



An  
Bord  
Pleanála

## Inspector's Report ABP-315987-23

### Development

For a proposed storey and a half dwelling, proposed shared vehicular entrance, driveway, borewell, proposed wastewater treatment tank and percolation area, stormwater soakaways, landscaping and all associated site works.

### Location

Ballygearda, Hugginstown,  
Co. Kilkenny.

### Planning Authority

Kilkenny County Council.

### Planning Authority Reg. Ref.

22/249

### Applicant

Jennifer Irish

### Type of Application

Permission.

### Planning Authority Decision

Grant Permission.

### Type of Appeal

Third Party Appeal

### Appellant

Jonathan Hillman

### Observer(s)

None

**Date of Site Inspection**

02-11-2023.

**Inspector**

Adam Kearney.

## 1.0 Site Location and Description

The appeal site is a circa 0.37 Ha (increased from 0.172 Ha at FI) green field site located in the townland of Ballygearda, c.500m north of Hugginstown village, c.20km south of Kilkenny City and c.25km north of Waterford City. To the north are two detached dwellings and to the south a linear cluster of 5 no. dwellings served by a single access road. There is an agricultural access gate setback from the road edge roughly centred on the boundary with the public road.

## 2.0 Proposed Development

The permission sought is for a storey and a half dwelling, proposed shared (revised to single when concurrent application was refused) vehicular entrance, driveway, borewell, proposed wastewater treatment tank and percolation area, stormwater soakways, landscaping and all associated site works.

**Note:** At Further information stage the site was enlarged with a concurrent application by Margaret Irish refused permission and the total area now subsumed into the subject application red line area.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to Grant Permission subject to 14 conditions.

### 3.2. Planning Authority Reports

The Planning Authority was satisfied following further information responses that the proposed design and site layout would integrate into the site, that the applicant conformed with the rural housing policy of the Kilkenny City and County Development Plan 2021 - 2027, that the wastewater system proposed would not be a threat to surrounding 'bored well' water quality and that consents from a proximate landowner would mitigate concerns over safe vehicular access.

- 3.2.1. Other Technical Reports
- 3.2.2. Environment Section required ground water testing as water supply in the area is from bored wells.
- 3.2.3. Roads Section requested sightline drawings including 'right turn' sightlines and consent from landowner on opposite side of public road.

## 4.0 Planning History

22/250 Refuse Permission for a dwelling for Margaret Irish

**Note:** As stated heretofore there were 2 no. concurrent applications. With 1 no. dwelling refused, the remaining subject permission extended the boundary to cover both application red line areas and centred the dwelling on the merged site.

Reasons for refusal summarised as follows:

- Inconsistent with existing pattern of development and would exacerbate ribbon development.
- Applicant failed to demonstrate compliance with rural housing policy.
- Failed to demonstrate adequate sightlines.
- Failed to demonstrate that the development would not be prejudicial to public health and the environment, in particular, water supply sources.

## 5.0 Policy and Context

### 5.1. National Planning Framework 2018

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.

## **5.2. Sustainable Rural Housing Guidelines 2005**

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 sets out criteria for Rural Generated Housing and points to those 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 sets out how 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. **Kilkenny City & 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:

Section 4.11 responds to RPO 27 of the RSES which 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 7.8.3 Ribbon Development: is defined as where there are 5 or more houses exist on any one side of a given 250 metres of road frontage. If four houses exist on any one side of a given 250 metres of road frontage, it is likely that ribbon development may be created with an additional house. Ribbon Development is discouraged for a variety of reasons, including road safety, future demand for the provision of public infrastructure and visual impact. The Planning Authority will have discretion to allow well-spaced infill ribboning to complete a particular settlement pattern only, but not where it will lead to further gap infill sites or the coalescence of separate ribbons of development or, in combination with other ribbons, lead to the over proliferation of houses resulting in overdevelopment creating ribbon development, wastewater disposal difficulties, traffic or other serious planning issues in the immediate area.

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**

- Hugginstown Fen (Alkaline (Rich) Fen) SAC 000404 (c.3km South)



## 5.5. EIA Screening

5.6. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- Applicants' uncle built adjoining estate (1 - 5 Hugginstown) where some units could have been assigned to family members.
- Claims that applicant lives in an area some distance from the site with her partner and fears the current application could be speculative development.
- Applicant has not provided the required information to the Planning Authority that supports her housing need as requested.
- Other lands owned by the family are available nearby that would be more suitable.
- Proposal would extend the ribbon development.
- Involves a material change of use from agriculture to residential.
- Reference in the application to a group scheme adjacent is incorrect, the scheme is served by a shared well which was also replaced by the residents.

### 6.2. Applicant Response

- Expresses concerns about personalisation of appeal.
- Applicant does have a local need that was demonstrated.
- Adjacent site is a housing scheme and not applicable to Ribbon development.
- Water testing was undertaken by a professional company.
- Extensive further information submitted.

### 6.3. **Planning Authority Response**

The Planning Authority having regard to the complete documentation submitted and which included evidence of address was satisfied that the applicant meets the criteria for a rural dwelling as per the Kilkenny City and County Development Plan 2021 -2027.

### 6.4. **Observations**

None

### 6.5. **Further Responses**

None

## 7.0 **Assessment**

7.1. Having reviewed the application details, the documentation on file, including the submissions received in relation to the appeal, and having inspected the site and having regard to national, regional and local policies and guidance I consider that the main issues in this appeal are as follows:

- Compliance with rural planning policy
- Ribbon Development
- Wastewater Treatment & Water Quality
- Access

7.2. With regard to compliance with rural housing policy the proposal should accord with the provisions of the National Planning Framework, Sustainable Rural Housing Guidelines 2005 and the provisions of the Kilkenny City and County Development Plan 2021-2027 as it relates to settlement in a rural area.

7.3. The site is located in an area that is identified as being under strong urban influence in the Sustainable Rural Housing Guidelines and is classified as being within an Area under Urban Influence as per Figure 7.1 “Rural Housing Strategy” of the Kilkenny City and County Development Plan 2021-2027

- 7.4. The Sustainable Rural Housing Guidelines define rural areas under strong urban influence as those within proximity to the immediate environs or close commuting catchment of large cities and towns. Circumstances for which a genuine housing need might apply include persons who are an intrinsic part of the rural community and persons working full time or part time in rural areas.
- 7.5. Policy Objective 19 of the National Planning Framework requires that, in rural areas under urban influence, the core consideration for the provision of a one-off rural house should be based on the demonstrable economic or social need to live in the rural area.
- 7.6. The Development Plan sets out qualifying criteria under which applications for one-off rural houses can be considered. The following is of relevance to the subject application:
- Persons with a demonstrable social need to live a particular local rural area,
- 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.
- 7.7. Kilkenny County Council issued a request for further information that *inter alia* requested the applicant to demonstrate compliance with the Rural Housing policy set out within the Kilkenny County Development Plan
- 7.8. I cannot identify anything on file that satisfies this request. I have had sight of a copy of correspondence relating to the payment of a premium for an insurance policy however this is not a utility bill and is not documentary evidence that satisfies the criteria as set out in the development plan. From review of the application documentation details I have no evidence to substantiate that the applicant has a demonstrable economic or social need to live in this rural area.
- 7.9. The applicant does not work within the rural area and while it is clear that the applicant has family links in the area of the appeal site, I do not consider that this constitutes a demonstrable social or economic need for a rural dwelling.

- 7.10. With regard to Ribbon Development, the site is proposed on lands located between 2 no. detached houses and 5 no. detached dwellings that form a linear cluster on the edge of Hugginstown which is categorised in the plan as a rural node.
- 7.11. While I appreciate that the 5 dwellings are accessed from one service road the fact remains that the provision of an extra dwelling would constitute 5 dwellings within 250m and 8 dwellings within 300m .
- 7.12. Having regard to water quality it is noteworthy that there are 7 dwellings reliant on bored wells for their potable water within close proximity of each other as evidenced by the Ribbon Development discussed in section 7.9. This proposal seeks to add another dwelling with accompanying wastewater treatment and another bored well.
- 7.13. Although I appreciate that testing of the well serving the 5 dwellings was undertaken and, on the occasion, no adverse results presented, I am acutely aware that there is a high concentration of wastewater systems in the area where there is a reliance on local ground water for a water source and where mains water or a group water scheme would not present such an issue.
- 7.14. I am not satisfied that an additional dwelling served by an additional wastewater treatment system would not impact on the 3 existing bored wells serving 7 dwellings or indeed on the bored well that is proposed to serve the subject dwelling.
- 7.15. With regard to access. I note there was extensive further information submitted with regard to sightlines. Having visited the site and observed the visibility available I would concur with the local Authority assessment that there are sufficient sightlines available and that the consent from the landowner on the opposite side of the road allowing for maintenance of hedgerows provides adequate 'right turning' visibility.

## **8.0 Appropriate Assessment Screening**

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.

## 9.0 Recommendation

I recommend that permission be REFUSED for the development for the following reasons.

## 10.0 Reasons and Considerations

- 10.1. Having regard to the location of the site in an unserved 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. 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.
- 10.2. The Kilkenny County Development Plan, 2021 to 2027, under Section 7.8.3 has a presumption against development that would create and exacerbate ribbon development where ribbon development is defined by way of example as five or more houses on one side of the road with a road frontage of 250m in accordance with Appendix 4 of the Sustainable Rural Housing Guidelines. The Board considers that the proposed dwelling would by virtue of being the fifth house on a road frontage that in this case is less than 250m would give rise to ribbon development and would, given the character of residential development along the road that serves the site, have the potential to give rise to further exacerbation of ribbon development and would add to the cumulative diminishment of the visual amenities of this rural

landscape by way of such developments. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

- 10.3. Having regard to the concentration of dwellings and associated wastewater treatments systems in an area dependent on ground water for a potable water supply and notwithstanding the documentation submitted in support of the application and appeal, the Board is not satisfied that the proposed development, in conjunction with other individual wastewater treatment systems in the vicinity, would not pose an unacceptable risk to groundwater resources in the area. The proposed development would, therefore, constitute an unacceptable risk of contamination of this groundwater, which serves as a source of public water supply, would be prejudicial to public health and 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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Adam Kearney  
Planning Inspector

01 December 2023