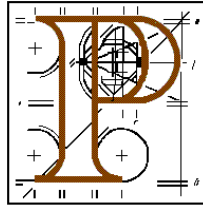


An Bord Pleanála



Inspector's Report

PL15.245868

DEVELOPMENT: Outline Permission for 6 no. detached dwellinghouses, associated wastewater treatment systems and all associated site works, at Tankardsrock, Kilkerley, County Louth.

PLANNING APPLICATION

Planning Authority: Louth County Council

Planning Authority Reg. No.: 15/474

Applicant: Bespoke Trustees Limited

Application Type: Outline Permission

Planning Authority Decision: **REFUSE OUTLINE PERMISSION**
for Reasons and Considerations (2)

APPEAL

Appellant: Bespoke Trustees Limited

Type of Appeal: **FIRST PARTY**

Observer: None

DATE OF SITE INSPECTION: 11th March 2016

INSPECTOR: Dermot Kelly

1. SITE LOCATION

The subject site is located at Tankardsrock, Kilkenny approximately 4 kilometres to the west of Dundalk Town in County Louth, as indicated on **APPENDIX A - LOCATION MAP**.

2. SITE DESCRIPTION

2.1 The subject site lands at Tankardsrock, Kilkenny, County Louth are approximately 3.4 hectares in area and are in agricultural use as grazing lands.

2.2 The Planning Report for the Planning Authority described the site: 'Site is located in Kilkenny Category II (a) development centre. The site lies at the northern portion of the village limit on the approach into village. The field gently rises from the public road which wraps around it and rises to a high point on the north-east boundary where mature trees line this boundary.'

2.3 The attached Photographs in **APPENDIX B – PHOTOGRAPHS** (including Key Plan which indicates the approximate Photograph locations) illustrate the nature of the subject site and its context.

3. PROPOSED DEVELOPMENT

3.1 Planning Application

- The proposed development comprises as specified in the Public Notices: Outline Permission for 6 no. detached dwellinghouses, associated wastewater treatment systems and all associated site works at Tankardsrock, Kilkenny, County Louth.
- The completed Planning Application Form and the submitted Design Statement and the detailed drawings of the proposed development including the submitted Site Layout Plan are noted.
- The submitted Site Characterisation Reports (6) and Soakaway Design Reports (6) regarding Site No. 1, Site No. 2, Site No. 3, Site No. 4, Site No. 5 and Site No. 6 are noted.

3.2 Further Information Request

The Planning Authority by letter dated 3rd September, 2015 sought Further Information including a revised Site Layout Plan indicating adequate Stopping Sight Distances (SSD) at the proposed vehicular entrance - and a Ground Water Risk Assessment and an Archaeological Impact Assessment as specified.

3.3 Further Information Submission

Further Information was received on 22nd October, 2015 including a Ground Water Risk Assessment and an Archaeological Assessment and included submitting in regard to the proposed vehicular entrance: 'A separate application was made for full permission for the site development works (i.e. the site access road and footpaths, watermain, surface water drainage, public lighting etc.) required to service the six sites (Planning Ref: 15/410).

The wording used in description of the development for which this permission was granted is '*site development works for a proposed housing development for six number houses to include for new road entrance, roads, services and all other associated site works*'.

Full permission was granted for this site development on 06/09/15. It is noted that none of the seven conditions attached to the permission relates to visibility at the entrance or stopping sight distance along the LS-7128-0.', and also

'It is considered inappropriate to raise issues regarding the site entrance in the case of the current subject application (15/474) as it does not in fact seek permission for a site entrance. It is deemed inconsistent and indeed to be beyond the remit of the Planning Authority to seek re-visit the issue of the site entrance at this site.'

4. NOTIFICATION OF DECISION OF PLANNING AUTHORITY - Submissions and Relevant Reports

4.1 Third Party Submission on Planning Application

The Submission received is noted and included stating that as a local resident the Objector was aware that the local road serving the proposed development was heavily trafficked. Concerns were also raised in regard to the proposed vehicular entrance which was located 'outside the speed zone area into village' as stated.

4.2 Environment Section Report

This report, dated 29th July, 2015 requested Further Information as specified including a Ground Water Risk Assessment.

4.3 Infrastructure Office Report

This report, dated 14th August, 2015 including stating as follows:
'Site inspections would indicate that the existing vertical and horizontal alignment of the road LS-7128-0 restricts the availability of stopping sight distance for a vehicle approaching the proposed entrance. It should be noted that the minimum stopping sight distance, in accordance with Table 1/3 NRA TD 9/12 – design speed 80 Km/h, is considered to be 160 metres. It is recommended therefore that the applicant be requested to submit a revised site layout plan clearly showing adequate stopping sight distance in accordance with the above.'

4.4 Department of Arts, Heritage and the Gaeltacht Report

This report, dated 19th August, 2015 included stating as follows:
'It is noted that the proposed development is largescale in extent and located in an area of high archaeological potential. It is this Department's recommendation that an Archaeological Impact Assessment, as described below, should be prepared to assess the potential impact, if any, on archaeological remains in the area where development is proposed to take place. The statement should be submitted as Further Information. This will enable the Planning Authority and this Department to formulate an informed archaeological recommendation before a planning decision is taken.'

4.5 First Planning Report for the Planning Authority

- The Planning Report, dated 28th August, 2015 included documenting the Planning History of the area and the relevant Policy Context in the 2009-2015 Louth County Development Plan, and noted the Third Party Submission received and the Internal Reports and also the Department of Arts, Heritage and the Gaeltacht Report.

- Under 'Assessment' the Planning Report stated:
(i) *Principle of Development: Land Use Zoning/Development Control Zone:* 'The site is located within the designated Kilkerley Category II(a) Development Settlement, and the principle of this development has already been firmly established by the grant of planning permission for site works under Ref. 15/410 only 2 months ago.'
- It was recommended that Further Information be requested as required in the Environmental Section Report, Infrastructure Section Report and the Departmental Report.

4.6 Third Party Submission on Further Information Submission

No Submission was received.

4.7 Environment Section Report on Further Information Submission

This report, dated 2nd November, 2015 stated that adequate information had been submitted as specified. Permission was recommended subject to Conditions as specified.

4.8 Infrastructure Section Report on Further Information Submission

This report, dated 6th November, 2015 included setting out Conditions to be included in any grant of outline permission for the proposed development.

4.9 Departmental Report on Further Information Submission

- This report, dated 11th November, 2015 included stating as follows:
'On the basis of the conclusions of the archaeological assessment report and the likelihood that similar archaeological features survive in the untested areas of the development, it is this Department's recommendation that archaeological testing and rescue excavations take place at the development site in advance of commencement of construction works.'
- Conditions (6) relating to Pre-Development Rescue Excavations and Archaeological Testing were specified.

4.10 Final Planning Report for Planning Authority

- This report dated 11th November, 2015 included documenting the Further Information Submission as received and stated:
‘It is noted that in the planner’s assessment at FI stage (dated 28/08/2015) that the site is located within the designated Kilkerry Category II settlement and *‘the principle of this development has already been firmly established by the grant of planning permission for site works under Ref. 15/410 only 2 months ago’*. The further information request was issued on 3rd September, 2015 and the applicant responded on 22nd October, 2015.
On the 28th September, 2015 the Louth County Development Plan 2015-2021 was adopted by the members of the Council. This plan replaces the previous Louth County Development Plan 2009-2015. Under Section 12(17) of the Planning and Development Act 2000 (as amended) a development plan shall have effect four weeks from the day it is made, in this instance the relevant date is 26th October, 2015.’
- Relevant provisions of the 2015-2021 Louth County Development Plan were set out and it was stated as follows:
‘The subject proposal comprises a multi-unit residential development in a rural area, located outside the development boundaries of Kilkerry, and as such the principle of the development is not consistent with the development zoning objective for zone 4 and to permit the proposed would materially contravene the provisions of the plan in this regard.’
and stated in regard to Policy SS 54 in the Development Plan:
‘The subject site is located outside the level 4 settlement of Kilkerry and directly adjoins the settlement development boundary (as identified in map 2.26 of the plan). Accordingly to develop the subject site would impinge on the required break of 300 metres between the boundary of existing developments and permitted development along adjoining roads. The proposal would be contrary to the development plan in this regard.’
- Refusal of outline permission was recommended for the Reasons and Considerations (2) as stated in the notification of decision of the Planning Authority.

4.11 Notification of Decision of Planning Authority

The Planning Authority, Louth County Council, issued a notification of decision to **REFUSE OUTLINE PERMISSION** for the proposed development for Reasons and Considerations (2) as follows:

1. The proposed development comprises 6 no. dwellings and associated treatment systems within a rural area and outside the development boundary of any designated settlement. The subject site is located within Development Zone 4, as per the Louth County Development Plan 2015-2021, where it is the policy of the Council *'to provide for a greenbelt area around the urban centres of Dundalk, Drogheda and Ardee'*. Policies RD 37 and RD 38 of the Plan guide development within Development Zone 4. Policy RD 38 explicitly excludes, inter alia, multi-unit residential development. To permit the proposed development would materially contravene the provisions of the development (plan) in relation to Development Zone 4 and would materially contravene policy RD 38. Accordingly the proposed development would be contrary to the proper planning and sustainable development of the area.
2. The subject site is located on lands that directly adjoin the development boundary of Kilkerley settlement (level 4 in the settlement hierarchy). Policy SS 54 of the Louth County Development Plan 2015-2021 seeks *'to preserve a clear break of a minimum of 300 metres between the boundary of existing settlements and any permitted development along adjoining roads'*. To permit the proposed development would impinge on the maintenance of a 300 metre break from the boundary of Kilkerley settlement. As such to permit the proposed development would materially contravene the provisions of the Development Plan and would be contrary to the proper planning and sustainable development of the area.

5. APPEAL GROUNDS

First Party Appeal

The First Party Appeal Grounds included stating as follows:
'By order dated 12th November 2015, however, and due to the obvious dismay of the applicant, notification of decision to refuse outline planning permission was issued by the Planning Authority. Notwithstanding that permission for site development works was granted just three months earlier by the Planning Authority (P.A. Ref.

No. 15/410), the decision to refuse permission was made following extensive and costly archaeological and groundwater testing of the site undertaken by the applicant on foot of a request for Further Information issued by the Planning Authority on September 3rd, 2015.', and 'The statutory Development Plan in force at the date of lodgement of the planning application (16th July, 2015) and the Further Information response (22nd October, 2015) was the Louth County Development Plan 2009-2015 (as varied). The application was however ultimately determined by the Planning Authority under the policies of the nascent Plan even though this Plan did not take effect until 26th October four days after the Further Information response was lodged by the applicant on 22nd October, 2015', and also

'It is strongly contended that in issuing its notification of decision to refuse permission the Planning Authority has acted entirely unreasonable and unfairly. This the case for the following reasons:-

- Permission for site development works P.A. Ref. No. 15/410 was granted (on 6th August, 2015) under the provisions of the 2009 Louth County Development Plan but following the publication of the proposed 2015 Draft Development Plan in October, 2014. This permission was granted following the publication of the Draft Plan wherein the zoning allocation on the lands was removed.
- The current application (P.A. Ref. No. 15/474) and subsequent response to the Further Information request were lodged with the Planning Authority whilst the 2009 Louth County Development Plan was still the statutory Plan governing the site.
- In issuing a request for Further Information on 3rd September, 2015 subsequent to the publication of the proposed 2015 Draft Plan and proposed Material Amendments to the Plan and just three weeks before the formal adoption of the Plan by the Elected Members of Louth County Council, the Planning Authority acted unreasonably and contrary to the spirit of the Development Management Guidelines. The Guidelines explicitly state – *'Requests for further information under Article 33 on one aspect of a proposal should not be sought where there is a fundamental objection to the proposed development on other grounds; applicant should not have to suffer unnecessary delay or expense if a refusal is likely'*., and also

'Section 37(2)(b) of the Planning and Development Act – The Planning Authority refusal reasons reference 'material contravention' of the Development Plan and as such the provisions of Section 37(2)(b) of the Planning and Development Act 2000 as amended are relevant.'

The Appeal Grounds submissions that An Bord Pleanála can grant permission under Section 37(2)(b) of the Act under Subsection (ii) ‘Conflicting or not clearly stated objectives’; Subsection (iii) – ‘Guidelines under Section 28’; and Subsection (iv) – ‘Pattern of Development and permissions granted since the making of the Development Plan’ are noted.

- The ‘Pre-Planning Consultation’ and the history of the Planning Application was documented and it was also stated as follows:
‘Whilst acknowledging the Planning and Development Act is largely silent as to the extent to which it is permissible to have regard to the provisions of a draft development plan in determining an application for permission, the date of decision (6th August, 2015) in this case is extremely significant. The book ‘Planning and Development Law’ (Simons G, Second Edition 1-134) highlights *‘it is legitimate to refuse planning permission where the proposed development would be inconsistent with the current draft development plan: to do otherwise would compromise the draft and frustrate its ever being implemented’*.
- ‘It is again contended that in issuing its notification of decision to refuse permission the Planning Authority has acted entirely unreasonably and unfairly.
It is submitted that in issuing a request for Further Information on 3rd September, 2015 subsequent to the publication of proposed 2015 Draft Plan and proposed Material Amendments to the Plan and just three weeks before the formal adoption of the Plan by the Elected Members of Louth County Council, the Planning Authority gave a firm indication of its intention to grant the outline permission and the applicant has a reasonable expectation in this regard.
The current application (P.A. Ref. No. 15/474) and subsequent response to the Further Information request were lodged with the Planning Authority whilst the 2009 Louth County Development Plan was still the statutory Plan governing the site.
Permission for site development works P.A. Ref. No.15/410 was granted (on 6th August, 2015) under the provisions of the 2009 Louth County Development Plan but following the publication of the proposed 2015 Draft Development Plan in October 2014, wherein the proposals of the Planning Authority in respect of the zoning of the land were evident.’

6. APPEAL RESPONSES

6.1 Appeal Observation

No Appeal Observation was received.

6.2 Planning Authority Appeal Response

- This Appeal Response received 11th January, 2016 included:
‘The appellant cites that the Planning Authority was satisfied to grant planning permission on the site for site development works; this matter is not disputed and it must be noted that the said application for site development works Planning Reg. Ref. 15/410 was decided within a different policy context; namely the Louth County Development Plan 2009-2015.

The Planning Authority sought further information on 3rd September 2015, whilst an applicant can make a response up to six months from that request (or nine if additional time is sought) it is noted that there is no minimum timeframe in which an applicant could respond. The Louth County Development Plan (CDP) 2015 was adopted on 28th September, 2015 and became effective on 26th October, 2015. Therefore there was a seven week timeframe between the request of the further information and the new plan becoming effective. It is considered that it was not beyond the realms of possibility that the applicant could have responded promptly and that the application may have been due for decision before the new plan became effective. It is considered that it would have been more ‘unfair or unreasonable’ of the Planning Authority not to afford the applicant the opportunity to address the various matters by way of further information.’

- ‘The Planning Authority considers that the applicant’s ‘expectation’ or presumption that this development would be granted was misinformed and unfounded.

The Planning Authority notes that the appellant refers to the provisions of Section 37(2)(b) of the Planning and Development Act 2000 (as amended). In this regard the Planning Authority, respectfully, advise the Board that it is not considered that this proposal is of ‘*strategic or national importance*’ nor is it considered that there are any conflicting objectives in the county development plan nor would this development be specifically supported by guidelines under section 28 or 29 of the Act. Moreover the pattern of development in the area since the plan was made (26th October,

2015) would not support development at this location. The Planning Authority therefore considers that the Board is precluded from granting the subject development which clearly contravenes the Louth County Development Plan 2015-2021.'

7. PLANNING HISTORY

The Planning Report for the Planning Authority documented the Planning History of the subject site including as follows:

15/410 – Permission was granted subject to 7 Conditions on 26th June, 2015 for a proposed development described as follows:

'Development to consist of site development works for a proposed housing development for 6 no. houses to include for new road entrance, roads, services and all associated site works.'

History Documents in regard to this planning application Reg. Ref. 15/410 have been forwarded by the Planning Authority.

8. DEVELOPMENT PLAN

The provisions of the 2015-2021 Louth County Development plan have been considered, and in particular the following provisions which are attached in **Appendix C – Development Plan** and which were set out in the Final Planning Report for the Planning Authority as follows:

'The current development plan (2015-2021) sets out the settlement hierarchy for the county including settlements levels 1-4 and any area outside same is deemed to be within the rural area. The plan identifies that Kilkierley is a level 4 settlement and map 2.26 identifies the extent of the village/settlement. The subject site is located outside the development boundary of Kilkierley, therefore the relevant policy context to consider this application within is set out in Section 2.18 and Section 3.9-3.10 of the plan i.e. rural housing. In this regard the subject site is located within development zone 4 where it is an objective of the Council: *To provide for a greenbelt area around the urban centres of Dundalk, Drogheda and Ardee. (section 2.19 refers)*

Policies RD 37 and RD 38 guide development within development zone 4 as follows:

RD 37 – To permit limited one-off housing, agricultural developments, extensions to existing authorised uses and farms, appropriate farm diversification projects, tourism related projects (excluding holiday

homes), institutional and educational facilities, leisure and recreational related projects and renewable energy schemes.

RD 38 – Multi-unit residential, large scale industrial and commercial developments, or other developments of similar scale or nature, would not be considered appropriate within this zone.

Ribbon Development:

Section 2.19.12 of the development plan sets out the Council's policy in relation to ribbon development in rural areas of the county. Policy SS 54 seeks to: *To preserve a clear break of a minimum of 300 metres between the boundary of existing settlements and any permitted development along adjoining roads.'*

- Development Zone 4 – 'To provide for a greenbelt area....'
- Map 2.26 – 'Kilkerley Composite Map'
- Policy RD 37 – Policy in regard to Development Zone 4
- Policy RD 38 – Policy in regard to Development Zone 4
- Section 2.19.12 – 'Ribbon Development'
- Policy SS 54 – Policy in regard to 'Ribbon Development'
- Section 2.18 – 'Rural Housing'
- Section 3.9 – 'Residential Development in Rural Areas'
- Section 3.10 – 'Development Zones'
- Map 3.1 – 'Development Zones'

9. PLANNING ASSESSMENT – Issues and Evaluation

Having regard to the above and having inspected the site and having reviewed all documents on file, the following is my assessment of this case where the major planning issues for consideration are as follows:

Proposed Development and First Party Appeal Grounds

- The subject site lands at Tankardsrock, Kilkerley, County Louth are approximately 3.4 hectares in area and are in agricultural use as grazing lands. The Planning Report for the Planning Authority on 28th August 2015 described the subject site as follows:
'Site is located in Kilkerley Category II (a) development centre. The site lies at the northern portion of the village limit on the approach into village. The field gently rises from the public road which wraps around it and rises to a high point on the north-east boundary where mature trees line this boundary.'

- The proposed development comprises as specified in the Public Notices: Outline Permission for 6 no. detached dwellinghouses, associated wastewater treatment systems and all associated site works at Tankardsrock, Kilkerry, County Louth.
- The Planning Authority by letter dated 3rd September, 2015 sought Further Information including a revised Site Layout Plan indicating adequate Stopping Sight Distances (SSD) at the proposed vehicular entrance - and a Ground Water Risk Assessment and an Archaeological Impact Assessment as specified.
- Further Information was received on 22nd October, 2015 including a Ground Water Risk Assessment and an Archaeological Assessment and included submitting in regard to the proposed vehicular entrance:
 'A separate application was made for full permission for the site development works (i.e. the site access road and footpaths, watermain, surface water drainage, public lighting etc.) required to service the six sites (Planning Ref: 15/410).
 The wording used in description of the development for which this permission was granted is '*site development works for a proposed housing development for six number houses to include for new road entrance, roads, services and all other associated site works.*'
- I note the *First Planning Report for the Planning Authority* stated:
 '(i) *Principle of Development: Land Use Zoning/Development Control Zone:* 'The site is located within the designated Kilkerry Category II(a) Development Settlement, and the principle of this development has already been firmly established by the grant of planning permission for site works under Ref. 15/410 only 2 months ago.' – Zoning as per the 2009-2015 Louth County Development Plan.
- I note the *Final Planning Report for the Planning Authority* dated 11th November, 2015 -- following the Further Information Submission and the subsequent Environment Section Report, Infrastructure Section Report and Departmental Report which reports specified Conditions to be included in any grant of outline permission for the proposed development -- included stating:
- 'It is noted that in the planner's assessment at FI stage (dated 28/08/2015) that the site is located within the designated Kilkerry Category II settlement and '*the principle of this development has*

already been firmly established by the grant of planning permission for site works under Ref. 15/410 only 2 months ago'. The further information request was issued on 3rd September, 2015 and the applicant responded on 22nd October, 2015.

On the 28th September, 2015 the Louth County Development Plan 2015-2021 was adopted by the members of the Council. This plan replaces the previous Louth County Development Plan 2009-2015. Under Section 12(17) of the Planning and Development Act 2000 (as amended) a development plan shall have effect four weeks from the day it is made,

in this instance the relevant date is 26th October, 2015.'

- *Relevant provisions of the 2015-2021 Louth County Development Plan were set out and the Final Planning Report stated as follows:*
'The subject proposal comprises a multi-unit residential development in a rural area, located outside the development boundaries of Kilkerry, and as such the principle of the development is not consistent with the development zoning objective for zone 4 and to permit the proposed would materially contravene the provisions of the plan in this regard.'
and stated in regard to Policy SS 54 in the Development Plan:
'The subject site is located outside the level 4 settlement of Kilkerry and directly adjoins the settlement development boundary (as identified in map 2.26 of the plan). Accordingly to develop the subject site would impinge on the required break of 300 metres between the boundary of existing developments and permitted development along adjoining roads. The proposal would be contrary to the development plan in this regard.'
- The Planning Authority, Louth County Council, issued a notification of decision to **REFUSE OUTLINE PERMISSION** for the proposed development for Reasons and Considerations (2) as follows:
 1. The proposed development comprises 6 no. dwellings and associated treatment systems within a rural area and outside the development boundary of any designated settlement. The subject site is located within Development Zone 4, as per the Louth County Development Plan 2015-2021, where it is the policy of the Council '*to provide for a greenbelt area around the urban centres of Dundalk, Drogheda and Ardee*'. Policies RD 37 and RD 38 of the Plan guide development within Development Zone 4. Policy RD 38 explicitly excludes, inter alia, multi-unit residential development. To permit the proposed development would materially contravene the provisions of the development

(plan) in relation to Development Zone 4 and would materially contravene policy RD 38. Accordingly the proposed development would be contrary to the proper planning and sustainable development of the area.

2. The subject site is located on lands that directly adjoin the development boundary of Kilkerry settlement (level 4 in the settlement hierarchy). Policy SS 54 of the Louth County Development Plan 2015-2021 seeks '*to preserve a clear break of a minimum of 300 metres between the boundary of existing settlements and any permitted development along adjoining roads*'. To permit the proposed development would impinge on the maintenance of a 300 metre break from the boundary of Kilkerry settlement. As such to permit the proposed development would materially contravene the provisions of the Development Plan and would be contrary to the proper planning and sustainable development of the area.
- I note the extensive First Party Appeal Grounds including as documented above in *Section 5 – Appeal Grounds* in this report: 'By order dated 12th November 2015, however, and due to the obvious dismay of the applicant, notification of decision to refuse outline planning permission was issued by the Planning Authority. Notwithstanding that permission for site development works was granted just three months earlier by the Planning Authority (P.A. Ref. No. 15/410), the decision to refuse permission was made following extensive and costly archaeological and groundwater testing of the site undertaken by the applicant on foot of a request for Further Information issued by the Planning Authority on September 3rd, 2015.', and also 'The statutory Development Plan in force at the date of lodgement of the planning application (16th July, 2015) and the Further Information response (22nd October, 2015) was the Louth County Development Plan 2009-2015 (as varied). The application was however ultimately determined by the Planning Authority under the policies of the nascent Plan even though this Plan did not take effect until 26th October four days after the Further Information response was lodged by the applicant on 22nd October, 2015.'
 - The First Party Appeal Grounds considered that the Planning Authority had acted 'unfairly' and also submitted as follows: '*Section 37(2)(b) of the Planning and Development Act – The Planning Authority refusal reasons reference 'material contravention' of the Development Plan and as such the provisions*

of Section 37(2)(b) of the Planning and Development Act 2000 as amended are relevant.’ The First Party Appeal Grounds submissions in this regard and the subsequent Planning Authority Appeal Response are considered below and comprise the significant issue to be determined in the appeal.

- I have noted the provisions of the *2015-2021 Louth County Development Plan*, and in particular the relevant provisions which are attached in **Appendix C – Development Plan** and which were set out in the *Final Planning Report for the Planning Authority*:
‘The current development plan (2015-2021) sets out the settlement hierarchy for the county including settlements levels 1-4 and *any area outside same is deemed to be within the rural area*. The plan identifies that Kilkerley is a level 4 settlement and map 2.26 identifies the extent of the village/settlement. *The subject site is located outside the development boundary of Kilkerley, therefore the relevant policy context to consider this application within is set out in Section 2.18 and Section 3.9-3.10 of the plan i.e. rural housing*. In this regard *the subject site is located within development zone 4* where it is an objective of the Council: *To provide for a greenbelt area around the urban centres of Dundalk, Drogheda and Ardee. (section 2.19 refers)*. *(Italics added)*.
- The *Final Planning Report* also noted that ‘Policy RD 37 and RD 38 guide development within development zone 4 as follows:.....
RD 38 – Multi-unit residential, large scale industrial and commercial developments, or other developments of similar scale or nature, would not be considered appropriate within this zone’, and
‘Ribbon Development:
Section 2.19.12 of the development plan sets out the Council’s policy in relation to ribbon development in rural areas of the county. Policy SS 54 seeks to: *To preserve a clear break of a minimum of 300 metres between the boundary of existing settlements and any permitted development along adjoining roads.*’ *(Italics added)*.
- Having considered all the submissions on file including as documented above, the following provisions of the 2015-2021 Louth County Development Plan – which are included in Appendix C – Development Plan in this report – are relevant for the determination of the appeal by An Bord Pleanála.
- I note that the subject site is located within ‘Development Zone 4’ – ‘To provide for a greenbelt area around the urban centre of Dundalk

.....’ as indicated on Map 3.1 – ‘Development Zones’ in the Development Plan and is located outside the ‘Development Boundary’ of Kilkenny as indicated on Map 2.26 – ‘Kilkenny Composite Map’ in the Development Plan. I note that Section 3.10.4 ‘Development Zone 4’ includes stating that ‘It is an objective of the Council to preserve a distinction between the built-up area of settlements and the surrounding countryside’.

- I note further that under Section 3.10.4 – Development Zone 4 – ‘To provide for a greenbelt area around the urban centres of Dundalk, Drogheda, and Ardee’, that in regard to such a ‘greenbelt area’ surrounding ‘the main urban settlement of Dundalk’ that under Policy RD38 in the Development Plan that ‘Multi-unit residential’ development such as the present proposed development ‘would not be considered appropriate within this zone’ (Policy RD 38), and as such I consider that the proposed residential development of six dwellings would materially contravene the 2015-2021 Louth County Development Plan.
- I note also that Section 2.19.12 ‘Ribbon Development’ in the Development Plan states as follows – which as such would qualify the proposed development of six dwellings as Ribbon Development:- ‘Furthermore, ribbon development does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development, if they have a common frontage or they are visually linked.’
- I note Policy SS 54 in the Development Plan states as follows:
‘SS 54 - To preserve a clear break of a minimum of 300 metres between the boundary of existing settlements and any permitted development along adjoining roads.’
As such the proposed residential development on the subject site located adjoining and outside the ‘Development Boundary’ of the ‘existing settlement’ of Kilkenny as indicated on Map 2.26 – ‘Kilkenny Composite Map’ in the Development Plan, would materially contravene Policy SS 54 in the 2015 – 2021 Louth County Development Plan.
- Further to the above assessment of the relevant provisions of the 2015-2021 Louth County Development Plan in relation to the proposed development of six dwellings at Kilkenny, County Louth, I conclude that the proposed development would materially

contravene the Development Plan for the Reasons and Considerations generally as stated in the notification of decision of the Planning Authority to refuse outline permission.

- As stated I have noted the detailed and extensive First Party Appeal Grounds which Appeal Grounds do not include contesting that the proposed development would materially contravene the 2015-2021 Louth County Development Plan – which Development Plan is the relevant Development Plan for the purposes of the determination of this appeal by An Bord Pleanála.
- I have noted the First Party Appeal Grounds as set out above in regard to the history of the planning application. However the planning application was determined by the Planning Authority on the date of decision under the relevant Development Plan in force at the time of the decision i.e. the 2015-2021 Louth County Development Plan which is also the relevant Development Plan for An Bord Pleanála in its determination of the appeal.
- In this regard I note the Appeal Grounds submission as follows:
'Section 37(2)(b) of the Planning and Development Act – The Planning Authority refusal reasons reference 'material contravention' of the Development Plan and as such the provisions of Section 37(2)(b) of the Planning and Development Act 2000 as amended are relevant.' The Appeal Grounds included as specified that An Bord Pleanála can grant permission under the following sub-sections of Section 37(2)(b) of the Act – under Subsection (ii) 'Conflicting or not clearly stated objectives'; Subsection (iii) - 'Guidelines under Section 28'; and Subsection (iv) - 'Pattern of Development and permissions granted since the making of the Development Plan'.
- I note the subsequent Planning Authority Appeal Response states:
'The Planning Authority notes that the appellant refers to the provisions of Section 37(2)(b) of the Planning and Development Act 2000 (as amended). In this regard the Planning Authority, respectfully, advise the Board that it is not considered that this proposal is of '*strategic or national importance*' nor is it considered that there are any conflicting objectives in the county development plan nor would this development be specifically supported by guidelines under section 28 or 29 of the Act. Moreover the pattern of development in the area since the plan was made (26th October, 2015) would not support development at this location. The Planning Authority therefore considers that the Board is precluded from

granting the subject development which clearly contravenes the Louth County Development Plan 2015-2021.’

- I have examined the relevant provisions of Section 37(2)(b) of the Planning and Development Act 2000 as amended as now set out:-

37- (2)(a) Subject to *paragraph (b)*, the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with *paragraph (a)* where it considers that –

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under *section 28*, policy directives under *section 29*, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

(c) Where the Board grants a permission in accordance with *paragraph (b)*, the Board shall, in addition to the requirements of *section 34(10)*, indicate in its decision the main reasons and considerations for contravening materially the development plan.

- I concur with the Planning Authority Appeal Response for the reasons as stated therein above that the proposed development is not such as would enable the Board ‘to grant a permission’ – in this case an outline permission – further to Section 37(2)(b) of the Act.

- Accordingly I recommend that outline permission for the proposed development be refused in accordance generally with the stated Reasons and Considerations in the notification of decision of the Planning Authority to refuse outline permission - as revised below.

Appropriate Assessment

Having regard to the location of the subject site and to the nature and scale of the proposed development and the intervening distance of approximately 5 kilometres between the subject site and the nearest identified European Sites i.e Dundalk Bay SPA (Site Code: 004026) and Dundalk Bay SAC (Site Code: 000455), I consider that no Appropriate Assessment issues arise in this case. It is not considered that the proposed development either individually or in combination with other plans or projects, would be likely to have a significant effect on a European Site.

10. CONCLUSIONS AND RECOMMENDATION

In conclusion, further to the above planning assessment of matters pertaining to this appeal, including consideration of the submissions of each party to the appeal, and including the site inspection, I consider that the proposed development would be contrary to the proper planning and sustainable development of the area, having regard to the relevant provisions of the 2015 – 2021 Louth County Development Plan which are considered reasonable. Accordingly, I recommend that outline permission be refused for the proposed development for the Reasons and Considerations stated in the Schedule below.

DECISION

REFUSE outline permission for the proposed development for the Reasons and Considerations set out below.

REASONS AND CONSIDERATIONS

1. The proposed development comprises 6 no. dwellings and associated wastewater treatment systems within an unserved rural area and outside the development boundary of any designated settlement. The subject site is located within Development Zone 4 and outside the Development Boundary for Kilkerry settlement as designated under

the 2015-2021 Louth County Development Plan. Development Zone 4 'to provide for a greenbelt area around the urban centres of Dundalk, Drogheda and Ardee' as designated includes the stated objective 'to preserve a clear distinction between the built up areas of settlements and the surrounding countryside'. Policies RD 37 and RD 38 of the Plan guide development within Development Zone 4 and Policy RD 38 specifically excludes multi-unit residential development within Development Zone 4. The proposed residential development of six dwellings would therefore materially contravene the provisions of the Development Plan in relation to Development Zone 4 including Policy RD 38, and the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The subject site is located on lands that directly adjoin and are outside the designated Development Boundary for Kilkerley settlement (Level 4 in the settlement hierarchy) as indicated on Map 2.26 in the 2015-2021 Louth County Development Plan. Policy SS 54 of the Development Plan seeks 'to preserve a clear break of a minimum of 300 metres between the boundary of existing settlements and any permitted development along adjoining roads'. The proposed residential development of six dwellings on the subject site would materially contravene Policy SS 54 in the Development Plan requiring the maintenance of a 300 metre clear break from the boundary of Kilkerley settlement and would, therefore, be contrary to the proper planning and sustainable development of the area

DERMOT KELLY
SENIOR PLANNING INSPECTOR

24rd March, 2016.

sg/ym

APPENDIX A - LOCATION MAP
APPENDIX B - PHOTOGRAPHS (incl. KEY PLAN)
APPENDIX C - DEVELOPMENT PLAN