



An
Bord
Pleanála

Inspector's Report ABP-309150-21

Development	Retention permission of building as constructed and permission for its use as a dwelling, new wastewater treatment system and change of use of existing farmhouse to a permanent farm storage building.
Location	Killaree, Threecastles,, Co. Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	.20/84
Applicant(s)	Walter Lennon.
Type of Application	Retention permission.
Planning Authority Decision	Grant permission
Type of Appeal	Third Party Appeal
Appellant(s)	Kevin & Breda Gertberg
Observer(s)	None
Date of Site Inspection	15 th day of March 2021
Inspector	Fergal Ó Bric

1.0 Site Location and Description

- 1.1. The subject site is located in a rural area approximately 7.5 kilometres north-east of Kilkenny City within the townland of Killaree.
- 1.2. The appeal site comprises two sections. The western part of the appeal site comprises a dormer style building, with a smooth render finish, with rooflights within the front and rear roof slopes and two aluminium fire escape stairs on the gable ends of the building. This building is used for commercial purposes and is unauthorised for this use. There is a large area of hardcore to the front of the building and a post and wire fence around the perimeter of the hardcore area. The eastern section of the appeal site comprises a farm dwelling in which the applicant presently resides. The farm dwelling is located approximately 220 metres east of the commercial office building.
- 1.3. The site is surrounded by agricultural fields and a number of one-off dwellings and the Threecastles GAA pitch to the north-east. The site has a stated area of 0.45ha, with hedging to the west and south, post and wire fencing to the north and east of the commercial building. Access to the site is off a local laneway, which in turn is accessed off the R639, a regional route, linking Kilkenny City with Freshford. The site has an eastern orientation with levels rising gradually from west to east and from south to north.

2.0 Proposed Development

- 2.1. The development relates to the following:
 - Retention permission of existing building as constructed.
 - Permission to use retained building as a dwelling house.
 - Permission for alterations to building and installation of a wastewater treatment system.
 - Permission for change of use of farmhouse to a permanent farm storage building.

- 2.2. The development is located on family lands, owned by the applicant and his son.
- 2.3. Correspondence consenting to the setting back of a fence line in a southerly direction at the access point to the local lane has been submitted by the landowner, Damien Lennon (son of the applicant).
- 2.4. Further Information was submitted by the applicant in relation to: Details of land ownership; Right of way and access to the commercial building; Details of other dwellings within the applicant's land holding; Wastewater treatment and surface water management details and distance from site boundaries.
- 2.5. Clarification of further information was submitted in relation to: Right of way and access details and details of an internalised domestic garage.

3.0 **Planning Authority Decision**

3.1. **Decision**

Kilkenny County Council granted planning permission for the development subject to 13 conditions. The following is a summary of the pertinent conditions:

Condition 12(a) Use of garage shall not be for habitable purpose, commercial purposes or for the housing of animals.

Condition 12 (b) Use of dwelling shall be solely for residential purposes and shall not be used for commercial purposes.

Condition 12 (c) The farm storage buildings shall be used solely for the storage of farm equipment and materials and shall not be used for any commercial related activity.

Condition 13; Occupancy clause.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The salient issues raised in the report can be summarised as follows:

- Site located in an Area under Urban Influence. The applicant is from the area. His current place of residence is located further east of the commercial building within the overall family land holding.
- Site suitable for effluent treatment
- Sightlines acceptable, public road is narrow. The proposals provide for a set back of the roadside boundary in a southerly direction at the junction with the local laneway.
- The site is not located in an area of High Visual Amenity. The re-design of the unauthorised commercial building as a dwelling house is considered to be acceptable.
- An Appropriate Assessment (AA) screening exercise concluded that no significant environmental impact is likely on any Natura 2000 site.
- An Environmental Impact Assessment (EIA) screening exercise concluded that due to the nature, size, and location of the development that there is no real likelihood of significant effects on the environment arising from the development and that an EIAR is not required.

3.2.2. Other Technical Reports

Environment: No objections, subject to conditions.

Area Engineer: No objections, subject to conditions.

3.3. Prescribed Bodies

None.

3.4. **Third Party Submissions**

Three submissions were received, and the issues raised therein are similar to the issues raised within the third-party appeal submission.

4.0 **Planning History**

Planning Authority reference number: 17/496: In 2017, Retention permission refused to Damien Lennon (son of applicant) to retain offices as constructed, parking area and septic tank, and permission to upgrade the percolation area and all associated site works. There were six reasons for refusal relating to: inappropriate land use and incompatible development in this rural area; Contrary to rural enterprise policy of the Development Plan; adverse impact upon neighbouring residential amenities; insufficient legal interest in the access to the site; wastewater and sightlines.

Enforcement:

Enf: 17/30; In 2017, an unauthorised development file was opened in relation to an unauthorised building and commercial use on site.

Neighbouring sites:

Planning Authority reference number: 06/1479: In 2006, Permission granted to Damien Lennon to construct a dwelling incorporating a family flat.

Planning Authority reference number: 07852: In 2007, Permission granted to Tom Lennon to construct a dwelling.

5.0 **Policy and Context**

5.1. **Development Plan**

- 5.1.1. The site of the proposed development is located within an area designated as an 'Area Under Urban Pressure'.

5.1.2. Section 3.5.2.5-Refurbishment and Replacement Dwellings in rural areas

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

Development management standards:

- The emphasis should be on the retention, refurbishment and reuse of the structure as part of the development proposals.
- The scale and architectural treatment of proposed works should be sympathetic to the character of the original structure and the surrounding area including adjoining or nearby development.
- In the case of replacement dwellings, to require proof that the original structure 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.
- Where an original structure was not habitable, if an applicant can demonstrate that their proposals will ensure the sensitive restoration of vernacular and traditional buildings in the rural area, thereby respecting and maintaining the integrity and scale of the original building, and does not compromise any other development management considerations, such proposals shall not be subject to the policies in Section 3.5.2 that applies to new dwellings (see Section 8.3.10 Vernacular built heritage)

5.2. **Draft Kilkenny County Development Pan 2021-2027**

Section 7.8.5 Refurbishment and Replacement Dwellings in rural areas

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

Development Management Requirements:

- For refurbishment of structures the emphasis should be on the retention, refurbishment, and reuse of the structure as part of the development proposal.
- For refurbishment, the scale and architectural treatment of proposed works should be sympathetic to the character of the original structure and the surrounding area including adjoining or nearby development.
- In the case of replacement dwellings, to require proof that the original structure was last used as a dwelling and was a habitable dwelling so as not to invoke the policies under Section 7.8.3 Rural Housing Policies.
- 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.

5.3. **Kilkenny Rural Design Guide**

Section 3 of this document pertains to scale, form, massing, and proportion.

5.4. **National Policy**

5.4.1. Sustainable Rural Housing Planning Guidelines

The site of the proposed development is located within an area designated as being under strong urban influence.

5.4.2. National Planning Framework (NPF)

National Policy Objective 19

In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstratable economic or social need to

live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.5. Natural Heritage Designations

River Barrow & Nore Special Area of Conservation (SAC) side code 002162 is located 0.45 kilometres north-east of the appeal site and the River Nore Special Protection Area (SPA) is located 0.45 kilometres north-east of the appeal site.

5.6. Environmental Impact Assessment-Preliminary screening

Having regard to the modest scale of the development, and the separation from any environmentally sensitive sites, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. A third-party appeal by Kevin & Breda Gertberg, of Killaree, Threecastles, Kilkenny neighbours of the applicant was received, and the following is a summary of the issues raised within their submission:

Principle of Development:

- Each planning application must be assessed on its individual merits regardless of the presence of an existing structure on site.
- The retention of the unauthorised building as an office was refused planning permission under Planning Authority reference number 17/496 for 6 reasons.
- The current proposal does not seek to provide an appropriate building to suit the applicant's future needs, but rather shoehorn the applicant's future housing needs into an unauthorised building.

Design & Layout:

- Would planning permission be granted for a building of this design, in the rural landscape, for use as a residence to serve the housing needs of the applicant.
- The design would not serve the housing needs of the applicant, does not represent an appropriate, rural residential design solution in this instance.
- The development is located on a backland site, accessed from an unserviced lane, in the ownership of the appellants.
- The structure is located in proximity to the home of the applicant's son, who appears to operate an office from the building.
- A large hardcore area is located to the east of the building to cater for employee parking.
- The building is a dormer style one of approximately 300 sq. m, with the upper floor fitted with rooflights within the front and rear roof slopes.
- The upper floors are served by external staircases.
- The floor to ceiling height of the upper floor is only 2.3 metres tall, less than the requirements set out within the building regulations standards.
- Guttering downpipes and outflow pipes from the building do not appear to be connected to the surface water management systems.
- The structure was not designed with the intention of providing alternate accommodation for the applicant and does not address any particular housing need he may have and simply represents an attempt by the applicants' son to retain the unauthorised structure.
- The building does not accord with the rural design policies and objectives of the Development Plan and would be contrary to the advice as set out within the Kilkenny Rural Housing Guide.
- The building is largely single aspect, which backs directly onto a boundary hedge. Little thought was given to the rural setting in which it is located.
- This is an unauthorised building constructed with no consideration for the principles of appropriate rural siting and design with no attention to the specific needs of the applicant.

- Its design contains a multitude of flaws including having an 8-metre-wide gable, is 23 metres in length, the ridge is 7.1 metres tall, the bare minimum 2.4 metre floor to ceiling height is achieved, the building is located tight against a boundary hedge, a 30-degree elongated roof pitch is proposed, and an overabundance of rooflights on both the front and rear elevations.
- The design and layout are completely inappropriate to provide for the housing needs of the applicant.
- A proper replacement dwelling for the applicant would likely be single storey in nature and of a scale commensurate with his future independent living needs.

6.2. Applicant Response

A summary of the applicant's response to the third-party appeal is as follows:

Background and Context:

- The subject property is owned by the applicant, Mr. Walter Lennon, a retired farmer, living in a farmhouse, in a poor state of repair and not economically viable for restoration and re-occupation, He has no other house. He therefore has demonstrated a rural housing need.
- The subject property was originally constructed in 2012 as a stable block which was converted for use as an office in 2014 and extended in 2016 to provide additional office and storage space.
- An application was made in 2017 to retain the office structure and use, was subsequently refused planning permission and now the applicant's son has acquired office space in Kilkenny City, and is in the final stages of relocating there.
- The structure when first constructed was used for the stabling of horses and subsequently converted to office space.

Design & Layout:

- The ground floor will provide for two bedrooms, a kitchen, living and dining area. The first floor will provide for guest accommodation, for family members.

- All of the habitable rooms have floor areas and window openings which meet modern standards and building regulation standards.
- The applicant currently resides in poor, sub-standard and unsafe living conditions.
- The proposal would mean that the applicant would remain living on the farm that he was born on, in modern, warm, and safe accommodation.
- There is no established building line along this road and the current proposals would not constitute backland development.
- The plans submitted comply with all current building standards.
- The design of the structure evolved, originally designed with a traditional narrow plan form, and appropriately pitched roof. The extension had a wider gable but remained as a narrow plan with appropriately pitched roof and created a linear structure of traditional rural proportions and form.
- The design reflects many of the examples of good rural design as set out on the Council's Rural Design Guide.

Use of structure:

- The structure is presently being used for office purposes associated with a road maintenance company, however this use will cease by early Summer 2021.
- The applicant would satisfy the Local Authority's policy for replacement dwellings, given the poor conditions in which the applicant currently resides.
- The proposed development, if permitted would regularise the existing unauthorised structure and make a positive use of it.
- The temporary continuation of the current key office activity and the proposed residential use would have no adverse impact upon neighbouring residential and rural amenity.

Land ownership:

- The grounds of objection to the Planning Authority mainly related to land ownership and use of the access lane serving the site and the unauthorised use and development of the structure.

- The applicant is satisfied that he has legal rights to the access lane to serve the proposed residential unit.

6.3. **Planning Authority Response**

The Planning Authority stated that it has nothing further to set out in relation to the planning appeal.

7.0 **Assessment**

7.1. The appeal shall be assessed under the following headings:

- Compliance with Planning Policy
- Design and layout
- Other Issues
- Appropriate Assessment

7.2. **Compliance with Planning Policy**

7.2.1. According to the planning documentation submitted, the applicant, Mr. Walter Lennon, was born and reared in the Killaree area. He remains living in the local community and his son resides in Killaree, south-east of the unauthorised commercial building. The farm dwelling is located approximately 220 metres east of the commercial office building. This low level (largely single storey) dwelling, presents as an antiquated dwelling and is located within a farmyard setting, in proximity to a number of farm buildings. The applicant is stated to be a retired farmer. He wants to remain in the area and living in proximity to his son. The applicant has not demonstrated an economic need to live in the area, however he has demonstrated a social need to live in the area, as he is stated to be a long-standing member of the local community.

7.2.2. In accordance with Section 3.5.2.5 (Replacement dwelling policy) of the Kilkenny Development Plan, the first bullet point sets out that “The emphasis should be on the retention, refurbishment and reuse of the structure”. I do accept that his current place of residence is antiquated, in need of modernisation, and this is apparent from the

photographic survey submitted as part of the planning documentation. The dwelling is habitable, in that the internal and external walls remain generally intact as does the roof and it is presently being resided in by the applicant. However, the applicant has not demonstrated that the existing structure cannot be retained, refurbished, or re-used for habitable purposes as per the provisions of the Development Plan replacement dwelling policy.

- 7.2.3. The current proposal, which would involve the change of use of an unauthorised commercial structure to a dwelling, was originally permitted as a modest stable structure and was subsequently extended and is used as a commercial office. The replacement dwelling would be located approximately 220 metres west of the existing farmhouse dwelling. Replacement dwelling would typically be located on the footprint or part of the footprint of the existing dwelling. I do not consider that the current proposal could be considered to comply with Section 3.5.2.5 as a replacement dwelling and would establish an undesirable precedent. The proposal is non-site specific and would be contrary to the provisions of the replacement housing policy within the Development Plan.
- 7.2.4. The proposal is not considered to represent an appropriate site-specific solution to meet the applicant's rural housing need. The proposal would also result in the creation of an additional, non-site-specific residential unit on the land holding. The applicant's housing need in this instance is being inter-linked to the retention of an unauthorised structure and an unauthorised commercial use. The unauthorised commercial office structure was refused retention planning permission by the Planning Authority in 2017 for six reasons, including inappropriate design and use within a rural context, wastewater, access, and undesirable precedent. The precedent of permitting a replacement house within an unauthorised commercial structure would be an undesirable one, and would be contrary to the proper planning and sustainable development of the area. I am not satisfied that the current proposal has demonstrated compliance with the Rural/Replacement Housing Policy as set out within Section 3.5 of the Kilkenny Development Plan 2014-20. Therefore, the applicant is not considered to have demonstrated a housing need as per the Development Plan provisions.

7.3. Design and layout

- 7.3.1. The existing structure on site was constructed in 2012 as a stable building for the housing of horses and feed. The applicant has stated in this appeal submission that in 2014 his son began to use the structure as a base for his road maintenance business and the structure was extended in 2016. The building presents as a commercial structure, with three access doors at ground floor level on the eastern (front) elevation and three more access doors on the northern and southern (side) elevations. There are also two external staircases on each gable, which are the sole access points to the first-floor level, there is no internal stairs. The structure is laid out internally in a number of offices, some single offices, and other larger offices to accommodate a number of people with office chairs and desks in place, filing cabinets as well as a canteen area. The applicant has stated that the office use will continue until early Summer 2021, when their new office accommodation would be available in Kilkenny City.
- 7.3.2. As per the provisions of the Kilkenny Rural Design Guide, the design as existing and as proposed would not accord with the main principles of the design guide. The design provides for a dwelling of 23 metres in length, would incorporate a double height porch on the front elevation, include a proliferation of rooflights/dormer features within the front elevation and a disproportionate ratio of rising wall to roof, and results in the creation of an incongruous non-site-specific rural dwelling design within this rural setting. It is also noted that the floor to ceiling height at first floor level is stated to be 2.4 metres within the current plan and was stated to be 2.3 metres as per the plans submitted to the Planning Authority under Planning Authority reference number 17/496. To permit this structure as a rural dwelling would establish an undesirable precedent and would be contrary to the proper planning and sustainable development of the area.
- 7.3.3. The proposed dwelling was designed originally as a stable building and then subsequently as a commercial office building. The internal layout provides for two independent units within the structure, with two separate sitting rooms provided, one at ground floor and the other at first floor level. On balance, the proposals would be contrary to the provisions of the Kilkenny Rural Design Guide, specifically Section 3 in relation to form, massing, and proportion, which would be unbalanced, would establish an undesirable precedent and would be contrary to the proper planning and sustainable development of the area.

7.4. Other Issues:

- 7.4.1. I consider that the applicants have provided sufficient evidence of right of way to gain access to the appeal site in order to permit the making of a valid planning application and for the determination of this appeal by the Board. I consider that any further dispute in relation to right of way constitutes a civil matter between the parties and is not a matter that falls within the scope of planning and development legislation for determination.
- 7.4.2. Section 5.13 of the Development Management Guidelines 2007 sets out the following in relation to title of land “The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land.; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as Section 34(13) of the Planning and Development Act 2000 (as amended) states, a person is not entitled solely by reason of a permission to carry out any development”.

7.5. **Appropriate Assessment**

Having regard to the nature and scale of the development and to the nature of the receiving environment and separation distance from the nearest designated site, no appropriate assessment issues arise, and it is considered that the development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European sites.

8.0 **Recommendation**

I recommend that planning permission be refused for the following reasons

9.0 **Reasons**

- 1 It is considered that the proposed dwelling, by reason of its excessive length, unbalanced ratio of rising wall to roof proportions, double height porch feature and proliferation of rooflight/dormer features would be visually incongruous and obtrusive in this rural area which is characterised by single-storey houses. The proposed dwelling would, therefore, be contrary to the provisions of the Kilkenny Rural Design Guide in terms of form and proportion

and would be contrary to the proper planning and sustainable development of the area.

- 2 The subject site is located within a 'rural area under pressure for rural housing, as identified in the Kilkenny County Development Plan 2014. Furthermore, the site is in an area that is designated as under urban influence in the Sustainable Rural Housing Guidelines and in the National Planning Framework, where National Policy Objective 19 aims to facilitate the provision of single housing in the countryside, based on the core consideration of demonstrable economic or social need to live in a rural area. Having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has demonstrated compliance with Section 3.5.2.5 of the Plan regarding retaining, refurbishing and reusing structures. It is considered, therefore, that the proposal would establish an undesirable precedent, be contrary to the provisions of the Rural Housing/Replacement Housing policy as set out in the Kilkenny County Development Plan, 2014 and with national planning policy for a house at this location. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Fergal Ó Bric

Planning Inspectorate

20/04/21