



An  
Bord  
Pleanála

## Inspector's Report PL09.249005.

### Development

The demolition of an existing garage, kennels and dog enclosure and the construction of a 4 bedroom single storey dwelling with attic storage overhead; the installation of a packaged wastewater treatment plant and polishing filter; the relocation of an existing fence to form a new boundary; modification of an existing access to form a shared access for the existing and proposed dwelling; the removal of an existing sewerage treatment system and its replacement with another to serve the existing dwelling and associated site works.

### Location

Coole Newtown, Eadestown, Naas, County Kildare.

### Planning Authority

Kildare County Council.

### Planning Authority Reg. Ref.

17/558.

### Applicant

Robert Catterson.

### Type of Application

Permission.

<b>Planning Authority Decision</b>	Refusal.
<b>Type of Appeal</b>	First Party
<b>Appellants</b>	Robert Catterson.
<b>Observers</b>	Thomas and Anne Devaney.
<b>Date of Site Inspection</b>	5 <sup>th</sup> February 2018.
<b>Inspector</b>	Derek Daly.

## 1.0 Site Location and Description

- 1.1. The appeal site is located in a rural area in the townland of Newtown approximately 3.5 kilometres to the east of the town of Naas and 2.5 kilometres north of Punchestown racecourse.
- 1.2. The site has frontage onto a local road which defines the site's western boundary and is located in the middle of a row of seven dwellings. The general area although rural is characterised by a significant level of houses fronting onto the rural road network including another cluster of dwellings at a junction of the local road with another local road approximately 400 metres north of the appeal site.
- 1.3. On the appeal site is a dormer type dwelling with detached garage located in the southern area of the site. There is also a detached garage and kennels located to the northeast of the dwelling. Dwellings in the vicinity are predominantly single storey including the dwellings on either side of the appeal site. The site is characterised by mature planting along its boundaries including a hedgerow and earthen bank along the roadside boundary. The site is roughly square in configuration and has a stated area of 0.462 hectares.

## 2.0 Proposed Development

- 2.1. The proposed development as submitted to the planning authority on the 17<sup>th</sup> of May 2017 was for the following;
  - The demolition of an existing garage, kennels and dog enclosure on the site.
  - The construction of a 4 bedroom single storey dwelling with attic storage overhead located to the north of the existing dwelling on the site. The proposed dwelling is of a modern design and construction with a maximum height to roof ridge of approximately 6330mm;
  - The installation of a packaged wastewater treatment plant and polishing filter to serve the proposed dwelling located to the front of the proposed dwelling;
  - The relocation of an existing fence to form a new boundary between the existing dwelling and the proposed dwelling;

- The modification of an existing access located in the southern corner of the overall current site to form a shared access for both the existing and proposed dwellings;
- The removal of an existing sewerage treatment system located in the site of the proposed dwelling and its replacement with another located to the rear of the existing to serve the existing dwelling and
- associated site works.

2.2. The application was accompanied by the following

- A cover letter addressing matters raised in a previous refusal of An Bord Pleanála.
- A site suitability report in relation to wastewater treatment on the site.
- A rural housing application form and other documentation to demonstrate a connection to the area and that the is being obtained from his parents with supporting documentation.

### 3.0 **Planning Authority Decision.**

#### 3.1. **Decision**

The decision of the planning authority was to refuse permission. two reasons were stated. The first reason refers to Policy RH9 of the Kildare County Development Plan 2017-2023. The second reason for refusal refers to ribbon development and to policy RH12 in this regard.

#### 3.2. **Planning Authority Reports**

##### 3.2.1. Planning Report

The planning report dated the 11<sup>th</sup> of July 2017 refers to;

- The planning history.
- The policy context in particular chapter 4 of the plan relating to housing with reference to sections 4.12 and 4.13; chapter 14 relating to landscape, recreation and amenities; chapter 16 on rural housing guidelines and chapter

17 in relation to development management. There is also reference to the sustainable rural housing guidelines.

- The key planning issues relating to the proposed development in particular ribbon development, the provision of services and local need
- The context of the site relative to the high level of development in the area and the previous refusal from the Board.
- Refusal was recommended.

### 3.3. Other reports

The area office report refers to the issue of surface water along the public road and the provision of measures to address this and also conditions to be included in any grant of planning permission.

The environment report dated the 27<sup>th</sup> of June 2017 indicates no objections subject to conditions.

Water services report dated the 30<sup>th</sup> of June 2017 indicates no objections.

Irish Water submission dated the 4<sup>th</sup> of July 2017 indicates no objections.

### 3.4. Other parties.

A third party submission refers to the planning history; the issue of local housing need; ribbon development; effluent treatment and road flooding.

## 4.0 Planning History

Appeals on the current appeal site.

ABP Ref No PL09.247087/ P.A Ref No 16/186

Permission refused on appeal for the demolition of an existing domestic garage, kennels and dog enclosure and construction of a four bedroom single-storey dwelling, with ground floor living area and attic storage overhead, the formation of a new vehicular access, the installation of a packaged wastewater treatment plant and polishing filter, relocation of an existing post and rail fence to form a new site boundary and a connection to the public mains water supply together with all other ancillary works to serve the proposed dwelling. Removal of an existing sewerage

treatment system, and the installation of a new packaged treatment system including polishing filter, along with new connection to the public mains water supply.

Three reasons were stated which referred to an excessive density of development in a rural area lacking certain public services and community facilities, would contribute to the increasing suburbanisation of the area; exacerbating a serious pattern of undesirable ribbon development in this rural area resulting in both visual impact and a multiplicity of vehicular entrances on a rural road, and exacerbating an excessive concentration of development dependent on on-site disposal of foul effluent in an area that is identified by the Environmental Protection Agency as being at high risk from domestic waste water pollution; result in a risk of pollution and would be prejudicial to public health.

ABP Ref No. PL 09.243554/P.A. Ref No. 13/799

Permission granted for the retention of fence structures, two detached dog kennels and dog run.

## **5.0 Policy Context**

### **5.1. National Policy.**

### **5.2. Guidelines on Sustainable Rural Housing 2005.**

- 5.2.1. The guidelines refer to the need for a development plan approach and to having similar defined the rural area types as set out in the NSS within the development plan. The guidelines also indicate that planning authorities must then tailor policies that respond to the different housing requirements of both urban and rural communities and the varying characteristics of rural areas.
- 5.2.2. The site is located in a rural area and in the context of the Guidelines section 3.2 would be in an area would be defined as a rural area under strong urban influence.
- 5.2.3. The Guidelines differentiate between rural and urban-generated housing. The guidelines refer to rural generated housing; to sustaining and renewing rural communities; to accommodating people of a rural area in their area of origin and in section 2.4 to tailoring policies to local circumstances.
- 5.2.4. Section 3.2.3 refers to rural generated housing and there is reference to “persons who are an intrinsic part of the rural community” and also reference in this regard to

“members of an established rural community, and persons who wish to return to reside near other family members or to care for elderly family members”. There is in addition reference to working in rural areas including full and part time farming.

5.2.5. The guidelines indicate, however, that having defined rural generated housing needs, the development plan should make very clear that subject to satisfying normal considerations the planning authority will look favourably upon an applicant’s proposal for an individual house in a rural area where that applicant comes within the development plan definition of need. Chapter 4 outlines the criteria to be assessed in determining applications in rural areas.

5.2.6. Section 4.3 refers to balanced assessments will need to be made regarding the circumstances and merits of the application and in making such assessments, while it will be necessary to support the spirit of the development plan policies, planning authorities must be sensitive in the treatment of applicants. It is also indicated that in particular, planning authorities should recognise that exceptional health circumstances supported by relevant documentation from a registered medical practitioner and a disability organisation may require a person to live in a particular environment or close to family support. In such cases, and in the absence of any strong environmental, access or traffic reasons for refusal, a planning authority should consider granting permission.

5.2.7. In summary, the Guidelines provide that people who are part of the rural community should be facilitated by the planning system in all rural areas and to take a positive approach to applications from such persons in the areas referred to, in circumstances where permission might otherwise be refused.

### **5.3. Development Management Guidelines for Planning Authorities June 2007.**

5.3.1. The guidelines are intended to promote best practice at every stage in the development management process and promote a more positive role for the planning system. It is the purpose of the planning system to promote proper planning and sustainable development, rather than to control undesirable forms of development.

- 5.3.2. The guidelines set out criteria in relation to the assessment of planning applications and the information submitted. There is guidance in relation to the preparation of conditions and also in relation to framing of reasons for refusal.
- 5.3.3. Section 7.14 sets out guidance in relation to reasons for refusal and section 7.15 in relation to refusals arising from development plans or local area plans and that a statement of objectives in a development plan should not be regarded as imposing a blanket prohibition on particular classes of development and does not relieve the planning authority of responsibility for considering the merits or otherwise of particular applications. A reason for refusal must, as far as possible, bring out the reasonableness of applying the provisions of the plan in the particular case.

#### 5.4. **Environment Protection Agency.**

- 5.4.1. The EPA publications Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.  $\leq 10$ ) 2009 and its subsequent clarifications.
- 5.4.2. The Code of Practice outlines the importance of proper site assessment methodology, the identification of the minimum environmental protection requirements, the need for design of on-site wastewater disposal systems specific to the local conditions and the need for installation, commissioning and maintenance as per design and attendant recommendations/conditions.

#### 5.5. **Development Plan**

##### **Kildare County Development Plan 2017-2023.**

- 5.6. Chapter 4 refers to housing in the context of an overall settlement housing strategy for the county. Section 4.12 refers to Housing in Rural Areas with the overall aim “*to encourage the sustainable provision of one off rural housing in accordance with the settlement strategy and to ensure that development of rural areas takes place in a way that is compatible with the protection of key economic, environmental, natural and cultural heritage resources of the county*”.
- 5.6.1. The plan in section 4.12.1 acknowledges the distinct characteristics of rural communities in Kildare and through the policies and objectives of the Plan, to endeavour to sustain and renew rural communities. The Plan seeks to facilitate housing in rural areas for people who have a genuine need to live in rural areas and



who will contribute to the rural community, while protecting rural areas from housing that would adversely impact on landscape character, environmental quality, the rural economy and the rural character of the area. The pressure for one off housing in the county is also recognised.

5.6.2. As a response to the pressure there is an overall county strategy and policy including the identification of 2 rural housing policy zones and the appeal site is located in policy zone 1 (map 4.4).

5.6.3. Section 4.12.7 sets out criteria in relation to consideration of rural generated housing and the need to locate in a rural area including being a member of a farming family or a member of the rural community and meeting the criteria as set out in table 4.3(a). For a member of the rural community the applicant must demonstrate a genuine local need to reside close to their family home by reason of immediate family ties or their active and direct involvement in a rural based enterprise and in zone 1 address the three criteria outlined which include:

(i) 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 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.

5.6.4. Section 4.13.1 refers to siting and design and policy RH9 refers to “*ensure that, notwithstanding compliance with the local need criteria, applicants comply with all*

*other normal siting and design considerations*". The matters outlined refer to design, landscaping assimilation and traffic safety but also;

- (iv) *The capacity of the area to absorb further development. In particular, the following factors will be examined; the extent of existing development in the area, the extent of ribbon development in the area, the degree of existing haphazard or piecemeal development in the area and the degree of development on a single original landholding.*
- (vi) *The ability of a site in an unserviced area to accommodate an on-site waste water disposal system in accordance with the EPA Code of Practice for Wastewater Treatment Systems for single houses (2009), the County Kildare Groundwater Protection Scheme, and any other relevant documents / legislation as may be introduced during the Plan period.*

5.6.5. Policy RH12 is policy to discourage ribbon development (defined as five or more houses alongside 250 metres of road frontage) and it is indicated that *"the Council will assess whether a given proposal will exacerbate such ribbon development, having regard to the following:*

- (i) *The type of rural area and circumstances of the applicant;*
- (ii) *The degree to which the proposal might be considered infill development;*
- (iii) *(iii) The degree to which existing ribbon development would coalesce as a result of the proposed development;*
- (iv) *(iv) Local circumstances, including the planning history of the area and development pressures.*
- (v) *Notwithstanding the above, special regard will be given to the circumstances of immediate family members of a landowner on single infill sites in a line of existing dwellings with 5 or more houses along a 250 metres of road frontage".*

5.6.6. Chapter 14 refers to Landscape Recreation and Amenity. The site is located within the Eastern Transition Landscape Character Area with class 2 sensitivity which is an area with the capacity to accommodate a range of uses without significant adverse effects. It is not within an area of high amenity, scenic area or a protected view.

5.6.7. Chapter 16 of the plan relates to rural design which outlines standards in relation to the design and siting of development and the assimilation of development in the landscape.

5.7. Chapter 17 refers to Development Management Standards which outlines requirements in relation to the provision of services.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appellant in the grounds of appeal refers to;

- By way of initial comment on the appeal a number of matters are indicated.
- The dwelling is to be built in the garden of the Catterson home rather than in a remote rural area or on farmland.
- The current proposal is to address the previous Board decision
- A function need to reside in the area does not form part of the development plan. There is no work related test in the Kildare plan and therefore no statutory authority to apply this requirement and the current proposal therefore satisfies adopted policy.
- Reference is made to sections 4.3 of the rural housing guidelines and 5.5 of the development management guidelines which refer to considering the health of parents and this was not considered despite evidence presented in this regard.
- Planning policy does not oppose infill proposals in ribbon development and county and national policy has shown tolerance in this regard.
- As a consequence, the Board has placed inadequate weight on the provisions of policy RH12 which refers to special regard and an allowance of greater flexibility for family members.
- Section 4.3 of the rural housing guidelines suggests permission should be granted in the absence of any strong environmental, access or traffic reasons for refusal.

- In terms of wastewater treatment all of the reports concluded the previous proposal satisfied the EPA Code of Practice and evidence submitted to indicate no cause of pollution.
- In section 7 of the submission there is reference to policy at national and local level.
- Reference is made sections 2.1 and 3.2.3 of the Sustainable Rural Housing Guidelines.
- Reference is made to chapter 4 of the current County Kildare Development Plan, to the distinct characteristics of rural communities in Kildare. At a more detailed level, there is guidance to rural development in rural areas and section 4.12.6 of the plan is referred to in this regard and there is policy guidance outlined in Policy RH9.
- It is noted that the current county plan places greater weight on rural housing than the previous plan which was the operative plan for the previous ABP decision.
- The grounds of appeal then address rural housing policy and at national level rural generated housing should be accommodated and seeks to accommodate applicants with societal and familial connections to a particular area.
- The local need has been accepted in relation to the current appellant in successive county development plans.
- The Board have accepted local need compliance but have questioned if a functional need has been demonstrated.
- The issue of functional need as stated in the Board decision is questioned and whether additional criteria over and above the development plan requirements should be applied.
- Reference is made to *Brophy v An Bord Pleanála* where in that case South County Dublin apply additional criteria but Kildare do not apply additional criteria and there is no need to show a functional need to live in the locality.

- Reference is made to the medical needs of the appellant's parents and documentation is submitted in support of this and this is provided for in section 4.3 of the rural housing guidelines. It is also indicated in section 5.3 of the Development Management Guidelines. This matter was not addressed in the previous Board decision.
- In relation to the capacity of the area for further development, reference is made to section 7.15 of the Development Management Guidelines and that it is preferable given his personal circumstances to construct a dwelling in the garden of his family home than elsewhere within a 5 kilometre of his family home.
- The site is not in itself so sensitive so as to counter balance the presumption in favour of housing of a local resident.
- There are no standards governing the number of houses which can be built in a particular rural area and a decision to suggest that the area has reached its natural capacity is subjective. Past decisions which have reversed previous recommendations indicate that refusals are in some cases subsequently granted permission.
- Reference is made in this regard to a development in Kinneagh ABP PL.09.224721 and that the position taken by the Board to grant permission in that appeal applies in the current appeal.
- There are areas in which there is a greater level and density of development in the rural area. Planning policy permits and facilitates people living in their rural area.
- The family site is approximately twice the area of other sites in the immediate vicinity.
- There are no visual issues.
- The development plan discourages but does not prohibit ribbon development and the provisions do not oppose infill developments.
- Reference is also made to appendix 4 of the rural housing guidelines in relation to the consideration of infill development.

- It is acknowledged that the area is characterised by ribbon development however the appeal site is a gap site and would not extend the ribbon of development.
- The development of the appeal site is preferable than development perhaps elsewhere in the rural area.
- Reference is made to ABP PL.09240627 in relation to the question of infill or an exacerbation of ribbon development.
- Policy RH12 of the current development plan supports the current proposal in the manner in which consideration can be made for immediate family members.
- In relation to availability and provision of services the reason for refusal ignores the proximity of the site to Naas and ignores that the development plan permits consideration of dwellings in a rural area. It is accepted that urban areas provide services for the rural hinterland.
- In relation to wastewater the previous application and current application complies with the EPS Code of Practice and there were no technical objections to the proposals as submitted.
- No evidence was presented to indicate an issue in relation to public health and that remains the case.

## 6.2. Planning Authority Response

The planning authority in a submission indicate that they have no further comments in relation the appeal.

## 7.0 Observer Submission

7.1. Thomas and Anne Devaney in a submission refer to;

- The reasons for refusal do not refer to the issue of local need.
- Reference is made to Policy RH9 and the criteria set out in relation to this policy and on this basis the Planning Authority and the Board determined that the site is not suitable for development.

- Local need has not been satisfied.
- Ribbon development would be exacerbated by the proposed development and that the development cannot be considered as infill development.

## 8.0 Assessment

### 8.1. Introduction.

8.1.1. The current appeal is essentially a new application to address a refusal by the Board, ABP Ref No PL09.247087/ P.A Ref No 16/186 where permission was refused on appeal on the 15/12/2016 overturning a decision of the planning authority for a proposed development which is largely the same as the current proposal. In the case of the current proposal the planning authority's decision was to refuse the proposed development.

8.1.2. In relation to ABP Ref No PL09.247087 three reasons were stated as follows;

1. Policy RH 5 of the planning authority, as set out in the Kildare County Development Plan 2011 – 2017, is to ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations, including the capacity of the area to absorb further development. In conjunction with the level of existing development in the vicinity, it is considered that the proposed house would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities, would contribute to the increasing suburbanisation of the area, and would contravene Policy RH 5 of the Development Plan, which policy is considered reasonable. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development would exacerbate a serious pattern of undesirable ribbon development in this rural area, and would, therefore, contravene the provisions of the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April, 2005, resulting in both visual impact and a multiplicity of

vehicular entrances on a rural road, and would be contrary to the proper planning and sustainable development of the area.

3. It is considered that the proposed development would exacerbate an excessive concentration of development dependent on on-site disposal of foul effluent in an area that is identified by the Environmental Protection Agency as being at high risk from domestic waste water pollution. The proposed development, taken in conjunction with the level of existing development in the vicinity, would, therefore, result in a risk of pollution and would be prejudicial to public health.

8.1.3. The planning authority stated two reasons for refusal in relation to the current proposal under appeal as follows;

- 1 Policy RH9 of the planning authority, as set out in the Kildare County Development Plan 2017 – 2023, is to ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations, including the capacity of the area to absorb further development. In conjunction with the level of existing development in the vicinity, it is considered that the proposed house would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities, would contribute to the increasing suburbanisation of the area, and would contravene Policy RH9 of the Kildare County Development Plan 2017-2023. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 2 Having regard to the degree of existing ribbon development in the area and the development pressure in the area it is considered that the area has reached its capacity in terms of one off residential development and is unable to absorb further development. Taken in conjunction with this pattern of development in the area, the proposed development, if permitted would exacerbate an undesirable pattern of ribbon development, which is defined as 5 or more houses along 250 metres of road frontage and further contribute to an excessive density of development in a rural area lacking certain public services and community facilities and services.



The proposed development would lead to demands for the provision of further public services and communal facilities in an area where these are not proposed. The proposed development would, therefore, contravene materially Policy RH12 as set out in the Kildare County Development Plan 2017-2023.

- 8.1.4. The Board decision was determined under the previous county development plan the Kildare County Development Plan 2011-2017 and the current proposal determined under the provisions of the current Kildare County Development Plan 2017-2023.
- 8.1.5. The current refusal which is the subject of this appeal reflects in the decision of the planning authority, the first reason of the Boards' first reason for refusal, aspects but differs in a number of respects the Board's second reason for refusal and does not include the Board's third reason for refusal.
- 8.1.6. The appellant in addressing the current decision of the planning authority has referred to matters raised in the current decision and the previous Boards decision.
- 8.1.7. Prior to considering matters specific to the site I propose to address this appeal initially in relation to matters of policy both nationally and local and subsequently site specific matters.

## 8.2. **Policy**

- 8.2.1. I will initially consider the need for the dwelling in a rural area
- 8.2.2. The proposed development is to construct a dwelling in a rural area. It is in effect a sub-division of an existing residential site where the son of the site owners wishes to construct a dwelling on his parent's site. This will involve the provision of a new dwelling with wastewater treatment and the replacement of the existing wastewater treatment of the parent's dwelling with a relocated wastewater treatment system. A shared entrance is also proposed.
- 8.2.3. In section 5 of this report I have outlined relevant provisions in relation to the DoEHLG Guidelines on Sustainable Rural Housing and the current County Development Plan on rural settlement which largely follows the national guidance in relation to rural housing.
- 8.2.4. In this regard policy is governed by the initial consideration of need to reside in a rural area and both the DoEHLG Guidelines and the current development plan

distinguish between urban generated and rural generated housing in rural areas. There is reference to establishing need to reside in rural areas. The overall policy as set out in the current KCDP is, I consider, reasonable in identifying a settlement strategy and hierarchy and also identifies a requirement for a structured appraisal of rural housing and that prospective housing in rural areas complies with a series of criteria to establish a rural generated rural need.

- 8.2.5. The applicant has indicated that he is part of a family who have lived in the area and has resided in a dwelling on part of the appeal site. In relation to place of work the applicant is employed in the town of Naas. Other than the current site the applicant and his family appear to have no alternative land holding. Documentary medical evidence is submitted to support a family member residing in proximity to parents.
- 8.2.6. I do not consider that there is an issue in relation to the applicant having established ties to the local area and in the absence of the family owning land they are availing of the opportunity to acquire a housing site by the sub-division of the parents site/land within the parish and area in proximity to his family. The issue is whether the applicant has established rural generated housing need.
- 8.2.7. In considering development in areas under urban pressure the current KCDP distinguishes between rural areas and has tailored criteria to be considered in relation to these areas. Section 4.12.7 sets out criteria in relation to consideration of rural generated housing and the need to locate in a rural area including a member of the rural community and meeting the criteria as set out in table 4.3(a).
- 8.2.8. I am satisfied that the current applicant would be considered to be a member of the rural community as defined in the current KCDP and meets the criteria as set out.
- 8.2.9. The guidelines in relation to rural generated housing also clearly indicate applicants to be considered in this context and refer to “persons who are an intrinsic part of the rural community” and “members of an established rural community, and persons who wish to return to reside near other family members or to care for elderly family members”. The guidelines also indicate, that having defined rural generated housing needs, the development plan should make very clear that subject to satisfying normal considerations the planning authority will look favourably upon an applicant’s proposal for an individual house in a rural area where that applicant comes within the development plan definition of need.

- 8.2.10. The applicant I consider, therefore, has established consideration based on a rural generated housing need. I would note that in the previous refusal by the Board did accept compliance with the local need criteria. The planning authority also accept compliance with local need criteria. I would also note that functional need does not arise in the provisions of the current development plan in relation to the current applicant. The plan distinguishes between three prospective groups, farming families, members of the rural community and persons involved in rural enterprise. It does not infer a requirement that a member of the rural community has of a necessity to be engaged in a functional related employment such as farming or rural enterprise to be considered for rural housing. The rural guidelines I consider do not reflect a position of similarly requiring functional need.
- 8.2.11. The reasons for refusal in the decision of the planning authority also refer to policies RH9 and RH12 of the current KCDP referring to notwithstanding compliance with the local need criteria, that applicants comply with a number of considerations. These considerations include all other normal siting and design considerations and services which I will refer to in relation to site specific matters in the report but also subsection (v) *the capacity of the area to absorb further development. In particular, the following factors will be examined; the extent of existing development in the area, the extent of ribbon development in the area, the degree of existing haphazard or piecemeal development in the area and the degree of development on a single original landholding.*
- 8.2.12. In relation to the planning authority's decision to refuse permission subsection (v) of policy RH9 is the basis of the decision with reference to the capacity of the area to absorb further development and the level of existing development in the vicinity, the proposed house/development would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities, and would contribute to the increasing suburbanisation of the area.
- 8.2.13. There is based on the correspondence submitted by parties to this appeal little dispute that the area in the vicinity of the appeal site has a very significant level of housing comprising of one off housing fronting onto the local road network.
- 8.2.14. The appellant in the grounds of appeal indicates that section 4.3 of the rural housing guidelines suggests permission should be granted in the absence of any strong

environmental, access or traffic reasons for refusal; that the current county plan places greater weight on rural housing than the previous plan which was the operative plan in the previous ABP decision; that rural housing policy and at national level rural generated housing should be accommodated and also seeks to accommodate applicants with societal and familial connections to a particular area. Reference is made to the medical needs of the appellant's parents and documentation is submitted in support of this and this is provided for in section 4.3 of the rural housing guidelines. It is also indicated in section 5.3 of the Development Management Guidelines and this matter was not addressed in the previous Board decision.

- 8.2.15. In a more general sense the grounds of appeal also refer to in relation to the capacity of the area for further development that it is preferable given his personal circumstances to construct a dwelling in the garden of his family home than elsewhere within a 5 kilometre of his family home; the site is not in itself so sensitive so as to counter balance the presumption in favour of housing of a local resident; there are no standards governing the number of houses which can be built in a particular rural area and a decision to suggest that the area has reached its natural capacity is subjective.
- 8.2.16. In relation to the matter of capacity and management of future development is I consider largely governed by standards set out in ribbon development which are defined in policy RH12. In assessing this policy, it is policy to discourage ribbon development which is defined as five or more houses alongside 250 metres of road frontage. The current proposal would in the context of this requirement constitute ribbon development and would exacerbate an already high level of development in the area.
- 8.2.17. Policy RH12 however also indicates that the Council will assess whether a given proposal will exacerbate such ribbon development, having regard to a number of criteria which include, the type of rural area and circumstances of the applicant; the degree to which the proposal might be considered infill development; the degree to which existing ribbon development would coalesce as a result of the proposed development; local circumstances, including the planning history of the area and development pressures and notwithstanding the above, special regard will be given to the circumstances of immediate family members of a landowner on single infill

sites in a line of existing dwellings with 5 or more houses along a 250 metres of road frontage.

8.2.18. In considering the criteria, the circumstances of the applicant would indicate no alternative landholding; the proposal can be considered infill development; issues of coalesce of ribbon do not arise as a result of the proposed development and there are development pressures in the area as demonstrated by the level of development. It is however also clearly stated that notwithstanding the other criteria, special regard will be given to the circumstances of immediate family members of a landowner on single infill sites in a line of existing dwellings with 5 or more houses along a 250 metres of road frontage. In this based on these provisions it is difficult to contend that an issue of material contravention arises.

8.2.19. In the context of the provisions of the plan I consider that notwithstanding the scale and level of development in the area, the development could be considered on the basis of infill and a clearly identified need and familial connection to the area which is provided for in the development plan and which is also defined in both sections 3.2.3 and 4.3 of the rural housing guidelines. I also consider that an additional dwelling in this area will not detrimentally impact on the area and would be preferable than putting pressure on rural areas within a 5 kilometre radius which the appellant could consider under the provisions of the plan.

### **8.3. Site specific considerations.**

8.3.1. In relation to siting and design I would have no objection to the proposed siting and design and do not consider that it will adversely impact on visual and residential amenities. In relation to visual impact there is an existing mature hedgerow along the site frontage which will screen the development and I would also note that the wider area has a strong level of mature planting and enclosure to assimilate the proposed development.

8.3.2. In relation to traffic it is proposed to amend the existing site entrance to provide for a shared entrance to accommodate the existing dwelling and proposed development. Sightline visibility in both directions is adequate. I would have no objections in relation to the proposals as submitted.

8.3.3. In relation to the treatment of waste water it is proposed to install a packaged wastewater treatment plant and polishing filter to serve the proposed dwelling

located to the front of the proposed dwelling also provide for the removal of the existing sewerage treatment system located in the site of the proposed dwelling and its replacement with another located to the rear of the existing to serve the existing dwelling.

The planning authority in the decision to refuse permission did not include a reason relating to wastewater treatment or public health but the Board in its previous refusal did refer to this matter.

It is proposed to install a private proprietary treatment system and percolation area to treat foul effluent located to the south of the proposed dwelling. The applicant has submitted site suitability tests in accordance with the EPA publications Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. 10) 2009 and its subsequent clarifications which outlines site suitability assessment methodology including site character assessment and suitability tests and a range of scenarios depending on results which indicate the suitability of the receiving ground to comply with the recommendations stated in the code of practice.

The site is I consider of an adequate area and it is also proposed to provide for a receiving media of an adequate percolation quality to treat the loading and effluent anticipated to arise in relation both dwellings on the overall site. The proposal as submitted, I consider, complies with the EPA Code of Practice and I would have no objections in principle to the proposed method of effluent disposal based on the details as submitted.

The proposed will result in an additional wastewater treatment in an area which already has a high concentration of on-site disposal of foul development but there is nothing based on the submitted documentation, which will provide an upgraded treatment for the disposal of effluent, to suggest that it result in a risk of pollution and as a consequence that it would be prejudicial to public health.

I would note that the environment section of the county council and environmental health has raised no issues in this regard.

## 9.0 Recommendation

- 9.1. Having considered the issues arising, in view of the above assessment permission for the proposed development is recommended.

## 10.0 Reasons and Considerations

- 10.1. Having regard to the nature of the proposed development; its location within an rural area, and the provisions of the current Kildare County Development Plan 2017-2023 and the Guidelines on Sustainable Rural Housing 2005, it is considered that subject to it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 17<sup>th</sup> of May 2017, 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 interests of clarity

- 2 (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of

development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

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

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

3 a) The carriageway of the public road shall not be raised, lowered or otherwise altered at its junction with the access driveway to the proposed dwelling.

(b) The gradient of the access driveway shall not exceed 3% for the first seven metres adjacent to the carriageway of the public road.

(c) The access and internal road shall be designed to ensure that surface water arising from the construction of the entrance and driveway road does not flow onto the public road.

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

. 4 The existing boundary finishes shall be retained except to the extent that its removal is necessary to provide for the entrance to the site.

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

. 5 The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.



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

- .6 The external walls shall be finished in neutral colours such as grey or off-white.

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

- .7 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.

- .8 (a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 17<sup>th</sup> day of May, 2017, 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. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) 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 in accordance with the standards set out in the EPA document.

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

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

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

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

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

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. Derek Daly  
Planning Inspector

6<sup>th</sup> February 2018