



An
Bord
Pleanála

Inspector's Report ABP-311105-21

Development	Development of derelict farmhouse, outhouses and extensions converting into a house, new well bore, sewerage treatment system, percolaton area and all associated site works.
Location	Dowling, Co Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	20837
Applicant(s)	Heather Kennington
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Joseph Walsh
Observer(s)	None
Date of Site Inspection	10 th of November 2021
Inspector	Caryn Coogan

1.0 Site Location and Description

The subject site, 0.45Ha, is located in a rural elevated townland of Dowling, north-east of Piltown village, Co. Kilkenny.

The site has a narrow road frontage which provides access to a narrow field, and at the end of the field there is a derelict farm house laid out in a courtyard with outhouses and a stone wall enclosing the property. The main dwelling is along the western site boundary and it is two storey. There is a single storey unit along the norther portion of the courtyard.

There are mature trees and hedgerows along the longer site boundaries, east and west.

Adjacent to the dwelling house on site is a livestock shed to the west. It is not accessible from the subject site. The shed's galvanised roof can be seen from the subject site.

2.0 Proposed Development

Permission to develop an existing derelict farmhouse, outhouses and extensions into a new dwelling house/ come with associated connections, a new borehole, sewage treatment system, percolation area, landscaping, site entrance and site development works.

3.0 Planning Authority Decision

Planning permission granted by Kilkenny Co. Co. on the 19th of July 2021, subject to 10 No. conditions. The most notable conditions are:

Condition No. 2: Development Contribution of €2730

Condition No. 3: The proposed secondary treatment system is to be relocated to ensure gravity discharge from the dwelling.

Condition No. 5: The access to the development shall be accordance with site layout plan submitted on 23rd of June 2021.

3..1. **Planning Reports**

- The existing farm buildings are derelict. The proposal will reuse the existing rural buildings on site. The design and refurbishment comply with the county development plan. The proposal represents a sensitive restoration project. The site is located on family lands and her home place is less than 1km from the site.
- Access to the site is acceptable, the area engineer has no objections.
- Land registry folios have been submitted as part of further information.

3..2. **Other Technical Reports**

Area Engineer: No objection

Environment: No objection

3.3 **Prescribed Bodies**

None

3.4 **Third Party Observations**

Joseph Walsh objected on the grounds:

- Site boundaries;
- No consent onto third party lands;
- Proposal will impact on agricultural lands and shed to the west;
- Septic tank will cause pollution.

4.0 **Planning History**

None

5.0 **Policy Context**

5.1 **Development Plan**

Kilkenny City and County Development Plan 2021 Vol. 1

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. 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 7.8.3 Rural Housing Policies that applies to new dwellings (see also Section 9.3.6 Vernacular Built Heritage).

5.2 Natural Heritage Designations

SITECODE 002137

SITE_NAME Lower River Suir SAC

Located 5km south of the site

5.3 EIA Screening

Under Items 10(b)(i) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2021, where more than 500 dwelling units would be constructed the need for a mandatory EIA arises. The proposal is for the development of

1 dwelling on a site with an area of 0.45 hectares. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall well below the relevant thresholds, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

6.0 The Appeal

6.1 Grounds of Appeal

Joseph Walsh of Dowling, Piltown has taken this third-party appeal against the decision to grant planning permission for the proposed development on the following grounds:

- The boundaries to the western and southern side of the proposed property were not in the ownership of the applicant. There is a discrepancy between the digital and folio map. The digital map would suggest the applicant's lands extend into the neighbouring property.
- For works to be completed on the property it would be necessary for the applicant to enter into the lands of the adjoining property. The lands to the western boundary are a used farmyard for cattle. The walls are the only thing separating them, and there could be damage to the walls resulting in future problems.
- The information relating to wastewater treatment is also inaccurate. The site assessment stated there are no watercourses within 250metres of the site. There is a watercourse running along the eastern boundary of the site. The watercourse runs in a culvert and under the road to the norther site boundary.
- The farmhouse that is said to be in ruins on the western site boundary of the EPA report has electricity and running water.

6.2 Applicant Response

The applicant has stated a lot of the issues raised on appeal were addressed by the planning authority.

- **Landownership and Livestock:**

The planning further information response included the certified folio map of the ownership and boundary. The appellant's boundary does not touch much of the applicant's buildings, and the line of ownership of Mr. Walsh is meters away from the applicant's planning permission. The current folio documents ownership extending past the dwellings external wall. The issue of potential damage to livestock can be dealt with under the Land and Conveyancing Reform Act 2009, and the applicants will work with the appellant to mitigate any damage that he is suggesting to his livestock.

- **Site Characteristics Form**

A drainage ditch running along the south-east boundary was illustrated in the drawings. This was raised during the planning application process and resolved.

The ethos of the proposed development is bringing the derelict house back to being a home. The two points made on appeal are immaterial to affecting the decision to grant planning permission for the development. The gentleman has a history of objections and appeals in the area, and this is an unfair delay on the applicant who has gone through the planning process correctly. The development is in line with rebuilding Ireland Principles, the Kilkenny County Development Plan and the EPA Code of Practice.

6.3 Planning Authority Response

None

6.4 Observations

None

7 Assessment

- 7.1 The proposed development relates to the refurbishment/ development of a vacant ruined farm house and outbuildings in Dowling, Co. Kildare to a modern dwelling house, with a conversion of outhouses to a shed, home office and art gallery. The proposed development utilises the existing building footprint with minimal contemporary intervention and extensions. Kilkenny Co. Co. granted planning permission for the development.

I have examined the newly adopted Kilkenny City and County Development Plan 2021, and the proposed development is in line with policy 7.8.5 Refurbishment and Replacement Dwellings in Rural Areas, whereby *'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.*

7.2 The proposed refurbishment of the ruins of a former farmhouse and outbuildings setback a considerable distance from the public road. The proposal complies in full with the above stated and relevant development plan policy and management guidelines. The reuse of the structures represents a sustainable form of development as opposed to a new build, and the overall design complies with the County Kilkenny Rural Design Guidelines. The overall development is located below the level of the public road and is enclosed by mature trees and hedgerows. The site is owned by the applicant's cousin. The applicant is an artist currently working in Waterford city. Part of the proposed development includes a new art studio. The applicant grew up 1km from the subject site and she is returning to the family landholding.

7.3 It is proposed to utilise the existing field access as the main access to the development. I note the sightlines are acceptable. in both directions.

7.4 The topography of the area falls across the site from north to south. A packaged wastewater treatment system has a polishing filter. As part of the further information submitted on the 23rd of June 2021, a new site characteristic form was submitted, a secondary treatment unit with a polishing filter was recommended by the report. It

was proposed to pump the effluent to the distribution system, however Condition No. 3 of the planning authority's decision required revised proposal to provide a gravity discharge from the dwelling to the secondary system.

- 7.5 The third-party appellant is the adjoining landowner to the west of the site. There is an existing livestock shed positioned beside the proposed development (see photographs taken on site). The shed is small with a galvanised roof. It is located within 1metre of the proposed development. The appellant has taken this appeal on mainly two grounds, issues relating to Ownership/ Works/ Livestock damage and the Site Characteristics Report on file. Most of the issues raised on appeal are a matter for the planning authority or are a civil matter beyond the remit of the Board.
- 7.6 I am satisfied the proposed development is within the site boundaries and does not encroach onto the third party's landholding. The further information response included a certified folio map. The appellant also submitted his folio map. From my reading of the maps, I can confirm there is no overlap, and the third party boundary does not encroach on to the subject site.
- 7.7 The applicant has been given consent by the relevant landowners (her cousins), the Bowers, to carry out the works and apply for planning permission on the site. Section 34 (13) of the Planning and Development Act 2000-2020 states, '*A person shall not solely by reason of a permission under this section to carry out any development*'. This implies the applicant is obliged to comply with other legislation and to avoid infringement on third party rights.
- 7.8 The claim by the third party that his livestock could be damaged by the proposed development is not substantiated or supported by a valid argument. This issue should be dismissed by the Board.
- 7.9 The appellant claims that a water course was not indicated on the submitted documentation, therefore the wastewater treatment has been designed incorrectly. I note the Site Characteristic report denotes a drainage ditch along the south-eastern site boundary. The proposed wastewater treatment system and percolation area are sized and distanced in accordance with the relevant EPA Manual.
- 7.10 The issue of a water supply and electricity at the dwelling house on site are not relevant to the appeal.

- 7.11 The existing roadside boundary is narrow, consisting of a long field gate and short stone wall. The sightlines are acceptable in both directions.
- 7.12 I consider the third party's grounds of appeal to be unsubstantiated and unfounded. The planning authority's decision to grant permission for the proposed development should be upheld, as it represents a form of sustainable development and is in line with national policy to encourage the reuse and redevelopment of vacant and derelict dwellings in urban and rural areas nationwide.
- 7.13 On balance I consider the overall design to be sympathetic to the existing building envelop. It respectful of the original layout and design of the farm buildings and outhouses. I welcome the principle of the reuse of the derelict farmhouse and outbuildings for domestic purposes.

8.0 Recommendation

The decision to grant planning permission for the development be upheld.

9.0 Reasons and Considerations

Having regard to the policies and objectives of the Kilkenny City and County Development Plan 2021-2027, the principle of the proposed development which is the refurbishment and reuse of a derelict dwelling in a rural area for domestic purposes, it is considered the proposed development would not seriously injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>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 23rd day of June 2021 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.</p> <p>Reason: In the interest of clarity</p>
----	---

2.	<p>Within 4 weeks of this decision the applicant shall submit to and agree in writing a revised site layout plan indicating the relocation of the secondary sewage treatment system to ensure a gravity discharge from the dwelling to the treatment system, in line with the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Dwellings (2009). The applicant shall accurate cross sections through the complete domestic wastewater treatment system indicating the complete domestic wastewater treatment system indicating proposed site levels and gradient of all pipework from the dwelling house to the infiltration area.</p> <p>Reason: In the interests of public health and to provide protection to the environment.</p>
3.	<p>The proposed front boundary and recessed entrance shall consist of natural local stone, the exact height and location of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
4.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.</p> <p>Reason: To ensure adequate servicing of the development, and to prevent pollution.</p>
5.	<p>The water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.</p>

6.	<p>The water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.</p>
7.	<p>a) A proprietary effluent treatment and disposal system shall be provided. This shall be designed, constructed and maintained in accordance with the requirements of the planning authority. Details of the system to be used, and 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 development.</p> <p>(b) Treated effluent shall be discharged to a polishing filter which shall be provided in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009.</p> <p>(c) Within three months of the first occupation of the dwelling, 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 and that the raised percolation area is constructed in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health.</p>
8.	<p>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</p>

	<p>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.</p> <p>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.</p>
--	---

Caryn Coogan
Planning Inspector

28th of January 2022