



An
Bord
Pleanála

Inspector's Report ABP-319663-24

Development	<i>To construct one new two-bedroom house with integrated garage and all associated site works on lands.</i>		
Location	<i>Jerpoint West, Thomastown, Co. Kilkenny.</i>		
Planning Authority Ref.	<i>24/24.</i>		
Applicant(s)	<i>Vincent and Colette O' Byrne.</i>		
Type of Application	<i>Permission</i>	PA Decision	<i>Refuse Permission.</i>
Type of Appeal	<i>First Party</i>	Appellant	<i>Vincent and Colette O' Byrne</i>
Observer(s)	<i>Robert & Mary Anderson</i>		
Date of Site Inspection	<i>22-08-2024</i>	Inspector	<i>Adam Kearney</i>

Context

1. Site Location/ and Description.

The site is located at Jerpoint West, c.1.5km west of Thomastown in a rural area between the settlement boundary and the Mount Juliet golf resort and hotel. The subject site which forms part of a larger family landholding is located along a narrow Cul de Sac (L82031-4) off Station Road with mature hedgerow frontage (LS8203). The Cul de Sac is lightly trafficked and serves a number of dwellings, a commercial property and farmland. The general area is under considerable development pressure from 'one off' housing as evidenced by the no. of properties in the vicinity and the number of planning applications. Station Road could be characterised as semi-rural given its proximity to 'The Greens' housing development (500m east of the subject site) and a low-density linear development of detached dwellings, name Ardmilan 100m to the east. Station Road itself is serviced by a municipal sewer and benefits from public lighting.

2. Description of development. To construct one new two-bedroom house with integrated garage and all associated site works on lands

3. Planning History

P23/203 Permission refused to construct a two-bedroom house with integrated garage and all associated site works, Jerpoint West, Thomastown, Co. Kilkenny.
Applicant: Michael and Sheila O'Byrne

Permission refused for 4 No. reasons relating to traffic hazard, density, rural housing policy and proper planning.

Proximate to site

24/60173 Permission refused for single storey dwelling, under appeal with ABP Reference ABP-320045-24

23/60113 - Permission refused for development consisting of a single storey dwelling house, wastewater treatment system and associated works, Jerpoint West, Thomastown, Co. Kilkenny.

21/90 - Permission to alter existing farm entrance to serve the existing dwelling house (permitted under planning permission ref. no. 17/7 19) and all associated works and Retention Permission for roadway leading from the upgraded entrance

to the existing permitted house. Permission refused by KCC and overturned/conditioned on appeal ABP-310149-21.

Condition 4 - ABP 310149-21

Within three months of this order, the applicant shall submit to and agree in writing with the planning authority full details regarding the proposed sightline improvement at the junction of the cul de sac and Station Road, including the long-term maintenance of the realigned hedgerow and grass verge.

4. National/Regional/Local Planning Policy

National Planning Framework – Project Ireland 2040

5.2.1. The National Planning Framework – Project Ireland 2040 (NPF) is a high-level strategic plan for shaping the future growth and development of Ireland to 2040. A key objective of the Framework is to ensure balanced regional growth, the promotion of compact development and the prevention of urban sprawl. It is a target of the NPF that 40% of all new housing is to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites with the remaining houses to be delivered at the edge of settlements and in rural areas.

National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e., the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations. In rural areas elsewhere, it refers to the need 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. In all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitely demonstrate that the proposed development will not have an adverse impact on water quality and requirements set out in EU and national legislation and guidance documents.

Sustainable Rural Housing Development Guidelines 2005

5.4.1. The Rural Housing Guidelines seek to provide for the housing needs of people who are part of the rural community in all rural areas and makes a distinction between 'Urban Generated' and 'Rural Generated' housing need. Chapter 4 of the guidelines relates to rural housing and planning applications and states that in areas under significant urban influence, applicants should outline how their proposals are consistent with the rural settlement policy in the development plan. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply, including 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas.

4.4 Roadside Boundaries

The removal of existing roadside boundaries, except to the extent that this is needed for a new entrance, should be avoided where at all possible except where required for traffic safety purposes. Roadside boundaries, whether hedgerows, sod and stone bank, stone wall or other boundaries, provide important features that are elements of both the landscape and ecology of rural areas. The retention of such boundary treatments assists in absorbing new rural housing into its surrounding and should generally be encouraged.

Occasionally, the removal of substantial lengths of roadside boundaries is proposed as part of an element of improving visibility at the junction of a new entrance onto a road. Where an alternative site is available and otherwise suitable, applicants and planning authorities should consider such alternative on a basis that avoids the necessity for widespread boundary removal.

5.4.2. The Guidelines further require that new houses in rural areas be sited and designed in a manner so as to integrate well with their physical surroundings and generally be compatible with water protection, roads, traffic and public safety as well as protecting the conservation of sensitive areas

Development Plan

The Kilkenny City and County Development Plan 2021-2027 is the operative development plan.

Rural Policy

Section 7.8 of the Development Plan sets out the Rural Settlement Strategy. This outlines that the NPF prescribes that in relation to the development of rural housing that a distinction is made between areas under urban influence and rural areas elsewhere. Smaller towns and villages below the level of the district towns in the settlement hierarchy are classified as part of the rural area but their viability and vitality must be protected and enhanced through the rural settlement policy. The site is located outside of any settlement boundary identified within the City and County Development Plan. The Development Plan outlines that 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.

The appeal site is classified as being within an Area under Urban Influence. The Development Plan sets out the following characteristics for Areas under Urban Influence. 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 with high population growth in the County
- Ready access to a good road network with ready access to the larger urban areas.

Qualifying Criteria for Rural Housing: Areas Under Urban Influence:

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. Areas under urban influence display the greatest pressures for development due to the commuter dependence of these areas on urban areas for reasons of employment and other social and economic functions. 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. The

Planning Authority shall have regard to the viability of smaller towns and rural settlements in the implementation of the policy.

13.22.1 Access and Sight Lines

The applicant must demonstrate that safe vehicular access to and from a proposed site is provided in terms of visibility from a proposed entrance, but also in terms of impact on road traffic on the adjoining public road, through generation of turning and stopping movements by vehicles leaving and entering the proposed site. Applicants must adhere to the TII document *Design Manual for Roads and Bridges* (DMRB) and TII Standard DN-GEO-03060 *Geometric Design of Junctions* when assessing planning applications and the *Design Manual for Urban Roads and Streets* (DMURS) and TII Standard DN-GEO-03084 '*The Treatment of Transition Zones to Towns and Villages on National Roads*' where appropriate. Site entrances should be located so as to require the least amount of hedgerow removal in accordance with DMRB requirements. Excessive hedgerow removal will be resisted where setback is considered significant or roadside definition is compromised. Hedgerow removal will also be resisted where several entrances have over time denuded the extent of mature hedgerow along a particular stretch of road. All hedgerows that are required to be removed to achieve sightlines should be reinstated behind the applicable sightlines and maintained so as not to cause any reduction in the extent of sightlines achievable over time.

9.2.5.1 Hedgerows

Hedgerows contribute significantly to biodiversity and landscape character. They have an important farming function, they are wildlife habitats, and corridors, between habitats, and they also have historical significance as townland and field boundaries.

5. Natural Heritage Designations

The site is not located within or close to any designated sites.

The nearest designated sites are as follows:

- River Barrow and River Nore SAC c.1.5km
- Thomastown Quarry SPA c.3km
- Hugginstown Fen SAC c.9km

Development, Decision and Grounds of Appeal

6. PA Decision

Refused Permission for the following 3 Reasons

1. Having regard to:

- the existing deficiency in the road network serving the site; the restricted width of the road; sightlines submitted not in accordance with National Roads Authority, Design Manual for Roads and Bridges, restricted visibility and poorly aligned junction between the LT82013 and LS8203, reliance on other previous permissions to carry road junction sightline works, the precedent that a grant of permission for the proposed development would create for other, similar developments in the vicinity, it is considered that the existing road is unsuited to further development and additional traffic movements generated by the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users.

2. In order to achieve required sightline standards with National Roads Authority - Design Manual for Roads and Bridges along the LT82013 which provides access to the site, would involve the removal of excessive amount of mature roadside hedgerow which would adversely impact upon the established rural character of this area and would seriously injure its environmental and visual amenities. The development would not, therefore, comply with Section 4.4 of the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of Environment, Heritage and Local Government and policy 9.2.5.1 of the Kilkenny City and County Development Plan 2021-2027 in relation to hedgerow protection and would be contrary to the proper planning and sustainable development of the area. In the absence of the removal of the hedgerow the proposed development

would have inadequate sightlines and would constitute a traffic hazard which would endanger public and traffic safety.

3. The proposed development, which would be located in an unzoned, rural area outside the development boundary of Thomastown, would constitute an excessive amount of houses in a rural area that is under strong development pressure. It is the policy of the Planning Authority, as set out in the Kilkenny City and County Development Plan 2021-2027, to channel housing into suitably zoned land in areas where the appropriate social, community and physical infrastructure either exists or is planned. It is considered that the proposed development taken in conjunction with existing developments in the vicinity would exacerbate the haphazard and unplanned form of development in this rural area, would intensify urban sprawl on the local road injuring the visual amenity and rural character of the area, would lead to demands for the uneconomic provision of certain public services outside of the Thomastown zoned area and, would represent an undesirable precedent for further such development in the area, and would be contrary to the policies set out in the said Development Plan and the Thomastown Local Area Plan 2019. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Area Engineer Report

The Local Engineer noted that the site layout plan and documentation submitted refers to previous permissions P03/I036 Condition no 2 and register reference 21/90 Condition No. 4 of ABP-310149-22 which relates to permitted upgrade of the junction at LT82013 and LS8203. Such works have not been carried out. It is noted that the landowner Michael O'Byrne who previously authorized junction sight line upgrade works under above permission (21/90) is the father of the applicant of this planning application and was refused permission recently under P23/203. The application documents refer to and rely on above sightline permission works for laneway junction improvements to be completed as part of proposed development, this is not considered acceptable and contrary to proper planning with no confirmation provided that applicant will complete such works or timeframe provided

7.1 First Party Appeal.

Grounds:

- It is part of the purpose of this development to upgrade the road network serving this and a number of permitted developments on this road where the upgrade of the junction at LT82013 and LS8203 is a condition of those permissions. See Planning Register 03/1036 Condition No. 2 and 21/904 Condition No. 5 and ABP 310149-21
- With regard to the removal of hedgerow the County Council and An Bord Pleanala have already conditioned the removal of hedgerow
- It is the intention of the applicant by condition or otherwise to plant a new native species hedgerow behind the required sightlines prior to the construction of the development which will mitigate any loss of flora, fauna and amenities of the area. This will include the required removal of hedges as conditioned by Kilkenny Co. Co. and An Bord Pleanala
- Applicants are the son and daughter in law of the site owners who are elderly and in need of care. To this end they have a demonstrable social need to live in this particular rural area.
- Will mean safety of road users with regard to the traffic hazard at the junction of the LT82013 and LS8203

7.2 Observations

Robert & Mary Anderson

- The lane in question is extremely narrow
- 3 previous refusals on the site
- Hedgerow is wide and is in place for generations and holds a diverse range of flora and fauna
- Gentle curve of road slows traffic
- Laneway unsuited to further development
- Questions why did applicant's parents applied for permission on same site 6 months prior this application?
- Parents operate a guest apartment in their home nearby

- Notes the year when applicant's parents purchased the land and refers to a planning issue surrounding a Lime Kiln on the lands
- Development would exacerbate haphazard development in the area and represent an undesirable precedent for further such development in the area

8. PA Response

- None

Environmental Screening

9. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, 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.

10. AA Screening

Having regard to the modest nature and scale of development, and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 Assessment

2.1. Having regard to the information presented in the appeal and the planning application, the reasons for refusal and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- *Rural Housing Policy*
- *Hedgerow Removal for Sightlines*

- *Visual Impact*

2.2. **Rural Housing Policy**

Vincent O' Byrne is the son of a long-term landowner, he indicates that he has applied to the civil service for a transfer back to Kilkenny. They state they do not own a house in the area and are returning home to support elderly parents. Being the person with a connection to the area he has demonstrated compliance with rural housing policy to the satisfaction of the PA detailing the dates of attendance at both national and secondary school, the location of the original family home where he grew up and the landholding of their parents. He has also detailed places of employment locally from his time fully resident in the area. This term of residency has exceeded the minimum of 5 years required. It is noted that the bona fides of the applicant and their qualification for housing in the area is not contested by any of the observations or submissions. I concur with the PA that the applicants comply with the rural housing policy under social need.

2.3. **Hedgerow removal for sightlines**

The Cul de Sac (L82031-4) serves agricultural lands, a commercial building and numerous private residences. At the time of my visit the hedgerow was overgrown given the time of year. The road is narrow in parts at circa 3m but is lightly trafficked. The application proposes the removal of a substantial section of hedgerow along the Cul de Sac, circa 75m to provide adequate sightlines for safe access and egress from the proposed site. Hedgerow removal/setback is also proposed along Station Road (circa 45m) to accommodate sightlines at the junction in the northwest direction toward Thomastown. As noted in the application, the appeal and in the Local Engineers report there is an unimplemented condition associated with ABP-310149-21 that required a setback of the Station Rd. boundary that would have improved sightlines at the junction.

Having walked and driven the Cul de Sac road I believe the extent of the works proposed i.e. the setback/removal of circa 80m of mature hedgerow would represent a wholly unnecessary and inappropriate destruction of large sections of mature hedgerow to provide access to a single dwelling. Excessive removal of hedgerow at this location would cause undue environmental damage and detract from the rural character of the area.

Section 4.4 of the Sustainable Rural Housing Guidelines encourages the identification of alternative sites rather than the widespread removal of roadside boundaries.

In addition to the removal of hedgerow along the Cul de Sac it is also proposed to setback the boundary along Station Road. As detailed by the agent for the appellant this has already been conditioned from a previous permission (ABP-310149-21) Taken in unison it would represent a substantially smaller section of hedgerow (c.45m) and its setback would have a wider benefit to all road users in terms of vehicular, cycle and pedestrian safety along Station Road and at the junction with the Cul de Sac. However, when taken in its totality for the subject proposal the provision of a dwelling at the stated location would result in the removal of over 120m of mature roadside hedgerow.

With regard to the family holding outlined in blue there may be alternative options subject to discussion with the PA with access on or closer to Station Rd that would have a more benign impact on the receiving environment.

2.4. Visual Impact

The dwelling design is single storey and in terms of bulk and scale would integrate well into the site. The visual impact of proposed boundary alterations would however be more profound and notwithstanding the aforementioned environmental impacts would serve to denude vast sections of rural hedgerow and have a substantial impact on the character of the rural area in contravention of Section 13.22.1 of the CDP.

3.0 Recommendation

- 3.1. I recommend that permission for the development be Refused for the following reasons.

4.0 Reasons & Considerations

Section 28 Guidance and Development Plan policy under the Kilkenny City and County Development Plan 2021-2027 is clear and consistent in terms of its policy and objectives in relation to the retention/removal of hedgerow in rural areas. It is

clear under Section 4.4 of Sustainable Rural Housing Development Guidelines (2005) and Section 9.2.5.1 and 13.22.1 of the CDP that there is a requirement to retain hedgerow unless removal is required to facilitate traffic safety. The proposal is for the removal of a substantial length of existing mature hedgerow along the frontage of 2 no. roads in a rural area in favour of the provision of sightlines for a single dwelling. The removal of such would not be justified on the basis of traffic safety alone and the proposal would be contrary to Development Plan policy in relation to such as well as resulting in a substantially diminished rural character and the loss of biodiversity. The proposed development 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.

Name: Adam Kearney

Planning Inspector

Date: 06-09-2024