



An
Bord
Pleanála

Inspector's Report

ABP-318042-23

Development	Demolition of existing ruins and construction of house, garage, new entrance and ancillary site works
Location	Turkstown, Fiddown, Piltown, Co. Kilkenny
Planning Authority	Kilkenny Co. Co.
Planning Authority Reg. Ref.	2360294
Applicant(s)	Shane Doody
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Shane Doody
Observer(s)	None
Date of Site Inspection	15 th April 2024
Inspector	Bernard Dee

1.0 Site Location and Description

- 1.1. The appeal site is located in Turkstown which is approximately 1.5km SE of Fiddown which is the nearest settlement to the appeal site. Turkstown itself is comprised of single dwellings on large plots and several historic farmyards such as the appeal site. The site is located between the River Suir to the south and the N24 to the north.
- 1.2. The appeal site itself has an area of 0.21ha and is currently occupied by a small stable block (40m²) in a derelict condition and the ruins of a stable block and the former farmhouse. The appeal site is partially defined by a stone wall to the north and west and there is an existing access facing north onto a spur road which provides access to the local road. This spur road is shared with two other dwellings.
- 1.3. I note from the Place Map submitted with the application that the appeal site forms part of a larger agricultural holding to the south of the site and there is also another landholding to the north of the N24 near the appeal site. These sites are outlined in blue on this map.

2.0 Proposed Development

- 2.1. The proposed development is comprised of a dwelling and a detached garage with a combined GFS of 250m². The siting of the dwelling is on a former stable block and the garage is to be sited on the existing derelict stable block on the eastern boundary of the site. The proposed dwelling has a footprint of 17.4m x 22m and a maximum ridge height of 5.3m and the proposed garage has a footprint of 5.6m x 6.7m and a maximum ridge height of 4.6m. The architectural style of the single storey structures could be described as contemporary-traditional or vernacular influenced design.
- 2.2. Vehicular access is proposed onto the existing spur road off the local road which is in close proximity to the access to the N24 which is located approximately 50m to the NE of the appeal site. Mains water supply is proposed and an on-site effluent treatment system.

3.0 Planning Authority Decision

3.1. Decision

Permission for the proposed development was refused on 29th August 2023 for 2 no. reasons.

- 1. The proposed development, which is located in a rural area, would constitute an excessive amount of houses in a rural area that is under strong development pressure and has reached saturation point in terms of single rural housing. It is the policy of the Planning Authority, as set out in the Kilkenny County Development Plan 2021-2027, to encourage housing into suitably zoned lands into suitably zoned land in areas where the appropriate social, community and physical infrastructure either exists or is planned. Taken together with the existing concentration of dwellings at this location, the proposed development would constitute ribbon development as set out in the Kilkenny County Development Plan 2021-2027 and as per Appendix 4 of the 'Sustainable Rural Housing Guidelines' (DoEHLG, 2005) which recommends avoidance from the creation of such development. The proposal would consolidate this haphazard and unsustainable pattern of development. Consequently, the proposed development is contrary to the proper planning and sustainable development of the area.*
- 2. Having regard to the concentration of wastewater treatment systems at this location and concern about the potential for high levels of nitrate and ammonia in the groundwater, the applicant has not submitted sufficient information with regard to potential impacts on groundwater quality at this location to demonstrate that the proposed development would not be prejudicial to public health or to the environment.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report on file, in summary, had regard to the following planning issues:

- The proposed dwelling is located in an area under strong urban influence where it is Planning Authority policy to accommodate rurally generated housing demand but to direct urban generated housing into suitably zoned areas within existing settlements.
- Applicants will need to demonstrate economic or social need to live permanently in a rural area. The applicant has not submitted proof to support the contention that he has lived within 7km of the application site for his whole life – the Development Plan rural housing need requires proof of residence in the locality for the last five years.
- The area within which the application site is located is defined by ribbon development and the proposed dwelling would be the 9th dwelling in a 250m zone along the local road or 11th in a 330m zone.
- The proposed dwelling, notwithstanding the argument that it could be considered an infill site, would exacerbate undesirable ribbon development at this location and create an undesirable precedent with regard to other potential infill sites along this road.
- It is considered that there is an excessive amount of residential development in this rural area and that the reason for refusal issued for a house on this site in 2006 has not been overcome by the present application.
- The Environment Section has verbally commented that , the proximity of wells in the area to the application site and concerns regarding the nitrate and ammonia levels in groundwater in the area. It was recommended that Further Information be sought with respect to these issues.
- There are no issues in relation to traffic safety connected with the proposed access and the design of the proposed dwelling and garage is single storey and is acceptable.

- Neither AA nor EIA is required in relation to the proposed development.
- Recommend a refusal of permission for 2 no. reasons.

3.2.2. Other Technical Reports

- Area Engineer – no objections.
- Environment Section – verbal report received requesting that Further Information be sought from the applicant on any wells located within 250m of the proposed treatment system.
- Water Services Section – emailed on 28th August 2023 who stated no issues.

3.2.3. Prescribed Bodies

- There are no submissions on file from Prescribed Bodies.

3.2.4. Observations

- Two Observations were received stating that if permission was refused for a dwelling in 2006, then permission for the current dwelling should be refused as nothing has changed in the interim.

4.0 Planning History

4.1. On the Appeal Site

- Ref. 061614 – permission was sought for a bungalow with proprietary treatment system and percolation area along with all ancillary site works including road entrance at the appeal site and was refused on 15th November 2006 for 2 no. reasons:
 1. Having regard to the existing and permitted development at this location, the proposed development would further erode the rural character of this Area of High Amenity, would lead to an excessive concentration of suburban type development and would exacerbate the pattern of linear development at this location, contrary to the Department of the Environment and Local Government Sustainable Rural Housing Guidelines for Planning Authorities. It is therefore

considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the information provided with the application documents, and the concentration of existing and permitted dwellings in the area likely to be served by private effluent treatment systems, the applicants have failed to satisfactorily demonstrate that effluent can be discharged at the subject site without risk to public health or the environment. Accordingly, the development as proposed would be prejudicial to public health.

4.2. In the Vicinity of the Appeal Site

- Ref. 2360554 – this site is located approximately 700m to the SE of the appeal site where an application to construct a new two storey five bedroom dwelling, waste water treatment system, new site entrance plus all associated site works was granted on 8th April 2024 subject to 12 no. conditions. In the Planner's Report on file, local housing need was established (Condition No. 1 of the Final Grant required proof of same to be submitted to the Planning Authority) and ribbon development was not considered to be an issue as there were only 3 no. dwellings along this stretch of the road. With reference to the on-site effluent treatment system, the Planner's Report stated that having regard to the previous grant of permission on the site the current proposal for effluent treatment was acceptable.
- Ref. 21696 – this site is located approximately 375m to the NW of the appeal site on the same local road where an application to construct a two storey dwelling with on-site sewerage treatment, new entrance onto the public road and all associated works was granted on 8th August 2022 subject to 13 no. conditions. In the Planner's Report on file, the Environment Section had no objection to the proposed effluent treatment system subject to conditions. In addition, the Planner's Report initially recommended refusal for reasons of ribbon development intensification and visual impact but following a request for Further Information regarding local housing need and redesign of the proposed dwelling, permission was granted.

- Ref. 18506 - this site is located approximately 200m to the east of the appeal site and on the other side of the N24, where an application to construct a bungalow type dwelling house, detached domestic garage, water treatment unit with percolation area, entrance onto public road and all associated site works was granted on 6th November 2018 subject to 12 no. conditions. There is planning history on this site and therefore the principle of residential development was previously established. In the Planner's Report on file, the issue of ribbon development or the on-site effluent treatment system did not arise in the assessment of the application. With regard to proof of local housing need as per the requirements of the Development Plan, the Planner's Report notes that no such information was submitted with the application but Condition No. 2 of the Final Grant required the applicant to supply such details to the Planning Authority (no timescale specified in this condition).

5.0 Policy and Context

5.1. Development Plan

The Kilkenny City and County Development Plan 2021-2027 is the relevant Development Plan for the area.

- 4.11 Rural Areas - 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.
- 4.11.1 Rural Housing - The Rural Housing Policy is contained in Chapter 7, Rural Development Strategy. The Rural Housing Policy complies with the requirements to designate two policy areas, being areas under Urban Influence i.e. within commuter catchment of cities and large towns and centres of employment and elsewhere.

- 7.8.4 Categories of Rural Compliance and Qualifying criteria - In line with the NPF, National Policy Objective 19 requires a clear distinction to be made between areas under urban influence and elsewhere in providing for the development of rural housing.
- Qualifying Criteria for Rural Housing: Areas classified as under Urban Influence are located close to the immediate environs or commuting catchment of cities and towns or to major transport corridors with ready access to urban areas.
- They are characterised by:
 - High levels of commuting patterns to urban areas
 - Areas with high population growth in the County
 - Ready access to a good road network with ready access to the larger urban 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.
- In areas under urban influence 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, being people who are 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 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.
- Occupancy Condition All permission granted for rural housing within the Areas of Urban Influence shall be subject to an occupancy condition restricting the use of the dwelling to the applicant or members of his/her immediate family as a place of permanent residence for a period of seven years from the date of first occupancy.
- Sterilisation Agreements In areas where significant levels of rural housing development have taken place on the edges of urban areas within the county and where the Council considers such areas are becoming over developed the council may seek agreement under Section 47 of the Planning Act (sterilisation agreement) if it considers it necessary to regulate development in the area.
- 10.1.7 Small Towns and Village Investment programme - The Council will support the servicing of rural villages (to include for serviced sites) to provide an alternative to one off housing in the open countryside. The Council will require that septic tanks, proprietary effluent treatment systems and percolation

areas are located and constructed in accordance with the recommendations and guidelines of the EPA and the Council in order to minimise the impact on surface water of discharges.

- 10.1.8 Water Quality - 10.1.8.1 Water Framework Directive - Objective 10B - To implement the measures of the River Basin Management Plan, including continuing to work with communities through the Local Authority Waters Programme to restore and improve water quality in the identified areas of action.
- 10.1.8.5 Water Quality Development Management Requirements (+ 13.22.2 Wastewater Treatment Systems) - To assess all new applications for single houses in accordance with the EPA manual entitled Code of Practice: Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10) or any subsequent revisions or replacement. The person carrying out the assessment will be suitably qualified and in the local authority's opinion, be competent to do so.

5.2. Natural Heritage Designations

The following natural Heritage designations are located in the vicinity of the appeal site:

- Lower River Suir SAC (002137) – is located approximately 200m SW of the appeal site.
- Fiddown Island pNHA (000402) – is located approximately 550m SW of the appeal site.

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed 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

The relevant planning issues raised by the First Party are, in summary, as follows:

- The appellant's family home and current residence is within a 7km radius of the appeal site and the grandparents reside 200m from the site (to the NW).
- The site previously accommodated a residential building and two stable blocks and the appellant seeks to return the site to its former residential use in a vernacular architectural style that is sympathetic to the character of the site and to buildings in the vicinity of the appeal site.
- The installation of a properly designed, installed and maintained effluent treatment system on the appeal site would not represent a threat to public health in the area.
- It is Council policy in rural areas under strong urban influence to facilitate rural generated housing and the appellant has lived in the area his whole life and as an agriculture graduate, the appellant wishes to farm the landholding adjacent to the appeal site.
- The current proposal is superior to the application refused on the appeal site in 2006 in terms of design and improved effluent treatment proposals and the previous refusal should not be used as a precedent for a refusal of the current application.
- The proposed dwelling would be in keeping with the existing pattern of development in the area and would not exacerbate ribbon development given that the application represents a renewal of the previous dwelling on the site and a house at this infill location would not contribute to the sprawl of ribbon development in the area.
- It is unfortunate that the Environment Section's recommendation for seeking Further Information on the proposed treatment system was not followed up on by the Planning Authority as this information would demonstrate that no public health hazard exists in connection with the proposed treatment system.

6.2. Planning Authority Response

- The Planning Authority has not responded to this appeal.

6.3. Observations

- None received.

7.0 **Assessment**

7.1. Scope of Assessment

7.1.1. Having examined all the application and appeal documentation on file, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. I note that the genuine rural housing need of the appellant has not been questioned by the Planning Authority and I see no reason to query their assessment of this issue.

7.1.2. The assessment issue therefore relates to the extent to which the proposed dwelling would contribute to ribbon/haphazard development in the area and the potential public health impact associated with the proposed effluent treatment system.

7.1.3. The issue of AA Screening is also addressed in this assessment.

7.1.4. Ribbon/Haphazard Development

7.1.5. The issue of the proposed dwelling contributing to ribbon/haphazard development in the area, the first reason for refusal cited by the Planning Authority, is a common reason for refusal for one off houses in rural areas under strong urban influence.

7.1.6. However, regard must be had to the existing pattern of development in the area which is comprised of suburban type dwellings located almost continuously along this road in either direction from the appeal site. In reality, this area is no longer a rural landscape in the accepted meaning of the concept but rather resembles a linear suburb in its pattern of development and character.

7.1.7. Regard must also be had to the fact that the appeal site is an infill site that was historically the site of a dwelling and stable blocks. The planning history of the area as reviewed in Section 4.2 above shows that the Planning Authority have granted permission for similar houses on infill sites in the area without the issue of

ribbon/haphazard development in the area being an obstacle to a positive decision in each case.

7.1.8. The rural landscape in this area has been eroded to an extent that it is no longer rural in character and the addition of another dwelling on this infill site will not contribute in any significant way to the ribbon/haphazard development already visible in the area.

7.2. Effluent Treatment System

7.2.1. I note that a Site Specific Report by Corcoran precast Tanks in relation to the suitability of the treatment system proposed on the site was submitted in the original planning application documentation. I note that this report concludes that *“it is contended that this treatment and disposal method will work satisfactorily at the above site and conforms to all EPA guidelines”*.

7.2.2. I also note that the Environment Section in a verbal report received requested that Further Information be sought from the applicant on any wells located within 250m of the proposed treatment system (having regard to nitrate and ammonia levels in the groundwater in the locality) and that the Water Services Section had no issues with the proposed development. Irish Water did not make any submission in relation to this case.

7.2.3. The Board should note that the recent planning history of the area (see Section 4.2 above) includes three relatively recent grants of permission for dwellings with proposed on-site effluent treatment systems with which the Planning Authority did not raise any concerns.

7.2.4. While I appreciate the precaution displayed by the Planning Authority, I see no reason why the proposed treatment system, if properly installed and maintained, should represent a threat to the quality of groundwater in the vicinity of the appeal site.

7.2.5. In the absence of a recommendation of refusal of permission from either the Environment Section or the Water Services Section, I recommend to the Board that this reason for refusal issued by the Planning Authority does not have sufficient credibility to be permitted to stand. Accordingly, I recommend that the Board omits this reason for refusal in its decision on this appeal.

7.3. AA Screening

7.3.1. Having regard to the relatively minor modifications proposed to a previously permitted development within an urban area and the distance from the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that planning permission be granted for the proposed dwelling for the reasons and considerations set out below and subject to the conditions set down hereunder.

9.0 Reasons and Considerations

Having regard to the provisions of the Kilkenny City and County Development Plan 2021-2027, the existing pattern of development in the area and to the recent planning history of the area, it is considered that the proposed dwelling would not exacerbate ribbon development or constitute a haphazard form of development or have an adverse impact on public health in the area by virtue of the proposed effluent treatment system. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 6th day of July 2023 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise, dust and vibration management measures, rock breaking/excavation methodologies and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
3.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>

4.	<p>Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
5.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
6.	<p>Prior to commencement of development, the developer shall enter into a water connection agreement with Irish Water.</p> <p>Reason: In the interest of public health.</p>
7.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:</p> <ul style="list-style-type: none"> (a) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment (b) Proposals for the protection of all existing and new planting for the duration of construction works on site, together with proposals for adequate protection of new planting from damage until established (c) A timescale for implementation, including details of phasing, which shall provide for the planting to be completed before the dwelling is first made available for occupation. <p>Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.</p>
8.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the</p>

	<p>planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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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.

Bernard Dee
Planning Inspector

17th April 2024