



An
Bord
Pleanála

Inspector's Report

ABP-309555-20

Development	Demolition of garage to side of dwelling and construction of two storey extension to rear of rec dwelling raising the ridge level of the existing dwelling and all associated site works.
Location	The Hollow, Camblin, New Ross, Co. Wexford.
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	20200436
Applicant(s)	William Byrne
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Patrick O'Hanlon
Observer(s)	None
Date of Site Inspection	20 th April 2021
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The subject site is located in mature sylvan setting amid agricultural land. It is around 110m to the south of the N25 which by-passes New Ross town to the north. The River Barrow is further west. The site is located in a natural hollow below the county road to the north from which it is most directly accessed. The site is on both sides of a narrow through road that connects to the R733 to the south. The site contains a semi-detached two-storey farmhouse which forms part of an established farmyard complex that includes a courtyard on one side of the through road and a working farmyard on the other side which includes large scale farm sheds and buildings. The dwelling is one of an adjoining pair that enclose the yard on to which the dwelling fronts and from which the dwelling is solely accessed. The rear of the dwellings back onto an access lane which provides sole access to the farmyard complex associated with the adjoining dwelling which is in a somewhat dilapidated condition.
- 1.2. The rear elevation of the dwelling is exposed and prominently viewed on close approach from the southern side/ private road but is otherwise obscured at more distant views due to undulating terrain, road alignment and mature trees.
- 1.3. A garage has also been extended to the side of the dwelling alongside the roadway.
- 1.4. A stone building faces the dwelling across the yard which is stated to be occupied for habitable purposes but ancillary to the dwelling (although temporarily let out to a separate household). It is conceded to be unauthorised but statute barred from enforcement proceedings. Both, the dwelling to be extended and the converted shed share the existing septic tank which is proposed to be upgraded. This septic tank is located on the opposite side of the stream which traverses the site (east-west) and is culverted under the private road. The site characterisation report states that the existing location is unsuitable for effluent treatment.
- 1.5. In a revised and republicised site boundary, the converted shed is omitted but remains in the blue line delineating lands in the applicant's holding. The revision also reflects the relationship with the adjoining landowner.

2.0 Proposed Development

- 2.1. It is proposed to demolish the existing garage and single storey extension to the side and rear and porch to the front and replace with a modified extension to the

semidetached house. It is proposed to extend to the rear and to the side by a combination of single and two storey additions . The roof ridge is proposed to be moderately raised and the roof profile will also be altered.

- 2.2. In revised plans submitted a proposed window is removed in the original rear elevation due to an adjusted boundary line in favour of the adjoining dwelling.
- 2.3. The extension is traditional in style and uses a mix of traditional materials such as slates to match and a Portland white sand and cement render.
- 2.4. It is proposed to upgrade the effluent treatment system by relocating and replacing the septic tank with a new wastewater treatment system in suitable soil conditions. A Site Characterisation Report is attached. In initial plans this was proposed to also serve a converted shed but this has been omitted in revised plans submitted as further information.

3.0 **Planning Authority Decision**

- 3.1. The Planning Authority sought further information in respect of the septic tank arrangements and site boundary (exclusion of other habitable structure) and following submission of details including a revised notice, decided to GRANT permission subject to 5 no. conditions.

3.2. **Planning Authority Reports**

- 3.2.1. **Planning Report:** The planning authority noted that the proposed development reduces the footprint of existing dwelling and is pulling back from the road. It is also noted that the applicant owns the lands on which he is developing. Further establishment of rights to the road may be a matter for the courts. Concerns were raised about the site boundary by reference to the land registry map. The area engineer states that the laneway serving the site is private.
- 3.2.2. Having regard to the circumstances of the case, the objections, the development plan and submissions on file it was concluded that the proposed development would not seriously injure the amenity of the area and would be in accordance with the proper planning and sustainable development of the area.
- 3.2.3. **Objection:** The appellant made a detailed submission raising concerns about right of way, back door and procedural issues.

3.2.4. **Appropriate assessment screening:** No potential for significant effects on Natura 2000 sites.

3.2.5. **Other technical Reports**

3.2.6. Area Engineer: recommends a grant of permission.

3.2.7. Environment Division: The report of the senior executive scientist notes that the site is suitable for discharge to the groundwater however it is also noted that the Site Characterisation Report explains the proposed polishing filter has been sized for a p.e. of 9 which is made up of a 2 bed dwelling and 3 bed dwelling . Wexford County Council does not grant permission for shared waste water treatment systems as legal issues regarding responsibility and access to the wastewater treatment system may arise in future. It is proposed to insert additional windows and introduce a rear access. The existing garage is to be replaced with part extension and part patio area. The proposal also includes a replacement septic tank to serve both the dwelling and the converted shed across the yard.

3.2.8. Further information was requested in respect of revised design, details for a wastewater treatment system to serve the existing dwelling house only and site boundary revisions

4.0 **Planning History**

4.1.1. The Site: There are two previous applications relating to similar development . One was invalid and the other refers to a decision to refuse permission for similar development on grounds of removal of asbestos and septic tank issues.

5.0 **Policy Context**

5.1. **Wexford County Development Plan 2013-2019.**

5.1.1. Section 18.13.1 refers to house extensions.

5.2. **Natural Heritage Designations**

5.2.1. The relevant site is the River Barrow and River Nore SAC 002162 which is separated from the site by the New Ross By-Pass (N25)

5.3. EIA Screening

- 5.3.1. Having regard to nature and scale of the proposed development there is no real likelihood of significant effects on the environment arising from the proposed 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. Grounds of Appeal

- 6.1.1. Pat O'Hanlon who owns the adjoining property has lodged an appeal against the decision to grant permission. The grounds of the appeal are based on the following points:

- Obstruction of right of way and consequent impingement on ease of access to existing farmyard. A map is attached showing right of way along road from the R733 to the south and through the applicant's lands.
- The existing garage extension is located 'hard up to the right of way as is the rear extension from where there is no dwelling entrance. The extension proposed is similarly located hard up to the right of way with additional encroachment by the patio (walled) area beyond the footprint of the garage to the north. It also introduces a back door opening directly on a right of way.
- It is explained that the appellant is reliant on this right of way as a farmyard entrance and it is also very constricted for manoeuvring large machinery in and out. The proposed layout would exasperate this situation.
- The proposed back door would be safety hazard due to the conflict of pedestrians and heavy farm machinery traffic.
- The multiple residential windows are not ideal in proximity to an adjoining farm.
- The construction stage and use of scaffolding will impede access to farm yard.
- It is recommended that the patio elements be removed by condition given impediment to access and proximity to a busy farm road.
- The rear door should be omitted as it constitutes a traffic hazard,
- The construction should not rely on a scaffolding.
- Permission for proposed development would legitimise unauthorised development. The second dwelling is owned by the application and rented out.

- In the event of permission for the replacement septic tank in the amended plans, the 2nd household would be without a septic tank. The environmental consequences of this have not been addressed. The unauthorised dwelling should not be legitimised by any decision made in this case. It is suggested that to the Board ask the applicant to furnish evidence of permission for the change of use and conversion of shed into a dwelling.
- A condition needs to be attached restricting subdivision.

6.2. **Planning Authority Response**

6.2.1. No comment on grounds of appeal.

6.3. **First Party**

- The applicant substantially reiterates the planning report in support of the proposed development.
- The Board is requested to reconsider the use of the septic tank for both the dwelling to be extended and the converted shed across the yard which is conceded to be unauthorised. It is explained that the converted shed is part of the same dwelling unit although temporarily let to a separate household and that the single treatment plant for 4 bedrooms serving the same family unit is more resource efficient and sustainable. The applicant is happy to accept a condition retaining the separate buildings as one household in order to permit the original proposal of a single treatment plant.

7.0 **Assessment**

7.1. **Issues**

7.1.1. This appeal relates to a domestic extension and conflict with rights of way and farm activities in the adjacent farm holding. There is also an issue concerning the consequences of permitting a replacement septic tank and decommissioning of an existing septic serving other development.

7.2. Domestic extension

- 7.2.1. The proposal involves the substantial remodelling of a dwelling house as part of upgrading works and extending the habitable space. In overall terms the design is sympathetic to the traditional character of the original semi-detached dwelling and acceptable in terms of visual amenity. In this regard I note there is no dispute on the visual aspects of the design and no further assessment is required. There are however concerns by the appellant about the introduction of additional openings.
- 7.2.2. There is concern about the increase in windows generally and the potential conflict of residential amenity with the adjacent farm activities. I note that the revised design takes account of amended boundaries and accordingly omits a window directly overlooking the adjacent access. I consider the other alterations to an existing habitable house do not constitute a material change of use and are within reasonable limits of upgrading an existing dwelling. Furthermore having regard to the existing site layout I do not consider there is likely to be any potential loss of amenities for the adjacent property.
- 7.2.3. I further note that the proposal which involves the replacement of a garage with a private amenity space will improve the curtilage environs of the house in providing an enclosed private open space where none exists which is welcome by reference to current housing guidance standards. It will also improve the aspect as viewed from the public realm.
- 7.2.4. Accordingly I consider the proposal to comply with the criteria, which I consider reasonable and appropriate, for assessing domestic extensions as set out in the Wexford County Development Plan.

7.3. Right of way and traffic safety

- 7.3.1. The appellant asserts a right of way over the access lane between his farm entrance north east of the dwelling and the road which runs in a southerly direction through the applicant's property in the direction of the R733. This is supported by maps but and a statement by the appellant's solicitor confirms a process of regularisation. The situation however is that no right of way is registered and the area engineer confirms the road is private. While it is not the role of the Board in this appeal to determine whether or not, or, the extent of which a right of way exists, it needs to satisfy itself

that the applicant has sufficient legal interest to make an application. While noting the submissions which indicate an established right of way (which is a reasonable interpretation of the use of the road given the means of access to the adjacent established farm holding) but also having regard to the landownership I am satisfied that the applicant has sufficient interest for the purposes of making planning application for the proposed development. Ultimately if there is a conflict of rights this is a matter for the courts and in any event planning permission cannot prejudice this by reference to limitations of the Planning and Development Act 2000 as amended, as set out in s.34(13). Notwithstanding ownership however, there are issues of traffic safety and orderly development.

7.3.2. The situation on the ground is that a farm access extends across the rear of the subject dwelling at a point where a new door opening is proposed. The appellant is concerned about the potential traffic hazard arising from a potential conflict of pedestrian movement, particularly that of young children, with farmyard traffic. I am inclined to agree that regardless of ownership of the road/laneway, the use of the adjacent roadway as a sole means of access to a farmyard should be a factor in appraising the impacts in terms of safety. It is normal for new domestic doorway entrances to be via a defined curtilage which in this case is confined to a narrow concrete skirt and otherwise substantially absent to the rear of the dwelling. An alternative access to the front door is already provided via the proposed dining area. I would see no issue with modifying the layout to provide a revised entrance/utility area from the patio for example. For this reason I consider that the door should be omitted at this location.

7.3.3. Similarly, the appellant also objects to the encroachment of the proposed patio area onto the existing road alignment over which the appellant asserts an established right of way and on which he relies for the movement of farm related vehicles. The drawings indicate that the overall footprint of the dwelling and attached garage as exists is to be reduced and the proposed patio area is set back in an easterly direction from the road carriageway as compared to the existing garage alignment - although a more detailed site layout drawing comparing existing and proposed relationship with the road carriageway would be helpful. The proposed patio is however forward of the existing northern building line as it is effectively squaring off the property rather than retaining the indentation and will occupy a small section of

the presently surfaced corner adjacent to the road carriageway. This, as submitted by the appellant, will make the manoeuvring of farm vehicles more difficult turning this corner to access the yard. The planning authority takes the view that this is private property and also notes the set back from the road and considers it to be acceptable. I concur generally with this standpoint on the understanding that the drawings are accurate in relation to a reduction in the width of the existing dwelling/garage structure and there is no substantive obstruction of the road carriageway as distinct from the curtilage, i.e., the hard surfaced area between the northern garage wall and gable end of the house. It would appear that the marginal widening of the road will substantially offset the extension northwards. I accept however that an encroachment on the roadway may give rise to traffic safety issues and accordingly I consider that details of boundary treatment for the patio area should be subject to written agreement with the planning authority to ensure that the sweep of the road is maintained in the interest of traffic safety. If the road is taken in charge the county council would also have options for road safety measures if needed.

7.4. Wastewater treatment system

- 7.4.1. With respect to the wastewater treatment system the applicant seeks to upgrade the present situation which is to be welcomed from an environmental perspective particularly having regard to the proximity of the existing system to a watercourse. There is no issue with the site suitability. The dispute centres on multiple dwellings and intensity of use. The existing septic tank serves the subject dwelling to be extended and the converted shed which is let as an effectively independent dwelling which is conceded to be unauthorised but statute barred from enforcement. The planning authority sought to have this shed omitted from the site of proposed development which in the event of permission and removal of the existing septic tank would leave this converted shed without a sewage treatment and disposal system. While this could be subject of enforcement proceedings by reason of pollution, the applicant could seek to regularise the situation. The applicant states that the converted shed is intended as an extension of the habitable space of the subject dwelling and in overall terms the accommodation between the two structures amounts to four bedrooms although no plans of the converted shed have been

submitted. It seems unfortunate and somewhat piecemeal not to regularise the situation in this case.

- 7.4.2. The applicant makes the case that two independent treatment systems for one household as intended is excessive although the applicant confirms that he will ultimately comply with any requirements of permission. I am inclined to agree with the applicant that two systems for one household is excessive but accept that the scope of the appeal is not to determine whether or not the converted shed should or should not be permitted. Its existence however cannot be entirely ignored due to the consequences of removing a septic tank. There are a number of options in addressing this.
- 7.4.3. First, by considering the initial proposal as lodged and the site outlined in red which includes the shed, permission could be contingent on being for a single household and the use of the converted shed as a habitable space shall cease prior to occupancy of dwelling to be extended. This does not prevent the applicant then making an application to regularise a change of use which may be granted or refused permission depending on the merits of the case.
- 7.4.4. As an alternative, by considering the amended site which excludes the converted shed but still includes it within the holding as outlined in blue, permission for the extension and the new wastewater treatment system could be contingent on it only serving an authorised habitable dwelling space. This puts the onus on the applicant to apply for permission to regularise the situation.
- 7.4.5. I consider either option allows for an upgrading of the septic tank system but does not facilitate a consent for unauthorised development but rather acknowledges and addresses the situation on the ground without prejudice. I am inclined to lean to the latter option given the revision to the site boundary in respect of the adjoining landowner.

7.5. **Appropriate Assessment**

- 7.5.1. The proposed development area is within 10m of a watercourse that flows into drainage channels/ponds 500m downstream that appear to be associated with the road drainage system of the newly constructed N25. This system then feeds into the River Barrow and River Nore SAC which is a further 100m downstream and on the other side of the N25 as compared to the site. The application is accompanied by a

detailed method statement addressing the removal and disposal of small amounts of asbestos cement in the roof and chrysotile in the range sealant. The application also includes an upgrade of the septic tank system with an improved percolation area at a greater distance from the watercourse. The environmental scientist has no objections to the location of the proposed treatment system.

- 7.5.2. Having regard to the nature and scale of the proposed development which relates to a modestly scaled domestic extension in a built-up farm complex and upgrading of the wastewater treatment system, no appropriate assessment issues arise, and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

- 8.1. I recommend that planning permission for the proposed development be granted based on the following reasons and considerations, as set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the Wexford County Development Plan 2013 – 2019, the pattern of development in the area and to the nature, form, scale, and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area and would be acceptable in terms of traffic safety and public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 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 31st day of December 2020, 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 interest of clarity

2. The rear external door into the utility room shall be omitted. Revised details shall be submitted for the written agreement of the planning authority prior to commencement of development.

Reason: In the interest of residential amenity.

3. The existing septic tank to be decommissioned and removed shall be dismantled and disposed of in accordance with details to be submitted for written agreement with the planning authority and within 6 months of the completion of the proposed effluent treatment and disposal system which shall only serve authorised habitable accommodation associated with the single dwelling unit and which 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

4. Details including samples of the materials, colours and textures of all the external finishes to the proposed building, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of Public Health.

6. Details which shall include plans and elevations of boundary treatment including materials and finishes along the road frontage shall be submitted to and agreed in writing with the planning authority prior to commencement of development. This scheme shall ensure that the roadway as distinct from the curtilage of the dwelling is not obstructed.

Reason: In the interest of traffic safety and visual amenity.

7. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- a) Off-site disposal of construction/demolition waste.
- b) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface watercourses or drains.
- c) Measures to ensure safe access to adjacent properties.

Reason: In the interest of amenities, public health and safety.

Suzanne Kehely

Senior Planning Inspector

21st April 2021