



An
Bord
Pleanála

Inspector's Report

ABP-312372-22

Development	Retention of existing building and permission for use of retained buildings as a dwelling
Location	Killaree, Threecastles, Co Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	21843
Applicant(s)	Walter Lennon
Type of Application	Retention and Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Walter Lennon
Observer(s)	Kevin and Breda Gertberg
Date of Site Inspection	18 th of October 2022
Inspector	Angela Brereton

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, Threecastles. Access to the site is off a local laneway, which in turn is accessed off the R693, a regional route, linking Kilkenny City with Freshford.
- 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. 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. There is a hedgerow along the western (rear) boundary of the building. There is a green field area to the north of the site which contains the existing septic tank. This area is included as part of the site in the current proposal. This building has been used for commercial purposes and is unauthorised. I noted on the day of the site visit that it no longer appeared to be in use.
- 1.3. 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. Having viewed the building I noted that while it appears to be used as a residence by the applicant, that it is in poor condition, both externally and internally. It is part of a wider group of older derelict farm buildings.
- 1.4. 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. 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. Documentation submitted with this application includes the following:

- Property Survey Report -Existing Property – Condition Report – Ronan Tansey Chartered/Consulting Engineer
- A letter from the Owner of the Lands Damien Lennon (son of the applicant) giving written consent for the application to be made.
- A Site Suitability Assessment Report – Tom Brennan Consulting Engineers
- Drawings including Site Layout Plan, Floor Plans, Sections and Elevations

3.0 **Planning Authority Decision**

3.1. **Decision**

Kilkenny County Council refused retention permission and permission for the proposed development on the 30th of November ,2021. In summary their reason for refusal related to the proposed site being located in a 'Area Under Strong Urban Influence' and would be contrary to planning policy and guidelines. They were not satisfied that the applicant has demonstrated a functional need to reside in the structure for which retention is proposed, nor that the existing residence of the applicant is not capable of refurbishment. That the proposal does not come within the scope of housing need criteria and would be contrary to policy and guidelines and the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The Planner had regard to the locational context of the site, planning history and policy and to the submissions made.

- They have regard to the building proposed for retention and to the residential use proposed. They note the revisions to the design of the latter.
- They note the Property Survey Report relative to the poor condition of the existing house.
- Water is proposed from a private well, with surface water disposal on-site.
- They have regard to the wastewater proposed on-site effluent system and to the site characterisation assessment results submitted.
- They note no objection to the proposed access and sightlines.
- They provide that an AA Screening was completed, which showed no significant environmental impact is likely on any Natura 2000 site.
- They provide that an EIAR is not required.
- They conclude that having regard to the documentation submitted, submissions made and relevant planning policy that they do not consider that the applicant has demonstrated that the proposed development sufficiently addresses the rural housing policy reason for refusal as the history application for the site as decided by An Bord Pleanála, or meets the requirements as per the policies of the *Kilkenny City and County Development Plan 2021-2027*.

3.3. **Other Technical Reports**

Environment Section

They have no objection to the proposed development subject to conditions.

3.4. **Prescribed Bodies**

No comments noted on file.

3.5. **Third Party Observations**

The Planner's Report notes the contents of the submission received and had regard to the issues raised. As these are now the subsequent Observers their concerns are noted in that context in this Report below.

4.0 Planning History

The Planner's Report provides a detailed planning history of the site and of sites in the vicinity. The most recent relevant to the subject site are as summarised below:

ABP-309150-21 – Reg.Ref.20/84 – Permission granted subject to conditions by the Council and subsequently refused by the Board for Retention of existing building as constructed, and permission for the use of the retained building as a dwelling house, alterations to the building, a new wastewater treatment system and all ancillary works.

This was refused by the Board for 2no. reasons, in summary relative to issues of design and layout of the building proposed for retention and use as a dwellinghouse and not being in accordance with planning policy and due to the existing house being habitable and a lack of demonstrated Local Need, in an area that is designated under urban influence.

A copy of the Board decision is included in the History Appendix to this Report.

Reg.Ref.17/496 – Permission refused to Damien Lennon for retention of offices as constructed, parking area and existing septic tank, and permission to upgrade the existing percolation area and all associated site works. The Council refused permission for 6no. reasons.

In summary the reasons included that the proposed retention development should be located on serviced lands in proximity to an existing urban settlement and would be contrary to the Development Plan 2014-2020 with regard to rural enterprise and the strategic location for economic development in urban areas and towns.

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 Context

5.1. National Policy

Project Ireland 2040, National Planning Framework (NPF) 2018

Section 5.3 refers to the growth and development of rural areas and the role of the rural town as a catalyst for this. It is recognised that the Irish countryside is, and will continue to be, a living and lived-in landscape focusing on the requirements of rural economies and rural communities, based on agriculture, forestry, tourism and rural enterprise, while at the same time avoiding ribbon and over-spill development from urban areas and protecting environmental qualities.

Objective 19 outlines that within areas under urban influence, single housing in the countryside will be facilitated based on the core consideration of a demonstrable economic or social need to live in the rural area. It further states that in rural areas elsewhere, it is an objective to facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2. Section 28 Guidelines

Sustainable Rural Housing Guidelines for Planning Authorities 2005

This seeks to encourage and support appropriate development at the most suitable locations. A distinction to be made between 'Urban Generated' and 'Rural Generated' housing need.

Section 3.2.3 concerns Rural Generated Housing and gives an example of Persons who are an intrinsic part of the rural community and Persons working fulltime or part-time in rural areas. This includes reference to people who have lived most of their lives in rural areas and are building their first homes.

Section 3.3 is concerned that the consideration of individual sites will be subject to normal siting and design considerations. These include the following:

- Any proposed vehicular access would not endanger public safety by giving rise to a traffic hazard.
- That housing in un-serviced areas and any on site wastewater disposal systems are designed, located and maintained in a way, which protects water quality.
- The siting of the new dwelling integrates appropriately into its physical surroundings.
- The proposed site otherwise accords with the objectives of the development plan in general.

Section 4.3 refers to Assessing Housing Circumstances. This includes exceptional health circumstances.

Section 4.4 is concerned with Access.

5.3. **EPA Code of Practice for Domestic Wastewater Treatment Systems 2021**

This Code of Practice (CoP) is published under Section 76 of the Environmental Protection Agency Act, 1992 (as amended).

Its purpose is to provide guidance on domestic wastewater treatment systems (DWWTSs) for single houses or equivalent developments with a population equivalent (PE) of less than or equal to 10. It sets out a methodology for site assessment and selection, installation and maintenance of an appropriate DWWTS.

This CoP replaces the previous Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) issued in 2009. This CoP applies to site assessments and subsequent installations carried out on or after 7th June 2021. It provides that the 2009 CoP may continue to be used for site assessments and subsequent installations commenced before 7th June 2021 or where planning permission has been applied for before that date.

5.4. **EU Water Framework Directive**

The EU Water Framework Directive (WFD) (Directive 2000/60/EC) creates a framework for the protection of all waters including rivers, lakes, estuaries, coastal

waters and groundwater, and their dependent wildlife/habitats, under one piece of environmental legislation.

5.5. **Kilkenny City and County Development Plan 2021-2027**

Chapter 4, Core Strategy sets out the overall development strategy for the county including the rural area: *The Council will ensure that the provision of one-off houses in rural areas does not undermine the vibrancy and vitality of the town or settlements in rural areas while accommodating the dispersed rural living traditions of the rural areas of County Kilkenny.*

Rural Development

Chapter 7 has regard to Rural Development including in Section 7.3 to 'Remote Working and Home-Based Economic Activity in Rural Areas'.

Rural Housing

Section 7.8 - Rural Housing Settlement Strategy. Fig. 7.1 'Rural housing Strategy' provides a Map showing the site within an Area under Urban Influence and outside but proximate to Threecastles 'Rural Node'.

Rural Generated Housing: *Housing needed in rural areas within the established rural community by persons from that community or whose occupation is intrinsically linked with that particular rural area as defined in Section 7.8.4 Categories of Rural Compliance below.*

Section 7.8.4 describes 'Categories of Rural Compliance and Qualifying criteria'.

County Kilkenny can be divided into two broad categories as follows:

1. Areas under Urban Influence
2. Other rural areas

It is the Council's objective for areas of urban influence to facilitate the rural generated housing requirements of the local rural community (as identified in this section) while on the other hand directing urban (non-rural) generated housing to areas zoned and identified for new housing development in the city, or towns and villages.

The site is within an 'Area under Urban Influence' and in such areas the Council will permit (subject to other planning criteria) single houses for persons where the following stipulations are met:

1. Persons with a demonstrable economic need to live in the particular local rural area e.g. *employed full-time in rural-based activity such as farming, horticulture, forestry, bloodstock or other rural-based activity in the area in which they wish to build or whose employment is intrinsically linked to the rural area in which they wish to build, such as teachers in rural schools or other persons who by the nature of their work have a functional need to reside permanently in the rural area close to their place of work, provided that they have never owned a house in a rural area.*
2. Persons with a demonstrable social need to live in a particular local rural area. In summary this includes persons born and living in the rural area who have not owned their own house and returning emigrants.

All applicants for one-off rural housing will need to demonstrate compliance with the qualifying criteria of one of the above categories unless otherwise specified as being located within an area where the Rural Housing Policy does not apply.

Section 7.8.5 refers to 'Refurbishment and Replacement Dwellings in rural areas'.

This refers to a habitable house and provides the Development Management Requirements relative to this issue and includes:

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.

Section 7.8.6 refers to the 'Rural House Design Guidance' as an instrument to develop best practice in design and siting of one-off rural housing.

Further guidance is given in Section 13.22 Rural Housing and Section 12.11.3 Access to National Roads and Section 12.11.10.1 Roads Development Management Requirements.

5.6. Natural Heritage Designations

River Barrow & Nore Special Area of Conservation (SAC) site 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.

5.7. EIA 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. Grounds of Appeal

Peter Thomson Planning Solutions has submitted a First Party Appeal on behalf of the Applicant Walter Lennon. This includes the following:

The application property

- Details are given of the history of the application property. This includes that the Applicant resides in the existing farmhouse which is in a poor state of repair. Regard is also had to the separate building proposed for retention.
- They note the previous reasons for refusal by the Board (ABP-309150 – Reg.Ref.20/84).
- They have regard to the Council's reasons for refusal relative to the current application.

Planner's Report – issues raised

- They consider it relevant to highlight that the submission made opposing the current proposal, does not have an objection to the principle of the applicant providing a residence in a manner that will allow a comfortable standard of independent living.

- They are concerned that the letter from the applicant's medical consultant may not have been forwarded to the Board. This provides crucial information on his case. They consider that had the third party been aware of this letter from the GP, that they may not have sought to challenge it as they are aware of current health conditions
- Without the medical information, consideration of the applicant's housing need is incomplete. They include a copy of the GP's letter.
- They refer to paragraph 4.3 of the 'Sustainable Rural Housing Guidelines' 2005 (Assessing Housing Circumstances - Medical Condition).
- They note that the Planner's Report does not refer to a pre-planning meeting and to the discussion of revised house plans and the need for a conditions survey of the existing house. A detailed engineers report has been submitted with the current application.
- They note the 4no cars parked at the structure to be retained all belonged to the applicant's family members.
- The revised design of the building addresses the Board's previous concerns and the Rural Design Guide.
- The 'Property Survey Report' carried out found that the existing house is occupied but uninhabitable for modern living and in a dangerous condition and could not be economically refurbished.
- From a health and well being and practicable perspective the applicant could not remain living in the house while refurbishment works were ongoing.
- While not addressed in the Engineer's Report, an internal inspection of the building proposed to be altered and converted and/or inspection of the existing and proposed layout plans demonstrate that with minimal works habitable living quarters can be provided.
- They submit that the applicant has a justifiable housing need. That the previous concerns of the Board have been addressed through the revised building scale and design and by demonstrating that he has a genuine

housing need in accordance with Government and Development Plan rural housing policy.

- They request that the Board to overturn the Council's decision and grant Retention and Planning permission.

6.2. Planning Authority Response

Their response to the First Party Grounds of Appeal includes the following:

- The letter submitted with the application form from the applicant's medical consultant is on file and has been on file. Due to GDPR the Planning Authority decided not to have the letter as part of the public file.
- It is the same letter as submitted by Mr Peter Thompson as part of the first party appeal. All documentation submitted with the application was considered by the PA before arriving at a decision.
- While the letter outlines the doctor's opinion on the condition of the living accommodation it does not add any additional material as to why that accommodation needs to be a new build as opposed to an extended/refurbishment of the existing dwelling.
- While the engineers report does outline a number of issues of concern to the property the PA considers that it does not condemn the property to demolition nor that the defects to the property could not be remedied by suitable investment.

6.3. Observations

Aine Ryan Consulting (ARC) has submitted an Observation in response to the First Party Appeal on behalf of local residents Kevin and Brenda Gertberg. This includes the following:

Exceptional Medical Needs

- They consider that the inclusion of the GP letter in this instance does not mitigate the over-riding statutory requirements for a proposed development to

have cognisance to National and Local Planning Policies and to the preservation and equitable development of the wider rural area.

- While the current application provides additional details pertaining to the condition of the existing farmhouse residence and design alterations to the unauthorised commercial unit, little has changed since the previous Board refusal Ref. ABP-309150-21.
- That application did not propose 'exceptional health circumstances' in alignment with the 2005 Sustainable Rural Housing Guidelines as a means on which the development should be permitted. They do note that there was reference to health issues in response to the Council's F.I request.
- There is no reference in the current application as to the suitability of the alterations to the unauthorised commercial unit as proposed to meet the applicant's independent living needs, nor a determination that his medical and living needs can only be met via the proposed development.

The Sustainable Rural Housing Guidelines 2005

- They note that the applicant seeks to rely on the 'exceptional health grounds' provision in these Guidelines. That while a letter from the GP has accompanied this application an Occupational Therapist letter in support of exceptional medical grounds has not been submitted.
- The 2005 Guidelines were compiled to provide direction to single rural dwelling applicants and were not intended to address unauthorised development or retention applications.
- They have regard to the Planning and Development Regulations 2001 (as amended) which take a limited view on the benefits available to unauthorised development. They refer to Articles 9 and 10 which provide restrictions on exemption, in this respect.
- While they acknowledge the applicant's health circumstances, they consider that it does not provide a route upon which to permit regularisation of an unauthorised commercial structure for residential use, located some 220m due west of the applicants existing residence, which is considered to be non-compliant with the policies of the relevant DP.

- They ask the Board to have regard to Section 3.3 (Siting and Design) of the 2005 Guidelines. They contend that their objection as submitted to the Council and noted in Appendix 1 of their Observation addresses the subject application's non-compliance with access, sanitary infrastructure, siting and design and the policies and objectives of the Kilkenny CCDP 2021-2027.

Updated Rural Housing Policies

- The 2005 Guidelines are due for an update and until such time, that policy direction may reasonably be taken from the more up to date government publications which reference housing requirements. They note this is reflected in the reason for refusal citing (NPO 19) and local Section 7.8, 2021 KCDP rural housing policies.
- They note that the importance of the National Planning Framework policies has been clearly stated relative to rural housing policies. That these policies underpin DP policies with regard to demonstrable need to reside in the rural area, siting and design criteria; with regard to the viability of smaller towns and settlements.
- Further Government publications also identify the key strategic goals for rural housing including: Housing for All (2021) and National Policy on Architecture (2021).
- They also refer to the Kilkenny CCDP 2021-2017 where regard has been had to all prevailing National, Regional and Local policies and guidance. This Plan does not provide an exemption from rural housing policy requirements to those who have exceptional health circumstances and which require a patient to live in a particular rural area or close to family support.

Observation on Rural Housing Principle and Need

- They refer to their letter of objection in Appendix 1 wherein site-specific limiting factors to rural housing are outlined.
- An Bord Pleanála has previously adjudicated the principle of residential use within the unauthorised commercial structure as being contrary to the proper planning and sustainable development of the area (Ref. ABP-309150-21).

- The precedent as set by the Board has been further upheld with the determination and subsequent refusal of permission by the Council for the current proposal.
- Applications for retention permission cannot indefinitely postpone enforcement action. They consider that the applicant has not provided a robust planning basis for residential use within the unauthorised commercial structure, which remains subject to Enforcement proceedings (KCC Ref.ENF17/30).

Extant Residence Condition

- The Board has previously determined in the Inspector's Report (Ref. ABP-309150-21) that the existing residence is habitable.
- The Property Survey Report that accompanies the current application has identified a number of issues with the structure, however subject to application of similar criteria as the Inspector's March Report 2021, it is considered the dwelling is habitable.
- They refer to family members residing in the area and note that permission was granted in Reg.Ref.06/1479 to the first party's son, for a dwelling incorporating a family flat, which has not been assessed to alleviate the applicant's health circumstances.
- There is no evidence forthcoming to prove that the subject location will serve the applicants ongoing medical needs in terms of proximity to family and access to medical services.
- The applicant does not come within the terms of statutory housing need criteria as set down in the 2021 DP for a replacement dwelling with an unauthorised structure. To grant this proposal would set a negative precedent for the wider rural area.

Regard to Rural Housing Policies

- They refer to Appendix 1 of their report and note that the subject development would be non-compliant with a number of policies in the Kilkenny CCDP 2021-2027 and provide details of such.

- They consider that the scale and height of the proposed unauthorised commercial building to be used as a dwelling is in excess of the applicant's independent living needs.
- The demonstration of the dilapidated living conditions, whilst illustrating the need for redress, does not indicate that the applicant's housing need can only be met via the proposed use of the unauthorised commercial unit.

General Observations on Appeal Statement

- They submit that the commercial operations continue at the unauthorised commercial premises and note the use of the premises and associated parking on the site. Table 1 of their Observation provides details of 'Previous Notifications of Cessation of Commercial Activities'. Appendix 2 refers.
- They remain of the opinion that the subject application seeks retention of the commercial unit (via permission for a rural residence) in order to avoid the necessity of demolition of this unauthorised structure as ordered some four years ago, in accordance with ENF 17/30.
- That the unauthorised structure was originally constructed in 2012 as a small office block and was subsequently extended to its current status.

Conclusion

- They refer to the need to comply with existing planning policies and guidelines and conclude that to permit the retention of an unauthorised structure as interlinked to rural residential need cannot be supported and will set a negative precedent regarding the development of replacement rural dwellings in the wider rural area.
- The proposal would give rise to permanent, negative impacts upon the sustainable planning and development of the area.
- They attach a copy of their submission to the planning application dated 9th of November 2021.

7.0 Assessment

7.1. Compliance with Planning Policy

- 7.1.1. The Settlement Strategy has regard to Rural Generated Housing Need. This is a matter of compliance with rural settlement strategy which requires consideration of not just local but also regional and national planning provisions that deal specifically with this matter. National Policy Objectives 18 and 19 of Project Ireland 2040, refer. As noted in the Policy Section above, Objective 18 seeks to develop a programme for new homes in small towns and villages. Objective 19 seeks that: "In rural areas under urban influence, to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in the 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".
- 7.1.2. The Council's reason for refusal included that they were not satisfied that the applicant had demonstrated compliance with Section 7.8 of the KCCP 2021-2027. As noted in the Policy Section above, this section provides the Rural Settlement Strategy. The site is in the rural area in an 'Area under Urban Influence, hence Local Needs criteria applies.
- 7.1.3. 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, where he currently resides, is in poor condition and is located approximately 220 metres east of the unauthorised commercial office building. It is provided that 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. Details have been submitted in the current application relative to his medical need and this is noted below.

7.1.4. Regard is also had to the Sustainable Rural Housing Development Guidelines 2005 where the strategy indicates that there should be a presumption against urban generated one-off housing in rural areas adjacent to towns. The site is located in an area classified as being under “Strong Urban Influence” as identified in the Guidelines. Section 3.2.3 refers to Rural Generated Housing. This includes reference to “people who have lived most of their lives in rural areas and are building their first homes”. Section 4.3 of the Guidelines refers to Assessing Housing Circumstances. This includes:

In particular, planning authorities should recognise that exceptional health circumstances – supported by relevant documentation from a registered medical practitioner and a disability organisation – may require a person to live in a particular environment or close to family support. In such cases, and in the absence of any strong environmental, access or traffic reasons for refusal, a planning authority should consider granting permission, subject (where Planning Guidelines appropriate) to conditions regarding occupancy.

7.1.5. The application and the First Party grounds of appeal refer to the health circumstances of the applicant and are accompanied by a letter from the applicant’s GP which provides medical details. This provides that the applicant’s existing living conditions are having a major effect on his health and well being and that a modern home to meet minimum living conditions expected would greatly improve the unnecessary hardship he currently endures at his existing residence.

7.1.6. The Observers note that while a letter from the GP has accompanied this application an Occupational Therapist letter in support of exceptional medical grounds has not been submitted. This relates to compliance with Section 4.3 of the Guidelines as quoted above. They submit that the health circumstances as presented in this application are not sufficiently robust basis for contravention of established National and Local planning policies and guidance on rural housing, or to undermine extant enforcement proceedings with regard to the unauthorised structure. They consider that having regard to the provisions of the Kilkenny County and City Development Plan 2021-2027, the Kilkenny Rural Design Guide, 2008 and National Guidance and Policy Frameworks, the development as proposed would be prejudicial to the sustainable planning and development of the rural area and a grant of permission

would set a negative precedent for rural development and general appeal observations.

7.1.7. However, it must be noted that this application is not for the provision of an additional one-off house in the rural area but includes for change of use of the existing farmhouse which is poor repair to a permanent farm storage building and retention and change of use of the existing unauthorised commercial structure to a dwelling house and regard is had to these issues and to the planning history of the site in this Assessment below. Therefore, it does not propose to provide a second dwelling for the applicant, rather to replace one with another on the applicant's landholding.

7.1.8. It is noted that Section 7.8.5 of the Kilkenny City and County Development Plan refers to Refurbishment and Replacement of Dwellings in rural areas. This refers to a habitable house and provides that the Council seeks to 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 Development Management criteria outlined. Therefore, it is of consideration as to whether it has been demonstrated that the proposed retention development can be considered as a replacement dwelling house.

7.2. Planning History and Retention Development

7.2.1. Regard has been had to the Planning History in the appropriate section above and as noted in the Planner's Report, the First Party Appeal and the Observation made. The most relevant to the current application is that recently refused by the Board – ABP-309150-21 (Reg. Ref.20/84 refers). This was refused for 2 no. reasons in summary relative to the following:

- Issues of Design and Layout - The use of the retention building as a dwelling would be contrary to the provisions of the Kilkenny Rural Design Guide in terms of form and proportion and would, therefore, be contrary to the proper planning and sustainable development of the area.
- Local Need not Demonstrated - The Board was not satisfied that the applicant has demonstrated compliance with rural housing policy or that the existing residence of the applicant is not capable of refurbishment. That the proposal would not comply with National, or Local planning policies and Guidelines and

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

It is of note that the Inspector's Report and the Board's Decision are included in Appendix 1 of this Report.

- 7.2.2. Therefore, the issue in the current application is what has changed and can the Board's reasons for refusal be overcome. The description of development is as previously stated i.e for permission and retention permission (relating to development on two separate parcels of land within the landholding). The Site Layout Plan and the location of the existing house and the unauthorised commercial structure proposed for a change of use to a new dwelling has not been altered. As previously shown the current application includes the greater landholding within the blue line outline.
- 7.2.3. Having regard to the documentation submitted, the two main changes are that there have been some alterations in the design and layout of the building for retention proposed to be used as a dwellinghouse, and a detailed 'Property Survey Report – Existing Property Condition Report' has been compiled by a Consultant Engineer, that describes the poor living conditions offered by the existing dwelling.

7.3. Regard to Condition of Existing House

- 7.3.1. Details submitted provide that the applicant resides in the existing farmhouse. This building has a floor area of 96m² and as noted is in a poor state of repair. It is accessed via the separate access lane to the farmyard area and is seen in the context of the existing what appear as relatively derelict farm buildings.
- 7.3.2. A 'Property Survey Report' has been submitted. This provides details of the poor condition of the existing farmhouse and includes both external and internal photographs and some diagrams. The owner is elderly and the Survey notes that at present the property would only be suitable for ambulant users and would not comply with current standards or regulations. It has regard to structural cracks in the walls and damage that has occurred to the building, including damp and mould and lack of insulation. That the single glazed windows are in a poor state of repair and it was noted that rewiring and a full replacement of the plumbing system was needed. It noted poor sanitary facilities and detected the presence of vermin in the attic space

(rats and mice). The Survey notes water ingress, persistent dampness, poor ventilation and concerns about carbon monoxide poisoning being at high risk in the property. It noted concerns about the roof including the need for the removal of asbestos slates and the flat roof over the w.c. (photographs are included). That there is no form of drainage provided around the perimeter of the external walls. The house is served by a water supply and that septic tank would not be in accordance with current EPA CoP standards and would need to be replaced.

7.3.3. The Survey notes that the existing dwelling, was constructed pre 1964 so was exempt from planning permission. The rear extension (which contains the sanitary facilities) is <40m² and so is also exempt from planning permission. It is within the 'G' BER rating. They note that the building would require major renovations to be brought up to current standards and provide a list of Recommendations. This includes that they would not recommend the occupation of the property in its present state of repair. The Survey concludes that having carried out a comprehensive inspection of the property and citing health and safety concerns alone, that they would condemn the dwelling in its current format and state of repair. That the structure is no longer suitable to be used as habitable accommodation.

7.3.4. I would consider that based on the Survey Recommendations, and my site visit that while it may be possible that the dwelling to be rehabilitated, that a considerable amount of work would need to be carried out. The applicants age and medical condition has been noted, as has the location of the dwelling within the existing farmyard, close to the farm buildings. I would consider that in view of all the issues raised relative to the poor living conditions, that it would be appropriate in this case, to use this building for farm storage purposes, and in view of the circumstances, for the Board to look at the building proposed for retention as an alternative living accommodation.

7.4. Design and Layout of building for Retention

7.4.1. The letter submitted with the current application from Peter Thompson Panning Solutions describes changes to the existing building proposed for retention and change of use to a dwelling house. They provide that this is to overcome the design issues raised by the Board in their reason for refusal in Ref. ABP-309150-21. As

shown on the plans currently submitted, the gross floor area of the building for retention has been reduced. This has been achieved by the reduction in length of the length of the building is from 23m to 18m and this results in the porch structure being more central. The porch itself has been reduced in height which they contend is more in keeping with a cottage type rural dwelling. The overall height of the building has not been reduced and as shown on the elevations is 7.1m. It is noted that as shown on the section the attic space allows for an overall floor to ceiling height of less than 2.4m which is less than the Building Regulations for habitable accommodation and so can only be used for storage.

- 7.4.2. The visual impact of the proposed dwelling has been changed and they contend a more appropriate roof to wall ratio has been achieved in the revision. They note that the existing ground floor windows will be replaced in the revised scheme with deeper window openings that have greater vertical emphasis and is also more appropriate to the Kilkenny Rural Design Guide. It is also noted that the fire escapes that served the unauthorised commercial building are to be removed. At roof level, the dormer window which was a concern and detracted from the balance of the roof has been omitted and the number of roof lights reduced. An additional gable window has been inserted at roof level to provide light to the first-floor bedroom. It is noted that this will not cause overlooking to neighbouring property, which is located some distance away.
- 7.4.3. Reference is had to issues regarding concerns with the design and layout in the previous reason for refusal and I would consider that the alterations that have been made in the current application offer a reduction in the overall length to the building, and changes to fenestration. Together these will result in an improvement to the appearance of the building, that would be more in keeping with rural house design.
- 7.4.4. In addition, if the Board decide to permit, I would recommend that it be conditioned that the large hardcore area in front of the building be removed and the site be landscaped to enhance the appearance of the building proposed for use as dwellinghouse in the rural setting. In addition, that existing boundary hedgerows be retained.

7.5. Access

- 7.5.1. The use of the existing access from the private laneway alongside the proposed retention building is proposed. This is a separate access from that used for the existing dwelling and farmyard buildings. As shown on the plans submitted it is proposed to set-back the roadside boundary by c.28m to the south to achieve the proposed sightlines, and to erect delineators along the roadside boundary. This area is shown within the red line site boundary. It is noted that sightlines of 90m will then be available in either direction, at the junction of the lane with the public road. It is also, of note that the Planner's Report states that they have no objection to the access and sightlines and that a letter has been received from the landowner, who is the applicant's son relative to the achievement of sightlines.
- 7.5.2. While access is not particularly raised as an issue in the current application it is noted that it was considered relative to the right of way issue in the Inspector's Report relevant to Ref. ABP-309150-21. The Inspector then considered that the applicants had 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.
- 7.5.3. 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. 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".

7.6. Suitability of site for Disposal of Effluent

- 7.6.1. The Site Layout Plan shows the location of the existing septic tank to be decommissioned and removed (served the former unauthorised commercial use) proximate to the western site boundary and of the new treatment system (for the use of the dwellinghouse) proposed at the north-western end of the site. This includes

that a separation distance of 4m between trees and roots from trees to the polishing filter is to be maintained upon installation in accordance with EPA recommendations. The location of the proposed well/borehole is shown located close to the south-eastern boundary.

- 7.6.2. As noted in the Policy Section above the 2009 CoP document has now been replaced by the EPA Code of Practice for Waterwater Treatment and Disposal Systems Serving Single Dwellings (2021). This includes that the 2009 CoP may continue to be used for site assessments and subsequent installations commenced before 7th June 2021 or where planning permission has been applied for before that date. It is noted that this application was made to the Council on the 7th of October 2021. However, it is noted that the Site Characterisation Form provides that the proposed location of the treatment system on site relative to the dwelling is acceptable subject to minimum separation distances in accordance with EPA CoP 2009. Also, the date of this Report is given as the 12th of August 2020, when the former was in place.
- 7.6.3. Table 6.2 of the 2009 EPA Code of Practice provides the minimum depth requirements for on-site systems discharging to ground i.e. 1.2m and at the base of polishing filter 0.9m. i.e. minimum depth of unsaturated subsoil to bedrock and the water table. Table 6.3 provides an interpretation of percolation test results and “in cases where $3 < P < 50$ the site may be suitable for a septic tank and percolation area and polishing filter at ground surface or overground if the soil is classified as Clay...” The ‘T’ and ‘P’ test values given should be within this range.
- 7.6.4. The Site Characterisation Form provides that there was no water encountered in the depth of the trial hole (2.0m). This provides that the site suitability assessment resulted in a $T=4.06$ and $P=22.72$ and therefore the site is suitable as per Table 6.3 of the EPA CoP 2009. It is of note that Table 6.4 of the 2021 EPA CoP provides the percolation values relative to the type of treatment system and while more detailed the similarities to Table 6.3 of 2009 EPA CoP are noted.
- 7.6.5. As per the Site Characterisation Form it is noted that the site is located in an area where there is a Regionally Important Aquifer Karstified of high vulnerability. Photographic Surveys and Maps are included. The Groundwater Protection Response is R2-1. There are no surface water streams in proximity to the site and it

is noted that there is an absence of drains in the area. The site appears relatively level and well drained. Appendix E of the CoP 2021 notes the Groundwater Protection responses -Table E1 refers. This provides that in an R2-1 response a domestic wwts is acceptable subject to normal good practice, having particular regard to depth of subsoil over bedrock, where domestic water supplies are located nearby.

- 7.6.6. They propose to install a waste water treatment system (described as a KPC Bio-Filter) and raised polishing filter discharging to ground water. Having regard to the details submitted, I would consider that the site is suitable for the disposal of effluent. If the Board decides to permit, I would recommend, that appropriate conditions be included and that the new system to be installed comply with current standards.

7.7. **Appropriate Assessment**

- 7.7.1. 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**

- 8.1. I recommend that retention and permission be granted for the development as proposed subject to the conditions below.

9.0 **Reasons and Considerations**

Having regard to the poor condition of the applicants existing dwelling as documented, and its proposed change of use to a permanent farm storage building, and to the modifications proposed to the building proposed for retention and use as a dwellinghouse for the applicant in lieu of the existing farmhouse, it is considered that, subject to compliance with the conditions set out below, this proposal will provide a replacement house and would not seriously injure the residential or visual amenities of the area or the amenities of property in the vicinity, would be acceptable in terms

of traffic safety, would not be prejudicial to public health and would constitute an acceptable form of development at this location. As such the proposal would be in accordance with Section 7.8.5 (replacement dwellings) of the Kilkenny City and County Development Plan 2021-2027 and 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 received by An Bord Pleanála on the 5th day of January, 2022, 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 a) The replacement dwelling hereby permitted in the building proposed for retention is in lieu of the existing farmhouse.
- b) Within two months of the occupation of the dwelling hereby permitted, the use of the existing farmhouse shall be changed to a permanent farm storage building to be used solely for the storage of farm equipment and material and not for any commercial use and shall not be used for habitable purposes.

Reason: In the interests of clarity and orderly development.

- 3.a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter [unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant]. Prior to commencement of

development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

- b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

4. 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.

5. (a) The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice – Domestic Wastewater Treatment Systems (p.e. ≤ 10)" – Environmental Protection Agency, 2021.

(b) 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 in accordance with the standards set out in the Environmental Protection Agency document.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwelling house and thereafter shall be kept in place at all times. Signed

and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Prior to the occupation of the dwelling, the existing septic tank to be decommissioned shall be removed and the site reinstated.

Reason: In the interest of public health

6. The vehicular access arrangements from the public road, serving the proposed development, shall comply with the requirements of the planning authority for such works.

Reason: In the interests of amenity and traffic and pedestrian safety.

7. Prior to the occupation of the development, a detailed Landscape Plan for the site with full works specifications shall be submitted to, and agreed in writing with, the planning authority. This plan shall include detailed specifications relating to boundary treatment, planting and the removal of hard surfaces where necessary. The site shall be landscaped in accordance with the agreed scheme. All planting shall be carried out in the first planting season following the commencement of development and shall be permanently retained thereafter. Any tree which dies, decays or is removed within the first five years of being planted shall be replaced with a tree of similar species and size.

Reason: In the interest of visual amenity and to protect the rural character of the area.

8. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.

Reason: In the interests of orderly development and the visual amenities of the area.

9. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

10. 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

Angela Brereton
Planning Inspector

16th November 2022