



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313884-22

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<b>Development</b>	House with detached garage and associated site works.
<b>Location</b>	Corstown, Co Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	22217
<b>Applicant(s)</b>	Ray Cantwell and Siobhan Hennessy
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Ray Cantwell and Siobhan Hennessy
<b>Observer(s)</b>	None
<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 (stated area 0.236ha) is located in the rural area in the townland of Corstown to the west of Kilkenny City. The village of Tullaroan is further to the west. Access is via the local secondary road LS5025. There is a watercourse located on the opposite side of the road. There is a drain along the roadside boundary, which was dry at the time of the site inspection.
- 1.2. The site forms the north-east corner of a larger field, and the land is relatively flat across the site, the surrounding topography rises steeply upwards to the rear/south and to the west.

## **2.0 Proposed Development**

- 2.1. This is for the construction of a part 2 storey part single storey, 4 bedroom dwelling house with separate garage, new entrance from public road, together with waste water treatment system and all associated works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On the 27<sup>th</sup> of May 2022, Kilkenny County Council, refused permission for the proposed development for the following reason:

Having regard to the documentation submitted in support of the application and the location of the site within a rural area under urban influence as identified in figure 7.1 of the Kilkenny City and County Development Plan 2021-2027 which seeks to facilitate the provision of new single houses in the countryside based on the core considerations of demonstrable economic or social need to live in the rural area it is considered that the applicant has not demonstrated an economic or social need that complies with section 7.8.4 of the Kilkenny City and County Development Plan 2021-2027. The proposed development therefore would be contrary to the proper planning and sustainable development of the area.

### 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 the internal reports. They noted that no submissions were made. Their Assessment included the following:

- The site is located in an Area Under Urban Influence as per the Council's Housing Policy.
- Having regard to the documentation submitted it is considered that the applicant does not comply with the rural settlement strategy.
- The applicant is the intended purchaser of the site, a letter of consent to make the application has been submitted from the stated landowner.
- A Screening exercise was completed, which showed that no significant environmental impact is likely on any Natura 2000 site.
- They recommended that permission be refused.

### 3.3. Other Technical Reports

#### Environment Section

- They have no objections to the proposal subject to conditions relative to the wastewater treatment system proposed, stormwater drainage, construction phasing/management and potable water supply.

#### Castlecomer Municipal Engineer

- They have no objections subject to conditions relative to the access, entrance and sightlines, no surface water run-off from the site to discharge to the public road, piping across the entrance and maintenance or piping of the roadside boundary ditch.

### 3.4. Prescribed Bodies

None noted.

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

None noted.

## 4.0 **Planning History**

The Planner's Report notes that there are no recent planning permissions relative to the subject site.

*History for site of applicants current dwelling at Balleven, Ballycallan*

- Reg. Ref. 18/599 – application deemed withdrawn following further information request in relation to the wastewater treatment system.

The Planner's Report notes that permission was sought by Ray Cantwell and Siobhan Hennessy for first floor extension to their existing house. The site has a stated area of 0.029ha, existing dwelling of 139sq.m and proposed extension of 43sq.m.

- Reg.Ref.00/1369 – Retention permission granted to Peter Murray for change of use of medical centre to domestic dwelling, attic conversion and garage.

A copy of this permission is included in the History Appendix for the current application.

## 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.

### 5.3. Other Environmental

#### **EPA Code of Practice for Domestic Wastewater Treatment Systems 2021**

This Code of Practice (CoP) 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.

#### **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.

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

Volume 1 – Kilkenny County

Volume 2 – Kilkenny City

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.

## **5.5. Natural Heritage Designations**

The site is some distance to the west of the River Barrow and River Nore SAC and River Nore SPA which flows through Kilkenny City to the east.

## **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

Anne Ryan has submitted a First Party Appeal on behalf of the applicants Ray Cantwell and Siobhan Hennessy relative to the Council's Decision to refuse permission for the proposed development. Their Grounds of Appeal include the following:

#### Planning History

- In 2018 the applicants applied for planning permission to extend their existing 2 bedroom cottage, 2km from the subject site (Rg.Ref.18/599 refers). A further information request was issued by the Council, in relation to this application and the applicants were requested to submit details for the installation of a new wwts to comply with current regulations. Being, an old cottage the existing septic tank and percolation system did not comply. There are space restrictions as there is little land around the cottage to allow them to do this. They approached the adjoining landlord and were unsuccessful in purchasing more land to facilitate the new treatment plant. The application was then deemed withdrawn as they applicants were unable to proceed. Figure 1 demonstrates the constraints of their existing house.

#### Local Need

- The applicants have been living in Ballycallan for 15 years and their children were born and raised there. They wish to remain in the area for this reason. There is a lack of space in the existing cottage for the family. They have tried for an extension with no avail. They consider that it is unfair policy for Kilkenny County Council not to allow them to build a new house just because they already own a house, a house no longer suitable for their needs. Figure 2 shows the proximity of the new site to the existing house.
- The couple run a successful café in Kilkenny City and they had planned to develop a small kitchen garden on their proposed new property to supply herb and salads to the coffee shop. This would serve to reduce the carbon footprint of their fresh produce and ensure that they could supply fresh organic food to

their customers. They consider that this would qualify the couple and their family as having an economic need to reside in the area in line with policy.

## 6.2. **Planning Authority Response**

There is no response from the Planning Authority on file.

## 6.3. **Observations**

There are no Observations on file.

## 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
- 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 include a letter of consent for the applicants from the landowner Thomas Comerford to apply for planning permission on his

lands. Details submitted notes that the applicants currently live in a converted 2no. bedroom cottage, which they purchased on their return from Australia and that they have lived in Ballycallan for 15 years and raised their family there.

- 7.2.6. In 2018 the applicants applied to extend their current home by extending upwards and adding a first floor, Reg.Ref.18/599 relates. However, this application was subsequently withdrawn following a further information request in relation to the wastewater treatment system, which in view of the constraints of the site there is inadequate space to install. Thus, the applicants provide that they have no space to extend their existing 2 bedroomed dwelling to add another much need bedroom. They previously asked the adjoining landowner if they could purchase more land to facilitate the new treatment plant but the landowner was not in a position to help them out.
- 7.2.7. The site of the proposed development is within the 10km radius of their home, as it is 2.5km from their current house. They include a drawing (aerial photograph) to demonstrate the proximity. The applicants wish to remain in the local area as their family have grown up there, but the existing house no longer meets their needs.
- 7.2.8. Their grounds of appeal reiterate these details and provide details of the applicants employment in Kilkenny City. This includes that they had hoped to develop a small kitchen garden on their proposed new property to supply produce for their coffee shop. Also, a drawing has been submitted to demonstrate the constraints of their existing site. This notes the proximity of the percolation area to the house.
- 7.2.9. It is noted that their existing dwelling is located in the rural area and the applicants employment is urban based in Kilkenny City. Having regard to the Rural Settlement Policy and to Section 7.8.4 of the Kilkenny CDP 2021-2027, it is considered that the applicants do not meet the Economic or Social criteria of the *Categories of Rural Compliance and Qualifying criteria* in this 'Area under Urban Influence'. This is because they have not demonstrated a functional need to reside in the rural area, and they are not building their first permanent home and already own a house in the rural area. Therefore, they have not demonstrated compliance with the rural housing qualifying criteria or policy to build a new house in the rural area.

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

- 7.3.1. The site has a stated area of 0.236ha and is situated on the southern side of the local secondary road LS5025. Permission is sought for the construction of a part two-storey, part single-storey, four bedroom dwelling house with separate garage, new entrance from the public road, together with wastewater treatment system and all associated site works.
- 7.3.2. The Site Layout Plan shows that the rectangular shaped site is at the north-eastern end of the greater field area. The proposed house is to be set back c. 25m from the road frontage boundary. The application provides that the area of the proposed works i.e to include the house and garage is to be 270sq.m. As shown on the plans the proposed house is to be c.235sq.m in floor area. The ground floor accommodation is to comprise the living area and two of the bedrooms. The first floor element to comprise 2no. bedrooms. The single storey (shown c.5.6m to ridge height) and first floor element (c.7.65m to ridge height) are shown pitched roofed and are to be linked by a single storey flat roofed element. This provides for a variation in the heights and roof pitches. The north elevation faces the road frontage and similar type windows are shown. However, as shown on the elevations a variety of fenestration is proposed on the side and rear elevations. I note that the scale and massing of the proposed side elevations will appear substantial.
- 7.3.3. External finishes are to include napp plaster finish, selected timber cladding, selected aluclad triple glazed windows and doors. The proposed detached garage is shown 35sq.m in floor area and to be c.4.9m in height and is to have a pitched roof and to be constructed in similar materials to the existing house. If the Board decides to permit, I would recommend that a condition regarding external finishes be included.
- 7.3.4. Regard is had to the County Kilkenny Rural Design Guide which as noted in Section 13.22 of the CDP 2021-2027, is 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 'Transitional/Lowland' landscape areas to the west of Kilkenny City.

- 7.3.5. It is important that landscaping along the site boundaries be established to assist in the integration of the site into the landscape. A new post and rail fence is to be erected along the site boundaries and the existing hedgerow is to be maintained. If the Board decides to permit, I would recommend that it be conditioned that a landscaping scheme to include native planting be provided.

#### 7.4. Access and Sightlines

- 7.4.1. As shown on the Site Layout Plan it is proposed to provide a new access to the public road. The hatched area shows where the existing hedgerow is to be removed at the proposed entrance and a new hedgerow to be planted with a mixture of native species inside the line of the proposed new post and rail fencing. Sightlines of 180m have been proposed to the west and 100m to the east. It is noted that the Council's Municipal Engineer, does not object and recommends conditions. If the Board decides to permit, I would recommend that similar type conditions be provided.

#### 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. This is an unserviced site in the rural area. The Site Layout Plan shows the proposed location of the new wastewater treatment system to the rear i.e. southeast of the proposed dwelling. It also shows the location of the proposed new well in the site frontage to the northwest 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. 57m to the northwest from the proposed DWWTS, appears to be in accordance with this Table.



- 7.5.3. A Site Characterisation Form has been submitted. This notes that the Aquifer Vulnerability is Extreme and the Status of the Groundwater Body – ‘Ballinarry’ is Poor. The groundwater protection response is given as 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 site is potentially suitable for the treatment of wastewater effluent, but that the groundwater is the target most at risk.
- 7.5.4. 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 trail hole is 2.5m. A number of ‘T’ tests were carried out and it is noted that percolation test results provide for a relatively fast value with a sub-surface value of 3.36 surface-test value of 4.39 recorded. It is stated that the site is suitable for secondary treatment system and soil polishing filter.
- 7.5.5. 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.

## 7.6. **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

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

## 9.0 Reasons and Considerations

1. Having regard to the location of the site in an unserviced rural area under urban influence, and to the documentation submitted with the application and appeal, 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 or with 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, based on the core consideration of demonstratable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements. Accordingly, 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, noting that they already own a dwelling in the rural area, cannot be satisfied in a serviced settlement, particularly in light of the site's proximity to Kilkenny site. 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 and would, therefore, be contrary to the proper planning and sustainable development of the area.

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

5<sup>th</sup> of September 2023