



An
Bord
Pleanála

Inspector's Report PL09.249052

Development	Removal of condition no.3 of Reg. Ref. 93/1212 and construction of a bungalow and garage.
Location	Barrettstown, Clane, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	16/796
Applicant(s)	Gerard Walsh
Type of Application	Permission
Planning Authority Decision	Grant Permission subject to conditions
Type of Appeal	Third party
Appellant(s)	Fergal O'Neill
Observer(s)	None
Date of Site Inspection	26 th October 2017.
Inspector	Ciara Kellett.

1.0 Site Location and Description

- 1.1. The appeal site address is Barrettstown, Clane, Co. Kildare. It is c.2.8km north-west of Sallins and c.3.7km south-west of Clane. It is c. 400m south of the Grand Canal and the protected structure of Digby Bridge. It is located in a rural area where land use is mainly agricultural. There are a small number of one-off houses in the vicinity.
- 1.2. South of Digby Bridge over the canal, the road splits into 3 and the site is located off the road heading south-east. The road is a very narrow lane and in poor condition. The site is located on the north side of the lane and is screened from the road by mature hedgerows and trees. The site itself has no defined boundary other than with the lane and to the west. It is currently in agricultural use. It is roughly square in shape and is stated as being 0.28Ha in area within lands owned by the applicant. The topography of the site and general area is gently undulating.
- 1.3. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. The proposed development is for a single storey dwelling 113.83sq.m in area and a garage of 47.47sq.m. The ridge height of the dwelling is 5.625m and the roof is a gable design. The dwelling comprises 3 bedrooms, a sitting room, and dining/kitchen area. Materials referenced on the drawings include selected roof tiles/slates and the walls are to be finished in a smooth plaster render. The garage is proposed to the rear of the dwelling and is single storey with a ridge height of 4.65m. A septic tank and percolation area are proposed to serve the dwelling.
- 2.2. The application also requests removal of condition no.3 of Reg. Ref. 93/1212 relating to sterilisation of lands.
- 2.3. The application was accompanied by a Site Characterisation Report, a rural housing application form, documents relating to the applicant's address being on the landholding, as well as standard drawings and documentation.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to 27 conditions. Condition no.2 allows for the amendment of condition no.1 of Reg. Ref. 93/1212 and states that the lands are to remain sterilised on foot of that permission, and all agreements entered into thereunder. Condition no.4 requires that road improvement works are carried out.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority decision. The application was subject to requests for Further Information and Clarification of Further Information. The Reports include:

- Reference to Rural Housing Compliance. Notes information provided by the applicant in proving compliance with local needs, including his birth certificate, land registry detailing his ownership of lands since 1983, and proof of address since 1983.
- Notes applicant indicates he was previously granted planning permission for a dwelling on the lands, but on foot of a court order was required to dispose of his former marital home. Notes applicant proposes to construct a new home on his family lands in accordance with policy RH9. Notes copy of Court Order granting a divorce was submitted along with letter from applicant's solicitor, stating that their client is obliged to sell his current residence in Clane and transfer the family home to his former spouse.
- Considers that this case is an 'exceptional circumstance' and that RH9 is relevant.
- Considers design suitable.
- Requests Further Information relating to 6 items: refers to condition of lane and requests clarity on situation regarding ownership and proposals to improve the lane; refers to a ditch which runs alongside the front of the site

which is not referenced on the drawing and requests proposal to address this; requests clarity on extent of hedgerow to be removed; amendments to Site Characterisation Report; inspection of trial holes; and makes applicant aware that there is a legacy landfill located 130m north-east of site, and advises that the applicant engage a consultant to assess the risk of environmental impact as a result of the proposed development.

- The applicant responded to all items including providing an environmental risk assessment prepared by Golder Associates – Landfill Gas Assessment at Proposed Dwelling.
- Clarification of Further Information was requested relating to details of the road repairs, and the Environment Section considered that the Risk Assessment Report failed to examine all possible pathways for gas migration from the historic landfill, and prove a break in the linkage between the source, pathway and receptor or prove that a linkage does not exist.
- Following the applicant's response, it is stated that the applicant complies with Local Needs Criteria Zone 1, Category 2(ii) and is considered to comply with RH3 of the 2017 Plan in terms of 'exceptional circumstances', having regard to the applicant's solicitors letter and Decree of Divorce documentation submitted.
- Considers scale, mass and design acceptable. Considers applicant was born and resided in the area all his life and it is reasonable to permit this dwelling.
- Planner recommends a grant of permission.

The decision was in accordance with the Planner's recommendation.

3.2.2. Other Technical Reports

- **Water Services:** No objection subject to conditions.
- **Environment:** Seeks Further Information. Following response, no objection subject to conditions.
- **Area Engineer:** No objection subject to conditions.
- **Transportation:** No objection subject to conditions.

3.3. Prescribed Bodies

- **Irish Water:** No objection subject to conditions.

3.4. Third Party Observations

One detailed third party objection was lodged by two neighbours to the south. One of the parties submitted the appeal. The points made are similar to those made in the appeal and are detailed in section 6 below.

4.0 Planning History

There are planning applications associated with the larger site. In summary:

- **KCC Reg. Ref. 16/0187:** Permission sought in March 2016 for similar development to that proposed in the subject application. Application withdrawn by the applicant.
- **KCC Reg. Ref. 15/0920:** Permission refused for the construction of a bungalow on a site further north of the subject site and to the rear of the existing dwelling with an entrance adjacent to the existing dwelling. Permission was refused for 3 reasons: 1. RH14 policy only considers positive decisions for backland development where it will have no negative impacts on third parties - it is considered the site is elevated relative to the existing house, driveway flanks rear and side boundaries and lacks screening; 2. Policy RH5 provides that development shall have regard to siting and design considerations, policy LA2 seeks to protect and enhance the county's landscape, Grand Canal is designated an Area of High Amenity and Digby Bridge is a Scenic Viewpoint – proposal represents poor site selection; and 3. Proposal materially conflicts with the terms of planning permission 93/1212 and condition no.3 which required land to be sterilised from further development.
- **ABP Ref. PL09.207282, KCC Reg. Ref. 04/0450:** Permission refused to G. Walsh to raise land, restore it, rehabilitate 4.27Ha to an average height of 2.25m above existing ground level in September 2004. The land is to the north of the subject site and is just to the south of Digby Bridge and runs

parallel to the canal. Permission was refused by the Board for one reason which related to the Board not being satisfied on the basis of the information submitted that the development would not impact on adjoining lands, would not affect drainage, would not detract from the visual amenities of the area and additional traffic especially heavy trucks would not endanger public safety.

- **KCC Reg. Ref.03/0784:** Permission refused to G. Walsh for development consisting of reinstatement and raising of lands of 4.2 acres for agricultural benefit using inert subsoil and topsoil only.
- **KCC Reg. Ref. 93/1212:** Permission granted in February 1994 for the development of a bungalow and garage to a John McMahon. Planner notes that lands on which subject site is proposed forms part of sterilised lands.
- **KCC Reg. Ref. 93/1283:** Retention permission granted in February 1994 for a domestic garage to the side of an existing house to a G. Walsh.

5.0 Policy Context

The site is outside the boundary of a Land Use zoning plan, so is subject to the general policies and objectives of the Kildare County Development Plan 2017 – 2023 (The Plan).

5.1. Kildare County Development Plan 2017 - 2023

Chapter 4 refers to Housing, and Chapter 16 to Rural Design.

Map V1-4.4 indicates that Clane and environs is located in 'Rural Housing Policy Zone 1'.

The Plan identifies criteria for an applicant to be considered for a one-off dwelling. An applicant must meet one of the following categories: A) is a member of a farming family actively engaged in farming the family land (Category 1), or a member of the rural community (Category 2), and B) meets one of the local need criteria set out in Table 4.3(a) and (b).

Category 2 of applicant in Zone 1:

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.

Local Need Criteria in Rural Housing Policy Zone 1 for Category 2 is:

- (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.*

A note is provided below Table 4.3(b). It state:

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.

Policy RH2 states ‘*Manage the development of one off housing in conjunction with the rural housing policy zone map (Map 4.4) and accompanying Schedules of Category of Applicant and Local Need Criteria set out in Table 4.3. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.*’

Policy RH3 states *‘Require applicants to demonstrate that they are seeking to build their home in the rural area in Kildare for their own full time occupation. Applicants will be required to demonstrate that they do not own or have not been previously granted permissions for a one off rural dwelling in Kildare and have not sold this dwelling or site to an unrelated third party, save in exceptional circumstances’.*

Policy RH9 notes that notwithstanding compliance with local need criteria, applicants comply with all other normal siting and design considerations.

Objectives relating to Rural Housing include **RO3** which seeks to implement the provisions of the Rural Housing Policy through the management of the provision of one-off housing in order to protect the physical, environmental, natural and heritage resources of the county, in conjunction with providing for rural housing for those persons who comply with the “Local Need” provision of the Plan.

Chapter 16 provides advice on Rural Design.

5.2. **Sustainable Rural Housing Guidelines for Planning Authorities 2005**

The Rural Housing Guidelines seek to provide for the housing requirements of people who are part of the rural community in all rural areas, including those under strong urban based pressures. The principles set out in the Guidelines also require that new houses in rural areas be sited and designed to integrate well with their physical surroundings and generally be compatible with the protection of water quality, the provision of a safe means of access in relation to road and public safety, and the conservation of sensitive areas.

5.3. **Natural Heritage Designations**

Ballynafagh Lake SAC (Site Code 001387) is located c. 6km to the north-west of the site. Ballynafagh Bog SAC (Site Code 000391) is located c. 5.8km to the north-west. Mouds Bog SAC (Site Code 002331) is c. 4.8km to the south-west.

6.0 The Appeal

6.1. Grounds of Appeal

A detailed third party appeal prepared by a Consultant on behalf of the appellant has been lodged against the Council's decision to grant permission. The appellant resides in a dwelling immediately opposite the proposed dwelling site. The appeal is set out in 5 sections. In summary, it states:

- Concern with public notices – description did not refer to proposed entrance or driveway. Calls into question validity of application and ownership of land.
- States that appellant did not give permission to upgrade of road (considers letters from two neighbours providing permission at Clarification of Further Information stage inadequate – section of laneway opposite proposed entrance is owned by appellant and no permission forthcoming for works on lane). Proposed works on lane should have been re-advertised.
- Refers to policy RH9 and requirement that applicants demonstrate that they are seeking to build their first home – applicant submitted details confirming ownership of two properties – the family home and the marital home. Further detail is required to determine whether applicant's situation can reasonably justify granting of a third family dwelling.
- Considers reasons for refusal of land rehabilitation are relevant in this case also.
- Ten items are listed for which there are concerns with the planning decision, including: The sterilisation agreement, the state of the proposed access road, previous decision to refuse permission, compliance with rural housing policy – applicant commutes to Dublin to work, ownership of laneway, proposal would detract from visual appearance of laneway, removal of hedgerow, ditch to the front of the site, and, legacy landfill 130m away.
- Considers that the applicant has no need for a dwelling in this area. There is no cover letter associated with the application, therefore it is not clear on what basis the applicant is claiming to comply with the planning authority's rural housing policy.

- Appellant states the applicant is employed by the OPW as a Park Ranger. Lands which applicant states he currently farms are farmed by his cousin. Applicant is applying for a rural house on lands he does not farm.
- Reasons for refusal of Reg.Ref.15/920 remain unaddressed. It is contrary to RH5 and LA2 of the Kildare County Development Plan 2011 – 2017; it is incompatible with the designation of the Grand Canal; and materially conflicts with Reg. Ref. 93/1212 which required sterilisation of lands.
- Landholding is too small to justify a new dwelling. States applicant's cousin owns the 22 acres of land and applicant wishes to reduce this land further.
- Query why design is not a farmhouse with shed and farm access – proposal has no access to farm the lands.
- Land sterilisation orders cannot be removed as proposed. No cover letter has been submitted to assess the applicants reasons for justifying the request. Considers a planning permission is indivisible. Considers Land Sterilisation order should not be removed.
- Refers to Corporate Policy Group decision on sterilisation of lands. Ask the Board to determine what basis in planning terms the corporate statement has, as it is being used to over-ride a sterilisation agreement which was a condition of a planning permission. Consider that planning permissions should not be undermined this way.
- Refers to minutes of a Special Planning Meeting of Kildare County Council that sterilisation agreements should only be used in 'exceptional circumstances' and sterilisation agreements on existing planning permissions cannot be altered/varied unless permission is granted for same.
- Impact on adjoining residential amenities. Property would impact on appellant's property during construction and operation in terms of noise, disturbance and damage to laneway, visual amenities, traffic, overlooking and light spillage.
- Inappropriate suburban style dwelling design and positioning and contrary to rural design guidelines.
- Contrary to national, regional and local planning policy.

- Environmental considerations, proliferation of wastewater treatment systems.
- Lands are designated as a pNHA, proposal would erode rural character of the area and cause a negative precedent.
- Removal of substantial hedgerow of 27m.
- Depreciate the value of property.

6.2. Applicant's Response

A consultant on behalf of the applicant responded in detail to the appeal. In summary, it states:

- Consider that the planning notices wholly accord with planning law, and that Kildare County Council has already concluded that all regulatory requirements have been met.
- Rebut the appellant's assertion that the applicant sold the land to his cousin, and that the applicant owns the two houses to the north of the land. Refers to contents of title deeds which identify the applicant as the owner of the lands.
- With respect to Rural Housing Needs reference is made to the application documents and the documents lodged with Reg. Ref. 15/920 and 16/0187, which show how the applicant is a longstanding resident of this rural area and at no stage is the applicant's strong link with the area called into question. Consider that it is appropriate for the Board to deem the applicant eligible for a dwelling in this area given his generational links.
- Considers the appellant's narrative on the applicant's career is incorrect. The applicant worked in different locations in Dublin and worked the landholding on a part-time basis. The applicant took early retirement in 2012 and now has no links with the OPW or any employer and will not take the trips envisaged by the appellant. The applicant's sole income, other than his pension, stems from working the landholding.
- The appeal is speculative with respect to the applicant's intention for the lands, and the 2003 and 2004 planning application demonstrate the applicant's intention to improve the lands.

- With respect to the sterilisation of lands, note that the Sustainable Rural Housing Guidelines now expressly criticise such requirements. The Council now allow housing on land which was previously sterilised – example planning file references quoted.
- Consider that the condition was prompted by general environmental motives rather than for reasons associated with the amenities of specific properties near the appeal site.
- Applicant demurs from the appellant’s entire approach with respect to the legality of the sterilisation agreement and reference to the indivisibility of planning permissions. Refers to other judgements where the judge states that the Planning Authority was limited to considering the proper planning and development of the area and that a sterilisation agreement did not prohibit new development.
- Note that the Planning Authority did not dispense with the covenant on the basis of the approach set out in the Corporate Policy Group, but rather on the basis of RH9 of the former County Development Plan 2011, currently policy RH3 of the 2017 Plan.
- Refers to applicants housing history. With respect to the two homes referenced by the appellant, states the family home pre-dates planning control, so that only one house has ever been permitted on this farm.
- Explains that the applicant lived in the family home until 1980, and relocated to his marital home which he built on the family farm thereafter. In 2008 following the breakdown of his marriage he left the marital home. Consider that ownership of a previous house by an applicant should not necessarily render an individual ineligible for a rural dwelling.
- Notes that while policy RH9 (now policy RH3) requires applicants to demonstrate that they are building their first home this provision provides for departures in exceptional circumstances. Consider that this is not a speculative development and there is a bona fide need for accommodation. Confirm that the applicant does not own a house and currently lives in rented accommodation. Notes other dwelling is owned by applicant’s cousin who grew up in same family home as the applicant.

- With respect to size of farm comments by appellant, notes that if applicant is provided with on-site accommodation the farm would be more productive.
- Refute appellant's assertion that this farm or the appeal site itself is within the pNHA. It is adjacent to a pNHA. Appellant considered the subject application should be refused for the same reason that the earlier 2004 application to raise the land was refused. The Board decision made no reference to the Grand Canal. Submit that the proposed development would not conflict with the ecological characteristics of the Grand Canal, nor is there evidence that the proposal would affect the recorded monuments or protected structures.
- The size of the dwelling is minimal and the peripheral location of this house on the land would allow the remainder of the lands to be worked as an intact holding.
- Do not consider that a single house would turn this low-profile area into a built up location, and do not agree that this location would cause appellant to suffer loss of residential amenity or overlooking or light impacts, given the domestic nature of the proposal, the physical separation and the foliage within the intervening distance.
- The upgrade of the lane as proposed by the applicant would benefit all the users of this route including the appellant. Traffic generated by the proposed development would not need to pass the appellant's dwelling.
- Do not accept that the dwelling will cause a traffic safety issue. Note that a small section of road is owned by the appellant's father, and request that the Board impose a condition which requires access to the new house to be repositioned to a point which is further north along the road which will confine works to land in applicant's possession or which are covered by letters of consent from neighbours.
- Submit that there are no trees or hedgerows of environmental significance being lost for the entrance.

6.3. **Planning Authority Response**

The Planning Authority responded referring to planning reports and interdepartmental reports.

7.0 **Assessment**

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Rural Housing Policy
- Procedural Matters
- Previous reasons for refusal
- Residential Amenities
- Design of Dwelling
- Environmental Designations
- Appropriate Assessment

7.1. **Rural Housing Policy**

7.1.1. In the subject application consultants, on behalf of the applicant, consider that the applicant fulfils the Local Need criteria.

The Council's policy with respect to Local Needs and the applicant's case is considered herein.

7.1.2. The county is split into two zones with respect to Rural Housing Policy. Clane and Sallins (the largest towns in the vicinity) and the subject site are located in Rural Housing Policy Zone 1. Zone 1 comprises more populated areas with higher levels of environmental sensitivity and significant development pressure.

In order for an applicant to be considered for a one-off dwelling in the rural area of Kildare, an applicant must be one of two categories: **1.** a member of a farming family who is actively engaged in farming the family landholding; or, **2.** a member of the rural community. The applicant must also meet one of the local need criteria depending on applicant category.

- 7.1.3. The applicant has explained his personal circumstances which due to marital breakdown required him to dispose of his former marital home. The applicant states that as a result he does not own a home in the vicinity, but does own the farm. The applicant states that he took early retirement from work in Dublin and plans to more intensively farm the land. Title deeds are referred to and an accountants letter accompanies the appeal response.

I consider that the applicant's personal circumstances constitute exceptional circumstances as provided for in policy RH3, which seeks to prevent persons from obtaining planning permission for more than one dwelling save in exceptional circumstances. I am satisfied that the applicant complies with the Local Needs policy having regard to his strong generational links and the fact that he has lived on the farm most of his life. I am also satisfied that he intends to farm the family landholding as his main source of income, as well as his pension.

7.2. Procedural Matters

- 7.2.1. The appellant considers that there are a number of procedural matters that the Board should have regard to.
- 7.2.2. I note that the Planning Authority accepted the development description as advertised in the public notices to be in compliance with the Planning and Development Regulations. The appellant considers the fact that the new entrance was not specifically referred to, or that the garage is a double garage, to be problematic and not a full description. I consider the development description to be acceptable in this instance. It clearly states that permission for a new bungalow and garage is requested, as well as ancillary works. I consider this constitutes a brief description of the nature and extent of works as required by the regulations.
- 7.2.3. I am satisfied that the public notices also clearly indicate that the applicant was seeking the removal of condition no.3 of an earlier planning permission Reg. Ref.

93/1212, which sterilised the lands following the grant of permission for another house. This formed part of the request for permission and was addressed by the Planning Authority with respect to conditions. I consider that the applicant has clearly requested that this condition be removed. Any other potential request for development that may arise in the future will be subject to assessment in the normal manner, and subject to assessment for compliance with the policies and objectives of the Development Plan.

7.2.4. I am satisfied that the applicant submitted a Rural Housing Application Form alongside the standard documentation. On this form, information has been provided with respect to how he complies with Local Needs Policy. I am satisfied that he owns the land and intends to farm it to supplement his pension from his previous job.

7.2.5. As part of the planning application, the applicant intends to upgrade the access lane. Two neighbours along the laneway submitted letters of consent to allow the applicant undertake these works. The appellant on the opposite side of the road has not provided consent. As part of the appeal the applicant has submitted an alternative entrance slightly further north to avoid the appellant's half of the laneway. I note that line of sight information indicates that the sightline is reduced from 90m to 65m with this revised site entrance. Having regard to the cul-de-sac nature of the lane and the narrow width, I consider this revised entrance to be acceptable. Furthermore, I am satisfied that consent for the works has been forthcoming, but equally Section 34(13) of the Planning and Development Act as amended, provides that planning permission does not solely entitle a person to carry out works.

7.3. Reasons for previous refusals

7.3.1. As can be seen from the Planning History (section 4 above) there have been a number of planning applications refused permission. I note that two in particular relate to raising of the land adjacent to the canal. I note that reasons for refusal related the Board not being satisfied on the basis of the information submitted that the development would not impact on adjoining lands, would not affect drainage, would not detract from the visual amenities of the area and additional traffic especially heavy trucks would not endanger public safety. I note that the land the subject of these applications is to the north of the subject lands and parallel to the

canal. I consider that these two applications are for a different type of proposal and in a different location.

- 7.3.2. With respect to the most recent refusal of a dwelling for the applicant, I note that his local needs were not questioned – the reason for refusal related to the site selection within his own land. The site originally chosen was poorly selected. It was located to the rear of another dwelling along the lane which resulted in an entrance wrapping around the existing dwelling and it being on an elevated position on the lands. I consider that these concerns and issues have been addressed in the subject application. The site selected is on the periphery of the lands and not overlooking any other dwelling. I consider that the reasons for refusal of the last application have been addressed.
- 7.3.3. I note a recent application for development was withdrawn. The site chosen is adjacent to the subject site but located further into the overall landholding.
- 7.3.4. In conclusion, I note that there have been two previous requests for permission for a dwelling (one refused and the other withdrawn). I am satisfied that the reasons for refusal have been adequately addressed in the subject application.

7.4. Residential Amenities

- 7.4.1. The appellant expresses concern with the potential impact on his residential amenities in terms of noise, lighting, overlooking, traffic and views. I do not accept that the single storey bungalow will seriously negatively impact on the residential amenities of property in the vicinity.

The single storey bungalow proposed is of a modest scale and set back well into chosen site. There may be some temporary disruption during construction and road upgrades, but this can be managed in accordance with a construction management plan.

The proposed relocation of the entrance submitted with the appeal has an added benefit in that most vehicular traffic will not pass by the appellant's property, and the chances of overlooking between properties at the entrances is also reduced.

I do not accept that there will be an impact on views. The hedgerows and shrubbery along the lane do not provide for substantial views and the addition of this single storey dwelling will not seriously injure any views in the vicinity.

I accept that there will be a slight increase in traffic along the laneway, but the applicant is intending to upgrade the lane from its very poor condition currently and this will be of benefit to the local residents.

- 7.4.2. In conclusion I consider that design, scale and modest size of the dwelling will not cause a seriously negative impact on residential amenities of the area.

7.5. Design of Dwelling

- 7.5.1. As noted above the dwelling is of a modest scale. The area of the house is stated as being 113.8sq.m and the garage is 47.7sq.m. . I do not agree with the appellant's comments that the design is of a suburban type dwelling or creates a building line on the access laneway. The design is single storey and materials proposed are of a neutral palette and it does not set a poor visual precedent.

7.6. Environmental Designations

- 7.6.1. The Grand Canal is located to the north of the site and runs alongside the northern boundary of the lands. The Grand Canal is a proposed Natural Heritage Area (Site Code 002104). The lands are adjacent to the pNHA but are not located within it. I am satisfied that the proposed development on the southern boundary of the applicant's lands will not result in a serious impact on the views or scenic value along the Grand Canal having regard to the intervening topography and landscaping.

7.7. Appropriate Assessment

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, no appropriate assessment issues arise and 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 a European site.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the provisions of the Kildare County Development Plan 2017 – 2023 and compliance with Local Needs Policy, to the single storey nature, form, scale and design of the proposed development, it is considered that the proposed development, subject to the conditions set out below, would not seriously injure visual or residential amenities of the area, would be acceptable in terms of traffic safety, and would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>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 15th day of February 2017 and the 26th day of June 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>(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</p>

	<p>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.</p> <p>(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.</p> <p>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.</p> <p>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.</p>
3.	<p>The proposed development shall be amended as follows:</p> <p style="padding-left: 40px;">a. Relocate the proposed entrance to the south-west corner of the site.</p> <p>Revised drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of visual and residential amenity.</p>
4.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
5.	<p>The proposed road improvements shall be in accordance with the detailed</p>

	<p>requirements of the planning authority for such works and shall be carried out at the developer's expense. Details in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of traffic and pedestrian safety.</p>
6.	<p>Details of the materials, colours and textures of all the external finishes and boundary treatments to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
7.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: To ensure adequate servicing of the development, and to prevent pollution.</p>
8.	<p>(a) The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009.</p> <p>(b) Treated effluent from the septic tank system shall be discharged to a raised percolation area which shall be provided in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009.</p> <p>(c) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the raised percolation area is constructed in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health.</p>
9.	<p>A detailed proposal for Gas Monitoring at Borehole 4 (BH4) located 15m</p>

	<p>from the proposed dwelling shall be submitted to, and agreed in writing with the planning authority prior to commencement of development.</p> <p>Reason: In the interests of public health.</p>
10.	<p>All service cables associated with the proposed development (such as electrical and telecommunications) shall be located underground.</p> <p>Reason: In the interests of visual amenity.</p>
11.	<p>The existing front boundary hedge shall be retained except to the extent that its removal is necessary to provide for the entrance to the site.</p> <p>Reason: In the interest of visual amenity.</p>
12.	<p>The landscaping scheme shown on drawing number P.1446/03 shall be carried out within the first planting season following substantial completion of external construction works.</p> <p>All planting shall be adequately protected from damage until established. 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.</p> <p>Reason: In the interest of residential and visual amenity.</p>
13.	<p>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</p>

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.

Ciara Kellett
Inspectorate

15th November 2017