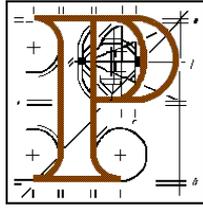


An Bord Pleanála



Inspector's Report

Development: Permission for single storey cottage style dwelling, effluent treatment plant, upgraded dual access site entrance, extensive screen planting and all associated site works.

Location: Roseberry, Newbridge, County Kildare

Planning Application

Planning Authority: Kildare County Council
Planning Authority Reg. Ref.: 14/580
Applicant: Aoife Geraghty
Type of Application: Permission
Planning Authority Decision: Refuse permission

Planning Appeal

Appellant: Aoife Geraghty
Type of Appeal: 1st party against refusal of permission
Date of Site Inspection: 26th November 2014

Inspector: **Joanna Kelly**

Appendices: Site Location plan
Site Key Plan and Photographs

1.0 THE SITE

The site is located approx. 400m north-west of the outskirts of the settlement centre of Newbridge in the townland of Roseberry. The site has a stated site area of 0.5 hectares and is rectangular in shape. The site is part of a larger field on which the family home is also located. The location of the proposed dwelling is to the rear of the existing field with an independent access from the local road between two dwellings. There is currently an agricultural access at this location.

The area whilst rural in character has a large concentration of one-off housing. Pursuant to site inspection, the lands north of the site were noted as being boggy, although the site itself was firm underfoot at time of inspection. The site is relatively flat although there is a depression in the field towards the rear. There is an existing hedgerow to the rear and side boundary. There is a timber fence to the eastern boundary.

The local road from which the site is accessed is narrow and in the main does not permit the simultaneous passing of two vehicles without one having to pull in. There are also signs along the road warning drivers of the drop in levels either side of the road. The proposed access is in close proximity to a bend in the road where a crash barrier is present and it was noted that there was a memorial present at this section of the road.

2.0 THE PROPOSED DEVELOPMENT

It is proposed to construct what the public notices describe a cottage style dwelling to the rear of an existing family home. Access is proposed via an existing agricultural entrance between two dwellings.

The proposed house a single storey dwelling has a floor area of 283sq.m. It is proposed to install a proprietary waste water treatment plant and to connect to public mains.

3.0 THE PLANNING AUTHORITY'S DECISION

Kildare County Council refused permission for the proposed development for two reasons as follows:

1. Having regard to the location of the dwelling to the rear of an existing dwelling, the development as proposed materially contravenes Policy RH14 of the County Development Plan 2011-2017. The proposed

development by reason of its backland location would, if permitted, impact on the residential amenity of existing dwellings and adjoining properties, would depreciate the value of the adjoining properties and set an undesirable precedent for future development in the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. Policy RH11 of the current Kildare County Development Plan, 2011-2017 states that piecemeal and haphazard development of rural areas close to large urban centres can cause difficulties as these centres grow and that it is the policy of the Planning Authority to strictly control such development. Policy RH5 states that it is the policy of the Planning Authority to have regard to the capacity of an area to accommodate further development including the degree to which it has already been subjected to haphazard or piecemeal development. The proposed development when taken in conjunction with existing housing in the area would give rise to an excessive density of housing served by septic tank drainage systems in this un-serviced rural area lacking in footpaths/public lighting, outside lands zoned for residential development, which would detract from the character of the area, lead to demands for the uneconomic provision of services and facilities and would therefore materially contravene policies RH5 and RH 11 of the Kildare County Development plan 2011-2017 and the Sustainable Rural Housing Guidelines issued by the Department of the Environment, Heritage and Local Government in April 2005. The proposed development would, therefore be contrary to the proper planning and sustainable development of the area.

4.0 TECHNICAL REPORTS

4.1 Planning report

The planning report refers to previous site history on the appeal site and also the relevant site history. The report sets out that in general terms the design of the dwelling proposed is suitable for the subject application site. The report sets out that the area has experienced significant development pressures over a 10 period from 1999 to 2009 in particular. It was considered notwithstanding the previous grant of permission on the site that the development capacity of the area has been exceeded and that the dwelling on its own and the precedent it would set would result in the further overdevelopment of the area. The report recommended that the proposed development be refused for two reasons for refusal cited in Section 3.0 of this report.

4.2 Water Services

Conditions recommended

4.3 Chief Fire Officer
No objection to the planning application

4.4 Irish Water
No objection subject to condition

5.0 RELEVANT PLANNING HISTORY OF THE LANDHOLDING

File ref. No. 07/1812 Permission granted to applicant for dormer dwelling house with associated bio-treatment system and percolation area and all associated ancillary site works on site.

File Ref. No. 12/1004 Permission refused to applicant for extension of duration as the proposal did not comply with Section 42 (1) (a) (ii) of the Planning and Development Act 2000 as substituted by Section 28 of the Planning and Development Act 2010. It was set out that the development no longer was consistent with the proper planning and sustainable development of the area as (i) the effluent treatment aspect of the development permitted under 07/1812 does not comply with the Code of Practice in this regard (ii) the dwelling proposed is two storey and is contrary to Policy RH14 and Objective RO2 and (iii) in the absence of information to assess and determine the potential impact of the proposed development on the SAC (Mouds Bog) it is considered that it would conflict with the policies and objectives to protect such areas as set out in the County Development Plan.

File Ref. No. 13/0658 Applicant was refused permission for a single storey and storey and a half cottage style dwelling, effluent treatment plant, upgraded dual access site entrance, extensive screen planting and all associated site development works on the appeal site. Reasons for refusal included (i) the proposal would materially contravene Policy RH14 of the County Development Plan 2011-2017 and would depreciate the value of the adjoining properties and set an undesirable precedent for future development (ii) materially contravenes policy RH 14 of the development plan which only allows single storey houses in backland locations and (iii) the proposal would give rise to an excessive density of housing served by septic tank drainage systems in this un-serviced rural area .. and would be contrary to policy RH11 and RH 12 of the county development plan and the SRHGs and (iv) it has not been properly demonstrated that the proposal would comply with the requirements of the EPA Code of Practice.

I also note that there was a previous application on the landholding to the rear of the family home File Ref. No. 06/0449 in the name of Eoghan, Aoife, and Eanna Geraghty for a development consisting of 3 no. bungalows. This application was refused.

Prior to this there were previous refusals on the landholding File Ref. No. 05/2308, File Ref. 05/23096 and File Ref. No. 01/2310 to Aoife, Eanna and Eoghan Geraghty respectively on the landholding in question.

6.0 PLANNING POLICY

6.1 Sustainable Rural Housing Guidelines for Planning Authorities

These guidelines follow on from and elaborate on the guidance in the National Spatial Strategy.

The guidelines set out overarching policy objectives for planning authorities as follows: -

- The importance of supporting development needed to sustain and renew established rural communities.
- The need to ensure that the planning system guides development to the right locations in rural areas, in the interest of protecting natural and manmade assets in those areas.
- The need to analyse the different types of economic, social and physical circumstances of different types of rural areas and to tailor planning policies to respond to these differing local circumstances.

The guidelines repeat the need for planning authorities to identify and distinguish the four types of rural area categorised in the National Spatial Strategy namely, rural areas under strong urban influence, stronger rural areas, structurally weaker rural areas and areas with clustered settlement patterns. They continue to divide rural housing into that which is urban-generated and that, which is rural-generated. They advise that in defining persons with rural-generated housing needs, development plans should not be over-prescriptive, citing the example of over-restricting the definition to persons engaged in full-time agriculture.

Map 1 of the guidelines is developed from a map in the National Spatial Strategy and gives an indicative outline of rural area types. However, Section 3.2 of the guidelines cautions that it is to be expected that all planning authority areas which are predominantly rural will contain, to varying extents, at least three of the rural area types defined in the National Spatial Strategy, namely: -

1. areas under strong urban influence,
2. areas with a traditionally strong agricultural base,
3. structurally weak areas.

On Map 1 of the guidelines, the appeal site would be located in an area under strong urban influence. Appendix 3 of the guidelines sets out recommended development plan objectives and issues for rural areas. In relation to areas under strong urban influence, in the area of the development plan, policies should normally include reference to the types of situations considered as constituting rural generated housing, the measures that would be put in place to facilitate the availability of an appropriate level of housing options in smaller settlements, the criteria that would be applied by the planning authority generally in assessing rural generated housing proposals and the measures to be adopted to ensure that development permitted to meet the requirements of those with links to the rural community continued to meet the requirements for which it was permitted.

6.2 Regional Planning Guidelines for the Greater Dublin Area 2010 – 2022

The Regional Planning Guidelines is a policy document which aims to direct the future growth of the Greater Dublin Area (the area covered by Dublin City Council and the county councils of Dun Laoghaire-Rathdown, Fingal, South Dublin, Kildare, Meath and Wicklow) over the medium to long term. It works to implement the strategic planning framework set out in the National Spatial Strategy.

Chapter 5 of the guidelines is on rural development. Section 5.2 is on rural housing. It notes that, as would be expected from the spatial distribution and settlement hierarchy of the Greater Dublin Area, the mid-east region counties of Kildare, Wicklow and Meath have the highest number of one-off houses in rural areas proportionate to overall housing in each of the counties accounting for just over 21% in counties Kildare and Wicklow and just over 34% in Meath. It advises

that in addition to the four broad rural settlement and housing framework objectives set out in the National Spatial Strategy, local authority policies need to take account of the different types of rural housing demands in varying rural contexts and be tailored accordingly. This requires different responses to managing housing in (a) rural areas under strong urban influence, (b) rural areas in strong rural areas, and (c) rural areas which are structurally weak and/or dispersed settlement areas. In general, urban generated rural housing need should be directed to existing settlements, built-up areas or identified lands (such as zoned lands), through a plan-led process. Where local needs assessment criteria have been satisfied, and subject to satisfying good practices or stated requirements in relation to site location, landscape/environmental sensitivities, design and layout, access, drainage and impacts on soils, watertable and water quality, rural generated housing needs should be accommodated where they arise. It is considered necessary that local needs assessment criteria should be provided in order to manage the demands for housing in rural locations (particularly in those areas under increasing development pressure) and that such criteria should be included in relevant development plans.

6.3 Kildare County Development Plan 2011-2017

The site lies within the functional area of Kildare County Council and as such the Kildare County Development Plan, 2011 – 2017 is the statutory plan for this area.

Chapter 4 of Volume I of the development plan relates to housing. Sections 4.11, 4.12 and 4.13 refer to rural housing provision, rural housing policies and rural housing objectives, respectively. The appeal site is located in Rural Housing Policy Zone 1, as shown on Map 4.1, i.e. a more populated area with higher levels of environmental sensitivity and significant development pressure.

Chapter 16 of Volume I of the development plan is entitled “Rural Design Guidelines”. It includes several sets of key principles including site selection, site layout, and design principles.

There are a number of policies that are of direct relevance to this application

RH 5: To ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations including the following:

- The location and design of a new dwelling shall take account of and integrate appropriately with its physical surroundings and the natural and cultural heritage of the area. Development shall have regard to Chapter 16, Rural Design Guidelines.
- The protection of features that contribute to local attractiveness including; landscape features, historic and archaeological landscapes, water bodies, ridges, skylines, topographical features, geological features and important views and prospects.
- The capacity of the area to absorb further development. In particular, the following factors will be examined; the extent of existing ribbon development in the area, the degree of existing haphazard or piecemeal development in the area and the degree of development on a single original landholding.
- The ability to provide safe vehicular access to the site.
- The ability of a site in an unserviced area to accommodate an on-site waste water disposal system in accordance with the EPA Code of Practice for Wastewater Treatment Systems for Single Houses (2009), the County Kildare Groundwater Protection Scheme, and any other relevant documents / legislation as may be introduced during the Plan period;
- The ability of a site in an unserviced area to accommodate an appropriate on-site surface water management system in accordance with the policies of the Greater Dublin Strategic Drainage Study (2005), in particular those of Sustainable urban Drainage Systems (SuDS); and
- The need to comply with the requirements of *The Planning System and Flood Risk Management Guidelines for Planning Authorities* published by the Department of the Environment, Heritage and Local Government in November 2009.

RH 11 To control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements having regard to potential impacts on:

- The orderly and efficient development of newly developing areas on the edges of towns and villages;
- The future provision of infrastructure such as roads and electricity lines; and
- The potential to undermine the viability of urban public transport due to low density development.

RH 14: To only positively consider family members for backland development. Such applications shall be explicitly supported by other family members with documentary evidence to this effect. The proposed development shall have no negative impact on third parties/ neighbouring property owners and viable sites with sufficient

independent percolation areas will be required in order to meet technical guidelines. Sufficient screening will be required to screen the house from adjacent homes and this has to be in place prior to occupation of the house. Single storey bungalow type houses only will be allowed in such backland locations to limit visual impact and overlooking.

7.0 THE APPEAL

This is a first party appeal against the planning authority's refusal of permission for this development and is summarised as follows:

- The applicant was previously granted permission at this location in 2008 for a dwelling and is now being refused permission.
- The appeal submission details the location and provides a description of the general area.
- Reference is made to previous planning history associated with the site and the landholding.
- With regard to the applicant's connection to the local area it is set out that she submitted birth cert, passport, and a letter from the neighbours confirming that she has always lived at this location. The applicant's extended family all live in Roseberry.
- The submission references the decision of the Planning Authority and also notes positive and negative aspects of the planner's report.
- With regard to the planning context the submission sets out extracts from the Sustainable Rural Housing Guidelines, Regional Planning Guidelines for the GDA and the Kildare County Development Plan, and the Newbridge Local Area Plan.
- Details are provided of relevant precedent and reference is made to PL.09.241689 pertaining to an appeal on a site between Naas and Johnstown at Kingfurze.
- With regards to the grounds of appeal it is set out that the first reason for refusal relates to the location of the dwelling at the rear of an existing development. It is set out that the Planning Authority previously granted permission for a dwelling in almost an identical location in 2008. It is set out that the current development plan is more supportive of backland development than the previous plan.
- Reference is made to RH 14 which it is set out that only family members would be considered positively for backland development. It is set out that documentary evidence in the form of a letter from the applicant's parents consenting to the proposed development was provided with the application.

- It is submitted that the only concern regarding traffic is construction traffic that would be temporary in nature. The applicant is open to a condition which controls the times that construction traffic can travel along this route. Temporary fencing can be erected along the boundary for the duration of the construction period to reduce noise impact.
- The applicant has submitted a letter from the neighbours stating that they have no objection to the proposal.
- It is submitted that the distance between the family home and the site is considerable and therefore there is no possibility of overlooking, overshadowing, overbearing impact.
- The Council has not provided any details as to why the proposed development would depreciate the value of adjoining properties. This issue is not discussed in the planner's report.
- There is no discussion of how the proposal would set an undesirable precedent for the area. It is submitted that there is already an established precedent for backland development in the immediate vicinity of the site and in the wider Roseberry area.
- Reference is made to Figure no. 2 where there is a house located to the west of the site which is accessed off lane from the L7040 and is set behind the dwellings fronting onto the L7040. Just beyond this cluster there are 2 no. dwelling which are also in a backland location.
- Reference is made to aerial photographs confirming backland development.
- In conclusion, it is set out that the established pattern of development in the area features backland housing. It is set out that each of the issues raised by the planner for not complying with Policy RH14 which specifically allows for family members to build a dwelling to the rear of the family home have been examined and demonstrated to be without foundation.
- With regards to reason no. 2 which relates to the refusal to the absorption capacity of the area with the Council referring specifically to policies Policy RH11 and Policy RH5.
- The applicant sets out that to justify a refusal now from the grant of permission in 2008 there has to be a material change in planning policy or a material physical change in the settlement pattern.
- It is submitted to the Board that under the SRHGs the applicant's needs should be facilitated where they arise, even in areas of strong urban pressure.
- The Planner included a map showing 13 no. dwellings in a 250m radius of the proposed development.
- The Board are referred to the 250m radius methodology that was used by the Planning Authority in the assessment of the Stephen Dunbar

application PL.09.241689 in order to assess overdevelopment. In that case there is a total of 10 no. dwellings within the 250m radius.

- Given the Board did not find the Stephen Dunbar dwelling to constitute overdevelopment it would seem entirely unreasonable and unjust to deem 3 additional dwellings to be overdevelopment.
- It is further noted that there is no reference in any of the planner's report or the report from the environmental department about an excessive density of effluent treatment systems in this area.
- It is set out that the applicant qualifies with the rural housing policy and is therefore entitled to build a dwelling in a rural area as per the provisions of the CDP and the SRHGs.
- Policy RH5 refers to capacity absorption as a consideration, an issue which is not a consideration in the Ministerial Guidelines. This policy refers to the following measures to be taken into consideration in assessing this issue:
 - Ribbon development
 - Degree of haphazard or piecemeal development
 - And degree of development on single original landholding
- The policy does not give any indication as to what degree of such measures would be considered to result in capacity absorption or overdevelopment.
- It is set out that this is a major flaw in the development plan and leaves such assessment down to subjective interpretation rather than based on empirical evidence.
- It is submitted that there needs to be clear and unambiguous baseline by which new development can be measured against. This requires work to be undertaken by the planning authority on each area under perceived threat of overdevelopment and a proper analysis carried out which results in clearly definable measures which have a transparent rationale.
- It is set out that Policy O1 would appear to address this very issue and any reasons for refusals are premature pending action on this policy.
- It is set out therefore based on each of the tests laid down in Policy RH5 the proposed development cannot reasonably be described as overdevelopment.
- It is set out that due to the close proximity of the subject site to Moud's Bog it is highly unlikely that the future expansion of Newbridge town will ever encroach into this area.
- It is submitted that it is of particular note that the Rural Sustainable Housing Guidelines do not refer to excessive density or overdevelopment. Instead the approach adopted is that genuine members of the rural community should be facilitated if they meet the

relevant Council's strict criteria for local needs and there are no technical concerns.

- It is submitted to the Board that if the application was deemed acceptable in 2008 there would have had to have been a significant amount of dwellings granted or built in the period before the current application was lodged to justify a reversal of the recommendation.
- The reality is that only one dwelling has been granted permission and built since 2008 in the vicinity of the subject site.
- With regard to the use of “materially contravenes” the county development plan in the reasons for refusal it is submitted that these words have been incorrectly used. It is set out that the Board is not restricted by section 37 (1) (b) in issuing a grant of permission.
- Notwithstanding the aforementioned, it is set out that if the Board are of the view that they are bound by section 37 (1) (b) that the applicant qualifies for a dwelling in a rural area under the provisions of the ministerial rural housing guidelines and therefore the Board is entitled to grant planning permission.
- The possible 1973 sterilisation issue has not been raised in the reasons for refusal most probably because there is no documentary evidence to prove it exists.
- Reference is made to PL.09.241689 and that the sterilisation involved in this case is of the same vintage of that in the aforementioned case that the Board can overrule the existence of same.
- The council has not demonstrated why an exceptional circumstance would exist in this case to apply such an agreement and it is submitted that the provisions of the CDP are sufficient for the Council to control any future applications on the landholding with each case being assessed on its merits.
- The submission concludes by summarising the main points raised in the grounds of appeal.

8.0 RESPONSE OF THE PLANNING AUTHORITY

No response is noted on file from the Planning Authority

9.0 ASSESSMENT

Having considered national, regional and local policies, all of the submissions in relation to the appeal, I consider the following to be the main considerations in this appeal:

- Compliance with rural housing policy
- Over-development and planning precedent
- Design and layout

- Access
- Sterilization Agreement
- Appropriate Assessment
- Material Contravention

9.1 Compliance with rural housing policy

9.1.1 The appeal site is identified as being located in an “area under strong urban influence” in the Sustainable Rural Housing, Guidelines for Planning Authorities, April 2005. National policy identifies that the “key development plan objectives in these areas should be to, on one hand facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan”.

The Board should note that the appeal site is only approx. 300m from lands zoned within the Newbridge Local Area Plan.

9.1.2 Section 5.2.2 of the Regional Planning Guidelines for the Greater Dublin Area 2010-2022 sets out that

“It is important that a differentiation is made between ‘urban generated housing’ and ‘rural generated housing’ and that, rural housing strategies and policies are tailored accordingly in Development Plans.

The Guidelines set out that local need assessment criteria should conform with the guidance provided in relevant ministerial guidelines relating to rural housing and any relevant DoEHLG updates or circulars such as Circular SP 5/08 – Rural Housing Policies and Local Housing Need Criteria in Development Plans: Conformity with Articles 43 and 66 (Freedom of establishment and Free Movement of Capital) of the European Community Treaty).

9.1.3 The provisions of the Kildare County Development Plan 2011-2017 provide that in Rural Housing Policy zone 1, where the appeal site is located, that local need extends to

- Persons engaged full time in agriculture (including commercial bloodstock/horticulture) wishing to build on their own landholding and who can demonstrate that they have been engaged in farming at that location for a continuous period of 7 years, prior to making the application.
- Persons who have grown up or spent substantial periods of their lives living in the area as members of the rural community

- Persons who have grown up or spent substantial periods of their lives living in the area, moved away and who now wish to return.....
- Persons employed full time in farming (agriculture, bloodstock etc.) in the locality, within 5 km of the site, where they need to reside close to their employment and have been engaged in such employment, at that location, for a continuous period....
- Persons who can satisfy the Planning Authority of their commitment to operate small scale, full time business from their proposed home in the rural area and that the business will contribute to and enhance the rural community and that the nature of such business/employment is more appropriate to a rural location.

9.1.4 The applicant has submitted a rural housing application form. It is indicated on the form that the applicant would meet Zone 1 (2) category of the rural housing policy. This category refers to people who have grown up or spend substantial periods of their lives (12 years) living in the area as members of the rural community seeking to build on family landholding. Details of a birth cert and correspondence indicating the applicant's home address was submitted with the application. I accept the applicant's bona fides that she is local to the area in question. Having regard to the provisions of the Sustainable Rural Housing Guidelines and the Kildare County Development it is considered on the basis that the applicant is considered to have spent a substantial period of time in this rural community that she is a member of this rural community.

9.2 Over-development of the area and planning precedent

9.2.1 Notwithstanding that the applicant is a member of the rural community the local road where the appeal site is located is over-developed. The applicant in the grounds of appeal attempts to present a case that once a rural generated housing need has been established that an applicant should be accommodated. However, section 3.3 of the Sustainable Rural Housing Guidelines is clear that

“in all cases, the rural housing section should make clear that the consideration of individual cases will (my emphasis) be subject to normal siting and design considerations”.

In this regard, I consider the character of the existing area in which the proposed dwelling is to be located, is a planning consideration. Further the proximity of the site to zoned lands within Newbridge is also a material consideration.

9.2.2 The applicant sets out that the Planning Authority cannot randomly decide that an area is over-developed but rather that such should be

based on empirical evidence. In this regard, I note that the area in question is located approximately 300m from the boundary of the urban settlement of Newbridge where lands are zoned and fall within the jurisdiction of the Newbridge Local Area Plan. A key objective of the county development plan is to prevent urban sprawl and retain a degree of separation between the urban and rural areas thus retaining their character.

9.2.3 Policy RH5 “to ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations...” One of these considerations is “the capacity of the area to absorb further development, in particular, the following factors will be examined: the existing of existing ribbon development in the area, the degree of existing haphazard or piecemeal development in the area and the degree of development on a single original landholding”.

9.2.4 Pursuant to site inspection, it was noted that the local road from which it is proposed to access the site, is in my opinion clearly over-developed. A copy of the level of development in the area extracted from “myplan” website is enclosed as an appendix. The location of zoned lands in Newbridge is also indicated for the Board’s reference. There are dwellings located in a linear manner along the same side of the local road in which the site is to be accessed for a substantial length of this local road. It is acknowledged that there are some “gaps” along the road where agricultural entrances are located. The concentration of housing is such that the area could in my opinion be described as being “suburbanised” with a high concentration of septic tanks/effluent treatment plants. The appeal site is located in an area identified as being under “strong urban influence” both in the Sustainable Rural Housing Guidelines and the County Development Plan which is evidence in itself that there is been much development pressure in this area.

9.2.5 Particular emphasis is given in the grounds of appeal to a recent Board decision in respect of File Ref No. 09.241689, a dwelling for Stephen Dunbar in Kingfurze, Naas (enclosed as appendix for ease of reference). The Inspector recommended a refusal for two reasons, one of which pertained to random residential development in a rural area under strong urban influence where the applicant was not considered to come within the scope of housing need criteria. The Board decided to grant permission for the dwelling and considered that the applicant did come within the scope of the housing need criteria as set out in the development plan. Whilst each application should be assessed on its

own merits it is worth noting that there would appear to be significantly more housing in the Roseberry area than in the Stephen Dunbar case, a fact accepted in the grounds of appeal. In this case, an inspection of the online planning details for Roseberry indicates many applications received in the immediate area for one off housing in recent times which would be indicative of the urban pressures the area is under for one off housing. I draw the Board's attention to a recent application File Ref. No. 14/624 which was refused by the Planning Authority to Theresa Davidson for a dwelling south of the appeal site.

9.2.6 The development in this case is considered to be backland development with access to the site located between two existing dwellings. Rural housing policy RH 11 specifically seeks to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements. Having regard to the backland nature of the site, proximity to urban zoned lands and existing over development nature of the area I consider the proposal to represent piecemeal and haphazard development that would be contrary to the RH 11. The proposal would also exacerbate the suburbanized, disorderly and piecemeal development of the area which is close to the urban centre of Newbridge. Such lands should be preserved so as to provide a distinct and clear distinction between urban and rural areas. Furthermore, the preservation of such lands allow opportunities for a more comprehensive and orderly expansion of urban lands in the future when or should a need arise for additional zoned lands.

9.2.7 Whilst I acknowledge the provision of policy RH14 in the County development plan which is to accommodate family members on backland sites I consider that the merits of each application need to be taken into account. In this instance, the lands are approx. 300m from the zoned lands of Newbridge urban centre. There is a clear policy in both the Sustainable Rural Housing Guidelines and the County Development Plan to protect the coalescence of urban and rural areas so as to allow for future orderly development of urban centres. I note reference by the applicant to precedent in the area for backland development however would consider that each application should be assessed on its merits having regard to the degree to which the proposed development would impact on the proper planning and sustainable development of the area. I note that there are appears to be no precedent decisions from the Board permitting such backland development in the area. In this instance, the provision of a dwelling some 200m from the road to the rear of an existing field within a 300m radius of urban zoned lands represents disorderly and an unsustainable use of lands giving rise to further suburbanization in an

area that should be protected so as to preserve the distinction between urban and rural boundaries. Furthermore the proposal will exacerbate the concentration of treatment plants in the general area which is approx. 500m from Mouds Bog, a SAC.

9.3 Design and Location

9.3.1 Policy RH 5 of the County Development Plan states that it is a policy
“To ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations including the following:

- *The location and design of a new dwelling shall take account of appropriately with its physical surroundings and the natural and cultural heritage of the area. Development shall have regard to Chapter 16, Rural Design Guidelines.....”*

9.3.2 The proposed house type is a large single storey style dwelling located approximately 210m from the road to the rear of existing ribbon development. The location of the dwelling represents unsustainable backland development in close proximity to urban lands. The scale of the house is in my opinion excessive. The proposed floor area is 288sq.m. which being single storey represents a very large footprint within a field located to the rear of existing modest scale housing. The family home and the adjacent dwelling where the access is located are single storey with a much smaller footprint to that proposed.

9.3.3 The rural design strategy set out in Chapter 16 of the development plan seeks to encourage imaginative and innovative design as well as more traditional type solutions, which complement their rural surroundings. The strategy specifically seeks to avoid sites that are carved out of fields which is the case in this instance and due to the location of the proposed dwelling to the furthest point in the field away from the public road would lend a potential justification for infill housing between the existing and proposed dwelling in the future.

9.3.4 With regard to the house design, whilst not raised as a concern by the planning authority, in my opinion the scale and form of the proposed dwelling design is out of character with the existing built form of dwellings in the immediate area. Whilst an attempt has been made to break up the mass of the single storey dwelling by using different elements, the overall composition of these elements results in an over-complicated and incoherent design that is at odds with the more simple and traditional single storey design of the dwellings generally located in the immediate vicinity of the site, in particular the two dwellings along

the road where the dwelling would be located. One of the design principles set out in Chapter 16 of the Kildare County Development Plan is to ensure that a dwelling relates to the rural building form of that particular area and achieve attractive proportions. Notwithstanding that there would be limited views of the proposed dwelling from the public road, I consider that the house design is not such that complies with the principles of the rural design strategy set out in Chapter 16 of the county development plan and would result in a house type that has an excessive footprint relative to the established character in the immediate vicinity.

9.4 Access

9.4.1 There is an existing agricultural entrance which is set back from the local road that provides access to the field in which the dwelling is proposed. The access road is a narrow country road that does not allow for the simultaneous passing of two vehicles. There is a crash barrier located just north of the proposed entrance on the opposite side of the road. The presence of the barrier is required due to a significant drop in levels from the road level to adjoining lands north of the road. It was noted that a memorial also exists at this location. Whilst there is an existing entrance serving this field, the proposal for a dwelling will give rise to a more significant level of vehicle movements to and from the site from the current levels that would be associated with the entrance. The applicant is proposing to provide an upgraded dual access serving the proposed dwelling and the existing family home. Visibility to the west of the current access serving the family home is limited due to the presence of a bend in the road and also existing hedgerow. I consider that the proposed new dual entrance would result in increased traffic movements at a location where visibility to the west is substandard due to the alignment of the road. The Board may consider that this matter is a new issue.

9.5 Sterilisation agreement

9.5.1 Reference is made in the grounds of appeal to a sterilisation agreement in the context of the planner's report. It is noted that the reason for refusal did not refer specifically to such an agreement. The Sustainable Rural Housing Guidelines provides that the use of such agreement should only be in exceptional cases. Having regard to the lapse of time since the granting of the family home to the present day I do not consider that this matter needs to be further elaborated upon other than that I do not consider this to be a material consideration in the context of this appeal.

9.6 Appropriate Assessment

9.6.1 Appropriate assessment (AA) considers whether the plan or project alone or in combination with other projects or plans will adversely affect the integrity of a European site in view of the site's conservation objectives and includes consideration of any mitigation measures necessary to avoid, reduce or offset negative effects. The requirements for AA, stems directly from Articles 6 (3) and 6 (4) of the Habitats Directive 92/43/EEC. A screening report is attached to the back of the planning report and concludes that there would be no potential significant effects on a Natura 2000 site and AA is therefore not required.

9.6.2 I note that there are two sites that the appeal site is located in close proximity to that form part of the Natura 2000 network. Mouds Bog (Site Code 002331) an SAC is located approx. 530m from the appeal site to the north. Pollardstown Fen (Site Code 000396) an SAC of international importance is located approx. 3.2 km to the south west of the appeal site.

9.6.3 The objective of the Mouds Bog is to maintain or restore the favourable condition of the Annex I habitats and/or Annex II species for which the SAC has been selected. In this instance they are active raised bogs; degraded raised bogs still capable of natural regeneration and depressions on peat substrates of the Rhynchosporion. The proposed development is located within 530m of the bog and it is proposed to install a proprietary waste water treatment plant as a means of effluent disposal. The proposal will involve the discharge of waste water following treatment in the treatment system to the ground. The site characterisation form submitted indicates that the water table is located at 1.3m below existing ground level and mottling was evident at 1m and the sides of the trial hole collapsed in. The details submitted on file indicate that a discharge with a hydraulic loading rate of 10 litres/m² per day would result. Having regard to the current density of one off housing on septic tanks/treatment plants that discharge to ground in combination with the proposed development it is not considered that significant impacts on the hydraulic regime of Mouds bog which is only 530m to the north of the appeal site cannot be ruled out.

9.6.4 Pollardstown Fen is selected for the following habitats, Cladium Fens, Petrifying Springs and Alkaline Fens. It also supports Geyer's Whorl Snail, Narrow mouthed Whorl Snail and the Desmoulin's Whorl Snail; the only known site in Ireland to support all three of these species. Pollardstown fen is the largest spring-fed fen in Ireland and has well developed and specialised flora and fauna. Given the distance

between the appeal site and this Natura 2000 site it is reasonable to conclude that the proposal individually would not impact on the conservation objectives of this site.

9.6.5 However, having regard to the distance of the appeal site to Mouds Bog, an SAC and the in-combination effects that may arise due to the large concentration of one-off housing in the immediate area which are serviced by one-off housing, I do not consider that the risk of significant effects on the conservation objectives for this particular Natura 2000 site can be ruled out. An NIS would be required to further assess such impacts.

9.7.0 Material Contravention

It is noted that the reasons for refusal cite that the proposal “materially contravenes” particular policies of the County Development Plan. The Development Management Guidelines provides that whether a development “materially contravenes” a development plan is where there is a fundamental departure from a development plan objective. In this instance I consider that there is a conflict between the policies and the proposed development rather than a “material contravention”. As such I do not consider that the Board are bound by the provisions of Section 37 (2) (b) of the Planning and Development Acts.

10.0 CONCLUSION

The applicant is seeking to construct a dwelling adjacent to the existing family home. The proposal is for a 288sq.m. single storey house in an area that is identified as being under strong urban influence and is in close proximity to the zoned lands of Newbridge. The immediate area of the appeal site is considered over-developed as is evidenced by the linear and dispersed concentration of dwellings along this local road. The proposal would exacerbate the already over-developed area leading to further haphazard and piecemeal development in close proximity to the urban boundary of Newbridge. The proposal is therefore considered contrary to the proper planning and sustainable development of the area.

11.0 RECOMMENDATION

Having regard to the foregoing, I recommend that permission be refused for this development for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

1. Having regard to the location of the site within an “Area Under Strong Urban Influence” as identified in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2005, and to the policies contained in the Kildare County Development Plan 2011-2017 in particular policy RH5 where the Council seek to ensure that, notwithstanding compliance with the local need criteria, applicant comply with all other normal siting and design considerations, the proposed dwelling is considered to be of an excessive scale and an inappropriate design having regard to the established character of housing in close proximity to the site. The proposal would contribute to and exacerbate the existing over-developed character of this area, militating against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore be in conflict with the provisions of national guidelines and the development plan which are considered to be reasonable and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development would result in a traffic hazard due to the restricted visibility to the west of the entrance due to the poor alignment of the road. The proposal would therefore be contrary to the proper planning and sustainable development of the area.
3. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board is not satisfied that the proposed development individually, and particularly in combination with other plans and projects would not be likely to have a significant effect on the European Site No. 002331, Mouds Bog, in view of the site’s conservation objectives. In such circumstances the Board is legally prohibited from granting approval/permission.

Joanna Kelly
Inspectorate
10th December 2014