

An
Bord
Pleanála

Board Direction
BD-017654-24
ABP-317387-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 30/09/2024.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

Having regard to the policies and objectives of the Kilkenny City and County Development Plan 2021-2027, in particular Section 7.8.5 (Refurbishment and Replacement Dwellings in Rural Areas), and the principle of the proposed development, which is the refurbishment and re-use of a derelict dwelling in a rural area for domestic purposes, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the policies of the Kilkenny City and County Development Plan 2021-2027, would not seriously injure the amenities of the area, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The proposed 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 received by the planning authority on the 27th day of April, 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the

planning authority prior to commencement of development and the proposed development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed ground floor window on the western elevation shall be omitted.

Reason: In the interest of residential amenity.

3. Prior to commencement of development, the developer shall retain a suitably qualified person to complete an assessment on the type, depth and current condition of the existing well and shall submit a detailed proposal in relation to the decommissioning of the well for agreement with the planning authority.

Reason: In the interest of public health and to provide for the protection of the environment.

4. (a) The wastewater treatment system hereby permitted shall be installed in accordance with the recommendations included within the site characterisation report submitted with the application and shall be in accordance with the standards set out in the document entitled "Code of Practice - Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)" – Environmental Protection Agency, 2021.
- (b) Treated effluent from the wastewater treatment system shall be discharged to a percolation area which shall be provided in accordance with the standards set out in the document entitled "Code of Practice - Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)" – Environmental Protection Agency, 2021.
- (c) Within three months of the first occupation of the dwelling, the developer shall submit a report to the planning authority from a suitably qualified person (with professional indemnity insurance) certifying that the septic tank/wastewater treatment system and associated works is constructed

and operating in accordance with the standards set out in the Environmental Protection Agency document referred to above.

Reason: In the interest of public health and to prevent water pollution.

5. The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.

Reason: To prevent flooding and in the interest of sustainable drainage.

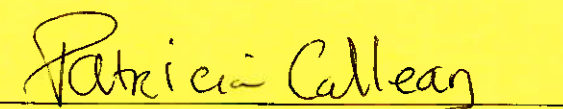
6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the 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.

Note:

While noting the planning history of the site, including a previous refusal of permission by the Board (ABP-311105-21), generally on the basis that the proposed development was not considered to be in compliance with National Policy Objective 19 of the National Planning Framework, the Board noted and concurred with the inspector's assessment on this matter as set out in Section 7.3 of the inspector's report. The Board specifically noted Section 7.8 (Rural Settlement Strategy) of the Kilkenny City and County Development Plan 2021-2027, including the provisions of Section 7.8.5 (Refurbishment and Replacement Dwellings in rural areas) which provides that if an applicant can demonstrate that their proposals will ensure the sensitive restoration of vernacular and traditional buildings in the rural area, such proposals shall not be subject to the policies in Section 7.8.3 (Rural Housing Policies) that applies to new dwellings. Furthermore, as was set out in the Judgement Justice Owens of Murtagh, 2021 No.778 JR, while planning authorities and the Board are required to have regard to the contents of the National Planning Framework in performing their functions, in cases of conflict between provisions of the development plan and the National Planning Framework, the former will prevail. The Board was therefore satisfied that, in line with the applicable development plan provisions, the applicant is not required to demonstrate an economic or social need to live in this particular local rural area in the circumstances where the rural house would be delivered by the sensitive restoration of vernacular and traditional buildings in the rural area, which the Board was satisfied has been demonstrated through the submitted design response. The Board was also satisfied that the requirements of NPO 19 outside of the context of Section 7.8 (Rural Settlement Strategy) of the development plan is not required to be otherwise met in this instance.

Board Member


Patricia Calleary

Date: 30/09/2024