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**Planning and Development Acts 2000 to 2021**

**Planning Authority: Kildare County Council**

**Planning Register Reference Number: 21/1608**

**APPEAL** by Aoibhinn Raleigh care of Marston Planning Consultancy of 23 Grange Park, Foxrock, Dublin against the decision made on the 13<sup>th</sup> day of January, 2022 by Kildare County Council to refuse permission for the proposed development.

**Proposed Development:** Demolition of the existing single storey detached garage to the side of the existing dwelling of 'The Willows'. Construction of a new detached part single and part two-storey three-bedroom dwelling to the side of 'The Willows' with dormer window to the rear. Provision of a new on-site wastewater treatment system/percolation area. Works will also include new boundary treatments and all associated hard and soft landscaping, site drainage/services and ancillary works. Access to the new dwelling will be via the shared existing vehicular entrance (unaltered) to 'The Willows' and a private driveway, all at 'The Willows', Kilmacredock, Leixlip, County Kildare.

**Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## Reasons and Considerations

Having regard to the pattern of development in the area and to the nature and layout of the site proposed for development, it is considered that the proposed development would comply with the provisions of the Kildare County Development Plan 2023 to 2029 and in particular with policy HO P14 which provides for circumstances for the provision of an individual dwelling where a gap site is evident within the existing pattern of development subject to a number of specific considerations. It is considered that the applicant has demonstrated a social need in compliance with the aforementioned Plan and the development provides for the sharing of an access. The proposed development, subject to compliance with the conditions set out below, would not seriously injure the visual or residential amenities of the area or the amenities of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board had regard in particular to policy HO P14 of the Kildare County Development Plan 2023-2029 which provides for circumstances for the provision of an individual dwelling where a gap site is evident within the existing pattern of development subject to a number of specific considerations. The Board disagreed with the Inspector in their interpretation of this policy as it would apply to the subject site and considered that the site would comprise a gap site, as intended by the policy, and that the proposal would meet the requirements as set out in this policy as it relates to the sharing of an access and the other technical considerations.

Furthermore, the Board did not share the Inspector's view that the proposal would contravene, materially or otherwise, policies HO P12, HO P13 or HO P15 as set out in the Development Plan as the proposal would not exacerbate or extend an existing pattern of ribbon development, having regard to the circumstances provided for by policy HO P14, and the design of the dwelling can be appropriately absorbed into the immediate area in compliance with

policy HO P12, and while the site may be located in a transitional area as it relates to the Leixlip urban area, the site is located within an existing area of dwelling units and does not comprise an open area of countryside and, therefore, would comply with policy HO P15. Having regard to the foregoing, the Board did not agree with the Inspector that the proposal would contravene the core strategy and settlement strategy of the Development Plan as set out under objectives CS O2 and CS O5.

In relation to the Inspectors second recommended reason for refusal, the Board did not share the Inspectors view that the applicant had not satisfied the requirements in respect of local need as it is set out in Table 3.4 of the Kildare County Development Plan 2023-2029. The Board noted that the decision of the planning authority which was made under the previous Kildare County Development Plan did not refer to local need, and the Board considered the changes made to rural housing policy in the current Development Plan, which save for the period of time an applicant needs to have spent in the area extending from 12 years to 16 years, has not materially changed. The Board considered the documentation submitted by the applicant in respect of satisfying the local need requirements and in this regard, considered that the applicant would satisfy the criteria set out in the Kildare County Development Plan pertaining.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter [unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant]. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.
- (b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

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

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

3. (a) A proprietary effluent treatment and disposal system shall be provided. This shall be designed, constructed and maintained in accordance with the requirements of the planning authority. Details of the system to be used, and arrangements in relation to the ongoing maintenance of the system, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

- (b) Treated effluent shall be discharged to a raised percolation area which shall be provided in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2021.
- (c) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the raised percolation area is constructed in accordance with the standards set out in the EPA document.

**Reason:** In the interest of public health.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

5. Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Uisce Eireann.

**Reason:** In the interest of public health.

6. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

**Reason:** In the interest of visual amenity.

7. Surface water from the site shall not be permitted to drain onto the adjoining public road.

**Reason:** In the interest of traffic safety.

8. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.


**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

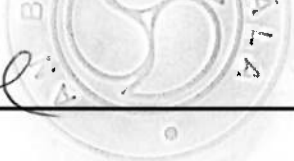
9.
  - (a) Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
  - (b) White uPVC shall not be used for windows, doors or rainwater goods.
  - (c) Any stone finish used on the external finishes shall comprise of natural stone only.

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

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

  
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**Una Crosse**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board.**



Dated this 16<sup>th</sup> day of October 2023.