



An
Bord
Pleanála

Inspector's Report

ABP-313413-22

Development	Construction of a house, garage, installation of a wastewater treatment system, water supply from new borehole, new entrance from public road and all associated site works.
Location	Tower Road, Jenkinstown, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	21997
Applicant(s)	Padraic Rafter
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Brendan Dawson and Carole McInerney
Observer(s)	None
Date of Site Inspection	18 th of October 2022
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The site (stated area 0.56ha) is located in the townland of Jenkinstown, on the southern side of the LP1824, to the west of the N78. This is a corner site at the junction with road frontage on two sides and access proposed from Tower Road (LS5866) to the south of the site. It is proximate to the junction and is opposite bungalows and the entrance to the roadway leading to Jenkinstown House and Jenkinstown Park.
- 1.2. There is a mature Copper Beech Tree proximate to the road frontage, which adds character to the streetscape on this corner site. There are hedgerows along the road frontages of the site. The site, which is to be taken off the larger field area, is relatively flat and on the day of the site visit, was in agricultural use with tillage crop. There is a field gate along the road frontage.
- 1.3. There are a number of one-off houses predominantly single storey and dormer type houses in the vicinity, including one set back to the southeast of the site and two on the opposite side of the road to the junction and some further one off housing to the northeast. There are no houses on the southern side of Tower Road, close to the junction opposite the site.

2.0 Proposed Development

Permission is sought for the following:

- a) Erection of Dwelling House
- b) Erection of Garage
- c) Installation of New Waste Treatment System
- d) Water Supply from new borehole
- e) New entrance from Public Road
- f) Associated Works

3.0 Planning Authority Decision

3.1. Decision

On the 30th of March 2022, Kilkenny County Council granted permission for the proposed development subject to 13no. conditions. These conditions in summary include relative to development contribution, occupancy, sterilisation agreement, infrastructure (roads/access, disposal of surface water and wastewater treatment system and potable water supply), landscaping, external finishes of proposed house and garage.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner had regard to the locational context of the site, planning history and policy and to the submissions made. Their Assessment included the following:

- Having regard to the documentation submitted they considered that the applicant complies with the rural housing policy for the area.
- They note that there was sterilisation agreement in place from 2002 for a period of 10 years (Ref.P01/1596 refers). They consider that a sterilisation agreement should be entered into regarding this application.
- They have regard to the design and layout of the proposed dwelling.
- They also request details on landscaping of the site be submitted.
- They note that Area Engineer has not objected, subject to conditions and recommend that a revised sightline drawing be submitted.
- They note that a private water supply and onsite wastewater treatment system is proposed.
- The file was referred to Environment Section and they note that they have no objection subject to conditions.
- A Screening exercise was completed, which showed that no significant impact is likely having regard to the distance from Natura 2000 sites.

- It was concluded that an EIAR was not required.

Further Information request

- The applicant was asked to clarify the location of any neighbouring wells and treatment systems to ensure separations can be achieved on site. That this be in accordance with Table 6.3 of the EPA CoP 2021.
- That a revised sightlines drawing be submitted, showing the works required to achieve the required visibility sightlines. Where amendments are required to be carried out to the roadside boundary location outside of their ownership, the written consent of the landowner to be submitted.
- To submit the written agreement of the landowner of their willingness to enter into a section 47 agreement to sterilise the remainder of the roadside lands to the northeast within this overall field from further residential development.
- To submit revised proposals showing the overall height and length of the proposed dwelling reduced and in accordance with the County Kilkenny Rural Design Guide and to ensure only 1no. front door to the front elevation of the dwelling house.
- To submit comprehensive landscaping proposals to aid screening of the site and from the neighbouring dwelling to the east.

Applicants F.I response

Altair's Enterprises response to the F.I on behalf of the Applicant includes the following:

- They refer to revised drawings submitted, showing revisions to the proposed design and layout, including modifications.
- They provide that Sightlines do not intercept the roadside boundary to the neighbouring property and provide a drawing.
- They include a landscaping plan and layout.
- They attach a letter from the landowner to confirm his willingness to enter into a Sterilisation agreement.

Planner's response

They had regard to the F.I submitted, including the revised plans and particulars. They concluded that having regard to the policies and objectives of the Kilkenny City and County DP 2021-2027, the referral reports received and all other material considerations that it is their recommendation that permission be granted subject to conditions.

3.3. Other Technical Reports

Environment Section

They have no objection subject to recommended conditions.

Area Engineer

They make some comments relative to sightlines and provide that they have no objection subject to recommended conditions.

3.4. Prescribed Bodies

Note noted on file

3.5. Third Party Observations

There is one submission from adjacent local residents, this has been noted in the Planner's Report and in summary includes the following:

- The proposed development would cause overlooking and loss of privacy to their dwelling and would have a negative impact on their residential amenity.
- The application site is more elevated than their site and they are concerned about overlooking and surface water drainage issues.
- The close proximity of the proposed garage and boiler house to their well raises concerns about contamination of their water supply.
- The land to the south-east of their property would provide a safer point of entry for a new house and would have less impact on their amenities.

- As was the case with the Application P19/945 by Pádraig Rafter, the proposed development would add to the pattern of ribbon development along the Jenkinstown Road.

4.0 Planning History

The Planner's Report has regard to Planning History and includes note of the following:

Sites within the overall field area:

Reg.Ref.19/945 – Permission refused to the current applicant for the erection of a dwelling house, garage, installation of new waste treatment system, water supply from new borehole and new entrance from the public road for the following reasons:

1. *Having regard to the concentration and pattern of single residential developments set out in the Rural Development Strategy of the Kilkenny CDP 2014-2020, the proposed development would be the fifth house within 250m of the same roadside frontage as set out in the CDP and by Appendix 4 of the 'Sustainable Rural Housing Guidelines' (DoEHLG, 2005) which recommends avoidance from the creation of such development. The proposed development would extend, strengthen and consolidate this haphazard and unsustainable pattern of development. Consequently, the proposed development is contrary to the proper planning and sustainable development of this rural area.*
2. *The applicant has not demonstrated to the satisfaction of the Council that the site is suitable for an on-site wastewater treatment and disposal and would therefore be prejudicial to public health and to the environment.*

This site faced the frontage on the LP1824, on the same greater field area to the northeast of the subject site.

Site to the southeast

- Reg.Ref.01/1596 – Permission granted to Gerard Brennan to construct a dwelling, domestic garage, septic tank and stables and feed store. As part of this application the landowner entered into a sterilisation agreement on the remainder of the landholding which includes the subject site for a period of 10 years.

- Reg.Ref.09/749 – Permission granted to Brendan & Carole Dawson to complete existing dwelling and garage, install wastewater treatment system, build entrance and associated site works.

Both these permissions related to the house that has been constructed to the southeast of the site, with access from Tower Road (LS5866).

Site to the northeast

- Reg.Ref.19/792 – Permission granted to Jennifer and Daniel Holden for the construction of a single storey dwelling, detached garage, treatment system with raised bed percolation area.

This site is further to the northeast of the subject site.

5.0 Policy Context

5.1. National Policy

Project Ireland 2040, National Planning Framework (NPF) 2018

Section 5.3 refers to the growth and development of rural areas and the role of the rural town as a catalyst for this. It is recognised that the Irish countryside is, and will continue to be, a living and lived-in landscape focusing on the requirements of rural economies and rural communities, based on agriculture, forestry, tourism and rural enterprise, while at the same time avoiding ribbon and over-spill development from urban areas and protecting environmental qualities.

Objective 19 outlines that within areas under urban influence, single housing in the countryside will be facilitated based on the core consideration of a demonstrable economic or social need to live in the rural area. It further states that in rural areas elsewhere, it is an objective 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.

5.2. Section 28 Guidelines

Sustainable Rural Housing Guidelines for Planning Authorities 2005

This seeks to encourage and support appropriate development at the most suitable locations. A distinction to be made between 'Urban Generated' and 'Rural Generated' housing need.

Section 3.2.3 concerns Rural Generated Housing and gives an example of Persons who are an intrinsic part of the rural community and Persons working fulltime or part-time in rural areas. This includes reference to people who have lived most of their lives in rural areas and are building their first homes.

Section 3.3 is concerned that the consideration of individual sites will be subject to normal siting and design considerations. These include the following:

- Any proposed vehicular access would not endanger public safety by giving rise to a traffic hazard.
- That housing in un-serviced areas and any on site wastewater disposal systems are designed, located and maintained in a way, which protects water quality.
- The siting of the new dwelling integrates appropriately into its physical surroundings.
- The proposed site otherwise accords with the objectives of the development plan in general.

Section 4.3 refers to Assessing Housing Circumstances. This includes exceptional health circumstances.

Section 4.4 is concerned with Access and restriction of such on National Primary and Secondary Roads.

EPA Code of Practice for Domestic Wastewater Treatment Systems 2021

This Code of Practice (CoP) is published under Section 76 of the Environmental Protection Agency Act, 1992 (as amended).

Its purpose is to provide guidance on domestic waste water treatment systems (DWWTSs) for single houses or equivalent developments with a population

equivalent (PE) of less than or equal to 10. It sets out a methodology for site assessment and selection, installation and maintenance of an appropriate DWWTS.

The current CoP replaces the previous Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) issued in 2009. This CoP applies to site assessments and subsequent installations carried out on or after 7th June 2021. It provides that the 2009 CoP may continue to be used for site assessments and subsequent installations commenced before 7th June 2021 or where planning permission has been applied for before that date.

5.3. **EU Water Framework Directive**

The EU Water Framework Directive (WFD) (Directive 2000/60/EC) creates a framework for the protection of all waters including rivers, lakes, estuaries, coastal waters and groundwater, and their dependent wildlife/habitats, under one piece of environmental legislation.

5.4. **Kilkenny City and County Development Plan 2021-2027**

Chapter 4, Core Strategy sets out the overall development strategy for the county including the rural area: *The Council will ensure that the provision of one-off houses in rural areas does not undermine the vibrancy and vitality of the town or settlements in rural areas while accommodating the dispersed rural living traditions of the rural areas of County Kilkenny.*

Rural Development

Chapter 7 has regard to Rural Development including in Section 7.3 to 'Remote Working and Home-Based Economic Activity in Rural Areas'.

Rural Housing

Section 7.8 - Rural Housing Settlement Strategy. Fig. 7.1 'Rural housing Strategy' provides a Map showing the site within an Area under Urban Influence.

Rural Generated Housing: *Housing needed in rural areas within the established rural community by persons from that community or whose occupation is intrinsically linked with that particular rural area as defined in Section 7.8.4 Categories of Rural Compliance below.*

Section 7.8.4 describes 'Categories of Rural Compliance and Qualifying criteria'.

County Kilkenny can be divided into two broad categories as follows:

1. Areas under Urban Influence

2. Other rural areas

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

The site is within an 'Area under Urban Influence' and in such areas 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 e.g. *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 in a particular local rural area. In summary this includes persons born and living in the rural area who have not owned their own house and returning emigrants.

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.

Section 7.8.6 refers to the 'Rural House Design Guidance' as an instrument to develop best practice in design and siting of one-off rural housing.

Further guidance is given in Section 13.22 Rural Housing which refers to consultation with the Kilkenny Design Guide 2008. Sections 12.11.5 and 13.22.1 refer to access and sightlines including relative to local roads.

5.5. Natural Heritage Designations

The site is within c. 0.6km of the River Barrow and River Suir SAC.

It is within c. 2.5km of the River Nore SPA.

5.6. EIA Screening

Having regard to the modest scale of the development, and the separation from any environmentally sensitive sites, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A Third Party Appeal has been submitted by Bluett & O'Donoghue on behalf of the Appellants Brendan Dawson & Carole McInerney, who are adjacent local residents. Their Grounds of Appeal include the following:

Driver's visibility Sightlines

- They consider that the sightlines shown are not based on an accurate topographical survey of the site. That it is difficult to understand how the planning authority concluded that satisfactory sightlines can be achieved.

Potential creation of additional gap/infill sites

- They note the previous planning authority refusal to the applicant for a one-off house. They consider that this application also will contribute to a haphazard pattern of development in an area under pressure for development.
- They consider that the Section 47 Sterilisation Agreement merely serves to delay or postpone the issue for 10 years and does not address the proper long-term planning and development of the area.

Revised proposals for dwelling house

- The applicant's RFI response makes no reference to the Rural Design Guide or to having incorporated its principles into the layout and design.
- They consider that despite the modifications made the impact on their residence remains the same.
- Due consideration of the Rural Design Guide could have addressed this issue but the planning authority does not appear to be concerned that its request has been disregarded.

Comprehensive Landscaping Scheme for the site

- They are concerned that the Landscaping Scheme has not been designed by a competent landscaping professional.

Conclusion

- The RFI appears to have been largely disregarded by the applicant.
- The Council should not have granted permission based on the responses received and that the evident short comings should have been addressed by way of clarification of F.I or they should have refused the application.
- The issues of the siting of the proposed residence, the safety of the proposed vehicular entrance and the landscaping of the site all remain unresolved.
- They submit that a site on the Rafter landholding to the southeast of their property would be more suitable and more in keeping with the policies and objectives of the planning authority. While this would require the submission of a new application, they hope the Board will see fit to refuse permission for the proposed development.

6.2. Applicant's Response

Altair Enterprises, Architectural Services response on behalf of the Applicant to the Third Party Grounds of Appeal includes the following:

Drivers visibility Sightlines

- The appeal highlights the lack of a topographical survey. There was no request for such and their response was fully in compliance with the RFI which asked for an 'accurate survey'. They submit that the Area Planner agreed that a topographical survey was not a necessity once the boundary was accurately assessed which was what was done.
- They contest the assertion that there has been a considerable amount of traffic on the local road network in the vicinity of the site. The vast majority of visitors to Jenkinstown Wood come from directions other than Tower Road.

Revised Proposals for the Dwellinghouse

- The issue of the scale of the house was discussed with the Area Planner and it was confirmed that their proposals were acceptable.
- The Rural Design Guide was used. The scaling down has resulted in a smaller and less showy house.
- The issue of building to the southeast is something that was considered and was ruled out on the basis of seasonal flooding on this site. They attach photographs to show flooding.
- As shown on the revised drawings, the intension is to significantly sink the house into the site; located the garage between the house and the dividing boundary, put a significant screen planting in place between the two sites.
- They submit that the Applicant's concerns on overlooking and loss of privacy are addressed in the revised plans.
- Surface water runoff will be contained within the site by correctly designed, sized and strategically located soakpits.
- The oil tank will be located in accordance with manufacturers instructions and will be fit for purpose. There will be no threat to Mr Dawson's well.

Comprehensive Landscaping

- The involvement of a landscape professional would be very expensive. The Planning Authority accepted the plan produced by the father of the applicant who is a gardener of considerable expertise. This plan was transferred onto a

standard drawing form of Altair Enterprises who had complied the overall application.

Conclusion

- The applicant meets the requirements of the Sustainable Rural Housing Guidelines and they refer to Section 3.2.3, Paragraph 5 – persons who are intrinsic to the rural area.

6.3. **Planning Authority Response**

They advise that Kilkenny County Council Planning Authority has no further comments to make.

6.4. **Observations**

There are none noted on file.

7.0 **Assessment**

7.1. **Compliance with Planning Policy**

- 7.1.1. The Settlement Strategy has regard to Rural Generated Housing Need. This is a matter of compliance with rural settlement strategy which requires consideration of not just local but also regional and national planning provisions that deal specifically with this matter. National Policy Objectives 18 and 19 of Project Ireland 2040, refer. As noted in the Policy Section above, Objective 18 seeks to develop a programme for new homes in small towns and villages. Objective 19 seeks that: “In rural areas under urban influence, to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in the 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”.
- 7.1.2. Regard is also had to the Sustainable Rural Housing Development Guidelines 2005 where the strategy indicates that there should be a presumption against urban generated one-off housing in rural areas adjacent to towns. The site is located in an area classified as being under “Strong Urban Influence” as identified in the

Guidelines. Section 3.2.3 refers to Rural Generated Housing. This includes reference to “people who have lived most of their lives in rural areas and are building their first homes”. It refers to ‘Persons who are an intrinsic part of the rural community’ and ‘Persons working full or part time in rural areas’. Section 4.3 of the Guidelines refers to Assessing Housing Circumstances.

- 7.1.3. As shown on Figure 7.1 (Rural Housing Strategy) of the Kilkenny City and County Development Plan 2021-2027 the site is located in an Area Under Urban Influence as per the Council’s Rural Housing policy. Section 7.8.3 provides the Rural Housing Policies. This includes regard to the distinction between Urban Generated Housing (to be accommodated in towns and villages) and Rural Generated Housing. Section 7.8.4 provides Categories of Rural Compliance and Qualifying criteria. For Areas under Urban Influence, this is divided into ‘Persons with a demonstrable economic need to live in the particular local rural area’ i.e persons who by 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 the rural area. Or it could be ‘Persons with a demonstrable social need to live in a particular local rural area’. In this case persons born in the local rural area, or who have lived 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.
- 7.1.4. Details submitted with the application provide that Padraic Rafter is the son of the landowner, and was born, rear and received early years education in Jenkinstown. He is currently living in rented accommodation in Kilkenny City and is now in a position to return to his place of birth, which he has always aspired to. The Planner’s Report notes that as per the map submitted the site is located with 10km of his family home. They considered that having regard to the documentation submitted that the applicant complies with the rural housing policy for this area.
- 7.1.5. The First Party response to the Appeal provides that the applicant meets the requirements of the Sustainable Rural Housing Guidelines, 2005. They refer in particular to Section 3.2.3 and to paragraph 5 – *Persons who are an intrinsic part of the rural community*. They provide that it is important to make clear that there is no

other site available to the applicant because of the previous refusal on the adjacent site and the unsuitability of the site to the southeast, which is prone to flooding. They note that even though the applicant has lived in Kilkenny City for a number of years he has remained very much part of the community in Jenkinstown. They provide that apart from his own wish to return to the area of his birth and upbringing, he also wants to be closer to his parents who are senior citizens.

- 7.1.6. However, I am concerned that there is no documentation on file to support the applicant's linkages to this specific rural area. The map submitted shows the landholding in blue, relates to the larger field area and is not substantial. There is no evidence that the applicant is engaged in farming or a rurally based activity or has a specific need to live on this site. There is no documentation on file to support that the applicant is a person with a demonstrable economic or social need to live in this particular rural area. Having regard to these issues and to planning policy I would consider that the applicant has not demonstrated compliance with the local need criteria.

7.2. Regard to Sterilisation Agreement

- 7.2.1. The Planning Authority note that there are a number of dwellings in the vicinity of the site, including a pattern of linear development with infill sites located to the north-east of the site. That a sterilisation agreement had been entered into in relation to the lands as per application P.01/1596. It is noted that this sterilisation agreement is dated 2002 and was for a period of 10 years.
- 7.2.2. As the current application is for a dwelling at the corner of the field, away from these houses, it would not constitute ribbon development (note this was included in the reasons for refusal for the siting proposed in Reg.Ref. 19/945). Having regard to the extent of one-off houses in a linear pattern to the northeast of the site, the Planning Authority considers that a sterilisation agreement should be entered into to prevent further gap/infill sites being created within the overall field to the northeast of the site. As part of their F.I request they advised that the applicant be requested to submit the written agreement of the landowner of their willingness to enter into a Section 47 agreement to sterilise the remainder of the roadside lands to the northeast within this overall field from residential development.

- 7.2.3. In response a letter has been submitted from Patrick Rafter, the landowner of his willingness to enter into a Section 47 agreement to sterilise (for 7 years or whatever is the normal term) the remainder of the roadside lands to the northeast within this overall field from further residential development. It is noted that the Planning Authority considered this to be acceptable and condition no.4 of their planning permission, relates.
- 7.2.4. It is of note that Section 47 of the Planning and Development Act 2000 (as amended) provides that a planning authority may enter into an agreement with any person for the purposes of restricting or regulating the development and use of land permanently or for a specified period. Regard is had to the 'Sustainable Rural Planning Guidelines', 2005. Section 4.7 refers to 'Occupancy Conditions'. This also includes regard to sterilisation agreements and provides: *However, the inflexible nature of such agreements limits their usefulness except in highly exceptional circumstances. Beyond such circumstances, the planning authority should avoid the use of such agreements and should focus instead on deciding the merits of the individual proposal in terms of the proper planning and sustainable development of the area.*
- 7.2.5. Appendix 1 of these Guidelines includes: *Indicative Occupancy Conditions*, pursuant to Section 47 of the said Act. It is noted that this is separate to a sterilisation agreement and is generally included as a condition relative to one-off rural housing. Condition no.3 of the Council's permission restricts the occupancy to the applicant Patrick Rafter for a period of 7 years.
- 7.2.6. Section 7.8.4 of the Kilkenny CCDP 2021-2027 which refers to *Qualifying Criteria for Rural Housing* and includes reference to *Areas under Urban Influence*. This refers to all permissions granted within such an area as having an Occupancy Condition for a period of 7 years. Having regard to Sterilisation Agreements they provide: *In areas where significant levels of rural housing development have taken place on the edges of urban areas within the county and where the Council considers such areas are becoming over developed the council may seek agreement under Section 47 of the Planning and Development Act (sterilisation agreement) if it considers it necessary to regulate development in the area.*

7.2.7. The issue in this case is that the proposed house, is not at the edge of an urban area, rather within the open countryside some distance (c.10kms) to the north of Kilkenny City. However, this is an area that is subject to pressure for one-off housing development and if the Board considers it appropriate and decides to permit, I would recommend, that such a condition relative to a sterilisation agreement be included.

7.3. Design and Layout

7.3.1. As shown on the Site Layout Plan, the site is to be taken off the larger landholding shown blue. There are hedgerows along the road frontage boundaries. It is proposed that the house be sited on a corner site close to the junction of Tower Road with the Public Road. The frontage of the house and the proposed access is to be from Tower Road, to the east of the junction. The application form provides that the site is 0.56ha and that the area of the proposed house is 314sq.m. set back from the Tower Road frontage, to be on a relatively similar set back to the dwelling to the southeast.

7.3.2. The Floor Plans show that this is to be a two-storey dormer type house. It is to provide living accommodation, 5no. bedrooms and an office/games/gym. The elevations show some variation in roof height ranging from c.4 -6m to ridge height. A detached double garage is to be located to the east of the proposed dwelling and this is shown to include the boiler room and is to be c.60sq.m. and 5.8m to ridge height.

7.3.3. There is a two-storey dwelling house located downhill to the southeast of the site, with extensive forestry further to the southeast of the site. The Third Party concerns regarding the design and layout, leading to overlooking and loss of their residential amenities have been noted. The Planner's Further Information noted the open and exposed nature of the site, the overall height and length of the proposed house. They requested that revised plans be submitted to show the dwelling house reduced in height and scale. Also, that regard be had to best practice and to the Kilkenny Rural House Design Guidelines.

7.3.4. In response revised plans were submitted. The revised plans include for the omission of the dormer style windows to the front elevation and replacement with velux rooflights and a reduction in the overall length across the front elevation and a

slight reduction in the overall height. In this respect it is noted that the length of the original house was shown as 21.5m and of the revised is shown as 20m. The overall height has been reduced to c. 5.7m. However, I would consider that modifications are not substantial. I would also have concerns, that the omission of the dormers in the front elevation, will result in first floor accommodation that will be below the recommended heights for habitable accommodation, as per the Building Regulations. In this respect regard is had to the cross section submitted. However, while it is important that the resultant accommodation not be substandard, it is noted that the Building Regulations are dealt with under separate remit.

- 7.3.5. Section 7.8.6 of the Kilkenny CCDP 2021-2027 refers to the Rural Design Guide which was produced in 2008 for County Kilkenny. It is provided, that this acts as an instrument to develop best practice in the design and siting of one-off rural housing. The County Kilkenny Rural Design Guide sets out the principles for integration of new dwellings in the countryside including inter alia, site layout, orientation, massing and finishing materials. Section 13.22 of the current DP reiterates in summary that its objectives are to improve the overall design quality and integration into the rural area, to encourage innovative design and sustainable development.
- 7.3.6. The Third Party is concerned that the proposed development, either as originally submitted or as per the revised plans does not pay sufficient regard to this Rural Design Guide. They have also expressed concerns about landscaping. In this respect it is noted that the copper beech tree on the site, is an important landscape feature in the streetscape. I note that the Landscaping Plan submitted does allow for the retention of this tree. If the Board decides to permit, I would recommend that a landscaping condition be included that provides for the protection and retention of this tree, and protection/reinstatement of boundary hedgerows (where there removal is necessary to achieve sightlines).
- 7.3.7. Having visited the site, and had regard to the proposal, I would consider that while the revised plans offer an improvement, that the proposed design and layout, scale and massing, on this prominent, exposed corner site, would not add to the character of the rural landscape. However, in view of the design of other houses in the vicinity, and landscaping proposed, I would not consider this a reason for refusal in this case.

7.4. Access and Sightlines

- 7.4.1. As shown on the Site Layout Plan it is proposed that the access be from Tower Road. It is noted that while the District Engineer did not object that they recommended that all the works to create the new entrance and to achieve sight visibility lines at the entrance to the development be as indicated on the drawings and be carried out prior to the main development. They recommended that the existing agricultural entrance to the site located along the local road LP1824 (located on the other road frontage) be closed off. Also, that the area between the sight visibility and the edge of the public road be re-graded, grass seeded and maintained by the applicant. That the entrance to the development be suitably surfaced and that they be consulted in relation to the tie-in to the public road.
- 7.4.2. Having regard to concerns about sightlines and the position of the access relative to the proximity to the T- junction at the intersection of Tower Road with the public road the Planning Authority requested that a revised sightlines drawing be submitted, based on an accurate survey of the public road, clearly indicating the extent of the roadside boundary hedgerow to be removed/set back in order to achieve the required visibility sightlines. In addition, that where any amendments are required to be carried out to the roadside boundary located outside of the applicant's ownership, that the written consent of the relevant landowner be submitted.
- 7.4.3. In response a revised drawing was submitted on behalf of the applicants, showing the sightlines. This showed that 61m sightlines are available to the junction of the roads and 90m in an easterly direction. That the details submitted also confirm that the sightlines do not intercept the roadside boundary to the neighbouring property.
- 7.4.4. It is noted that Section 13.22.1 of the Kilkenny CCDP 2021-2027 refers to Access and Sightlines. This includes that that the entrance should be sited to ensure the least amount of hedgerow removal and that all hedgerows that are required to be removed to achieve sightlines should be reinstated being the applicable sightlines and maintained so as not to cause any reduction in the extent of sightlines achievable over time.
- 7.4.5. The Third Party are concerned that the applicant's response is not based on a topographical survey so that the feasibility of achieving adequate sightlines could be assessed. They are concerned that due to the narrow width of Tower Road that

substantial roadside hedgerows will have to be removed to form a safe entrance. They note that no levels have been provided on the drawings. They submit that the topography is likely to obstruct visibility in the vertical plane and in the absence of accurate levels, it is difficult to understand how sightlines can be considered safe.

- 7.4.6. The First Party response provides that there was no request for a topographical survey and their response was fully in compliance with the RFI which asked for an 'accurate survey' which they provide is what was done.
- 7.4.7. As noted above Section 13.22.1 of the Kilkenny CCDP 2021-2027 refers to Access and Sightlines. This includes that applicants must adhere to the TII document: *Design Manual for Roads and Bridges (DMRB) and TII Standard DN-GEO-03060 Geometric Design of Junctions when assessing planning applications* where appropriate.
- 7.4.8. It is noted that the DMRB is primarily a guidance document dealing with the geometric design of new major/minor priority junctions. The guidance notes that the desirable distance back (referred to as the 'x' distance) from a direct access from a simple junction is 2.4 to 3 metres. The guidance sets out the minimum sightline distances ('y' distance) that will be required to be able to see clearly points to the left and right. The required sight distance associated with the various design speeds as set out in Table 7/1 of the DMRB. A 'y' sight distance/sight line of 70m is required for a road with a design speed of 50kph.
- 7.4.9. It is noted that as shown the sightline distance of 61m available to the west of the proposed entrance in the direction of the T-junction is less than the required minimum standards. Notwithstanding the minor amendments proposed and having regard to the above, I am not satisfied that it has been demonstrated that the proposed access arrangements in proximity to the junction, comply with the relevant standards and would not give rise to a traffic hazard or endanger the safety of other road users.

7.5. Drainage

- 7.5.1. Section 13.22.2 of the Kilkenny CCDP 2021-2027 requires that site will be assessed in accordance with the EPA Code of Practice, *Domestic Waste Water Treatment Systems (Population Equivalent <10)* 2021 or any subsequent revisions or

replacement. That the person carrying out the assessment must be suitably qualified. Also, that water and wastewater systems for new rural development shall be located within the subject site.

- 7.5.2. It is noted that the application was submitted on the 7th of December 2021 and the Site Characterisation Form submitted with the application is dated 27th of September 2021, so the EPA CoP 2021 Guidelines are applicable. It is noted that the Site Characterisation refers to the EPA CoP 2009 Guidelines. However, there are similarities between the former and new revised Guidelines. It is of note that Table 6.4 of the 2021 EPA CoP provides the percolation values relative to the type of treatment system and while more detailed the similarities to Table 6.3 of 2009 EPA CoP are noted. It is provided that the site is located in a Sand and Gravel Aquifer, where the Vulnerability rating is 'High'. Appendix E of the CoP 2021 notes the Groundwater Protection responses -Table E1 refers.
- 7.5.3. The Depth of the trial hole is 2.1m. A number of 'T' tests were carried out and it was noted that the results varied. It is provided that the lowest value of 6.25 is in itself an acceptable result for concluding that the subsoil is suitable media for treated waste disposal to groundwater. They provide that using a Modified Method that a 'T' value of 10 was obtained. It is proposed to install BAF2 or equivalent Packaged Treatment Plant or similar for Primary/Secondary Treatment followed by discharge to Groundwater via a Sand Polishing Filter.
- 7.5.4. The Site Layout Plan shows the proposed location of the proposed wastewater treatment system to the front (south) of the proposed house and the proposed borehole in the north-eastern corner. As part of the F.I request the Applicant was requested to provide a revised Site Layout Plan showing wells and wastewater treatment systems within 250m of the site, which include dimensions from all existing and proposed wastewater treatment systems and well in this area in accordance with section 6.3 of the EPA CoP 2021. The application has done this on a revised drawing and has indicated 3no. dwelling houses in the vicinity. Although it has not shown the exact locations of their private wwts and boreholes, it would appear that in view of distance that they are all in excess of the distances as set out in Table 6.2 which provides 'Minimum separation distances from the entire DWWTS' of the EPA CoP 2021.

7.5.5. It is noted that the Council's Environment Section does not object to the proposed wastewater system and recommends conditions to include that the complete wastewater treatment unit and percolation area/polishing filter have been satisfactorily installed to accord with EPA, 2021, prior to the occupation of the house. If the Board decides to permit, I would, recommend that similar type conditions be included.

7.6. **Appropriate Assessment**

7.6.1. Having regard to the nature and scale of the development and to the nature of the receiving environment and separation distance from the nearest designated site, no appropriate assessment issues arise, and it is considered that the development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European sites.

8.0 **Recommendation**

8.1. I recommend that permission be refused for the reasons and considerations below.

9.0 **Reasons and Considerations**

1. Having regard to: -

- (i) The location of the site in an unserviced rural area under urban influence, the Board is not satisfied that the applicant has demonstrated compliance with the qualifying criteria for rural housing of economic or social need as per Section 7.8.4 of the Kilkenny City and County Development Plan 2021-2027.
- (ii) the national policy, as set out in National Policy Objective 19 of the National Planning Framework 2018 and the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and local Government in April 2005, that 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,
and

(iii) the documentation submitted with the application and appeal,

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 smaller town or rural settlement, particularly in light of the site's proximity to Kilkenny City. In the absence of a sufficient justification, it is considered that the proposed development would contribute to the development of random rural housing 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 Sustainable Rural Housing Guidelines and to overarching national policy, and the provisions of the Kilkenny City and County Development Plan 2021- 2027 and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a local road that is substandard in terms of width and alignment, proximate to the T-junction of Tower Road with the public road, and where sightlines are restricted in a westerly direction.

Angela Brereton
Planning Inspector

13th of December 2022