



An
Bord
Pleanála

Inspector's Report PL10.248577.

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| Development | Holiday cabin with effluent treatment system and all associated works. |
| Location | The Weir, Bleach Road, Dunmore, Co Kilkenny. |
| Planning Authority | Kilkenny County Council. |
| Planning Authority Reg. Ref. | 16/586. |
| Applicants | Vincent O'Shea and Donna McGreevy |
| Type of Application | Permission. |
| Planning Authority Decision | Grant of planning permission with conditions. |
| Type of Appeal | Third Party |
| Appellants | Alan Maharaj and Martin Duggan. |
| Observer(s) | None. |
| Date of Site Inspection | 13 th September 2017. |
| Inspector | Derek Daly. |

1.0 Site Location and Description

- 1.1. The site is located in a built up area on the northern fringes of Kilkenny city. The site fronts onto a public road referred to as the Bleach Road, which defines the site's southwestern boundary. This road which runs northwards from Kilkenny runs parallel to the River Nore located approximately 35 metres to the west of the site. The site is wooded and falls in level from east to west with a pronounced slope in the eastern area of the site.
- 1.2. To the east of the site is an established residential area, the Weir View residential estate, which is accessed from an estate road which has an access onto the R712 Castlecomer Road. To the north of the site is a dwelling which has access through the site.
- 1.3. The site has a stated area of 0.21 hectares.

2.0 Proposed Development

- 2.1. The proposed development as submitted to the planning authority on the 5th of September 2016 was for a holiday cabin with effluent treatment system and all associated works.
 - 2.1.1. The proposed cabin will be located in the southeastern corner of the site within approximately 8 metres of the public road. The cabin is single storied with a pitch roof and the stated area of the holiday cabin is 40m². The external finish of the cabin is a metal clad finish. There is a ramp proposed to provide access to the cabin reflecting the nature of the levels on the site. The access serving the existing dwelling to the north will serve the proposed development.
 - 2.1.2. The effluent treatment plant and associate percolation area is located in the northern area of the site.
 - 2.1.3. A site suitability assessment was submitted and based on the results of the assessment the site was considered suitable for a packaged wastewater treatment system, polishing filter and percolation area.
 - 2.1.4. A flood risk assessment identified there was a fluvial flood risk event from the River Nore and a tributary of the River Nore including lands to the northwest and west but

flood maps do not identify the site as a flood risk area based on historical data and evaluation of recurring data. CFRAM studies, it is indicated, support this. The assessment also considered the site in the context of the National guidance on floodrisk management and that a small area of the site would be within zone B moderate probability of flood and the that the access, driveway and effluent system would be within Zone C low to negligible probability of flooding and therefore not a risk of flooding.

2.1.5. A screening assessment was also submitted and considered predicted impacts as unlikely and did not require stage 2 Assessment.

2.1.6. Traffic surveys was also submitted.

2.2. Further information was submitted on the 11th of April 2017 which included:

- Details of the building and the ramp serving it,
- A revised location of the cabin and provision for 2 parking spaces. The cabin is further west on the site and further removed from the public road.
- Revised location of the percolation area.

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted planning permission subject to 11 conditions.

Planning Authority Reports

3.1.1. Planning Reports

The planning report dated the 26th of October 2016 refers to:

- The provisions of the development plan in particular section 7.9.3.
- That based on information there is no risk of flooding.
- That based on the provisions of the development plan the proposed development is acceptable in principle.

- That further clarification is required in relation to the exact nature of design of the ramp serving the cabin, a section to reflect the nature of the ramp and the cabin and details relating to parking.
- Further information was recommended.

3.1.2. The planning report dated the 5th of May 2017 in relation to the further information recommends permission.

3.1.3. Other Technical Reports

The environment report dated the 25th of October 2016 indicated no objections to the development and included recommended conditions.

The area roads report dated the 25th of October 2016 indicates no objections in the context of the use of an existing entrance and although the sightlines provided are below the desired standards for a 80kph zone in the context of the road and anticipated traffic volumes the submission is acceptable.

3.2. Other submissions

Submissions were received in relation to the proposed development referring to issues the relating to access onto the extension of the Kilkenny Northern Ring Road, soil stability of the site and impacts on adjoining lands, sightline visibility and flooding.

4.0 Planning History

4.1. P.A. Ref. No.15/618

Permission refused for a holiday cabin on the site.

5.0 Policy Context

5.1. Development Plan

5.1.1. The current operative plan is the Kilkenny County Development Plan 2014-2020.

5.1.2. The site is located just outside of the development boundary of the Kilkenny City and Environs Development Plan. In this regard I would refer to figure 3.3 of the Kilkenny City and Environs plan. The lands to the east are zoned residential and are within

the development boundary. The site is therefore within the area provided for in the county plan and is defined rural.

5.1.3. Chapter 7 refers to tourism and section 7.9.3 to Integrated Rural Tourism and consideration of locations outside of centres and also niche tourism developments.

5.2. **National Policy.**

5.2.1. **The Planning System and Flood Risk Management Guidelines for Planning Authorities November 2009.**

5.2.2. These guidelines require the planning system at national, regional and local levels to:

- Avoid development in areas at risk of flooding, particularly floodplains, unless there are proven wider sustainability grounds that justify appropriate development and where the flood risk can be reduced or managed to an acceptable level without increasing flood risk elsewhere;
- Adopt a sequential approach to flood risk management when assessing the location for new development based on avoidance, reduction and mitigation of flood risk; and
- Incorporate flood risk assessment into the process of making decisions on planning applications and planning appeals.
- Carry out a site-specific flood risk assessment, as appropriate, and comply with the terms and conditions of any grant of planning permission with regard to the minimisation of flood risk.

The core objective of the Guidelines is to avoid inappropriate development in areas at risk of flooding.

5.2.3. Three types or levels of flood zones defined for the purposes of the Guidelines:

- Flood Zone A – where the probability of flooding from rivers and the sea is highest (greater than 1% or 1 in 100 for river flooding or 0.5% or 1 in 200 for coastal flooding);
- Flood Zone B – where the probability of flooding from rivers and the sea is moderate (between 0.1% or 1 in 1000 and 1% or 1 in 100 for river flooding

and between 0.1% or 1 in 1000 year and 0.5% or 1 in 200 for coastal flooding); and

- Flood Zone C – where the probability of flooding from rivers and the sea is low (less than 0.1% or 1 in 1000 for both river and coastal flooding). Flood Zone C covers all areas of the plan which are not in zones A or B.

5.2.4. The guidelines in requiring assessment of flood risk sets out a methodology in chapter 3 to examine proposals through a series of stages including where identified the need for a justification test where identifiable risks are outlined. Chapter 5 indicates guidance in relation to development management of applications for development.

5.2.5. **Environment Protection Agency.**

5.2.6. The EPA publications Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) 2009 and its subsequent clarifications.

5.2.7. The Code of Practice outlines the importance of proper site assessment methodology, the identification of the minimum environmental protection requirements, the need for design of on-site wastewater disposal systems specific to the local conditions and the need for installation, commissioning and maintenance as per design and attendant recommendations / conditions.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The appellants in a submission dated the 22nd of May 2017 refers to:

- The appellants contend that the studies on flooding and EIS in relation to the Kilkenny Northern Ring Road should not be relied upon as the Board inspector in report HA0083 was referred to as deficient.
- The site is not suitable as a holiday cabin and the site is zoned residential.
- The weir is not a designated swimming area.

- Flooding has occurred previously on numerous occasions and the conditional grant is not sufficient to adequately deal with such flooding on the proposed effluent treatment system.
- Sightlines do not currently exist and consent from adjoining landowners is necessary to achieve 90 metres and such consent will not be forthcoming from the appellants.
- There are concerns in relation to the structural stability of the ground on which it is proposed to locate the development and the implications on adjoining lands and a dwelling on adjoining lands given the proximity of the dwelling and site levels. It is contended that to construct the development would require significant earthworks and excavation and effect the retaining wall of the appellant's property.
- It is proposed to build and fill on a flood plain.
- An oral hearing was requested.
- Submissions made to the planning authority are also submitted.

6.2. Planning Authority Response

The planning authority in a submission dated the 21st of June 2017 indicate that they have no further comments to make.

6.3. First Party Response

Doyle Kent Planning Partnership in a response dated the 24th of June 2017 refers to:

- In relation to flooding, the applicant prepared a flood risk assessment and based on the assessment the site guidance based on the assessment is not subject to the requirement of a justification test with reference to department guidance.
- The assessment did not rely on the Northern Ring Road Extension EIS.
- The reference to the wall as raised is an agreement should the ring road proceed. This does not impact in any way on the current proposal.

- The site has been in the ownership of the O'Shea family since the early 1960s and lived in the dwelling since 2003 and there has been no flooding.
- In relation to the entrance the site is served by an established entrance used by the dwelling and previously a sand and gravel pit.
- The sightline was surveyed and details submitted. There were no objections from the roads section to the details submitted. The entrance is acceptable for the low volumes of traffic which the proposed development will generate.
- In relation to finished floor levels and excavation of the site, the cabin was repositioned away from the embankment to a lower level which would have little or no impact on the embankment. There will be minimal excavation and by reason of the cabin being raised off the ground on stilts there will be no impact on any adjoining properties.
- An environmental screening was carried out and the planning authority carried out screening and the applicants are satisfied there will be no direct or indirect impact on any qualifying site.
- The proposal will not impact on third property lands and is within the applicants' property and using an existing entrance. It will not impact on any proposal by Alan Mararaj in relation to a proposed road to connect his lands to the ring road or Martin Duggan's property where the embankment is outside of the appellants' holding and there is a requirement by condition in PL.10.213111 that the bank should be suitably supported.
- The site is located in a rural area immediately adjacent to the development boundary and near a designated swimming weir. The cabin will not impact on the weir or public amenity.
- The height of the development is respectful to neighbours and its sylvan setting and will not be injurious to properties in the vicinity.

7.0 Assessment

- 7.1. The application as submitted is for a holiday cabin with effluent treatment system and all associated works. The cabin is single storied with a pitch roof and the stated area of the holiday cabin is 40m². The external finish of the cabin is a metal clad

finish. There is a ramp proposed to provide access to the cabin reflecting the nature of the levels on the site. Revised details relating to the ramp were submitted by way of further information. The access serving the existing dwelling to the north will serve the proposed development. The documentation submitted also a site suitability assessment; a flood risk assessment and traffic and site access surveys.

- 7.2. The site presents issues given the levels of the site and the sloping nature of the site. The eastern area of the site has steep slopes in proximity to the site boundary which moderate in a westerly direction away from the boundary becoming relatively level in the western area of the site. The proposal is located in an area where there is an increasingly gentler slope and the proposal provides for the construction of the cabin on stilts and for the use of a ramp to minimise cutting into the slope.
- 7.3. In the grounds of appeal reference is made to issues relating to the principle of the suitability of the site for the use proposed; and site specific issues relating to flooding; traffic and sightline visibility; and ground conditions and resultant potential impacts arising to adjoining lands. These are, I consider, the matters which require to be addressed in this appeal.
- 7.4. In relation to the suitability of the site for the use proposed, the site is located outside of but immediately proximate to the development area of Kilkenny City and its environs and is therefore in an area defined as rural.
 - 7.4.1. There are provisions in section 3.5 of the county development plan for housing in rural areas but the proposal is not for a permanent dwelling in a rural area. The planning authority in considering the proposal refer to chapter 7 of the plan and in particular section 7.9.3 which refers to integrated rural tourism and consideration of locations outside of centres and also provision of niche tourism developments.
 - 7.4.2. In relation to section 7.9.3 the section is largely to accommodate largely small scale integrated rural tourism outside of towns and villages and is a form of development which as the plan states *“is directly and positively linked to the economic, social, cultural and natural resource in rural areas. It is an approach to tourism development, which is sensitive to the nature of local resources, traditions and opportunities and endeavours to optimise the use of resources and shares the benefits throughout the area. In order to promote balanced regional development, while also preserving the rural character and amenity of the open countryside and*

boosting rural tourism, an area needs to be self-sufficient with a full range of services. This may include for example accommodation, farmers' markets, organic produce, activity holidays, walking/cycling facilities, golf, fishing, boating and swimming facilities.

There is an existing range of special interest and other attractions that can be further developed for tourists while also preserving the rural character and amenity of the open countryside, these include on-farm tourist accommodation, fishing, equestrian pursuits and other secondary activities such as health spas, cooking schools and adventure centres. Although rural tourism remains a relatively small niche in the overall tourism industry it can play a vital role for local communities including a supplementary role for the farming community. These activities all serve to encourage visitors to stay longer in the County'.

- 7.4.3. In relation to the proposed development the site is located in close proximity to Kilkenny City and immediately adjoins the built up area. It is notwithstanding this proximity within a rural type setting. The general sense of the provisions in the plan is agri based tourism projects supporting a rural economy but it also a very broad provision and supports a wider base and diversification of a tourism product outside of towns and villages. In this regard consideration could be given to the proposed development provided standards as set out in the development management guidelines can be adhered to.
- 7.5. In relation to site specific considerations the main issues arising related to flooding; traffic and provision of services and construction of the cabin in the context of prevailing site conditions.
- 7.6. In relation to flooding, the applicant prepared a flood risk assessment and based on the assessment considered that the site is not subject to the justification test with reference to department guidance based on the assessment.
- 7.6.1. The site is close proximity to the River Nore and it is noted that the site already has a dwelling located to the north of the appeal site which is in the ownership of the applicant. There are signs on the public road to the south of the appeal site which refer to risk of flooding.
- 7.6.2. The Planning System and Flood Risk Management Guidelines for Planning Authorities November 2009 set out guidance and a methodology for assessment of

proposed developments in areas where there is risk of flooding applying an overriding principle of avoidance of areas at risk of flooding and management of acceptable risk to and acceptable level without increasing flood risk elsewhere. The adoption of a sequential approach to flood risk management when assessing the location for new development based on avoidance, reduction and mitigation of flood risk is outlined and the incorporation flood risk assessment into the process of making decisions on planning applications and planning appeals.

- 7.6.3. In this particular case the applicant has carried out a site-specific flood risk assessment as required under the guidelines identifying most of the site as within flood zone C and a small area within flood zone B in effect indicating that specific to the site itself the probability of flooding is assessed as low. The finished floor level of the structure is above recorded levels of flooding in the area.
- 7.6.4. In the grounds of appeal there is reference to the information submitted and that the existing ground level is indicated as 45.00m OD and the floor level of the proposed dwelling is 52.00m OD. This raises the appellants contend issues in relation to filling of land as one of the drawings for the proposed development refer to a level of 49m OD rising to 52m OD and therefore raises the issue of whether the rising of land is acceptable in a flood plain. The applicants in response have indicated there is no history of flooding on the site and that the cabin will be built on stilts at a FFL of 49.5m OD. I would note that the planning authority report refers to a FFL of 52m OD.
- 7.6.5. The survey drawing 04 revision 1 working levels to Poolbeg Datum indicate a level of approximately 45m OD at the entrance. The drawing proposed site plan drawing number PLN-02 indicates a level of approximately 48/49m OD based on the site contours indicated. Both drawings were received by the planning authority on the 5th September 2016. The divergence in levels is not fully clear but if Malin OD was applied in relation to drawing number PLN-02 and as the Malin Head datum is approximately 2.7m above the Poolbeg Lighthouse datum with reference to the OSI Irish grid reference system the difference is largely explained.
- 7.6.6. In the flood study submitted by the applicant Malin OD is used at levels on the site indicating that topographical levels range from 48.01m OD to 62.24m OD and would appear to largely correspond to the levels applied in drawing number PLN-02 inferring the levels on drawing number PLN-02 are Malin OD. Flood level events in

the study all relate to Malin OD and the level at the entrance is indicated as 47.90m OD. The level of the site would therefore be above the extreme flood levels applicable to the site in relation of a maximum level of 48.2m OD based on a 1 in 1,000-year event. The finished floor of 52m OD would be above required levels to avoid flooding as would the entrance; the area of the site where it is proposed to located the cabin and the area where it is proposed to locate the effluent treatment system. In this context filling and raising site levels would not be necessary or arise.

7.6.7. I am satisfied the issue of flooding has been addressed and the methodology applied in the department guidelines has been followed.

7.7. In relation to traffic the appellants have raised the issue of inadequate sightlines and that authorisation to lower boundaries to meet requirements would not be forthcoming and the proposed development would pose a traffic hazard.

7.7.1. The site is within a 80kph speed limit area though given the nature of the road alignment speed levels along this section of Bleach Road are likely to be lower than 80kph. The site is on a local road and to the south there is a curve/ bend in the road and its location in in the inner side of the curve assists in providing sightline visibility in a southerly direction. To the north the alignment is more straight. There is, however, a wide grass verge which provides a reasonable level of sightline visibility in this direction. I would also note that the site has been in use for a dwelling. I would have no objection to the proposal as submitted.

7.8. In relation to effluent treatment, the existing dwelling is served by an effluent treatment system and percolation area located to the north of the dwelling. It is proposed to install an independent effluent system for the proposed development north of the proposed cabin between cabin and the existing dwelling.

7.8.1. Site suitability tests were submitted in accordance with the guidance outlined in the EPA publications Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) 2009 and its subsequent clarifications which would indicate the suitability of the site for a packaged wastewater treatment system a polishing filter and percolation area. There is sufficient space on the site to accommodate the effluent system proposed and comply with required distances. I would have no objection to the proposal as submitted.

- 7.9. In relation to other aspects of site conditions the site has a slope which is steep at the eastern boundary but the slope moderates in a westerly direction. The applicant submitted a revised site layout on the 11th April 2017 relocating the cabin westwards on the site and provided for a revised ramp to the cabin. The proposal provides for a timber cladding exterior.
- 7.9.1. The revised details submitted indicate minimal disturbance of site levels, the development is of simple design and given the wooded nature of the area would not I consider be visually obtrusive and I acceptable. It will not I consider impact on amenities of properties in the vicinity.
- 7.10. Appropriate Assessment.
- 7.10.1. The application was accompanied by a screening assessment. The site is not located within a Natura 2000 site but is located adjacent to the River Barrow and River Nore SAC (Site Code: 002162). The SAC is largely a linear site following the course of the rivers, and their tributaries and also includes coastal tidal estuaries at the mouth of the river system with a diverse range of qualifying habitats. No habitat is directly impacted by the proposed development and there is therefore no loss of habitat.
- 7.10.2. Indirect effects on qualifying species would largely arise from discharges to the river from the site in the course of construction through increased levels of solids entering the water course from ground disturbance and spillages and long term potentially from the discharge of effluent.
- 7.10.3. Given the nature and scale of the development; the methodology of construction; the test results and the mitigation measures outlined 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 the River Barrow and River Nore SAC (Site Code: 002162), in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required.

8.0 Recommendation

- 8.1. In view of the above assessment permission for the proposed development is recommended.

9.0 Reasons and Considerations

- 10.0 Having regard to the nature of the proposed development; its location within an rural area, and the provisions of the current Kilkenny County Development Plan 2014-2020, it is considered that subject to it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 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 5th of September, 2016 and the 11th of April 2017, 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 interests of clarity

- 2 The proposed cabin and ramp entrance serving it shall be located and sited in accordance with the details submitted to the planning authority on the 11th of April 2017. The ground levels of the cabin and ramp shall also be in accordance with the details submitted on the 11th of April 2017.

Reason: In the interests of clarity and orderly development.

- 3 The external finishes of the proposed development shall be agreed with the

planning authority prior to the commencement of any development works on the site.

Reason: In the interest of visual amenity.

- 4 All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

- 5 The proposed wastewater treatment system shall be in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009.

Reason: In the interest of public health.

- 6 The proposed development and the existing dwelling on the site shall remain as one dwelling unit and shall not be subdivided without a prior grant of planning permission

Reason: In the interests of clarity

- 7 The proposed development shall be used for short-term tourist accommodation only, and shall not be used as a place of permanent residence.

Reason: The occupation of the proposed development on a permanent basis is unsustainable having regard to the overall layout of the site.

- 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 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.

Derek Daly
Planning Inspector

27th September 2017