



An  
Bord  
Pleanála

## Inspector's Report ABP-302904-18

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<b>Development</b>	Demolition of existing Agricultural Shed and Construction of a Single Storey and a Half Dwelling with use of an existing Agricultural Site Access with all ancillary Site Works
<b>Location</b>	Castledillon, Straffan County Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	18131
<b>Applicant(s)</b>	Fionn Carr
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Graham Groom
<b>Observer(s)</b>	
<b>Date of Site Inspection</b>	24 <sup>th</sup> January 2019
<b>Inspector</b>	Colin McBride



## 1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 1.865 hectares, is located to the south east of Straffan in the townland of Castledillon. The appeal site is accessed over an existing private laneway that links to the public road to the south of the site. There are metal electronic gates at the vehicular entrance and the laneway features a tarmacadam surface. The appeal site is part of an existing field with established hedgerow boundaries along the northern, eastern and western boundaries (no existing boundary to the south). To the south are existing dwellings served by the laneway serving the site (two existing dwellings access the laneway). The next nearest dwelling is to the west (the appellant's property). Adjoining lands to the north west and south are agricultural lands similar in nature to the appeal site. The River Liffey is located to the west of the site.

## 2.0 Proposed Development

2.1. Permission is sought for...

- (a) the demolition of an existing single-storey agricultural shed (39sqm).
- (b) construction of a part single-storey part storey and a half dwelling with a floor area of 369.1dsqm and a detached garage (43.6sqm).
- (c) the provision of a new on-site wastewater treatment system and percolation area.
- (d) the use of an existing agricultural site access at the end of the existing private road the serves 2 no. existing dwellings for vehicular site access.
- (e) landscaping works to include new hedgerow planting, dense mixed shrub planting and mixed tree planting.
- (f) all associated ancillary site development works.

## 3.0 Planning Authority Decision

3.1. **Decision**

Permission granted subject to 12 conditions. Of note are the following conditions...

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

Planning report (03/04/18): Refusal of permission was recommended on the basis of failure to comply with rural housing policy (RH2), contravention of policies RH9 and RH10, giving rise to an excessive concentration of development taken in conjunction with existing development and failure to comply with the Kildare County Rural Design Guidelines.

Planning report (05/04/18): Further information required including P test results, a simplified design more in keeping with Rural Design Guidelines, clarification of planning status of existing access laneway, proposals for waste collection and indication whether there is a willingness to enter into a Section 47 agreement regarding development of other lands in the same ownership.

Planning report (05/10/18): The proposal was considered satisfactory in the context of design, scale layout, visual amenity, traffic safety and public health. A grant of permission was recommended subject to the conditions outlined above.

### 3.2.2. Other Technical Reports

Irish Water (10/03/18): No objection.

Water Services (08/03/18): Conditions in the event of a grant of permission.

Environment Section (22/03/18): Further information required including results of P test on the mock mound.

Roads, Transportation and Public Safety Dept (29/03/18): No objection subject to conditions.

Area Engineer (04/04/18): No objection subject to conditions.

Environment Section (03/10/18): No objection subject to conditions.

Roads, Transportation and Public Safety Dept (03/10/18): No objection subject to conditions.

### 3.3. Third Party Observations

#### 3.3.1 Observation by Graham Groom, Riveroaks, Castledillion, Straffan, Co. Kildare.

- Issues raised included concerns regarding the proposal in terms of zoning policy, urbanisation of the rural area, over-development of agricultural land, light pollution, ribbon development, overlooking and loss of privacy, additional septic tank treatment in close proximity to the river, traffic congestion and failure to cater for local people.

### 4.0 Planning History

16/268: Permission sought to demolish agricultural shed and construct a part single-storey part storey and a half dwelling. Application pending response to further information.

### 5.0 Policy Context

#### 5.1. Development Plan

The relevant Development Plan is the Kildare County Development Plan 2017-2023. Rural Housing Strategy is set out under Section 14.25. The county is split into two areas for the purposes of rural housing policy, Rural Housing Policy Zone 1 and Rural Housing Policy Zone 2.

The appeal site is located in Rural Housing Policy Zone 1.

Under Section 4.12.7 Rural Housing Policy

In order for an applicant to be considered for a one-off dwelling in the rural area of Kildare, an applicant must:

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

**1.** A member of a farming family who is actively engaged in farming the family landholding.

**OR**

**2.** A member of the rural community.

**AND**

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

Category 2 of applicant

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. (\*Immediate family members are defined as mother, father, son, daughter, brother, sister or guardian).

Local Need Criteria (Rural Housing Policy Zone 1)

(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.

**RH 2** 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.

**RH 9** Ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations (Refer to Chapter 16 for further guidance) including the following:

- (i) The location and design of a new dwelling shall take account of and integrate appropriately with its physical surroundings and the natural and cultural heritage of the area and respect the character of the area. Development shall have regard to Chapter 16 Rural Design Guidelines (and any subsequent changes to these guidelines) and Chapter 17 Development Management Standards.
- (ii) Appropriate landscaping of proposed development using predominantly native species as per Table 17.2 of this Plan.
- (iii) The protection of features that contribute to local attractiveness including; landscape features, hedgerows, trees, historic and archaeological landscapes, water bodies, ridges, skylines, topographical features, geological features and important views and prospects.
- (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.
- (v) The ability to provide safe vehicular access to the site without the necessity to remove extensive stretches of native hedgerow and trees. The need for the removal of extensive roadside hedgerow may indicate that the site is unsuitable for development.
- (vi) The ability of a site in an unserved 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.

(vii) The ability of a site in an unserviced area to accommodate an appropriate on-site surface water management system in accordance with the policies of the Greater Dublin

Strategic Drainage Study (2005), in particular those of Sustainable urban Drainage Systems (SuDS);

(viii) The need to comply with the requirements of The Planning System and Flood Risk Management Guidelines for Planning Authorities, DEHLG (2009).

**RH 10** Control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements having regard to potential impacts on:

(i) The orderly and efficient development of newly developing areas on the edges of towns and villages;

(ii) The future provision of infrastructure such as roads and electricity lines;  
and

(iii) The potential to undermine the viability of urban public transport due to low density development.

## 5.2 Sustainable Rural Housing

Under the Sustainable Rural Housing: Guidelines for Planning Authorities (April 2005) the site is located in an Area under Strong Urban Influence.

## 5.3 Natural Heritage Designations

None in the vicinity.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A third party appeal has been lodged by Graham Groom, Riveroaks, Castledillon, Straffan, Co. Kildare.



- The appellant notes that they believe the proposal to be a commercial development rather than residential.
- It is noted that the proposal is contrary proper planning and the zoning for the area,
- The proposal would result in urbanisation of this rural environment with existing overdevelopment of the area for rural housing, it will increase light pollution, will exacerbate ribbon development, will result in overlooking of adjoining properties..
- The proposal would add further wastewater treatment systems in close proximity to the river.
- The proposal will create further congestion on the main laneway which can only accommodate a single lane of traffic.
- The proposed development constitutes over development of the area and would impact on the rights of this local to the area to provide accommodation at this location.
- There should be a freeze on further development of the land given the previous development of houses and a roadway on the landholding.

## 6.2. Applicant Response

Response by David Mulcahy Planning Consultants Ltd.

- The lands are not zoned and the proposed development can't be deemed contrary to same. It is noted that the proposal is adjacent existing development and that there is no public view of the dwelling within the context of its river setting ad the dwelling is setback a considerable distance from the river.
- It is noted that the area is characterised by one of dwellings and agricultural lands. It is noted that the applicant complies with policy regarding rural housing under both the Sustainable Rural Housing Guidelines and the County development Plan. It is noted that the area has the capacity to absorb the development without having an adverse impact on rural character.

- In relation light pollution it is noted that an undertaking is given to remove low level lighting along the entrance road for which permission has not been obtained.
- The proposal is setback form the river and the proposal would give rise to ribbon development as define under the Sustainable Rural Housing Guidelines (five or more houses along 250m of road frontage).
- In relation to privacy the proposal is adequately separated from the appellant property in terms of distance with screen planting between the two properties.
- The applicant note the proposed dwelling is for himself and his family and refutes the appellant's claims it is commercial development.
- In relation to wastewater treatment it is noted the site s well separated from the river and that the Council's Environment Section indicated no objection.
- The access road is lightly trafficked and that the addition of one dwelling is unlikely to result in traffic congestion.
- There is no sterilisation agreement associated with previous planning application on the wider landholding and the Council have imposed a restriction on further residential development as part of the conditions of the grant of permission.

### 6.3. **Planning Authority Response**

Response by Kildare County Council.

- The Planning Authority have no further observations to make.

### 6.4. **Observations**

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- The proposal should be assess in accordance with National Policy Objective 19 set out in the National Planning Framework and the Sustainable Rural Housing Guideline for Planning Authorities, 2005.

- The observers note Section 4.5 of the Guidelines in relation to the protection of water quality. The proposal should be assessed on the basis of EPA guidelines and consideration given to the number of one-off houses and proliferation of septic tanks and such impact in close proximity to a water body.

## 7.0 Assessment

7.1. Having inspected the site and the associated documents, the main issues can be addressed under the following headings.

Development Plan policy/rural housing policy

Design, scale and pattern of development

Public Health

Traffic

Appropriate Assessment

7.2 Development Plan policy/rural housing policy:

7.2.1 The site is located in Rural Housing Policy Zone 1. Within this zone applicants must fall under two categories. In this case the applicant was assessed under Category 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. (\*Immediate family members are defined as mother, father, son, daughter, brother, sister or guardian).

7.2.2 Based on the information on file, the applicant is originally from the rural settlement of Ardclough, which is 2km from the site. The applicant lives in his family home, where he was raised. Ardclough is defined as a Rural Settlement under Development Plan policy settlement strategy. Under 3.4.5 of the County Development Plan the role of Rural Nodes and Rural Settlements is outlined. It is proposed that settlements will develop as local centres for rural catchments with growth appropriate to cater for local demand. Lower densities will be encouraged in appropriate locations to provide alternatives to one-off rural dwellings in the

immediate rural area. Expansion will be controlled to minimise pressure on services, the environment and unsustainable commuting patterns. Rural Settlements have a higher order function than Rural Nodes. Rural Nodes comprise largely unserved areas with limited social and community infrastructure and will accommodate limited development at a sustainable scale for local demands by way of small scale cluster developments. The planning framework for future development of the rural settlements is detailed in Volume 2, Section 2. Planning policy for future development in Rural Nodes is detailed in Chapter 4.

7.2.3 Based on the information on file the applicant would fall under Category 2, 'a member of the rural community'. The applicant resides and is originally from a location in close proximity to the site. The applicant is from a lower order rural settlement. I am satisfied that the applicant would comply with Development Plan policy in regards to rural settlement strategy.

7.3 Design, scale and pattern of development:

7.3.1 The proposal is for a two-storey detached dwelling and a detached garage. The site is located well away from the public road and is accessed over a private road that serves existing dwellings. Over the course of the application the design of the dwelling was revised on foot of a further information request to provide a design more in keeping with the Council's Rural Design Guidelines.

7.3.2 The appeal site is level as is the surrounding lands and is located well away from the public road. The site is not located in area designated of high scenic amenity or a vulnerable landscape character designation. The appeal site by virtue of its location remote from the public road and the topography of the area, would not be a prominent site. These facts taken in conjunction existing landscaping and hedgerows and subject to appropriate landscaping if permitted would mean that the proposed development would not have a significant or adverse visual impact. There is mention in the appeal submission of the visual context of the dwelling in relation to the river located to the west and north of the site. The site is a reasonable distance from the river and does not impinge on the visual amenities of the area.

7.3.3 The design of the dwelling approved is a revised design submitted in response to a further information request to take cognisance of the Rural Design Guidelines under Chapter 16 of the County Development Plan. I would note that the approved/revised design is an improvement over the original proposal and does have adequate regard to the Rural Design Guidelines. I would note that such fact taken in conjunction with the flat topography of the site and its location relation to adjoining public road and existing landscaping would mean the proposal would be satisfactory in the context of the visual amenities of the area.

7.3.4 There is mention of the pattern of development and inappropriate urbanisation of the rural area. The dwelling uses an existing access road that is in place and continues on a pattern of development that is not necessarily rural in character. In terms of ribbon development the pattern of development does not constitute ribbon development in the context of the definition of such under the Sustainable Rural Housing Guidelines.

7.3.5 The appeal submission suggest that the proposal would impact on residential amenities of adjoining properties through loss of privacy. In the case of the appellants property, which is a dwelling and associated outbuildings located to the west of the appeal site, there is significant separation between it and the appeal site to such an extent that the proposal would have no significant or adverse impact on residential amenity. The nearest dwelling to the appeal site is to the south east and off the same access road to the site. I am satisfied the layout, scale and orientation of the proposed dwelling is satisfactory in the context of adjoining residential amenity.

#### 7.4 Public Health

7.4.1 The proposal entails installation of a proprietary wastewater treatment system. Site characterisation was carried out including trial hole and percolation tests. The trial hole test notes that the water table level was encountered at a depth of 0.9m in the

trial hole (2.1m). The percolation tests result for T tests carried out by the standard method and for deep subsoils and/or water table and P tests for shall soil/subsoils and/or water table, indicate percolation values that are within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses.

7.4.2 The applicant was requested to create a mock mound and submit P test results for such. The test results indicate percolation values that are within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The drawings submitted meets the required separation distances set down under the EPA Code of Practice (based on site size and separation from site boundaries). Based on the information on file and subject to appropriate conditions requiring compliance with the EPA Code Practice, I would consider that the proposal would be acceptable in the context of public health.

7.5 Traffic:

7.5.1 The site is to be accessed over an existing private road that forms junction with the L to the south of the site. The existing entrance onto the public road is a splayed entrance with electronic metal gates. Sightlines at the existing entrance are off a good standard in both directions. The appeal submission notes that the proposal would create further congestion on the existing access road as it is a cul-de-sac and accommodates a single-line of traffic. The proposed dwelling would be the third dwelling off the access road (the dwelling nearest the road has its own direct access off the public road), which currently serves existing residential development. The existing access road is a well maintained private roadway. Having regard to the nature of existing traffic using the access and the nature of the proposed development, I am satisfied that the proposal would lead to a minimal increase in traffic using the private roadway. Such would have no adverse traffic impact and as noted above access arrangements at the entrance onto the public road are of a satisfactory standard.

## 7.6 Appropriate Assessment:

7.6.1 Having regard to the nature and scale of the proposed development and its 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.

## 7.7 Other Issues:

7.7.1 The appeal submission notes that the scale of development suggests that the proposal may be commercial in nature. The development proposed is a single dwelling and such is what is being assessed on its merits. I would note that the view expressed by the appellant is pure speculation and has not been substantiated by any factual information.

## 8.0 Recommendation

8.1. I recommend a grant of permission subject to the following conditions.

## 9.0 Reasons and Considerations

Having regard to the provisions of the Kildare County Development Plan 2017-2023 and to the nature, form, scale and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in the context of the visual amenity of the area, the amenities of adjoining properties, traffic safety and convenience, and satisfactory in regards to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 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 plan received on the 11<sup>th</sup> day of September 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. 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. 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.

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. 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 and no surface water from the proposed development/site shall be allowed to discharge onto adjoining properties or the public road.

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

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

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

5.

(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 11<sup>th</sup> day of September 2018, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses", Environmental Protection Agency (current edition). 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.

6. 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. Any plants which die, are removed or become seriously damaged or diseased, within a period of 2 years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

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

7. 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 the 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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Colin McBride  
Planning Inspector

06<sup>th</sup> January 2019