



An  
Bord  
Pleanála

## Inspector's Report PL09.248357

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<b>Development</b>	Two detached 2 storey houses with garages, served by individual treatment systems and site works.
<b>Location</b>	Newtown Townland, Enfield, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	16/701
<b>Applicant(s)</b>	Dermot Tighe
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Dermot Tighe
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	1 <sup>st</sup> July 2017.
<b>Inspector</b>	Susan McHugh

## 1.0 Site Location and Description

- 1.1. The appeal site is located to the south of the village of Newtown in north Kildare. The village of Newtown is approx. 5.5km southeast of Enfield and 6km west of Kilcock. This is a small village with a strong rural feel, there is a church (of modern idiom) to the north of the appeal site and two storey dwelling and former school located further to the east of the site.
- 1.2. There is a small housing development to the north-east of the church and a row of detached predominantly single storey dwellings to the north west of the church. A new small housing development (consisting of bungalows) is located along the northern approach to the village. There are two town houses, a vacant retail unit and public house to the northwest of the site.
- 1.3. The site is bounded to the west by local road L1007 and to the north by the L5027. The site is triangular in shape and has a stated area of 0.434 ha. The site is generally level and was overgrown on the day of site inspection. There is an existing two storey detached dwelling located to the east of the site. There is agricultural land in tillage to the south and west of the site.
- 1.4. The site is reasonably level and defined by mature hedgerows and trees. There is an open stream along its southern boundary which is a tributary of the River Blackwater.

## 2.0 Proposed Development

- 2.1. The applicant is seeking permission to construct two detached two storey four bedroom dwelling houses (183.6sqm. floor area, ridge height 8.2m) with garages (23sq.m.) to the side on roughly equal site areas (Site 1. is 0.22ha and Site 2 is 0.214ha). These will be in line with the adjacent dwelling house to the east. The development will be served off two Aquamax Bison waste water treatment systems and polishing filters located in the rear garden of each house. It is proposed to provide a shared vehicular access from the northern boundary of the site. The development would connect to the public water supply.

## 3.0 Planning Authority Decision

### 3.1. Decision

The decision of the planning authority was to refuse permission for two reasons.

1. *'The Office of Public Works Preliminary Flood Risk Assessment indicates that part of the subject lands are prone to flooding. In the absence of detailed site-specific flood risk assessment that would clearly identify the areas affected to inform the design of the proposed development, the Planning Authority is not satisfied that the proposed development would not itself be at risk of flooding, or that it would not give rise to an increased risk of flooding in the area. It is considered that the proposed development would, therefore, be contrary to the provisions of the 'Planning System and Flood Risk Management – Guidelines for Planning Authorities' (2009), would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.'*
2. *'The proposed layout on a prominent site at the edge of a village fails to integrate successfully with the existing settlement. Section 4.13.8 of the Kildare County Development Plan 2017-2023, in particular the provisions of policy RH26 require that all new developments in the rural nodes particularly cluster development, contribute to and integrate successfully with the existing settlement.*

*The proposed development by reason of its inappropriate layout and design would therefore conflict with the above policy provisions and would therefore be contrary to the proper planning and sustainable development of the area.'*

### 3.2. Planning Authority Reports

- 3.2.1. The **1<sup>st</sup> Senior Executive Planner's** report dated **26/08/2016** is the basis for the Planning Authority decision. It includes:

- Compliance with Rural Housing Policy - Applicant has failed to submit any details/documentary evidence to demonstrate compliance with any of the categories of local need.
- Design and layout – fails to adequately contribute to and integrate successfully with the existing settlement and has not taken account of Rural Design Guidelines of the Kildare County Development Plan 2011-2017.
- Flooding – OPW preliminary flood risk assessment mapping appears to show flood extent along the southern boundary of the site and requires further investigation.

Following discussions with the Senior Planner a request for further information was recommended in relation to details to be submitted to demonstrate compliance with the local need criteria, revised site layout and landscaping plan, revised house design, details of a site specific flood risk assessment, details of sightlines and junction improvements, public lighting and a 2m wide footpath along the entire frontage of the site.

3.2.2. The **2<sup>nd</sup> Senior Executive Planner's** report dated **02/11/2016** following further information noted no details submitted in regard to compliance with the local need criteria, no amendments made to site layout or house design, no site specific flood risk assessment carried out, revised site layout plan indicating the sightlines required and public lighting is acceptable, provision of a footpath on part of the northern boundary acceptable. The applicant failed to respond adequately to the issues raised and a request for clarification of further information is recommended on the site specific flood risk assessment, local need criteria, revised layout with landscaping, and revised house design proposals.

3.2.3. The **3<sup>rd</sup> Senior Executive Planner's** report dated **17/01/2017** following clarification of further information noted the issue of potential flooding has not been addressed, the applicant stated they are willing to accept a condition requiring one dwelling be restricted to local need criteria, no revisions to layout, landscaping or house design. To permit the development and given the prominent location of the subject site would create a negative visual impact on the village of Newtown and recommends a refusal on the basis of flooding and design.

- 3.2.4. In a memo from the **Senior Planner** dated **24/01/2017** following discussions with the **Director** a request for clarification of clarification of further information is recommended in relation to flood risk and house design.
- 3.2.5. The **4<sup>th</sup> Senior Executive Planners** report **21/03/2017** following clarification of clarification of further information noted that the issues in relation to potential flooding and design have not been addressed and recommends a refusal.

### 3.3. **Other Technical Reports**

The **Area Engineer** in a report dated **11/09/2016** recommended further information in relation to sightlines, public lighting and a 2m footpath along the entire road frontage of the site. The **Senior Executive Engineer** in a report dated **01/11/2016** recommends no objection subject to conditions.

The **Water Services** report in a report dated **17/08/2016** recommends no objections subject to conditions. In a report dated **20/10/2016** noted a flood risk assessment was not submitted, and that a portion of the site may be subject to flooding.

The **Environment Section** in a report dated **23/08/2016** recommends no objection subject to conditions.

The **EHO** in a report dated **17/08/2017** has no objection subject to conditions.

### 3.4. **Prescribed Bodies**

**Irish Water** in a report dated 18/08/2016 has no objection subject to conditions.

### 3.5. **Third Party Observations**

There were two third party submissions on file from the following parties and the issues raised can be summarised as follows:

Frank O'Rourke TD

- In support of the application

Niall Cavanagh

- Disputes the date of erection of the site notice and the location indicated on the site layout plan.
- The application is incomplete and contains incorrect information particularly in relation to flooding, and refers to the site flooding in August 2008.
- Refers to a major flood relief scheme undertaken by the Council despite which the site is still waterlogged. Considers that there could be a risk of contamination from the proposed sewage treatment systems.
- Refers to previous permission for a single house Ref. 98/135 with a condition that the site share a double entrance with the adjacent property.
- The current application does not set back the boundary or improve sightlines. The removal of a mature tree and hedgerow to accommodate the proposed entrance may be used for parking. no proposals submitted to replace the mature trees at proposed entrance.
- The applicant has failed to demonstrate any local need criteria.
- The design of the proposed dwellings conflicts with policy HO3 which aims to promote a mix of household types/sizes.
- Failure to comply with policy RH24 which aims to ensure that all new development in rural nodes integrate successfully with the existing settlement.
- Conflicts with section 16.3.2 'Rural Design Guidelines of the Kildare County Development Plan 2011-2017'.
- Potential for overlooking from the proposed gable window facing into the adjoining property, site plan does not show boundary treatments, and building line is not in compliance with Table 19.8 of the Kildare County Development Plan 2011-2017.

#### 4.0 Planning History

**P.A. Ref. No. 14/980:** Permission **refused** January 2015 for construction of three detached two storey dwelling houses with garages and served by individual Aquamax Bison Treatment systems and polishing filters. There were two reasons for refusal;

1. Materially contravene Policy RH22 of the Kildare County Development Plan 2011-2017 and would represent speculative development.

2. Non-compliance with Policies RH23 and RH24 of the Development Plan and constitute a visually incongruous development injuring the visual amenities of the area.

**P.A. Ref. No. 08/1821:** Permission **granted** December 2008 for construction of three detached two storey houses served by individual Aquamax bison treatment systems.

**P.A. Ref. No. 07/2016:** Permission **refused** February 2008 for construction of six 3 bedroom two storey detached houses. There were two reasons for refusal, contrary to policy RS7 housing mix, inadequate quality of private open space, and premature pending the construction and commissioning of a new waste water treatment plant in Newtown.

**P.A. Ref. No. 02/1334:** Application for permission for a building consisting of a public house, restaurant, retail unit and 6 no. apartments **withdrawn**.

## 5.0 Policy Context

### 5.1. National Policy

5.1.1. *Sustainable Rural Housing – Guidelines for Planning Authorities 2005*, issued by the DoEHLG in 2005 identify that Kildare falls within the areas under strong urban influence and also within the stronger rural areas. The guidelines advise that only people who are part of the rural community are facilitated for one-off housing and that there is careful management of the rural environs of major urban areas to ensure their orderly development in the future.

5.1.2. The DoEHLG Circular Letter PL02-2017 provides advice and guidance in relation to local need and occupancy conditions.

### 5.2. Development Plan

5.2.1. The operative plan is the Kildare County Development Plan 2017-2023.

5.2.2. Chapter 3 of the Plan deals with the Settlement Strategy and Table 3.1 identifies the designated settlement of Newtown as a Rural Node.

*‘Rural Nodes comprise largely unserviced areas with limited social and community infrastructure and will accommodate limited development at a sustainable scale for local demands by way of small scale cluster developments.’*

5.2.3. Chapter 4 deals with Housing. Newtown is located in Rural Housing Policy Zone 1 as identified in Map 4.4. Section 4.13.8 states;

*‘It is anticipated that each rural node can cater for 10-15% population growth from their current population base over the period of the Plan.’*

*‘Rural nodes are designated for limited development at a sustainable scale for immediate local need through the development of clusters.’*

*‘Rural nodes serve as areas where members of the rural community can live as an alternative to housing in the countryside. The Settlement Strategy encourages appropriate levels of consolidation.’*

*‘Many rural nodes have a more residential focus with fewer services available than the villages.’*

*‘Existing nodes are diverse in their role and function within the rural area.*

*Consideration of planning applications for development within the nodes will have regard to the role and form of the node within the wider rural area with particular care being taken that these settlements do not compete with villages in the services they provide of the role and function they play within the rural area.’*

#### Policies: Rural Nodes

It is the policy of the Council to:

**RH25:** *‘Facilitate the following types of applications for housing in the rural nodes:*

- (i) Individual one-off houses subject to applicants meeting the **local need** criteria identified in the Plan (refer to Map 4.4 and Table 4.3)*
- (ii) Small scale clusters of dwellings/ serviced sites of not more than 5 housing units for applicants / occupants complying with **local need** criteria (refer to Map 4.4 and Table 4.3), and subject to the provision of appropriate physical infrastructure.’*



**RH26:** *‘Ensure that all new developments in the rural nodes particularly cluster development, contribute to and integrate successfully with the existing settlement and to promote the development of central brownfield sites, if existing, as appropriate.’*

**RH27:** *‘Require, in all cases, that special care is taken to protect the architectural and environmental quality identifying the character of the existing settlement form.’*

5.2.4. Chapter 16 of the Plan deals with Rural Design Guidelines.

### 5.3. **Natural Heritage Designations**

There are no natural heritage designations in the immediate vicinity of the site. The closest designated sites include the Ballynafagh Bog SAC located 9.7km to the south and the Rye Water Valley/Carton SAC located 12km to the east.

### 5.4. **Grounds of Appeal**

The 1<sup>st</sup> Party appeal was submitted by the applicant. The grounds of the appeal can be summarised as follows:

1. Grounds of refusal are unreasonable, unprincipled and contrary to natural justice.
  - The further information request which would entail the destruction of the natural hedgerow and replacement with a 2m wide pathway would lead directly to an open stream and create a traffic hazard. Kildare County Council refused to cooperate with the applicants request for a copy of the Office of Public Works (OPW) Preliminary Flood Risk Assessment Report and did not give due consideration to reasons for spot flooding on site which only occur after heavy rainfall.
2. Layout fails to integrate successfully with the existing settlement.
  - Proposed development is similar to adjoining property as referenced in planning report 02/11/16. The planning report falsely claims the applicant’s willingness to accept an exemption from local needs conditions.
3. Failure to issue a decision based on information submitted.

- The planning authority failed to give any consideration to the applicants request for a decision, as they subsequently requested further information and a clarification of further information. The planning authority's refusal to make a decision renders the application for planning permission by default.
4. The protracted planning history of the site.
    - Reference to previous permission for three houses on the site P.A. Ref. 08/1821 without seeking further information, and subsequent refusal for three houses P.A. Ref. 14/980. Refers to delays in dealing with the planning authority in relation to arranging pre planning meetings and agreeing appropriate design guidelines. An earlier application P.A. Ref 02/1290 was returned as invalid under very suspicious circumstances, and subsequent application P.A. Ref. 02/1334 the case planner continued to obstruct the applicants plans by refusing to make a decision. Reference to an invalid application on adjoining site P.A. Ref. 02/2366.
  5. Similarity of current application to P.A. Ref. 02/1334.
  6. Kildare County Council granted planning permission for a commercial development with a residential waste water treatment system with significant discounted contributions on the adjoining site in breach of planning and development regulations.
  7. Similarity between design proposals in P.A. Ref 04/421 which were acceptable to the planning authority and previous design proposal by the applicant which were not acceptable.
  8. Requests that the issues raised in the appeal are brought to the attention of the appropriate authorities.

## 5.5. Planning Authority Response

The submission can be summarised as follows:

- In relation to the first reason for refusal it is noted that part of the site is indicated in the OPW's Preliminary Flood Risk Assessment as being prone to flooding. The applicant was afforded an opportunity to submit a site specific

flood risk assessment in order to allay concerns of flood risk. Given that the site adjoins a watercourse, is prone to flooding and/or water ponding, that the proposed houses would be served by individual waste water treatment systems, together with the OPW's Preliminary Flood Risk Assessment it is considered that a site specific flood risk assessment is submitted.

- Refers to recent decision of The Board on PL.09.247402 (Kildare County Council planning reg. ref. 16/575) where permission was refused for a single house in a rural area on the basis of flood risk. Given the provisions of the Flood Risk Management Guidelines the decision to refuse permission in respect of the current application was considered reasonable, applying the precautionary principle to the development on the subject site.
- Refers to an informal meeting which was arranged on the request of Mr. Frank O'Rourke TD with the applicant at the planning Department of Kildare County Council, at which the applicant was furnished with a map highlighting the OPW preliminary flood line which traverses the southern portion of the site i.e. where it is proposed to locate the proposed treatment systems for each dwelling.
- In relation to the second reason for refusal it is noted that the planning assessment was carried out having regard to the provisions of the (then relevant) Kildare County Development Plan 2011-2017 in particular the provisions relating to Newtown areas 'Rural Node' status and the provisions of policies RH23 and RH24. The new Kildare County Development Plan 2017 - 2023 came into effect on 1<sup>st</sup> March 2017. Section 4.13.8 relates to Rural Nodes, where Newtown is identified as a Rural Node and relevant policies are now listed as RH25, RH26 and RH27 in the County Development Plan.
- Following consideration of the proposal further information was requested in order to accord with the relevant policies of the County Development Plan relating to Rural Nodes in relation to design and layout and respond to the particular sensitivities of the prominent corner site and its relationship to the village in general. A consistent approach to the development of the subject lands in terms of design was taken by the planning authority.

- Kildare County Council gave every opportunity to the applicant to address the issues raised and respectfully request The Board to uphold the decision of Kildare County Council and refuse permission.

#### 5.6. **Observations**

None.

#### 5.7. **Further Responses**

The applicant in a response to the submission of the planning authority dated 19<sup>th</sup> June 2017 indicates;

- Kildare County Council have refused to respond to the historical issues referred to in the appeal and that there was a biased adjudication of the current application.
- The claim that there is spot flooding / ponding on the site is as a result of a condition imposed by Kildare County Council on the adjoining site to raise site levels. As a result, this created a dip along the boundary and ponding only occurs along the boundary. Kildare County Council refused to accept this logical and reasonable response and repeatedly proceeded to issue clarification of further information, despite previously granting permission to the applicant for three houses with separate Waste Water Treatment Systems under Reg. Ref. 08/1821 and without raising any concerns over potential flooding.
- Kildare County Council failed to comply with the PFRA Guidelines which states that maps should not be used for local-decision making or any other purpose without verification, they reneged on its pre-planning agreement of granting exemption from 'local needs' restriction in return for its request for a reduction from three houses to two, they refused to make a decision on the application as requested, despite having sufficient information to make a decision.
- The applicant sought advice from his local representatives Frank O'Rourke T.D. and Catherine Murphy T.D. in relation to seeking a meeting with the

Planning Department. A meeting was held on 2<sup>nd</sup> December but it was unproductive and Kildare County Council refused to provide a copy of the PFRA.

- The grounds for refusal in relation to the proposed layout which fails to integrate successfully with the existing settlement is contradictory by the acknowledgment in its planning report of the similarity to the adjoining property and which was agreed at pre-planning. The applicant notes that under Reg. Ref. 08/1821 the house design permitted had no resemblance to any houses in the vicinity.
- The applicant requests that in the interest of justice and the protection of the common good, that the issues highlighted are considered in the context of Kildare County Councils infringements of the Planning and Development Regulations and the 'The Prevention of Corruption (Amendment) Act, 2001.

## 6.0 Assessment

6.1. The following are considered to be the main issues arising:

- Compliance with Development Plan Policy – Local Need
- Flooding Drainage and Waste Water
- Design and Landscaping
- Appropriate Assessment

### 6.2. Compliance with Development Plan Policy - Local Need

6.2.1. The subject site is located in Rural Housing Policy Zone 1 as identified in Map 4.4 of the development plan. Table 4.3 of the plan identifies categories of housing need criteria, which are deemed to meet eligibility for a one-off rural house in this zone.

6.2.2. Section 4.13.8 sets out policy in relation to Rural Nodes of which Newtown is identified in Table 4.6. In relation to Rural Nodes Policy RH25 seeks to facilitate applications for housing either for individual one-off houses or small scale clusters of dwellings, where in either instance the applicant is required to demonstrate that they meet the local need criteria identified in the Plan referring to Map 4.4 and Table 4.3.

- 6.2.3. The applicant did not provide any information in relation to meeting the local need criteria. This was acknowledged in the first planning report, and the applicant was requested to submit details of how it was intended to meet the local need criteria in accordance with rural housing policy RH22 of the Kildare County Development Plan 2011-2017. In response the applicant made an application for a Certificate of exemption from Part V of the Planning and Development (Amendment) Act 2002-2005.
- 6.2.4. The planner in the second planning report notes that the applicant failed to address the issue and notes that the term 'local need' has been misinterpreted as referring to Part V social housing. The applicant is again requested in item 2. of the request for clarification of further information to address this issue. In response the planners report states that he is willing to accept a condition requiring that one dwelling be restricted to local need criteria in accordance with Table 4.3 of the Kildare County Development Plan 2011-2017.
- 6.2.5. I would note however that there does appear to be a discrepancy between what is stated in the planners report in relation to the applicant's willingness to accept a condition, as this is not explicitly stated in correspondence from the applicant in letter dated 15/12/2016.
- 6.2.6. The issue was not pursued any further in the clarification of clarification of further information or cited as a reason for refusal in the final decision.
- 6.2.7. Permission was not refused on the basis of non-compliance with the rural housing policy. The appellant makes reference to the planning history on the site and attempts to arrange pre planning meetings. However, there is no elaboration on the file on this issue of local need. It is further noted that the planning authority in their response to the appeal while citing the changes in relevant policies with the adoption of the current County Development Plan do not comment either on this matter.
- 6.2.8. Table 4.3 of the plan identifies the following categories of housing need criteria, which are deemed to meet eligibility for a one-off rural house in this zone. In order for an applicant to be considered for a one-off dwelling in the rural area of Kildare, an applicant must:

*(A) Meet one of the following categories of applicant;*

1. *A member of a farming family who is actively engaged in farming the family landholding or*
2. *A member of the rural community. and*

*(B) Meet one of the local need criteria (i) – (iii) set out in Table 4.3 Schedule of Need.*

*Category Applicant 1:*

- (i) Persons engaged full time in agriculture (including commercial bloodstock / horticulture), wishing to build their home in the rural area on the family landholding and who can demonstrate that they have been engaged in farming at that location for a continuous period of over 7 years, prior to making the application.*

*Category Applicant 2.:*

- (i) Persons who have grown up and spent substantial periods of their lives (12years) living in the rural area of Kildare as members of the rural community and who seek to build their home in the rural area on their family landholding and who currently live in the area. Where no land is available in the family ownership, a site within 5km of the original family home may be considered.*
- (ii) Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare, as members of the rural community who have left the area but now wish to return to reside near to, or to care for immediate family members, seeking to build their home in the rural area on the family landholding or on a site within 5km of the original family home.*
- (iii) Persons who can satisfy the Planning Authority of their commitment to operate a full time business from their proposed home in the rural area where they have existing links to that rural area and that the business will contribute to and enhance the rural community and that the nature of such enterprise is location dependent and intrinsically linked to a rural location.*

- 6.2.9. I am not satisfied that the applicant despite being given the opportunity to do so has demonstrated that they meet the local housing need criteria in relation to the proposed dwellings. I also note that the previous application P.A. Ref. 14/980 was refused for a similar reason i.e. the absence of documentary evidence demonstrating compliance with local need criteria. In my opinion, the current application has not satisfactorily addressed reason no. 1 of that refusal.
- 6.2.10. To conclude, it is considered that the applicant has not demonstrated compliance with the rural housing policies of the Kildare County Development Plan 2017-2023 and has not demonstrated a local rural housing need in accordance with the criteria set out in Table 4.3 of the plan. As such the proposed development would contravene rural housing policy RH25.

### 6.3. **Flooding, Drainage and Wastewater Treatment**

- 6.3.1. The proposed Aquamax Bison waste water treatment systems have been assessed with regard to the guidance provided in the EPA manual *Treatment Systems for Single Houses (2009)*, to the site characterisation form and documentation on file, to the planning history and to the site inspection.
- 6.3.2. The site characterisation form states a groundwater protection response of R1, i.e. acceptable subject to normal good practice. The form notes the dwelling adjacent to the site, and grassland at the site, with no other potential site restrictions identified. The drainage ditches to the south and west boundary. The site tests were carried out in June 2016. They indicate a silt/clay topsoil with a gravel subsoil with no mottling noted. The form states that water was encountered at 1m below ground level. In addition, I observed the water table in both trial holes at the site during the site inspection, but did not observe any ponding on site albeit the site was very overgrown. I would note that site tests were carried out in the month of June during a typically dryer period, and my own site inspection again in June a year later confirmed that the water table was high. Three tests were carried out but all on the same date 29/06/2016.
- 6.3.3. The T test result of 20 minutes is below 50 and therefore within acceptable parameters. A lower P result of 18.72 indicates better draining soils closer to the surface. The test results are consistent with the observed soil types.



Two proprietary wastewater treatment systems with a soil polishing filter are proposed to discharge to groundwater. The site layout indicates that satisfactory separation distances can be achieved in accordance with EPA guidance. Given the depth of the water table it is proposed to raise the polishing filter 0.6m above ground level. On balance, given that the T and P test results are satisfactory and that the Environment sections of the PA have no objection, I consider that the proposed treatments systems are acceptable. I do note however that the Water Services section note that the portion of the site adjacent to the river may be subject to flooding from OPW records and that the percolation areas may extend into this area.

6.3.4. The River Blackwater is located c. 2.8km to the west of the development site. I note the stream that runs along the southern boundary of the site feeds into a tributary to the River Blackwater. I note that OPW flood maps indicate that the site is located within the 1% fluvial annual exceedance probability (AEP) event area as per the CFRAMS preliminary flood risk assessment (PFRA) draft map, indicating a 1 in 100 year return fluvial flood occurrence.

6.3.5. Cognisant that the subject site is prone to flooding as indicated on the OPW flood risk maps, and as highlighted in the submission received, and the fact that site tests demonstrated a high water table in the month of June, the applicant was requested to submit a site specific flood risk assessment report as recommended by the DoEHLG *Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)*. The applicant however despite being requested by the PA did not provide a site specific flood risk assessment report. The applicant claims that the PFRA flood maps should not be used for local decision making (see letter dated 23/02/2017 from James Lohan on behalf of the applicant).

6.3.6. Circular PL2/2014 gives guidance on the use of OPW Flood Mapping in assessing planning applications. The guidance notes the Draft Indicative Flood Risk Assessment (PFRA) Maps produced by the Office of Public Works (OPW) in 2010 were prepared for the purpose of an initial assessment, at a national level, of areas of potentially significant flood risk, as required by the EU Floods Directive 2007/60/EC. The circular notes that '*the maps provide only an indication of areas that may be prone to flooding. They are not necessarily locally accurate and should not be used as the sole basis for defining Flood Zones, or for making decisions on planning applications*'.

- 6.3.7. Furthermore, the OPW Guidance Notes state that *'local site inspections, and/or making use of the knowledge of staff familiar with a particular area, are essential to determine if the maps for a given area are reasonable. For the purposes of flood zoning, or making decisions on planning applications, it is strongly recommended that a Stage II Flood Risk Assessment (Initial Flood Risk Assessment), as set out in the (2009 DECLG) Guidelines, is undertaken (where there are proposals for zoning or development, and where the area may be prone to flooding, as described above).'*
- 6.3.8. The planning authority met with the applicant, furnished him with a copy of the OPW preliminary flood map and also advised him consult with his engineer and the OPW mapping system. The planning authority consequently refused planning permission on the grounds that the proposed development on the site which relies on two waste water treatment systems and which is prone to flooding would be prejudicial to public health.
- 6.3.9. Notwithstanding the acceptable test results, and that on the day of my site inspection I saw no evidence of ponding, and the water level in the stream was low, I would still have concerns about the high water table and overall density of wastewater treatment systems given the density of one off houses. Given the potential possibility of fluvial flooding and in the absence of a site specific flood risk assessment, it is considered based on the precautionary principle that the flood risk is high and a recommendation of refusal of permission is warranted.

#### 6.4. **Design and Landscaping**

- 6.4.1. The site is located at a junction of two roads at the entrance to the village of Newtown. The proposed two storey dwellings are double bay with quoin detailing, and have pitched roofs with a ridge height of 8.2m. The houses are set back approx. 11m and 15m respectively from the public road and are orientated north south. It is proposed to provide a shared vehicular entrance to serve both dwellings.
- 6.4.2. The site benefits from being generally level with mature trees and planting along its rear southern boundary and lower hedges along the northern boundary at the entrance to the village. It is acknowledged that the site is at a prominent location but considering the existing screening and screening proposed and set back of the houses, and the similarity in design to the adjoining house, it is considered that the

site can absorb the visual impact of the dwellings and that the house design is acceptable. It is also noted that there is quite a mix of building types in the village. It is noted that there is little detail in relation to finishes but this could be addressed by way of condition future.

- 6.4.3. The planning authority considered the proposed design to be overly complicated and bulky and requested revised proposals which provides for a strong landscaped green edge easing the transition from the village core to the proposed new housing. However, no amendments to the design were forthcoming. I consider that subject to enhanced planting and landscaping along the northern boundary in particular, that the concerns of the planning authority could be addressed. The design and layout of the proposed dwellings are generally considered to be in accordance with the recommendations of the development plan Chapter 16.
- 6.4.4. I do not consider that the design of the proposed houses albeit at a prominent location at the entrance to the village warrants a recommendation of refusal.

## 6.5. **Appropriate Assessment**

- 6.5.1. There are no SPA's within 15km of the site. With regard to the nature and scale of the proposed 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.

## 6.6. **Other Issues**

- 6.7. It is noted that the required sightlines can be achieved and a 2m footpath is proposed to be constructed along the northern boundary of site no. 1.

## 7.0 **Recommendation**

- 7.1. In view of the above, it is recommended that permission be refused based on the following reasons and considerations:

## 8.0 Reasons and Considerations

1. The site of the proposed development is located on the fringes of an area indicated as being at risk of flooding on the flood risk maps prepared by the Office of Public Works. On the basis of the documentation submitted with the current application and appeal, the high water table observed on site, and in the absence of a site specific flood risk assessment, the Board is not satisfied that the development can be located outside the flood risk zone. Accordingly, it is considered that the proposed development by reason of flood risk at the site would materially contravene the national guidelines in relation to flooding and, would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The subject site is located in the Rural Housing Policy Zone 1, as per Map 4.4 of the Kildare County Development Plan 2017-2023. Having regard to the location of the site in an area under strong urban influence as identified in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005, where it is policy to distinguish between rural-generated housing need and urban-generated housing need, and in an area where housing is restricted to persons demonstrating local need in accordance with the current Kildare County Development Plan, it is considered that the applicant has not demonstrated compliance with the scope of the rural-generated housing need criteria as set out in the Guidelines, nor with the local need criteria set out in the Development Plan for a house at this Rural Node. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Susan McHugh

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Planning Inspectorate

7<sup>th</sup> July 2017