



An  
Bord  
Pleanála

## Inspector's Report ABP-305656-19

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<b>Development</b>	Construction of a detached single storey dwelling house with vehicular entrance and new secondary effluent treatment system.
<b>Location</b>	Old Kilcullen, Kilcullen, County Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	19/836
<b>Applicant(s)</b>	Maeve Keogh
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Maeve Keogh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> December, 2019
<b>Inspector</b>	Sarah Moran

## **1.0 Site Location and Description**

- 1.1. The appeal site is located in the rural townland of Old Kilcullen to the south west of Kilcullen, Co. Kildare, c. 500m west of Whitehall Crossroads. It is accessed via an existing agricultural entrance from a narrow roadway to the west of the site. The roadway is in poor structural condition and is impassible at the northern end where it meets the L6078. The surrounding area is predominantly rural in character and the site is currently in agricultural use. There are several one-off houses in the vicinity. There is a mature hedgerow along the full length of the site frontage along the L6078. The site has a stated area of 0.97 ha.
- 1.2. The site is approx. 320m to the south of Knockaulin (KD028-038001).

## **2.0 Proposed Development**

- 2.1. Permission is sought for the construction of a detached single storey dwelling house with detached single storey domestic garage with vehicular entrance off the road to the rear / west of the site and via an existing agricultural entrance, also the installation of a new secondary effluent treatment system and all associated site works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Kildare County Council issued a Notification of Decision to Refuse Permission for one reason, which states that the applicant has not demonstrated compliance with the requirements of the Council's rural housing policy as set out in Policy RH2 of the Kildare County Development Plan, 2017-2023 and has failed to demonstrate a genuine local need to build a home in a rural area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The report of the Planning Officer notes the planning history of the site and previous reasons for refusal. It is considered that the information submitted does not

demonstrate a need to reside on the site and that the applicant's housing need can be accommodated in recently permitted housing developments in established settlements nearby. The application therefore does not address the refusal reasons of previous applications at this site.

### 3.2.2. **Other Technical Reports**

Irish Water – No objection (Class 1).

Area Engineer – No objection subject to conditions.

Environment Section – Seeks further information comprising details of ground levels, the proposed WWTP and clarification of the water table level.

Environmental Health Officer – No objection subject to conditions.

Roads, Transportation and Public Safety Dept - No objection subject to conditions.

### 3.3. **Third Party Observations**

- 3.3.1. The planning authority received a submission from Cllr. Anne Connolly in support of the proposed development, which is stated to be for her niece.

## 4.0 **Planning History**

### 4.1. **18/710**

- 4.1.1. Permission sought by the above named applicant for the construction of a detached single storey bungalow, single storey detached domestic garage, recessed entrance, secondary effluent treatment system and all associated site works at the subject site. Permission was refused for three reasons relating to:

1. Non compliance with rural housing policy RH2.
2. Contravention of development plan policy RH9 due to removal of an extensive stretch of native hedgerow.
3. Contravention of development plan policies NH1, GI8 and GI9, which seek to preserve and maintain and protect native hedgerows and trees within the county.

## 4.2. 17/1162

- 4.2.1. Permission sought by the above named applicant for the construction of a detached single storey bungalow, single storey detached domestic garage, recessed entrance, secondary effluent treatment system and all associated site works. Permission was refused for the same three reasons as 18/710.

## 5.0 Policy and Context

### 5.1. National Planning Framework

- 5.1.1. National Policy Objective 19 states as follows:

*Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:*

- *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;*
- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on the siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.'*

### 5.2. Sustainable Rural Housing Guidelines for Planning Authorities, April 2005

- 5.2.1. The appeal site is located in an area identified as an area under strong urban influence under the provisions of the guidelines. Within such areas, Chapter 3 sets out how development plans should distinguish between urban and rural generated housing demand, that demand for rural generated housing should be accommodated where it arises. Chapter 4 of the guidelines relates to rural housing and planning applications and states that in areas under significant urban influence, applicants

should outline how their proposals are consistent with the rural settlement policy in the development plan.

### 5.3. Kildare County Development Plan 2017-2023

5.3.1. The site is located on unzoned lands outside of any settlement. The provisions of the rural housing policy are therefore applicable to proposals for the construction of a dwelling in this location. Development plan policy VRS3 is to facilitate sustainable population growth in the identified Rural Settlements with growth levels of up to 20% over the Plan period to cater primarily for local demands. Local demand for rural settlements is defined as persons residing for a period of 5 years within a 10km radius of the site. 'Primarily for local demand' is defined as being in excess of 50% of the overall development.

5.3.2. Development plan section 4.12 sets out rural housing policy. The Settlement Strategy makes provision to accommodate up to 8% of the county's projected housing growth over the Plan period in rural areas. Other projected housing growth will be directed into the settlements, villages and towns of the county. Kilcullen is located in Rural Housing Policy Zone 1 of the county as per development plan Map 4.4, comprising the northern, central and eastern areas of the county, the more populated areas with higher levels of environmental sensitivity and significant development pressure. Development plan Table 4.3 sets out specific Local Need Criteria for Zone 1. An applicant must comply with either Category of Applicant 1 or Category of Applicant 2 and must also meet one of the local need criteria in order to be considered eligible for a rural one off house.

5.3.3. The following rural housing policies are noted in particular.

Policy RH 2 is 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. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.

Policy RH9 requires that notwithstanding compliance with RH2, an applicant must comply with all other normal siting and design considerations. This includes sub paragraph (iv) which requires that the area must have capacity for additional

development in terms of existing development, ribbon development and the degree of existing haphazard or piecemeal development in the area.

Policy RH17 relates to entrances and requires that details of the design of entrances should be submitted with applications.

Policy RH 18 relates to 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. These will generally be favourably considered, having regard to the following criteria:

1. The landholding shall comprise a minimum of 5 Hectares.
2. All other siting and design considerations will be taken into account in assessing the application.
3. It must be demonstrated that the nature of the enterprise is location dependent and intrinsically linked to a rural location.

#### **5.4. Natural Heritage Designations**

- 5.4.1. The nearest Natura 2000 site is the River Barrow And River Nore SAC (site code 002162), which is located approx. 8.6 km to the south west of the development site.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

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

- The applicant is a long established resident in Cutbush and has grown up and spent a substantial period of her life (over 12 years) living in the rural area of Kildare as a member of the rural community. She has strong social and family ties with the area, e.g. her children attend school locally. Local demand for rural settlement is defined as persons residing for a period of 5 years within a 10 km radius of a site. The applicant wishes to care for elderly parents who live in the vicinity.

- The site is owned by the applicant and is part of her family landholding, within 5 km of the original family home, which is located within the rural settlement of Cutbush.
- There is no availability of sites in Cutbush. A survey is submitted in support of this point.
- The applicant seeks to establish a rural permaculture business at the site and to live immediately adjacent to the business.
- The appeal cites a precedent ref. 14/971, where it is stated that permission was granted for development on a site to the north of Cutbush in similar circumstances.
- The proposed house is located in the western part of the site and will not be visible from the main public road. It therefore will have no impact on the rural character of the area. The permaculture development would be located in the northern part of the site, this would further integrate the development into the rural landscape.
- The proposed design is the same as that of previous applications at the site.
- The proposed access arrangement has been amended from the previous applications at the subject site, such that the house will be accessed via an existing agricultural entrance. This obviates the need for any substantial removal of hedgerow at the road frontage. Safe vehicular access can be achieved with adequate sight lines.
- There is no flood risk associated with the proposed development.

## **6.2. Planning Authority Response**

6.2.1. The following are the main issues raised in the response of the Planning Authority to the grounds of appeal:

- The planning authority notes that there is no mention of a permaculture business in the planning application.
- The Board is referred to development plan section 3.4.5, which outlines the role of rural settlements. It is clear that the role of rural settlements is to

provide an alternative to one-off housing. The applicant's family home is in the rural settlement of Cutbush, however it is noted that the applicant is not limited to residing in Cutbush and could reside in any rural settlement, village or town in Co. Kildare.

- The planning authority therefore maintains its position that the proposed development should be refused planning permission having regard to the reason outlined in its decision.

## 7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of the development the subject of this appeal:

- Principle of Development and Rural Housing Need
- Environmental Impact Assessment
- Appropriate Assessment

7.2. I note that previous applications at the site were also refused for the reason that they would involve the removal of a substantial amount of hedgerow at the road frontage. It is considered that the applicant has addressed this issue by using an existing agricultural entrance.

### 7.3. Principle of Development and Rural Housing Need

7.3.1. The site is located in a rural area that is outside of any identified settlement. The development site is located in Rural Housing Policy Zone 1. Development plan table 4.3 states that applicants at such locations must meet one of the following categories:

1. A member of a farming family who is actively engaged in farming the family landholding, or
2. A member of the rural community.

The applicant is not engaged in farming. Applicants that are a member of the rural community must meet the following criteria in Rural Housing Policy Zone 1:

1. 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.

2. 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.
3. 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.

7.3.2. The documentation on file provides the following information in relation to the appellant's connections to the area and local housing need:

- The appellant resides at her family home the rural settlement of Cutbush, c. 2 km from the development site.
- The applicant has lived in the local area for all of her life and has direct family and social ties with the area, e.g. her children attend school at Cutbush N.S. and she wishes to care for family members who live locally.
- The applicant provides a detailed analysis on a site by site basis of the unavailability of sites within 5 km of the family home.
- The appeal states that the applicant wishes to establish a permaculture business at the subject site. However, as noted by the planning authority, the application does not include any information in support of this statement, e.g. a business plan.

7.3.3. I note that both the planning report and correspondence from the planning authority refer to information on the applicant's local housing need that is held in a separate file. It is considered that the onus is on the applicant to demonstrate her local housing need in accordance with development plan rural housing policy in the documentation submitted with the application and appeal. The applicant submits that

she complies with category 1 above, i.e. she is a member of the rural community.

Development plan Table 4.3 states the following in relation to same:

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

The applicant is from and currently resides in the established settlement of Cutbush, c. 2 km from the subject site. The extent of the settlement is defined in development plan map V2-2.23 (see enclosed), which includes lands zoned for 'settlement expansion'. It is accepted that the applicant currently lives in the general area and has done so for over 12 years and has strong family and social ties to the area. However, the applicant is from and has resided in an established settlement and not in a rural area. As noted by the planning authority, development plan policy VRS3 is to facilitate sustainable population growth in the identified Rural Settlements with growth levels of up to 20% over the Plan period to cater primarily for local demands. Local demand for rural settlements is defined as persons residing for a period of 5 years within a 10km radius of the site. The applicant would meet this criterion. I therefore do not consider that the applicant meets the above definition of a 'member of the rural community'.

- 7.3.4. The applicant must also meet the local need criteria for Rural Housing Policy Zone 1 as set out above. Given that she is not considered to be a member of the rural community, she does not meet categories 1 or 2. Given the lack of information available on the proposed permaculture business and the limited size of the subject site, it is considered that she does not meet category 3, i.e. the establishment of a full-time, viable, location dependent commercial rural enterprise at the site.
- 7.3.5. With regard to the above, I do not consider, on the basis of the information available to me, that the applicant meets the local need criteria set for Rural Housing Policy Zone 1.
- 7.3.6. I note that the wording of reason for refusal No. 1 issued by Kildare County Council does not refer to any material contravention of the Kildare County Development Plan 2017-2023. The provisions of section 37(2)(b) of the Act therefore do not apply in this case.

#### **7.4. Environmental Impact Assessment**

- 7.4.1. Having regard to the scale of the proposed development and the proposed connection to existing foul drainage and water supply networks 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.

#### **7.5. Appropriate Assessment**

- 7.5.1. 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.

#### **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 site of the proposed development is located within an “Area Under Strong Urban Influence” as set out in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April 2005, and “Rural Housing Policy Zone 1” as identified on Map 4.4 of the *Kildare County Development Plan, 2017-2023* reflecting its location in a more populated area with higher environmental sensitivity and significant development pressure. Furthermore, the subject site is located in an area that is designated under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, to 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. Having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has a demonstrable economic or social need to live in this rural area

or how they comply with the detailed requirements of the rural housing policy set out in the development plan. It is considered, therefore, that the applicant does not come within the scope of the housing need criteria as set out in either the *Kildare County Development Plan, 2017-2023*, the Sustainable Rural Housing Guidelines or national policy for a house at this location. The proposed development would, therefore, be contrary to Policy RH2 of the *Kildare County Development Plan, 2017-2023*, to the Ministerial Guidelines and to the over-arching national policy and would be contrary to the proper planning and sustainable development of the area.

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Sarah Moran

Senior Planning Inspector

9<sup>th</sup> December 2019