



An
Bord
Pleanála

Inspector's Report PL09.246639

Development	Demolish house and garage. Construct new house with attached garage, wastewater treatment system and ancillary works.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	16/250
Applicant(s)	Philip Moore
Type of Application	Permission
Planning Authority Decision	Grant permission
Appellant(s)	1. William Donohoe 2. Philip Moore
Observer(s)	None on file.
Date of Site Inspection	25 th August, 2016
Inspector	Sarah Moran

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1.0 Site Location and Description

- 1.1. The site is an existing residential property located on the southern side of the settlement of Killeel, Co. Kildare, close to the county boundary with South Dublin. The site is opposite a cluster of recorded monuments associated with the Killeel early Christian and mediaeval ecclesiastical complex and the Pale boundary to its immediate south and west. The group of structures includes a castle, a 12th century stone cross, a ruined early monastery, a ruined church and a graveyard. Killeel Wood pNHA is situated c. 0.35 km to the north of the site. This is a relatively elevated location and the rear of the site has extensive views over the Kildare plains to the west.
- 1.2 The site has a stated area of 0.4648 ha and has a long, rectangular shape running back from the public road. It is occupied by an existing bungalow and detached garage, stated total floor area 278 sq.m. The bungalow is within a row of similar residential properties along the western side of the public road. There is also a bungalow on the opposite side of the road, to the immediate south of the castle grounds. The applicant owns lands to the rear of the subject site and adjoining residential properties, which are reached via a laneway to the immediate north of the site. The site is generally overgrown and the house is in a derelict condition with fire damage and the roof fallen in. It is served by an existing well and wastewater treatment system. There are 2 no. vehicular accesses on the road frontage, both of which are blocked by vegetation. Levels fall from the public road within the site.
- 1.3 The third party appellant William Donohoe lives in a bungalow 3 houses to the north east of the subject site (towards Killeel), which has a rear access to the laneway along the northern site boundary.
- 1.4 Please see enclosed maps, photographs and aerial photographs of the site.

2.0 Proposed Development

2.1. Permission is sought for the following:

- Demolition of the existing house and garage at the site.
- Construction of a split level bungalow and attached garage, in line with the fall in ground levels away from the road frontage. The proposed structure has a modern design and a total stated floor area of 299 sq.m.
- New wastewater treatment system.
- Amendments to the southern existing vehicular access to the site. The northern access is to be closed up.
- Landscaping of site.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 The PA granted permission subject to 24 no. conditions on 6th May 2016. Condition no. 2 imposed an occupancy restriction of 7 years on the permitted dwelling. Condition no. 3 required a landscaping plan. Condition no. 9 required archaeological monitoring. Condition no. 24 required a section 48 development contribution of €16,744.00. The remaining conditions imposed are considered to be standard for this type of development.

3.2. Planning Authority Reports

3.2.1 The main points made in the report of the area planner can be summarised as follows:

- The applicant meets the local need criteria under Zone 1 Item 3. Development plan policy RH19 applies.

- The revised design is acceptable and will not have any significant negative impact on the amenity of the area.
- Notes 3rd party concerns regarding the building line, however the existing building line is relatively staggered and addresses an east facing orientation rather than being parallel to the road frontage.
- The development was discussed with the Environment Section on 5th May 2016. The Environment Section is satisfied with the site characterisation report and site suitability report including a recent inspection of trial holes on site.
- Recommends permission subject to conditions.
- Attached AA screening report states that there are no potential effects on designated sites, AA not required.

3.3. Other Technical Reports

3.3.1 Naas Municipal District Area Engineer 12th April 2016. No objection subject to conditions.

3.3.2 Department of Arts, Heritage and the Gaeltacht Development Applications Unit 15th April 2016. Notes that the development lies immediately opposite a concentration of National Monuments. Recommends conditions.

3.3.3 Kildare County Council Roads, Transportation and Public Safety Department 14th April 2016. No objection subject to conditions.

3.3.4 Kildare County Council Environment Section 20th April 2016. No objection subject to conditions.

3.3.5 Kildare County Council Environmental Health Officer 26th April 2016. Requires further information for new site suitability tests.

3.3.6 Kildare County Council Heritage Officer 18th April 2016. Recommends DoAHG conditions.

3.3.7 Kildare County Council Conservation Officer 20th April 2016. No objection subject to one condition.

3.3.8 Kildare County Council Water Services 3rd May 2016. Recommends conditions.

3.4. **Third Party Observations**

3.4.1 There is one third party submission on file by the above named appellant William Donohoe. This raises similar issues to those stated in the third party appeal.

4.0 **Planning History**

4.1. Previous Application at Subject Site Reg. Ref. 14/968

Permission sought by the above named applicant Philip Moore for demolition of the existing house and construction of a detached split level house (stated area 296 sq.m.) and single storey garage with new septic tank and percolation area and ancillary and associated site works. Kildare County Council refused permission for one reason relating to location in a high sensitivity landscape; location on a scenic route; inappropriate design by reason of failure to appropriately address the public road and overlooking of private amenity space of neighbouring property to the south; development not in accordance with the rural design guidelines or development management guidelines of the Kildare County Development Plan 2011-2017; excessive height of proposed garage.

4.3 Lands to Rear of Site

4.3.1 There was a series of applications by Swanward Enterprises for residential developments on the lands to the rear (west) of the subject site, accessed via the laneway to the north of the site:

- 00/2089 PL09.130728. 39 no. dwellings with on-site wastewater treatment. The Board refused permission for 3 no. reasons relating to unsatisfactory water supply, inadequate effluent treatment and conflict with the policies set out in the Strategic Planning Guidelines for the Greater Dublin Area.
- 03/1142 PL09.207702. Permission for 15 no. dormer dwellings and outline permission for 12 no. development sites. The Board refused permission for 2 no. reasons relating to conflict with the Regional Planning Guidelines for the Greater Dublin Area, 2004- 2016 and location of the site on a substandard minor road lacking public footpaths, resultant traffic hazard.
- 06/980 PL09.218970. 17 no. dwellings. The Board refused permission for 3 no. reasons relating to conflict with the Regional Planning Guidelines for the Greater Dublin Area and the Kildare County Development Plan 2005-2011; traffic hazard and visual impacts on scenic route no. 22 and Killeel Wood pNHA.

5.0 Policy Context

5.1 The site is located within an area under strong urban influence as indicated in Map 1 of the National Spatial Strategy 2002-2020. The DoEHLG *Sustainable Rural Housing Guidelines for Planning Authorities (2005)* aim to manage pressure for overspill development from urban areas in rural areas closest to the main cities and towns. They distinguish between development needed to sustain rural communities and urban generated development which should be directed to areas zoned for new housing development in cities, towns and villages. Balanced assessments are to be made regarding the circumstances and merits of each application. Section 3.2.3 of the guidelines deals with the definition of 'rural generated housing'. Suggested examples of rural generated housing need include persons who are an intrinsic part of the rural community, who have spent substantial periods of their lives living in rural

areas and persons working full time or part time in rural areas. The assessment of individual sites will be subject to normal siting and design considerations.

6.0 **Kildare County Development Plan 2011-2017**

- 6.1 Chapter 3 Settlement Strategy. Settlement hierarchy Table 3.1 and Map 3.1
- 6.2 Chapter 4 Housing Policy. Section 4.11 rural housing provision. Map 4.1 Rural Housing Policy Zones. Table 4.3 schedule of local need criteria. Section 4.12 rural housing policies including RH4, RH5, RH8, RH9, RH11. Section 4.12.3 replacement of derelict dwellings, policy RH19.
- 6.3 Chapter 14 Landscape, Recreation and Amenities. Map 14.1 landscape character areas. Table 14.1 major landscape character types. Section 14.4.1 and map 14.2 landscape sensitivity. Section 14.5 areas of high amenity. Section 14.6, table 14.2 and map 14.3 scenic routes and protected views. Section 14.8 landscape policies including LA1, LA2 and LA4. Section 14.8.3 specific policies for upland character areas including East Kildare Uplands. Section 14.9.1 scenic routes policies including SR1. Section 14.10 landscape objectives including LO5, LO6 and LO7.
- 6.4 Chapter 16 Rural Design Guidelines.
- 6.5 Chapter 17 Village Plans and Rural Settlements. Section 17.4 village and rural settlement policies including VRS1, VRS3. Map 17.25 rural settlement map for Killeel.
- 6.6 Chapter 19 Development Management Standards.

7.0 **Natural Heritage Designations**

- 7.1 The site is c. 0.35 km from Killeel wood pNHA (site code 001394) to the north west (see enclosed aerial photograph). The following Natura 2000 sites are located within 15 km of the development:

Natura 2000 site	Site Code	Distance to subject site (approx.)
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Red Bog, Kildare SAC	000397	c. 4.5 km south
Poulaphouca Reservoir SPA	004063	c. 6 km south east
Wicklow Mountains SAC	002122	c. 10.4 km east
Glenasmole Valley SAC	001209	c. 11 km east
Wicklow Mountains SPA	004040	c. 14 km east
Rye Water Valley / Carton SAC	001398	c. 15 km north

8.0 The First Party Appeal

8.1 The applicant has appealed the financial contribution condition no. 24. The main points made in the grounds of appeal may be summarised as follows:

- The Kildare County Council Development Contribution Scheme has not been properly applied in this instance.
- The development includes the demolition of an existing derelict dwelling and garage (combined gross floor area 278 sq.m.) and the provision of a new house and garage (floor area 299 sq.m.). According to local information, the existing house was last occupied c. 10 years ago and suffered a fire leading to roof collapse.
- Section 8(i) of the development contribution scheme sets out contributions for residential development. Section 12(k) provides an exemption for redevelopment projects. The Council did not apply this exemption. The applicant should be charged for additional floor area only, i.e. a net chargeable area of 21 sq.m.
- The applicable rate under development contribution section 8 is €50 per sq.m., resulting in a total contribution of €1,050.00 rather than the amount of €16,744 charged by the Council.

9.0 The Third Party Appeal

9.1 The third party appellant lives in a bungalow 3 houses to the north east of the subject site. The grounds of appeal can be summarised as follows:

- The positioning of the house within the site is inappropriate and at variance with the positioning of neighbouring houses. The development does not follow the established building line. It is set back considerably from the building line and will appear incongruous and fail to blend into the landscape and streetscape.
- The site is located within the rural settlement of Kiltel. It is unclear if the applicant meets the criteria for local demand in a rural settlement as per development plan objective VRS3. The lands on which the septic tank and percolation area are located are not within the rural settlement of Kiltel.
- The applicant has not fully demonstrated that he can provide adequate sight lines at the vehicular entrance. The provision of the necessary sight lines may require consents from adjoining land owners.
- The proposed dwelling does not have an acceptable standard of design given the location of the site relative to several recorded monuments and facing a scenic route in a high sensitivity landscape area. The dwelling does not properly address the road frontage. County Development Plan policies L06 and LO7 apply. The site is also near Kiltel Woods pNHA. The dwelling does not enhance the landscape or built environment. There are no detailed landscaping proposals submitted with the application, these should form part of any application in this sensitive landscape area. Permission should be refused in the absence of these particulars.

- This elevated site is unsuitable for a dwelling. The design and location of the development contravene the design guidance provided in development plan chapter 16. Permission for the development would set an undesirable precedent for one off houses on elevated and prominent hillside locations which will clearly impact on scenic views.
- Some of the refusal reasons of PL09.130728, PL09.207702 and PL218970 may be appropriate to the proposed dwelling.
- Drawings on file indicate a wayleave over a laneway within lands stated to be in the applicant's ownership. The appellant has enjoyed uninterrupted access to the rear of his property over this laneway for 17 years. There is currently a dispute over the appellant's continued use of this access laneway which has caused considerable distress and a significant deterioration in his ability to fully enjoy his property. The appellant has serious concern that this situation would worsen if permission is granted for the proposed development beside the access laneway. The decision of Kildare County Council to grant permission is premature whilst this issue remains unresolved.
- Given the sensitive location of the site, it is unacceptable that the issues of landscape design and wastewater treatment are to be dealt with by way of conditions. All relevant details in relation to these matters should be part of the planning documentation and available for public view. The decision to grant permission in the absence of these particulars is premature.

10.0 **Planning Authority Response**

10.1 The response of Kildare County Council makes the following main points:

- The PA is satisfied that the current proposal sufficiently addresses the previous reasons for refusal on this site under reg. ref. 14/968.

- The proposed development relates to a fire damaged property. The issues of concern raised by the appellant relating to local need, design, archaeology, landscaping and sight lines have been addressed in the planner's report.
- The wayleave referred to in the appeal is indicated in yellow on the submitted site layout and noted as being outside the red line site boundary and within the blue line boundary of the applicant's landholding. The continued use of this wayleave is a civil matter.
- The response does not refer to the first party appeal.

11.0 Applicant Response to Third Party Appeal

11.1 The main points made may be summarised as follows:

- The proposed dwelling was designed to specifically address the issues that arose in relation to reg. ref. 14/968. The front elevation is simple and well composed with a centrally located entrance porch that addresses the public road. The rear elevation was designed to address concerns of potential overlooking of the private amenity space of the neighbouring property to the south. The garage was integrated into the house design to minimise its impact on adjacent properties.
- The issue of the positioning of the dwelling on the site was not raised by the PA at any point in the planning process. The dwelling has been positioned to align with the neighbouring property to the south west. The position was also influenced by the existing site levels, resulting in a split level solution to help the dwelling to sit comfortably in the landscape, while also reducing the apparent mass of the building.
- The applicant submitted a rural housing application form and associated supporting documentation as part of the planning application. The applicant was

raised and grew up in the area, attended local schools and spent a substantial period of his life living locally. He works for the family business which is based in Killeel and his parents' home is in Killeel. He therefore falls under the category of zone 1(3) which is in compliance with the local need criteria as per County Development Plan rural housing policy.

- The development substantially improves the traffic safety situation by blocking up an existing second entrance to the site and by widening the remaining main entrance resulting in improved sight lines for traffic entering and exiting the site. The entrance would have sight lines in excess of 90m in both directions.
- The development would have no impact on the national monuments in the vicinity of the site. It is recognised that the groundworks for foundations, wastewater treatment system and soil filter may disturb sub surface archaeological features. An appropriate mitigation measure is proposed, i.e. archaeological monitoring. The dwelling has been designed to be appropriately modest in character, scale, size and height in deference to nearby Killeel Castle. The application includes an archaeological impact assessment, which supports the proposed design and mitigation measures.
- The design is in keeping with adjacent dwellings in terms of size, scale and height and the main front elevation is appropriately modest. The existing site levels would be maintained with the split level design. The proposal also retains existing mature hedgerows to the northern site boundary and mature trees to the east and west of the proposed dwelling, helping the building to integrate into the landscape. The design is restrained and absent of superfluous decoration. It will make sensitive use of good quality local materials and simple, clean detailing to produce an attractive dwelling which, in combination with proposed landscaping improvements to the front of the house, will dramatically improve the road

frontage line, particularly when compared to the existing unsightly dwelling at the site.

- The site is within the Killeel rural settlement boundary. The proposal is to replace an existing derelict dwelling within the rural settlement to meet an appropriate local demand. The previous refusals under PL09.130728, PL09.207702 and PL09.218970 relate to multiple housing developments.
- The wayleave referred to in the appeal does not form any part of the development site. The concerns raised by the appellant relating to the wayleave are not a planning issue. It is submitted that the appeal is spurious and that the wayleave issue is the real motivation for the appeal.

12.0 **Assessment**

12.1 I consider the key issues in determining this appeal are as follows:

- Principle of Development
- Visual and Landscape Impacts
- Impacts on Residential Amenity
- Archaeological Heritage Issues
- Wastewater Treatment
- Vehicular Entrance and Wayleave Issue
- Appropriate Assessment
- First Party Appeal

12.2 **Principle of Development**

12.2.1 The existing house and the eastern side of the site are zoned as 'existing settlement', within the development boundary of Kilteel, as per County Development Plan map 17.25. Kilteel is located in Rural Housing Zone 1 as per development plan map 4.1, i.e. the northern, central and eastern areas of the county, the more populated areas with higher levels of environmental sensitivity and significant development pressure. Kilteel is identified as a rural settlement in the settlement hierarchy for Co. Kildare identified in development plan table 3.1 and map 3.1. Rural settlements are to develop as local centres for rural catchments with growth appropriate to cater for local demand. Expansion is to be controlled to minimise pressure on services, the environment and unsustainable commuting patterns. Development plan housing policy states an emphasis on the sequential development of lands in rural settlements, with undeveloped lands closest to the settlement core being given first priority in order to offer an effective alternative to the provision of single houses in surrounding unserviced rural areas. There is a strong emphasis on encouraging infill opportunities. Rural settlement policy VRS3 as set out in development plan chapter 17 applies:

VRS3: To facilitate the sustainable population growth of the identified Rural Settlements with growth levels of up to 20% over the Plan period to cater primarily for local demands. Local demand for rural settlements is defined as persons residing for a period of 5 years within a 10km radius of the site. Primarily for 'local demand' shall be defined as being in excess of 50% of the overall development.

Development plan section 4.12.2 sets out policy on the replacement of derelict dwellings in rural areas. Policy RH19 applies:

RH19: To facilitate the sensitive replacement of a structurally unsound derelict dwelling as an alternative to the construction of a one off dwelling elsewhere in the countryside. The scale of the replacement dwelling shall have regard to the scale of the existing dwelling to be replaced and site size. Documentary evidence in the form of a structural survey and photographs shall be submitted to accompany the application. The proposed applicant / occupant shall comply with local need criteria

identified in the Plan and shall use the dwelling for his/her own occupation and not for resale.

12.2.2 The documentation on file provides the following information regarding the applicant's circumstances and his local housing need:

- The applicant Philip Moore lived in his parents' house in Killeel for his entire life until September 2015. He is currently renting accommodation in another location.
- He submits a letter from the local primary school, Rathmore N.S., a letter from the local secondary school Holy Family Community School Rathcoole, a birth certificate and a marriage certificate in support of his application. These confirm that his parents lived in Killeel when he was born, that he attended local schools and that he had an address at Killeel when he was married.
- The applicant works in a local family business, Martin Moore Electrical Ltd, which is based at his parents' home in Killeel.
- The applicant has not previously been granted permission for a house in Co. Kildare.

12.2.3 The application includes a 'Condition Survey Report' prepared by Dean Moore Architect, dated 9th March 2016. The survey is based on a non-invasive inspection of the interior and exterior of the house, which was carried out on 26th August 2014, and includes photographs of the building. I note the concern of the third party appellant regarding the nature of the survey, however it is considered that (1) the report submitted provides a sufficient level of detail for general planning assessment purposes and (2) the derelict condition of the existing house is immediately evident upon site inspection. The report states that the existing house dates to c. 1973 and was last occupied about 10 years ago. The building has been subject to extensive fire damage and the roof has collapsed, which has led to severe water ingress throughout the property and exposure to the elements. There are no remaining electrical, water or heating services installations. The report concludes that the

building is uninhabitable in its present state. What remains of the existing structure has been severely damaged by water ingress, general weathering, vandalism, structural movement (roof collapse), vegetation growth to the interior and fire damage. It is therefore not feasible to restore the existing building to a state where it can meet current requirements. Having inspected the site, I concur with this assessment and consider that the building could be classified as a 'structurally unsound derelict dwelling' in accordance with development plan policy RH19.

12.2.4 The development would result in a replacement dwelling on an infill site within the settlement boundary of Kiltel. I am satisfied based on the information available that the applicant has a genuine local housing need and that the development would therefore be in accordance with rural settlement policy VRS3. I also accept that the existing building is beyond repair and therefore that policy RH19 applies. The proposed development is considered acceptable in principle on this basis.

12.3 Visual and Landscape Impacts

12.3.1 The site is located within the landscape character area Eastern Uplands as per development plan map 14.1. Section 14.4.1 and map 14.2 identify the Eastern Uplands as an area of high sensitivity, with the ability to accommodate limited development pressure. Section 14.5 identifies the East Kildare Uplands as an Area of High Amenity. Section 14.8.3 sets out specific policies for the East Kildare Uplands Area of High Amenity, including:

LU 1: To ensure that development will not have a disproportionate visual impact (due to excessive bulk, scale or inappropriate siting) and will not significantly interfere or detract from scenic upland vistas, when viewed from areas nearby, scenic routes, viewpoints and settlements.

The site also overlooks scenic route no. 22 to the east:

Views to the North-West of the Open Countryside; from Kiltel Village to Rathmore Village.

Development plan policy SR1 applies:

SR 1: To protect views from designated scenic routes by avoiding any development that could disrupt the vistas or disproportionately impact on the landscape character of the area thereby affecting the scenic and amenity value of the views.

The following landscape objectives also apply:

LO 5: To preserve the character of all important views and prospects, particularly upland, river, canal views, views across the Curragh, views of historical or cultural significance (including buildings and townscapes) and views of natural beauty.

LO 6: To preserve and protect the character of those views and prospects obtainable from scenic routes identified in this Plan, listed in Table 14.2 and identified on Map 14.3.

12.3.2 The subject site is particularly sensitive with regard to the above policies and objectives. The front elevation is visible from a scenic route and is adjacent to a concentration of recorded monuments including Killeel Castle. The rear elevation is elevated, with extensive views to the west over a designated Area of High Amenity. The site is also c. 0.35 km from Killeel Woods pNHA, to the northwest, and the development would be visible from that location. Visual impacts on adjacent residential properties must also be considered. Moreover, I note that visual impact issues were the principal reason for the refusal of 14/968, the previous application for a replacement house at this site.

12.3.3 The proposed development appears as a single storey elevation with a ridge height of c. 6.5m when viewed from the road frontage. It has a simple, modern design, which is generally in keeping with the recommendations of the rural design guidelines provided in development plan chapter 16. The footprint is set back from that of the existing house, however it would be in keeping with the building line of the house to the immediate south. The existing hedgerow along the northern site boundary in the front garden and some existing mature trees are to be retained and

to be supplemented by additional landscaping. I consider that this design and layout would generally be in keeping with the existing development pattern along the western site of Rathmore road, i.e. single storey or dormer houses set back from the road frontage behind mature vegetation. The low profile of the house would not result in any greater impact on views from the scenic route than at present and the design would not have any adverse impact on the setting of the national monuments across the road. I note in this regard that the report of the Kildare County Council Conservation Officer on file dated 29th April 2016 states no objection subject to landscaping.

12.3.4 The rear elevation has a two storey appearance due to the split level nature of the design, which fits in with the falling ground levels towards the western side of the site. However, it is simple and modestly proportioned. The drawings provided give limited information regarding ground works, however it appears that the area cut into the hillside would be c. 15m along the rear elevation, less than the overall length of the house. The lower ground level would not be visible from side elevations, only the narrow gable of the front of the house, resulting in much less bulk than the 'L' shape proposed under 14/968. Existing vegetation along the northern and southern site boundaries would also provide screening to adjacent residential properties. Given the modest scale and simple design, the presence of existing vegetation and the context of the site within a row of residential development, I consider that the proposal would not result in any significant increased visual impact on views from vantage points to the west of the site, within the designated Area of High Amenity, or from Killeel wood pNHA to the northwest.

12.3.5 Having inspected the site and with regard to the proposed design, I am satisfied that the dwelling would not have any significant adverse visual impact such as would warrant a refusal of permission, notwithstanding the sensitivity of the site. I accept that limited landscaping details have been provided. However, I note that there is already a substantial amount of screening from the existing vegetation at the site and

a condition requiring the implementation of a detailed landscaping scheme could be imposed if the Board is minded to grant permission.

12.4 Impacts on Residential Amenity

12.4.1 As discussed above, it is considered that the proposed dwelling would not have any significant adverse impact on visual amenities. The footprint is in line with the rear of the house to the immediate south and only a narrow gable end would be visible from that property. A substantial hedgerow, which is to be retained, would screen the house from views within the residential property to the north. There were concerns about overlooking of the rear garden of the residential property to the immediate south from a raised outdoor area to the rear of the dwelling proposed under 14/968, however that feature has been omitted from the current proposal. Significant impacts as a result of overshadowing are unlikely given the distance to site boundaries and the narrow footprint of the house, also the presence of existing mature vegetation. To conclude, therefore, it is considered that the development would not have any significant adverse impact on residential amenities by way of overlooking, overshadowing or visual obtrusion.

12.5 Archaeological Heritage Impacts

12.5.1 There are several recorded monuments in a cluster immediately across the road from the subject site, now located within and adjacent to an existing farmyard. These monuments are associated with Killeel early Christian and mediaeval ecclesiastical complex, a monastery with the Pale boundary to the immediate south and west. The individual recorded monuments comprise:

- KD020-007002, Class: Church. 'Cell céli críst' An early monastery including a ruined church with a surviving rectangular structure of nave and chancel, found to have resulted from several building phases dating from the Early Christian through the Romanesque and high medieval periods to the 17th century. Also KD020-007003, Class: Religious house - Knights Hospitallers. Described by the National Monuments Service as a preceptory of Knights Hospitallers of St John of

Jerusalem, which was founded sometime before 1212 by Maurice Fitzgerald on the site of 'Cell céli críst' (KD020-007002). Associated monuments KD020-007004, Class: Earthwork; KD020-007005, Class: Cross - High cross; KD020-007008, Class: Earthwork; KD020-007009, Class: Bridge; KD020-007010, Class: Graveyard; KD020-007011, Class: Cross-slab and KD020-007012, Class: Graveslab.

- KD020-006, Class: Castle - tower house. National Monument No. 275, standing at the Wedge of the Killeel Early Christian and medieval ecclesiastical complex (KD020-007001- to KD020-007012), around which the Pale Ditch (KD020-008) also runs, and associated both with the Preceptory of the Knights Hospitallers (KD020-007003) and the subsequent defence of the Pale. A probable 15th century, rectangular, five-storied, roofed structure. Associated monuments KD020-006001, Class: Gatehouse; KD020-006002, Class: Bawn.
- KD020-008 Class: Linear earthwork. 'The English Pale', a section of the pale boundary, south and east of the ecclesiastical remains.

12.5.2 The application was accompanied by an Archaeological Impact Assessment by Mary Henry Archaeological Services Ltd, dated 26th February 2012. This notes that the subject site is located within the constraint area for National Monument no. 275, as described above. Archaeological records state that in 2005 an archaeological assessment was carried out at a single house development adjacent to the gatehouse at Killeel, on the opposite side of the road from the subject site. Follow up archaeological monitoring of topsoil removal in 2006 uncovered some 20 shards of pottery, 14 of which were medieval in date, including Leinster cooking ware, Dublin-type coarse ware and Dublin-type fine ware, with the remainder being post-medieval in date. The report notes that the current proposal would involve substantial excavations to accommodate the split level element of the design. The nearest monuments, Killeel Castle, gatehouse and bawn and Killeel High Cross are all situated within 75m of the development site. The report assesses potential visual impact and considers that the visual integrity of Killeel Castle would not be

compromised, also there would be no obvious archaeological impact on the monuments in the vicinity. Archaeological monitoring of groundworks is recommended as a mitigation measure.

12.5.3 I note the report on file by the DoAHG, which states a possibility that archaeological features could be disturbed and recommends conditions requiring archaeological monitoring. The recommendation is repeated in the report on file of the Heritage Officer of Kildare County Council. I agree that the imposition of a monitoring condition would be satisfactory to record and preserve any archaeological material which might be unearthed in a development involving ground disturbance in the vicinity of known monuments. Potential visual impacts on the setting of the recorded monuments are assessed above.

12.6 Wastewater Treatment

12.6.1 The proposed house would be served by a new wastewater treatment system. The Site Characterisation Form on file indicates a groundwater protection response of R2¹, i.e. acceptable subject to normal good practice. The T test result is 19.47, which is within acceptable parameters. The soil type is silt clay, with the water table encountered at 2.3m below ground level. These findings are consistent with the ground conditions that I encountered at site inspection. A raised soil polishing filter is proposed, this is desirable given the high water table. Distances to site boundaries, existing wells, etc, are in accordance with the recommendations provided in the EPA *Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses* (EPA 2009). The site and wastewater treatment system are downslope from the recorded monuments to the east. I note that the reports on file of the Area Engineer and the Environment Section of Kildare County Council state no objection subject to conditions. The report of the Kildare County Council Environmental Health Officer notes that the trial holes on site have been open for 2 years and requires a new site assessment. However, given that existing ground conditions appear to be reasonable and that there is no history of difficult ground conditions in the vicinity, with regard to the planning history on file, it is considered that the submitted

information is adequate to assess site suitability. I am satisfied that the site is suitable for wastewater treatment and the proposed wastewater treatment systems is considered acceptable.

12.7 Vehicular Entrance and Wayleave Issue

12.7.1 The site is within the 60 kph zone at the edge of Kiltel village. It is within a row of residential properties and there is an agricultural entrance to Kiltel Castle immediately across the road. The development involves closing an existing access at the northern end of the site and changing the layout of the southern access, which is currently blocked by fallen vegetation. The Rathmore road is straight at this point, without visual obstruction, and there are adequate sight distances in both directions. I note that the Roads, Transportation and Public Safety Department of Kildare County Council states no objection subject to conditions in its report on file dated 15th April 2016. The proposed vehicular access is considered satisfactory on this basis.

12.7.2 The concerns of the appellant regarding right of way over the adjacent laneway are noted. The laneway is outside the red line site boundary and would not be used to access the proposed development. In addition, the Board generally does not arbitrate on matters of dispute in relation to private property as they are not strictly planning matters. I am therefore of the view that this issue is not material to a consideration of whether or not the proposed development can be permitted.

12.8 Appropriate Assessment

12.8.1 The designated sites within 15 km of the proposed development are listed in above section 7.0. I note that the AA screening report on file concludes that there is no potential for significant effects on the Natura 2000 network. With regard to the nature and scale of the development, the intervening distances and to the lack of hydrological connections, it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on any European site.

12.9 First Party Appeal

12.9.1 Section 48 of the Planning and Development Act 2000, as amended, allows a planning authority when granting permission to include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority. Section 48(2)(a) provides that the basis for the calculation of such contributions shall be set out in a development contribution scheme. Section 48(10) provides that an applicant can only appeal a condition requiring a development contribution in accordance with a development contribution scheme where the applicant considers that the scheme has not been properly applied. Therefore, the Board's sole remit is not to adjudicate on the merits of the scheme but to consider whether it has been properly applied

12.9.2 The applicant has appealed financial contribution condition no. 24, which states:

The applicant/developer to pay to Kildare County Council the sum of €16,744.00 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5th November 2015 in accordance with section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015.

12.9.3 The current Kildare County Council Development Contribution Scheme 2015-2022 was adopted on 5th November 2015. Section 8(i) of the scheme states that development contributions for residential development will be applied at the following rates:

Floor Area	< 230 sq.m.	231sq.m. – 370 sq.m.	> 371 sq.m.
Rate per sq.m.	€50	€56	€65

Section 8(ii) states that development contributions will be applied to extensions according to the following rates, allowing a 40 sq.m. exemption:

Floor Area	0-40 sq.m.	41 sq.m. –	231sq.m. –	>	371
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	(Exempt)*	230 sq.m.	370 sq.m.	sq.m.
Rate per sq.m.	€0	€50	€56	€65

The development contribution calculations provided on file indicate that the proposed 299 sq.m. residential development was charged at a rate of €56 per sq.m., resulting in the charge of €16,744. The applicant submits that the scheme has not been properly applied as the PA has not taken into account an exemption provided for in section 12(k), which states in relation to redevelopment projects:

Where permission is granted for the redevelopment of a project which includes replacing existing development, the relevant contribution charge will be applied to the additional floor area per sqm i.e. residential (using the extension rates), commercial, retail etc.

12.9.4 The PA has charged the applicant for the entire 299 sq.m. floor area of the proposed house. Clearly, this is incorrect as no allowance has been made for the existing residential floor area. Given that there is already a house at the site, I am satisfied that the exemption provided for under section 12(k) of the scheme applies in this case and that an allowance should be made for the existing residential floor area. I note that the total floor area of the existing house and garage at the site are stated as 278 sq.m. in the application form on file. The development contribution may therefore be calculated on the following basis:

299 sq.m. (proposed residential floor area) – 278 sq.m. (stated existing residential floor area) = 21 sq.m.

The first party appeal submits that the 21 sq.m. floor area should be charged at the rate for residential development specified in section 8(i) of the development contribution scheme. This would result in a charge of €1,050.00. However, section 12(k) states that the charge is to be applied to the additional floor area per sq.m. and that residential extension rates are to apply. Section 8(ii) of the scheme allows a 40 sq.m. exemption for residential extensions. I therefore conclude that, as additional floor area is below this threshold, no development contribution charge applies.

12.9.5 To conclude, it is considered that Kildare County Council has incorrectly applied the terms of the Kildare County Council Development Contribution Scheme 2015-2022.

With regard to the above assessment, I recommend that the Board should not impose any condition requiring a section 48 development contribution if it is minded to grant permission in this instance.

12.10 Conclusion

12.10.1 The proposed development is considered to be acceptable in principle with regard to rural housing policy and policy for rural settlements in the current Kildare County Development Plan 2011-2017. It is considered that the development would not have any significant adverse impact on visual, landscape or residential amenities, including scenic route no. 22, Kilteel Wood pNHA, the designated Area of High Amenity in which the site is situated and the setting of the adjacent cluster of recorded monuments to the east of the site. Potential archaeological impacts are acceptable subject to a condition requiring archaeological monitoring. The proposed site access and drainage arrangements are satisfactory subject to conditions. Accordingly, permission is recommended subject to the conditions set out below.

13.0 Recommendation

13.1. I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

14.0 Reasons and Considerations

14.1 Having regard to the location of the site within the settlement of Kilteel, to the pattern of development in the area and to the scale, nature and design of the proposed structure, it is considered that, subject to compliance with the conditions set out below, the proposed development would not result in detrimental visual or landscape impacts, would not seriously injure the amenities of the area or of property in the vicinity of the site, would not be injurious to the cultural or archaeological heritage of the area, would be acceptable in terms of traffic safety and convenience and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

15.0 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. 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 in the interest of the proper planning and sustainable development of the area.

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

Reason: To ensure adequate servicing of the development, and to prevent pollution.

4. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 14th day of March, 2016, and 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, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) 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 polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

5. (a) The entrance gates to the proposed house shall be set back not less than four metres and not more than six metres from the edge of the public road. Wing walls forming the entrance shall be splayed at an angle of not less than 45 degrees and shall not exceed one metre in height.

(b) The wing walls to the vehicular entrance shall consist of natural local stone.

Reason: In the interest of traffic safety and visual amenity.

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. Prior to commencement of development, details of the materials, colours and textures of all external finishes to the proposed development shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

8. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

- (a) Contoured drawings to scale of not less than 1:500 showing –
- (i) a survey of all existing trees and hedging plants on the site, their variety, size, age and condition, together with proposals for their conservation or removal
 - (ii) a continuous hedge of indigenous species (e.g. holly, hawthorn, beech or field maple) planted for the full length of the roadside boundary
 - (iii) any hard landscaping works, including car parking layout, enclosed areas, lighting and outdoor seating, specifying surfacing materials
- (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment
- (c) Proposals for the protection of all existing and new planting for the duration of construction works on site, together with proposals for adequate protection of new planting from damage until established
- (d) A timescale for implementation

Deciduous trees shall be planted at not less than two metres in height and evergreen species at not more than 750 millimetres in height. Species to be used shall not include either cupressocyparis x leylandii or grisellinia. 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. No development shall take place until details of earthworks have been submitted to, and agreed in writing with, the planning authority. These details shall include the following:

- (a) Soil and subsoil cross-sections.
- (b) Plans and sections showing the proposed grading and mounding of land areas, including the levels and contours to be formed.
- (c) The relationship of the proposed mounding to the existing vegetation and surrounding landform, including adjoining residential properties to the north and south.

Development, including landscaping required by condition number 8 of this order, shall be carried out in accordance with the approved earthworks plan.

Reason: In the interest of residential and visual amenity.

10. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

Sarah Moran
Senior Planning Inspector
12th September 2016