



An
Bord
Pleanála

Inspector's Report

ABP-304752-19

Development	Replacement of existing dwelling with a new split level style dwelling.
Location	Newtown, Annestown, Co. Waterford.
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	18883
Applicants	Jamie Guidera & Jennifer Morrissey
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant	John Halley
Date of Site Inspection	11 th , November 2019
Inspector	Paddy Keogh

1.0 Site Location and Description

- 1.1.1. The site of the proposed development which has a stated area of 0.59 hectares is located in the rural townland of Annestown. The site contains the vacant and derelict remains of an original vernacular style farm cottage (roof intact) and adjoining roofless farmstead buildings. There is an existing working farm to the north of the site (appellant's property) There are existing farm buildings and sheds associated with this working farm beyond which there is a farm residence (modern bungalow).
- 1.1.2. The appeal site is served by 2 separate gated entrances onto the Regional Road R675 which runs to the front of the site.
- 1.1.3. The general area in the vicinity of the site is characterised by agricultural lands together with a light scattering of houses.
- 1.1.4. Levels across the site fall away in a westerly direction from the public road.

2.0 Proposed Development

- 2.1.1. The proposed development involves the demolition of the existing vacant and derelict dwelling together with the attached roofless outbuildings and the construction of replacement split level dwelling together with detached garage.
- 2.1.2. The application lodged with the planning authority indicates that the proposed structures for demolition have a stated area of 135 sq.m., the proposed dwelling will have a stated area of 235 sq.m. and the proposed detached garage will have a stated area of 39 sq.m.

3.0 Planning Authority Decision

- 3.1. Notification of a decision to grant planning permission for the proposed development, subject to 11 (standard) conditions, was issued by the planning authority per Order dated 6th, June 2019.
- 3.2. **Planning Authority Reports**
 - 3.2.1. Planning Reports

3.2.2. Reports from the planning authority Senior Executive Planner dated 21st, February 2019 and 5th, June 2019 (following the receipt of further information) include:

- The site is zoned 'Agriculture' in the Waterford County Development Plan 2011-2017 ('the Development Plan').
- The site is designated as an 'Area Under Urban Pressure' in the current rural housing policy of the Development Plan.
- The proposal is for a replacement dwelling subject to Development Plan policy on replacement dwellings. The applicants do not claim to comply with any of the categories of 'genuine local need' for a dwelling at this location in accordance with Development Plan policy.
- The Senior Executive Planner is satisfied that the proposed development complies with Development Plan policy in respect of replacement houses.
- The now vacant/derelict cottage on the site is of some social historical significance insofar as there is evidence that the last native Irish speaker in the area resided in the cottage.
- The proposed replacement split dwelling will appear as a single storey dwelling to the front (ridge height 5.582 m.). The ridge height of the proposed dwelling will be lower than the ridge height of the neighbouring bungalow to the north east.
- The design of the proposed dwelling is deemed to be acceptable.
- The proposed development will involve the closing of 2 existing gated entrances to the site and the creation of a new vehicular entrance onto the R765. Sightlines of 160m in a southerly direction and 100m in a northerly direction will be provided.
- The site lies on a site over an aquifer that has been identified as a Regionally Important Aquifer.
- It is proposed to install a new wastewater system and percolation area to serve the proposed development. A Site Characterisation Report submitted with application indicates that the proposed wastewater treatment system and

percolation area can be accommodated on site in accordance with EPA Code of Practice standards.

- A bat survey (requested by the planning authority) revealed no evidence of bats on the site.

The decision of the planning authority to grant planning permission reflects the recommendation of the Senior Executive Planner.

[A copy of a pre-planning report dated 12th, July 2018 (included with the application documentation) states that the proposed development is for a '*Replacement dwelling – as per the Development Plan*' and '*Housing need not required*'.]

3.2.3. Other Technical Reports

District Engineer – The report on file dated 21st, February 2019 from the planning authority Senior Executive Planner states that the District Engineer returned (no report on file) on 18th, January 2019 with no objection raised subject to conditions on entrance detail and drainage to be agreed with the Roads Department.

Water Services – The report on file dated 21st, February 2019 from the planning authority Senior Executive Planner refers to a verbal response received on 21st, February 2019 with further information requested on well separation distances.

3.3. Prescribed Bodies

- 3.3.1. **Transport Infrastructure Ireland (TII)** – Letter dated 16th, January 2019 states that Transport Infrastructure Ireland have no observations to make on the current application.

3.4. Third Party Observations

- 3.4.1. One third party observation objecting to the proposed development was received from the farmer of lands adjoining the application site. The grounds of objection are reflected in the third party grounds of appeal.

4.0 Planning History

- 4.1.1. Reg. Ref. 94147 – Outline planning permission for a dwelling on the appeal site was granted by the planning authority to John & Maura Murphy..
- 4.1.2. Reg. Ref. 981077 – Approval for a dwelling and effluent treatment system and associated site work on foot of the outline permission granted per Reg. Ref. 94147 to John & Maura Murphy.
- 4.1.3. Reg. Ref. 05112 – Planning permission to renovate and extend the existing stone cottage on site was granted by the planning authority to John & Maura Murphy.
- 4.1.4. None of the above planning permissions were implemented. John Murphy with an address at Shanaclune, Dunhill, Co. Waterford is indicated as the potential vendor of the site in the Supplementary Planning Application Form completed by the current applicants.

5.0 Policy Context

5.1. Waterford County Development Plan 2011-2017 ('the Development Plan')

- 5.1.1. The Waterford County Development Plan 2011-2017 is the current Development Plan for the area. With the establishment of Waterford City & County Council, in June 2014, this plan had its lifetime extended (pursuant to *S. 11A of the Planning and Development Act 2000, as amended*) and remains in effect until the new Regional Spatial and Economic Strategy comes into effect.
- 5.1.2. The appeal site is located in an area zoned 'Agriculture'. The stated objective of this zoning is '*To provide for the development of agriculture and to protect and improve rural amenity*'
- 5.1.3. **Chapter 3** refers to *Core Strategy* and identifies Dunmore East as a District Service Centre within the County settlement hierarchy.

The county is divided into three broad categories;

1. Areas Under Urban Pressure
2. Stronger Rural Areas
3. Structurally Weak Rural Areas

5.1.4. The *Rural Area Types Map* contained within the Development Plan identifies the subject site as being located within an 'Area Under Urban Pressure'.

5.1.5. **Section 4.8** refers to Rural Housing Policy

The Council's aim is to

- *'Minimise the amount of sporadic speculative development which would be more appropriately located on serviceable lands in towns and villages; and*
- *Meet the genuine housing need of rural people and their families who have strong ties to a particular locality and to those who need to reside in rural areas for employment, economic and social reasons subject to the applicant demonstrating a Genuine Local Housing Need.'*

Policy SS3 seeks *'To cater for the housing requirements of members of the local rural community who have a genuine local housing need in areas under urban pressure as set out in the Criteria in Section 4.10.'*

Policy SS4 seeks *'To direct urban generated housing development in Areas Under Urban Pressure into the adjoining zoned settlements.'*

Section 4.10 refers to 'Genuine Local Housing Need'.

Housing Need criteria includes *'A farm owner or an immediate family member (son, daughter, mother, father, sister, brother, heir) wishing to build a permanent home for their own use on family lands.'....*

5.1.6. **Section 7.5** (Variation No. 1) of the Development Plan states;

It is the policy of the Council to retain vernacular architecture and to preserve, where possible cottage and traditional outbuilding. The Council may allow in limited circumstances, a replacement dwelling where it is deemed that the existing habitable dwelling is of little or no architectural or historical merit. This assessment shall be made during the Development Management Stage of any prospective application and may require specialist reports if deemed necessary by the Council.'

5.1.7. **Section 10.19** defines a 'habitable structure' as

A dwelling that is serviced by electricity and water, has 4 intact walls and a roof and the last use of which was residential.

5.1.8. The existing Structures on site are not include in the Development Plan schedule of Protected Structures.

5.2. **National Inventory of Architectural Heritage.**

5.2.1. The existing structures on site are not listed on the National Inventory of Architectural Heritage.

5.3. **National Policy**

5.3.1. ***Sustainable Rural Housing Planning Guidelines***

The site of the proposed development is located within an area designated as being under strong urban influence.

The Guidelines distinguish between 'Urban Generated' and 'Rural Generated' housing need. Examples of situations where rural generated housing need might apply as set out in the Guidelines include rural houses for '*persons who are an intrinsic part of the rural community*' and '*persons working full time or part time in rural areas*'

5.3.2. ***National Planning Framework***

National Policy Objective No. 19 states

In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.4. **Natural Heritage Designations**

5.4.1. The site is located c. 8 km to the west of the Tramore Dunes and Backstrand Special Area of Conservation (SAC) (Site Code 000671).

5.4.2. The site is located c. 1.14 km to the north of the Mid-Waterford Coast Special Protection Area (SPA) (Site Code 004193).

5.5. EIA Screening

- 5.5.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment 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 submitted grounds of appeal include:

- The appellant's home and farmyard are located immediately to the north of the appeal site. A slatted shed on the appellant's property is located 70m from the proposed house and stables/dry bed animal housing are 60m from the proposed dwelling.
- There are 2 wells on the appellant's property – one serves the appellant's house and animal houses. The other was sunk to serve a milking house which the appellant plans to construct in the existing hay barn.
- The proposed development does not comply with Development Plan policy on rural housing to justify a 'genuine housing need' for a dwelling in an area designated as an Area Under Urban Pressure.
- The proposed dwelling should not be considered as a replacement dwelling on the basis that the existing cottage on the site is not a 'habitable' house.
- The definition of a habitable structure as defined in the Development Plan (a dwelling that is serviced by electricity and water, has four intact walls and a roof, and the last use of which was residential) is at odds with the definition provided in the *Planning and Development Act, 2000*, as amended ('the Act') and caselaw.

- The house has not been occupied for over 50 years. The appellant recalls when the last occupant/owner was taken from the house to St. Otteran's Hospital in Waterford where he remained for the rest of his life.
- The Planner's Report on Reg. Ref. 05112 describes the structure on site as 'a (very) derelict dwelling'. The 'Bat Report submitted by the applicant confirms that the doors and windows are missing and there were animal droppings on the floor at the time of surveying. All of this confirms abandonment of use and dereliction.
- Caselaw in *Dublin City Council v Tallaght Block Company Ltd.* [[1982] ILRM.535 unreported Supreme Court] cited. In this case Hederman. J adopted the statement of law pronounced in '*Hartley v Minister of Housing in Local Government*' [[1970] 1 QB413] to the effect that 'When a previous use of land had not merely been suspended for a temporary and determined period but had ceased for a considerable time with no evidence of an intention of resuming it...the tribunal of fact was entitled to find that the previous use had been abandoned so that when it was resumed the resumption constituted a material change of use'. In the current instance the previous use of the cottage was as a shelter for animals the earlier use having been abandoned.
- The *National Planning Framework* (NPF) seeks to secure the provision of low density serviced sites in towns and villages as an alternative to one-off unserviced sites in rural locations. In particular NPF Objective 18b seeks to 'Develop a programme of "new homes" in towns and villages" with local authorities, public infrastructure agencies such as Irish Water and local communities to provide serviced sites with appropriate infrastructure to attract people to build their own homes and live in small towns and villages'.
- There are current opportunities in nearby District Service Centres for the applicants to have their housing needs met in the area giving them the rural lifestyle that they seek.
- Housing should not be permitted in such close proximity to a working farm. The proposed house will be as close as 60m to animal housing and will be even closer to the milking parlour proposed by the appellant in his existing

hay barn. The impacts of farming life would not be compatible with protecting the residential amenities of a new dwelling on the appeal site.

- Sightlines at the proposed new entrance are inadequate.
- The proposed development will result in the loss of significant stretches of roadside boundaries which will detract from the visual attractiveness and character of the road which is designated in the Development Plan as a scenic route.
- No site suitability test was carried out to determine the suitability of the location for the proposed wastewater treatment system as revised in further information submitted to the planning authority.
- The appellant reports seeing bat activity around the site in the past and is of the opinion that if the structures on site are retained the structures will again attract bat activity in the future.

6.2. Applicant Response

A submission (undated) received by the Board on 18th, July 2019 from the applicant's agent, in response to the submitted grounds of appeal, includes:

- The applicants do not claim to comply with the planning authority rural housing policy. The application is in respect of a replacement dwelling.
- The proposed development complies with Development Plan policy in relation to replacement dwellings. Despite the appellant's assertion to the contrary the proposed development falls within the definition of a 'habitable house' as defined for the purposes of the Act.
- The fact that the structure on site has been described as a derelict dwelling in Planner's Reports relating to previously permitted development on the site and in the Bat Survey submitted on behalf of the applicant does not alter the fact that the structure falls within the definition of a habitable dwelling for the purposes of the Act and within criteria for a replacement dwelling as set out in the Development Plan.

- The last use of the dwelling was for residential purposes (as testified to by the appellant who recalls the last occupant leaving prior to being admitted to hospital).
- Reg. Ref. 17488 cited as a precedent in the local authority functional area. In this case the planning authority granted planning permission for a dwelling as a replacement for a vacant/derelict house to applicants that did not comply with the planning authority rural housing policy.
- The current Development Plan remains the operative plan until such time as it has been replaced by a new plan.
- The proposed development seeks planning permission for a replacement dwelling under the criteria as set out in the Development Plan. The rural housing local need criteria and strategy advocated under the National Planning Framework and Regional Planning Guidelines do not apply in the case of a replacement dwelling,
- No regulations preclude the building of a house in proximity to a working farm. The applicants should not be prejudiced by the appellant's plan to possibly install a milking parlour in an existing haybarn. The structure in question is currently used as a haybarn.
- The proposed entrance will replace 2 existing entrances to the site from the R675 Regional Road. Normal development management guidelines would require minimum sightlines of 160m in each direction. However, in circumstances where the proposed entrance replaces an existing entrance the planning authority Roads Department are satisfied with the proposed access arrangements. TII issued a letter stating that they have no observations to make on the proposed development.
- The proposed development will not interfere with the scenic character of the designated scenic route on which the appeal site lies. The applicants do not intend to remove the existing roadside boundaries but merely to set them back in order to achieve improved sightlines from the new vehicular entrance.
- It is not the applicants' intention to alter the character of the landscape. The proposed dwelling has been carefully designed to echo the character of the

existing building to be replaced which is not a Protected Structure and does not feature on the National Inventory of Architectural Heritage.

- The re-location of the proposed wastewater treatment system in the context of further information submitted to the planning authority was raised with both the Sanitary Section and Planning Department. Both departments were satisfied that re-testing was not required as they were satisfied that this would have no impact on the system to be installed which system was robust in its design.
- The appellant's comments in relation to bats having been displaced from the site in the past are merely speculative.

7.0 **Assessment**

I consider that the key issues arising from the current application and appeal are as set out in the grounds and can be assessed under the headings below. No further substantial issues arise. The matter of Appropriate Assessment must also be addressed.

- Rural Housing & Replacement Dwelling Policy
- Access & Roads
- Wastewater Treatment
- Conflict with Farming Use
- Scenic Amenity
- Bats

7.1. **Rural Housing & Replacement Dwelling Policy**

- 7.1.1. The submitted grounds of appeal argue that the proposed development does not comply with Development Plan policy in respect of rural housing policy to justify a dwelling in an area designated as an Area Under Urban Pressure.

- 7.1.2. A covering letter from the applicants accompanying the documentation lodged with the planning authority the applicants who were both reared in rural areas (outside Waterford) Studies in Waterford Institute of Technology and are both employed in the Pharma industry in Waterford City. They are currently living in rented accommodation in Waterford City. The applicants have a strong desire to obtain permanent residence in a rural area outside of the city where they believe that they can contribute to the local community.
- 7.1.3. On the basis of the above it is clear that the applicants do not comply with Development Plan policy in relation rural housing. Furthermore, the applicants do not comply with the requirements of the *Sustainable Rural Housing Guidelines* or policies and strategy (including Objective 19) of the *National Planning Framework*.
- 7.1.4. The applicants accept that they do not comply with rural housing policy. However, they highlight the fact that the current proposal is for a replacement dwelling. Accordingly, it is submitted that the proposal should be assessed based on policy and criteria contained in the Development Plan in relation to replacement dwellings. It is submitted that the proposed development complies with the requirements relating to replacement dwellings.
- 7.1.5. I consider the only basis on which a grant of planning permission can be granted in the current instance is if the proposal qualifies as a replacement dwelling. In my opinion, this matter is central to the determination of this appeal.
- 7.1.6. The submitted grounds of appeal include testament from the appellant that the existing house was last occupied c. 50 years ago prior to the last resident being taken to St. Otteran's hospital and never returning. It is submitted that the definition of a habitable dwelling contained in Section 10.19 of the Development Plan (water and electricity connections, four walls and an intact roof) is at odds with the definition of a habitable dwelling contained in the Act. It is submitted that the existing structure is not a habitable dwelling. It is further submitted that, in any event, the residential use of the site has been lost or abandoned by virtue of the passage of time and evidence of more recent use of the dwelling structure for the housing of animals. The decision of the Irish High Court in *Dublin City Council v Tallaght Block Company Ltd.* [[1982] ILRM.535 unreported Supreme Court] has been cited in support of this claim.

- 7.1.7. The applicants claim that the contrary is the case.
- 7.1.8. The existing dwelling on site is without intact windows or doors but does have an electricity connection, has four intact walls and an intact roof. In fact, the roof appears to be in reasonable condition. Photographs on file (included in the Bat Survey submitted by the applicants) indicate roof trusses that appear to be in good condition. In this regard, I consider that the existing structure falls within the definition of a habitable dwelling set out at Section 10.19 of the Development Plan.
- 7.1.9. Section 2 (Interpretation) of the Act states that a 'habitable house' means a house which-
- (a) Is used as a dwelling
 - (b) Is not used but when last used but when last used, disregarding any unauthorised use, as a dwelling and is not derelict, or
 - (c) Was provided for use as a dwelling but has not been occupied.

The existing dwelling on site does not come within the definition at (a). Neither does it come within the definition at (b) on the basis that it is current vacant/derelict. I consider that arguably the structure falls within the definition of a habitable dwelling at (c) (as suggested by the applicant).

- 7.1.10. As cited in the submitted grounds of appeal, the Irish High Court in *Dublin City Council v Tallaght Block Company Ltd.* [[1982] ILRM.535 unreported Supreme Court] adopted the statement of law pronounced in '*Hartley v Minister of Housing in Local Government*' [[1970] 1 QB413] to the effect that 'When a previous use of land had not merely been suspended for a temporary and determined period but had ceased for a considerable time with no evidence of an intention of resuming it...the tribunal of fact was entitled to find that the previous use had been abandoned so that when it was resumed the resumption constituted a material change of use'. This case concerned re-activation and intensification of quarrying activity and the question of whether a material change of use (constituting development that would require planning permission) had taken place. In the current instance there is no dispute as to whether or not the proposal constitutes development (planning permission for development is being sought by the applicants). Nonetheless, in applying the principle applied by the High Court I would come to an opposite conclusion to that of

the appellant. The court held that a tribunal of fact was entitled to find that a previous use had been abandoned where the use had ceased ***with no evidence of an intention of resuming it.*** I consider that the fact that the current owners (and prospective vendors) of the site applied for an obtained planning permission to continue the residential use in 1994 (Reg. Ref. 94147), 1998 (Reg. Ref. 981077) and 2005 (Reg. Ref. 05112) constitutes clear evidence of an intention to continue (and not abandon) the residential use. Given that a planning permission has a (normal) life of 5 years, the current owners had the benefit of planning permission to continue the residential use until c. 2010, In this light, despite the long passage of time since the dwelling was last occupied and despite the fact that previously obtained planning permissions were not implemented, I consider that it would be difficult to conclude the residential use of the structure on site has been lost or abandoned.

7.1.11. On the basis of the above, I consider that the proposed development complies with Development Plan policy in relation to replacement dwellings.

7.1.12. Notwithstanding the above, the applicants (who will both be commuting to work in Waterford City) clearly do not comply with the strategy and criteria in respect of rural housing and supporting smaller towns and rural villages as advocated in the National Planning Framework (in particular Policy Objective 19). A question, therefore, arises as to whether the overarching requirements of the National Planning Framework should trump Development Plan policy in relation to replacement dwellings. On balance, and in the absence of any specific policy on replacement dwellings in the National Planning Framework, I consider that the applicants are entitled to avail of the benefit of the Development Plan policy in relation to replacement dwellings. In coming to this conclusion, I note that (theoretically at least) the applicants could resume occupancy of the existing vacant/derelict dwelling having carried out minimum repair works (provision of replacement doors and windows, improved insulation etc. by carrying out works which would constitute exempted development under the provisions of the Act). I consider that the proposed development provides for an acceptable design (see Section 7.5 below) that echoes the character of the dwelling to be replaced, would be satisfactorily assimilated into the landscape while at the same time providing suitable accommodation for modern living. In fact, the scenario whereby the existing dwelling might be occupied following the carrying out of exempted development might be a less optimal outcome in circumstances where

the existing vacant/dwelling is served by substandard entrance from the public road and likely served by substandard wastewater treatment facilities.

7.2. Access & Roads

- 7.2.1. The appeal grounds highlight that sightlines at the proposed new access from the R675 are substandard in terms of Development Plan requirements (160m in each direction onto a Regional Road).
- 7.2.2. The proposed development involves the provision of a sightline of 160m (in accordance with Development Plan requirements) in a southerly direction and a maximum achievable sightline of 100m in a northerly direction. The applicants refers to discussions and (correspondence) with the District Engineer who accepts that the proposed arrangement is the most optimal access arrangement in light of the fact that the proposed development is for a replacement house.
- 7.2.3. I note that the proposed access arrangements allow for the closing of 2 gated vehicular accesses to the site, both of which are substandard, and their replacement with a single access benefitting from improved. In the circumstances, I would agree with the comments of the District Engineer that the proposed (sub-optimal arrangement) which provides for improved access to the site is acceptable. In this context and having regard to the relatively low levels of traffic passing along this section of road I consider that the proposed development would be acceptable in terms of traffic safety and convenience and would not constitute a traffic hazard at this location. I consider that a condition should be attached to any grant of planning permission that may issue from the Board requiring that the existing gated entrances to the site be permanently closed/rendered inoperative.

7.3. Wastewater Treatment

- 7.3.1. The proposed development includes provision of a new wastewater treatment system and percolation are to serve the proposed replacement dwelling, a Site Characterisation Report accompanying the documentation submitted with the planning application indicates site suitability to accommodate the proposed wastewater treatment unit on site.

- 7.3.2. The planning authority sought further information from the applicant in relation to the location of the proposed treatment system vis-à-vis a well on the appellant's site in order to address concerns raised by the appellant.
- 7.3.3. The applicants, in response, state that the well identified by the appellant is not currently in use but the borehole is in existence. The applicants propose to move the proposed wastewater system downhill from the well. Subject to such amendment the proposed wastewater system will be 30m downhill from the well that has been identified by the appellant and all preferential flow paths allow a fall away from the well. [This modification requires amendments to the site boundaries. Revised public notices were submitted by the applicants].
- 7.3.4. The submitted grounds of appeal state that the new location for the proposed wastewater treatment unit has not been subjected to a site suitability test.
- 7.3.5. I note that the report dated 5th, June 2019 from the planning authority Senior Executive Planner indicates that the Water Services Department have stated that the original Site Characterisation Report submitted by the applicants provides adequate assessment of ground conditions for this development noting the relocation distance.
- 7.3.6. I would concur with the conclusion of the planning authority in respect of the acceptability of the conclusions of the original Site Characterisation Report and consider that compliance with minimum standards as set out in the EPA Code of Practice Manual for Single Dwellings in the countryside can be required by way of the attachment of a condition to any grant of planning permission that may issue from the Board. Furthermore, I note that in the context of the current proposal for a replacement dwelling (as described at Section 7.1 above) the applicants would be free to occupy the existing dwelling on site subject to the carrying out of works under the exempted development provisions of the Act and occupy the dwelling (even in circumstances where it were served by a substandard effluent treatment system). In this regard, the proposed development has merit in that it provides for an upgrading of the wastewater treatment system from that which would occur under the latter scenario.

7.4. **Conflict with Farming Use**

- 7.4.1. The submitted grounds of appeal argue that the proposed development by reason of its close proximity to the appellant's working farm will interfere with the efficient management of the appellant's farming activities.
- 7.4.2. I consider that conflict between residential and farming activities resulting from the encroachment of residential use into rural areas in active use for farming is a legitimate concern. In this regard, I consider that the concerns raised by the appellant have merit. The appellant has highlighted the fact that he intends to convert an existing haybarn adjacent to the proposed dwelling for use as a milking parlour at an (unspecified) date in the future. However, if the analysis provided at Section 7.1 above in relation to the established residential use of the site is accepted then the proposed development must be regarded of the continuation of an established use (which, even in the absence of a grant of planning permission for the current proposal could be continued by the carrying out of works that would constitute exempted development under the exempted development provisions of the Act) rather than the establishment of a new residential use. In such circumstances, I consider that a refusal of planning permission on grounds relating to potential conflict with farming use on the adjoining farm would be unwarranted.

7.5. **Scenic Amenity**

- 7.5.1. The submitted grounds of appeal argue that the proposed development will impact negatively on the amenities of the designated scenic route which passes along the R675 Regional Road to the front of the site.
- 7.5.2. The applicant contends that proposed development will not impact significantly on the visual amenities of the area or impact negatively in any way with the character of the scenic route. In this regard, the incorporation of natural stone finishes in the proposed external finishes have been highlight. Furthermore, it is stated that the existing roadside boundary will not be removed but merely setback on site in order to provide for improved sightlines at the point of access.
- 7.5.3. I note that the proposed development is to a contemporary design incorporating materials (natural stone) and external finishes that mirror and complement the design and style of traditional in the are including the existing dwelling to be demolished. The proposed dwelling, which provided for the conveniences of modern living, is significantly larger in floor area than the dwelling to be replaced.

Nonetheless the dwelling will read as a single storey cottage when viewed from the public road to the front of the site. The ridge height of the proposed dwelling is lower than that of the modern bungalow on the adjoining site to the north and is compatible with the ridge height of the dwelling to be demolished. Furthermore, levels across the site fall away from the public road. The design (two storey to the rear) takes advantage of the site profile to ensure that the structure is set well down in the landscape. Mounding to the rear of the site will screen and significantly reduce the visual impact of the site from the rear. In these circumstances, subject to satisfactory landscaping, I consider that the proposed dwelling will not be visually intrusive in the landscape and will not be significantly different in terms of its visual impact to that of the dwelling which it will replace. I consider that the setting back of the front boundary of the site in order to provide adequate sightlines at the proposed entrance may result in visual scarring of the roadside boundary. However, I consider that such scarring will be temporary in nature and will cease to be apparent once the relocated boundary has had the opportunity to settle and mature.

7.6. Bats

- 7.6.1. The submitted grounds of appeal argue that the proposed development will result in disturbance to bats roosting in the existing vacant/derelict house on site. The appellant has also provided testament to the fact that bats have been present on the appeal site in the past.
- 7.6.2. The planning authority in their assessment of the proposed development sought a number of items of further information from the applicant including the preparation of a Bat Survey for the site. A Bat Survey prepared by Gerard McGrath Ecology Services was submitted by the applicant in response to this request. The Bat Survey concludes that only one bat was observed during three separate surveys conducted on the site and that it is unlikely that it originated from the dwelling being surveyed. The report states that the installation of bat boxes in the new building may be of benefit to the overall area.
- 7.6.3. The applicants express the opinion that the demolition of the existing building on site will not pose any threat to bats in the area.

7.6.4. Having regard to the conclusion of the Bat Survey prepared by Gerard McGrath Ecology Services I consider that, subject to the provision of bat boxes on site (as recommended in the Bat Survey Report), the proposed development would not pose a threat to bat activity on site and in the vicinity of the site. This can be achieved by way of the attachment of an appropriate condition to any grant of planning permission that may issue from the Board.

7.7. Appropriate Assessment Screening

7.7.1. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, no appropriate assessment issues arise and it is considered that the proposed development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European site.

8.0 Recommendation

8.1. I recommend that planning permission for the proposed development be granted for the reasons and considerations and subject to the conditions as set out below.

9.0 Reasons and Considerations

Having regard to the established residential use of the site which it is considered (by reference to recent planning history on the site) has not been lost or abandoned, it is considered that the proposed development complies with policy as set out in Section 7.5 of the Waterford County Development Plan 2011-2017 (as extended) in relation to replacement dwellings and having regard to its design and scale and the established pattern of development on and in the vicinity of the site, it is considered that the proposed development would not seriously injure the visual or other amenities of the area, would be acceptable in terms of traffic safety and convenience, would not be prejudicial to public health and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

- (1) The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 30th day of April 2019, 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.

Reason: In the interest of clarity.

- (2) 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 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.

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.

- (3) The existing dwelling on site shall have been removed in its entirety from the site no later than one month from the date of completion and occupation of the proposed replacement dwelling.

Reason: In the interest of clarity and orderly development.

- (4) The proposed garage shall be used solely for purposes incidental to the enjoyment of the dwelling. It shall not be used for human habitation, for the housing of animals or for commercial purposes.

- (5) Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works. In this regard,

(a) The wastewater treatment system shall be installed in accordance with the submitted site characterisation and manufacturer's instructions, relevant agreement certification and EPA Code of Practice Waste Water and Disposal Systems Single Houses. The treatment system shall meet the requirements of EN 12566 series of standards developed by the European Committee for Standardisation TC165 and the standard and performance shall also meet those specified in the national annex as provided for under Circular Letter BC06/2012

(b) Prior to the replacement dwelling being occupied, the planning authority shall be notified that the wastewater treatment system is constructed and operational. In addition, the dwelling shall not be occupied until such time as a Certificate of Compliance, prepared and signed by a suitably qualified Site Assessor to state that the wastewater treatment system and associated works fully comply with condition No. 5 (a) above has been submitted to the planning authority for its approval. The Certificate of Compliance must include date stamped photographic evidence of the installation of the wastewater treatment system and percolation area and/or polishing filter. The photographic evidence shall clearly demonstrate that the entire system

has been installed in accordance with the recommendations of the site characterisation and the drawings and particulars of the granted planning permission. The Certificate of Compliance must include confirmation of the existing , proposed and 'as constructed' ground levels, the invert levels of tanks and percolation pipes, the length of the percolation pipes, the materials used including suppliers delivery docket, the separation distance to the constructed private borehole (if permitted) and the details of the person/company that installed the wastewater treatment system.

(c) The installation of the proposed wastewater treatment system shall include maintenance and repair contract, a copy of which shall be submitted to the planning authority prior to the commencement of development. This contract shall be renewed on an annual basis and shall be taken out initially with the supplier/manufacturer of the system. Thereafter any change of contractor shall be notified to the planning authority. A copy of all maintenance contracts shall be retained by the applicant and furnished to the planning authority on request.

(d) Surface water shall be discharged to soakaways.

Reason: To ensure adequate servicing of the development in the interest of public health.

(6) Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material, including any materials containing asbestos materials in the existing structures to be demolished, in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

(7) The site shall be landscaped in accordance with a scheme of landscaping and boundary treatment, using only indigenous trees and hedging species,

in accordance with a scheme to be submitted to and agreed in writing with the planning authority prior to the commencement of development. Any planting which dies, is removed or becomes seriously damaged or diseased within a period of five years from the completion of the development, shall be replaced in the next planting season with others of similar size and species, unless otherwise agreed to in writing with the planning authority.

Reason: In order to screen the proposed development and to satisfactorily assimilate it into the landscape in the interest of visual amenity.

- (8) Bat boxes shall be provided at suitable locations within the site in accordance with a scheme details of which shall be submitted to and agreed in writing by the planning authority

Reason: In order to provide for and encourage the retention of any bat activity that may be present on the site in the interest of protecting Biodiversity.

- (9) The 2 no. existing gated entrances to the site shall be rendered permanently inoperative, Details of necessary measures to ensure compliance with this requirement shall be submitted to and agreed to in writing with the planning authority prior to the commencement of development.

Reason: In the interest of traffic safety.

Paddy Keogh
Planning Inspector
12th, December 2019