



An  
Bord  
Pleanála

## Inspector's Report

### ABP-305596-19

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<b>Development</b>	Construction of dwelling and Heliculture business
<b>Location</b>	Daars North, Sallins, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	17/756
<b>Applicant(s)</b>	Aidan & Loretta Damer
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Aidan & Loretta Damer
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> May 2020
<b>Inspector</b>	Ciara Kellett

## 1.0 Introduction

- 1.1.1. Following the quashing of the decision on this case by order of the High Court under Appeal Ref. PL09.249234, the case was remitted back to the Board. The Board directed that the file was to be allocated to a different Planning Inspector for the preparation of a new report. This report has been prepared on foot of that Board Direction.

## 2.0 Site Location and Description

- 2.1. The site is located in Daars North, which is located c.2.7km south-east of Clane and c.3.2km north-east of Sallins in Co. Kildare. The site is located on the northern side of a local road which is west of the Sherlockstown Road in a rural part of Kildare. The general area is in use for agricultural purposes with a number of golf courses further afield (including Killeen, Millicent and the K-Club being some examples). There is a substantial number of one-off houses in the general vicinity of the site.
- 2.2. The site is stated as being 1.84Ha in area and roughly rectangular in shape. It is relatively flat and surrounded on all sides with mature hedgerows and trees. As of the date of my site visit, it appears not to have been in use for some time and is overgrown. There is an agricultural gate fronting onto the local road. However, it was not possible to enter the site - it is clear that the gate has not been used for some time due to the growth of vegetation (see photos attached). The local road is narrow with limited opportunities for two cars to pass. There are dwellings either side of the site with scattered agricultural buildings all on the northern side of the local road.
- 2.3. Appendix A includes maps and photos.

## 3.0 Proposed Development

- 3.1. The applicant is seeking permission for a number of elements including:
  - Construction of a one and a half storey low energy dwelling and a single storey domestic garage/store with a recessed entrance
  - Provision of a willow zero discharge wastewater treatment system
  - Construction of netted area to facilitate a snail farm

- Construction of an agricultural shed
- Construction of a polytunnel.

3.2. The dwelling is described as being 283sq.m and the garage being 51.3sq.m in area. The polytunnel is 195.6sq.m and the shed is 68.4sq.m. The netted area for the snails is 4,000sq.m in area although this is not a structure as it does not have a floor, walls or roof.

3.3. The house style is dormer (8.928m high) with a nap plaster finish and timber details. It is located to the rear (north-west) of the site with the garage behind. The house will be served by a zero-discharge willow facility sized at 39m x 6m located to the rear of the site. The agricultural shed and the polytunnel are located to the rear of the site also, to the north-east. The development is set back from the road with appropriate sightlines.

3.4. It is proposed to establish a heliculture business “Shamrock Escargot” on the site. The snail netted area is towards the front of the site and is shown as being 55m x 55m in area.

3.5. The application documentation included a number of reports as well as the statutory requirements. The reports included a Planning Report, Site Characterisation Form, Zero-discharge Willow Facility Design Report, information about snail farming, support letters from neighbour and other snail farmers, as well as a Business Plan. The Business Plan provides financial information, projections, number of employees and the expected increase in business going forward.

## 4.0 Planning Authority Decision

### 4.1. Decision

The Planning Authority decided to refuse permission for 3 reasons as follows:

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 are 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.*
3. *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 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 table 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.*

## **4.2. Planning Authority Reports**

### **4.2.1. Planning Reports**

The Planner's Report is the basis for the Planning Authority's decision. In summary, it includes:

- Past number of years has seen a significant increase in the proliferation of one-off dwellings and piecemeal development of landholdings in the townland of Daars North; a location characterised by winding and narrow rural roads. Figure included illustrating the site to the south-west of the image and development surrounding it.
- Area under pressure from counter-urbanisation and is within the County's Rural Housing Policy for Zone 1 which puts stricter limits on compliance with local need criteria for rural housing. An addition of another dwelling would further exacerbate this highly developed rural area.
- Considers design of dwelling complies with the rural design guidelines as outlined in Chapter 16 of the County Development Plan and the dwelling would not cause an adverse visual impact on the area.
- Area Engineer and Roads section have no objection to the entrance as proposed. Considers proposed internal 6.5m wide avenue is excessive in width.
- Notes Environment Section have major concerns over the lack of plans to deal with surface water drainage. Environment section recommend refusal on the ground that research from the EPA has shown that there is always some wastewater discharge into local water sources from such willow facilities.
- EHO has concerns with the operation of a snail farm and its potential impacts on the area and recommend a request for Further Information.
- Considers application against Local Needs Policy provision of the Kildare County Development Plan 2017 – 2023 and notes that applicant will be assessed against Category 2 (iii)<sup>1</sup> of Zone 1 as set out in Table 4.3(b) of the Plan.

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<sup>1</sup> Note there appears to be a typing error in Planner's Report as there is reference to Category 2(iv) which does not exist in the Plan. The specifics of Category 2(iii) are written within the report. Therefore I am satisfied that this is a typing error and Category 2(iii) is what the Planner is referring to. This error is repeated on page 13 of the Report.

- Notes that on foot of the earlier refusal by An Bord Pleanála the applicant has submitted an updated Business Plan and a detailed Planning Report refuting various aspects of the Council and the Board’s earlier decision to refuse permission.
- Summary of the Planning Report and Business Plan set out.
- Does not consider that the applicants have demonstrated sufficient compliance with criteria (iii) for the provision of a dwelling on the site on several grounds.
- The applicants have not demonstrated any ties to the townland of Daars North or any surrounding area proximate to the subject site – only evidence submitted is a copy of a historic land registry record showing one grandparent to have bought land at Barberstown Lower in Straffan in 1962. This does not represent an existing link to the area.
- Not convinced that the business falls within the category of a full-time business or one that would require the applicants to reside permanently on the site. Queries the number of employees as this Business Plan increases employee requirements over previous application but forecast production remains the same – concludes effort has been made to make business appear to have a larger economic impact on the local area than would actually be the case.
- Concludes that notwithstanding the serious issues with suitability of the site for wastewater treatment, the lack of a specified surface water drainage system, it is considered that the application does not comply with the local needs policy. Also notes that application does not materially differ from that refused earlier by the Board and recommends refusal.

The Planning Authority’s decision is in accordance with the Planner’s recommendation.

#### 4.2.2. Other Technical Reports

- **Area Engineer:** No objection subject to conditions
- **Water Services:** No objection subject to conditions

- **Transportation:** No objection subject to conditions
- **EHO:** Seeks Further Information on snail farm
- **Environment:** Recommends refusal because of the reference to proposals for an overflow channel discharging to the adjacent surface water drain. It is not policy to permit a surface water discharge from an on-site wastewater treatment system from a one-off house. Therefore the site is not suitable for the provision of an on-site wastewater treatment system due to high water table level, poor percolation and risk of pollution.
- **Heritage Officer:** Verbal concerns expressed regarding bio-security of site in relation to the possible negative effects on native biodiversity.

#### 4.3. Prescribed Bodies

- **Irish Water:** No report

#### 4.4. Third Party Observations

None received

### 5.0 Planning History

On the site itself:

- **ED/00621:** Section 5 referral – concluded polytunnel, farm shed, netted area constituting a snail farm was development and was not exempted development.
- **ABP Ref. 247167** (KCC Reg. Ref. 16/598): The Board decided to refuse permission in January 2017 following the Council's refusal of permission, for a very similar development to the subject proposal. The Board decided to refuse permission for one reason as follows:

*Having regard to the submissions made in connection with the application and the appeal and having regard to the pattern of development in the area with a substantial number of one off houses, and having regard 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 and 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 refused permission for three reasons including suitability of the site for effluent treatment and non-compliance with policy RH5 (of the 2011 – 2017 Plan). The Inspector had also recommended refusal for three reasons, but the Board refused for the reason stated above.

- **KCC Reg. Ref. 03/2060:** An application for outline permission for a dwelling was withdrawn by the applicants in August 2004 (note different applicants).

Cases referred to that are located in the vicinity:

- **KCC Reg. Ref. 17/1221:** Construction of a 2 storey dwelling in Daars South granted permission by the Council in June 2018. The applicant complies with Local Need Policy in terms of how long he has lived and worked in the area. There is no reference to density within the Planner's Report.
- **KCC Reg. Ref. 14/508:** Construction of new dwelling in Daars was granted permission in October 2014 following a previous refusal under Reg. Ref. 13/1016 for reasons relating to location of employment of applicant, as well as wastewater treatment concerns and house design. This revised application states that the applicant complies with Category 2 of the housing policy. The Planner's Report refers to the fact that there are 13 no. dwellings within 250m of the proposed site and considers area to be under substantial development pressure. The Planner recommends that permission is refused as it would further contribute to an excessive density of development, would constitute undesirable ribbon development and considers the applicant's place of employment means the applicant has not demonstrated a convincing need to reside in the rural area and the development would give rise to urban generated housing. However, the Director of Services decided to seek Further Information relating to density issues and future plans for the landholding. The



FI request specifically sought information relating to dwellings within a 300m radius. Following the response, the Planner continued to recommend a refusal of permission for reasons relating to excessive density of development and ribbon development. However the Director of Services did not agree and noted that having regard to applicant's compliance with Rural Housing Policy, willingness to enter into a S.47 agreement, location on a cul-de-sac and no objections from engineering, considered that permission should be granted.

- **Reg. Ref. 13/556:** Permission was granted in October 2013 for the development of a dwelling in Turnings. The applicant complied with policy RH10 with respect to medical conditions of the previous Plan. There is no reference to density in the Planner's Report – it is considered not to contribute to Ribbon development.

## 6.0 Policy Context

### 6.1. National Policy

#### 6.1.1. National Planning Framework

Section 5.3 of the NPF refers to 'Planning for the Future Growth and Development of Rural Areas'. Under the heading of **Countryside** it is stated '*It will continue to be necessary to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e. the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations*'.

National Policy **Objective 19** includes:

*.....In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;.....*

National Policy **Objective 23** refers to the rural economy and states:

*Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.*

#### 6.1.2. **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.

Appendix 4 specifically refers to Ribbon Development. It states:

*Taking account of the above and the dispersed nature of existing housing in many rural areas, areas characterised by ribbon development will in most cases be located on the edges of cities and towns and will exhibit characteristics such as a high density of almost continuous road frontage type development, for example where 5 or more houses exist on any one side of a given 250 metres of road frontage.*

#### 6.1.3. **Circular SP5/08**

Circular SP 5/08 was issued by the Department of Environment Heritage and Local Government on 30th September 2009. In relation to **Local Need Criteria Policies and Practices** it states:

*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 processes 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.*

## **6.2. Kildare County Development Plan 2017 – 2023**

- 6.2.1. Chapter 4 refers to Housing, Chapter 10 to Rural Development and Chapter 16 to Rural Design. Map V1-4.4 indicates that Daars North is located in 'Rural Housing Policy Zone 1'.
- 6.2.2. The Plan identifies criteria for an applicant to be considered for a one-off dwelling. An applicant must meet one of the following categories: A) is a member of a farming family actively engaged in farming the family land (Category 1), **or** a member of the rural community (Category 2), **and** B) meets one of the local need criteria set out in Table 4.3(a) and (b).

Category 2 of applicant in Zone 1:

*A member of the rural community: The applicant must demonstrate a genuine local need to reside close to their family home by reason of immediate family<sup>2</sup> ties or their active and direct involvement in a rural based enterprise.*

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

- (i) Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare as members of the rural community and who seek to build their home in the rural area on their family landholding and who currently live in the area. Where no land is available in the family ownership, a site within 5km of the original family home may be considered.*
- (ii) Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare, as members of the rural community who have left the area but now wish to return to reside near to, or to care for immediate family members, seeking to build their home in the rural area on the family landholding or on a site within 5km of the original family home.*
- (iii) Persons who can satisfy the Planning Authority of their commitment to operate a full time business from their proposed home in the rural area where*

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<sup>2</sup> Immediate family members are defined as mother, father, son, daughter, brother, sister or guardian

*they have existing links to that rural area and that the business will contribute to and enhance the rural community and that the nature of such enterprise is location dependent and intrinsically linked to a rural location.*

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

*Applications for rural one off dwellings will be considered, subject to the policies and objectives set out in the County Development Plan, where it is demonstrated that the development would not prejudice the environment and the rural character of the area. In this regard factors such as sensitivity of the receiving environment, the nature and extent of existing development and the extent of existing development on the original landholding will be considered.*

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

6.2.4. **Policy RH9** notes that notwithstanding compliance with local need criteria, applicants comply with all other normal siting and design considerations including *inter alia*:

*(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.....*

*(vi) The ability of a site in an unserviced area to accommodate an on-site waste water disposal system in accordance with the EPA Code of Practice for Wastewater Treatment Systems for single houses (2009), the County Kildare Groundwater Protection Scheme, and any other relevant documents/ legislation as may be introduced during the Plan period.*

*(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)*

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

6.2.6. Section 4.13.3 addresses housing applications based on equine (or other) rural enterprises. **RH 18** seeks 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 in assessing the application. (iii) It must be demonstrated that the nature of the enterprise is location dependent and intrinsically linked to a rural location.*

6.2.7. Chapter 10 refers to Rural Development. It considers a wide range of developments in the rural area including agricultural, equine, agri-food sector etc. The proposed development should be assessed against a number of policies in this chapter of the Plan. Table 10.3 lists the criteria for assessment of one-off enterprises in rural areas. It includes:

*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; The proposals should conform to other objectives of the County Development Plan*

6.2.8. Chapter 16 provides advice on Rural Design.

### **6.3. Natural Heritage Designations**

- Ballynafagh Bog and Lake SAC c.8km west
- Mauds Bog SAC is c.11km south-west
- Red Bog SAC is c.12km to the south-east

### **6.4. EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

A First Party appeal has been submitted by consultants on behalf of the applicants against the decision of the Council to refuse permission. In summary it includes:

- Reference made to pre-planning meeting and advice provided therein.

- States that the recent inclusion of ‘existing links’ was discussed but as the 2017 – 2023 Plan was only recently adopted, little advice as to how this requirement would be applied could be given.
- It was never suggested that this requirement absolutely had to be adhered to or that this would be a main reason for refusal.
- Notes that the Board’s Inspector for the previous application stated that insufficient detail about how the business would contribute to the local economy was provided – expanded upon in the current application.
- Density of development was discussed including the newly identified calculation of density using a 300m radius as per Reg. Ref. 14/508.
- Further spatial analysis from NIRSA presented as part of the application. Empirical evidence concluded a low density of development in the ‘Small Area’.
- Noted that the Board had accepted Zero Discharge Willow bed system.
- Notes the three reasons for refusal and identifies the positive aspects in the Planner’s Report as well as the negatives.
- Highlight that the Planner’s Report makes no mention of Circular SP5/08 and considers that this circular is fundamental to this application.

*Addresses each reason for refusal.*

- *Reason no. 1:* Sustainable Rural Housing Guidelines and the Plan allow provision for a location dependent business and associated dwelling in a rural area subject to certain criteria. There should be no discrimination against applicants wishing to establish a full-time home-based business in an area in favour of those who are deemed to be ‘locals’.
- The addition of the requirement to have ‘local links’ compared to the old Plan is an important material difference between the two applications. Considers that this additional requirement means this section of the policy no longer adheres to the Sustainable Rural Housing Guidelines 2005 and the Planner’s Report makes no reference to Circular SP5/08 or that the ‘existing links’ requirement appears to disregard the circular. The applicants did present

historic links to the area – one of the applicant’s grandfathers farmed land at Straffan from 1962 – 1980 when he passed away. The reasoning for a full-time business proposal seems to be contradicted by the requirement to have existing links.

- Request the Board to assess compliance under SP5/08. Submit that the Ministerial Guidelines and by extension SP5/08 take precedence over County Development Plans.
- Refer to file PL06S.241613<sup>3</sup> for a business and dwelling in Glenasmole Valley and the Senior Inspector’s view therein.
- Refer to Circular PL2/17 which states that the 2005 Guidelines remain in place and Council’s should defer amending policies pending reviews to avoid planning authorities adopting different approaches. Considers that this is the case for Kildare.
- Refer to Development Management Guidelines whereby a Planning Authority should not briefly reference a policy and use this as a basis for refusal.
- Planner’s Report states that the business is still not deemed a full-time business but does not elaborate in any way on this point of refusal. As no reason is given it is difficult to address this point so request the Board to consider the applicant’s assessment as to why the business is full-time. Case restated for a full-time business. Reference made to PL06S.241613 and Inspector’s comments therein about the applicant’s business.
- State that not living on the farm would jeopardise the whole farming enterprise – no snail farmers are willing to take the commercial risk associated with living off-site.
- *Reason no.2:* New statistical analysis was presented. Excessive density is a subjective view. Note Planner provided a screenshot with site offset which shows a denser number of dwellings to the north and east. Figure includes dwellings, garages, out-buildings, farm buildings etc. Revised screenshots presented with dwelling at the centre of the image and removing all buildings except dwellings. Consider this is a fairer and truer representation of the one-

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<sup>3</sup> Note PL06S.241613 file attached



off dwellings in the area of over 200 Hectares, albeit it is still considered to be an excessive area.

- Reviewing most recent grants, cannot see the same area of expansive inclusion in the density analysis and note that density analysis should be consistent. Refers to Development Management Guidelines which notes that it is important that planning authorities take a consistent approach. The Planner made no reference to the detailed analysis submitted or to the NIRSA analysis presented.
- Request the Board to consider a 300m radius as used in file Reg. Ref. 14/508. Concludes on this basis that the area does not have an excessive density of housing, a dwelling would not constitute ribbon development and is not exacerbating haphazard development, is set back from the site and in line with neighbouring dwellings. This reason can be dismissed.
- *Reason no. 3:* Clarification of the issues raised in this reason are addressed in the report accompanying the appeal. The zero discharge wastewater treatment was accepted by the Board in the previous appeal so it is disappointing to see the Planning Authority take a different view.
- Refer to EPA Report no.161 and report prepared by applicant's consultant and the design proposed in this instance. It is stated that the best design practice should prevent any overflow due to an incorrect choice of backfill soil.
- The overflow channel matter is addressed. It is noted that quality rainfall is needed for the snails.
- In relation to the absence of a surface water treatment solution this was as a result of an error on the form. A soakpit design is proposed as per the previous application and this is rectified in the appeal.
- *Other Clarifications:* It is noted that the EHO sought further information regarding the operation of the snail farm in relation to impact of pests such as birds and rodents, how it is proposed to store and dispose of waste, and the anticipated number of staff and location of sanitary facilities. The points are addressed wherein it is stated that rodents etc. are unwanted on the farm and measures are taken to prevent them, waste management is addressed – it is

never collected and staffing is per the business plan with sanitary facilities in the garage.

- With respect to the Heritage Officer's verbal comments in relation to biosecurity, it is noted that the escape of snails is loss of livestock and income and all necessary measures are taken to prevent this happening, including fencing. There is no need for the snails to escape as they are provided with ample plant forage. Finally, the snails are common garden snails found all over Ireland and are not a foreign invasive species.
- Concludes that the farm will be fulltime and contribute to the local community and has to be located in a rural location for reasons relating to space and the organic nature of the product. The applicants are prepared to sell their existing house and give up their current employment. It is imperative that they live on-site in order to provide continual monitoring. Consider that each of the three reasons for refusal have been addressed in detail. Highlight that the applicants are willing to accept a condition of planning which requires the business to be operational within a year of the dwelling being completed.

## 7.2. Planning Authority Response

A response to the first party appeal was received from the Council. In summary it states:

- Notes the contents of the first party appeal and address the issues raised by the appellants in relation to each reason for refusal.
- *Reason no. 1:* Notes planner assessed applicants under Category 2(ii) of Zone 1 as set out in Table 4.3(b) of the CDP. Notes the applicant was unable to provide sufficient documentary evidence of existing links to the area. Accept that the Planning Authority do not define the concept of existing links but it is considered that the evidence submitted by the applicant represents at best a tenuous historic link and by any objective assessment this cannot be considered to constitute an existing link to the area.
- Consider that Circular SP/08 does not amount to carte blanche for any proposal to develop a one-off dwelling with an associated enterprise. Such an

application must also be assessed against all the relevant sustainable planning and development considerations as outlined in Chapters 4, 16 and 17 of the CDP. Contend that Reasons No.2 & 3 together form a solid basis for an outright refusal of the application.

- *Reason no.2:* Reject suggestion that density of one-off dwellings around the subject site alone without any other developments (agricultural, commercial etc) should be examined in isolation when assessing an application for a rural dwelling. Refusal was on basis of RH9 which states that such developments should be assessed 'on the capacity of an area to absorb further development...'. This policy does not distinguish between different types of development and authority was obliged to examine the totality of development in the vicinity.
- Refute contention that the notion of excessive density is a subjective view. By any objective measure it can be considered the site is located in an area under pressure from counter-urbanisation and another dwelling would exacerbate this highly developed rural area – a view supported by the Board's Inspector in assessing the previous application and agreed with by the Board. Notes the Board 'considers that the proposed development would contribute to an increasing pattern of suburbanisation in a rural area...'.
- Note that while the Board refused permission under the provisions of the 2011 – 2017 Development Plan, it is considered that the proposed development no way differs from that which was refused by the Board in 2016.
- *Reason no.3:* The EPA report concludes that current consent procedures would require a change to allow for such a controlled discharge to surface water. The Environment Section wish to reiterate that it is not the policy to permit a discharge to surface water from an onsite wastewater treatment system from a single dwelling.
- Refer to FH Wetlands report on p.11 in relation to Initial Soil Backfill. It is noted that this '*should prevent any overflow due to an incorrect choice of backfill soil*'. The use of the word 'should' provides no guarantee that an overflow will not occur and there has been no scientific research published by

the EPA to back up the claims of these proposals. The risk of overflow still exists.

- In relation to the proposal to harvest the diverted rainfall from the willow bed for use elsewhere on the farm, reference is made to the Consultant's report which states that '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. It is also important to note that the EPA National Inspection Plan for domestic wastewater treatment systems considers the site in question to be located in an area zoned Very High Risk (map attached).
- Respectfully request the Board to uphold their decision.

### 7.3. Further Responses

The applicant was provided an opportunity to respond to the planning authority's response. In summary it states:

- *Reason no. 1:* Reference to take a carte blanche approach is a mischaracterisation of the first party appeal which never suggested that the Planning Authority should take a carte blanche approach to applications considered under these criteria and SP5/08. Reaffirm that as the CDP provides no definition of the term 'existing links' this should be given a wide interpretation. This is not a speculative application – the appellants have bought the site and if required by the Board this can be considered to satisfy the requirement of existing links.
- Acknowledge that due to the application highlighting the non-compliance of the local need criteria with the Sustainable Rural Housing Guidelines 2005 the Planning Authority now belatedly agree and has rescinded Reason no.1 for the refusal. The appropriate course of action for the Board to take would be to adopt the position of the planning authority regarding the material contravention. The Planning Authority make it clear that it does not stand over its earlier position that the proposed development would materially contravene section 4.13 of the CDP.

- Enhanced information addressed the concerns of the Board in its single reason for refusal under the earlier application. Reason no.1 is now fully addressed and can be dispelled.
- *Reason no.2:* No factual means for calculating this 'objective measurement' is given. Why choose an area of 200 hectares and why offset it? No factual reason or precedent is given. Area chosen is to strengthen planner's argument and not to present a fair fact-based objective assessment of density. Note in earlier application planner presented an arbitrary area, offset to the north-west and 20 dwellings only are noted. Approach is not consistent and is clearly subjective.
- Analysis presented of density with reference to recent permissions in the area. Using precedent of Ref. 14/508 the area does not yet have an excessive density and this reason can be dismissed. Contends that the Board did not agree with their Inspector regarding increasing suburbanisation.
- Contends that the screenshots were of both dwellings and all development. Non dwelling type development do not require services. Refer to RH9 and reference to ribbon development therein – 'development' implies dwellings. Farm sheds etc. can be built without planning permission and in a haphazard way and the use of the word 'development' plausibly implies dwellings. Again subjective inconsistency. Consider this reason can be dispelled.
- *Reason no.3:* The system will operate as a fully zero discharge system and therefore the rainwater overflow design can be removed. The overflow channel was designed as a back-up only and can be removed. The Board accepted this solution and consider this reason can be dispelled.
- Clarify EHO waste.
- Address how this application is different to the 2016 application and refer to pre-planning meeting where the approach to the second application was discussed. It is contended that the application has substantively changed and reasons provided therein.

## 7.4. Post High Court Judgement Responses

7.4.1. Following the High Court judgement, the Board decided to invite all parties to make observations on the appeal having regard to the quashing of the previous decision.

7.4.2. The Planning Authority responded stating that they had no further comment to make and referred the Board to the planner's report and subsequent appeal observations.

7.4.3. The applicant responded with observations on the court order which can be summarised under the following headings as laid out in the applicant's response as follows:

- *The Board's statutory duty to give Main Reasons and Considerations:* The court decision confirms that in the disputed 2<sup>nd</sup> appeal the planning history is relevant particularly when applying the test of the "informed participant".
- The court concluded that it was not possible on the basis of the 2<sup>nd</sup> appeal with the absence of a proper statement of the main reasons whether the 1<sup>st</sup> appeal grounds were advanced and satisfactorily addressed in the 2<sup>nd</sup> appeal. It is not possible to determine if the more detailed business plan met the threshold of relevant conditions under table 4.3(b)(iii).
- The revised business plan is mentioned in the Board's decision but as there was no comment in the Inspector's Report, the Board failed in its statutory duty.
- Request the Board to fully appraise the revised Business Plan and indicate if it is agreeable that the business is rural dependent and will contribute to the local community and permission can therefore be granted.
- *The Board engaging fully with development density facts and precedent:* Refer to Sustainable Rural Housing Guidelines 2005 and consider that Inspector failed to add that while the site is in an area under strong urban influence, it also states that the map is a broad brush and further and more detailed analysis must be carried out at a local level.
- The 'more detailed analysis' was carried out by NIRSA to inform the CDP 2017 – 2023. The fact as presented in the 2<sup>nd</sup> Planning Application concludes that the population density is low in the 'Small Area' in which the site is

located. This fact without reason was dismissed by the Inspector and the Board accepted that the unsubstantiated opinion that the pressure for development is eroding the rural character of the area. Furthermore, the Board declined to deliberate on the planning precedent density of 300m radius as per Ref.14/508. Planning Ref. 17/1221 which is just 450m to the east and notwithstanding local needs was granted planning by the planning authority, with no concern of development pressure noted – this application was submitted after the subject application. Clearly demonstrates an inconsistent and biased approach to local vs. non-local.

- If this perceived excessive density opinion is to remain, we request of the Board full reasoning for persisting with this opinion in light of unbiased fact based AIRO data and 300m radius density and planning granted.
- *Notion of the proposal exacerbating haphazard development in the area:* Notes the court's decision that the report simply states a conclusion without offering rationale. This is not sufficient to dispel the Board of its obligation under S.34(10).
- Refers to 2005 Guidelines and the reference to haphazard development. Submits that the proposal is on a serviced infill site. The transport section had no objection and there could be no undermining of public transport with the high demand at the Sallins train station. The applicant intends to live and work at the site.
- Proposal is not for a remote rural greenfield development – it is an infill development.
- *The Board engaging as an 'informed participant' regarding wastewater system:* It is clear from the 1<sup>st</sup> Appeal and the Board decision that the treatment system was accepted. The planning authority did not acknowledge the Board's prior approval of the system. Refer to EPA latest information that the site was reclassified to 5B, lowest risk. Request the Board to accept the wastewater treatment system on the site.
- *Development Plan 'Local Need' location dependent wording:* Both the CDP and the 2005 Guidelines allow provision for a location dependent business

and associated dwelling subject to certain criteria. Table 4.3(b) criteria (iii) is repeated with emphasis on 'a rural location'. Inspector's report contention that the business should be location dependent to *this specific location* rather than *a rural location* is a misinterpretation of the CDP wording. In addition, the 'resource tied' expression was commented on by the court that it does not appear in the CDP. The proposed business is clearly rural dependent and cannot be carried out in an urban location.

- Request the Board to determine that the proposed business is location dependent to a rural location and will contribute to the rural economy and will comply with the aforementioned criteria.

7.4.4. Following the submission from the applicant, the Planning Authority were provided a further opportunity to comment. In summary the response included:

- Planning Authority notes the first party's reactivated appeal submission and strongly refutes the appellant's assertions regarding section 2.5 and section 2.2.
- The Authority did not rescind the 'existing links requirement' in the appeal comments to the Board, as suggested by the appellant. The Authority refer the Board to their response dated 11<sup>th</sup> October 2017 which clearly references Circular SP5/08.
- Proposals must be assessed in the context of all relevant planning and sustainable development considerations. The Authority does not have a biased approach of 'local vs. non-local'.
- The Planning Authority based its decision on the facts having full regard to the policies of the CDP, Section 28 Guidelines and proper planning and sustainable development of the area.
- The Planning Authority reiterates its reasons for refusal.

## 8.0 Assessment

8.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed.



The issues can be dealt with under the following headings:

- Reasons for refusal of permission by the Council
- Appropriate Assessment

I intend to address each reason for refusal in order.

## 8.2. Reason No.1 Local Needs Policy

- 8.2.1. The first reason for refusal related to the applicant's compliance with Local Needs criteria. This has resulted in a significant amount of documentation on the file. The applicant contends that they comply with Table 4.3(b)(iii), i.e. *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 (my emphasis). The applicant contends that it is their intention to operate a full-time business. The Planning Authority were of the opinion that the applicant did not comply with the necessary criteria.*
- 8.2.2. In the first instance, I note the applicant raises issues around 'existing links' and considers this aspect of the criteria to be contrary to Circular SP05/8. SP05/8 advises Planning Authorities not to discriminate against applicants wishing to establish a full-time home-based business in an area in favour of those who are deemed to qualify as "locals". For reasons I address presently, I am satisfied that this is a moot point. I agree with the applicant that there is no clear definition of what existing links are. However, the Table 4.3(b) clearly provides for members of a rural community and 'their active and direct involvement in a rural based enterprise'.
- 8.2.3. The applicant refers to another case ABP Ref. PL06S.241613<sup>4</sup>, whereby the Inspector was of the opinion that the Board cannot question the '*motivation, commitment or raison d'être with regard to the intention of starting a business of the nature proposed*'. Furthermore, I note that in the original appeal for the subject site (ABP Ref. 247167) the Inspector stated that she was not inclined to be drawn into the commercial element of the proposal in detail. However, I note that the Local Needs criteria clearly include that the business should be full-time and that it will

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<sup>4</sup> This case is attached to the file

contribute to and enhance the rural community. Based on the information provided including the revised Business Plan, I am satisfied that there is no reason to contend that it is not a full-time business.

- 8.2.4. Notwithstanding this, I have concerns with the last element of the criteria referring to 'location dependent' as well as policy RH18 and aspects of Table 10.3, which lists the criteria for assessment of one-off enterprises in rural areas.
- 8.2.5. The information provided by the applicant indicates policy support at all levels for farm diversification and the need to develop alternative rural enterprises. I am in full agreement that there is policy support for farm and rural diversification, but have concerns that the subject proposal is not in compliance with a number of other policies particularly relating to the provision of a dwelling on the basis of a rural enterprise, which in my opinion are location related.
- 8.2.6. It is necessary to consider policy **RH18** at this stage. Policy RH18 seeks 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 in assessing the application. (iii) It must be demonstrated that the nature of the enterprise is location dependent and intrinsically linked to a rural location*'.
- 8.2.7. I am of the view that the proposed enterprise does not comply with the criteria to justify a dwelling on the basis of a rural enterprise. The overall area is less than 2 Hectares – significantly less than 5 Hectares referred to in (i) above. I have concerns relating to siting which are addressed in 8.3 below, and I am not satisfied that the proposal must be on the proposed greenfield rural site as per (iii). I will expand this point having regard to Table 10.3 of the Development Plan.
- 8.2.8. Table 10.3 lists the criteria for assessment of one-off enterprises in rural areas outside of *designated employment centres*. I note the applicant's argument that this is more akin to a farming practice and their comments that snail farming is another type of farming, albeit different to more traditional cow or sheep farming. However, noting the strong encouragement in policies in the Development Plan for farms to diversify, I am not convinced that this type of farming could not be carried out on the

*site of a redundant farm building / yard or similar agricultural brownfield site as per criteria in Table 10.3.*

8.2.9. To conclude I am not satisfied that the proposal complies with policy RH18 to justify a dwelling on the site. As stated in 8.2.7 above, it is less than 5Ha and does not have to be on a green field site and could easily be accommodated on a brownfield site or on an existing farm or indeed on the edge of a rural village. Furthermore, having regard to 8.3 below, I am not satisfied that all other siting considerations have been taken into account. In conclusion, I am of the opinion that the proposal is not in compliance with policy RH18.

### **8.3. Reason No.2 Density**

8.3.1. The density of development formed the main reason for refusal no.2. The applicant was of the view that the Planning Authority had presented a 'subjective' opinion on density. This was not accepted by the Planning Authority who were of the strong opinion that by any 'objective' measure the density of development in the area is high.

8.3.2. There are a number of points that have been raised by both the applicant and the Planning Authority which I intend to address in the following order to ensure all matters are considered:

- Area/Radius to be considered when assessing density and precedent
- Location of dwelling within the area assessed, i.e. images presented
- Ribbon development
- NIRSA/Small Area density

#### **Appropriate Area/Radius to be considered**

8.3.3. The applicant refers to a number of different planning applications and considers that the Planning Authority has taken an inconsistent and subjective approach to deciding on the area to be considered for assessment of density.

8.3.4. Planning application Ref. 14/508 in particular is referred to. I note that in that application the Planner recommended refusal in the first instance, but the Director of Services sought further information. Part of that further information was a request for the applicant to provide an assessment of the development within a radius of 300m. I

note that the Planner initially assessed the dwelling with respect to a radius of 250m and noted that there were 13 dwellings within that radius. The Planner considered that the area '*has reached a watershed in terms of capacity to absorb additional housing to the detriment of the rural countryside*'. An assessment of a 300m radius was submitted as part of the Further Information response. The Planner continued to recommend a refusal, but this was over-ruled by the Director of Services. It is unclear why a radius of 250m or 300m was chosen. Notwithstanding, I do not agree with the applicant whereby in their original planning report supporting their application, with respect to the 300m radius it is stated that "absolute precedent has been set" with a reference to 300m. One application does not set an absolute precedent.

- 8.3.5. I am of the opinion that a definitive radius would have been set by the Planning Authority as part of the County Development Plan if it was appropriate to do so – however each case must be considered on its merits and a 'one size fits all' approach would not work as every case is set against a different backdrop. For example, a site could be near a large water body, or as in this case, a single landholding which would skew a 300m radius analysis.
- 8.3.6. I do not accept the analysis of the 300m provided by the applicant as being a reason to concur that the area has not reached a watershed in terms of its ability to absorb further development. A drive along the road where the site is located and along the road to the west provides sufficient indication that the area has reached a watershed in terms of its ability to absorb further development. On this basis, I do not accept that a 300m radius should be the determining factor for density assessments in this case.
- 8.3.7. Furthermore I note that in the response to the Planning Authority's response to the appeal, the applicant considers that the southern part of the townland is not yet overdeveloped but acknowledges that other parts of the same townland may be reaching capacity. In my opinion splitting the townland does not lend support to a density argument and further demonstrates that the area has reached capacity.

#### **Images/figures presented by both parties**

- 8.3.8. The initial Planner's Report included a figure (identified as Figure 6) which was a screenshot of the general area taken from *myp lan.ie* with the subject site in the

south-west corner of the image. This figure included the townlands of Daars North and Daars South and the level of development therein. The Planner considers that the figure highlights the large number of one-off dwellings in the vicinity of the site.

8.3.9. As part of the appeal the applicant states that the site has been offset in the Planner's figure to show a denser number of dwellings to the north and east and includes the townlands of Shortwood and Turnings. The applicant states that the figure included an area of 200 Hectares and includes not just dwellings but other structures such as farm buildings etc. Two other figures are provided by the applicant within the appeal with the site centred and with the various non-dwellings removed. Having viewed all figures presented, I am of the opinion that the number of dwellings is still high regardless of what image is viewed. I note that the land to the south is owned by one landowner and therefore there are limited dwellings on this side of the road. However, viewing the images of Daars North and Daars South and using professional judgement I consider that there is a high number of one-off dwellings. I visited the site and, in my opinion, there is an excessive proliferation of one-off houses in Daars North alone. When including Daars North and South, Turnings and Turnings Upper as well as Shortwood, it is clear that the area is under pressure from urban generated dwellings and to permit another dwelling would be to exacerbate this.

8.3.10. I am satisfied that it would be contrary to policy RH9 which states 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. In particular the following factors will be examined: the extent of existing development in the area, .....* I am satisfied that there is significant development in the area and there is no capacity to absorb further development.

### **Ribbon Development**

8.3.11. Another consideration to assist with this assessment is the concept of ribbon development. A crude measurement using Google maps indicates that the distance from the houses in the south-east corner to the dwelling furthest west is c.265m and the distance between the houses to the south-east and immediately west is c.169m. Appendix 4 of the Sustainable Rural Guidelines 2005 includes a very clear reference to ribbon development: *Taking account of the above and the dispersed nature of*

*existing housing in many rural areas, areas characterised by ribbon development will in most cases be located on the edges of cities and towns and will exhibit characteristics such as a high density of almost continuous road frontage type development, for example where 5 or more houses exist on any one side of a given 250 metres of road frontage.* Having regard to this, I note that there are already 4 houses within 169m – should the Board decide to grant permission for this dwelling, this will be a 5<sup>th</sup> within 169m and the 6<sup>th</sup> within c.269m.

### **NIRSA/AIRO information**

8.3.12. The applicant supplied further information to support the case that the area can accommodate another dwelling. Data is supplied from the All-Island Research Observatory (AIRO) which is part of the National Institute for Regional and Spatial Analysis (NIRSA) based in Maynooth University. The data submitted indicates that in Kildare, rural areas have an average population density of 36.1 persons per Km<sup>2</sup>. The particular site is identified as part of a small area with an identified density of 45 persons per Km<sup>2</sup>. While the applicant considers that this information supports their case, I disagree. I consider that this demonstrates that the area is 25% denser than the average rural area. The applicant submits that this demonstrates that the area is not 'excessively populated'. In my opinion this demonstrates that the area is excessively populated compared to the average.

### **Conclusion**

8.3.13. The density argument has generated a significant amount of information. Having regard to all that information, as well as my site visit, I am of the opinion that the area has reached a watershed with respect to its capacity to absorb further development. I base this opinion on:

- The number of dwellings in the townland of Daars North,
- The number of dwellings along the road where the dwelling is to be located, and
- The above average density for rural areas based on AIRO information.

In addition, I am of the opinion that if there was an appropriate/standard area or radius to be assessed in terms of determining if an area was overly dense or not, this would have been included in various policy documents. Each case must be

assessed on its own merits and having regard to this fact, as well as the reasons referred to above, I am of the opinion that the area cannot absorb further development and to permit this dwelling would be contrary to Policy RH9 (iv).

#### **8.4. Reason No.3 Wastewater System**

8.4.1. I note concerns raised by the Planning Authority with respect to surface water discharge, as well as overflow concerns from the proposed treatment system. I am satisfied that should the Board wish to grant the subject proposal, a suitable condition requiring the applicant to install a surface water treatment system as per the appeal documentation and to avoid any overflow from the wastewater facility entering the surface water system, should be appended.

8.4.2. I do not consider that this is a reason for refusal.

#### **8.5. Appropriate Assessment**

8.5.1. Having regard to the nature and scale of the proposed development and the 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.

### **9.0 Recommendation**

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.

### **10.0 Reasons and Considerations**

Having regard to the location of the site within an "Area Under Strong Urban Influence" as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating compliance with Local Need Criteria in the current Kildare County Development Plan 2017 – 2023, and where it must be demonstrated that the development would not prejudice the environment and the rural character of the

area, it is considered that the applicant has not demonstrated compliance with policy RH18 with respect to justifying a dwelling on the basis of a rural enterprise or policy RH9 which seeks to ensure that development complies with all other normal siting and design considerations, including the capacity of the area to absorb further development.

The proposed development would therefore materially contravene policies RH9 and RH18 of the Kildare County Development Plan 2017 – 2023 and would, therefore, be contrary to the proper planning and sustainable development of the area.

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Ciara Kellett

Inspectorate

9<sup>th</sup> May 2020