



An
Bord
Pleanála

Inspector's Report PL09.246754

Development

Retention of use of corrugated agricultural shed, masonry agricultural store and site as an animal shelter, material alteration to masonry store used as ancillary space to animal shelter, retention of wooden hoarding/fence at the entrance to the premises and vehicular access to cottage, at Oldtown, Athgarvan, Newbridge, Co. Kildare.

Planning Authority

Kildare County Council.

Planning Authority Reg. Ref.

15/491.

Applicant(s)

Kildare and West Wicklow Society for the Prevention of Cruelty to Animals Ltd. (KWWSPCA).

Type of Application

Retention Permission.

Planning Authority Decision

Grant permission with conditions.

Appellant(s)

Oliver and Frances Conway (3rd Party vs. Grant).

Observer(s)

Marie Whelan.

Date of Site Inspection

31st August 2016.

Inspector

C. Kellett.

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1.0 Site Location and Description

- 1.1. The appeal site is located on the Athgarvan -Two Mile House road, c. 2.1kms east of Athgarvan. The Athgarvan-Two Mile House road crosses over the M9 motorway and the subject site is located c. 450m to the east of the Motorway. The site is located c. 1.7kms due south of where the M9 and M7 motorway intersect and is c. 4.2kms south-east of Newbridge town. The area is predominantly rural in nature; there is a large quarry to the south-east of the site, as well as signs of smaller quarrying activity to the north and west of the site. There are a number of residential dwellings along the road in the vicinity of the appeal site. The maximum speed at this section of road is 80km/hr.
- 1.2. There is a splayed entrance to the appeal site comprising two entrances located on the northern side of the road – one to the cottage, and the other to the agricultural shed and store. The gated entrance to the shed and store has been clad in vertical timber laths to a height of c. 2.5m. The detached cottage is occupied by the persons involved in running the shelter – retention permission for vehicular access to this cottage is included in this application. A third gate to the left is to a laneway in the ownership of the appellant.
- 1.3. The agricultural shed is clad in corrugated metal sheeting and a single storey extension adjoins its south face which has a rendered finish. The shed is accessed via a double height perspex doorway on its east face. The shed was previously used to house horses and each stable block now houses two dogs at night time (average number of dogs is 20). The detached store is used as a staff room/kitchen, storage area and w.c facilities. There is an area to the north of the shed noted as the 'sand arena' which is used for exercising and play areas for the dogs during the day. At the time of the site visit, acoustic hoarding had been erected to the west along the boundary with the appellant's laneway. Modular type fencing encloses the rest of the sand arena. The dogs are also walked in fields further to the north. The site area is stated as 1.3935Ha.

1.4. Appendix A includes maps and photos of the development.

2.0 Proposed Development

- Retention permission is sought for the use of the corrugated agricultural shed, masonry agricultural store and site as an animal shelter which rescues and rehomes dogs;
- Material alteration to masonry store used as ancillary space to animal shelter; and
- Retention of wooden hoarding/fence at the entrance to the premises and retention of vehicular access to the cottage.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a decision to **grant permission** subject to 15 conditions. Condition no.3 requires that mitigation measures for the control of noise, as submitted by the applicant, be carried out within 3 months of the date of the permission; Condition no.9 states that lines of sight shall be strictly in accordance with the Design Manual for Roads and Bridges; and Condition 13 requires the applicant to submit, for the approval of the Planning Authority, a suitably scaled drawing of the new site entrance with the proposed modifications, as detailed in the response letter, following the request for Clarification of Further Information dated 27/04/16; and a separate drawing shall be submitted clearly showing the lines of sight required for the development, detailing measures required to be taken to ensure the sightlines are to be achieved.

3.2. Planning Authority Reports

The Planner's Report is the basis for the Planning Authority decision. The Report:

- Considers that the main areas of concern are whether the location of the site is appropriate, and if it will be detrimental to the amenity of nearby properties, and whether the existing or planned road network can accommodate the extra demand generated by the proposal.
- Considers the applicant should be afforded an opportunity to submit proposals to mitigate noise generated on the site, and address transportation queries by way of a Further Information request.
- Following the response to the Further Information request and a Clarification of Further Information with respect to sightlines, the Planner recommended permission is granted subject to conditions.
- An Appropriate Assessment Screening was carried out and it was determined that no further assessment was required.
- The decision was in accordance with the Planning Recommendations.

3.3. Other Technical Reports

The application was referred to:

- Area Engineer – no objection subject to conditions.
- EHO - no objection subject to conditions.
- Environment - no objection subject to conditions.
- Water Services - no objection subject to conditions.
- Compliance – Site is subject to enforcement file UD 6570.
- Irish Water - no objection subject to conditions.
- Transportation – Following response to FI and CFI – no objection subject to conditions.

3.4. Third Party Observations

The Planning Authority received 33 submissions from third parties and 4 representations supporting the development, and 2 letters of objection. The main planning points raised by the objectors include:

- Change of use from residential to a business.
- Inaccuracies in the drawings.
- Traffic and road safety.
- Excessive noise.
- Lack of waste management proposals, waste water facilities and surface water facilities.

4.0 **Planning History**

There are no relevant planning applications on the site. An Enforcement Notice was served on 20th April 2015 for the use of the site as an animal shelter, the construction of a wooden fence along the road, the material widening of a means of access and the erection of a mobile home.

5.0 **Policy Context**

The site is subject to the policies and objectives of the Kildare County Development Plan 2011 – 2017, and is not located in an area subject to a Local Area Plan.

5.1. **Development Plan**

Chapter 10 of the Development Plan refers to Rural Development and Chapter 19 refers to Development Management Standards. Chapter 6 refers to Movement and Transport.

With respect to Rural Development, section 10.4.10 of the Development Plan considers Rural Enterprises. Whilst the applicant is a registered charity and the facility is run by volunteers, it is appropriate to consider it as a rural enterprise in this instance. It is noted that key considerations for rural enterprise will include “*One-off enterprises in the rural area may be located in the open countryside only where the Council is satisfied that the enterprise is suitable for that location in the first place*”

and that it will comply with the criteria outlined in Table 10.2". Table 10.2 lists criteria *inter alia*:

- The proposed development shall be located on the site of a redundant farm building/yard or similar agricultural brownfield site,
- The development will not be detrimental to the amenity of nearby properties, and in particular the amenities of nearby residents, and
- The existing or planned local road network and other essential infrastructure can accommodate extra demand generated by the proposal.

The policies of the Council include:

RRD 2: *To liaise and co-operate with statutory, local development, sectoral community/ voluntary agencies and groups to develop economic, social and cultural benefits for the rural community.*

RRD 4: *To encourage the sustainable and suitable re-use of farm buildings in the county and to ensure that such works, where relevant, have regard to Re-using Farm Buildings – A Kildare Perspective produced by Kildare County Council in 2006.*

RRD 7: *To encourage the development of alternative rural based small scale enterprises. The Council will consider the use, nature and scale of developments when assessing such applications. In addition, the Council will also consider the requirements to locate such developments in rural areas.*

Chapter 19 refers to Development Management Standards. Section 19.6 states that sightline requirements are determined by the Council on a case by case basis. The Council will also take into consideration *inter alia* that “Where sightlines are inadequate and would give rise to a traffic hazard, development will not be permitted” and “All applications for planning permission must clearly indicate the sightlines available at the proposed access.....”.

5.2. Natural Heritage Designations

There are no designated sites within the vicinity of the site. Mouds Bog SAC (Site Code 002331) and Pollardstown Fen SAC (Site Code 000396) are located c. 8.3km and c. 7.8km respectively north west of the site – the far side of the M7 motorway. Red Bog, Kildare SAC (Site Code 000397) is located c. 14km north east of the site. Poulaphouca Reservoir SPA (Site Code 004063) is located 14km east of the site.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal has been received from the neighbour to the west of the site.

The appellant has submitted the appeal under two main headings, namely; Technical Deficiencies and Planning Deficiencies. The grounds of appeal can be summarised as follows:

Technical Deficiencies:

- The applicant has failed to demonstrate that they can achieve sight distances and sightlines at any stage of the planning process. The application should have been refused and not conditioned to achieve sightlines.
- The development is having a serious impact on the amenities and health of the community. It is noted that the noise survey submitted as part of the Further Information response stated that the noise levels were excessive and above those permitted at residential properties.
- No opportunity is provided for the appellants to comment on the details of the noise mitigation measures conditioned by Kildare County Council with respect to the visual impact of such a barrier, its location, and the materials to be used.
- There is no waste disposal permit for the facility. The suitability of the septic tank has not been demonstrated.
- Parking inside the gate is only available to workers and not to the public.

There will be no access to parking inside the gate at all, if the gate is to be

closed up as proposed in the applicant's letter of the 27th April 2016, in response to the request for Clarification of Further Information. Parking occurs on the appellant's private property and on the opposite driveway.

- The Transportation Department notes, on a file dated 11th January 2016, that they are mindful to recommend a refusal of permission if the sightlines issue is not resolved. On 16th May 2016 they state that they have no objections subject to conditions despite the issue not being resolved.

Planning Deficiencies:

- The original application should have been invalidated because retention permission is not the appropriate mechanism to deal with unauthorised development, and there is no letter of consent from the landowner only a letter of support.
- An Appropriate Assessment under the Habitats Directive has not been carried out (due to bats). Therefore, an application for retention should not have been permitted.
- The Council granted permission without all the information necessary to determine the application, i.e. without final access arrangements, parking, sightlines, emergency access arrangements, and noise barrier details.
- The development contravenes other objectives of the Development Plan as well as non-compliance with Table 10.2 (*see Policy Context Section 5.1 above*). The appellant has prepared a table listing every applicable Development Plan policy and how the proposal contravenes each one.

6.2. Planning Authority Response

The Planning Authority responded with comments from the Road, Transportation and Public Safety Department, and the Veterinary section. The Veterinary section would like to acknowledge the co-operation and work of the KWWSPCA in assisting the Kildare Dog Warden.

The Transportation department response can be summarised as such:

- The Council have no available funds to realign this section of road.
- The development did not require a Traffic and Mobility Assessment to be carried out due to the size of the development.
- The department accepts that there are issues relating to sight visibility at the entrance, however notes that the applicant is conditioned to submit drawings clearly showing the lines of sight required for the development.

6.3. Applicant's Response

The First Party response to the appeal includes a detailed reply to each point made by the appellant. A summary of the response is provided below.

- The premises were previously used as riding stables with horses and dogs being kept there, and with the public visiting on a daily basis for riding lessons. They did not realise that Planning Permission was required for the change of use.
- KWWSPCA will be submitting plans to the Council for a new entrance to the Shelter to improve the existing sightlines. All works will be carried out on land owned by the landlord. It is stated that they require their neighbours to maintain their hedge and verge as provided for under the Roads Act 1993. A drawing indicating proposed sightlines from the cottage is included with the response, indicating that the sightlines can be achieved.
- KWWSPCA state that their volunteers do not park in the laneway, and that there is ample parking inside their gate including disabled parking.
- With respect to noise, it is stated that the noise levels are within acceptable limits and once a soundproof wall is completed will be further reduced. Funding has been secured for the sound barrier as conditioned by the Council and will be erected in the stated time. Tenders are being sought for the sound proofing measures for the kennels as recommended in the Noise Survey. It is further noted that no noise complaints have been made to the Council and a letter to this effect has been submitted with the response from the EHO.

- No evidence has been found of bat roosts.
- With respect to waste, the Shelter is not an environmental hazard and all waste is taken to the Waste Management Facility at Silliot Hill. Proof of disposal is provided by way of an invoice from Oxigen.
- KWWSPCA is not in material contravention of the Development Plan and all required documentation has been provided to the Council.
- KWWSPCA does support the local economy; the local vet is used, supplies are bought in local shops, local builders merchants have provided supplies; and, local groups such as schools and people with special needs get to see and volunteer at the Shelter.
- A response to each policy of the Development Plan is provided.

6.4. **Observations**

One observation on the appeal has also been received. The observer supports the points made by the appellants (the observer's parents), and states that KWWSPCA admit there is a road safety issue at their entrance in letters sent to the appellants requesting hedges on the appellant's land be cut back.

6.5. **Third party response to first party response to appeal**

A response was received from the observer on behalf of the appellants. In summary the response states:

- KWWSPCA have engaged in further unauthorised development with the erection of the noise barrier. Notwithstanding this, the barrier has not been erected in accordance with the mitigation measures required by the Noise Specialist.
- Health of appellant is affected by the development.
- Reiterates that laneway is private property and not a right of way.

- The drawing submitted indicates sightlines cannot be achieved without third party property. Refers to accidents occurring on the stretch of road.
- The premises were never used as a horse riding school but were in the past used to break race horses for training.
- States that noise levels in original appeal have been misquoted by KWWSPCA. There have been complaints made in the past to the EPA and the Council.

7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Residential Amenity
- Traffic
- Other issues

Principle of Development

The site is located within a rural area subject to the policies and objectives of Kildare County Council Development Plan 2011 – 2017. Planning policy supports small scale rural enterprise subject to appropriate safeguards and standards. The Council lists objectives *to liaise and co-operate with statutory, local development, sectoral community/ voluntary agencies and groups to develop economic, social and cultural benefits for the rural community and development of alternative rural based small scale enterprises*. Whilst this is a registered charity and it is stated that all the workers are volunteers, there is clearly a benefit to the community with respect to

indirect effects. The applicant states that they use a local veterinary practice, buy supplies locally and also provide students/community groups/ICA members etc., opportunities to visit and assist in the running of the shelter.

The applicants state that the land was used as a riding school prior to their occupation of the site. This is disputed by the appellants, but the presence of numerous stable blocks indicates that animals were housed in this location. Furthermore, the Development Plan states that a *proposed development shall be located on the site of a redundant farm building/yard or similar agricultural brownfield site.*

Based on compliance with the policies and objectives of the Council with respect to development in rural areas, and based on previous existence of animals in this location, I am satisfied that the development of an animal shelter in this location is acceptable in principle.

Residential Amenity

The appellants state that their residential amenities are being seriously injured, in particular with respect to noise and illegal parking.

The Council requested a Noise Assessment to be undertaken as part of a Further Information request. I note that different sections of the resulting Noise Impact Assessment are quoted at various times by the applicant and the appellants. The Noise Assessment does state that the majority of the noise during day time hours of 08.30am to 16.30pm is as a result of dogs barking in the external run. The predicted noise level at the appellant's dwelling is stated as 60dB(A)¹, which is above the EPA guideline limit of 55dB(A) during daytime. It further states that when the dogs are indoors, between the hours of 16.30pm and 08.30am, background noise from intermittent traffic on the adjacent roadway and on the M7 motorway, is more apparent.

¹ The Impact Assessment states that the worst case is 60dB(A) but that an allowance of 5dB(A) can be added as a correction factor for close proximity and impulsive noise.

Mitigation measures have been proposed in the Noise Assessment, including erecting a barrier on the western boundary, screening each external dog run to prevent the dogs seeing visitors which results in barking, and sealing all the holes and gaps in the shed. During my site visit, I noted that the erection of the acoustic barrier and screening of each run has begun, in accordance with the mitigation measures.

Whilst I understand the distress and discomfort experienced by the appellants since the facility has opened, I am satisfied that with the full implementation of the mitigation measures as detailed in the Noise Impact Assessment, the noise issues can be reduced to within acceptable levels.

With respect to parking issues external to the site, I observed plenty of parking spaces within the development. There are 4 spaces (including a disabled space) just inside the entrance gate and there is room to the rear of the shed for additional parking, if required. The entrance to the site is set back and two cars could pull safely off the road and not overhang while waiting on the gates to be opened.

The response to the Clarification of Further Information states that to achieve sightlines, the entrance to the shed could be closed and access/egress would only be allowed from the cottage gate. No details are provided on how access to the parking areas will be provided through this gate only.

I am satisfied that there is sufficient parking within the development to cater for normal daily activities on the site. I am of the opinion that should the Board decide to grant permission, a condition requiring full details of how the parking will be accessed internally should be included, if the gate to the shed is to be closed off.

In conclusion, I am satisfied that with the application of appropriate mitigation measures, the proposed development will not seriously injure residential amenities.

Traffic

The development is accessed from a road that has a current maximum speed limit of 80km/hr.

The issue of the sightlines was the subject of a request for Further Information following the planning report of the Transportation Department. Following receipt of the response, the Transportation Department stated that they were not satisfied with the response and sought clarification of the further information. The Transportation Department stated that *“The applicant has not satisfactorily addressed the issue of poor sight visibility from the entrance to the site. No definite solution to the lack of sight visibility has been proposed. If the applicant deems the removal and/or modification of boundaries to adjacent properties will improve sightlines, then letters of agreement with the landowners **must** be submitted. If an alternative solution is available, the applicant must show how this will be achieved. The Transportation Section is mindful to recommend a Refusal of Permission should this issue not be resolved”*. The applicant responded by stating that they will only use the entrance to the cottage which will help with the sightlines and also referred to the fact that the Council had earmarked land for straightening of this road some years ago. The Transportation Department accepted the response from the applicant, and noted no objection subject to conditions including requiring the applicant to submit detailed drawings of the revised proposals.

A drawing was submitted by the applicant as part of the response to the appeal, which indicates sightlines from the entrance to the cottage. The proposal would appear to require third parties to reduce/remove hedgerows, as well as requiring another third party, on the opposite side of the road, to keep the area clear of objects greater than 0.6m.

It is noted that the facility is open to the public daily, and that community groups visit. Based on this information, I am satisfied that there has been an increase in traffic movements since the applicant opened in this location.

I am not satisfied that the proposal submitted on the drawing will achieve the necessary sightlines without the support of third parties, and no letters of agreement have been provided.

Therefore, based on the submitted design, I am of the opinion that the current proposals are not acceptable from a road safety perspective.

Other issues

The appellant raises concern with respect to waste and wastewater from the development. The applicant has stated, and provided evidence, that waste is collected every morning and disposed of into strong refuse bags which are taken to the Waste Management Facility at Silliot Hill. The applicant states that the waste facilities, as well as the septic tank, have been deemed adequate by the Council. The applicant also states that very few dogs die on the premises, and that this year they have only had one dog die, and the animal was brought to the Veterinary Practice to be disposed of appropriately.

There is no additional hard surfaced area proposed as part of this application, so I of the opinion that there will not be issues with surface water.

Therefore, I am satisfied that there are no issues with drainage and waste disposal.

8.0 Appropriate Assessment

The appellant states that the trees between their property and the subject site were home to birds and bats, and states that the shed was home to bat roosts over the years. The appellant states that there have been no bats since the shelter opened. There are no designated sites in the vicinity, and I note that the nearest designated sites do not list bats as qualifying criteria.

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 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.

9.0 Recommendation

9.1. I recommend that planning permission should be **refused** for the reasons and considerations as set out below.

10.0 Reasons and Considerations

It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development generates on a road at a point where sightlines are restricted in both directions.

Ciara Kellett
Senior Planning Inspector

14th September 2016

Appendix A: Location Maps and Photographs.