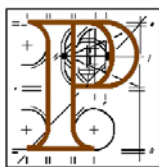


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL09.246343

Development: Renovation and refurbishment of existing single storey cottage, construction of single storey rear extension, entrance, domestic garage, proposed stables.
Painestown, Donadea, Co. Kildare.

Planning Application

Planning Authority: Kildare County Council

Planning Authority Reg. Ref.: 15/870

Applicant: Grainne Forster

Planning Authority Decision: Grant Permission

Planning Appeal

Appellant(s): Timothy Reilly

Type of Appeal: Third Party v Grant

Observers: None on file

Date of Site Inspection: 8th June 2016

Inspector: Sarah Moran

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The site is located on a local road in the rural area of Painestown, Co. Kildare. The nearest settlement is the village of Rathcoffey, c. 2km to the east. The site is also c. 5.5 km north of Clane and c. 7 km south of M4 junction 8 at Kilcock. There is a substantial amount of one off housing in this area, associated with its proximity to several settlements and with its accessibility to the Dublin metropolitan area. There is an existing house and a large shed to the immediate north of the site. The public road runs along the eastern site boundary and there are open fields to the south and west.
- 1.2 The site is the eastern half of a large field. It has a stated area of 0.742 ha. There is an existing single storey cottage in the north eastern corner of the field, close to the road frontage, which is unoccupied at present. The cottage appears to be quite old, of traditional style with rendered walls and a galvanised metal roof. The structural survey on file states that it is thought to have been constructed in the early 1900's. It has a small, flat roof extension to the rear. The ground level of the cottage is c. 1m below that of the road. The house is connected to the mains water supply and there is an existing septic tank. There are hedgerows along the road frontage and at the field boundaries. There are also mature trees around the cottage, within the site.

2.0 PROPOSED DEVELOPMENT

- 2.1 The proposed development comprises the following:
- Renovation of existing cottage including the removal of the galvanised roof material and its replacement with natural slates.
 - Single storey rear extension, stated total floor area 60 sq.m.
 - Separate domestic garage to the north west of the house, stated total floor area 48 sq.m.
 - Separate building with 3 no. stables and tack room in the south western corner of the field, stated total area 68 sq.m. The site layout indicates that the area between the house and the stables would be a paddock.
 - Existing vehicular entrance to be blocked up and construction of a new vehicular entrance from the public road, to the south of the existing cottage.
- 2.2 The applicant submitted a revised design to the PA on 28th January 2016, also further details of the proposed wastewater treatment system.

3.0 PLANNING HISTORY

- 3.1 An application made in 2014 was withdrawn, reg. ref. **14/787**. The planning report on file refers to an earlier permission for a septic tank, reg. ref. **87/776**.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and Technical Reports

- 4.1.1 Kildare County Council Water Services report 9th October 2015. No objection subject to conditions.
- 4.1.2 Irish Water submission to Kildare County Council 16th October 2015. No objection subject to conditions.
- 4.1.3 Kildare County Council Roads, Transportation and Public Safety Department report 04th November 2015. No objection subject to conditions.
- 4.1.4 Kildare County Council Environment Section report 18th November 2015. Requests further information regarding the proposed wastewater treatment system. Second report on foot of the further information submission, dated 19th January 2016, requests clarification of further information. Third report dated 15th February 2016, on foot of the clarification of further information submission, states no objection subject to conditions.
- 4.1.5 Kildare County Council Planning Department report 23rd November 2015. Concludes that the dwelling is capable of sensitive refurbishment and extension as facilitated under County Development Plan section 4.12.1. Recommends a further information request for a revised design to required specifications. Attached AA screening report concludes that AA is not required. Second planning report dated 26th January 2016, on foot of the further information submission, concludes that the revised design is satisfactory. Recommends a clarification of further information request as per the recommendations of the Environment Section. Third planning report dated 22nd February 2016, on foot of the clarification of further information submission, recommends permission subject to conditions.

4.2 Third Party Submissions

- 4.2.1 The above named appellant made a third party submission to the PA objecting to the development on grounds similar to those raised in the appeal. The submission quotes the following ABP cases:
- PL24.222005. The Board granted permission to demolish a habitable dwelling and construct two-storey garage at Lighthouse Road, Ballynacourty, Dungarvan, Co. Waterford.
 - PL09.244046. The Board refused permission for a 2 storey dwelling at Grangebeg, Dunlavin, Co. Kildare, for the following reason:

Having regard to the nature and scale of the proposed dwelling and its context and setting in close proximity to a vernacular style single storey cottage, the Board considered that by reason of its two-storey height, bulk and discordant fenestration pattern, the proposed development would fail

to integrate successfully within the site and could be better integrated through a single storey design solution and would seriously injure the visual amenities of the area and be contrary to the objectives as set out in Policy RH 19 and Chapter 16 of the Kildare County Development Plan 2011 – 2017 regarding rural house design. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- PL07.225971. Permission sought to reconstruct and extend existing derelict building as a dwellinghouse at Porridgetown East, Rosscahill, County Galway. The Board refused permission for the following stated reason:

The proposed refurbishment of an existing ruinous barn building and its extension to form a large two-storey dwelling would be located in close proximity to an existing small dwelling to the rear in this unserviced rural area with a poor local road network. The narrow laneway access to the existing dwelling to the rear would not be adequate to serve the proposed new dwelling directly alongside the narrow laneway and including a proposed parking area/driveway alongside the laneway. The proposed development would, therefore, seriously injure the residential amenities of the existing dwelling in the vicinity and be contrary to the proper planning and sustainable development of this unserviced rural area.

4.3 Planning Authority Decision

- 4.3.1 The PA issued a further information request on 23rd November 2015, for revised design as follows:

“The applicant is requested to pull in/step back a portion of the northern elevation so that the gable end of the existing dwelling remains intact i.e. in a similar way to the proposed southern elevation.”

The PA also requested further details of the proposed wastewater treatment system, including a site characterisation form.

- 4.3.2 The PA requested clarification of further information on 26th January 2016, in relation to further details of the wastewater treatment system.
- 4.3.3 The PA granted permission on 23rd February 2016 subject to 33 no. conditions. The conditions imposed did not involve any significant changes to the proposed development.

5.0 GROUNDS OF THIRD PARTY APPEAL

- 5.1 The appellant has an address at Baltracey, Donadea, Co. Kildare. The main points made may be summarised as follows:

- Development does not comply with County Development Plan policy on the renovation of vernacular dwellings ref. section 4.12.1 as the existing dwelling is not habitable. The structural survey submitted by the applicant is inadequate. The survey was carried out by a technical engineer and not a structural engineer. A structural engineer would have indemnity insurance to cover any liability arising from structural issues, this has not been adhered to. The historic building on the site does not comply with modern building standards. The dwelling is devoid of DPC or any radon barrier and is most likely subject to rising damp.
- The scale of the proposed extension is not in keeping with development plan policy for sensitive refurbishment, ref. section 4.12.1. The overall development includes stables and a domestic garage, a new entrance and the reorientation of the existing house, changing the roof appearance and tripling the size of the cottage. This undermines the integrity of the development plan policy.
- The appeal quotes the ABP case PL06F.222485, relating to the refurbishment, renovation and part rebuilding of a semi-derelict cottage at Corduff Hall, Lusk, County Dublin. The Board refused permission for 3 reasons relating to (1) non-compliance with Development Plan rural housing policy; (2) very poor structural condition of the existing building on the site, the Board considered that there is no longer an established residential use on the site, development would not accord with development plan policies to retain and renovate traditional or vernacular rural houses; (3) traffic hazard.
- The appeal quotes ABP case PL09.242465, relating to refurbishment/remedial works, extensions and alterations to an existing fire damaged cottage at Blackmillar Hill, Kildare Town, County Kildare. The Board granted permission for the development.

6.0 PLANNING AUTHORITY RESPONSE TO THIRD PARTY APPEAL

6.1 The following points are noted:

- Policy RH18 r.e. replacement dwellings refers to ‘habitable’ dwellings. The proposed development is not a replacement dwelling.
- The development relates to the extension and refurbishment of an existing cottage and comes under the provisions of County Development Plan section 4.12.1. The development is considered to be in accordance with the proper planning and sustainable development of the area.

7.0 APPLICANT RESPONSE TO THIRD PARTY APPEAL

7.1 The applicant submits that the subject appeal is frivolous and vexatious on the following basis:

- The appeal incorrectly refers to development plan sections 4.12.2 and 4.12.3, which relate to the replacement of existing dwellings and derelict

dwellings. However, the appellant also admits that a dwelling existed on the site as far back as 1897.

- It is submitted that the underlying reason for the appeal is based on a dislike of the applicant and that the appeal is designed to delay and frustrate the applicant.
- It is submitted that the appellant is appealing on behalf of another party.

The Board is requested to dismiss the appeal on this basis.

7.2 The applicant also submits a response to the grounds of appeal. The following points of same are noted:

- The cottage at the site is a vernacular dwelling as defined in development plan section 12.5 and as per policy RH17. It is clear that the dwelling has existed at the site from between 1897 and 1913, corroborated by the PA assessment of the application. The submission refers to the Charter of Built Vernacular Heritage (Mexico 1999).
- The agent, who prepared the structural report submitted with the application, is a fully qualified Civil Engineer. Details of the relevant qualifications are provided. The agent retains professional indemnity insurance. The structural report submitted complied with the requirements of the PA and policy RH17.

- The submission refers to the precedents cited by the appellant. It is submitted that these precedents are not relevant to the subject case as they are remote from the subject site or at locations where significantly different planning policies apply. The proposed development is entitled to be viewed independently on its merits.
- The Board is requested to recognise the refurbishment proposals of the development and the positive proposal towards the housing crisis.

7.3 The response submission is accompanied by the following particulars:

- Affidavit of the applicant Grainne Forster, which relates to a dispute between the applicant and the appellant.

8.0 ADDITIONAL COMMENTS ON APPLICANT'S RESPONSE TO APPEAL

8.1 Appellant Comment

8.1.1 The following points are noted:

- The appellant refers to a dispute with the applicant and states that he has no knowledge of texts cited by the applicant in her response to the grounds of appeal.
- The appellant reiterates his concerns about the adequacy of the structural report on file. It is submitted that the structural report does not include moisture readings, lead flashing inspection, issue of water run-off from the road, no details of foundations.
- It is submitted that the precedents cited are relevant to the subject case with regard to planning law.
- The charm and character of the existing cottage would be diminished by the proposed development. Erosion of last few cottages of character in Co. Kildare.
- The Council has accepted the application in an incorrect category and should have considered the issue of local need and compliance with Development Plan rural housing policy.

8.2 PA Response

8.2.1 The PA states that it has nothing further to add.

9.0 POLICY CONTEXT

9.1 Kildare County Development Plan 2011-2017

9.1.1 Rural Housing Policy

Chapter 4 of the plan sets out housing policy.

Section 4.8.3 sets out policy on extensions to dwelling houses such that their design and layout should have regard to the amenities of adjoining properties, particularly as regards sunlight, daylight and privacy.

The site is located in Rural Housing Control Zone 1 as per Map 4.1, i.e. the northern, central and eastern areas of the county, the more populated areas with higher levels of environmental sensitivity and significant development pressure. Applicants for one-off dwellings in this area must meet one of the local need criteria set out in Table 4.3 in order to be considered eligible for a one off rural house. Rural housing policy RH5 states that, notwithstanding compliance with the local need criteria, applicants must comply with all other normal siting and design considerations including the Rural Design Guidelines. in Chapter 16 of the plan, also the capacity of the area to absorb further development, provision of safe vehicular access and satisfactory wastewater treatment and surface water management.

Section 4.12.1 of the plan deals with the refurbishment of existing dwellings. Policy RH16 is to promote the re-use and sensitive restoration of existing dwellings, particularly those of traditional vernacular architecture. Policy RH 17 states:

RH17: To encourage the sensitive restoration of a derelict traditional vernacular dwelling as an alternative to the construction of a one-off dwelling elsewhere. The vernacular dwelling must be capable of being suitably restored to habitable accommodation in keeping with its original character. Documentary evidence to this effect, including the submission of a structural survey and photographs must accompany an application. The applicants or proposed occupants will not be required to comply with local need criteria, identified in the Plan (Table 4.3). Normal planning, siting and design considerations will be taken into consideration.

The following note is provided in relation to the definition of ‘derelict’:

The structure, including walls must be intact. Structure must be capable of restoration.

9.1.2 Policy on Architectural Heritage

Section 12.5 of the plan defines vernacular architecture as follows:

Vernacular architecture is generally classified as the homes and workplaces of the general population built by local people using local materials. This is in contrast to formal architecture, such as the grand estate homes of the gentry, churches and public buildings, which were often designed by architects or engineers. The majority of vernacular buildings are domestic dwellings. Examples of other structures that may fall into this category include shops, outbuildings, mills, limekilns, farmsteads, forges, gates and gate piers.

The plan includes the following vernacular architecture objectives:

VA 1: To encourage the protection, retention, appreciation and appropriate revitalisation of the vernacular heritage of the county.

VA 2: To resist the demolition of vernacular architecture, in particular thatched cottages and farmhouses and to encourage their sensitive reuse having regard to the intrinsic character of the structure.

VA 6: To ensure that both new build, and extensions to vernacular buildings are of an appropriate design and do not detract from the building's character.

9.1.3 Rural Design Guidelines

Chapter 16 of the plan provides rural design guidance and section 16.8 relates to extensions and renovations. Section 16.8.3 states:

A distinction should generally be made between the old and the new so that the various building phases can be seen as a harmonious progression of development with the external form and historic character of the building being maintained.

Care should be taken that the proposed extension does not compromise the daylight, natural ventilation or structural integrity of the original building. A good design should not confuse the legibility of the original building footprint and form.

The following additional guidance is provided:

- *Extensions should be simple and complement the existing building.*
- *Extensions are generally best located to the side and rear of the house.*
- *Care should be taken that larger extensions do not disturb the scale of the original house.*
- *Where possible match the existing widths of the gables of the original house and maintain a similar pitch and eaves height.*
- *Where extensions are being added to traditional vernacular architecture it is good practice to make the new extension demonstrably different from the old.*

9.1.4 Development Management Standards

Chapter 19 of the plan sets out development management standards. Section 19.4.7 relates to extensions to dwellings. It provides further guidance on the design and layout of extensions and regarding impacts on residential amenities.

10.0 ASSESSMENT

10.1 The following are the issues considered relevant in this case:

- Nature of Appeal
- Principle of Development
- Design and Visual Impacts
- Drainage
- Other Issues

These may be considered separately as follows.

10.2 Nature of Appeal

10.2.1 The applicant submits that the subject appeal is based on a dislike of the applicant and that the appeal is designed to delay and frustrate the applicant. It is also submitted that the appellant is appealing on behalf of another party. The Board is requested to dismiss the appeal on this basis. Documentation submitted by the applicant and the appellant indicates that there is an ongoing dispute between the parties.

10.2.2 Section 138(1) of the Planning and Development Act, 2000, as amended, provides that:

The Board shall have an absolute discretion to dismiss an appeal or referral—

a) where, having considered the grounds of appeal or referral or any other matter to which, by virtue of this Act, the Board may have regard in dealing with or determining the appeal or referral, the Board is of the opinion that the appeal or referral—

(i) is vexatious, frivolous or without substance or foundation, or

(ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person

I note that the grounds of appeal raise substantive planning issues, i.e. County Development Plan policy on rural housing and vernacular architecture; design and visual impact; importance of historic buildings in Co. Kildare; precedent Board decisions. I conclude on this basis that section 138(1)(a)(i) does not apply. In addition, there is no evidence available that section 138(1)(a)(ii) applies. I therefore consider that the Board should consider the subject appeal on its merits.

10.3 Principle of Development

10.3.1 The subject site is located in an area of significant development pressure, where there are policy restrictions on one off houses. The PA has considered

the proposed development on the basis that it involves the extension of a habitable house and therefore rural housing policy does not apply. The appellant submits that the existing dwelling at the site is not a 'habitable house' and that the application should therefore be considered as a new house in a rural area and subject to the normal restrictions on one off houses in this area. While the historic appeal cases cited by the appellant are noted, it is considered that the issue of the habitability of individual houses can only be considered on a case-by-case basis with regard to an inspection of the subject site and to relevant Development Plan policy.

10.3.2 County Development Plan rural housing policy RH17 allows for the sensitive restoration of a derelict traditional vernacular dwelling, subject to the following:

“The vernacular dwelling must be capable of being suitably restored to habitable accommodation in keeping with its original character. Documentary evidence to this effect, including the submission of a structural survey and photographs must accompany an application.”

Applicants are not required to comply with local need criteria where this is the case. The plan defines a 'derelict' dwelling one where the structure, including walls is intact, which is capable of restoration.

10.3.3 The application includes a structural survey of the existing house, which was carried out by a qualified engineer (credentials are supplied) and is based on a visual inspection of the property. The following points of same are noted:

- The property is thought to have been constructed in the early 1900s.
- The roof, walls and windows are in place.
- The main roof covering is galvinised steel, which appears to be of recent construction and is structurally sound. The chimney is intact. There is no proper rain system in place, run off is soaking into the walls.
- The walls are of mass concrete with a lime based plaster. They are structurally sound and dry, registering between 1.2 and 4% moisture content on day of inspection.
- There are water and electricity connections. The electricity connection has been turned off since 2007, as per an ESB tag on the main fuseboard.
- The dwelling is structurally sound by visual inspection. There do not appear to be any cracks or settlement issues.
- There are mains water and electricity connections. The electricity connection has been turned off since 2007, as per an ESB tag on the main fuseboard. There is an existing septic tank.
- The internal walls require dry lining and insulation. The existing floor is not thick enough and lacks a damp proof layer. The cottage has basic fixtures and fittings. There are functioning electrical storage heaters. Photographs of the interior are provided.
- The report concludes that the house is in poor condition but completely habitable and capable of accommodating people immediately if necessary.

- Photographs of the interior are provided.

10.3.4 The appellant submits that the structural survey is inadequate. I note that the report has been prepared by a suitably qualified professional. I accept that the survey is based on a visual inspection only, however such surveys are normally considered acceptable for legal purposes such as a house purchase and are considered sufficient in this instance to demonstrate the habitability or otherwise of the dwelling. Having inspected the site and viewed the premises, I concur with the above findings. I therefore conclude that the subject application should be considered on the basis that it involves the renovation of an existing habitable dwelling and that rural housing restrictions should not apply.

10.4 Design and Visual Impacts

10.4.1 The proposed extension is situated to the rear of the house and re-orientates the dwelling such that it faces the centre of the site rather than the public road. The design was revised on foot of the PA request, such that the gable end of the house remains intact. The extension is larger than the existing house on the site. However, the overall dwelling remains modest in scale. In addition, the extension has a simple design that is in keeping with the traditional style of the existing cottage. The hedgerow along the road frontage and the existing mature vegetation within the site would provide screening. I am satisfied that the extension is sympathetic to the existing house and is generally in keeping with the guidance provided in Chapter 16 of the Development Plan, subject to the careful refurbishment of the existing structure and to the use of satisfactory materials and finishes in the extension. These matters could be required by condition if the Board is minded to grant permission. I therefore conclude that the development would not have any adverse impacts on the visual amenities or vernacular architecture of the area. I have no concerns regarding potential impacts on the residential amenities of adjacent properties.

10.5 Drainage

10.5.1 The applicant initially proposed to use the existing septic tank at the site. However, a Site Characterisation Form and a proposal for a new proprietary wastewater treatment system were submitted on foot of a request by Kildare County Council Environment Section. Further details of the proposed system, comprising cross sections of the site and gradient details, were submitted to the satisfaction of the PA. I note that the Site Characterisation Form and the cross sections indicate a high water table c. 600m below ground level. The proposed wastewater treatment system includes a raised polishing filter to address this issue. This type of arrangement would generally be considered inadequate due to the risk of groundwater contamination. However, it is accepted that there is an existing septic tank present in this case. In addition, the proposed wastewater treatment is satisfactory to the Environment Section

of the PA. The wastewater treatment system is considered acceptable on this basis.

10.6 Other Issues

10.6.1 I note that the technical reports on file have no objection to the development, including the vehicular access, subject to requirements. The proposed shed and stables are considered acceptable, subject to their use being restricted to that incidental to the main house on the site. Having regard to the nature and scale of the development, at an existing residential property on a serviced site, no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

10.7 Conclusion

10.7.1 The proposed development is considered to be acceptable in principle given that it involves the extension and renovation of an existing habitable dwelling in a rural area. I am satisfied that the extension would not have any significant adverse impact on visual or residential amenities. The proposed new wastewater treatment system is acceptable. Accordingly, a grant of permission is recommended, subject to the conditions set out below.

11.0 RECOMMENDATION

11.1 Having regard to the foregoing, I recommend that permission be granted for this development for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Having regard to the habitable nature of the existing dwelling at this serviced site, and to the design and layout of the proposed extension, it is considered that the proposed development, subject to compliance with the conditions set out below, would be in accordance with County Development Plan policy on vernacular architecture and on extensions to residential properties, would not have an adverse impact on visual or residential amenity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

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 to the planning authority on 23rd December 2015 and 28th January 2016, 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. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

3. Prior to commencement of development, details of the materials, colours and textures of all external finishes to the proposed development shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

4. The existing front boundary hedge shall be retained except to the extent that its removal is necessary to provide for the entrance to the site.

Reason: In the interest of visual amenity.

5. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

6. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, the use of the proposed development shall be restricted to residential and ancillary use (as specified in the lodged documentation), unless otherwise authorised by a prior grant of planning permission.

Reason: To protect the amenities of property in the vicinity.

7. The existing dwelling and proposed extension and ancillary outbuildings shall be jointly occupied as a single residential unit and the extension and

outbuildings shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

Reason: To restrict the use of the extension and outbuildings in the interest of residential amenity.

8. 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 the 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.

Sarah Moran,
Senior Planning Inspector,
13th June 2016