



An
Bord
Pleanála

Inspector's Report

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| Development | Permission for construction of a dwelling and heliculture business |
| Location | Daars North, Salins Co Kildare |
| Planning Authority | Kildare County Council. |
| Planning Authority Reg. Ref. | 17/756. |
| Applicant(s) | Aidan & Loretta Damer. |
| Type of Application | Permission. |
| Planning Authority Decision | Refuse Permission. |
| Type of Appeal | First Party v Refusal |
| Appellant(s) | Aidan & Loretta Damer. |
| Observer(s) | Department of Culture Heritage and the Gaeltacht |
| Date of Site Inspection | 5 th December 2017 |
| Inspector | Brid Maxwell. |

1.0 Site Location and Description

1.1. The appeal site which has a stated area of 1.84 hectares is located in a rural area in Co Kildare 3.5km east of Clane and 3.3km north east of Salins. The site is within an area of level terrain and comprises an overgrown scrub field enclosed by drainage ditches and hedgerows. The local area is characterised by a significant level of one off rural housing development. Access is from a largely single carriageway local road. The front roadside boundary of the site is defined by mature hedging and a large open drain extends along the frontage. There are a number of dwellings of varied age style and design in the vicinity including two adjacent to the road front to the southeast of the site, one of which is on a very restricted site area, and in depth dwellings set back from the road to the west.

2.0 Proposed Development

2.1. The application seeks permission for a one and half storey low energy passive house 283m² and a single storey domestic garage/ store 51.3m² with recessed entrance, provision of zero discharge waste water treatment system and all associated services, construction of a netted area to facilitate a snail farm 4,000m², construction of an agricultural shed 68.4m² and polytunnel 195.6m². The application is accompanied by extensive documentation including a planning report and a business plan, which outline in some detail the specifics of the proposal which is to establish a heliculture business “Shamrock Escargot” at the site. The business is intended to develop the snail based products including premium organic snail meat, snail egg caviar and snail slime secretion. The business will have two fulltime employees in the first year of operation and it is projected that two additional farm hands will be required during snail egg and mature snail harvesting seasons. As production increases in year 2 onwards three farm hands will be needed for harvesting.

3.0 Planning Authority Decision

3.1. Decision

By order dated 18/8/2017, Kildare County Council decided to refuse permission for the following reasons:

“1 It is the policy of the County Development Plan 2017-2023, namely Policy RH2 to ‘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.’ Based on the information submitted with the application, it is considered that the applicant has not demonstrated compliance with Local Need Criteria, as outlined in Table 4.3(b) of the County Development Plan 2017-2023. The proposed development would therefore materially contravene Section 4.13 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

2. Policy RH9 of the Planning Authority, as set out in the Kildare County Development Plan 2017-2023, is to ensure that, notwithstanding compliance with local need criteria, applicants comply with all other normal siting and design considerations, including the capacity of the area to absorb further development. Taken in conjunction with the level of existing development in the vicinity it is considered that the proposed development would exacerbate an excessive density of development in a rural area lacking public services and community facilities, which it is not economic to provide, and which area not planned. The development would also exacerbate the degree of existing haphazard and piecemeal development in the area. Accordingly, the development would materially contravene Policy RH9 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

With regard to the Zero discharge willow facility design report (dated June 2017) reference is made to proposals for an overflow channel discharging to the adjacent surface water drain. It is not the policy of the Kildare County Council to permit a

surface water discharge from an onsite wastewater treatment system for a one off house. In addition to this, the site is not considered suitable for the provision of an on-site wastewater treatment system due to the high water level and poor percolation, with the consequent risk of pollution to groundwater, surface water and the risk to public health. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planner’s report notes a significant level of one off housing development and pressure for further development within the Dares North area. Application fails to demonstrate sufficient compliance with housing need criteria for the provision of a site in Zone 1. Question in particular a *link to the local area* and question whether the business falls into the category of a full time business or the requirement to reside permanently on the site. Notes recommendation for refusal by environment section and refers to verbal discussion with heritage officer indicating concerns regarding the bio-security of the site in relation to possible negative effects on native biodiversity if some snails were to escape. Refusal recommended

3.2.2. Other Technical Reports

- Area Engineer indicates no objection subject to conditions.
- Roads, transportation and public safety department indicates no objection subject to conditions.
- Environmental Health Officer’s report indicates no objection subject to conditions.
- Environment section report recommends refusal on grounds of site unsuitability for wastewater treatment due to high water table, poor percolation and consequent risk of pollution.
- Water Services Report – no objection subject to conditions.

4.0 Planning History

ED/00621 Section 5 Referral. Kildare County Council determined that the proposed construction of a polytunnel (200m²) a farm shed (80m²) and a netted area (400m²) constituting a snail farm is development and is not exempted development.

PL09.247167 16/598 Mirror application refused for construction of a one and half storey serviced low energy passive house, single storey domestic garage/store with recessed entrance, provision of proprietary wastewater treatment system and polishing filter. Construction of a netted area to facilitate a snail farm, construction of an agricultural shed and construction of a polytunnel and all associated services. Board's Refusal was for the following reason:

“Having regard to the submissions made in connection with the application and appeal and having regard to the pattern of development in the area with a substantial number of one off houses and having read to the provisions of the development plan and particularly policy RH4, the Board was not satisfied that the business plan satisfactorily met the threshold of relevant criterion under Table 4.3 of the Development Plan for the provision of a full time business which would contribute to an enhance the rural community. The proposal therefore of itself and in the precedent it would set for other development would seriously injure the rural and residential amenity of the area and of properties in the vicinity.”

I note that the Planning Authority had refused for three reasons related to settlement policy, excessive concentration of development and site unsuitability for wastewater treatment.

The Board's reporting inspector had recommended refusal on grounds of settlement policy and excessive concentration of development.

03/2060 Application for outline permission submitted by Willie and Ann Marie Dollard. Application withdrawn prior to determination.

5.0 Policy Context

5.1. National Policy.

Sustainable Rural Housing Guidelines 2005

The National Spatial Strategy identified categories of rural area types requiring differing settlement policies for rural housing. The Sustainable Rural Housing Guidelines issued by the Department of the Environment Heritage and Local Government, April 2005 are based on the presumption that people who are part of the rural community should be facilitated by the planning system in all rural areas. The site of the proposed development is located in an area identified as an Area under Strong Urban Influence as defined in the guidelines. The key development objective in relation to these types of areas should be to on the one hand to facilitate the housing requirements of the rural community as identified by the Planning Authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.

I note **Circular SP 5/08** issued by the Department of Environment Heritage and Local Government on 30th September 2009 in relation to Local Need Criteria Policies and Practices notes

“The overarching consideration for the local need assessment criteria in relation to residency, blood line, local employment and agricultural activities must be that objectives and provisions in development plans and their application in the development management process do not discriminate against planning applicants wishing to establish a full time home based business in an area in favour of those who are deemed to qualify as “locals” through the particular local need assessment criteria, which are adopted by the members of each Council”

5.2. Development Plan

5.2.1 The Kildare County Development Plan 2017-2023 refers.

5.2.1.1 The site is located within Rural Housing Policy Zone 1. Rural Housing Policy is outlined at 4.12.7 where it is stated *“Rural generated housing demand will be managed having regard inter alia to the applicant’s genuine local need. Together with the protection of key economic environmental natural and heritage assets such as the road network, water quality, important landscapes, habitats and the built heritage.”*

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. 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

(B) Meet one of the local need criteria set out in Table 4.3(a) and (b) Schedule of Local Need.

In the context of the current appeal the relevant local need criteria is as follows:

Local Need Criteria in relation to Rural Housing Policy Zone 1.

(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 and enhance the rural community and that the nature of such enterprise is location dependent and intrinsically linked to a rural location.” (my emphasis.)

5.2.1.2 Policy RH4 it to *“Restrict residential development on a landholding, where there is a history of development through the speculative sale or development of sites, notwithstanding the applicant’s compliance with the local need criteria.”*

5.2.1.3 Policy RH9 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 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.”

5.2.1.4 RH18 *“It is the Policy of the Council to ensure that planning applications for a rural dwelling on the basis of the establishment of a full-time viable commercial equine or other rural enterprise on site will generally be favourably considered having regard to the following criteria:*

(i) The landholding shall comprise a minimum of 5 hectares

(ii) All other siting and design considerations will be taken into account when assessing the application.

(iii) It must be demonstrated that the nature of the enterprise is location dependent and intrinsically linked to a rural location”

5.2.1.5 Chapter 16 sets out the Rural Design Guidelines.

5.2.1.6 Chapter 10 relates to Rural Development and includes the following Criteria for Assessment of One-off Enterprises in Rural Areas.

Proposals for the development of one-off new small-scale enterprises in rural areas outside of designated employment centres will be assessed against the following criteria:

“–As a general guide, development proposals shall be limited to small-scale business development with a floor area at circa 200 sq. m. and shall be appropriate in scale to its location;

– The development will enhance the strength of the local rural economy;

- *The proposed development shall be located on the site of a redundant farm building / yard or similar agricultural brownfield site;*
- *There is a social and economic benefit to being located in a rural area;*
- *The proposal will not adversely affect the character and appearance of the landscape;*
- *The development will not be detrimental to the amenity of nearby properties, and in particular the amenities of nearby residents;*
- *The existing or planned local road network and other essential infrastructure can accommodate extra demand generated by the proposal;*
- *The proposal should be accompanied by a mobility plan catering for employees' home to work transportation;*
- *Adequate proposals to cater for any waste arising at the facility;*
- *All advertising should be kept to a minimum and be suitable in design and scale to serve the business;*
- *Proper planning and sustainable development;*
- *Proposals should conform to other objectives of the County Development Plan."*

5.3. Natural Heritage Designations

Ballynagagh Bog and Lake SAC situated c 8km west of the site.

Mouds Bog SAC 11.4km to the southwest.

Red Bog SAC 11.9km to the southeast.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal is submitted by Entrust Limited, Chartered Planning Consultants on behalf of the First Party. Grounds of appeal are summarised as follows:

- Application was made following positive and pre planning consultation meetings
- No reference in planner's report to circular SP5/08 which is referenced under section 4.12.2 of the Kildare County Development Plan.
- Both the sustainable rural housing guidelines as updated by Circular SP5/08 and the Kildare County Development Plan 2017-2023 allow provision for a location dependent business and associated dwelling in a rural area, subject to certain criteria being met.
- Requirement for applicant to have 'existing links' to the rural area demonstrates a conflict with the Sustainable Rural Housing Guidelines as stated in SP5/08 which requires that the objectives and provisions of the development plan and their application in the development management process do not discriminate against planning applicants wishing to establish a full-time home based business in an area in favour of those who are deemed to qualify as locals.
- Ministerial Guidelines and by extension Circular SP 5/08 takes precedence over County Development Plans.
- The applicant will be working full time on the farm and the necessity to be fulltime is apparent in the proposed commercial scale.
- Note Inspector's consideration with regard to local need in PL06S241613
- Given that the CDP provides no definition of the term existing links and having regard to the provisions of Circular Letter SP5/08, such expression must be given a wide interpretation such that the evidence provided by the applicants of a grandparent having been the registered owner of land at Straffan purchased in 1982, should satisfy the requirement of existing links.
- If category 2(iii) of zone 1 is to make any sense the requirement that an application demonstrate existing links must reasonably be omitted.
- Question of excessive density is a highly subjective view. Calculation of density using a 300m radius from the site demonstrates that the site does not have an excessive density of housing. A dwelling on site would not constitute

ribbon development and is not exacerbating haphazard development but counterbalancing it as it is set back on site in line with neighbouring dwellings.

- As regards site suitability for disposal of treated effluent it is noted that the Board accepted site suitability in previous decision. Application prepared by Féidhlim Harty FH Wetlands Systems Ltd clearly sets out that the soil mix must be carefully filled with an appropriate soil / sand mix.
- Soakpit design proposed for surface water and the applicants are considering rainwater harvesting
- Impact of birds and rodents addressed and due to quantities and its organic nature there is no extensive waste management process required.
- Measures to prevent snail escape are outlined. Three fences which the snails would have to climb to escape. Notably the snail species being farmed is the *Helix aspersa* or the common garden snail as found all over Ireland, therefore is not a foreign invasive species.
- Applicants seek permission to establish a snail farm on their land in their ownership to be a self-sufficient enterprise which is full time and contributing to the local community both socially and economically.
- Applicants are prepared to sell their existing house and give up their current employment to embark on this new business venture to which they are wholly committed.
- Reasons for refusal have been overcome and the Board is not legally restricted under Section 37(2) of the Act.
- Given the unique nature of the business, the lack of such enterprise in the County, the funding and business support from other local council bodies, the large size of the site the fact that the applicants own the site is submitted that granting permission will only set an extremely limited precedent for similar type applications in the future.
- The proposed development fully accords with the proper planning and sustainable development of the area.

- Application are happy to accept a condition that requires the heliculture business to be operational within a year of the dwelling being completed.
- Submission of Féidhlim Harty outlines that the willow facility basin is designed to hold all septic tank and rainfall inputs and to contain this water and effluent on a year round basis. The overflow channel is proposed as a backup only and no overflow is expected or anticipated.
- One of the distinct advantages of the zero discharge willow facility is that it is not influenced by either water table or soil percolation rates. The zero discharge willow facility is a fully lined basin which can be used effectively to address low infiltration characteristics by evaporating all effluent to air as the disposal route instead of relying on percolation.
- The sewage system is designed and perfectly adequate to the task of safely disposing all effluent to air via the growing willows (or stored within the soil void space in the large willow basin over winter months) and groundwater, surface waters and public health will be protected by the proposed system.

6.2. Planning Authority Response

6.2.1 The response of the planning authority is summarised as follows:

- It is noted that the applicants provide a tenuous historic link to the general area of North County Kildare.
- Sustainable Rural Housing Guidelines and Department Circular SP/08 does not amount to carte blanche for any proposal to develop a one off dwelling with an associated enterprise.
- Reasons for refusal 2 and 3 form a solid basis for outright refusal of the application.
- By any objective measurement it can be considered that the site is located in an area under pressure from counter urbanisation as acknowledged in reporting inspector's report and decision of the Board PL09.247167.

- The proposed development is in no way materially or substantively differs from that refused by the Board in 2016
- Environment Section reiterates that it is not the policy of Kildare County Council to permit discharge to surface water from one site treatment system for single dwelling.
- Risk of overflow exists and as acknowledged in the submission of appeal any sewage system holds a risk of failure therefore it would not be advisable to use the discharge from the evapotranspiration system elsewhere on the farm.
- Notably within the EP National Inspection Plan for domestic wastewater treatment systems the site is located in an area zoned very high risk.

6.3 First Party Response to Planning Authority response to appeal.

- Note Planning Authority's apparent concession in relation to reason no 1.
- The enhanced information in respect of the business plan satisfactorily addresses the concerns raised by the Board in the previous refusal.
- No empirical evidence to quantify development pressure is provided. An arbitrary and subjective view is presented and local authority's approach is inconsistent. Precedent 14/508 is cited. Three out of four of the most recent grants in the townland or adjacent townlands had a greater dwelling density within 200m radius than the application site.
- Precedent for recent planning permissions in the townland and independent spatial analysis with the assistance of the National Institute for Regional and Spatial Analysis (NIRSA) shows a low dwelling density when compared with rural areas all across county Kildare and nationwide.
- Notably the Board did not refuse previously on basis of density.
- Proposed wastewater treatment incorporates best practice and is engineered to be fully zero discharge therefore does not require a change to consent procedures to allow for controlled discharge to surface water.

- Overflow designed as a backup however can be removed without compromising the effectiveness of the system.
- Previous objector now supports the application and there are no third party objections.

6.4 Observations

6.4.1 Submission from Department of Culture Heritage and the Gaeltacht indicate no archaeological objection to the development.

7.0 Assessment

7.1. Having regard to the Planning history on the site and in particular mirror application **PL09.247167** I consider that it is appropriate to assess the development in terms of the degree to which the application has overcome the previous reason for refusal relating to rural housing need and the settlement strategy. The Planning Authority's grounds for refusal on basis of site suitability for wastewater treatment and disposal and the issue of appropriate assessment also need to be addressed. From my review of the file, all relevant documents and inspection of the site and its environs, I consider that the main issues for consideration in the Board's assessment of the appeal may be considered under the following broad headings:

- Settlement Strategy
- Wastewater Treatment
- Appropriate Assessment

7.2 Settlement Strategy.

7.2.1 The issue of settlement policy is the main focus of the appeal documentation and indeed the planning application documents as the first party focus has sought to address the Board's previous reason for refusal (PL09.247167) namely:

“Having regard to the submissions made in connection with the application and appeal and having regard to the pattern of development in the area with a substantial number of one off houses and having read to the provisions of the development plan and particularly policy RH4, the Board was not satisfied that the business plan satisfactorily met the threshold of relevant criterion under Table 4.3 of the Development Plan for the provision of a full time business which would contribute to an enhance the rural community. The proposal therefore of itself and in the precedent it would set for other development would seriously injure the rural and residential amenity of the area and of properties in the vicinity.”

7.2.2 The previous decision of the Board was determined in accordance with the Kildare County Development Plan 2011-2017 which has since been superseded by the Kildare County Development Plan 2017-2023.

7.2.3 The first Party refers to Circular Letter SP5/08 and its requirement that development plan objectives do not discriminate against applicants wishing to establish a home based business in favour of those who are deemed to quality as locals. I note that the circular clarifies that *“a bona fide applicant who may not already live in the area nor have family connections there or be engaged in a particular employment or business classified within the local needs criteria should be given due consideration within the proper planning and sustainable development objectives for the area subject to a number of considerations including that they satisfy the planning authority that the nature of their employment or business is compatible with those specified in the local needs criteria for rural areas so as to discourage applicants whose business is not location dependant”*.

7.2.4 I note that Circular SP 5/08 also provides that

“All planning applications for houses in rural area, regardless of where the applicant comes from or whether they qualify under specific criteria, must continue to be determined on the basis of the proper planning and sustainable development of the area, in accordance with development plan policies regarding overarching environmental concerns including the protection of natural assets, landscape, siting and design, traffic safety etc.”

7.2.5 The Kildare County Development Plan 2017-2023 which has regard to Circular SP5/08 as noted at 4.12.2. I would not accept the first party argument that the development plan contradicts Circular SP 5/08. Rather, the Development Plan in its rural housing strategy adopts a prescriptive and area based approach based on the distinct characteristics of rural communities in Kildare. In terms of the character of the area, it is evident that the appeal site is within an area of sustained pressure for development. It is designated in the Sustainable Rural Housing Guidelines 2005, Map 1 Indicative Outline of NSS Rural Area Types as “Area under Strong Urban Influence” and is designated Rural Housing Policy Zone 1 in the Kildare County Development Plan 2017-2023. Whilst the site is essentially rural in nature urban pressures are very visible and as such the restrictive policies of the Development Plan are entirely reasonable and consistent with national policy on the basis of the proper planning and sustainable development of the area.

7.2.6 The first party in making the case for locational justification of the proposed development has argued that the proposed development complies with rural housing need based only on ownership of the site. The historic family link to landownership in Straffan is not in my view a local link. I consider that on the basis of the nature of the business it is not resource tied at this location and a functional need to establish the business at this location in the context of rural development policies has not been demonstrated. Furthermore, in terms of the requirements for one of house on basis of a full time rural dependent business as set out in Policy RH18 the landholding is significantly smaller than the requisite 5 hectares and it has not been demonstrated that the nature of the enterprise is location dependent and intrinsically linked to this rural location. I further consider that the proposed development would set an

undesirable precedent for similar such development and would therefore be contrary to the proper planning and sustainable development of the area.

7.2.7 I have noted the first party submissions with regard to spatial analysis of density however cannot accept the contention that the area displays a low density. In my view the proposed development would exacerbate a pattern of haphazard development and increase the pattern of suburbanisation of this area.

7.3 Wastewater Treatment

7.3.1 On the issue of waste water treatment and disposal it is proposed to provide a zero discharge willow facility on the site. I note the high watertable on the site and the requirement on this basis for the plastic liner. I note the concerns of the Planning Authority with regard to the potential for risk of overflow and risk of system failure. I consider that such concerns are valid and particularly note the concentration of individual wastewater treatment systems in the area. I note that the Board did not include wastewater treatment and disposal as a basis for the previous refusal.

7.4 Appropriate Assessment

7.4.1 As regards the issue of Appropriate Assessment having regard to the nature and scale of the proposed development and nature of the receiving environment and proximity to the nearest European site, 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 have read the submissions on file, visited the site and had due regard to the provisions of the Development Plan and all other matters arising. I recommend that planning permission be refused for the following reasons and considerations.

Reasons and Considerations

Having regard to the zoning of the site as Rural Housing Policy Zone 1 within the Kildare County Development Plan 2017-2023 a zoning that is considered reasonable and consistent with the governments Sustainable Rural Housing Guidelines 2005 which deems the site to be in an area under strong urban influence, and the pattern of development in this predominantly rural area, it is considered that the applicant has not demonstrated an exceptional housing need in line with objective RH18 of the Kildare County Development Plan 2017-2023. It is considered that the proposed development would therefore be contrary to the objectives of the plan and the zoning designation and would thus materially contravene the provisions of the Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

Policy RH9 of the Kildare County Development Plan 2017 – 2023 seeks to ensure that development complies with normal siting and design considerations, including the capacity of the area to absorb further development. Policy RH10 of the Kildare County Development Plan 2017 – 2023 seeks to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements.

Having regard to the planning history of this site, and the pattern of random residential development in this area, the Board considers that the proposed development would contribute to an increasing pattern of suburbanisation in a rural area that is under significant development pressure, would exacerbate further piecemeal residential development in the area, and would, therefore, contravene the provisions of Policy RH9 and RH10 of the Development Plan, and would be contrary to the proper planning and development of the area.

Bríd Maxwell

Planning Inspector

19th December 2017