



An
Bord
Pleanála

Inspector's Report PL10.248579

Development	Demolition of existing cottage and construction of a storey and a half dwelling including new septic tank and site entrance.
Location	Mount Juliet Road, Ballycoam, Stoneyford. Co. Kilkenny
Planning Authority	Kilkenny Co Council.
Planning Authority Reg. Ref.	16/777.
Applicant(s)	Olivia & Neil Conway.
Type of Application	Permission.
Planning Authority Decision	To Grant Permission.
Type of Appeal	Third Party
Appellant(s)	Bernard Raggett.
Observer(s)	None.
Date of Site Inspection	August 15 th , 2017.
Inspector	Breda Gannon.

1.0 Site Location and Description

- 1.1. The site is located outside the village of Stoneyford in Co. Kilkenny. It is positioned on the north side of a local road and accommodates a small single-storey residence which is unoccupied. The front boundary is formed by a concrete wall. There is pedestrian access to the front of the house and a vehicular access to the western end of the site frontage.
- 1.2. The site is elevated above road level and slopes up-gradient towards the rear of the site. It is adjoined to the west by a dormer dwelling on lower ground and to the east by a single-storey residence on higher ground. Site boundaries are formed by hedgerows.
- 1.3. The area is predominantly rural with isolated dwellings. Stoneyford primary school is located c 500m to the south west.

2.0 Proposed Development

- 2.1. The development as described in the public notices submitted with the application proposes the following;
 - Demolition of existing cottage.
 - Construction of a new 4 bedroom storey and a half dwelling.
 - new septic tank, new site entrance and ancillary works.

The proposed house would be recessed significantly from the public road (29m) and would have a ridge height of 7.7m and a floor area of 200 sq.m. The front elevation would comprise a mixture of smooth render finish and natural slate cladding, with a substantial glazed area at ground floor level. The rear elevation would be finished entirely in smooth render and the roof covering would be slate. A single-storey shed would be positioned along the north-eastern side elevation. The waste water treatment plan would be located to the front of the house. The existing boundary wall would be removed and replaced with a new stone wall. The vehicular entrance to the site would be relocated to the middle of the site frontage.

3.0 Further Information

3.1. Further information was requested from the applicant on 19/01/17 on the following matters;

- Contiguous elevation showing the proposed house in the context of adjoining properties.
- Proposals with regard to 225mm pipe located outside the site boundary.
- Cross sectional drawing through the public road, verge, roadside drain and boundary area showing proposed finished levels together with details for containing and disposing of any surface water arising from the entrance and driveway areas within the curtilage of the site.
- Revised floor plans and a south eastern side elevation showing the two bedroom windows omitted and the ensuite fitted with opaque glass.
- Detailed landscape plan.

The responses of 13/3/17 and 18/4/17 were to the satisfaction of the planning authority.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission for the development subject to 11 no. conditions, which includes the following conditions of note.

Condition No 2 – Financial contribution.

Condition No 3 – Existing house to be demolished prior to the construction of the new dwelling.

Condition No 4 – On site disposal of surface water.

Condition No 5 – Access, sightline, roadside boundary requirements.

Condition No 6 – On-site wastewater system to be constructed in accordance with EPA (2009) recommendations.

Condition No 9 – Existing site boundaries to be retained, maintained and renewed. All new site boundaries shall be hedged with a mix of deciduous shrubs, indigenous to the area as detailed on the Landscaping Plan submitted on 13th March 2017. A minimum of 8 deciduous trees shall be included in the landscaping of the site.

Condition No 10 – Requires that where hedgerow is to be removed along the roadside to achieve lines of sight, that a continuous double hedgerow be replanted along the entire roadside boundary and behind the lines of sight and proposed post and rail fence.

Condition No 11 – External finishes i.e. blue/black slates, natural stone, windows of hardwood construction or alternatively aluminium, woodgrain or dark coloured uPVC (to details to be agreed) front door of outer leaf timber construction, rainwater goods shall be of treated/painted zinc, cast iron, aluminium or uPVC etc.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The **Planning Officer's** report of 3/5/17 noted the size of the site and considered that the size and scale of the replacement dwelling reflects the site's characteristics and context and accords with best practice in rural house design. The contiguous elevation, together with the proposals to integrate the replacement dwelling into the surrounding area, successfully demonstrate that the proposed dwelling would not have any adverse impact on the visual and residential amenities of the area. The removal of Window 16 and the provision of opaque glass to Window 15 reduces potential for overlooking of neighbouring property.

It is concluded that the proposed development would not seriously injure the amenities of the area, be prejudicial to public health or create a traffic hazard and would, therefore, accord with the proper planning and sustainable development of the area.

4.2.2. Other Technical Reports

The **Area Engineer's** report of 28/4/17 raised no objection to the proposal, subject to conditions.

The **Environment Section** report of 12/01/17 raised no objection to the proposal subject to 1 no. condition relating to the on-site treatment system.

4.3. **Prescribed Bodies**

None

4.4. **Third Party Observations**

A submission was received from Mr Bernard Raggett, who raised similar issues to those raised in the appeal and which will be considered below in the assessment.

5.0 **Planning History**

14/125 – Permission granted for the demolition of the existing cottage and for the construction of a single-storey dwelling including new septic tank, new site entrance and ancillary works on the appeal site on 20/6/14.

95/523 – Outline planning permission granted on 15/1/95 for a house and septic tank on the adjoining site to the northeast. Approval granted (00/1735) for a bungalow, septic tank and associated site works on 31/10/00.

99/1076 – Permission granted for a two-storey dwelling, garage, septic tank and associated site works on the adjoining site to the southwest on 18/10/99.

03/227 – Permission granted for the construction of a dormer dwelling house, entrance, septic tank and percolation area on the adjoining site to the southeast on 25/8/03.

6.0 **Policy Context**

6.1. **Development Plan**

The operative development plan is the **Kilkenny County Development Plan 2014-2020**. It is acknowledged in the development plan that the Stoneyford LAP has expired and is no longer a statutory plan. The development plan includes a map of the town showing a settlement boundary (Fig 3-12), within which development will be

considered in accordance with development plan policies. The site is located outside the settlement boundary.

Section 3.5 of the Kilkenny County Development Plan 2014-2020 contains the Rural Settlement Strategy for the county. Stoneyford is located in an area identified as a rural 'Area Under Urban Influence', where a rural generated housing need must be established under the provisions of Section 3.5.2.3.

Under Section 3.5.2.5 the Plan facilitates the refurbishment and replacement of dwellings in rural areas. It states;

The Council will encourage and facilitate the appropriate refurbishment of existing housing stock and other structures in rural area and in certain limited cases the replacement of existing dwellings subject to the criteria outlined below.

In the case of replacement dwellings to require proof that the original dwelling was last used as a dwelling and was habitable so as not to invoke the policies under Section 3.5.2 that applies to new dwellings (Replacement dwellings will be subject to all usual development management criteria also).

In cases where retention or reuse of the existing dwelling is not technically feasible, the size and scale of any replacement dwelling should reflect the site's characteristics and context and shall accord with best practice in rural house design.

6.2. Natural Heritage Designations

None.

7.0 The Appeal

7.1. Grounds of Appeal

The grounds of appeal may be summarised as follows;

- West facing visual amenity will be lost from kitchen, sitting room windows/patio doors and patio. Loss of afternoon and evening summer sunshine.
- Loss of privacy as a result of overlooking windows.

- The house is almost 8m in height with four double bedrooms, a lounge and bathroom at first floor level. Calling it a storey and a half is a matter of semantics. It is excessive in scale being less than 5m from appellant's house.
- Nuisance of headlights as cars enter/leave.
- There is no mention of how it is intended to ensure integrity of appellant's electricity supply, without which he would have no power, heat or water.
- Queries whether any percolation tests were carried out as the photographs are similar to those done for the previous application (14/125).
- Concerned that the house may in the future be used as a B&B.

7.2. Applicant Response

- The applicants have been in contact with Mr Raggett numerous times regarding the building of a replacement house on the site.
- Planning permission was granted for a single storey house on the site under reg ref. no 14/125. The location of the house on the site proposed under the current location is the same as that originally permitted. The footprint is less. The distance from the boundary is 4.7m compared to 1m in the original permission. The applicants are prepared to discuss boundary screening with Mr Raggett.
- The alignment of the house with Mr Raggett's dwelling was done to increase privacy for both the applicants' and Mr Raggett and was done following consultation with Mr Raggett.
- The height of the house is a storey and a half. It is in keeping with the existing dormer house to the north-west and is quite common for houses along this road. Mr Raggett's is at a raised elevation and his ridge line is approximately 300mm above the ridge line of the proposed house. In order for the proposed house to cast any shadow on Mr Raggett's front window, the sun would have to be very low in the sky (just 15 degrees) and have a large azimuth angle from south (between 83-148 degrees).

- The planning authority agreed that the previous percolation test holes could be used.
- There is no intention to use the house as a B&B. It is intended to use it to accommodate the family with three children.
- The concerns regarding overlooking were addressed at further information stage. Side window W16 was removed and W15 was made opaque. The nearest window to Mr Raggett's is c.24m.
- The applicants' have been in contact with the ESB regarding the underground electrical line traversing the site. The ESB do not have this line shown on their maps and stated that the house foundations would most likely not interfere with the existing line. The location of the line will be surveyed prior to construction and should it need to be removed, it will be done in consultation with the Mr Raggett and the ESB Codes of Practice will be adhered to.

7.3. **Planning Authority Response**

The planning authority stated that they had no further comments to make on the appeal.

8.0 **Assessment**

8.1. The main issues that arise for determination by the Board in respect to this appeal relate to the following:

- The principle of the development in this location.
- Impacts on the residential amenity of adjacent property.
- Foul effluent disposal.
- Appropriate Assessment.
- Other matters.

1. Principle of the development.

The site is located in an area identified in the Rural Settlement Strategy for the county as an 'Area Under Strong Urban Influence'. These are areas close to the immediate environs or commuting catchment of cities and towns, or, to major transport corridors with ready access to urban areas. It is the Council's objective for such areas to facilitate the rural generated housing requirements of the local community and to direct urban generated rural housing to areas zoned for housing development in the city, towns and villages. It would be a requirement that applicants for housing substantiate a rural generated housing need (Section 3.5.2.3).

However, the plan encourages the refurbishment and replacement of the existing housing stock in rural areas. Where a replacement house is proposed, under the provisions of Section 3.5.2.5, it is a requirement that the proof be submitted that the original structure was last used as a dwelling and was habitable. Where such conditions are met the normal rural housing policies do not apply i.e. the need to establish rural housing need.

The proposal is for a replacement house and satisfies the requirements of Section 3.5.2.5. of the development plan. From my inspection of the site, I would accept that the house when last used was used for residential purposes and was habitable. I accept, therefore, that the proposal is acceptable in principle in this location, subject to normal planning considerations.

2. Impacts on residential amenity

The issues raised by the appellant relate to a diminution of residential and visual amenity due to overlooking, overshadowing and loss of views.

The proposed house will be located in line with the existing house to the southwest and forward of appellant's house. According to the applicants the position of the house was agreed following discussions with the appellant.

There are windows in the side elevation at ground/first floor level facing appellant's property, which have the potential for overlooking of the front garden area. I note that additional hedging is proposed along the boundary which will mitigate potential impacts at ground level. The windows at first floor level serve bedrooms/ensuite and do not generate the same potential for impacts on privacy. Notwithstanding this, the applicants agreed to omit first floor window (W16) serving a bedroom and to fit

window (W15) with opaque glass, to address the concerns of the appellant. Having regard to the separation distance to the boundary (4.7m) and that the area to the front of appellant's house is already overlooked by the public road, I do not consider that the proposed development will result in a significant impact on the privacy of appellant's property.

I would point out to the Board that the side windows to appellants property, which are at a higher elevation, will directly overlook the rear garden of the proposed house, and create significantly greater impacts than any potential impacts associated with the proposed house. Additional screening would be required along the north eastern site boundary to mitigate such impacts.

I do not consider that there is any justification for appellants concerns regarding overshadowing and lack of access to sunlight having regard to the recessed position of his house. I accept that the construction of a new house on the adjoining site will impact on the outlook from the side windows of the house, but it is not a function of the planning system to preserve such views.

3. Foul effluent disposal

It is proposed to treat foul effluent from the proposed house in a packaged waste water treatment system and soil polishing filter with final effluent discharged to ground.

A site suitability assessment report was submitted in support of the application. The site is noted to be located in an area underlain by a Locally Important (L1) aquifer with an 'Extreme' vulnerability rating. The trial hole was excavated to a depth of 0.85 m and rock was encountered at this level. Water was not encountered in the trial hole. Soils are shallow and indicated to consist of a SILT topsoil, with subsoils of silt sandy/ silty Clay and cobbles. No surface water drains were recorded in the area. The target at risk is therefore groundwater.

The result of the T tests and P tests indicate that soils have a T-value of 14 and a P-value of 43.25.

It is acknowledged in the assessment that in order to obtain adequate percolating medium to adequately attenuate the effluent that it will be necessary to construct a raised percolation area and to import soil with suitable percolating properties. The site improvement works proposed will require significant engineering works including

the placement of lifts of suitable soil across the site and the testing of each 300mm layer. Land drains will also be required to be constructed up-gradient of the treatment system to prevent ingress of surface water. Other than a site layout plan indicating that the system can be accommodated on the site in compliance with EPA distance requirements, there is no information including cross sectional drawings showing how the system will be designed on the site.

I accept that the proposed treatment system is technically capable of providing a good quality effluent. I accept that the site can be improved to address the insufficient depth of the subsoil. I am also mindful that the extent of the engineering works proposed places a significant responsibility on the developer.

I note that there is an existing septic tank on the site and that the proposed system if properly constructed will result in a higher quality of effluent being discharged to ground. Having regard to the established use of the site for residential purposes, the policies of the planning authority to encourage replacement dwellings and the improvement to effluent discharging that will be achieved, I consider that the proposal is acceptable.

4. Appropriate Assessment

The closest Natura 2000 site is the River Barrow and River Nore SAC. It is a significant site traversing eight counties. It includes the freshwater stretches of the both river catchments and the tidal elements and estuary in Co Waterford. It is designated for a wide range of habitats/species listed in the EU Habitats Directive. Site specific conservation objectives have been published for the site which are *'To maintain/restore the conservation condition of the habitats/species for which the site is selected'*

The Kings River which runs to the north of the village is a tributary of the River Nore. It merges with the River Nore to the east of the village. The appeal site is well removed from the SAC and there will be no direct impacts on its qualifying habitats/species. The only potential for impacts that could arise would be indirectly from foul effluent reaching the SAC with impacts on water quality and the habitats/species its supports.

Having regard to the separation distance to the SAC and the secondary and tertiary treatment of the effluent proposed prior to discharge to ground, I consider that the

proposed development either alone, or, in combination with other plans or projects, would not be likely to have significant effect on any other European Site, in view of the sites conservation objectives and that, therefore, a Stage Appropriate Assessment and the submission of a Natura Impact Statement is not required.

5. Other matters.

I accept that appellant's argument that the proposed house would be more appropriately described as a two-storey house having regard to its overall height and design. The public notices have served their purpose in alerting the public to the proposed development on the site and I am not persuaded, should the Board be minded to grant permission for the development, that the publication of new notices is required.

The developer of the site would be obliged to liaise with the ESB regarding electricity cables crossing the site and has a duty of care to ensure neighbouring supply is not interfered with.

The appellant's contention that the house will be used in the future as a B&B is based on supposition. The applicants have clearly indicated that it will be used a family home.

Regarding potential nuisance created by headlights from cars entering the site, I would point out to the Board that appellants house, whilst well set back, is bounded by the local road.

9.0 Recommendation

- 9.1. Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the planning issues, I recommend that permission be granted for the development for the reasons and considerations set out below.

10.0 Reasons and Considerations

Having regard to the established use of the site for residential purposes, the pattern of development in the area and the policies of the current Kilkenny Co Development

Plan, which facilitates the replacement of existing houses in rural areas, it is considered that, subject to compliance with the conditions set out below, the proposed development would not detract from the visual or residential amenities of the area, would not be prejudicial to public health 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 received by the planning authority on the 13th day of March 2017, and the 18th day 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 the development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interests of clarity.

2. The existing dwelling on the site shall be demolished prior to the commencement of construction of the proposed house.

Reason: In the interests of clarity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. A method statement for the removal of the existing septic tank on the site shall be submitted to and agreed with the planning authority prior to the commencement of development on the site.

Reason: In the interests of public health and to ensure a proper standard of development on the site.

4. All service cables associated with the proposed development, including electrical, telecommunications cables and communal television shall be placed underground throughout the site.

Reason: In the interest of visual amenity.

5. Details of the materials, colours and textures of all of the external finishes to the proposed development including front door and windows shall be submitted to, and agreed in writing with the planning authority, prior to commencement of development.

Reason: In the interests of visual amenity.

6. Prior to the commencement of development on the site, details of height and finish of the front boundary wall, which shall not exceed 1.2m in height shall be submitted to and agreed in writing with the planning authority.

Reason: In the interests of visual amenity.

7. The site shall be landscaped in accordance with the landscaping scheme submitted to the planning authority on March 13th, 2017. Existing hedgerows along the site boundaries shall be maintained and augmented by additional planting. The beech hedging along the north-eastern boundary shall be planted continuously and in a double row. A continuous double row of hedgerow shall also be provided inside the new front boundary wall, comprising indigenous species such as holly, hawthorn, field maple, beech etc). A minimum of 8 no. native indigenous trees (not dwarfed) shall be included in the landscaping of the site. Cupressocyparis x leylandii shall not be used in any part of the site.

All planting shall be adequately protected from damage until established. 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 the interests of residential and visual amenity.

8. (a) The proposed effluent treatment system shall be located, constructed and maintained in accordance with the details submitted and in accordance with the requirements of the document "Wastewater Treatment and Disposal Systems Serving Single House (EPA Code of Practice 2009). Arrangements in relation to the ongoing maintenance of the system shall be submitted to and agreed in writing with the planning authority prior to commencement of the development.

(b) treated effluent shall be discharged to a raised percolation area constructed from imported fill with a suitable T value and depth to ensure adequate attenuation of the effluent prior to discharge to ground. The percolation area shall be provided in accordance with the requirements of the Wastewater Treatment and Disposal Systems Serving Single House (EPA Code of Practice 2009). Surface water drains shall be constructed up-gradient of the treatment system to prevent ingress of surface water.

(c) Within three months of the commissioning into use of the effluent treatment system, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards sets out in the EPA manual.

Reason: In the interests of public health.

9. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including facilities for the provision of

facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing prior to commencement of development. Thereafter, the waste shall be managed in accordance with an agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interests of protecting the environment.

10. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

11. 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.

Breda Gannon
Senior Planning Inspector

24th August 2017.