



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313830-22

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<b>Development</b>	House with domestic garage and new site entrance. Associated site works.
<b>Location</b>	Bonnetsrath, Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	
<b>Applicant(s)</b>	Jane and Gary McEvoy
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Paul Drury
<b>Observer(s)</b>	Claire Walsh
<b>Date of Site Inspection</b>	7 <sup>th</sup> of June 2023
<b>Inspector</b>	Angela Brereton

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## **1.0 Site Location and Description**

- 1.1. The site is located to the north of Kilkenny City in the townland of Bonnetsrath. It is in the rural area to the north and east of the N77 and is accessed via the local road network. It is c. 500m north of the development boundary for Kilkenny City. This is outside the urban area and the suburbs of Kilkenny City
- 1.2. The site forms part of a larger agricultural field and save for the existing front roadside and western hedgerow boundaries the remaining boundaries are undefined. The site is set back and is more elevated from the road.
- 1.3. There are a number of one-off and agricultural dwellings/buildings and vehicular entrances in the vicinity. The access road is narrow and undulating.

## **2.0 Proposed Development**

- 2.1. Permission is sought for the construction of a new dwelling, domestic garage, waste water treatment system, new residential site entrance, plus all associated works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On the 22<sup>nd</sup> of April 2022, Kilkenny County Council granted permission for the proposed development subject to 15no. conditions.

These generally concern, compliance with plans and particulars, development contributions, amendments to the design including windows and omission of balcony, waste water treatment system, supply of potable water, vehicular access and boundary treatment, landscaping, external finishes of dwelling and garage, seven year occupancy, construction and surface water drainage.

### **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, to the internal reports and submissions made. Their assessment included the following:

- The site is located in an Area under Urban Influence having regard to the Kilkenny City and County Development Plan 2021-2027.
- The applicant has demonstrated social demonstrable needs to live in the rural area and complies with the Council's rural housing policy as per the KCDP.
- They note the packaged wastewater treatment system and polishing filter and on-site borehole in accordance with the 2021 EPA CoP.
- It is proposed to construct a new entrance and the existing agricultural entrance will be blocked off. The Area Engineer has not objected subject to conditions.
- The site is located in a transitional area having regard to the Landscape Character Assessment in the KCDP 2021-2027.
- The proposed development site forms part of the larger permission site landholding under P16/265 but does not conflict, additional landscaping is proposed.
- They consider that the proposed dwelling and garage can be assimilated into the proposed site landscape without being visually obtrusive. They recommend conditions regarding revisions to the fenestration and omission of the balcony.
- A Screening exercise was completed, which showed no significant impact is likely having regard to the development proposed and distance of the site from any Natura 2000 site. They concluded that a Natura Impact Statement is not required.
- They recommended that permission be granted subject to conditions.

### 3.3. Other Technical Reports

#### Area Engineer

They have no objections subject to conditions.

## Environment Section

They have no objections subject to conditions regarding the wastewater treatment system, surface water drainage and construction works/phase.

### **3.4. Prescribed Bodies**

None noted.

### **3.5. Third Party Observations**

Concerns raised in the submission from the subsequent Observer include the following:

- Bonnetsrath Lane is a narrow laneway with no footpath and no road markings and a bad bend at the applicant's site location with a speed limit of 80kph.
- Traffic Safety issues, narrow road close to a bend. Too many entrances in vicinity. Sightlines maybe on third party lands.
- There is an adventure centre, shooting range, an abattoir, a busy bus and taxi depot at the end of the lane.
- Design and layout – proposal will appear visually prominent on this elevated site and will not integrate well into the landscape.
- The applicant's proposed site is already part of a defined site and amenity already under Reg.Ref. P16/265. To sub-divide an already granted amenity to another house would negate planning. They are concerned about landscaping carried out, the existing house appears prominent in the landscape.
- Speculative piecemeal development. Genuine rural housing need or economic reason to live in the area has not been proven.
- Will add to the proliferation of wwts and septic tanks in the area. Concerns about groundwater and pollution effects.
- Preservation of the rural landscape and environmental concerns.

## 4.0 Planning History

The following permissions are noted relevant to the subject site:

- Reg.Ref.16/265 – Permission granted subject to conditions to Martin Gibbons for the construction of a dormer dwelling and detached garage, with a septic tank/percolation area, and all associated site works.

A copy of this permission is included with the application.

*To the south of the Landholding*

- Reg.Ref. 03/868 – Permission granted subject to conditions to ISRON Ltd to (a) demolish existing dwelling house with associated farm buildings; (b) to construct a single storey dwelling house with vehicular roadside entrance, proprietary wastewater treatment system, private well, landscaping, boundary treatment and all associated works and permission to construct a steel portal frame agricultural store.

*Subject site*

- ABP-22-313600 – A Grant for Leave to Appeal of Reg.Ref.22/129 was decided by the Board under section 37(6) of the Planning and Development, Act, 2000, as amended based on the following reasons and considerations:
  - (i) The development, in respect of which a decision to grant permission has been made, will differ materially from the development as set out in the application for permission by reason of conditions numbered 6 and 7 imposed by the planning authority to which the grant is subject, and
  - (ii) The imposition of conditions numbered 6 and 7 will materially affect the applicant's enjoyment of the land adjoining in respect of which it has been decided to grant permission or reduce the value of the land.

## 5.0 Policy Context

### 5.1. 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) purpose is to provide guidance on domestic wastewater 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.

### **EU Water Framework Directive**

The EU Water Framework Directive (WFD) 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.

## **5.3. Kilkenny City and County Development Plan 2021-2027**

Volume 1 – Kilkenny County

Volume 1 - Chapter 4 – The Core Strategy sets out the overall development strategy for the county including the rural area: *RPO 27 of the RSES requires that the Core Strategy identifies areas under urban influence and sets the appropriate sustainable rural housing response which facilitates the provision of single housing whilst having regard for the viability of smaller towns and rural settlements. These areas under urban pressure have been identified and contained in Figure 7.1 Rural Development Strategy.*

### 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. *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 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.*

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 for example:*

- a. *employed full-time in rural-based activity such as farming, horticulture, forestry, bloodstock or other rural-based activity in the area in which they wish to build or whose employment is intrinsically linked to the rural area in which they wish to build, such as teachers in rural schools or other persons who by the nature of their work have a functional need to reside permanently in the rural area close to their place of work, provided that they have never owned a house in a rural area.*
2. *Persons with a demonstrable social need to live in a particular local rural area.*
  - a. *Persons born within the local rural area, or who have lived a substantial period of their lives in the local rural area (minimum 5 years), who have never owned a rural house and who wish to build their first home close to the original family home. Persons born in the area without having lived for the minimum of 5 years must be able to demonstrate strong family and social connections to the area to demonstrate a demonstrable social need.*
  - b. *Returning emigrants who do not own a house in the local area and wishes to build their first permanent home for their own use in a local rural area in which they lived for a substantial period of their lives (5 years), then moved away or abroad and who now wish to return to reside near other family members.*

*All applicants for one-off rural housing will need to demonstrate compliance with the qualifying criteria of one of the above categories unless otherwise specified as being located within an area where the Rural Housing Policy does not apply.*

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 Rural Design Guide. Sections 12.11.5 and 13.22.1 refer to access and sightlines including relative to local roads. Section 13.22.2 to the criteria for Wastewater treatment systems.

#### **5.4. Natural Heritage Designations**

The site is c.1.2km to the north east of the River Barrow and River Nore SAC.

## 5.5. 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 Paul Drury. While it is stated that he did not make a submission to the original application, as has been noted in the Planning History Section above, he has been granted leave to appeal by the Board -Ref. ABP-313600-22 relates. The Grounds of Appeal to the current application, include the following:

#### Land ownership issues

- The Appellant is heir in law to the estate of Patrick Mooney of Bonnetsrath and by law owner of a property folio KK3867 (appendix iii). Folio KK3867 is the adjoining land to the originally proposed development site on folio KK39528F (formerly part of the lands on folio KK3866) see appendix vi - owned by Mr Martin Gibbons.
- Maps A and B show the appellants family lane (folio KK3867 - appendix iii).
- Maps Y and Z show the proposed development site on folio KK39528F – (formerly part of the lands on folio KK3866) – see appendix v.

#### Grounds of Appeal

- The planning application originally proposed for the development site location to be situated on folio KK39528F (formerly part of the lands on folio KK3866).
- In the grant of permission, the planning authority has imposed conditions (6.7,9,10) that request various alterations and provisioning to the land on folio KK3867 and permit for part of the proposed development site to encroach

onto folio KK3867. This differs materially from the development as set out in the application for permission as originally proposed.

- Due to the imposition of conditions now attached to the grant of permission, the proposed development has a devastating impact on folio KK3867 (see Map B & Map Z).
- Impacts include but are not limited to:
  1. Dramatically decreases the land area of folio KK3867 by approx.10%;
  2. Decrease the value of land;
  3. Affects his enjoyment of the land.
- At the present time, the appellant, Paul Drury is the only living person in the world with legal lawful authority, right or permission to administer the estate of the late Patrick Mooney of Bonnetsrath Kilkenny namely the land on folio KK3867.
- Mr Martin Gibbons is not the registered owner of folio KK3867 (see appendix iii) and neither Jane & Gary McEvoy nor Martin Gibbons have the authority, right or permission to alter /provision the land on folio KK3867 in any way.
- He requests that the Board refuse permission for the proposed development Reg.Ref. 22/129.

## 6.2. Applicant Response

PBA Architects response on behalf of the applicants includes the following:

### Legal Issues

- Due to the nature of the appeal by Mr Drury being solely of a legal nature, their clients Solicitors Thomas A Walsh and Company have compiled a response of behalf on the applicants Jane and Gary McEvoy.
- In the first instance notwithstanding the content of the copy Folio 3867 produced by Mr Patrick Mooney of Bonnetsrath who was registered as the owner of the 20<sup>th</sup> of May 1909 is not the beneficial owner of the property. This property is owned by the Gibbons family of Bonnetsrath and in particular Mr Martin Gibbons, father of Jane McEvoy.

- Beyond the assertion that he is the heir in law to Mr Patrick Mooney, Mr Drury has produced no documentation or information to support this.
- There is nothing to suggest that Mr Drury is a direct successor in any way of Mr Patrick Mooney, the person appearing as registered owner. No Grants of Probate or Letters of Administration, no Transfers, nor documentation evidencing a descent of through several generations from Patrick Mooney to Mr Drury has been produced.
- Mr Drury indicates that he is the only living person with the legal/lawful authority to administer the Estate of Patrick Mooney of Bonnetsrath, Kilkenny without producing any documentation in support of this contention.
- In any event, Mr Mooney is not the personal entitled to the beneficial ownership of the land. The property was purchased by the Gibbons family from descendants of Mr Mooney being Jim and Mary Mooney who were his son and daughter. This took place c. 1962 and by agreement the two parties who sold to the Gibbons family were allowed to remain on the property for their lifetime.
- When Jim Mooney passed away in 1969, the Gibbons family and in particular the grandmother and laterally the father of the applicant Jane McEvoy moved into and enjoyed full control and ownership of the property and exercised all the rights and entitlements that such ownership conferred and have done for upwards of 53 years. This right was acquired for valuable consideration.
- They provide that accordingly, Mr Drury is not entitled to make objection on the grounds of the alleged ownership of the property, nor an entitlement which he alleges he has to proceed with administration to the Estate of the person appearing as the registered owner of the Folio.
- They submit that he is not entitled to set aside prior agreement for valuable consideration to dispose of the property entered into by parties entitled to do so. Furthermore, that he has not produced documentary evidence to support any of his contentions.

### 6.3. Planning Authority Response

They have responded that following the successful leave to appeal on ABP 313830-22 re: 22/129, that there are no further comments from the Area Planner.

### 6.4. Observations

An Observation has been made by Claire Walsh, and this is summarised as follows:

#### Impact on Visual Amenity

- The positioning of the house if granted would be a visually obtrusive feature in the landscape and would have a negative impact seen high up on the hill in this field.
- The Council's Development Plan emphasises the importance of designing to integrate into the landscape to minimise visual intrusion. Having regard to the topography of the site, this dwelling will be an obtrusive feature in the landscape.
- It will seriously injure the visual amenity of the area and will fail to be absorbed and integrated into the landscape.

#### Sightline issues

- Sightlines appear to be across third party property to which the applicants have no control. They are concerned that with hedge growth etc, visibility could be significantly reduced on an already narrow laneway with no footpath and no road markings and a concentration of entrances at the proposed entrance location. That it would endanger public safety by reason of traffic hazard.

#### Lack of Further Information request

- They consider that taking into account the planning history and the proposed siting, design and layout that further information should have been requested by the Council. They note that Condition no.3 refers to a redesign and they submit that such changes should have been submitted prior to the Council's grant of permission.

- Condition no.9 of the Council's permission seeks a landscape plan be submitted to reduce the visual impact of the house. This should have been a matter for an F.I request to afford the public the opportunity to view it.
- They refer to Article 34 of the Planning and Development Regulations relative to revised plans. They believe that the Council should have requested such and the said revisions would then have formed part of the planning grant and the public would have an opportunity to make a submission based on the revised plans and/or appeal the revisions to the Board.
- The Council's permission means that any revisions are solely at the discretion of the planning department with no appeal mechanism afforded, which they consider unfair and unjust. That the Council are seeking major changes instead of taking the opportunity to request further information.
- A copy of their original Submission to the Council is enclosed.

## **7.0 Assessment**

7.1.1. Having examined the application details and all other documentation on file, including the submission received in relation to the appeal, and the response on behalf of the applicant, having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Compliance with Planning Policy
- Design and Layout and Impact on the Character of the Area
- Land Ownership issues
- Access and Road Safety
- Drainage issues
- Appropriate Assessment



## 7.2. Compliance with Planning Policy

- 7.2.1. 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”.
- 7.2.2. 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.
- 7.2.3. Section 7.8 of the Kilkenny City and County Development Plan 2021-2027 provides the Rural Housing Settlement Strategy. Fig. 7.1 ‘Rural housing Strategy’ provides a Map showing the site within an Area under Urban Influence as per the Council’s Rural Housing policy. In this case the application site is in the rural area, c. 500m north of the boundaries of Kilkenny City.
- 7.2.4. 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.

- 7.2.5. Details submitted with the application provide that Jane McEvoy currently resides in her parent's family home in Bonnetsrath, along with her husband Gary and their children. The application is for a proposed dwelling to be constructed on family farmlands. The new dwelling is for the applicant's own occupation and she has not applied for planning permission on any previous occasion and now wishes to build her first family home. They submit that this shows that the applicants comply with section 7.8.4 of the current County Development Plan 2021-2017 i.e Persons with a demonstrable social need to live in a particular local rural area - (a) *Persons who have lived a substantial period of their lives in the local rural area (minimum 5 years), who have never owned a house and who wish to build their first home close to the original family home.*
- 7.2.6. It is noted that Section 7.8.4 includes that: *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.*
- 7.2.7. In this case as noted on the application form, the applicants employment is urban based (i.e. Dublin Area). However, it is stated in the documentation submitted, that they are working from home and live in their parents family home, and are seeking to build their first home on family lands. It would appear therefore, that the applicants have demonstrated compliance with Section 7.8.4 in that they have a demonstratable social need to reside in the area. If the Board decides to permit, I would recommend, that an Occupancy Condition be included.

### 7.3. Design and Layout and Impact of the Character and Amenities of the Area

- 7.4. The application form provides that the site area is 0.3ha. and is to be taken out of the larger landholding. The dwelling proposed is shown c.75m set back from the road with a FFL c.5m above the road level. It is to be accessed via a new vehicular access with the existing field gate entrance to the access lane to the west to be closed. As shown on the Site Layout Plan it appears the access lane along the western site boundary is to remain as a route to the agricultural lands to the north of the site.
- 7.4.1. As shown on the plans the proposed dwelling is to comprise single and two storey elements. The floor area of the proposed dwelling is given as 274sq.m and the detached garage as 33.6sq.m. The elevations show that the dwelling is to be flat roofed with the two storey element being c.6.18m in height. The external walls are to be clad with 'charred larch or other approved timber sheeting'.
- 7.4.2. The floor plans show that the ground floor is to be c.177.7sq.m and the first floor 97.2sq.m. The ground floor is to comprise 3no. bedrooms and ancillary accommodation. The first floor to comprise kitchen/dining living space. This is also to include a front, south facing balcony (as shown - 5.9m in length and 2.5m in width). It is noted that while the floor plans provide the dimensions, they do not appear to correspond to the 1:50 scale given. I note that sections have not been submitted, to clarify as to whether an element of cut and fill, having regard to the elevated siting, would be involved.
- 7.4.3. Regard is had to the County Kilkenny Rural Design Guide which as noted in Section 13.22 of the CDP 2021-2027, this intended to provide assistance to people who are considering the development of a single house in the countryside. This includes that it is important that design in rural areas meets with the aspirations of those building new homes, without compromising the integrity of the rural landscape. While it seeks to encourage innovation in design, it also seeks to ensure maximum integration with the rural landscape. As noted in Appendix 3 of this Design Guide the site is within a 'Transitional' landscape area to the north of Kilkenny City.
- 7.4.4. Other than the hedgerow along the western boundary it is open and visually exposed. The Site Layout Plan shows that landscaping is to comprise a new timber

post and rail fence with a double row of native species in a mix of blackthorn/whitethorn/holly to be planted in the first planting season.

- 7.4.5. The Observer's concerns about the elevated siting and that the proposed dwelling would not be integrated into the landscape are noted. While I note the proposed set back, I would be concerned that visually this has the potential to appear as a backland development, that would impact on the usability of the agricultural land, closer to the road frontage. Also, that the proposed siting, house type and external finishes on this elevated site would make it appear overly dominant and would not integrate well with the landscape. As such, I would consider that it would not comply with the Kilkenny Rural Design Guide or with the objectives of Section 13.22 of the current CDP 2021-2027.
- 7.4.6. However, if the Board decides to permit, I would recommend conditions relative to external finishes, changes to fenestration and omission of the front balcony (Condition no.3 of the Reg.Ref. P22/129 refers) and landscaping including boundary hedgerows and planting.

## **7.5. Land Ownership issues**

- 7.5.1. The context of the Third Party Appeal and the Applicants response relative to landownership issues has been noted in the Grounds of Appeal and the First Party response sections above. It is noted that the Appellant contends that there is an area of the landholding that relevant to the lands proximate and adjoining the road frontage is not within the ownership of the applicants (Folio nos. and Maps are included). This is the area of land relevant to the road frontage of the site to facilitate the entrance, and access route to the site.
- 7.5.2. In summary, the Third Party provides that he is the only person with legal lawful authority, right or permission to administer the estate of the late Patrick Mooney of Bonnetsrath, Kilkenny (folio no. is included). He submits that neither the applicants nor Martin Gibbons have the authority, right or permission to alter/provision the land on folio KK3837 in any way. That the impacts of this application include dramatically decreasing the land area of this folio by approx. 10%, decrease in the value of the land and that it affects his enjoyment of the land.

- 7.5.3. The First Party response notes that the appeal is solely of a legal nature and provides a response from the Solicitor for the applicants. They dispute the Third Party claim relevant to land ownership and consider supporting documentation has not been submitted in support of this contention. They note that the property was purchased by the Gibbons family from descendants of Mr Mooney c. 1962. They provide that the grandmother and laterally the father of the applicant, Jane McEvoy moved into and enjoyed full control and ownership conferred and having done so for 53 years.
- 7.5.4. In this respect regard is had to the letter submitted with the application from Martin Gibbons to confirm that he is the landowner of the lands which are the subject of the application. That he gives permission to his daughter Jane and her partner Gary to apply for planning permission on these lands and to alter or maintain hedge line boundaries fronting the public roadway in order to achieve sightlines from the proposed new residential access. A letter from Jane McEvoy notes that she and Gary and their children and residing in the family home, on land that has been in her family for 113 years.
- 7.5.5. The First Party contend that the appellant is not entitled to make an objection on the grounds of ownership of the property, nor an entitlement which he alleges he has to proceed with administration of the Estate of the person appearing as the registered owner on the Folio. That he is not entitled to set aside a prior agreement for valuable consideration to dispose of the property entered into by parties entitled to do so. That the appellant has produced no documentary evidence to support any of his contentions. In this respect I note that in view of the issues raised by the Third Party that the applicants have not submitted documentary evidence regarding their ownership of the lands in question.
- 7.5.6. It is of note that this is a new issue, in that the objection relative to the land ownership issue was not included for consideration in the submissions made to the Council, relative to the planning application. As has been noted in the Planning History Section above, the Board has subsequently granted leave to appeal (Ref. ABP-313600 – 22) refers. Reference is had in the Board's Reasons and Considerations to the imposition of condition nos. 6 and 7 imposed by the Planning Authority under Reg.Ref.22/129. In brief these conditions concern the vehicular access and set back of roadside boundaries to achieve sightlines. The Board

considered the grant of permission would differ materially from the development as set out in the application. That these conditions would materially affect the applicant's enjoyment of the land adjoining in respect of which it has been decided to grant permission or reduce the value of the land. Hence, they decided to grant the leave to appeal.

- 7.5.7. Generally having regard to issues including access and boundary issues, it must be noted that any issue of encroachment, or alterations to the site boundaries is a civil matter, and the applicant is advised that in the event of encroachment or any dispute regarding easements concerning the adjoining property, the consent of the adjoining property owner is required. I note here the provisions of s.34(13) of the Planning and Development Act: "*A person shall not be entitled solely by reason of a permission under this section to carry out any development*".
- 7.5.8. Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*" In other words, the developer must be certain under civil law that he/she has all the rights in the land to execute the grant of permission.
- 7.5.9. In this case however, having regard to the lack of documentation submitted, I would consider that the landownership issue, which has been disputed has not been fully clarified. This has the potential to have implications for the provision of the vehicular entrance from the public road to serve the site, setback, achievement of sightlines etc as referred to in Condition nos. 6 and 7 in the Council's permission. Taking into consideration the issues raised, I am not convinced that sufficient documentation has been submitted, to verify that the development as applied for can be carried out.

## 7.6. Access and Sightlines

- 7.6.1. As shown on the Site Layout Plan it is proposed to block up the existing agricultural entrance at the western boundary of the site and to provide a new vehicular entrance to serve the proposed development. This is to be sited c.10m further to the east of

the existing entrance. The issues regarding the concerns relative to land ownership have been separately noted above.

7.6.2. The Council's Area Engineer notes that the development will have access to a Local Tertiary Road, with a nominal speed limit of 80kph. That the applicant has demonstrated visibility of 90m in both directions from the proposed entrance (as shown on the Site Layout Plan submitted). The minimum required is 70kph so this is satisfactory. It is noted that their recommended conditions relative to the access, boundary treatment, surface water discharge etc. are included in the Council's condition nos. 6 and 7 referred to above.

7.6.3. On site I noted that there are a number of vehicular accesses to serve existing residential and agricultural developments in the area. While this proposal will replace the existing agricultural entrance it will serve to provide a new entrance which it appears maybe used to serve the proposed dwelling and the adjoining landholding (relative to the access lane to the west of the site). The public road is a narrow local road with issues regarding vertical and horizontal alignment, I would be concerned that this proposal will add to the proliferation of vehicular entrances in the area.

## 7.7. Drainage

7.7.1. Section 13.22.2 of the Kilkenny CCDDP 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.

7.7.2. The Site Layout Plan shows the proposed location of the new wastewater treatment system to the southeast of the proposed dwelling. It also shows the location of the proposed new well to the northeast of the proposed dwelling. Having regard to the well it is noted that Table 6.2 of the CoP 2021 provides the minimum separation distances from the entire DWWTS. The separation distance from the proposed well which is shown c. 30m to the northeast uphill from the proposed DWWTS, appears to be in accordance with this Table.

- 7.7.3. A Percolation Test Report has been submitted by MK Environmental Solutions Ltd. Appendix A provides a Site Characterisation Form. This notes that the Aquifer Category is Regionally Important and the Vulnerability is high. The groundwater protection response is R2<sup>1</sup>. Appendix E of the CoP 2021 notes the Groundwater Protection responses -Table E1 refers. This provides that a wastewater treatment system is acceptable subject to normal good practice and having regard to the location of domestic water supplies. The Site Characterisation Form notes that there is none locally. That the mains water pipe for Kilkenny City is located c.500m to the north of the site.
- 7.7.4. It is of note that Table 6.4 of the 2021 EPA CoP provides the percolation values relative to the type of treatment system. This notes for secondary treatment systems and soil polishing filters the percolation value range is 3-75. The Site Characterisation Form provides that the Depth of the trial hole is 2.4m. A number of 'T' tests were carried out and it was noted that the results varied. It is provided that an average T value of 31 was obtained and that the site is suitable for hydraulic disposal after a secondary system and proposed in-situ soil polishing filter.
- 7.7.5. The Planner's Report provides that the Kilkenny Environmental Officer has expressed no objections subject to conditions. These 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.

## 7.8. **Appropriate Assessment**

- 7.8.1. 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**

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



## 9.0 Reasons and Considerations

1. The Board is not satisfied that sufficient documentation has been submitted to clarify the land ownership issue that has been raised in the Third Party Appeal to allow for the proposed development to proceed. It has not been established beyond reasonable doubt that the frontage of the site which includes the proposed vehicular entrance and access to the site is within the ownership of the applicants. In these circumstances it is considered that the Board is precluded from giving further consideration to the granting of permission for the development which is the subject of this application.
2. The proposed house, by reference to its siting and design, proportions, scale and massing and external finishes on this elevated site, does not accord with the best practice design principles set out in the County Kilkenny Rural Design Guide, as contained in the Kilkenny City and County Development Plan 2021-2027. Accordingly, it would result in a visually obtrusive feature that would impact on the usability of the agricultural land, creating a narrow strip between the site and the road frontage and would not successfully integrate into the receiving rural landscape. The proposed development would fail to achieve the objectives set out in Section 13.22 of the development plan including 'to improve the overall design quality' and 'to ensure maximum integration with the landscape' and would, therefore, be contrary to the proper planning and sustainable development of the area.
3. The site is located on a minor local road which is substandard in terms of width and alignment and in an area where maximum speed limits apply. The proposed development would increase the number of vehicular entrances to serve random residential development in an area where there is already a proliferation of vehicular entrances. As such the traffic generated by the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Angela Brereton  
Planning Inspector

31<sup>st</sup> of August 2023