



An
Bord
Pleanála

Inspector's Report ABP-315767-23

Development	Retention of use of agricultural shed, store and site as an animal shelter, and retention of wooden hoarding/ fence and vehicular access to cottage
Location	Oldtown, Athgarvan, Newbridge, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	22/91
Applicant(s)	Kildare and West Wicklow Society for the Prevention of Cruelty to Animals (KWWSPCA)
Type of Application	Retention permission
Planning Authority Decision	Refuse
Type of Appeal	First Party v Decision
Appellant(s)	Kildare and West Wicklow Society for the Prevention of Cruelty to Animals
Date of Site Inspection	14 May 2023
Observer(s)	Frances Conway
Inspector	L. Gough

1.0 Site Location and Description

- 1.1. The subject site is situated in a rural area on a stated 1.39Ha site, located on the Athgarvan -Twomilehouse, L2032 Oldtown road. It is c.2.1km to the east of Athgarvan, c.3.3km southwest of Two Mile House and approximately 450m to the east of the M9 Motorway. It is also 1.7km to the south of the M9 and M7 intersection and 4.2km to the southeast of Newbridge town.
- 1.2. The wider area is generally rural in nature with a large quarry to the south-east of the site and what appears to be a construction and demolition waste recovery facility (LA ref.13948), to north-west, with an access laneway onto the L2032 Oldtown road to the west of the appeal site and observers dwelling. There are also a number of residential dwellings along the road in the vicinity of the appeal site, with the observer's dwelling being located to the west of the shelter. The entire western boundary of the KWWSPCA site is bound by a thick growth of vegetation which screens the facility, with a laneway running along the outside length of same.
- 1.3. The entrance to the animal shelter is a wide, splayed dual entrance with a vehicle entrance to the KWWSPCA site and associated corrugated metal sheeting agricultural shed, store to the side of an existing cottage, and the other entrance serving the existing cottage. The entrance gates are +2m in height and are solid, with little opportunity to view into the site. Entrance to the site and shelter can only be gained by prior appointment. The maximum speed on this section of road is 80km/ph.
- 1.4. The agricultural shed is accessed via a double height doorway from the east which faces the gable of the house on the site. The shed contains a number of large kennels (formerly horse stables). These house the dogs indoors at night. The cottage functions as an administrative centre and also houses cats. The masonry store is used as a staff room/kitchen, storage area and w.c facilities. The area to the north of the shed has 12No fenced areas providing for larger outside dog runs and the dogs are walked in the fields to the immediate north of the shed and cottage.

2.0 Proposed Development

- Retention permission is sought for the continued use of the facility as an animal shelter,
- for wooden hoarding/ fence at the entrance to the premises along the Athgarvan – Twomilehouse county road and
- retention of vehicular access to cottage.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse planning permission for the development for the following stated reason:

Having consideration to the location of the vehicular entrance and the existing lines of sight on the L-2032 local road with a speed limit of 80 km/h, the traffic movements generated to and from the development represents an endangerment of public safety by reason of traffic hazard. The development is therefore contrary to proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The initial planning report considered the proposed development in terms of the planning history, submission made and compliance with the Kildare County Development Plan 2017-2023.
- The report notes that the Roads Department required further information in relation to sightlines, entrance details and surface water runoff.
- Following receipt (19 December 2022) of the response (which included drawings confirming the manner of surface water runoff/ disposal and surface finish to the entrance/ access [Dwg Ref. P1001]) to the FI request, the planning report notes the applicant's response, which highlighted that sightlines and entrance details are

as existing and granted by both Kildare County Council and by An Bord Pleanála under appeal references PL09.246754 (KCC Ref. 15/406) and PL09.304734 (KCC Ref. 18/1113).

- The report concluded that on foot of the response received from the Roads, Transportation and Public Safety Department, which states that the traffic movements generated to and from the development represent an endangerment of public safety by reason of traffic hazard, permission should be refused for retention of the development.

3.2.2. **Other Technical Reports**

The application was referred to:

- Water Services: No objection subject to compliance with condition.
- Area Engineer: No objection subject to compliance with conditions.
- Chief Fire Officer: No objection
- Environment Section: No objection subject to conditions.
- Environmental Health Officer: No objection.
- Roads, Transportation and Public Safety: Further information required in relation to sight lines of 160m, revised entrance detail with 3.5m setback, and details of surface water runoff collection and disposal.

3.2.3. **Prescribed Bodies**

- Irish Water: No objection subject to compliance with conditions.

3.2.4. **Third Party Submissions**

Frances Conway: Notes that she is the closest neighbour to the shelter and has been adversely affected since the shelter moved in 8 years ago. Objects to the planning application on the grounds of noise, traffic impact, road safety and residential amenity. Issues have been raised in previous objections, and matters have not improved but have gotten worse.

Marie Whelan: Ms Whelan notes that she is Ms Conway's daughter, and the issues raised are the same as outlined above by Ms Conway. The submission also notes that previous permissions were granted in order to provide KWWSPCA with

additional time to relocate and that the plywood sheeting erected as a noise barrier was never functional as noise mitigation and has disintegrated.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

ABP-304734-19 (PA Ref 18/1113): Planning permission granted for a period of 2 years on the 21st October 2019, following an appeal for retention of the same development as applied for and permitted (on appeal), under ABP Ref.

PL09.246754. The ABP Inspector's report considered it reasonable that the KWWSPCA be afforded the two years requested to facilitate the shelters move from the subject site but noted that in the event of any further applications, a full traffic assessment, to include traffic figures, should be required.

ABP Ref. PL09.246754 (PA ref 15/491): Planning permission granted for a period of 2 years on the 19th of September 2016, following an appeal to the Board for the retention of the same subject development.

The reason for the temporary permission was to allow a review of the effects on neighbouring residential amenity.

UD-6570: An Enforcement Notice was served on 20th April 2015 for the use of the site as an animal shelter, the construction of a wooden fence along the road, the material widening of a means of access and the erection of a mobile home.

5.0 Policy and Context

5.1. Development Plan

- The Kildare County Development Plan 2023-2029 is the relevant policy document relating to the subject site. The development is considered under policies relating to rural enterprise and Chapter 9 is considered relevant in this regard as it deals with 'Our Rural Economy'. The animal shelter is considered as a Rural Enterprise, notwithstanding the fact that it is a registered charity and the facility is run by volunteers.

- **Policy RE P13:** Support and facilitate sustainable agriculture, horticulture, forestry and other rural enterprises at suitable locations in the County.
- **Objective RD O1:** Encourage the development of appropriately scaled alternative rural based small-scale enterprises that are appropriate in rural areas. All planning applications for one off enterprises in rural areas shall have regard to the criteria listed in Table 9.1 of the Plan.
- **Objective RD O4:** Encourage and facilitate the sensitive re-use of vernacular houses or farm buildings for farm diversification, agri-tourism, and other appropriate rural-based development.
- Section 9.3 of the Plan notes that ‘One-off enterprises in the rural area may be situated in the open countryside only where the council is satisfied that there is a demonstrable need for the enterprise at the specific location in the first instance and where it complies with the criteria outlined in Table 9.1’.
- The criteria listed in Table 9.1 include the following:
 - The development will enhance the strength of the local rural economy
 - The proposed development shall be located on the site of a redundant farm building / yard or similar agricultural brownfield site
 - There is a social and economic benefit to being located in a rural area
 - The proposal will not adversely affect the character and appearance of the landscape
 - The development will not be detrimental to the amenity of nearby properties, and in particular the amenities of nearby residents
 - The existing or planned local road network and other essential infrastructure can accommodate extra demand generated by the proposal
 - The proposal should be accompanied by a mobility plan catering for employees’ home to work transportation
 - Adequate proposals to cater for any waste arising at the facility
 - All advertising should be kept to a minimum and be suitable in design and scale to serve the business

- Proper planning and sustainable development
- The proposals should conform to other objectives of the County Development Plan.
- Chapter 15 of the Development Plan deals with Development Management Standards and Section 15.7.5 deals with sightlines. It is noted that sightline requirements are determined by the Council on a case-by-case basis and factors including the type, speed limit and condition of the road are taken into consideration. Where sightlines are inadequate, and would give rise to a traffic hazard, development will not be permitted, and in cases where an access already exists with inadequate sightlines, it is Council policy to recommend the closing-up of this entrance prior to the use of an alternative access with adequate sightlines.

5.2. **Natural Heritage Designations**

The site is not located within any designated site. The closest Natura 2000 site is the Pollardstown Fen SAC (Site Code 000396) which is located approximately 7.8km to the north west of the site. Mouds Bog SAC (Site Code 002331) is located approximately 8.3km to the north west of the site.

Red Bog, Kildare SAC (Site Code 000397) is located 14km north east of the site and Poulaphouca Reservoir SPA (Site Code 004063) is located 14km east of the site.

5.3. **EIA Screening**

Having regard to nature and scale of the development, together with the brownfield nature of the site, 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

- This is a First party appeal against the decision of the Planning Authority to refuse planning permission for the proposed use to be retained. The appeal submission highlights the background to the subject retention application, specifically noting that in 2018 when lodging its application including seeking a two-year extension to the Board's initial consent (PL09.246754), KWWSPCA believed it would be possible to find an alternative site which could be used as a shelter. This has however not been possible, notwithstanding direct approaches to Kildare County Council, Bord Na Mona, Coillte, the farming community and other large landowners in the area.
- KWWSPCA now wish to remain at the present location, which is well-established, provides a vital service in Kildare and west Wicklow and is successful in its animal rescue work, which would otherwise be the responsibility of the respective local authorities.
- Kildare County Council has already considered the use is appropriate in the open countryside and that animal-related activities of this type can establish in rural areas, in line with adopted policy.
- Previous An Bord Pleanála decisions indicate the acceptability of the existing physical structures on the land from a visual perspective and that these features do not erode the rural amenities of the open countryside.
- The pivotal issue on which the subject appeal should be based is therefore on the sole reason by Kildare County Council for refusal on this particular occasion, ie road safety. Reference is made and extracts from previous application documentation (ref. 15/491; 18/1113; ABP 304734) are also provided in support of the appellant's position.
- The issue of public safety has twice been considered by An Bord Pleanála and on both occasions, the Board has concluded that local road conditions would not be adversely affected by this activity.

- The application site has been used as an animal sanctuary for nine years (since 2014), without any accidents, incidents or near-misses.

6.2. **Planning Authority Response**

The Planning Authority submitted a response to the first-party appeal, stating that they had no further comments to make, and requested the Board to refer to the Planner's Report which is considered to satisfactorily deal with the issues raised. Kildare County Council requested that An Bord Pleanála uphold the Planning Authority's decision to refuse the application.

6.3. **Observations**

There is one observation noted in relation to this appeal, submitted by Frances Conway. The observation reflects the objections to the development as submitted to Kildare County Council, and is summarised as follows:

- Planning history and non-compliance issues.
- Continued negative impact on residential amenity.
- Road safety and sightlines.

6.4. **Further Responses**

There are no further submissions.

7.0 **Assessment**

7.1. The site is located within a rural area subject to the policies and objectives of Kildare County Council Development Plan 2023 – 2029. Planning policy supports small scale rural enterprise subject to appropriate safeguards and standards.

7.2. My review of the planning application documentation, including all associated historical information, as well as my site visit, indicates and confirms that matters relating to the acceptability of the land use proposed to be retained and noise, have been previously considered and dealt with to the satisfaction of both Kildare County Council and An Bord Pleanála.

- 7.3. Notwithstanding, as regards the issue of noise, raised by the observer, I noted during my visit that the noise mitigation barrier on the western boundary, required as part of the previous grant of planning permission, and confirmed to be acceptable by the EHO subsequent to its implementation and an updated noise survey, remains in situ on the premises and has obviously also now been supplemented by the additional thick vegetation growth to the rear of the outside dog runs.
- 7.4. With regard to the issue raised by the observer and Kildare County Council in their reason for refusal of the application of traffic safety and sightlines, I observed that there are generally good sightlines to the left and that the issue to the right arises from a field hedge which has been allowed to grow too high. Whilst ownership of the hedge is unclear, it is noted that Kildare County Council can require the hedge to be trimmed or removed as a public safety concern, as laid out in Section 70 of the Roads Act 1993. In this regard, the owner/ occupier of land is obliged to take all reasonable steps to ensure that trees or vegetation is not a hazard, or potential hazard, to persons using a public road.
- 7.5. The matter of sightlines was the subject of a request for Further Information following the planning report of the Local Authority's Transportation Department. In this regard, it is highlighted that this was the same situation with regard to the previous application (ABP Ref. PL09.304734), and that at that time, the Transportation Department accepted the response from KWWSPCA and noted no objection, subject to conditions including requiring the applicant to submit detailed drawings of the revised proposal to the site entrance.
- 7.6. The KWWSPCA is located in a rural area, wherein the planning history of the site attests to and supports the fact that it has a history of animals being present on the site, both in terms of it having comprised a working/ agricultural farm and riding stables, and that the current operation is centred around the welfare of animals.
- 7.7. I note the rural location and on the date of site visit I noted that given the nature and alignment of the roadway, traffic speeds were low, as was the volume of traffic. I also noted that visitors to the shelter are by prior appointment only. Consequently, I would not consider that the facility gives rise to significant volumes of traffic and while I agree that the sightlines are somewhat restricted to the right on exit, it did not prove problematic or unsafe, in my opinion. Given the scale and nature of the

development, the proposal will not give rise to significant traffic generation and the proposal will not in my view give rise to traffic hazard. In this regard, I would consider that the requirement of the planning inspector on the previous application (ie. ABP Ref. PL09.304734), for a full traffic assessment, is unwarranted in this instance, as the proposed use to be retained is not of a size or type that would generate significant additional trips on the adjoining transport infrastructure, nor generate additional demand which might necessitate changes to the road layout. Such consideration is especially pertinent in consideration of the context of the history of the site as a farm and riding stables, where members of the public visited the site for riding lessons on a daily basis, prior to its occupation by KWWSPCA.

7.8. On balance, it is my view that a pragmatic approach must be taken having regard to the rural nature of the area, the appropriateness and acceptability of the use within a rural context and area, traffic speeds on the adjoining road network which are of necessity lower than 80kph due to the existing alignment of the road and the volume of traffic currently accommodated on the network. Sight distances can be improved in a westerly direction with the cutting back of hedgerows and this issue can be addressed by Kildare County Council through application of the provisions of Section 70 of the Roads Act 1993. I therefore do not consider it appropriate to refuse planning permission on traffic or access grounds.

7.9. While I acknowledge the third-party concerns, and those of the Planning Authority, I do not consider that there has been a significant reduction in the available sight distances at the entrance which the PA considered acceptable under the initial planning application (ABP Ref. PL09.246754).

8.0 Recommendation

8.1. I recommend that planning permission be granted for the proposed development for the following stated reason and subject to the following stated conditions.

9.0 Reasons and Considerations

Having regard to the rural location, the pattern of permitted development in the area, the planning history of the site, and to the provisions of the Kildare County Development Plan 2023-2029, and to the nature and scale of the proposed

development for which retention is sought, it is considered that, subject to compliance with the conditions set out below, the proposed development for which retention is sought would not give rise to traffic hazard, would not seriously injure the residential or visual amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be retained, carried out and completed in accordance with the plans and particulars lodged with the application, submitted on the 31st day of January 2022 and further information received on 19th day of December 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 within six months from the date of this order and the development shall be retained, carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Water supply and drainage arrangements, including the disposal of uncontaminated surface water and solid waste, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health and to ensure a proper standard of development.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

L. Gough
Planning Inspector

8th October 2023