site is subject to siting and design criteria as contained in the statutory guidelines and plans. The necessities for a business to have multiple addresses is of no bearing on this matter and the applicant has provided significant demonstration of his need and local affiliation to satisfy Kilkenny County Council.
- **Sustainable Housing Policy** – Reference is made to Section 3.2.3 Rural Generated Housing and “persons who are an intrinsic part of the rural community”. The applicant is the son of a family who lives in a rural area (Ballavarra), has grown up in a rural area and lived most of their life there. Letters of schools attended are submitted. The applicant states that they have never owned a dwelling house in a rural area or built a dwelling house previously. Stated that this is an area of population decline. Reference is also made to Section 3.9 of the Development Plan. It is submitted that the proposed development is in keeping with the core development aims of the County Development Plan.
- **Road Infrastructure** – A requirement by the Planning Authority by way of further information was to replace the current hedgerow with a post and rail fence at the junction of roads LS822 and the LS8310. This will widen the road and dramatically improve visibility at this junction. Drawings attached. The Area Engineer was satisfied with the proposal. Regarding accidents on the road it is submitted that Graiguenamanagh Garda Station confirmed that the roads LS8222 and LS8310 are not accident blackspots and that the last reference to any accident in this area was in 2002. The Garda can be contacted in this regard. Details provided.

6.3. Planning Authority Response

6.3.1. None

6.4. Observations

6.4.1. None

6.5. Further Responses

6.5.1. None

7.0 Assessment

7.1. This assessment is based on plans submitted to the Planning Authority on the 12th November 2021 as amended by further information submitted on the 20th January 2022 and 24th January 2022 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
- Traffic Safety & Hedge Removal
- Other Issues

7.3. Principle

7.3.1. 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 “other area” and not an area under urban influence and where housing restrictions do not apply. The site is therefore subject to the criteria set out in Section 7.8.4 Categories of Rural Compliance and Qualifying Criteria of the Development Plan. In these areas it will also be the policy of the Council to accommodate proposals for individual rural or urban generated permanent residential development subject to meeting normal planning and environmental criteria.

7.3.2. While it is not a requirement of the Development Plan to demonstrate economic or social need to live in areas categorised as “other rural areas” I refer to the Supplementary Information Form submitted with the application where the following information is provided:

- Distance of work from present residence – 20 mile radius

- Distance of work from proposed residence – 20 mile radius
- Proposed dwelling is for applicant's own occupation
- Proposed dwelling / site is not for sale
- Applicant is willing to accept an occupancy condition
- Applicant has not applied for planning permission before
- Applicant is an intrinsic part of the Ballavarra / Carrickanoran rural community and has grown up in this area with his parents and siblings
- OS map provided showing location of applicant parents family home located circa 6.5km to the south of Graignamanagh as the crow flies.

7.3.3. I also refer to the letter from the applicant submitted with the application setting out the following as summarised:

- The applicant grew up in Ballavarra.
- The applicant previously sought a pre-appclaiton regarding a site on the L8246 but the Road Engineer and Planners had serious reservations about the road network and previous refusal on this road.
- After looking for an alternative site in the area the applicant found the current site at Barnaviddaun South.

7.3.4. Having regard to the foregoing together with the location of the appeal site within an area classified as "other area" I am satisfied that the principle of constructing a dwelling house at this location is acceptable.

7.3.5. In all cases the consideration of individual sites will be subject to normal siting and design considerations, which will include but not necessarily be limited to the following. I have addressed each of the criteria below.

- *Any proposed vehicular access would not endanger public safety by giving rise to a traffic hazard* – This is discussed separately below
- *That any proposed on-site waste water disposal system is designed, located and maintained in a way which protects water quality* – Having regard to the information submitted on file I am satisfied that the proposed development can be adequately serviced by means of a sewage treatment system with partially raised soil polishing filter and associated site works subject to a condition requiring

compliance with the EPA Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)"

- *That the siting and design of new dwellings takes account of and integrates appropriately with its physical surroundings and other aspects of the natural and cultural heritage* – The extensive removal of the mature boundary hedge and associated traffic impact are discussed separately below. With regard to the proposed dwelling I am satisfied that it has been sited to minimise visual intrusion and would not of itself form a significant obtrusive feature on the landscape or seriously impact the visual amenities of the area.

7.3.6. As stated previously it is not a requirement of the Development Plan to demonstrate economic or social need to live in areas categorised as "other rural areas". I am satisfied that the applicant meets the siting and design criteria as set out in the Development Plan save for the vehicular access and public safety to be discussed below.

7.4. Traffic Safety & Hedge Removal

7.4.1. As documented in Section 4.0 above the Board previously refused permission for a similar development at this location as the site is located on a minor road that is seriously substandard in terms of width and alignment and the proposed development would, therefore, endanger public safety by reason of traffic hazard and obstruction of road users. The third-party appeal raises concerns regarding additional traffic volumes on this narrow local secondary road and that the replacement of the blind hair-pin bend to the south of the site by a post and rail fence will not alleviate the real danger that the road is not wide enough to accommodate increased traffic.

7.4.2. I refer to Section 13.22.1 Rural Housing Access and Sight Lines of the Development Plan where it states inter alia that the applicant must demonstrate that safe vehicular access to and from a proposed site is provided in terms of visibility from a proposed entrance, but also in terms of impact on road traffic on the adjoining public road, through generation of turning and stopping movements by vehicles leaving and entering the proposed site. It also states that site entrances should be located so as to require the least amount of hedgerow removal in accordance with DMRB

requirements and that excessive hedgerow removal will be resisted where setback is considered significant or roadside definition is compromised.

- 7.4.3. I refer to the plans and particulars available on file, the report of the Area Engineer and my site inspection. As set out in the Area Engineers report the access for the proposed development is onto a local secondary road with a speed limit of 80 km/h, the minimum visibility requirement is 90m in both directions measured to the nearside edge of the road from a setback distance of 3m, although this may be reduced to 2.4m in difficult circumstances. Similarly, there must be 90m of clear visibility for right hand turning vehicles.
- 7.4.4. The applicant has submitted a site layout with a visibility splay of 90m. In the western direction the 90m sightline relies on the hedge on the opposite side of the road being maintained; without this maintenance an 80m sightline is achievable. Visibility for right hand turning vehicles of 90m was indicated to the east but not from the western direction. Approximately 80m forward visibility can be achieved in this direction. However, the Area Engineer was satisfied having regard to the road width and alignment in the vicinity, this was deemed acceptable. I agree with the Area Engineers conclusions in this regard.
- 7.4.5. There is a blind hair-pin bend to the south of the appeal site and referred to in the previous inspector's report. A requirement by the Planning Authority by way of further information was to replace the current hedgerow with a post and rail fence at this junction of roads LS822 and the LS8310. While these works will widen the road and improve visibility at this junction and the Area Engineer was satisfied with same I am concerned with the scale of works proposed and the loss of mature hedgerow at this rural location.
- 7.4.6. The road network in the immediate area including the hair pin bend to the west of the site naturally acts to slow traffic as the visibility of vehicles approaching is restricted thereby requiring drivers to negotiate the corner with caution. Setting aside the matter of visual impact, removing the hedgerow has the potential to encourage greater speeds approaching and turning the corner. To this end I recommend that permission be granted subject to a condition omitting proposals to replace the current hedgerow with a post and rail fence at this junction of roads LS822 and the LS8310.

- 7.4.1. Having regard to the foregoing together with my site inspection I am satisfied that the site entrance is adequate to serve the proposed development and that subject to the implementation of the measures outlined in the application that the vehicular movements generated by the proposed development would not have a significant material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic movements in the immediate area.

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 proposed development, the nature of the receiving area (the proposed development has demonstrated that a wastewater treatment plant and surface water soakaway can both be safely accommodated at the site), the physical separation distances to European Sites, and the absence of ecological and/ or hydrological connections, the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

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 **GRANTED** for the following reason.

9.0 Reasons and Considerations

- 9.1. Having regard to the policy and objectives as set out in the Kilkenny City and County Development Plan 2021-2027 in respect of rural residential development, the nature, scale and design of the proposed development (as amended), to the pattern of existing and permitted development in the area it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would respect the existing visual character of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 20th January 2022 and 24th January 2022 and by the further plans and particulars received by An Bord Pleanála, 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>a) The roadside boundary at the junction of the LS8222 and LS8310 shall NOT be replaced with a timber post and rail fence or similar</p> <p>b) The site entrance shall located as per the revised pans and particulars submitted to An Board Pleanála on the 24th January 2022.</p> <p>c) All works associated with eh access and sightlines shall be carried out prior to other works on site to ensure a safe access during construction works. The boundary along the road frontage of the site shall be set back as necessary to achieve the required sightlines and the visibility splay</p>

	<p>shall be kept clear of all obstructions. The verge shall be maintained to safeguard visibility on an ongoing basis. Where hedge is removed it shall be replaced with an indigenous hedge behind sightlines.</p> <p>d) Where roadside boundaries are set back / removed, the area between the boundary and the public roadway shall be suitably structured with stone so as not to lead to deterioration of the road edge. The area shall be finished with topsoil to a level of 200-300mm above road level and seeded with grass.</p> <p>e) The site entrance shall consist of a sod and stone wall/earth mound together with appropriate gate design and planting. Details shall be agreed prior to commencement of work on site.</p> <p>Reason: In the interest of traffic safety and in order to protect the integrity of the public road network and visual amenity.</p>
3.	<p>a) The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009.</p> <p>b) Treated effluent from the septic tank system shall be discharged to a raised percolation area which shall be provided in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009.</p> <p>c) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the raised percolation area is constructed in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health.</p>
4.	<p>a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from</p>

	<p>roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.</p> <p>b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.</p> <p>Reason: In the interest of traffic safety and to prevent pollution.</p>
5.	<p>The water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.</p>
6.	<p>Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
7.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.</p> <p>Reason: In the interests of visual and residential amenity.</p>
8.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p>

	Reason: In order to safeguard the residential amenities of property in the vicinity.
9.	<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 the 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.</p> <p>Reason: 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>

Mary Crowley

Senior Planning Inspector

26th October 2022