



An
Bord
Pleanála

Inspector's Report ABP-303751-19

Development	Removal of condition No. 2 of previous planning Ref. No. 86/884 relating to sterilization of lands and construction of a detached dormer type dwelling, garage, shared access and waste water treatment system.
Location	Firmount West, Clane County Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	181429
Applicant(s)	Kiri Lowry and Lorcan O'Sullivan
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Kiri Lowry and Lorcan O'Sullivan
Observer(s)	none
Date of Site Inspection	18 th April, 2019
Inspector	Stephen Kay

1.0 Site Location and Description.

- 1.1. The appeal site is located in a rural area, approximately 2km to the west of Clane in County Kildare. The site is located at a fork in the road between the R403 regional road to Prosperous and a local road that also runs west towards Prosperous. The site has road frontage both onto the R403 to the north and to the south onto the local road.
- 1.2. The site forms part of a cluster of dwellings that front onto the local road and which run west from the junction of the local road and the R403. Development to the west of the appeal site along the local road comprises a number of large dormer type dwellings on large sites.
- 1.3. The site currently forms part of a larger residential site with the western side of the site occupied by a single storey dwelling owned by the parents of one of the applicants. The eastern part of the current landholding which forms the site which is the subject of the current appeal is currently in use as an area for keeping and rising ponies.
- 1.4. The site is bounded to the north by a large mature hedgerow which separates the site from the R403. The eastern and southern boundaries are also characterised by mature roadside vegetation. The vehicular access to the existing dwelling is located to the south west of the appeal site.
- 1.5. The site has a stated area of 0.272 ha.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a dormer style dwelling on the site. The design has a H shaped floorplan with living accommodation on one side and sleeping accommodation on a two storey opposite wing. The stated floor area of the dwelling is 202 sq. metres. A detached single storey garage with a floor area of 26 sq. metres is proposed to be located close to the north west corner of the site.

- 2.2. The site is proposed to be served by an effluent treatment system and polishing filter which would be located to the east of the house. The house would be served by a new connection to the public water supply.
- 2.3. Access to the site is proposed to be via a shared access located at the south west corner of the site where the existing vehicular access to the adjoining house in the ownership of the parents of the first party appellant would be modified to provide for access to both dwellings. As part of the new layout to the access the existing roadside boundary to the local road to the east of the site entrance is proposed to be set back such that it would be c.5 metres from the road edge.
- 2.4. The application and public notices submitted also highlight the fact that the application seeks the removal of Condition No.2 attached to ref. 86/884 relating to the sterilisation of lands.

3.0 Planning Authority Decision

3.1. Decision

A Notification of Decision to refuse Permission for 4 no. Reasons was issued. The reasons for refusal can be summarised as follows:

1. That the development, together with the existing concentration of development in the area would contribute to the increasing suburbanisation of the area and would be contrary to Policies RH9 and RH10 of the Kildare County Development Plan, 2017-2023.
2. That combined with existing development in the area, the proposed development would result in ribbon development (defined as five or more houses along 250 metres of road frontage) and would be contrary to the provisions of Policy RH12 of the Kildare County Development Plan.
3. That the site is located in an area under strong urban influence and in rural housing zone 1 as set out in Map 4.4 of the Kildare County Development Plan, 2017. Having regard to this and to National Policy Objective 19 of the NPF, it is considered that the applicant does not comply with NPF. The

proposed development would therefore constitute the encroachment of random rural development into the rural area.

4. That the proposed development would materially contravene a condition attached to a permission (Ref. 86/884) which restricted development to a single house on the site.

I note the fact that reason for refusal No.4 relates to the material contravention of a condition attached to a previous grant of permission. The provisions of s.37(2)(b) of the Planning and Development Act, 2000 (as amended) are therefore applicable.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer notes the extensive planning history to the site and the fact that the area is under strong urban development pressure. The fact that the site is located in a strong urban area is noted as is the policy with regard to the management of the capacity of the rural area to absorb new development. Stated that the development would result in 5 no. dwellings within a 250 metres section of road frontage and that the proposal would be contrary to Policy 19 of the NPF and the sterilisation agreement which currently exists on the site.

3.2.2. Other Technical Reports

Environment – No objections.

Roads – no objections subject to conditions.

Area Engineer – No objections subject to conditions.

EHO – No objection.

3.2.3. Prescribed Bodies

Irish Water – No objection (Class 1).

3.2.4. Third Party Observations

None received.

4.0 Planning History

There is a very significant amount of planning history referenced in both the report of the Planning Officer and the first party appeal. The following is particularly noted:

Kildare Co. Co. Ref. 16/1174 – Permission refused to the current applicants for the construction of a dwelling on the appeal site. Reasons for refusal related to excessive ribbon development and concentration of development in this location contrary to Policies RH5 and RH12 of the plan and that the proposed development would materially contravene a condition attaching to Ref. 86/884 which restricted the development on the overall landholding including the current appeal site to one house.

Kildare Co. Co. Ref. 17/213 – Permission refused to the current applicants for the construction of a dwelling two reasons that are consistent with the above decision.

Kildare Co. Co. Ref. 17/1193 – Permission refused to the current applicants for the construction of a dwelling two reasons that are consistent with the above decision.

Kildare Co. Co. Ref. 18/377 - Permission refused to the current applicants for the construction of a dwelling two reasons that are consistent with the above decision.

In addition to the above, the report of the Planning Officer makes reference to a number of applications for permission for the construction of single and in some applications two dwellings on sites that incorporate the appeal site and lands to the west. These applications date from the early 1980s.

The report of the Planning Officer also makes reference to recent applications for permission on lands located to the south of the current appeal site where permission was refused for single dwellings for reason relating to the capacity of the area to accommodate additional development, the density of development and compatibility with Policy RH9 of the development plan.

5.0 Policy and Context

5.1. National Policy

National Planning Framework

Reference is made in the report of the planning officer to Project Ireland 2040 and the National Planning Framework. Specifically ***National Policy Objective 19*** states that it is policy to ensure that there is a distinction made between areas under urban influence and elsewhere and that, in rural areas under urban influence, to facilitate the provision of rural houses in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

Sustainable Rural Housing Guidelines for Planning Authorities, 2005

Guidelines distinguish between urban and rural generated housing and, in the case of urban generated housing state that applicants should outline how their proposal is consistent with the rural settlement approach in the development plan and should supply supporting documentation where appropriate. Paragraph 4.3 relates to the personal circumstances of the applicant and clarifies that the case of exceptional health circumstances is a basis for permission in certain circumstances.

5.2. Development Plan.

The appeal site is located in an area that is identified as an area of strong urban influence and development pressure as per Map 4.4 of the *Kildare County Development Plan, 2017-2023*.

As per Map 4.4, the appeal site is located in Area 1 and in such areas the applicant is required to comply with the requirements of paragraph (A) and (B) contained in Paragraph 4.12.7 of the Plan. The provisions of this section are attached with this report.

Rural housing policies that are considered to be of specific relevance to the appeal include:

Policy RH2 states that it is the policy of the council to manage the development of one off rural housing in conjunction with the rural housing policy zone map 4.4 and the criteria set out in Table 4.3.

Policy RH9 states that notwithstanding compliance with local housing need requirements, applicants are required to comply with further criteria relating to siting and design. RH9(iv) makes reference to the capacity of the area to absorb development.

Policy RH10 states that it is policy to control the level of piecemeal and haphazard development in rural areas close to urban settlements.

Policy RH12 states that it is policy to discourage ribbon development (defined as five or more houses alongside 250 metres of road frontage). The council will assess whether a proposed development would exacerbate such ribbon development having regard to

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

Chapter 16 of the Plan relates to rural design and the rural design guidelines.

5.3. Natural Heritage Designations

The site is not located within or close to any European site. The closest European site to the appeal site is the Ballynafagh Bog and Lake SAC which is located approximately 3km to the north west of the site.

5.4. EIA Screening

Having regard to the single dwelling nature of the proposed development there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the first party grounds of appeal:

- That the first party are aggrieved that they were not afforded a s.247 consultation.
- [REDACTED]
- With regard to the sterilisation agreement on the lands, it is submitted that no sterilisation agreement was ever entered into or registered on the lands. Given the long passage of time and the expiration of the original planning permission, it is considered that the conditions attached to Ref. 86/884 are no longer relevant and sterilisation conditions are no longer used.

- Submitted that the area has changed significantly since 1986 and that the proposal is in compliance with the proper planning and sustainable development of the area.
- Noted that there are a number of applications where permission has been granted for dwellings where previous sterilisation agreements have been removed. Ref. 18/217 is one of the examples cited (Firmount West).
- Submitted that the proposed dwelling would coalesce and finalise development in this location.
- That the first party consider that they have addressed the previous reasons for refusal relating to sterilisation and ribbon development.
- That the site and surround area has the capacity to absorb an additional dwelling.
- That the appeal site had previously been approved for additional dwellings.
- That Kiri grew up and went to school in the local area and is employed as a teacher in Lucan. She has a long record of playing GAA in the local area and is the trainer of ladies teams as well as being active with disability and school associations locally. Letters of support were submitted with the application.
- That the applicants are currently living on the adjoining lands with Kiri's parents.
- Submitted that the applicants comply with rural housing policy Category 2 of Zone 1 – persons who have grown up or spent a substantial period of their lives (12 years) living in a rural area as a member of the rural community, seeking to build on family landholding or a site within 5 km of the family home and currently living in the area.
- That the design of dwelling is appropriate to and complements the local area. The design is consistent with the requirements of section 4.13.1 of the plan.
- Policy RH12 of the plan relates to the overall density of rural development and ribbon development. Submitted that Firmount West does not have an excessive density of development and that the site is large and easily capable of accommodating an additional dwelling. The development would not meet

the development plan definition of ribbon development and the proposal is not ribbon development as the entrance is shared.

- That the development is a 'family cluster' and comprises infill development.
- That the proposal is the last site that can be developed in this location and will coalesce and finalise any development in this location.
- That the site is served by public infrastructure, transport and is within 1km of facilities in Clane village.
- That existing trees and hedgerows will be retained in the development.
- That the revised access arrangement with a shared access would ensure adequate visibility at the entrance and the proposal is acceptable to the roads department of the council.
- Drainage on the site is acceptable to the EHO, area engineer and environment sections of the council. There are no recorded flood incidents in the vicinity of the site.
- The appeal is accompanied by a legal opinion prepared by David Browne BL. This opinion states, inter alia that
 - The definition of ribbon development is clear from Policy RH12 and is not open to ambiguity. The policy is to discourage such development and not to prevent or rule it out.
 - Policy RH12 is subject to a number criteria where ribbon development could be exacerbated.
 - Submitted that little or no consideration given by the Planning Officer to the location and siting of the property and / or whether the definition of ribbon development was met in this case. There does not appear to be any reference to the criteria set out in Policies RH9 and RH12, including the special 'exemption clause' for immediate family members.
 - That Condition No.12 of Ref. 86/884 could not be construed as a sterilisation agreement within the meaning of s.47 of the act.
 - That relying on a condition attached to a 1986 permission is arguably contrary to the principle of proportionality. The effect would be that the

council could never grant permission which could not have been foreseen in 1986.

- Reference made to s.47(3) which states that nothing in this section shall be construed as restricting the exercise of any powers under the act so long as these are not exercised so as to contravene materially the development plan or as requiring the exercise of any such powers so as to materially contravene these provisions.
- It is also noted that the use of s.47 agreements is discouraged in the Sustainable Rural Housing Guidelines for Planning Authorities, (pg.40).
- Also noted that the Sustainable Rural Housing Guidelines identify a number of criteria for determination as to whether a proposal will exacerbate ribbon development.

6.2. Planning Authority Response

The main issues raised in the planning authority response to the first party grounds of appeal can be summarised as follows:

- [REDACTED]
[REDACTED] A granny flat could be considered if there is a need to reside close to the parent's site.
- That condition No.2 attached to Ref. 86/884 refers to finishes rather than sterilisation.
- That Condition No.10 attached to 86/884 is not a compliance condition or identify a requirement to enter into a s.47 agreement. It is a statement that only one house will be permitted on the entire site. The proposed development the subject of appeal would materially contravene this condition.
- That the applicant has not demonstrated an economic or social need to live in a rural area and has not outlined a locally based need to live in this location. The applicant could live in a rural settlement or urban area in the vicinity of the site.

- That a measurement taken from the centre of the dwelling c.250 metres to the west indicates that the proposed dwelling would be the 5th along this 250 metre section of road. Ribbon development would result.

6.3. Further Circulations

6.3.1. The following is a summary of the main issues raised in the first party response to the submission of the Planning Authority:

- That the applicants consider that they have a rural housing need as the family have lived in the area for over 40 years, the applicant was born and attended school in the area, the site adjoins the family home and the applicant is heavily involved in activities in the local area.
- Reference to a family flat is noted. This would not be suitable to the needs of a family / couple.
- That the proposal does not constitute ribbon development and it is submitted that the planning authority have been inconsistent in their application of plan policy.
- It is also considered that other applications by local families have been treated in a very different way by the planning authority – note Ref. 18/217.

6.3.2. The Planning Authority responded to state that it had no further comments to make on the appeal.

7.0 Assessment

7.1. The following are considered to be the most significant issues in the assessment of this appeal:

- Principle of Development and Rural Housing Policy
- Location, Design and Layout
- Site Drainage and Access
- Appropriate Assessment

7.2. Principle of Development and Rural Housing Policy

- 7.2.1. The appeal site is located in a rural area that is outside of any identified settlement. The site is located in an area that is identified as being under **strong urban influence** as per Map 4.4 of the Kildare County Development Plan and Map 1 of the Sustainable Residential Development In Rural Areas Guidelines for Planning Authorities, 2005. These designations are consistent with the location of the site within 2km of the village of Clane and within the Dublin commuter belt.
- 7.2.2. The **policy of Kildare County Council** with regard to rural housing is set out at section .12 of the development plan and paragraph 4.12.7 and the associated Tables set out this section (Table 4.3). An applicant for a rural dwelling is required to demonstrate that they are either a member of a farming family or of the rural community and that they meet one of the specified criteria set out in Table 4.3. In the case of the first party appellants, their connection with the rural area is that they have grown up in the local area, going to school, playing GAA and being involved in local community organisations. In my opinion therefore, the applicant in this case is a member of the rural community by virtue of the fact that they have immediate family ties (parents living next door) to the local area. The applicant therefore needs to be assessed against the detailed criteria for Rural Housing Policy Zone 1 set out at Table 4.3(b). These criteria include persons who have spent substantial parts of their lives living in a rural area and who seek to build on the family land holding.
- 7.2.3. In the case of the applicants, Ms Kiri Lowry is from the local rural area of Firmount West and the site on which the application is being made is part of the family land holding in this location. The applicant has demonstrated that she has been a resident of the local rural area for a period in excess of 12 years and evidence of attendance at local schools has been provided in that regard. It is not clear if she remained a resident at Firmount West for the continuous period between leaving school and the present however correspondence from the 2010 – 2016 period indicating this address has been provided. On the basis of this information and having regard to the additional information provided relating to the applicants involvement in local community activities including the GAA and community groups, it is my opinion that the applicant has demonstrated that they are in compliance with the rural housing policy provisions of the development plan.

7.2.4. The applicant has also indicated that there is a **medical or health need** for the location chosen [REDACTED]

[REDACTED] This issue is noted however it is not in my opinion clear from the information presented that the medical issues are such that they require the applicant to live immediately adjoining the parents' house or that a location a short distance away in the settlements of Clane or Prosperous would not be suitable.

7.2.5. While I consider that the applicant meets the requirements of the rural housing policy as set out in Chapter 4 of the development plan it is apparent from the information presented with the application that neither applicant has an economic need to reside in a rural area as their employments are not local and are not related to agriculture or rural based economic activity. The social connections as outlined are such that while the applicant has social connections to the local area by virtue of growing up in the area and having family (parents) living in the area they do not, in my opinion, have a clear social need to reside in the local area. The local organisations listed in the application documentation including Clane GAA, KARE, Clane Community Council are all based in urban areas rather than in the immediate rural vicinity of the appeal site.

7.2.6. I note that **Reason for Refusal No.4** attached to the Notification of Decision to refuse Permission issued by the Planning Authority makes reference to the fact that the proposed development would **materially contravene a condition attached to an existing permission** for development (Kildare Co. Co. Reg. Ref. 86/884) which restricted development to a single house on the overall site which comprises the site of the existing family home to the immediate south west of the appeal site and the current appeal site.

7.2.7. The first party appeal includes a **legal opinion** from Mr David Browne BL which addresses the issues of ribbon development and contravention of the condition attached to the parent permission for the development of the adjoining site to the south west (Ref. 86/884). With regard to the implications of Condition No.10 attached to Ref. 86/884, I note the fact that the wording of this condition makes reference to '*one dwelling only to be erected on entire site outlined on 1:2500 map submitted 18th August, 1996*'. I therefore agree with the legal opinion submitted that this condition could not be construed as a sterilisation agreement within the meaning of s.47 of the act. The submitted opinion and the appeal contend that it is not

appropriate that a condition from 1986 would still be relevant and that it should therefore not be an impediment to a grant of permission in this case. I note the case being made in this regard, however the purpose of the condition as attached clearly relates to an avoidance of an excessive concentration of residential development in this rural area. This level of concentration has increased in the interim years with the additional dwellings permitted and so I do not see that the purpose of the condition is no longer relevant solely due to the period of time that has elapsed since the 1996 decision. The legal opinion also raises the issue of proportionality and contends that relying on a condition attached to a 1986 permission is arguably contrary to the principle of proportionality and that the effect would be that the council could never grant permission which could not have been foreseen in 1986. As outlined above however, I consider that the purpose of the 1996 condition remains relevant, this being the avoidance of an excessive concentration of residential development in this rural area that is located in close proximity to Clane and which is under significant development pressure.

7.2.8. The submitted appeal and legal opinion also makes reference to s.47(3) which states that nothing in this section shall be construed as restricting the exercise of any powers under the act so long as these are not exercised so as to contravene materially the development plan or as requiring the exercise of any such powers so as to materially contravene these provisions. It is also noted that the use of s.47 agreements is discouraged in the Sustainable Rural Housing Guidelines for Planning Authorities, (pg.40). These points are noted, however the condition at issue is not under s.47 of the Planning and Development Act and does not require that a sterilisation agreement would be entered into.

7.2.9. **Reason for Refusal No. 4** makes specific reference to material contravention of condition No.10 attached to Ref. 86/884. The wording of Condition 10 is in my opinion unambiguous, and the proposed development would clearly be in material contravention of it. Given the wording of the refusal reason, the provisions of **s.37(2)(b) of the Planning and Development Act** relating to the circumstances where it is open to the Board to overturn the decision of the Planning Authority are therefore applicable. The nature of the proposed development is such that the proposed development is not of strategic or national importance as required under s.37(2)(b)(i) and, in my opinion there are not conflicting objectives in the

development plan relating to the proposed development such as would meet the requirements of s.37(2)(b)(ii). The general focus of the ***Sustainable Residential Development Guidelines for Planning Authorities, 2005***, which are ministerial guidelines issued under s.28 of the Act, is that rural generated housing demand should be satisfied in the rural area in which it occurs, including areas under high development pressure, subject to considerations relating to siting, density of development and ribbon development being considered acceptable. The proposed development may be considered to be in accordance with this principle set out in the guidelines, and this issue together with the implications of the development for siting, density, ribbon and haphazard development is discussed in more detail in the following sections. National policy as set out in ***Policy Objective 19 of the National Planning Framework*** however, states that permission for development in rural areas under urban influence where there is a demonstrable economic or social need to live in the rural area. For the reasons discussed previously in this assessment, I do not consider that the applicants in this case have clearly demonstrated such a need. For this reason, it is my opinion that the provisions of s.37(2)(b)(iii) could not be considered to be met in the development. Similarly, with regard to s.37(2)(b)(iv) relating to permission being appropriate on the basis of the pattern of development and permissions granted since the making of the development plan, I note the contention of the first party that other applicants, with similar personal circumstances to the first party, have been granted planning permission in recent years. Specific reference in the first party submissions is made to Planning Ref. 18/217 and other specific planning reference numbers are not provided. In the case of Ref.18/217, however and examination of the online documents associated with the application indicate that permission was granted following revisions to the site layout / boundaries to ensure that it did not materially contravene a condition attached to a 1997 grant of permission which restricted further residential development on part of the landholding. In this regard I do not therefore consider that the circumstances relating to Ref. 18/217 are such that it is the same as the subject application and such that s.37(2)(b)(iv) of the Act is applicable.

7.3. Siting, Design and Layout

- 7.3.1. The **design** of the proposed dwelling comprises a two storey dwelling with a H shaped floorplan and a floor area of just over 200 sq metres. The basic design of dwelling is considered to be acceptable in principle and the retention of the bulk of the existing boundary vegetation to the site would result in a development that would be well screened from the public road and which would not have a significant impact on the residential amenity on the existing dwelling to the west.
- 7.3.2. The basis of **refusal reasons Nos. 1 and 2** relate to the capacity of the local area to accommodate additional development and compatibility with Policies RH9 and RH10 of the Plan (Reason No.1) and the issue of ribbon development resulting compliance with Policy RH12 (Reason No.2). The first party have submitted a detailed assessment as to how the proposal does not constitute ribbon development, including a Ribbon Development Map, and contend that the criteria attached to Policy RH12 relating to ribbon development have not applied in the assessment. The submitted map indicates that if the full length of the site roadside frontage is taken into account that there would be only 4 no. houses (including the proposed development) along a 250 metre length of road frontage. It is therefore argued that the definition of ribbon development as set out in Appendix 4 of the Sustainable Residential Development Guidelines would not occur.
- 7.3.3. I have a number of issues with regard to the submission of the first party on this issue. First, the full c.110 metre frontage of the appeal site is being used to reduce the number of dwellings that are included. A grant of permission for the proposed development would result in a run of 6 no. houses along this section of road with additional residential development beyond that to the west, albeit set back from the road. The proposed development is located at the western end of the appeal site and if the frontage of the site where the dwelling is located is taken into account, the proposal would result in 5 no. dwellings within a 250 metres length of road frontage. I would also note the fact that the 5 no. houses within a 250 metres length of road frontage is given in Appendix 4 of the Sustainable Rural Housing Guidelines as an 'example' of ribbon development. Appendix 4 states that whether a given proposal will exacerbate such ribbon development would depend on a number of factors including

- *The type of rural area and circumstances of the applicant,*
- *The degree to which the proposal might be considered infill development, and*
- *The degree to which existing ribbon development would coalesce as a result of the development.*

7.3.4. In the case of the appeal site, I do not consider that the site can be considered to be an infill location. I note the content of the first party appeal regarding the site forming a logical and coherent completion of the residential cluster in the Firmount West area, however it is my opinion that the proposed development would represent a further extension of what is already a densely concentrated cluster of residential development on lands fronting both the R403 to the north and the local road to the south. Policy RH12 of the development plan seeks to '*discourage ribbon development*' and lists a number of criteria that will be taken into account in the assessment. These largely reflect those cited in the Sustainable Residential Development Guidelines but include '*(iv) local circumstances, including the planning history of the area and development pressures and (v) notwithstanding the above, special regard will be given to the circumstances of immediate family members of a landowner on single infill sites in a line of existing dwellings with 5 or more houses along a 250 metres of road frontage.*'

7.3.5. Notwithstanding the above, I do not consider that the proposed development would not constitute ribbon development in this location. I am also of the opinion that the extent of existing development in the vicinity of the appeal site, including to the west on the local road, to the north west on the R403 and to the north east on the local road that runs north from Firmount Cross Roads is such that there is already a very significant degree of haphazard and piecemeal development in the environs of the appeal site and a blurring of the distinction between urban and rural areas to the west of Clane. The location of the site and its proximity to Clane and to Dublin is such that it is the subject of significant development pressure. The proposed development of an additional dwelling in this location would, in my opinion, result in further haphazard and piecemeal development that would exacerbate the existing pattern of haphazard development and ribbon development in this location. The proposed development would therefore be contrary to Policy RH9(iv) of the County Development Plan which states that notwithstanding compliance with the local

housing need criteria, applicants must also demonstrate the capacity of the area to accommodate further development.

7.4. Site Drainage and Access

- 7.4.1. The appeal site is located in an area where there is no public wastewater network. The development is therefore proposed to be served by an on site effluent treatment system and the system proposed to be installed is an O'Reilly Oakstown BAF treatment system. The results of a site suitability assessment are on file and indicate that the site is suitable for the installation of a treatment system in this area where the groundwater protection response is categorised as R1 (locally important aquifer and moderate vulnerability).
- 7.4.2. The results of the on site assessment indicate that the T test result of 22 with no water or rock encountered in the trial hole. The results of the test are consistent with observations on site which indicated good drainage and no water was observed in the trial hole which remained open at the time of inspection.
- 7.4.3. Water supply is proposed to be via a connection to the public water supply network which is available and Irish Water indicate that there is no objection to a connection to this network.
- 7.4.4. On the basis of the information presented, I consider that the site is suitable for the installation of an on site effluent treatment system of the form proposed in the application details.
- 7.4.5. Site access is proposed to be via an access point at the south west corner of the site where the existing vehicle entrance to the adjoining site to the west is proposed to be modified to provide for a shared access to be used by both sites. The shared recessed entrance would access two separate entrances into the two dwellings and the proposed layout, together with sight lines, is indicated on the Proposed Site Layout Plan. I do not have any objection in principle to the development of a shared access and the proposed removal of part of the hedgerow boundary to the north of the entrance would result in improved sightlines for the existing dwelling.

- 7.4.6. The access proposals include the removal of a section of hedgerow and roadside boundary measuring approximately 60 metres to the north of the revised entrance. This section is however part of a double roadside hedgerow boundary in this area and the existing inner hedgerow would be retained as the roadside boundary.
- 7.4.7. Overall, the access proposals are considered acceptable from a traffic safety and visual amenity perspective.

7.5. Appropriate Assessment

- 7.5.1. The appeal site is not located in or close to any European sites. The closest European site to the appeal site is the Ballynafagh Bog and Lake SAC which is located approximately 3km to the north west of the site.
- 7.5.2. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

7.6. Conclusion

- 7.6.1. In conclusion, while I consider that the applicant is in compliance with the rural housing provisions of the development plan being a member of the rural community who has resided in the local rural area for a significant period (greater than 12 years), I am not satisfied that they have demonstrated an economic or social need to reside in this rural area and that the social needs put forward could not be readily met by residing in one of the number of established settlements that are located in close proximity to the site.
- 7.6.2. The appeal site comprises part of a larger site which was granted permission subject to a condition (Condition No.10 attaching to Ref. 96/884) which restricted development to a single dwelling. Contrary to the assertions of the appellants, I consider that the basis for the inclusion of such a condition remains valid given the development pressures and location of the site. The relevant condition is also not a sterilisation agreement under s.47 of the Act. The proposed development would materially contravene this condition and I do not consider that the criteria set out in

s.37(2)(b) of the Act have been met such that the Board can consider a grant of permission. In reaching this conclusion, I do not consider that the first party have demonstrated a clear economic or social need to live in this location.

- 7.6.3. Notwithstanding the conclusion, the location of the appeal site is such that the proposed development would result in a further extension of the already significant density of residential development in the Firmount West area and rural area to the north of Firmount cross roads and the creation of ribbon development. The proposed development would therefore, in my opinion be contrary to Policy RH9(iv) of the plan relating to the capacity of the area to accommodate further development with particular regard to the creation of ribbon development and exacerbation of existing haphazard or piecemeal development patterns. The proposed development is also considered to be contrary to Policy RH12 relating to discouraging ribbon development.

8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that permission be refused based on the following reasons and considerations:

9.0 Reasons and Considerations

1. The development would result in an extension of the already significant density and haphazard nature of residential development in Firmount West and the rural area to the north of Firmount cross roads and would exacerbate the existing pattern of ribbon development on the local road onto which access is proposed. The proposed development would therefore be contrary to Policy RH9(iv) of the *Kildare County Development Plan, 2017-2023* relating to the capacity of the area to accommodate further development with particular regard to the creation of ribbon development and exacerbation of existing haphazard or piecemeal development patterns, Policy RH10 relating to the control of piecemeal and haphazard development in rural areas close to urban settlements and Policy RH12 which seeks to discourage ribbon development and would therefore be contrary to the proper planning and sustainable development of the area. .

2. The proposed development would materially contravene a condition attached to a permission for development (Kildare County Council Register Ref. 86/884) which restricted development to a single house on a site which included the current appeal site and the site of the existing developed house to the west. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.



Stephen Kay
Planning Inspector

20th May 2019