



An
Bord
Pleanála

Inspector's Report ABP-309415-21

Development	Construct a house, garage, equine facility with associated buildings and structures, two wastewater treatment systems and associated works, and retain existing groundwork and access
Location	Park Lane, Grange Beg, Dunlavin, County Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	20/819
Applicant(s)	Michael O'Callaghan Racing Ltd.
Type of Application	Permission & Retention Permission
Planning Authority Decision	Grant
Type of Appeal	Third-Party & First Party
Appellant(s)	Third Parties - Michael John Ryan Limited and Karen Brownlee First Party - Michael O'Callaghan Racing Ltd.
Observer(s)	An Taisce
Date of Site Inspection	30 th September 2021
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1.** The appeal site is located on a single lane local road (L-6061), known as Park Lane, in the rural townland of Grange Beg, approximately 3.5km to the north of Dunlavin village and 3km to the south of Brannockstown village in County Kildare. It is situated in an area characterised by expansive agricultural fields enclosed by mature hedgerows and sparsely distributed farmsteads and single housing developments, set on elevated ground overlooking southeast County Kildare and less than 1km from the Wicklow county boundary. It comprises a single field stated to measure 10ha, on lands rising steadily by 20m in a southern direction from the rear of the site to the front boundary with the local road.
- 1.2.** The local road accessing the site connects with the R412 regional road to the west and the L-2027 local road to the east. This local road, Park Lane, currently serves agricultural lands, approximately several houses and a special needs community facility. The site is bordered by mature hedgerows, which is supplemented by fencing along the roadside boundary. There are three agricultural entrances serving the subject field, with the western entrance formed by a recessed bell-mouth connecting into an access track running along the western boundary to the rear of the site.

2.0 Proposed Development

- 2.1.** The proposed development would comprise the following:
- construction of a three-bedroom two-storey detached house measuring a stated gross floor area (GFA) of 215sq.m with attached garage measuring a GFA of 52sq.m;
 - construction of a stable block with 32 stalls (790sq.m GFA), a hay/machinery store (490sq.m GFA), a roofed manure pit (185sq.m GFA) and two roofed horse walking pavilions (each measuring 151sq.m GFA);
 - installation of an underground soiled-water tank, a domestic packaged wastewater treatment system with a subsurface soil-polishing filter to serve the house and a Tricel wastewater treatment system with a percolation area to serve the stable block welfare facilities;

- water supply via on-site well;
- all associated groundworks, landscaping, formation of paddocks and the construction of access roads, lanes and galloping track, as well as hardstanding, car and bicycle parking and passing bay areas.

2.2. The development proposed to be retained comprises the following:

- vehicular access works onto a local road and groundworks to the rear.

2.3. In addition to the standard planning application documentation and drawings, the application was accompanied by a site suitability and characterisation report addressing on-site disposal of effluent, a traffic assessment report, a report from a Teagasc advisor addressing the nature and scale of the equine enterprise, a stables operational plan and a landscape specification report. Following a request for further information a business plan and a traffic and transportation report were submitted by the applicant to the Planning Authority.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to 28 conditions, the following of which are of note:

Condition no.2 – occupancy clause to comply with housing needs;

Condition no.10 – maintaining of visibility splays at the entrance;

Condition no.11 – provision of an electric-vehicle charging point;

Condition no.27 – a special development contribution of €40k applies under section 48(2)(c) for local road improvement works;

Condition no.28 – a general development contribution of €33k applies.

3.2. Planning Authority Reports

3.2.1. Planning Report

The initial report of the Planning Officer (September 2020) noted the following:

- further information is required, with respect to the full-time business element, in order to demonstrate the applicant's local housing need;
- the development would be well sited with respect to addressing the visual impacts;
- the operation of the galloping track would not significantly impact on the amenities of local residents;
- further information is required with respect to the adequacy of the vehicular access along the local road, including the need for passing bays, road gradients, surfacing proposals, electric-vehicle charging and turning areas;
- to enable the consideration of the wastewater management proposals the trial holes need to be reopened for viewing;
- the applicant is invited to comment on the two third-party observations received;
- significant effects on European sites are not anticipated.

The recommendation of the Planning Officer in their final report (January 2021) reflects the decision of the Planning Authority and noted the following:

- the details submitted confirm the applicant's compliance with policy regarding local housing need;
- a special development contribution is required to address the need for upgrade works along the local road serving the site;
- road gradient, surfacing, electric-vehicle charging and turning area details are acceptable;
- the Environment Section does not object to the proposals and the applicant has addressed the concerns raised in the third-party observations.

3.2.2. Other Technical Reports

- Executive Engineer – no objection, subject to conditions;
- Fire Services – no objection;
- Kildare/Newbridge Area Engineer – no objection, subject to conditions;

- Environment Section – no objection, subject to conditions;
- Enforcement Section – refer to enforcement case reference (ref.) UD7239;
- Roads Transportation and Public Safety – further information initially requested and subsequently no objection raised, subject to conditions;
- Environmental Health Officer – further information initially requested and subsequently no objection raised, subject to conditions.

3.3. Prescribed Bodies

- Irish Water – no objection, subject to a condition.

3.4. Third-Party Observations

- 3.4.1. During consideration of the application, the Planning Authority received observations from a resident of Naas, which is approximately 11km to the north of the appeal site, and a resident of the appeal site townland, who stated that they farm lands along the local road serving the site. The issues raised are similar to those raised in the third parties grounds of appeal and they are collectively summarised below under the heading ‘Grounds of Appeal - Third-Parties’.

4.0 Planning History

4.1. Appeal Site

- 4.1.1. Pre-planning discussions relating to a development comprising a house and stables is stated to have been undertaken between representatives of the Planning Authority and the applicant under Kildare County Council (KCC) planning ref. PP4500 in June 2019.

Parties to the appeal refer to withdrawn planning applications relating to this site (KCC refs. 20/384 and 18/1181). The Planning Authority has also referred to warning letters issued under Enforcement ref. UD7239 in March and April of 2019, which are stated to refer to works undertaken onto the local road fronting the site, the creation of an access road on site, as well as other groundworks and excavation works.

4.2. Surrounding Sites

4.2.1. Recent decisions regarding planning applications for residential development in the surrounding area, include the following:

- KCC Ref. 20/348 – permission was refused by the Planning Authority in July 2020 for a two-storey house, a garage, stables (12 stalls) and a wastewater treatment system on a site measuring 1.75ha located approximately 460m to the east of the appeal site, due to non-compliance with local housing need requirements, the creation of an undesirable pattern of sporadic development, the visual impact on the character of the area and the consolidation of unauthorised development;
- KCC Ref. 19/1314 – permission was granted by the Planning Authority in February 2020 for a single-storey house, a garage, a wastewater treatment system and a vehicular access onto the L-6061 local road, on a site located opposite the entrance to the appeal site;
- ABP ref. PL09.248060 (KCC Ref. 16/823) – permission was granted by the Board in July 2017 for a single-storey house served by a wastewater treatment system, located approximately 550m to the east of the appeal site.

5.0 Policy and Context

5.1. National Guidance

National Planning Framework – Project Ireland 2040

5.1.1. National Policy Objective 19 of the National Planning Framework outlines that within areas such as this, which are under urban influence, single housing in the countryside will be facilitated based on the core consideration of a demonstrable economic or social need to live in the rural area. Consideration also needs to be given to the siting and design of houses.

Sustainable Rural Housing Guidelines for Planning Authorities

5.1.2. The Guidelines provide criteria for managing rural housing requirements, whilst achieving sustainable development. The Rural Housing Guidelines outline how rural-generated housing need to reside in rural areas should be defined in the

Development Plan and lists examples of categories of persons that may be used to define same. The appeal site is located in an area akin to an area ‘under strong urban influence’, as set out under Section 5.2 below. Appendix 3 to the Guidelines outlines that the key Development Plan objective in relation to areas under strong urban influence should be to facilitate the housing requirements of the rural community, as identified by the Planning Authority in the light of local conditions, while directing urban-generated development to lands zoned for new housing development.

- 5.1.3. Departmental Circular Letter SP5/08 (2007) provides additional advice and guidance in relation to local need and occupancy conditions, while Departmental Circular Letter PL 2/2017 (2017) addresses local needs criteria in Development Plans.

5.2. Local Policy

Kildare County Development Plan 2017-2023

- 5.2.1. The policies and objectives of the Kildare County Development Plan 2017-2023 are relevant. In setting out the rural housing strategy, policy RH 1 of the Development Plan supports the intention to ensure that the planning system guides development to the appropriate locations in rural areas, thereby protecting natural and man-made assets in those areas. Map 4.4 of the Development Plan identifies two rural housing zones in the County based on criteria relating to landscape sensitivity and population density. The subject site is located in ‘Rural Housing Policy Zone 1’, which comprises more populated areas containing higher levels of environmental sensitivity and subject of significant development pressure. Policy RH 2 of the Development Plan seeks 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 of the Plan. Documentary evidence of compliance with the rural housing policy must be submitted as part of a planning application.
- 5.2.2. The Development Plan distinguishes between two categories of applicants, consisting of members of a farming family who are actively engaged in farming family landholdings and members of the rural community. Based on table 4.3(b) of

the Development Plan, for a 'member of a rural community' to demonstrate a local housing need, they must be actively engaged with direct involvement in a rural enterprise and this would include:

- '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.'

5.2.3. Other relevant policies include policies RH 15 and RH 17 relating to access and entrances, and policy RH 9 addressing the siting and design of rural housing with reference to the rural housing design guidelines in chapter 16 and the development management standards in chapter 17 of the Development Plan. Section 4.13.3 of the Development Plan includes policy RH 18 specifically addressing applications for rural housing on the basis of an equine (or other) rural enterprise. Section 10.5.4 of the Development Plan sets out policies for the equine industry, including policy EQ 3, to ensure that equine-based developments are located on suitable and viable landholdings and are subject to normal planning, siting and design considerations.

5.2.4. From a landscape character perspective, the site is located within the Eastern Uplands, which is categorised as class 3 of five ranked sensitivity areas and is characterised as being of high sensitivity, with the following description attributed to it:

- 'areas with reduced capacity to accommodate uses without significant adverse effects on the appearance or character of the landscape having regard to prevalent sensitivity factors.'

5.2.5. The closest scenic route is route 13, which follows the R413 regional road over 3km to the north of the site and the R411 regional road approximately 4.7km to the northeast of the site.

Development Contribution Scheme 2015-2022 - Kildare County Council

5.2.6. The terms of the Development Contribution Scheme for Kildare County Council are applicable to the development. The Scheme includes a host of development types and scenarios where reduced contributions and exemptions would apply.

5.3. Natural Heritage Designations

- 5.3.1. The nearest natural heritage designated sites to the appeal site, including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), comprise the following:

Table 1. Natural Heritage Designations

Site Code	Site Name	Distance	Direction
004063	Poulaphouca Reservoir SPA	7.1km	east
000781	Slaney River Valley SAC	8.9km	southeast
002122	Wicklow Mountains SAC	9.9km	east
004040	Wicklow Mountains SPA	10.6km	east
000396	Pollardstown Fen SAC	13.8km	northwest
000397	Red Bog, Kildare SAC	14.8km	northeast

5.4. Environmental Impact Assessment - Preliminary Examination

- 5.4.1. Having regard to the nature and scale of the development subject of this application and the location of the site, there is no real likelihood of significant effects on the environment arising from the 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 - Third-Parties

- 6.1.1. Two third-party appeals were lodged against the decision of the Planning Authority, both of which were submitted on behalf of two neighbouring residents of the appeal site townland. The appeals were accompanied by photographs, planning application extracts and correspondence specifically addressing traffic and roads, structural matters and local ecology. In conjunction with their third-party observations, the issues raised by the third-party appellants can be collectively summarised as follows:

Local Housing Need and Development Principles

- the applicant is a limited company and, therefore, cannot meet the local housing need criteria, as the company owners are not persons from this area and have purchased the subject lands;
- the applicant is establishing an equine enterprise as a means to circumvent planning restrictions and the development is centred on providing a house;
- precedent for this development is not provided by the permitted housing in the area, which were granted to applicants on their family-owned lands;
- the neighbouring refused proposals for a house and stables along the L-6061 local road under KCC ref. 20/348 is comparable with the subject application proposals and this provides precedent for refusal of permission for the subject development on grounds relating to rural housing policy, the impacts on the visual amenities of the area and the consolidation of unauthorised development;
- proposals would involve the scaling down of the equine enterprise proposed to be relocated as part of the application;
- the site has been subject of unauthorised development based on warning letters issued under KCC ref. UD7239, while two additional gated entrances to the subject field were undertaken within the past seven years and 300-350m of the roadside boundary was removed;

Impacts on Visual Amenities

- the impact on the landscape has not been assessed in a meaningful way with the buildings visible from sensitive locations, including the local road;
- the scale of the equine facility would be out of character with the area, which features views across Kildare;
- alternative existing structures and larger farms should be considered for the equine enterprise prior to the use of this greenfield site;
- floodlights may be needed in future to serve the facility;

Access and Road Safety

- inadequacy of the local road to serve the proposed development due to its limited road width (average of 3.1m), poor surface condition, inadequate structural capacity and poor horizontal and vertical alignment;
- traffic modelling undertaken to justify the proposals is absent of specific necessary details and uses unverifiable surveys and imprecise vehicles;
- proposals would result in an unsustainable increased need for traffic to have to travel year-round to and from the relocated enterprise, including staff, visitors, delivery vehicles and those travelling to race meets, trials and sales;
- based on staff and stall numbers, the equine enterprise vehicular traffic and volumes would be excessive for this local road;
- the application proposals do not fully address road safety issues, including the need and the location for passing bays, construction traffic, access from the northeast and the fact that refuse collection vehicles currently do not use this road;
- a passing bay along the local road is not available at the restored cottage location and there is an absence of visibility between the identified bay locations;
- there are hazardous road safety conditions at the junction of the local road with the R412 regional road;
- the additional traffic would impact on local residents, including users of Camphill Community facility, which is supported by the Health Service Executive (HSE);
- the horses that would be accommodated are primarily fed by concentrates and not grass, which would require deliveries to the facility throughout the training season;

Impacts on Residential Amenities

- the galloping track is too close to the public road and the use of the galloping track and machinery would impact on the amenities of neighbouring residents;

- based on advice, a noise impact assessment should be undertaken and an earthen berm installed to mitigate noise impacts;

Environmental and Enterprise Management

- there would be insufficient area to accommodate the livestock based on the likely age of the horses and the available grazing paddocks on site, with potential to exceed the statutory limitations for nitrates. Consequently, there would be significant potential to impact on groundwater quality;
- the expected livestock waste would be unsuitable for spreading on the lands and must be collected, notwithstanding the fact that there would be less area available for land spreading than is stated to be available due to the need for various buffers zones to be provided;
- cattle would be likely to be used for grazing, but they have not been included as part of the stocking level and there is a possibility that the stocking rates may alter over time in exceedance of statutory limits;
- use of noise banger deterrents as part of the operation of neighbouring tillage farms would conflict with the operation of the equine facility;
- hare and badger have been observed using the area, as per commentary from environmental consultants appended to the grounds of appeal, and the proposals, including the removal of substantive hedgerows, would impact on their habitat, contrary to various policies of the Development Plan and legislative protection of these species;
- the impact of removing extensive areas of hedgerow for passing bays and access has not been fully assessed and any replacement hedgerow would be of reduced biodiversity value;
- landscaping proposals would feature species that are not typical of the area and would impact on biodiversity;

Other Issues

- a number of application documents, including the planning statement, the business plan and pre-planning meeting minutes, were not made available to the public;

- based on the appended commentary from consulting engineers, there is potential for passing traffic along the local road accessing the site to impact on the structural integrity of an appellant's restored cottage, known as An Tuí;
- enforcement matters still require addressing.

6.2. Grounds of Appeal - First-Party

6.2.1. A first-party appeal was submitted solely in relation to the levies applied under conditions 27 and 28 of the Planning Authority's decision. The grounds of appeal can be summarised as follows:

Special Contribution

- the applicant has agreed to fund the three passing bays and the particular works have not been specified in the special development contribution condition, as is required under law;
- it is not clear how the €40,000 special contribution figure was arrived at for the delivery of the passing bays, nevertheless the two appended quotes sourced by the applicant suggest that a figure of between €4,427 and €8,626 would be more reasonable and appropriate;
- the Roads Transportation and Public Safety section of the Planning Authority had only sought written agreement for the passing bays to be provided prior to the use of the development and the contribution condition should be omitted or, if required, should be based on the applicant's estimated costings;

General Contribution

- a levy rate of €10 per sq.m was charged for the retention of the equine buildings, resulting in a charge of €17,660, but this fails to account for the exemption of the first 600sq.m from the contribution as provided for under the terms of the Development Contribution Scheme;
- the proposed garage should be levied at the Development Contribution Scheme miscellaneous development rate and not at the residential building rate.

6.3. Applicant's Response

6.3.1. The applicant's response to the third-parties grounds of appeal can be summarised as follows:

- the proposed house would be the residence of the two directors of the applicant company, who would relocate their established equine business as part of the development and they would both need to be on the ground to operate this business;
- based on the advice within Circular SP 5/08, local housing need does not apply in circumstances where an applicant is seeking to build a house in a rural area that is directly associated with a rural-based business. Notwithstanding this, the subject proposals would also comply with the Development Plan (section 4.12.7) housing need criteria set out for category (iii) persons in rural housing zone 1;
- technical traffic, access and road safety issues are addressed within an appended traffic report;
- current traffic/pedestrian volumes on the local road are low;
- a report from a noise expert was not submitted with the third parties grounds of appeal and the gallops would only result in noise levels typical for a rural area;
- exercise areas do not normally require planning permission based on planning legislation and the gallop track would be a substantive distance from the nearest residence based on an additional section drawing appended to the response showing the relationship between the development and a third-party appellant's neighbouring property;
- the siting, design and visual impact of the proposals have been addressed and considered acceptable by the Planning Authority, including the provision of landscape screening;
- the hedgerow along the roadside boundary was previously in poor condition and was not removed, as it was only coppiced;

- substantive evidence that badger setts would be interfered with or that badgers would be harmed as a result of the development, has not been provided by the appellants' environmental consultants;
- an ecologist could be engaged as part of the project as a condition in the event of a permission;
- the design of the farm buildings and the issue of nitrates is addressed within accompanying correspondence from an agricultural consultant.

6.4. Planning Authority Response

6.4.1. In response to the third-parties grounds of appeal, the Planning Authority make no further observations and refer to their previous reports regarding the application. In response to the first-party grounds of appeal, the Planning Authority state the following:

- a breakdown of the costs and the main road improvement elements associated with the special development contribution for the passing bays is provided in the Roads Transportation and Public Safety section report dated the 13th day of January, 2021;
- the subject road improvements would be best carried out by Kildare County Council in order to address traffic management issues and to deal with third parties, including relevant landowners;
- the equine element of the development is to be retained, therefore, the rates for retention permission under section 9 B(ii) of the Development Contribution Scheme apply;
- the garage is attached to the house and therefore should be charged at the residential rate and not the miscellaneous rate.

6.5. Further Submissions

6.5.1. With regard to the Planning Authority's response to the first-party grounds of appeal, the applicant states the following:

- the passing bays envisaged by the Planning Authority would be more typical of an urban setting and they would detract from the character of the rural area. A more understated approach for the passing bays based on the quotes provided would be more reasonable;
- it is entirely unreasonable to apply levies at the retention rate given the minor element of the development proposed for retention.

6.6. Observations

6.6.1. An observation was received from An Taisce, raising the following with respect to the third parties grounds of appeal:

- the subject site has been subdivided from a larger farm unit;
- planning precedent for refusal of permission is provided for under KCC ref. 20/348;
- proposals would attract significant traffic movements;
- it is not clear why the originally required six passing bays has been reduced to a requirement for three passing bays or how a financial contribution can resolve this;
- the applicant's business plan should be available to view;
- the grounds of appeal with respect to the constricted landholding and the substandard roads access are supported.

7.0 Assessment

7.1. Introduction

7.1.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and having inspected the site, and having regard to the relevant policy and guidance, I consider that the main issues in this appeal are as follows:

- Rural Housing and Rural Development Policies;
- Siting, Design and Amenities;

- Traffic and Access;
- Development Contributions;
- Environmental Management.

7.2. Rural Housing and Rural Development Policies

- 7.2.1. Map 4.4 of the Kildare County Development Plan 2017-2023 identifies the appeal site as being within rural housing zone 1, which features more environmental sensitivities and development pressure than rural housing policy zone 2. Policy RH 2 of the Plan specifically outlines that applications for rural housing should demonstrate the respective applicant's compliance with the category of applicant and local need criteria listed in table 4.3. The Development Plan distinguishes between two categories of applicant, including a member of a farming family who is actively engaged in farming the family landholding and a member of the rural community.
- 7.2.2. The third parties grounds of appeal assert that as the applicant in this case is a business entity, 'Michael O'Callaghan Racing Ltd.' with an address at Crotanstown Stud, Lumville, Curragh, County Kildare, this restricts the potential for local housing need to be demonstrated in line with planning policy. The application form states that 'Michael O'Callaghan' is the applicant company director and that the applicant is the owner of the site, while the submitted business plan and planning statement identifies Michael O'Callaghan and Siobhain O'Callaghan as the business owners. The business plan submitted in response to a further information request, stated that the owners of the business will be required to continuously monitor the equine facility and provide security for the horses, and it is for this reason that they would require a residence for themselves as part of the development. I am satisfied that in the event of a permission for the proposed house, it would be possible to attach a condition that would specifically restrict the occupation of the house to the persons referenced as the applicant company owners (and their immediate family members or heirs) and this should not necessarily impede assessment of the proposals with respect to rural housing policy.
- 7.2.3. The third parties grounds of appeal also refer to the failure of the proposals to comply with 'one-off enterprise' criteria listed under table 10.3 of the Development Plan. The equine industry is addressed under a separate heading from 'rural

enterprise' in chapter 5 of the Development Plan and the criteria listed in table 10.3 of the Development Plan for the assessment of one-off enterprises in rural areas, does not appear to be specifically intended for the purposes of assessing equine enterprises. Notwithstanding this, the relevant planning criteria listed in table 10.3 is addressed as part of my assessment below.

Policy RH 18 – Housing based on Equine Enterprise

- 7.2.4. Policy RH 18 of the Development Plan sets out that applications for a rural house based on the establishment of a full-time viable commercial equine enterprise, will generally be favourably considered, subject to the landholding comprising a minimum of 5ha, siting and design considerations and demonstration that the nature of the enterprise is location dependent and intrinsically linked to a rural location.
- 7.2.5. The applicant's planning statement asserts that the applicant complies with policy RH 18 and they have provided a business plan and various other details that refer to the intention to relocate the applicant's current business from rented facilities on the south side of Newbridge and to build and develop a private, boutique, self-contained, racehorse training facility on the subject site. The information available and provided with the application, including staffing and stock numbers, suggests that the applicant company is an established full-time viable commercial equine enterprise, while the site area at 10ha would be well in excess of the 5ha minimum requirement stated in the Development Plan. Siting and design criteria are specifically considered further below in section 7.3 of my report and given the stated nature of the proposed facility requiring a reasonable and quiet area for the training, development and feeding of racehorses, I am satisfied that the applicant has demonstrated a functional rationale for an equine enterprise of this nature to be located in a rural area. The third-party appellants assert that other existing facilities and locations closer to various equine industry destinations should be considered prior to developing the subject site, however, I am satisfied that there is no strict necessity under planning policy for the applicant to address the appropriateness of alternative facilities or sites. I also recognise that equine enterprises, including stables, are not focussed into limited parts of the subject region, including this part of County Kildare, and that economic development policy ECD 24 of the Development Plan actively promotes and supports the equine industry as an economic driver for

the county as a whole and does not require equine facilities to be located in certain areas.

- 7.2.6. The applicant sets out in their business plan that it is intended to build the equine training facility first and subsequently build the house. As the proposed equine facility would provide the economic need for the owners of the application company to reside in this rural area, I am satisfied that this would be a necessary phasing approach to undertake for the proposed development, in line with NPO19 of the NPF.

Category of Applicant

- 7.2.7. The applicant's planning statement asserts that the applicant fits into a category 2 person, a 'member of the rural community', for the assessment against local housing need criteria, based on the definition of same in table 4.3 to the Development Plan. Table 4.3(b) of the Development Plan for a 'member of the rural community' to demonstrate a local housing need, they 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.
- 7.2.8. Within the applicant's business plan and operational plan it is stated that the established equine enterprise has been operated by the business owners, Michael and Siobhain O'Callaghan, and they would also run the enterprise on a day-to-day basis in the relocated facility.
- 7.2.9. As part of the application documentation, evidence is provided to demonstrate Siobhain O'Callaghan's links to the rural area, including a Birth Certificate and correspondence from her former primary school referring to her maiden name, O'Sullivan, and her address as Harristown estate, which is approximately 3.5km north of the appeal site. Correspondence from a post-primary school in Dunlavin refers to a Siobhan O'Sullivan as residing in Ballymore Eustace when attending the school. An electricity bill dating from 1999 and stated to be in the name of Siobhain O'Callaghan's father is appended to the applicant's further information submission. The land registry details appended to the business plan submitted with the planning application refer to Michael O'Callaghan Racing Ltd., as well as Michael O'Callaghan and Siobhan O'Sullivan, as being the owners of the site since February 2018.

7.2.10. Documentary evidence has been provided to show the links of one of applicant company owners, Siobhain O'Callaghan, to the neighbouring area, I am satisfied that a commitment to operate a full time business from the subject site in this rural area of Kildare and active and direct involvement of the applicant company owners in the equine enterprise has been demonstrated as part of the application and appeal documentation. Accordingly, the applicant meets the category criteria required to be considered as a 'member of the rural community'.

Local Need Criteria

7.2.11. The applicant's planning statement asserts that the applicant meets criteria under rural housing policy zone 1 item (iii) of Table 4.3(b) of the Development Plan, which would include:

- '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.'

7.2.12. Based on the details contained in the business plan, including the scale of the facility and the established nature of the subject full-time equine enterprise, I am satisfied that the proposed development would be capable of contributing to and enhancing the rural community, by providing alternative employment and service opportunities, both directly and indirectly from the equine enterprise. As highlighted above, an equine enterprise is more suitably located in a rural location and existing links of one of the applicant company owners to this area has been provided, as referenced above, as well as the site currently being in the control of the applicant. Accordingly, I am satisfied that the applicant meets the local needs criteria listed under item (iii) for rural housing policy zone 1 of Table 4.3(b) to the Development Plan.

7.2.13. In summary, the proposed development would comply with Policy RH 18 of the Development Plan, as the applicant company owners have demonstrated that they would relocate a full-time viable commercial equine enterprise to this rural area and as the applicant company owners would be directly involved in the operation of this enterprise, which would be in a rural area where they have existing links. Furthermore, while the site is one that is in an area under urban influence and as the

applicant company owners have provided a demonstrable economic need to live in this rural area, I am satisfied that the proposals would comply with National Policy Objective 19 of the National Planning Framework. In conclusion, I am satisfied that the proposed house and equine enterprise should not be refused a grant of permission for reasons relating to rural housing and rural development policies. As the housing aspect of the application proposals is dependent on the operation of the equine enterprise in order to comply with rural housing policy, a condition can be attached to provide additional clarity with respect to the phasing of the development in the event of a grant of permission.

7.3. Siting, Design and Amenities

- 7.3.1. When considering proposals for rural housing and equine developments, policies RH 9 and EQ 3 of the Development Plan, require due consideration of development siting and design. The primary building and construction elements of the proposed development would feature a two-storey detached house with an attached garage, as well as the equine enterprise buildings and structures, which would feature stables, a hay store, a roofed manure pit and two horse walking pavilions to the northwest corner of the site and a galloping track sweeping around the boundaries of the site to form a central paddocks area. A host of additional ancillary facilities are proposed including roads and boundary treatments which would not have as pronounced an impact as the main building elements. The proposed house would be situated over 180m from the local road to the front of the site, with finished-floor level 4m to 8m below the level of this road and a maximum roof ridge height of 7.2m. The equine enterprise buildings would be situated approximately 300m to 400m from the local road and between 10m to 17m below the level of the local road. The maximum roof ridge height for the proposed equine buildings would be 8.4m. The applicant asserts that the house location on site was selected to minimise the visual impact on the landscape and the equine buildings would be situated in an area that had previously accommodated an agricultural shed. The applicant also asserted that earthworks associated with the build would feature gradual inclines.
- 7.3.2. A longitudinal cross-section is provided in the applicant's Landscape Plan drawing (no. LD-200) to illustrate the context for the proposed equine buildings and the house relative to the existing and proposed planting. I am satisfied that the site layout,

including the provision of additional native soft landscaping, and the sweeping undulation in the land, would ensure the proposed buildings would not form overly dominant obtrusive features where intermittently and partially visible from the local road fronting the site.

- 7.3.3. Consequent to the sloping topography of the area and mature field boundaries, views of the house and equine buildings from the wider area would largely be restricted to those lower areas to the north and east of the site. Having visited the area, I am satisfied that the site is not visible from protected views, viewpoints or scenic routes identified in the Development Plan, including scenic route 13, which is located along regional roads over 3km to the north and northeast of the site. Based on map 14.2 of the Development Plan, the site is located within the Eastern Uplands landscape character area, a landscape of high sensitivity, which are described in the Development Plan as areas with reduced capacity to accommodate uses without significant adverse effects on the appearance or character of the landscape having regard to prevalent sensitivity factors.
- 7.3.4. Where partially visible from the local road network and the immediate lower lands to the north and northeast, the buildings would be viewed against the backdrop of gently rising lands, as well as mature hedgerows and trees, including those to be developed as part of the project for screening purposes, other agricultural buildings and rural houses of similar context and scale. The buildings would not break the hillside ridgeline, including those identified in the Development Plan, as they would sit into the slope. I am satisfied that the proposed development would not have a substantive visual impact on this 'high sensitivity' landscape. Furthermore, the proposed building design, entrance and landscaping proposals, providing for native, indigenous species, would generally be in accordance with the provisions set out within chapters 16 and 17 of the Development Plan, addressing guidance for rural houses, gardens, planting and boundary treatments in Kildare. The third parties grounds of appeal refer to the potential for floodlighting to be required in future to serve the development and in this regard I note that this would need to be subject of a separate planning permission and that the bulk of the equine facility is set well away from the local roads and neighbouring houses and that the operation of the galloping track would generally occur during daylight hours based on the operational plan submitted with the application.

- 7.3.5. The third parties grounds of appeal also refer to concerns with respect to the potential impacts arising from noise and disturbance associated with the operation of the equine facility, particularly the proximity of the galloping track to the local road and neighbouring residences. While I accept that activities such as farming can often have noticeable impacts on the noise environment in rural areas, primarily due to the low ambient background noise level, the use of land for the sheltering, grazing and training of horses is an activity that is typical of this area, including galloping tracks, jump yards, stables and horse-walking facilities in various surrounding farms, and this would not be likely to result in a substantive and undue increase in noise levels in this rural area, which is dominated by a range of agricultural land uses.
- 7.3.6. In conclusion, the design, form and scale of the proposed residential and equine buildings and the associated structures would be capable of being absorbed within this rural landscape and without undue impacts on neighbouring amenities. Consequently, I am satisfied that the proposed development and the development to be retained should not be refused for reasons relating to siting and design, and the resultant impact on the visual or residential amenities of the area.

7.4. Traffic and Access

Traffic

- 7.4.1. The third parties grounds of appeal refer to various perceived deficiencies in the vehicular access available to the site, which they consider is based on imprecise traffic modelling and the resultant implications for safety along the roads serving the site. The level of traffic anticipated during the operational phase of the development is set out in the applicant's Traffic Assessment based on their operational plan, including the employment of three part-time and three full-time staff, who would normally arrive during 07:00 to 07:45 hours and would depart at 16:30 hours. Additional traffic is also anticipated arising from the proposed house, deliveries, including rigid heavy vehicles every two to three weeks, weekly trips by a veterinary surgeon and a farrier, occasional visits by horse owners and horse transport to equestrian hospitals and to race meets using a horsebox or a rigid type horse box. According to the applicant, trips to and from the site would be from the R412 regional road and limited daily or peak trips onto the adjacent road network would arise with the applicant clarifying that traffic modelling was based on surveys at the applicant's

existing operational equine facility, which indicates that the proposed development would generate four to five trips in and out per day. The grounds of appeal assert that the actual equine enterprise vehicular traffic and volumes would be excessive for the local road and that there would be nothing to stop traffic using the section of local road leading northeast from the site to the L-2027 local road, which has limited carrying capacity.

- 7.4.2. The Roads Transportation and Public Safety section did not object to the extent of increased traffic associated with the development. I accept the third parties concerns that the level of traffic associated with the development would most likely be above the applicant's forecasted four to five trips per day in and out of the site, however, I am satisfied that the nature and scale of the facility would be one that would attract a volume of traffic similar to existing agricultural operations in the area and it would only attract a modest increase in traffic movement along the access roads leading to the site, which appear very lightly trafficked based on my visit to the area. Consequently and as undertaken below, the capacity of the access roads to accommodate the additional traffic to the site needs to be considered.

Retain Access

- 7.4.3. Section 17.7.1 of the Development Plan sets out the requirements for single accesses onto local roads, an element of the development that the applicant is proposing to retain as part of the development. A drawing (no.119-A39-LP01) appended to the Traffic Assessment initially submitted by the applicant, reveals that a minimum of 90m vision lines in both directions from a point 2.4m setback from the roadside is available onto the local road fronting the site. The applicant asserts that the access arrangements facilitate safe access and egress for all vehicles, including heavy vehicles such as tractors and hay wagons. The Roads Transportation and Public Safety section of the Planning Authority did not object to the retention of the vehicular access to the site, and sought resurfacing proposals at this bell-mouth entrance, which the applicant proposed to undertake in response to a further information request. I am satisfied that the available sightlines at the entrance are appropriate based on Development Plan requirements referring to the Design Manual for Roads and Bridges, and the retention of the bell-mouth vehicular entrance would not pose an unacceptable risk to traffic safety along the local road with extensive views from the entrance in both directions. It is primarily the means of

vehicular access leading to and from this entrance that the third parties grounds of appeal assert to be inadequate to serve the development and I consider this further below.

Access Roads

- 7.4.4. The third parties grounds of appeal, including a report from consulting engineers referring to various limitations of the local road (L-6061) accessing the site to accommodate the associated traffic to and from the development. The third parties grounds of appeal assert that the local road measures on average 3.1m in width, whereas the applicant had initially referred to this road as featuring an average width of 3.5m. All parties accept that the road does not have capacity to cater for two-way vehicular traffic and to address this the Roads Transportation and Public Safety section of the Planning Authority sought the applicant to provide a drawing showing the locations of three passing bays along the 820m stretch of local road leading to the regional road (R412) with a maximum separation distance of 250m and with inter-visibility between the bays. In response the applicant identified with grid co-ordinates six possible locations for the passing bays on both sides of the local road west of the site. The Roads Transportation and Public Safety section accepted in their revision A report that this would be acceptable, subject to a condition requiring the payment of a special development contribution to enable the associated improvement works to be undertaken along the L-6061, which the Local Authority would carry out in the interests of road safety.
- 7.4.5. The grounds of appeal assert that the construction of the passing bays would not be sufficient to accommodate the additional traffic given their concerns regarding the gradient, the surface condition and structural capacity of the road, and the bays would not allow for safe access along the local road. The potential locations of the bays would be in addition to existing informal passing areas along the local road associated with entries to other properties and they are not proposed along the stretch of local road leading northeast from the site. I am satisfied that the passing bays would be necessary to facilitate the modest increase in traffic and the typology of traffic associated with the proposed development. While there is scope for traffic to use the north eastern stretch of local road leading to the L-2027 local road in accessing and egressing the site, it is clear that the most convenient and most frequented means of access would be from the west and it is this route that requires

an improved form of access. Having visited the area, including the possible locations for the passing bays and noted a number of existing informal passing arrangements, and having considered the modest level of additional traffic associated with the development, I am satisfied that the passing bays could be installed by the Local Authority to provide an adequate means of access to the site ensuring that substantive inconvenience or implications for road safety would not arise from the development. Furthermore, I am satisfied that safe access and egress can be achieved at the junction of the R412 regional road with the L6061 local road based on forward visibility along the regional road at this junction and the available visibility from the local road onto the regional road in both directions. Considering the required specification of the three passing bays and given the length of local road, extensive stretches of hedgerow would remain as traditional landscaping features within this rural environment and without substantively compromising the visual amenities of the area. The local road features a reasonable surface conditions and already caters for domestic and agricultural traffic. The anticipated modest increase in traffic would not be likely to impact on the structural integrity of properties along this route given this context.

- 7.4.6. The road upgrade works comprising the construction of three passing bays should be conditioned to be undertaken prior to the operation of the equine enterprise, as it is this element of the project, which would attract the modest increase in traffic. As these works would be required to address the additional traffic associated with the proposed development and as they would be undertaken by the Local Authority outside of the applicant's landholding, I am satisfied that a special development contribution, as per the requirements of the Planning Authority, would be necessary and reasonable to attach as a condition in the event of a permission. A review of the detail of such a condition is undertaken in the proceeding section of my report.
- 7.4.7. In conclusion, I am satisfied that appropriate provision of access has been proposed and provided to cater for the traffic that would be generated by the proposed development. With the proposed upgrade works in place prior to the operation of the equine enterprise, the road network in the area would be capable of carrying the additional traffic that would be generated without jeopardising road safety. The development and development to be retained would not, therefore, be likely to give

rise to traffic hazard. Permission and retention permission should not be refused for reasons relating to traffic, access and road safety.

7.5. Development Contributions

Special Development Contribution

- 7.5.1. The applicant has contested the costs associated with the special contribution condition required by the Planning Authority, asserting that the costs are not based on clear or transparent calculations and that they are excessive when compared with quotes that they have sourced themselves. Condition 27 requires the payment of a special contribution of €40,000 under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of road improvement works on the L-6061. Such a requirement should only be made in respect of a particular development whereby demands likely to be placed on public services and facilities are deemed to be exceptional, thereby incurring costs not covered by the General Development Contribution Scheme. Furthermore, such a condition must be amenable to implementation under the terms of section 48(12) of the Act requiring that the basis for the calculation should be clear from the planning decision. The Development Management Guidelines for Planning Authorities (2007) state that it will be necessary to identify the nature/scope of the works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.
- 7.5.2. The reason for condition 27 states that the contribution is required as it is considered reasonable that the developer should contribute towards specific exceptional costs comprising road improvement works, which would be incurred by the Planning Authority, and which are not covered in their Development Contribution Scheme and would benefit the proposed development. The planning and technical reports of the Planning Authority contain more detailed justification for the special contribution condition, where it was identified that there would be a requirement for a minimum of three passing bays along the L-6061 local road from the site to the R412 regional road, as set out in the first Roads Transportation and Public Safety report dated the 19th day of August, 2020. As highlighted above, the requirement for a minimum of three passing bays relates to road safety issues arising from the identified increased traffic movements along the road associated with the proposed development. The

second Roads Transportation and Public Safety report dated the 5th day of January, 2021, sought the developer to seek the written agreement of the Local Authority to provide a minimum of three passing bays in accordance with National Roads Authority (NRA) Technical Advice (TA) 85/11, addressing minor improvements and road safety improvements schemes. The Roads Transportation and Public Safety report was subsequently revised and the third and final Roads Transportation and Public Safety report dated the 13th day of January, 2021, sought the developer to pay a special development contribution and this provided a breakdown of the primary elements for the three passing bays that could form the necessary road improvement works. The necessary elements would consist of drainage pipe works, boundary treatments, traffic management arrangements and construction build-up, including pavement surfaces. The cost for each bay was stated by the Roads Transportation and Public Safety section to amount to €13,333.

- 7.5.3. While the wording of condition 27 does not specifically state the need for three passing bays to be constructed on the L-6061 local road west of the site, I am satisfied that the intention of the condition is clear from the planning and technical reports and that the proposed upgrade works are specific exceptional costs that would be incurred by the Planning Authority arising from the proposed development and which are not covered by their General Development Contribution Scheme. Accordingly, in the event of permission being granted for the proposed development I am satisfied that the wording of condition 27 should be amended to specify the nature of the works as set out in the Roads Transportation and Public Safety reports. While the condition does not clarify how the contribution was calculated and apportioned to this particular development, the cost per bay, the primary elements of the works and limited specification for these works were outlined within the Roads Transportation and Public Safety reports. When compared with the primary elements for the works outlined by the Roads Transportation and Public Safety section, the quotes for the road improvement works submitted as part of the first-party grounds of appeal to justify a reduction in the contribution, do not refer to 'drainage piped works' and 'boundary treatments'. I would also note that one of the quotes provided as part of the first-party grounds of appeal refers to the tarmac finish for all three bays amounting to 65sq.m, whereas based on the stated NRA technical advice a single bay could potentially amount to approximately 90sq.m at a

width of 3m over 20m length and with 10m tapers to the road edge. Given the absence of reference to drainage and boundary works in the applicant's estimates and the difference in estimated surface area required for the bays, I am satisfied that it has not been demonstrated that the costings set out by the Planning Authority would not be unreasonable for the proposed works.

- 7.5.4. In conclusion, having regard to the character and condition of the road serving the site and the additional traffic associated with the proposed development, it is considered reasonable and appropriate to impose a special development contribution with respect to the provision of three passing bays along the western section of the local road L-6061 connecting with the R412 regional road. It is considered that the relevant scope of work identified, based on NRA technical advice, and the unit rate indicated by the Planning Authority is also reasonable based on the nature of the work involved. I am satisfied that the condition and costs associated with this are therefore considered acceptable in terms of the proper planning and sustainable development of the area.

General Development Contributions

- 7.5.5. Condition 28 of the subject permission requires the developer to pay contributions totalling €33,116 in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority. The Planning Authority set out in their final report dated the 14th day of January, 2021, that levies would apply based on 1,766 sq.m floor area of equine buildings and 276sq.m floor area for the house and domestic garage. The first-party grounds of appeal assert that the terms of the Council's Development Contribution Scheme have not been correctly applied by the Planning Authority in arriving at the cost of the levies to be incurred by the developer for these general development contributions. The 'Development Contribution Scheme 2015-2022- Kildare County Council' breaks down and sets out the manner in which contributions would be applied for development of the nature and scale proposed and to be retained.
- 7.5.6. The proposed house on site would measure 215sq.m and the attached garage would measure 52sq.m, giving a total floor area of 267sq.m. For residential development measuring between 231sq.m and 370sq.m a charge of €56 per sq.m would apply based on the terms of the Development Contribution Scheme. The first-party

grounds of appeal assert that the rate for miscellaneous development (€27.51 per sq.m) would be more appropriate for the proposed attached garage featuring a boot room and a shower room, as this is not a residential building. Only a flat residential rate based on the gross floor area of developments is provided in the Development Contribution Scheme, with no differentiation provided for ancillary residential buildings such as garages and sheds. Inconsistencies in the application of this rate based on other planning permissions have not been cited by the first-party appellant. I am satisfied that given the garage internal layout, its internal access from the house and intended function, it would serve as an extended area and would be ancillary to the enjoyment of the proposed host residence. Accordingly, it would be appropriate to levy its respective floor area based on the residential rate included within the Development Contribution Scheme. Accordingly, the residential element of the proposed development would incur a levy of €14,952 (267sq.m x €56).

7.5.7. With respect to the equine element of the proposed development, section 12 of the Development Contribution Scheme addressing exemptions and reduced contributions sets out the following:

- the first 600 sq.m of non-residential development on any equine landholding will be exempt and the contribution thereafter will be at a rate of €10.00 per sq.m. This exemption is cumulative and will only be granted once on any landholding.

7.5.8. The proposed development would feature a stable block (790sq.m GFA), a hay/machinery store (490sq.m GFA), a roofed manure pit (185sq.m GFA) and two roofed horse walking pavilions (each measuring 151sq.m GFA) resulting in equine buildings and roofed structures amounting to 1,767sq.m. In response to the first-party grounds of appeal, the Planning Authority state that based on the fact that retention permission is being sought and given the terms of section 9(B)(ii) of the Development Contribution Scheme, the equine enterprise element of the development would incur a standard levy and not the reduced level. This would therefore incur a contribution of €17,766 (1,167sq.m x €10) for the equine enterprise. I have not been made aware of a reduction in the levy having previously been granted for the subject landholding. Section 12 of the Development Contribution Scheme states that no exemptions or waivers shall apply to any developments

subject to retention permission, except where it applies to a previously permitted development.

- 7.5.9. The development proposes retention of vehicular access works onto the local road and groundworks leading to the rear of the site. Contributions are not sought by the Planning Authority with respect to these specific works. Retention of the equine buildings and roofed structures is not specifically proposed as part of the development, as they do not exist on site, therefore, I am satisfied that the reduced rate within the Development Contribution Scheme would be applicable in this case. Based on the reduced contributions outlined above, omitting the first 600sq.m of floor area, the equine enterprise element of the proposed development would incur a levy of €11,670 (1,167sq.m x €10).
- 7.5.10. In conclusion, having regard to the nature and scale of the proposed elements of the development and the provisions of the 'Development Contribution Scheme 2015-2022 - Kildare County Council', including the classes of infrastructure covered for the various categories of development, the terms of the Development Contribution Scheme have not been properly applied in respect of condition 28 of the Planning Authority's decision and it is appropriate to request contributions relating to the proposed attached garage at the residential rate and to request contributions for the equine development at the reduced rate. To reflect the nature and scale of the development and the terms of the Development Contribution Scheme a total general contribution of €26,622 would be applicable (€11,670 + €14,952).

7.6. Environmental Management

Wastewater Treatment

- 7.6.1. In June 2021, the Environmental Protection Agency (EPA) issued a revised 'Code of Practice (COP) - Wastewater Treatment and Disposal Systems serving Single Houses (population equivalent ≤ 10)', however, as the site assessment tests were undertaken in December 2019 prior to the coming into effect of the revised COP, I am satisfied that it is the 2009 EPA COP that is most applicable in this case.
- 7.6.2. The site suitability and characterisation form submitted with the planning application notes that the site is located on a regionally-important aquifer, where groundwater vulnerability is high. Based on the EPA COP 2009, an appropriate groundwater

response for this area accepts the use of an on-site wastewater treatment system 'subject to normal good practice, including attention to other systems nearby and the depth of subsoil over bedrock'. The applicant's characterisation form does not note any existing watercourses, karst features, wells or other sensitive features to pollution within the vicinity of the site test area. Neither bedrock nor the water table was encountered at a depth of 2.1m in the trial hole consisting of layers of clays, sands and gravels. Ground conditions appear relatively consistent across the site.

7.6.3. Percolation tests undertaken for the proposed development revealed an average T-value of 13. The EPA COP 2009 advises in this case that the site would be suitable for either a septic tank system or a secondary treatment system providing for a discharge of effluent to groundwater. Given the area available, a packaged wastewater treatment system is proposed with a subsurface soil polishing filter to serve the house, as well as a separate Tricel wastewater treatment system with a percolation area to serve the stable block, which features staff washroom facilities. Wastewater arising from the staffing element of the stable block would be limited.

7.6.4. The proposed well to serve the development would be constructed 65m to the northeast of the domestic wastewater treatment system and on a similar ground level. The well would be 165m down gradient of the wastewater treatment system to serve the stable. Given these separation distances from the wastewater treatment systems and the likely groundwater flows in a northwest direction, as referenced in the site characterisation form, the system would be in compliance with requirements in the EPA COP 2009 regarding separation distances to wells. There is not a high density of developments in the surrounding area and I am satisfied that the system proposed would be appropriate for the proposed development on this site. The Water Services and the Environment sections of the Planning Authority require the attachment of various standard conditions primarily providing for the efficacy and performance of the proposed wastewater treatment systems to be maintained and I am satisfied that conditions of this type would be appropriate to attach in the event of a grant of permission.

Agricultural Waste Management

7.6.5. In order to avoid pollution, under article 8 of SI No.605 of 2017 - European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017, as amended

by SI 65 of 2018 and SI 40 of 2020 (hereinafter the 'Good Agricultural Practice Regulations'), general obligations are set out to ensure that the capacity of storage facilities for livestock manure and other organic fertilisers, soiled water and effluents from dungsteeds, farmyard manure pits, silage pits or silage clamps on a holding, are adequate to provide for the storage on the holding for such period as are required in the Regulations.

- 7.6.6. According to the applicant, storm water runoff from the development would be collected and discharged to soakaways designed to Building Research Establishment (BRE) Digest 365 (SH1 & 2). A potable water supply via bored well northeast of the proposed house is proposed to serve the development. The stables would accommodate a maximum of 32 horses. Soiled water arising from the operations, including the manure pit and stable block, would be piped and directed to an underground tank, which would have capacity for 35m³, whereas according to the advice provided with the application and appeal response documentation from a Teagasc advisor, 26m³ of soiled water storage would only be necessary based on Department of Agriculture Specification S156 – Horse Facilities and Fencing (2016). The advice from Teagasc also states that 230m³ of manure storage would be required based on the location and livestock numbers and that the proposed manure pit, which would be roofed, would have spare capacity given its storage volume of 303m³. Based on the stated livestock type and number, the horse facilities, including the size of the collection tank and manure pit proposed to serve the development, would appear to meet the aforementioned specifications and exceed the minimum assigned waste storage holding volumes required for this part of the country in the Good Agricultural Practice Regulations.
- 7.6.7. Any spreading of horse manure and nutrients would be required to be in accordance with the provisions of the Good Agricultural Practice Regulations and any revisions to same, including SI 40 of 2020 - European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2020, which provide greater protection for water quality from agricultural activities. The advice from the Teagasc advisor submitted with the application and appeal response states that 8.39ha of the 10ha of the site would be available for land spreading of farmyard manure. I am not aware of any evidence of the subject lands being prone to flooding. The appellant asserts that a derogation licence may be required for the operations under the

Nitrates Directive, however, the calculations from the applicant's Teagasc advisor calculates that a farm stocking rate of 168kg/N/hectare/year based on the 32 horses would arise and this would be below the threshold set for a nitrates derogation licence (170kg/N/ha/year). Any alteration of stocking levels would be subject of these Good Agricultural Practice Regulations.

- 7.6.8. I am satisfied that based on the information provided there would appear to be sufficient and suitable lands within the identified grazing area and away from sensitive features to take all of the generated manure based on the proposed stocking levels, in accordance with the standards set out in the Good Agricultural Practice Regulations. The applicant has also set out the standard of construction, and the proposals for management and maintenance of these operations.

Local Ecology

- 7.6.9. Third party appellants have raised concerns in relation to the potential impact of the development on local ecosystems, including impacts on mammals such as hares and badgers who potentially use the area based on the National Biodiversity Data Centre records and evidence of badger setts. It does not appear that any substantive disturbance or change in the extent of hedgerows is proposed, with the vast majority of the hedgerows to the site boundaries and local roads remaining in situ as part of the application proposals. Furthermore, as part of the application proposals the existing agricultural use of the subject site would remain for the vast majority of the site (8.39ha). I am satisfied that given the extent of hedgerows to be maintained, the extent of the site remaining in agricultural use and the expansive surrounding rural context consisting of similar potential habitat, a sustainable approach to developing the site has been set out in terms of local ecological impacts.

Conclusion

- 7.6.10. In conclusion, the wastewater and waste elements arising from the proposed development would not be prejudicial to public health and would not be likely to cause a deterioration in the quality of waters in the area. A sustainable approach to the development on site in a manner that would not substantively compromise local ecology has been set out. Permission and retention permission should not be refused for reasons relating to environmental management.

8.0 Appropriate Assessment

Stage 1 - Screening

- 8.1. The site location is described in section 1 of this report above. A description of the proposed development is provided in section 2 of this report and expanded upon below where relevant. Neither a screening report for appropriate assessment nor a Natura Impact Statement were submitted with the application. Consultation was not undertaken with the Department of Culture, Heritage and the Gaeltacht.
- 8.2. The site features lands used for varying agricultural purposes and features an access track along the western boundaries. It is situated on a hillside sloping gradually downwards in a northwest direction.

Description of European Sites

- 8.3. The nearest European sites to the appeal site are listed in table 1 of section 5.3 above. Conservation objectives relating to these sites are listed on the National Parks and Wildlife Service website (www.npws.ie).

Is the Project necessary to the Management of European sites?

- 8.4. The project is not necessary to the management of a European site.

Direct, Indirect or Secondary Impacts

- 8.5. The potential direct, indirect and secondary impacts that could arise as a result of the proposed works, which could have a negative effect on the qualifying interests of European sites, include the following:
- impacts on water quality during the construction phase, for example via release of suspended solids;
 - impacts on water quality during the operation phase, for example via release of pollutants from wastewaters and waste arising.
- 8.6. I consider that the potential of likely significant effects on the European Sites arising from the proposed development, alone or in combination with any other plans or projects, can be reasonably excluded due to the absence of ecological and / or hydrological connections based on the source-pathway-receptor model, the physical separation distances from the site, as well as the scale and nature of the project. As

there is no pathway between the project and European Sites, there is no potential for loss or disturbance of species or habitats associated with the qualifying interests of the European Sites, and therefore, no possibility of any effect on European Sites' conservation objectives.

- 8.7. No measures designed or intended to avoid or reduce any potentially harmful effects of the project on a European Site have been relied upon in this screening.

In-Combination Effects

- 8.8. I do not consider that there are any specific in-combination effects that arise from the development when taken in conjunction with other plans or projects.

Appropriate Assessment Screening Conclusion

- 8.9. The project was considered in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. Having carried out screening for appropriate assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Sites in view of the Sites' conservation objectives and qualifying interests, and that a Stage 2 appropriate assessment, and the submission of a Natura Impact Statement, is not therefore required.

9.0 Recommendation

- 9.1. For the reasons and considerations set out below and subject to conditions, I recommend that permission and retention permission should be granted for the proposed development and the development proposed to be retained.

10.0 Reasons and Considerations

1. Having regard to the nature and scale of the proposed development and the development proposed to be retained, it is considered that subject to compliance with the conditions set out below, the proposed development featuring an equine enterprise and a house would comply with rural housing and rural development policies of the Kildare County Development Plan 2017-2023, including Policy RH 18 of the Development Plan addressing the

requirements for a rural house based on the establishment of a full-time viable commercial equine enterprise, would not seriously injure the visual or residential amenities of the area or of property in the vicinity, would feature an appropriate means of vehicular access that would not result in traffic hazard, would not result in the deterioration of water quality or local ecology and would be in accordance with the provisions of the Kildare County Development Plan 2017-2023. The proposed development and the development to be retained would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 16th day of December 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicants; the stated applicant company owners, Michael O'Callaghan and Siobhan O'Callaghan, members of the applicants' immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter, unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall

enter into a written agreement with the Planning Authority under section 47 of the Planning and Development Act, 2000 to this effect.

(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The development shall be carried out on a phased basis, in accordance with a phasing scheme which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of any development. The phasing scheme shall require the necessary road improvement works along the L-6061 local road to be in situ prior to the operation of the equine enterprise facility and shall require the operation of the proposed equine enterprise in advance of the occupation of the proposed house.

Reason: To ensure an orderly form of development in the interest of the proper planning and sustainable development of the area.

4. Details of the materials, colours and textures for the house and equine structures, shall be submitted to, and agreed in writing with, the Planning Authority prior to the commencement of the development.

Reason: In the interest of the visual amenities of the area.

5. The water supply to serve the house shall have sufficient yield to serve the development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to the occupation of the house.

Reason: To ensure that adequate water is provided to serve the proposed house, in the interest of public health.

6. Drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services. In this regard –
 - a) uncontaminated surface water run-off shall be disposed of directly in a sealed system, and;
 - b) all soiled waters shall be directed to storage tanks. Drainage details shall be submitted to and agreed in writing with the planning authority, prior to the commencement of development.

Reason: In the interest of environmental protection and public health.

7. (a) The site shall be landscaped with indigenous deciduous trees and hedging species within the first planting season following the completion of the development in accordance with the landscaping plan submitted to the planning authority on the 27th day of July 2020.

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

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

8. (a) The wastewater treatment plants and percolation areas shall be located, constructed and maintained in accordance with the details submitted to the Planning Authority on the 27th day of July 2020, and in accordance with the requirements of the document entitled 'Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)' – Environmental Protection Agency, 2009. No system other than the types proposed in the application shall be installed unless agreed in writing with the Planning Authority.
- (b) Certification by the system manufacturers that the systems have been properly installed shall be submitted to the Planning Authority within four weeks of the installation of the systems.
- (c) A maintenance contract for the treatment systems shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the equine facility and the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the Planning Authority within four weeks of the installations.
- (d) Surface water soakways shall be located such that the drainage from the dwelling, equine facility and hardstanding areas of the site shall be diverted away from the location of the polishing filters.
- (e) Within three months of the first occupation of the dwelling and the equine facility, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the respective effluent treatment systems have been installed and commissioned in accordance with the approved details and are working in a satisfactory manner and that the percolation areas are constructed in accordance with the standards set out in the EPA Code of Practice.

Reason: In the interest of public health.

9. The stables shall be used only in strict accordance with a management schedule, which shall be submitted to and agreed in writing with the

planning authority, prior to commencement of development. The management schedule shall be in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017, as amended by SI 65 of 2018 and SI 40 of 2020, and shall provide at least for the following:

- a) Details of the number and types of animals to be housed.
- b) The arrangements for the collection, storage and disposal of slurry.
- c) Arrangements for the cleansing of the buildings and structures.

Reason: In order to avoid pollution and to protect residential amenity.

10. All foul effluent and slurry/manure generated by the proposed development shall be conveyed through properly constructed channels to the proposed storage facilities and no effluent or slurry/manure shall discharge or be allowed to discharge to any stream, river or watercourse, or to the public road.

Reason: In the interest of public health.

11. All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to adequate soakpits and shall not discharge or be allowed to discharge to the foul effluent drains, foul effluent and soiled water storage tanks or to the public road.

Reason: In order to ensure that the capacity of effluent and storage tanks is reserved for their specific purposes.

12. Slurry/manure generated by the proposed development shall be disposed of by spreading on land, or by other means acceptable in writing to the planning authority. The location, rate and time of spreading (including prohibited times for spreading) and the buffer zones to be applied shall be in accordance with the requirements of the European Union (Good

Agricultural Practice for Protection of Waters) Regulations 2017, as amended by SI 65 of 2018 and SI 40 of 2020.

Reason: To ensure the satisfactory disposal of water material, in the interest of amenity, public health and to prevent pollution of watercourses.

13. A minimum of 16 weeks storage shall be provided in the storage tanks. Prior to commencement of development, details showing how it is intended to comply with this requirement shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of environmental protection and public health.

14. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the 'Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects', published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

15. The developer shall pay the sum of €40,000.00 (forty thousand euros) (updated at the time of payment in accordance with changes in the Wholesale Price – Building and Construction (Capital Goods), published by the Central Statistics Office), to the Planning Authority as a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of the provision of three inter-visible passing bays to NRA technical advice specification along the western section of the local road L6061 connecting the site with the R412 regional road. This contribution shall be paid prior to the commencement of development or in such phased payments as the Planning Authority might facilitate. The

application of indexation required by this condition shall be agreed between the Planning Authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the Planning Authority, which are not covered in the Development Contribution Scheme and which benefit the proposed development.

16. The developer shall pay to the planning authority a financial contribution of €26,622 (twenty-six thousand, six-hundred and twenty-two euros) in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the Planning Authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Colm McLoughlin
Senior Planning Inspector

30th September 2021