



**An Bord Pleanála**

**Inspector's Report**

**Development:** Retention of replacement house, waste water treatment system and all ancillary site works at Killahurler Lower, Thomastown, Co. Wicklow

**Planning Application**

Planning Authority: Wicklow County Council  
Planning Authority Reg. Ref.: 12/6075  
Applicant: Gerard Curran  
Type of Application: Retention  
Planning Authority Decision: Refuse

**Planning Appeal**

Appellant(s): Gerard Curran  
Type of Appeal: 1<sup>st</sup> Party  
Observers: None  
Date of Site Inspection: 13<sup>th</sup> July 2012

**Inspector:** Lorraine Dockery

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.1 The subject site, which has a stated area of 0.3 hectares, is located within the townland of Killahurler Lower, Thomastown, Co. Wicklow. The site is accessed off a narrow access lane from the public road. The subject site is setback from the public roadway by approximately 80 metres. There is an existing located to the south of the site and permission granted for a dwelling to the south-west of the site.
- 1.2 The site currently contains a single storey, cottage style dwelling which has an east-west orientation. It is an L-shaped property that has parking area to front. At time of site visit it would appear that the property was unoccupied.
- 1.3 Due to the differing levels, together with existing hedging and boundary treatments, the existing dwelling on site is barely visible from the public roadway.

## **2.0 PROPOSED DEVELOPMENT**

- 2.1 The proposed development, as per the public notices comprises a replacement dwelling as constructed on site, retention of replacement waste water treatment system and all ancillary site works.
- 2.2 The dwelling proposed for retention has a stated floor area of 122 square metres and a maximum height of 4.5 metres. It is an L-shaped property that comprises three bedrooms, bathroom, kitchen/dining and lounge area all at ground floor level. The north and western elevation have a local stone finish while the remainder of the elevations are finished in nap plaster. Old burnt brick is provided to quoins and window opes. The pitched roof has a blue black slate finish.

### **3.0 PLANNING AUTHORITY'S DECISION**

Planning permission was REFUSED for three no. reasons which are as follows:

1. The proposed development is considered a new dwelling and not a replacement dwelling. The development of a new dwelling would not represent a necessary dwelling in this Landscape Zone designated Area of Special Amenity, contrary to the provisions of Objective RH14 of Chapter 6 of the County Development Plan 2010-2016. These provisions are required to maintain scenic amenities, recreational utility, existing character and to preserve views of special amenity value and special interest and to conserve the attractiveness of the county for the development of tourism and tourist related employment.

The Council's settlement strategy policy is to encourage further growth of existing settlements and to restrict rural housing development to cases where there is a bone fide necessity to live in the rural area instead of in existing settlements. It is considered that the applicant does not come within the scope of the housing need criteria as set out under Policy RH14 of the County Development Plan as he already owns a dwelling. The proliferation of non-essential in the rural landscape areas erodes the landscape value of these areas and seriously detracts from views of special amenity value.

2. The proposed development would endanger public safety by reason of serious traffic hazard because the sightlines from the entrance have not been proposed in accordance with the Design Manual for Roads and Bridges, national Roads Authority 2009
3. Inadequate evidence is available that the site is suitable for effluent disposal and that the system installed accords with current EPA standards. In the absence of this information the development may give rise to pollution and would be prejudicial to public health

## **4.0 TECHNICAL REPORTS**

### Planner's Report

The report of the planning officer reflects the decision of the planning authority.

### Environmental Health Officer

Further Information required relating to information to show that effluent system and polishing filter has been installed correctly; sections showing ground levels; levels of trenches; distance of slope breaks and P values for original topsoil

## **5.0 APPEAL GROUNDS**

The grounds of appeal may be summarised as follows:

- There was a cottage on this site constructed at the turn of the century and inhabited until the 1980s. Since then, it was derelict and fell into state of neglect. Chimney is evidence that it was a dwelling. Photographs submitted of original cottage
- Members of appellants lived in original cottage. Replacement dwelling is located on site of original dwelling. OS maps show dwelling on site dating back to 1908
- Began remedial works on cottage in summer of 2008. Original dwelling demolished as it was found to be in a state of near collapse when work to refurbish it began. This was not a greenfield site and should not be assessed as such
- Purchased with intention of refurbishing it over time and it will remain in the family. Plans to use it in his retirement. Intention was to construct 40 square metre extension to rear under exempted development regulations, but only once works began, he realised its poor condition. A replacement dwelling was considered the best way to preserve the presence of a dwelling on site.

Replacement dwelling is modest and no higher than original dwelling

- Replaced old out-dated treatment system with modern plant and engaged services of a geologist. He carried out site tests and supervised installation of new system, wither certification of this enclosed
- Proposal will not detract from views of special amenity as there was always a dwelling on site
- Never any intention to breach planning laws
- Proposed sightlines are same as those permitted to Orla Killoran when she was granted permission for her dwelling. Appellant agreed to allow her to remove some of boundary to achieve required sightlines
- Have enclosed correspondence from Orla Killoran and Seamus Killoran stating that there is permission to carry out works in order to achieve necessary sightlines, even in the event that Orla Killoran does not commence works on her development. There is no danger to public safety in this proposal
- A letter from Geraldine Kavanagh has been submitted stating that she sold the cottage to the appellant and outlines family connection to it; Certification of Compliance from Liam Kenna has also been submitted as has a copy of professional indemnity insurance; photographs purporting to be taken from this site; Site Characterisation Form and other ancillary documentation

## **6.0 OBSERVERS**

None

## **7.0 RESPONSES**

None

## **8.0 PLANNING HISTORY**

There would appear to be no recent planning history on this site

UD3582 Enforcement file relating to alleged unauthorised development on the site. Enforcement Notice issued on 01/02/2012

An application of relevance is as follows:

11/4407

Permission GRANTED to Orla Killoran for residential dwelling and garage and associated treatment system and site works at Killahurler Lower, Arklow, Co. Wicklow. – site located to the west of subject site fronting onto public roadway.

Condition No. 9 relates to provision of adequate sightlines

## **9.0 DEVELOPMENT PLAN**

The operative Development Plan is the Wicklow County Development Plan 2010-2016

Landscape categorisation: Area of Special Amenity

Policy HL1

The Council will ensure that the development of Wicklow takes full account of the Designated landscape categories and the protection of their amenities and assets

Chapter 6 Rural Housing and Development

6.3.2 Houses in the open countryside (Level 10)

Objective RH14 sets out the criteria whereby residential development will be considered in the countryside

6.4 Rural Development Design Standards

6.4.3 Houses in the Open Countryside

*Sustainable Rural Housing, Guidelines for Planning Authorities (2005)*

- The subject site is located within an area designated as being as 'Area under Strong Urban Influence' within these Guidelines
  
- Section 3.2.3 deals with 'Rural Generated Housing'
- Section 3.3.3 deals with 'Siting and Design'

## **10.0 ASSESSMENT**

10.0.1 This application is assessed in terms of Development Plan policy and all other relevant Government Guidelines. I consider that the following are the main issues pertaining to this appeal:

1. Principle of proposed development
2. Impact on amenity of the area
3. Roads and Access Issues
4. Drainage issues
4. Other issues

10.0.2 In considering any application for retention, the Board is confined to considerations of proper planning and sustainable development and the effects on the environment, having regard to those matters which are provided for in legislation

## **10.1 PRINCIPLE OF PROPOSED DEVELOPMENT**

- 10.1.1 The proposed development as described in the public notices comprises the retention of the replacement of a dwelling on this site. It is clear from the information provided within the file that there was historically a dwelling on the site but that this dwelling in recent times was not habitable. It was described in a sales brochure, dated February 2004, as being a derelict cottage. From the photographs submitted with the appeal, which are undated, it is clear that the cottage had a tin roof which was partially collapsed and that the structure was in a partially ruinous condition. It is stated that it was lived in until the 1980s but I question its condition at that time, judging by its condition in the said photographs and sales brochure.
- 10.1.2 It is stated within the appeal submission that it was the appellant's original intention to repair the original cottage on site. However, during the course of the works, it was found to be structurally unsound and was therefore demolished. While no report regarding the structural stability of the original cottage has been submitted, I can consider this a reasonable assertion judging from the information before me.
- 10.1.3 It is stated that the original cottage had an approximate floor area of 60 square metres. I note that the existing dwelling to be retained has a stated floor area of 122 square metres and is located substantially on the footprint of the original dwelling. The footprint of that existing currently on site reflects the footprint of the original structure. While the height of the original dwelling on site has not been stated, the height of the replacement dwelling is 4.45 metres. It is traditional in style and retains the cottage style of architecture. It is stated within the appeal submission that some of the stone from the original cottage has been used as facing for the replacement dwelling.
- 10.1.4 Having regard to all of the above, I note that the original dwelling on site was not habitable immediately prior to its demolition. However, judging from the information before me, some of the external walls were in place and the roof was partially intact. Notwithstanding this it would appear to have been in a partial ruinous condition. However, I note that the floor area of the proposed replacement dwelling is relatively modest and its design, height and layout



reflect that of the original cottage on site. I am mindful of the issue of creating a precedent for similar type applications that propose to 'restore' or 'replace' virtually ruinous structures on the landscape with modern additions that bear little resemblance to those that originally existed on site. However, every application is judged on its own merits. Often when one proposes a 'replacement' or 'restored' dwelling, it is of a scale, design, floor area that bears little resemblance to the original structure that occupied the site. In this instance, however, the proposed structure reflects that of the existing cottage on site, with only a somewhat marginal increase in floor area.

10.1.5 The planning authority in their first reason for refusal refer to Objective RH14 of Chapter 6 of the operative County Development Plan in relation to the provision of dwellings in rural areas. Having regard to the circumstances of the application, namely that a cottage has historically existed on the site, I consider it inappropriate to apply the criteria for new housing in rural areas, as set out in the operative County Development Plan.

10.1.6 Having regard to all of the above, I consider that the principle of the proposed development is acceptable in this instance and that if permitted, the proposal would not set a precedent for similar type developments in the vicinity.

## **10.2 IMPACT ON AMENITY OF THE AREA**

10.2.1 This is an issue of concern considering the high amenity area in which it is proposed to retain the proposed dwelling. I acknowledge that the proposed dwelling is quite traditional in style, being single storey in height with relatively low ridge height and pitched roof. Its setback from the public road, together with the intervening boundary treatments is such that it is not unduly visible as one travels along the public road in both directions. The fact that a cottage of similar proportions to that proposed for retention historically existed on the site must be a factor in this consideration. Having regard to all of the above, I consider that the impact on the amenity of the area at this location would not be so great as to warrant a refusal of permission.

### **10.3 ROADS AND ACCESS ISSUES**

10.3.1 The second reason for refusal by the planning authority stated that the proposed development would endanger public safety by reason of a serious traffic hazard because the sightlines from the entrance have not been proposed in accordance with the Design Manual for Roads and Bridges, national Roads Authority 2009. The planning report states that the site layout plan details improvements to sightlines facilitated by an area of setback associated with PRR11/4407. This is a grant of permission for a dwelling on lands to the west of the subject site, adjoining the access laneway. No works have commenced on this development to date. The report continues by stating that the planning authority is precluded from granting a development which is reliant upon an adjoining development which may or may not be carried out.

10.3.2 Condition No. 9 of grant of permission 11/4407 relates to the roadside boundary and the provision of adequate sightlines to Orla Killoran on lands to the west of the subject site. The provision of sightlines in accordance with this grant of permission would have a subsequent improvement in the sightlines of the subject site.

10.3.3 I concur with the opinion of the planning authority that they are precluded from granting a development which is reliant upon an adjoining development, which may or may not be carried out. I also agree that the existing sightlines are seriously inadequate and as existing could constitute a traffic hazard, in my opinion. I note however that the appellant has submitted a letter purporting to be from Seamus Killoran giving permission to the appellant to remove the existing boundary ditch and move it back in order to allow for adequate sightlines if Orla Killoran does not proceed with her building works. Separately, a letter purported to be from Orla Killoran, dated March 27<sup>th</sup> 2012, states that it is her intention to commence works within six months from the date of the letter and that she will be completely reinstating the boundary ditch as agreed with planning authority.

10.3.4 Again, I acknowledge that a cottage has historically existed on the site and presumably the access to the site has also existed. Having regard to all of the above, I consider that while the existing sightlines are inadequate and as

existing could constitute a traffic hazard, I do consider that if upgraded to current standards, then the access could be considered acceptable in principle.

10.3.5 Taking into account the letters from Seamus and Orla Killoran, which agree to the upgrade of the existing sightlines, I consider that in this instance it may be appropriate, if the Bord were disposed towards a grant of permission, to attach a condition to any such grant stipulating that the proposed dwelling for retention not be occupied until such time as adequate sightlines have been provided, to the satisfaction of the planning authority.

#### **10.4 DRAINAGE ISSUES**

10.4.1 The third reason for refusal of the planning authority states that inadequate evidence is available that the site is suitable for effluent disposal and that the system installed in accords with current EPA standards. In the absence of this information the development may give rise to pollution and would be prejudicial to public health. I note that the Environmental Health Officer's Department requested Further Information in this regard in particular with regards to verification that the effluent system and polishing filter has been installed correctly; sections showing ground levels; levels of trenches; distance of slope breaks and P values for original topsoil.

10.4.2 In response, the appellant states that he had the site assessed by a geologist who carried out a full assessment in accordance with EPA guidelines prior to installation of new system. The appellant states that there was an existing system on site and that this was replaced in accordance with EPA Guidelines 2009 under the supervision of the geologist on site. A Certificate of Compliance, signed by Liam Kenna has been included with the submission and states that 3 m<sup>3</sup> septic tank and 48 linear metres of percolation area, which has been raised 400mm above existing ground levels due to the presence of bedrock has been installed at this site in accordance with EPA 2000 regulations. Photographs purporting to be taken on this site have been submitted as has a Confirmation of Cover for Professional Indemnity Insurance for 'L/K Design'.

10.4.3 I note that very little information including contact details, company details or qualification details have been submitted for Liam Kenna. I also note that the Site Characterisation Form submitted shows that only two test holes were dug, which is not in accordance with current EPA Guidelines and I consider that the queries raised by the EHO have not been adequately addressed. I consider that there is a distinct lack of details pertaining to the proposed system, including its make, details from installation company etc. A brochure for Oakstown BAF Sewage Treatment Plant has been included with the appeal but it is not stated whether or not this is the installed system. While I again acknowledge that there was an existing cottage on site and that replacing an inefficient system with a more modern one is to be welcomed, I am not satisfied with the detail before me. Having regard to all of the above, I am not satisfied that the proposed development if permitted would not be prejudicial to public health and therefore must be considered to be inconsistent with the proper planning and sustainable development of the area.

## **10.5 OTHER ISSUES**

10.5.1 I draw the attention of the Bord to the fact that the application, as described in the public notices, does not include for the demolition of the original dwelling on site.

10.5.2 The subject site is not located adjacent to nor in close proximity to any European sites, as defined in Section 177R of the Habitats Directive. Having regard to the nature and scale of the proposed development and/or the nature of the receiving environment and/or proximity to 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.

## **11.0 CONCLUSION**

- 11.1 The subject site is located within a rural area, designated as being of special amenity value within the operative County Development Plan. Based on the information before me, I acknowledge that there was historically a dwelling on this site. I also consider that the size, location, height and footprint of the proposed dwelling for retention is such that it is considered acceptable in principle at this location and consider that it would not be appropriate in this instance to apply the criteria for new housing in the countryside, as set out in the operative County Development Plan.
- 11.2 The subject site is located within a scenic, sensitive area, designated within the operative County Development Plan to be an 'Area of Special Amenity'. I consider that the development is such that if permitted would not impact so negatively on the rural amenities that currently exist as to warrant a refusal of permission. This is due to the low ridge height, setback from public roadway, position on the site and intervening boundary treatments.
- 11.3 With regards traffic and access issues, I consider that if the Bord is disposed towards a grant of permission, a condition should be attached stipulating that the subject dwelling not be occupied until such time as adequate sightlines to the satisfaction of the planning authority are provided.
- 11.4 Finally, with regard the issue of drainage and effluent disposal, I again note the sensitive nature of this rural area. I consider that inadequate information has been submitted in this regard, including details and qualifications of the certifying agent. In this regard I am inclined to take a precautionary principle. I am therefore not satisfied based on the information before me that the proposed development would not be prejudicial to public health.
- 11.5 Having regard to all of the above, I consider the proposal unacceptable and inconsistent with the proper planning and sustainable development of the area.

## **12.0 RECOMMENDATION**

In light of the above assessment, I recommend that the decision of the planning authority be UPHELD and that permission be REFUSED for the following reasons and considerations.

### **REASONS AND CONSIDERATIONS**

1. The Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the site can be drained satisfactorily by means of a septic tank, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health

**L. Dockery**

**Planning Inspector**

16<sup>th</sup> July 2012

