



An
Bord
Pleanála

Inspector's Report

ABP-317333-23

Development

For demolition of existing dilapidated dwelling, decommissioning of existing septic tank and construction of a new two storey replacement dwelling accessed via an existing site entrance, a new wastewater treatment system plus all associated site works.

Location

Bradley house, Coolcullen, Co
Kilkenny

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

22684

Applicant(s)

Alison Watchorn & Brendan Brennan

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

Alison Watchorn & Brendan Brennan

Observer(s)

None

Date of Site Inspection

17th September 2023

Inspector

Mary Crowley

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1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.82ha is located in a rural area of Kilkenny c 2km to the east of Coon Village. The site is located on the southern side of the adjoining public road. There is a an uninhabited two storey farmhouse, in need of significant repair and associated farm budlings on the site together with a mobile home. The applicant submits that the mobile home will be removed once the development is permitted. The area is characterised as rural, agricultural with dispersed housing. A set of photographs of the site and its environs taken during the course of my site inspection is attached. These serve to describe the site and location in further detail.

2.0 Proposed Development

2.1. Planning permission is sought for the demolition of existing dilapidated dwelling, decommissioning of existing septic tank and construction of a new two-storey replacement dwelling accessed via an existing site entrance, a new wastewater treatment system plus all associated site works. The development will be served by a private well.

2.2. The application was accompanied by the following:

- Cover letter setting out the rational for demolition and replacement dwelling.
- Site Suitability Report

2.3. Further information was submitted on the 9th May 2023 comprising the following:

- The existing building is not a protected structure and is not on the NIAH register. The design proposals are in accordance with Section 7.8.5 of the Development Plan. The development represents an appropriate size and scale of a replacement dwelling, which reflects the sites characteristics and context and also accords with best practise in rural house design.
- If the building were to be retained, the vast majority of the budling fabric would need to be replaced and the minimum scope of works to be required would be as follows:

- 1) Replacement ground floor slab with an insulated slab containing adequate damp proofing and radon barrier.
 - 2) Tanking to ground floor - wall junction, which at present contains no DPC.
 - 3) External insulation of existing building envelope. Replacement of existing roof structure and associated soffit, fascia and rainwater goods.
 - 4) Introduction of adequate insulation and ventilation systems.
 - 5) Replacement of all external windows and doors.
 - 6) Replacement heating solution.
 - 7) Replacement Electrical package
- Technical Due Diligence survey and updated site layout plan

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Kilkenny County Council issued a notification of decision to refuse permission for a single reason as follows:

1. *The policies set out in the Kilkenny City and County Development Plan 2021-2027 relating to Vernacular Built Heritage, Embodied Energy and Refurbishment and Replacement Dwellings in Rural Areas, emphasise the retention, refurbishment and reuse of such structures as part of the development proposal to preserve built heritage and embodied energy. Notwithstanding the submitted reports and the rationale to replace this traditional vernacular dwelling, the applicant has failed to demonstrate that the retention or reuse of the existing dwelling is not technically feasible or will be advantageous from a whole life energy costs perspective. The Planning Authority considers that the building to be demolished has held its architectural merit in the local landscape and could be technically retained with the right construction methods. It is considered its demolition represents an excessive response which will lead to an unacceptable loss of vernacular architectural heritage and therefore does not comply with the policy guidance in this respect. As such, the development as proposed would be contrary to the Council's policy*

of protecting architectural heritage and embodied energy and would be contrary to the proper planning and sustainable development of this area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** in their first report requested the submission of (1) revised proposals demonstrating compliance with Development Plan policy relation to “Refurbishment and Replacement Dwellings in Rural Areas”, “Embodied Energy” and “Vernacular Built Heritage” and (2) revised wastewater treatment system and percolation area. Further information was requested on the 13th December 2022.
- Following the consideration of the further information submitted on the 9th May 2023 the **Case Planner** recommended that permission be refused for a single reason. The notification of decision to refuse permission issued by Kilkenny City & County Council reflects this recommendation.

3.2.2. Other Technical Reports

- **Architectural Conservation Officer** – In their first report the applicant was requested to submit revised proposals and reuse of the dwelling. It was stated that this may include a proposal for an appropriate extension which will complement the original dwelling rather than compete with it. Having considered the further information submitted it was recommended that permission be refused.
- **Environment** – In their first report noted that the removal of existing trees and roots could lead to preferential flow paths underneath the proposed percolation and also raised concerns about the main sewer line from the dwelling crossing the public road that may block in the future. Further information was sought in relation to the submission of a new site characterisation form, site sections and the location of any wells on adjacent sites. No objection following receipt of further information.
- **Area Engineer** – No objection subject to conditions relating to traffic safety and surface water.

3.3. Prescribed Bodies

3.3.1. None

3.4. Third Party Observations

3.4.1. None

4.0 Planning History

4.1. There is no evidence of any previous appeal on this site. The following site history has been provided with the appeal file and pertaining to lands immediately adjoining the appeal site to the east. No planning history pertaining to the mobile home on site has been made available with the appeal file.

Reg Ref 06/89 – Kilkenny County Council granted permission for the construction of a two storey, three-bedroom dwelling, stables, well, proprietary effluent treatment system / septic tank, site entrance and associated site works subject to 10 no generally standard conditions.

5.0 Policy Context

5.1. Development Plan

5.1.1. The operative plan for the area is the **Kilkenny City & County Development Plan 2021 – 2027**. The appeal site is location within an area designated as an **Area Under Urban Influence** i.e. within commuter catchment of cities and large towns and centres of employment and elsewhere. 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. In areas under urban influence the Council will permit (subject to other planning criteria) single houses for persons where the following stipulations are met:

Persons with a demonstrable economic need to live in the particular local rural area, being people who are for example:

- a) *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.

Persons with a demonstrable social need to live a particular local rural area

- a) *Persons born within the local rural area, or who have lived a substantial period of their lives in the local rural area (minimum 5 years), who have never owned a rural house and who wish to build their first home close to the original family home. Persons born in the area without having lived for the minimum of 5 years must be able to demonstrate strong family and social connections to the area to demonstrate a demonstrable social need.*
- b) *Returning emigrants who do not own a house in the local area and wishes to build their first permanent home for their own use in a local rural area in which they lived for a substantial period of their lives (5 years), then moved away or abroad and who now wish to return to reside near other family members.*

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.

The Planning Authority shall have regard to the viability of smaller towns and rural settlements in the implementation of the policy.

Occupancy Condition

All permission granted for rural housing within the Areas of Urban Influence shall be subject to an occupancy condition restricting the use of the dwelling to the applicant or members of his/her immediate family as a place of permanent residence for a period of seven years from the date of first occupancy.

Sterilisation Agreements

In areas where significant levels of rural housing development have taken place on the edges of urban areas within the county and where the Council considers such areas are becoming over developed the council may seek agreement under Section 47 of the Planning Act (sterilisation agreement) if it considers it necessary to regulate development in the area.

Section 7.8.5 Refurbishment and Replacement Dwellings in rural areas

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

Development Management Requirements:

- *For refurbishment of structures the emphasis should be on the retention, refurbishment and reuse of the structure as part of the development proposal.*
- *For refurbishment the scale and architectural treatment of proposed works should be sympathetic to the character of the original structure and the surrounding area including adjoining or nearby development.*
- *In the case of replacement dwellings, to require proof that the original structure was last used as a dwelling and was a habitable dwelling so as not to invoke the policies under Section 7.8.3 Rural Housing Policies.*
- *In cases where retention or reuse of the existing dwelling is not technically feasible, the size and scale of any replacement dwelling should reflect the site's characteristics and context and shall accord with best practice in rural house design.*

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).

Section 9.3.6 The Vernacular Built Heritage

The vernacular built heritage consists of buildings and settlements historically created by local people from local materials and resources to meet local needs following local traditions. The response to the local environment gave rise to construction techniques which vary from region to region, often with great subtlety. This type of building is often undervalued because it does not represent 'great architecture' and because of associations with poverty and a perception that the buildings have become obsolete.

The value of these buildings lies in the regional distinctiveness and identity that they confer on a place and their importance as an embodiment of the accumulated wisdom and cultural traditions of the people who built and lived in them. Vernacular styles of architecture and their importance in modern buildings in the countryside is discussed and illustrated in the publication County Kilkenny Rural Design Guide.

The Council will apply the conservation principles and guidelines in practice as set out in the ICOMOS Charter on the Built Vernacular Heritage (Mexico 1999) when considering proposals to adapt vernacular buildings to meet contemporary living standards and needs.

The Council will promote the retention and re-use of the vernacular built heritage through increasing public awareness of its potential for re-use and its adaptability to change.

Development Management Requirements:

- *To apply the conservation principles and guidelines in practice as set out in the ICOMOS Charter on the Built Vernacular Heritage (Mexico 1999) when considering proposals to adapt vernacular buildings to meet contemporary living standards and needs.*
- *To promote the retention and re-use of the vernacular built heritage through increasing public awareness of its potential for re-use and its adaptability to change. See Re-use of Farm Buildings Laura Bowen and Nicki Matthews, Kildare County Council, 2007 and National Rural Network Case Study, Conservation of Old Farm Buildings.*
- *To promote the refurbishment of vernacular built heritage in rural areas as per development managements standards set out under Section 7.8 Rural Settlement Strategy of this Plan.*

Section 9.3.8 Embodied Energy

A large portion of Kilkenny's buildings were constructed using traditional materials and building techniques. While the use of cement became more common from the early 20th century onwards, dwellings prior to that consisted of stone, brick, lime mortar, with timber sash windows and a slate or thatched roof.

These traditional materials allow the necessary permeability required for these traditionally constructed buildings, while also being the sources of stored carbon. The phrase “the greenest building, is the one that is already built” acknowledges the embodied energy and carbon within these buildings. Embodied energy is the energy required for the construction of a structure, from extraction of the raw materials, manufacturing processes, transport, machinery involved in the construction right through to completion of the building. The demolition of buildings for new development results in enormous loss of embodied energy, while simultaneously creating more waste in landfills and the need for new materials which produce vast amounts of carbon.

Kilkenny County Council are committed to a sustainable development building approach and will assess the potential for reuse and refurbishment of current building stock as an alternative to demolition of existing buildings.

The Council recognises the embodied energy within our traditionally constructed building stock while assessing proposals for demolition or development and will ensure that refurbishment works to traditionally constructed buildings will not be detrimental to the occupants or to the fabric of the building.

Development Management Requirements:

- *To have regard to the DCHG Advice Series on Energy when assessing energy upgrades of traditionally constructed buildings.*
- *To assess the whole life energy costs, its lifespan and durability of new building stock, as part of proposals to demolish traditionally constructed structures in favour of new development.*
- *To ensure refurbishment work on these buildings is undertaken in an appropriate manner using suitable materials.*

5.2. Other Guidance

- 5.2.1. **Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)"** – Environmental Protection Agency, 2009 – Sets out guidance

on the design, operation and maintenance of on site wastewater treatment systems for single houses.

5.3. Natural Heritage Designations

5.3.1. The site is not located within any Natura 2000 designated site.

5.4. EIA Screening

5.4.1. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The first party appeal has been prepared and submitted by Peter Thompson Planning Solutions and may be summarised as follows:

- It is evident that the decision to refuse permission is based entirely on the recommendation of the conservation officer. There is no assessment of the further information response by the planner under the heading "Assessment" and no recommendation by the planner.
- If the planning authority was entirely opposed to the replacement of the dwelling, it should have refused permission and not sought further information. By requesting further information under Article 33 and by noting in the request that the applicant's agent had, in the opinion of the planning authority, failed to demonstrate in the original application submission that retention and refurbishment of the dwelling house were not technically feasible, it was inviting further evidence and qualified technical input and justification in respect of the proposed demolition of the existing dwelling. Moreover, it was implicit in the further information request that, if provided, it would likely lead to a grant of permission.

- The detailed report prepared by Peter Bolger, Chartered Building Engineer and Registered Building Surveyor gives a detailed account of the structural condition of the existing derelict dwelling, the limitations, and, in many situations, structurally unviable potential, of the reuse and refurbishment of structural elements. The report concludes overall that the structural condition of the fabric envelope of the house is not robust nor sound enough to enable it to be upgraded as it stands.
- The report also addresses what the implications would have been for refurbishment had the envelope, or part of the envelope of the building, lent itself to reuse. This would have involved raising the ground floor level and ceiling heights, thereby rendering the upper floor unviable without raising wall heights, creating new window and door openings, and adding a new roof, all of which would materially alter the existing scale, design and character of the structure.
- The suggestion that the engagement of a conservation engineer for such a project would be an acceptable alternative approach to engaging a structural engineer and would potentially lead to a different recommendation other than replacement, is without foundation. The planning authority could have engaged a structural engineer or conservation engineer to review the project engineer's report but did not. It relied upon the conservation officer's expertise, which is not known to extend to structural or conservation engineering.
- A review of the permitted applications 22/444, 22/578, and 22/499 shows that the conservation officer recommended refusal of them all, no structural engineer reports were submitted or requested, and examination of the application plans and particulars demonstrates all of the buildings involved were structurally sound and readily viable for retention and refurbishment.
- The Ministerial Guidelines for Planning Authorities - Development Management 2007 in Section 6.7 deals with "Measures to improve consistency". It is stated, "Consistency is also facilitated when the planner's report is countersigned in certain circumstances by a more senior planner, such as a team leader or area planner, who is in a position to ensure that, as far as possible, similar cases are assessed using similar criteria".
- Consistency in decision-making would have drawn a clear distinction between the subject proposal and those developments permitted under planning permission

refs: 22/444, 22/578, and 22/499 and drawn a similarity with permission ref: 22/16 which was also supported by a structural engineer's report in support of the proposed replacement dwelling.

- While the examples of refurbishment scheme grants available provided by the conservation officer in the planner's report are noted, they are only relevant where the existing building can be refurbished. They would not be relevant to the proposed development as the refurbishment of the property is not technically feasible for the reasons outlined in the structural engineer's report.
- The applicants' design team comprises RIBA architects with experience in building conservation and rural house design and consulting engineers qualified to address structural, building control, and fire safety matters. The entire assessment of the application in respect of the proposals for the building was that of the planning authority conservation officer. There was no input from any of the other professions recommended by the Department in its publication.
- The project engineer's report explored the potential for rehabilitation of the building and, after detailed survey analysis and justification, ruled out reuse and rehabilitation. There was no critical assessment of the report by the planning authority, which did not have the appropriate expertise to hand to make such an assessment.
- In the planner's report, it is stated, "The proposed two-storey replacement dwelling is located roughly in the same footprint and orientation and is similar proportions which are acceptable in principle". Therefore, there is no objection to the proposed dwelling or any other aspect of the proposed development, save for the issue of replacement over reuse and refurbishment, which this appeal advocate is not technically feasible.

6.2. Planning Authority Response

- 6.2.1. Submitted that every application is considered on its own merits. Historic buildings, subject to proper structural and design measures can be rehabilitated; this was not adequately demonstrated to the contrary by the applicant to the satisfaction of the Planning Authority.

6.3. **Observations**

6.3.1. None

6.4. **Further Responses**

6.4.1. None

7.0 **Assessment**

7.1. Planning permission was sought from Kilkenny City & County Council on the 20th October 2022 for the demolition of existing dilapidated dwelling (173.89 sqm), decommissioning of existing septic tank and construction of a new two-storey replacement dwelling (210sqm) accessed via an existing site entrance, a new wastewater treatment system plus all associated site works. The development is to be served by a private well. Further information was received on the 9th May 2023. Accordingly, this assessment is based on the plans and particular submitted on the 20th October 2022 as amended by further information submitted on the 9th May 2023 together with the appeal and associated submissions.

7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings.

- Principle
- Retention or Reuse of the Existing Dwelling
- Appropriate Assessment
- Other Issues

7.3. **Principle**

7.3.1. Planning permission is sought for the demolition of existing dilapidated dwelling, decommissioning of existing septic tank and construction of a new two-storey replacement dwelling accessed via an existing site entrance, a new wastewater

treatment system plus all associated site works. The development will be served by a private well.

7.3.2. I refer to the Kilkenny City & County Development Plan 2021 – 2027. The appeal site is location within an area designated as an Area Under Urban Influence i.e., within commuter catchment of cities and large towns and centres of employment and elsewhere. In these areas the Council will permit (subject to other planning criteria) single houses for persons with a demonstrable economic need to live in the particular local rural area or persons with a demonstrable social need to live a particular local rural area. I refer to Section 5.1 Development Plan for further details in this regard. Generally, this would be the starting point in the consideration of a rural dwelling at this location. However, having regard to the structure on site and the applicants proposal to demolish the existing *dilapidated dwelling* on site I refer the Board to Section 7.8.5 Refurbishment and Replacement Dwellings in Rural Areas of the Development Plan where *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.* The Development Management Requirements for the consideration of schemes under this Section states that *in the case of replacement dwellings,* policies under Section 7.8.3 Rural Housing Policies shall not be invoked subject to proof that the *original structure was last used as a dwelling and was a habitable dwelling.*

7.3.3. Accordingly, the principle of the scheme cannot be determined without further detailed consideration of the proposed demolition of the existing *dilapidated dwelling* in the first instance.

7.4. Retention or Reuse of the Existing Dwelling

7.4.1. Kilkenny County Council issued a notification of decision to refuse planning permission as the building to be demolished has held its architectural merit in the local landscape and could be technically retained with the right construction methods and that its demolition represents an excessive response which will lead to an unacceptable loss of vernacular architectural heritage and therefore does not comply with the policy guidance in this respect.

- 7.4.2. The building to be demolished is a three bay two storey house, orientated north south, with projecting one bay, single storey porch to the front and later one bay two storey flat roof extension to the rear. There is also an early but later than original, two bay, two storey extension off the northern gable of the early house. According to the applicant the farmhouse is over 180 years old (historical maps refer).
- 7.4.3. I refer to the policies set out in the Kilkenny City and County Development Plan 2021-2027 relating to Vernacular Built Heritage, Embodied Energy and Refurbishment and Replacement Dwellings in Rural Areas set out in Section 5.1 above, that emphasise the retention, refurbishment and reuse of such structures as part of any development proposal to preserve built heritage and embodied energy. Having regard to the policies and objectives the questions to be considered is whether or not the building to be demolished and replaced was last used as a dwelling and was a habitable dwelling, whether it is technically feasible to retain and reuse the existing building and whether the size and scale of the replacement dwelling reflects the sites characteristics and context.
- 7.4.4. On the issue of whether or not the building to be demolished and replaced was last used as a dwelling and was a habitable dwelling has not been addressed in the appeal file. However having regard to my site inspection it would appear that in all likelihood it was last used as a habitable dwelling and therefore it is reasonable to accept that the applicant has satisfied this criterion.
- 7.4.5. In my view the difficulty in this case arises as to whether or not it is technically feasible to retain and reuse the dwelling. I have considered the reports on file and there are compelling arguments both technically and otherwise on both sides. As documented, this is not a protected structure and is not on the NIAH register. The absence of a formal protected designation does not detract from the importance of such buildings as it has significant local importance and is part of the vernacular architecture of Kilkenny. I note the problems set out by the applicant in retaining and refurbishing the proposed dwelling to bring it up to modern day standards. However, I also share the Conservation Officers position that the importance of buildings such as this is only acknowledged in the aftermath of their demolition. There is a delicate balance in accessing proposals such as this. However, in this case I remain unconvinced that the retention and refurbishment of the existing dwelling is not technically feasible. Refusal is recommended.

7.4.6. The final criterion for assessment of schemes such as this is whether the size and scale of the replacement dwelling reflects the sites characteristics and context. No plans and particulars have been made available with the appeal file. To this end I have had regard to the information available on the Kilkenny County Council Planning website. The proposed replacement dwelling in terms of elevational treatment is unsympathetic in its detail to the building it is proposed to replace. Any replacement building at this location requires to be fastidious in its attention to style, detail and proportions and above all its front elevation should be respectful to the building it is replacing. It is my view that further refinement is necessary in this regard. Given the substantive issue with regard to demolition of the building on site it is not proposed to include this matter as a reason for refusal.

NOTE: The Board may wish to seek copies of the plans and particulars pertaining to the proposed elevational treatment of the proposed replacement house prior to making it decision.

7.5. **Appropriate Assessment**

7.5.1. Having regard to the nature and scale of the development and its distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.6. **Other Issues**

7.6.1. **Development Contribution** - I refer to the Kilkenny City & County Council Development Contribution Scheme. The proposed development is not exempt. It is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

8.0 **Recommendation**

8.1. I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, together with all other issues arising, I

recommended that permission be **REFUSED** for the following reasons and considerations.

9.0 Reasons and Considerations

- 1) The policies set out in the Kilkenny City and County Development Plan 2021-2027 relating to Vernacular Built Heritage, Embodied Energy and Refurbishment and Replacement Dwellings in Rural Areas, emphasise the retention, refurbishment and reuse of traditional vernacular dwellings as part of the development proposal to preserve built heritage and embodied energy. The Board is not satisfied that the retention or reuse of the existing dwelling is not technically feasible and that its demolition will lead to an unacceptable loss of vernacular architectural heritage and therefore does not comply with the policy guidance in this respect. As such, to permit the proposed demolition of this dwelling would be contrary to the Council's policy of protecting architectural heritage and would be contrary to the proper planning and sustainable development of this area.

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.

Mary Crowley

Senior Planning Inspector

17th September 2023