



An
Bord
Pleanála

Inspector's Report PL27.248054

Development	Retention of works of renovation and extension to building for the prospective use of the applicant as a dwelling. Retention of revised entrance. Proposed installation of a sewage treatment system.
Location	Kilmacullagh, Newtownmountkennedy, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	16/1311
Applicant(s)	Joseph Delaney
Type of Application	Permission for retention & Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party -v- Decision
Appellant(s)	Joseph Delaney
Observer(s)	None
Date of Site Inspection	19 th May 2017

Inspector

Hugh D. Morrison

1.0 Site Location and Description

- 1.1. The site is located between Newtownmountkennedy (0.7 km to the south west) and Kilcoole (3 km to the east north east) on the northern side of the L-1048-0 just before it runs through an underpass to the elevated N11. The surrounding area is one of open, mildly undulating, countryside that is punctuated by one-off dwelling houses and through which flows a stream to the south of the site.
- 1.2. The site itself is of reasonably regular shape and it extends over an area of 0.15 hectares. Access to the site is immediately off the aforementioned local road via an existing gated entrance. The accompanying front (southern) boundary to the site abuts this road and it is denoted by means of a stone wall, which is overgrown by vegetation in places. The eastern boundary abuts the foot of the embankment to the elevated N11 and the northern boundary runs along the top of an embankment to the field beyond. The foot of this embankment is enclosed by means of a shallow retaining wall and the embankment tapers in a south westerly direction. The remaining short western boundary is elevated above an adjacent agricultural gate and it is enclosed by means of timber fencing.
- 1.3. The site accommodates the subject building and a mobile home. The subject building is of single storey elongated form and it is sited in the central and eastern portions of the site. The mobile home is sited in the western portion of the site. Forward of these structures is a forecourt with a sealed surface.
- 1.4. The subject building is in use as a stable, a garage, and for domestic and storage purposes, i.e. spaces are furnished for use as a utility room/lounge, a fitness room, and a space for storing rugs. The submitted plans indicate that the former two uses are within the original structure (43.5 sqm), while the latter uses are within what is largely a new structure that has a slightly larger footprint (80 sqm) than the original structure that it replaces.

2.0 Proposed Development

- 2.1. The proposal comprises the following three elements:
 - The retention of works of renovation and extension to the subject building,
 - The use of this building as a family dwelling by the applicant,

- The retention of the revised entrance to the site, and
- The proposed installation of a sewage treatment system in the western portion of the site, which would be vacated once the mobile home is removed.

3.0 Planning Authority Decision

3.1. Decision

Permission was refused for the following reasons:

1. The site lies in an Access Corridor Area and the dwelling would not be a necessary one in this Area, as the applicant does not have a rural housing need, as defined by Objective HD23 of the CDP. Consequently, this dwelling erodes the landscape value of the Area and seriously detracts from views of special amenity value.
2. The dwelling would contravene materially the CDP's 100m set back requirement for dwellings adjacent to national roads.
3. The dwelling would be subject to noise, dust, and potentially vibrations from the adjacent elevated national road all of which would be detriment to residential amenity and the public health of future occupants.
4. The dwelling would be served by an access with sub-standard sightlines, which would endanger public safety by reason of a serious traffic hazard.
5. The proposed development and the development proposed for retention would facilitate the continuation and intensification of unauthorised development on the site, which would seriously injure the amenities of property in the vicinity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

See reasons for refusal.

3.2.2. Other Technical Reports

- Environmental Health: No objection subject to standard advice.

- Area Engineer: Sightlines, particularly the eastern one, require works, which are inadequately depicted on the submitted plans.

3.3. Prescribed Bodies

- TII: No observations.
- Irish Water: No objection subject to standard advice.

3.4. Third Party Observations

None

4.0 Planning History

- **99/1186**: Demolition of dwelling and replacement with dormer bungalow and bio-cycle: Refused on the grounds of sporadic development, which would be contrary to the settlement strategy and the need to safeguard scenic landscape/views of special amenity value, premature with respect to future roads plans, and extension of suburban sprawl.
- **00/2085**: Demolition of dwelling and replacement with dormer bungalow and bio-cycle: Refused on the grounds of sporadic development, which would be contrary to the settlement strategy and the need to safeguard scenic landscape/views of special amenity value, and extension of suburban sprawl.
- **02/6836**: Retention of replacement alterations and extension to cottage and provision of septic tank and percolation area: Refused at appeal PL27.200739 on the grounds that, as the cottage constitutes a new dwelling, it is contrary to the CDP's settlement strategy and to the LAP's agricultural zoning of the site, and the need to ensure that lands within 100m of the N11 are kept free of development.
- **13/8388**: Retention of renovations and extension to reinstated cottage and garage, including a new roof, and proposed waste water treatment system and new entrance in lieu of existing one, along with roadside boundary wall: Refused at appeal PL27.242359 on the grounds that the proposal would facilitate the continuation and intensification of unauthorised development,

which is injurious to amenity, and the need to ensure that lands within 100m of the N11 are kept free of development.

- **14/1216:** Retention of revised entrance: Withdrawn.
- **16/0820:** Retention of mobile home as a dwelling and retention of revised entrance gates and proposed waste water treatment system (WWTS): Refused at appeal PL27.247353 on the grounds of the siting of the WWTS/public health, the applicant has not demonstrated a rural-generated housing need, and noise, dust, and vibration pollution would be detrimental to the amenities/public health of residents.

5.0 Policy Context

5.1. Development Plan

The Wicklow County Development Plan 2016 – 2022 (CDP) shows the site as lying beside the N11, which is a Corridor Area (cf. Section 10.3.9 of the CDP and Map No. 10.13(d) and Section 5.3.14 (Key Development Considerations) of the Landscape Assessment under Appendix 5 of the CDP). The Newtownmountkennedy Local Area Plan 2008 – 2018 (LAP) shows the site as lying in an area that is zoned agricultural, wherein the objective is “To protect and provide for agriculture and amenity in a manner that protects the physical and visual amenity of the area and demarcates the urban and rural boundary.” Residential uses are not normally permitted in this zone. Objective HD23 of the CDP sets out the criteria that applicants must meet for residential development in the open countryside and Objective HD25 sets out the criteria for the conversion or reinstatement of non-residential or abandoned residential buildings back to residential use in rural areas.

5.2. Natural Heritage Designations

The Murrough Wetlands SAC (site code 002249) and the proposed NHA The Murrough (site code 000730) lie to the east of the site on the coastline.

6.0 The Appeal

6.1. Grounds of Appeal

The applicant begins by reviewing the planning history and policy context of the site. He questions the reasonableness of the Planning Authority's five reasons for refusal, when a similar proposal was refused for only two reasons by An Bord Pleanala (cf. PL27.242359). He then proceeds to respond to each of these reasons, as follows:

- In relation to the first reason, the applicability of the rural housing policy is questioned as the subject building was in use as a dwelling for over a century. In this respect attention is drawn to the Board's decision on PL09.241586, in which a small vernacular cottage was substantially extended without the applicant needing to demonstrate a rural housing need. Under the CDP's Objective HD25, the current applicant should be allowed to do likewise, as he is now applying to reside in the subject building and not a mobile home.

Attention is drawn to the presence of the subject building on 19th Century 6-inch and 25-inch Ordnance Survey maps and to the expert opinion of a conservation architect who comments on this building.

The Board's customary approach is to permit replacement dwellings in rural areas without requiring that any rural housing policy be complied with, e.g. PL27.222856, PL25K.228944, PL13.242276, and PL27.240469.

The Planning authority's customary approach differs, too, from the one adopted in the present case, e.g. 16/1162 where a derelict cottage was restored, 05/3824 where a substantial extension was added to a dilapidated house, and 10/2174 and 14/1178 where replacement dwellings were built, all of which were permitted without requiring that any rural housing policy be complied with.

- In relation to the second reason for refusal, under Table 7.3 of Section 7 of Appendix 1 to the CDP, a set-back distance for all non-employment development of 100m from national roads is cited. This requirement is qualified by a series of factors that the case planner did not address. The Board is invited to give weight to the subject building's longevity on the site.

The Planning Authority in simply citing the aforementioned requirement fails to draw out how any planning objective would be infringed by the proximity of the N11 to the subject building. The advice of Section 7.15 of the Development Management Guidelines has thus not been heeded.

The aforementioned qualification of the requirement was not previously discussed by the inspector under PL27.242359.

- In relation to the third reason, unlike the situation under PL27.247353, the current proposal relates to a building of permanent construction rather than a mobile home. Thus, the noise insulation properties are superior to that of a mobile home and they have been enhanced by the installation of double glazing. The proposed patio area could similarly be enhanced by the addition of screening.

The applicant's noise consultant advises that the site is not unduly affected by the N11 and that with minor works no conflict would arise.

- In relation to the fourth reason, while the access to the site has previously been critiqued by the Planning Authority the Board has not reflected such critiques in their reasons for refusal under PL27.242359 and PL27.247353. Rather the inspector's view, under the latter appeal, is cited wherein he considered that the setting back of the road boundary to the east of the access would improve the sub-standard sightline sufficiently.
- In relation to the fifth reason, contrary to the wording contained therein, the current proposal seeks to regularise all outstanding unauthorised development on the site. Furthermore, it is unclear that there are any properties in the vicinity of the site and so any effect on such properties would not therefore arise.

6.2. Planning Authority Response

None

6.3. Observations

None

6.4. Further Responses

None

7.0 Assessment

I have reviewed the proposal in the light of national planning guidelines, the CDP and the LAP, relevant planning history, and the submissions of the parties.

Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Land use and conservation,
- (ii) Amenity,
- (iii) Access,
- (iv) Water, and
- (v) AA.

(i) Land use and conservation

1.1 The site lies in open countryside, which is traversed by the N11 that runs on a north/south axis immediately to the east. Under the CDP and the LAP, this site is variously shown as lying within a Corridor Area and an agricultural area. Advice on the former landscape category states that “Development proposals within this area should aim to locate within existing clusters of structures/tree stands and avoid locating new development in open fields.” The latter zoning does not normally permit residential uses.

1.2 I have reviewed the planning history of the building on the site. This history indicates that this building has been the subject of two previous applications/appeals in 2003 and 2013. In both instances, it was held by the Board that the western portion of the building identified for use as a dwelling was essentially a rebuilt structure and so the dwelling in question would be a new one rather than the resumption in use of an abandoned one.

1.3 The submitted plans accompanying the current proposal indicate the footprint of the former dwelling on the site. The rebuilt western portion of the building

encompasses this footprint and extends slightly beyond it to the rear and the side. Thus, these plans are consistent with the previous findings of the Board.

- 1.4 The site lies within a rural area that is under strong urban influence. Policy HD23 of the CDP addresses housing in the open countryside. In keeping with the Sustainable Rural Housing Guidelines, this Policy distinguishes between urban generated and rural generated housing need. The latter need is identified by means of 16 criteria. The applicant has not sought to establish that he has such a need. Instead, he relies upon the fact that there was formerly a dwelling on the site and that under Policy HD25 he should be able to convert/reinstate this dwelling without establishing that he has a rural generated housing need. He cites a number of planning cases that, in his view, bear out the validity of this approach.
- 1.5 Policy HD25 is one of three policies that appear in the CDP under the heading of “Housing in the Open Countryside”. I, therefore, “read” them as running together and so I do not agree with the applicant’s approach of isolating Policy HD25 from Policy HD23. Thus, where the former Policy is applicable, the latter still falls to be complied with.
- 1.6 Notwithstanding the foregoing paragraph, Policy HD25 comprises criteria the first element of which is that “the original walls must be substantially intact – rebuilding of structures of a ruinous nature will not be considered.” The western portion of the building on site would not comply with this element. The remaining elements refer to the building being of some interest and the need to ensure the substantial retention of their original appearance and the employment of works in a sensitive manner. From the applicant’s submission I accept that there is some interest attendant upon the retained original central and eastern portions of the building, as distinct from the western portion. Furthermore, the rebuilt western portion fails to reflect the likely original form, insofar as it introduces an asymmetrical roof, and the choice of textured render finish is a non-traditional treatment that covers the retained original stonework. Thus, the proposal would fail to comply with the criteria set out in Policy HD25.
- 1.7 I conclude that the works undertaken to the western portion of the building amount to the provision of accommodation for a new dwelling in the countryside.

The applicant has not demonstrated that he has a rural generated housing need and so the provision of this dwelling would be contrary to the CDP's settlement strategy.

(ii) Amenity

2.1 The eastern boundary of the site abuts the base of the embankment for the N11.

The nearest part of the western portion of the building on this site is 18m away from this embankment. The proximity of this national primary road to the dwelling, thus poses a range of traffic generated environmental impacts in terms of noise, dust, fumes, headlight glare, and vibrations. These impacts affect the level of residential amenity that the dwelling would and the site does afford.

2.2 Under Section 7 of Appendix 1 to the CDP, new dwellings are to be set back from public roads in the interest of, amongst other things, residential amenity. Table 7.3 cites a distance of 100m where a national primary road runs past a residential development. This distance can be relaxed having regard to the likelihood of future road widening/realignment, the desirability of maximising density near to urban areas, and the need to mitigate the aforementioned environmental impacts.

2.3 In the case of the current proposal, the proposed dwelling clearly comes well within the 100m set back. I am not aware of any road widening/realignment proposals for the L-1048-0 and, as the site is well away from any urban area, the question of raised densities does not arise. Of the environmental impacts identified, noise is the most significant and so I will consider this further in conjunction with an acoustic assessment of the site, which the applicant commissioned.

2.4 Readings recorded for the acoustic assessment of the site indicate that the outdoor 15-minute LAeq is 64 dB(A) and the indoor one is 43 dB(A). Thus, noise attenuation properties of the existing western portion of the building leads to a reduction of 21 decibels. The applicant has identified measures that could be taken to increase this reduction, although it has not been demonstrated that a 30 dB(A) level could be achieved, i.e. the customary level for "good" bedroom acoustic conditions. Likewise, the applicant envisages the provision of a patio area to the south west of the building. i.e. the side furthest from the N11. He

anticipates that with the careful positioning of acoustic barriers around this patio a reduction of up to 10 decibels would be achievable and so the customary maximum level of 55 dB(A) for outdoor areas may be obtainable. However, I am concerned that the utility value of any patio may be largely negated by the inordinate presence of acoustic barriers around it. Elsewhere on the site the customary maximum level would be exceeded without any significant remedy being to hand.

2.5 In the light of the foregoing paragraph, I am unpersuaded by the case for a relaxation in the normal set back distance of 100m presented by the applicant and so I conclude that there appears to be no prospect of the site affording a satisfactory standard of amenity to future residents, due to the environmental impacts generated by traffic on the N11.

(iii) Access

3.1 The L-1048-0 passes the front of the site. This local road is of variable horizontal and vertical alignment within the vicinity of this site. It is subject to a continuous white centre line and an 80 kmph speed limit.

3.2 Access to the site from the L-1040-0 is taken from a point towards the centre of the site's frontage with this local road. Evidence on site indicates that the access proposed for retention coincides with the historic access to the site. Essentially this access has been reformed to provide a recessed gated entrance with blockwork pillars on either side and splayed wing walls.

3.3 The eastern and western sightlines available from the access are restricted, in the former case, by the splayed wing wall and, in the latter case, potentially, by a dip in the road and the height of the hedgerow on the far side of this road. The applicant proposes to set back the front boundary wall to the east of the access point to secure the needed sightline in that direction, i.e. 2m x 160m. To the south west, the securing of a similarly dimensioned sightline would be contingent on the hedgerow on the far side of the road remaining clipped.

3.4 I consider that, while the access to the site is not ideal, it is established and so, under the current proposal, the regularisation of increased usage only is envisaged. I, therefore, conclude that on the basis of the proposed improvement to the eastern sightline, this access would, in the circumstances, be satisfactory.

(iv) Water

- 4.1 The site is served by the public water mains. Surface water would be drained to a soakaway that would be sited in the south eastern corner of the site. Foul water would be handled by means of WWTS, i.e. a Euro Bio and a 36 sqm pump discharged soil polishing filter. This WWTS would be sited in the western portion of the site in a position that would approximate to that which is presently occupied by the mobile home.
- 4.2 The applicant has completed a site characterisation form, which concludes that the site is suitable for the proposed packaged WWTS and soil polishing filter. Specifications for the soil polishing filter are set out and it would be capable of being sited in a position consistent with the requirements of the relevant EPA Code of Practice.
- 4.3 Under Appendix 11 of the CDP, a Strategic Flood Risk Assessment for the County is set out. This Assessment includes Newtownmountkennedy and its environs. While the stream to the south of the site is shown as prone to flooding, it is at some remove from the site and at a considerably lower level and so this site would not be at risk of fluvial flooding. Floodmaps.ie records no flood events near the site.
- 4.4 I, therefore, conclude that the site is capable of being supplied by the public water mains and that proposed surface and foul water drainage arrangements would be satisfactory. The site is not at any appreciable risk of flooding.

(v) AA

- 5.1 The site does not lie within or near to a Natura 2000 site. The stream to the south of this site runs to the east, where it passes through The Murrough Westlands SAC (site code 002249) to the Irish Sea. Thus, insofar as the site ultimately drains to this stream, there is a potential source/pathway/receptor between it and this Natura 2000 site. Nevertheless, provided the proposed WWTS is properly installed and maintained, I do not consider that any pollution from the site thus developed would enter this stream and so it would have no significant effect on the conservation objectives of the identified site or any other Natura 2000 site.
- 5.2 It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the

proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 002249, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

That the proposal be refused.

9.0 Reasons and Considerations

1. Having regard to the planning history of the site, wherein it has been established that the western portion of the subject building, proposed for use as a dwelling, was rebuilt from the ruins of a former abandoned cottage, it is considered that the works thus carried out to this building do not come within the ambit of Policy HD25 of the Wicklow County Development Plan 2016 – 2022. Consequently, the proposed dwelling would be a new one.

Having regard, too, to the location of the site within an Area Under Strong Urban Influence as identified in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with Policy HD23 of the Wicklow County Development Plan 2016 – 2022, it is considered that, as the applicant has not demonstrated that he comes within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location, the proposed dwelling, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed dwelling would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the proximity of the elevated N11 to the site, it is considered that the environmental impact generated by traffic on this national primary road, in terms especially of noise and general disturbance, would militate against the establishment of a satisfactory standard of amenity for future residents of the proposed dwelling. Advice contained within Appendix 1 of the Wicklow County Development Plan 2016 – 2022 indicates that proposed dwellings should be set back at least 100m from national roads in order to mitigate against the environmental impact generated by traffic. This set back would not pertain to the proposed dwelling on the site. Accordingly, to accede to this dwelling would contravene this advice and so it would be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

25th May 2017