



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311297-21

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<b>Development</b>	Retention of existing barn structure and permission for installation of dungstead.
<b>Location</b>	Oughterard, Boston Hill, Straffan, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	21906
<b>Applicant(s)</b>	Gary Sherwood
<b>Type of Application</b>	Retention & Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Gary Sherwood
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	23 January 2022
<b>Inspector</b>	Una Crosse

## 1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 1.085 hectares and is located in the townland of Oughterard south of Ardclough. The site is accessed from the L2009. The site is elevated rising from the public road up to the southeast towards Oughterard cemetery, church and roundtower which is accessed from a laneway to the south of the site. The site currently accommodates a barn which is accessed from the public road by an existing recessed entrance with wooden fence and hedgerow along the boundary. The barn is located on a levelled area behind which a paddock area has been created surrounded by a timber fence which is at a higher level than the barn. Behind the paddock is the remainder of the field. There is an overhead power line which traverses the site from west to east.

## 2.0 Proposed Development

### 2.1. As proposed

The development as proposed comprises two elements:

Retention of:

- An existing barn structure for the stabling of five horses (as per public notices) which has a floor area of 125m<sup>2</sup> and an overall height of c.6.3m and built from solid brickwork and sheeting. This is located to the northwest of the site adjoining the road boundary between the 110m and 112m OD contour lines.
- Alterations and excavations to original site levels.

Permission for:

- A dungstead for effluent storage with an area of 29m<sup>2</sup> and minim volume of 57 m<sup>3</sup> with a sludge holding tank of c.9 m<sup>3</sup>
- Wastewater treatment plant with filter bed with an area of 60 sq.m located c.35 m south east of the barn structure.

### 2.2. On appeal

2.2.1. In response to the reasons for refusal the applicant has amended the proposed development such that the polishing filter has been increased in area from 60 sq.m

to 120 sq.m and has been relocated such that it is 16.2m from the barn structure and is now outside of the zone of notification for the national monuments to the south east of the site.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. On 11<sup>th</sup> August 2021 Kildare County Council refused permission for two reasons, as follows:

- 1. The application site is located within the Zone of Notification of KD015-007001 deserted settlement and also within the Zones of Notification of Oughterard Church and Round Tower (KD015-007003, KD015-007005 and RPS B15-01) National Monuments in State Ownership, with the Round tower also listed in the Record of Protected Structures in the Kildare County Development Plan 2017-2023. Having regard to the location of the site in close proximity and adjacent to the aforementioned National Monuments it is considered that the development would materially contravene stated policies of the Kildare County Development Plan 2017-2023 including AH1 which requires that development is managed “in a manner that protects and conserves the archaeological heritage of the county, avoids adverse impacts on sites, monuments, features or objects of significant historical or archaeological interest..” and AH2 which states that “no development shall be permitted in the vicinity of a recorded feature, where it detracts from the setting of the feature...”. The development, therefore, by reason of its location on a prominent and elevated site within the zones of notification of National Monuments would injure and interfere with a National Monument, would be contrary to policies AH1 and AH2 of the Kildare County Development Plan 2017-2023, would set an undesirable precedent for similar development of this nature and would therefore be contrary to the proper planning and development of the area.*
- 2. The application site is located on a noted Scenic Route, Oughterard Road (L2009) as identified in Table 14.5 of the Kildare County Development Plan 2017-2023. Policy SR1 at Section 14.9 and Objective LO 6 at Section 14.10 respectively of*

*the Plan, seek to preserve scenic views by avoiding development that could disrupt such views or have a negative impact on the surrounding landscape. The development therefore by reason of its location on an elevated site on a listed Scenic Route would have a negative impact on the surrounding landscape would be contrary to Policy SR1 and LO 6 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.*

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

3.2.1. A planning report dated 19<sup>th</sup> February 2021 reflects the decision to refuse permission with the following points in the assessment are noted:

- Principle of agriculture/equine development in rural areas generally acceptable however all normal siting, design and planning considerations must be considered prior to making a determination.
- Much of development located close to the public road with ground levels altered to accommodate the development with wooden fence and retaining wall erected adjacent to the lowered lands.
- Extensive cut into the site taken place to accommodate the site but the site remains elevated from the public road.
- Stable located close to front boundary and appears to be within the 18.5m set back distance required (Table 17.8) of the Plan.
- Site contains two metal structures that have not been referenced in the public notices and should be removed from site if permission is granted.
- Whilst uses generally acceptable in a rural area, requirement to assess each application on its own merits whilst being cognisant of the planning status of the site, including all other applications on the landholding with significant planning history on the site including numerous applications for one off housing.
- Whilst current application is for agricultural type development, many similarities between the proposal and previous applications most notably the location of the site adjacent to the National monuments that must be protected.

- Heritage Officer recommends refusal of the proposal due to negative impact on the monument complex with the proximity of the proposal to the National monuments most noteworthy and in the interest of common good, to facilitate the development of a site adjacent to and within the zone of notification of a national monument of such significance would be contrary to the proper planning and sustainable development of the area notwithstanding its intended equine use.
- Impact of works to date including excavation of the site and reduction in levels is also significant with the potential to have already impacted the national monument.
- Works are significant in terms of the location of the site adjacent to the public road that is a designated scenic route.
- Noted that there is a request for further information on the WW treatment system but considered that the principal issue with regard to the site centres on the archaeological matters pertaining to the site.
- Not considered necessary to seek further information as considered that development would contravene the requirements of the PA as set out in the Plan.

### 3.2.2. **Appropriate Assessment Screening Report**

The report undertaken by the PA is summarised as follows:

- Screening report received with application.
- Nearest site is the Red Bog SAC which is c9.4km to the south of the application site.
- Given distance from site to Natura 2000 sites, no source-pathway-receptor, no impact on integrity of network.

### 3.2.3. **Other Technical Reports Received**

**Heritage Officer** – report summarised as follows:

- Outlines the historic significance of the Oughterard complex.
- Fig 1 shows RMP sites and zone of notification in purple/grey.
- Recommends permission is refused as it has the potential to impact in a significant way on a recorded monument.

- Historic monuments service notified of the works in close proximity to a recorded monument.

**Environment Section** – Further information recommended as follows:

- Validity of the Site Characterisation Form submitted in COP2021 format and dated 4/6/2021 (COP2021 valid from 7/6/2021).
- Site suitability report prepared by manufacturers/suppliers of the wastewater treatment system based on site visit and including site layout plan showing all WWT systems, streams, drains and wells.

**Transportation Section** – no objection.

**Water Services** – no objection subject to condition

### 3.3. Prescribed Bodies

#### 3.3.1. Development Applications Unit (Archaeology)

The submission received can be summarised as follows:

- Proposed development would involve ground disturbance close to RM KD015-007001 (settlement shrunken) subject to statutory protection.
- Department recommends that site assessment and pre-development testing (as outlined) to be carried out on site with report of site assessment and testing to be submitted as further information enabling the Department and PA to formulate an informed archaeological recommendation before a decision is taken.
- Compilation of the Archaeological Impact Assessment is set out and report submitted to the PA and Department in advance of the planning decision.
- If significant archaeological remains are found, refusal might still be recommended and/or further monitoring or excavation required.

#### 3.3.2. Irish Water

No objection subject to condition.

### 3.4. **Third Party Observations**

None

### 4.0 **Planning History**

#### 4.1. Enforcement Case – UD7761 – Current

Current enforcement case relating to a barn structure for the stabling of horses, timber panel fence along the boundary with the road, alterations to the original agricultural entrance, alterations and excavation of the original site levels and two containers on the site.

#### 4.2. Decisions to Refuse Permission

The following references relate to applications made by Carmel Curran for a bungalow, secondary effluent treatment system, recessed entrance and all associated site works all of which have been refused – 17/1264; 18/363, 18/831, 18/1335, 19/583 and most recently:

Ref. 19/1058 which was made by Carmel Curran and James Roche which was refused for 4 reasons which related to:

Housing policy and location of site in area under strong urban influence; materially contravene policies in relation to archaeological heritage given proximity to Oughterard Church and Graveyard; contrary to policy RH9 given proximity to national monument and scenic route; and extent of hedgerow required to be removed.

#### 4.3. Sites in Vicinity

While there are other decisions on sites in the vicinity which have been refused/withdrawn it is stated that no planning history can be found for the dwelling which to the site to the south.

## 5.0 Policy Context

### 5.1. Development Plan – Kildare County Development Plan 2017-2023

5.1.1. The site is located within the open countryside.

#### Rural/Equine

5.1.2. Chapter 10 deals with rural development with Policy EQ3 seeking to ensure that equine based developments are located on suitable and viable landholdings and are subject to normal planning, siting and design considerations.

#### Architectural and Archaeological Heritage

5.1.3. The following structures/sites adjoin the site:

#### *National Monuments*

Deserted settlement - KD015-007001

Round Tower - KD015-007003

Graveyard - KD015-007004

Church – KD015-007005

#### *Protected Structures*

Round Tower – B15-01

5.1.4. Section 12.8 of the Plan addresses archaeological heritage with Table 12.1 outlining the zones of Archaeological potential – settlements - which includes Oughterard. The following policies are referenced in the report and decision of the Planning Authority

**Policy AH1** – *“Manage development in a manner that protects and conserves the archaeological heritage of the county, avoids adverse impacts on sites, monuments, features or objects of significant historical or archaeological interest and secures the preservation in-situ or by record of all sites and features of historical and archaeological interest. The Council will favour preservation in – situ in accordance with the recommendation of the Framework and Principles for the Protection of Archaeological Heritage (1999) or any superseding national policy”.*

**Policy AH2** – *“Have regard to the Record of Monuments and Places (RMP), the Urban Archaeological Survey and archaeological sites identified subsequent to the*



*publication of the RMP when assessing planning applications for development. No development shall be permitted in the vicinity of a recorded feature, where it detracts from the setting of the feature or which is injurious to its cultural or educational value”.*

#### Landscape Character (Chapter 14)

- 5.1.5. The site is within the Eastern Transition landscape character area which is characterised as a Class 2 Medium Sensitivity Landscape which provides that the area has capacity to accommodate a range of uses without significant adverse effects on the appearance or character of the landscape having regard to localised sensitivity factors.
- 5.1.6. The Oughterard Road (L2009) is a designated Scenic Route 10 (Table 14.5) which refers to views of the west plains on the Oughterard Road.
- 5.1.7. Policy SR 1 seeks to “*protect views from designated scenic routes by avoiding any development that could disrupt the vistas or disproportionately impact on the landscape character of the area, thereby affecting the scenic and amenity value of the views*”.
- 5.1.8. Objective LO 6 seeks to “*preserve and protect the character of those views and prospects obtainable from scenic routes identified in this Plan, listed in Table 14.5 and identified on Map 14.3*”

## **5.2. Natural Heritage Designations**

- 5.2.1. The subject site is not located within or adjacent to any designated European Site.

## **5.3. EIA Screening**

- 5.3.1. Having regard to the type of development which is not a class of development for the purposes of EIA and the limited nature and scale of the proposed development it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal include a number of appendices which are referenced as they arise, they are summarised as follows:

- Outlines the history of the case in relation to the commencement of correspondence (Warning Letter) from the Enforcement Section of KCC (10/03/2021) which related to five items – barn structure, timber panel fence along boundary, alterations to entrance, alterations and excavation of original site levels, and two containers (Appendix A).
- Response dated 03/04/21 provided (Appendix B) which outlined that the barn is exempt (Class 6 of Part 3), where fence exceeded the 2m maximum it would be reduced, original access has not been altered, if reduction in site levels considered development, an application would be made to retain same and the containers are temporary and proposed to be removed within 6 months.
- Reply from KCC dated 10/04/21 accepted barn met critical in Class 6 but questioned two of the limitation (3 & 6) in relation to effluent storage and distance to any house. Noted that the agricultural entrance was not mentioned and assumed accepted and alterations to ground levels were deemed development requiring permission (Appendix C).
- In response applicant responded to say permission would be sought for a dungstead and accepts barn is less than 100m from a house so permission for its retention is to be sought in addition to the alterations in site levels (appendix D).
- Applicant submitted 11/06/21 which was invalidated for a number of reasons (correspondence Appendix E) which includes reference to the wastewater treatment system in the neighbouring property not being shown which is of importance as have been led to believe in interim that the house has no permission.
- Applicant proceeded to construct barn on basis that house was further than 100m and interpreted Regulations to understand development was exempt nor could they have known the house did not have permission.

- A Section 5 referral may have been recommended on basis that an unauthorised development cannot be used as a basis to deny an exemption and are forced to request that the Board make such a determination within the jurisdiction of this Appeal.
- If the neighbouring house does not exist in the planning realm, then the barn is over 100m from a house and the barn would be exempt and open to the Board to grant permission to retain the structure to resolve the injustice
- Proposed development c.200m from the ruins of the Oughterard Church, given the distance and fact proposal is over the brow of Boston Hill and therefore not visible from the structure agent under impression Conservation Architect's Impact Assessment not required but as issue in refusal impact assessment submitted.
- Rob Goodbody report (Appendix G) which outlines the site, the monument noting the top of the tower is visible from the bottom of the appeal field and is summarised as follows:
  - Noted that the site of the deserted medieval settlement is unknown although known to be significant and in view of the uncertainty the zone of notification is large.
  - Application site is not within the zone, part of it is and only element of proposal within the zone was the polishing filter, which it is proposed to move, with none of works undertaken to date within the zone.
  - Constraint is a zone of 'notification' not an area that automatically triggers refusal with the correct approach to notify authorities and take their advice with the response ignored with basis of DAU submission, seeking further information, not addressed.
  - Given all parts of proposal are outside Zone, Policy AH1 does not apply.
  - Zone of Notification does not delineate extent of monument but considered to be sufficiently beyond likely site of the monument.
  - Potential for impact on setting is a matter of opinion and given hilltop location the setting of the monument is extensive and given modest size of the shed, the setting would not be impacted given planting along public road and

views to the monument. The brow in the field obscures all views of the proposal.

- Opinion as to where the deserted settlement may/may not have been located provided.
  - Heritage officers report copies text from the National Monuments website followed directly by a recommendation to refuse with no narrative to explain basis for the recommendation.
  - No indication that attempt was made by Planner to visit the site other than view from the road, or to examine same from the National Monument despite assertion that proposal would injure and interfere with same.
  - PA delegated responsibility for archaeology to the Heritage Officer, issued a flawed decision based on an inadequate appraisal of the site conditions.
  - Too late to fulfil requirements of the DAU as timescale for obtaining a licence for archaeological investigation and carrying out the works, could not have been undertaken within the 4 week appeal period.
  - Request Board grant permission subject to conditions amending the location of the wastewater polishing area and archaeological investigation.
- Reference by agent to zone of notification and proposal to amend the location of the wastewater treatment plant outside of the zone of notification as per drawing 20.14.001F submitted with the appeal.
  - Fresh trial holes at proposed location carried out with new site characterisation form appended to the appeal (Appendix L).
  - Revised Site specific suitability report specifying compliance with EPA Code of Practice 2009 attached as Appendix M.
  - Services of Aisling Collins Archaeologist retained by Applicant (letter Appendix N) stating that proposed polishing filter and 50mm wastewater pipe has been relocated outside the zone of archaeology. To avoid any possible disturbance the filter bed will be placed above existing ground level and wastewater pipe and dungstead will be located above existing ground level. Archaeologist available to carry out any archaeological requirements.

- While site is on the scenic route, the view as explained in para 10 of page 123 of the Development Plan states that extensive views of the Kildare plains are available from local road (L2009) with open and long distance vistas of the lowlands to the 'west'. The appeal site is east of the L2009 and on Boston Hill behind a hedgerow and trees so the developments subject of the appeal could not impact the view.

## 6.2. Planning Authority Response

The response can be summarised as follows

- Reviewed appeal and no further comments.
- Please revert to planner's report, internal section report and DAU response.
- Request that decision is upheld.

## 6.3. Observations

6.3.1. None on file.

## 7.0 Assessment

7.1. Having inspected the site and considered the contents of the first-party appeal in detail, the main planning issues in the assessment of the proposed development are as follows:

- Principle of Proposal
- Material Contravention
- Impact on Archaeological Heritage
- Wastewater Treatment
- Impact on Scenic View
- Development Contribution
- Appropriate Assessment.

## 7.2. Principle of Proposal

- 7.2.1. The grounds of appeal outline that the appellant considered the barn to be exempt under the provisions of Class 6. While the appellants agent seeks to request the Board to make a determination on whether the proposal may or may not be exempt on the basis of what appears to be unclear planning history on the adjoining dwelling, this is not a Section 5 referral and the Board are not required to provide a determination on such a matter within the course of an appeal. The appeal relates to the retention of the structure, and it is on this basis that this assessment is based. The proposal seeks to retain a barn structure and alterations to site levels and to provide a dungstead and wastewater treatment system. This is an agricultural use in an area of open countryside. The Planners report does make reference in the opening paragraph of the assessment to the principle of agricultural/equine development in rural areas generally being acceptable.
- 7.2.2. What appears to be central to the Planning Authority's consideration of the proposal is the planning history pertaining to the lands. As outlines in Section 4 of this report, between 2017 and 2019 six planning applications were made on the site for a single house all of which were refused. The Planners report states that whilst the use is generally acceptable in a rural area, there is a requirement to assess each application on its own merits whilst being cognisant of the planning status of the site, including all other applications on the landholding with the significant planning history on the site including numerous applications for one off housing. It is also stated that whilst the current application is for agricultural type development, that there are many similarities between the proposal and previous applications most notably the location of the site adjacent to the National monuments that must be protected.
- 7.2.3. It would appear that there is a concern within the Planning Authority that permitting any development on this site will somehow provide for an acceptance in principle of the development of a one-off house. I would suggest that rather than comparing previous applications and potential similarities that each application must be considered on its own merits. The potential impact on archaeology arises notwithstanding the nature of development, however, previous refusals for residential development or a perception that any approval of the site would facilitate such development is not, in my opinion, providing the applicant with an appropriate

consideration of their proposal. If the proposal is acceptable in principle, it is acceptable in principle.

- 7.2.4. In my opinion, the proposal to develop a barn structure serviced by treatment facilities is appropriate in a rural agricultural area.

### 7.3. **Material Contravention**

- 7.3.1. While I do not concur with the decision of the Planning Authority that the proposal comprises a material contravention of policies AH1 & AH2 of the current County Development Plan, the inclusion of the material contravention within the refusal reason requires that the Board is bounded by Section 37(2)(a) of the Act. The applicant's agent does not address this matter in their grounds of appeal as they may not have appreciated the significance of the inclusion of the word 'material' in respect of the implications it has for the Board.
- 7.3.2. Notwithstanding, I would also note at the outset that within the limited analysis provided in the Planners report regarding this particular matter, the assessment provided does not reference the contravention being material but states that "*it is not considered necessary to seek further information as it is considered that development would contravene the requirements of the planning authority as set out in the Kildare County Development Plan 2017-2023*". The inclusion of material contravention in the reason for refusal is not explained in this regard.
- 7.3.3. **However, while as I said I do not agree that the proposed development is a material contravention**, where the refusal reason references the material contravention, if minded to permit a development, the Board must address Section 37(2)(a)&(b) of the Planning and Development Act 2000, as amended and determine if any of the four 'tests' within same apply. Section 37(2)(a) states that:

Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

*(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the*

*Board may only grant permission in accordance with paragraph (a) where it considers that—*

*(i) the proposed development is of strategic or national importance,*

*(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*

*(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*

*(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*

7.3.4. I will address each in turn.

7.3.5. I do not consider that subsection (i) would apply, the proposed development is not of strategic or national importance.

7.3.6. In relation to subsection (ii), *there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned*. The reason for refusal refers to policies AH1 and AH2 which seek to

*“manage development in a manner that protects and conserves the archaeological heritage of the county, avoids adverse impacts on sites, monuments, features or objects of significant historical or archaeological interest and secures the preservation in-situ or by record of all sites and features of historical and archaeological interest. The Council will favour preservation in – situ in accordance with the recommendation of the Framework and Principals for the Protection of Archaeological Heritage (1999) or any superseding national policy” . **Policy AH1***

*And provide that “no development shall be permitted in the vicinity of a recorded feature, where it detracts from the setting of the feature or which is injurious to its cultural or educational value” . **Policy AH2***

As far as the proposed development is concerned the objectives are not clearly stated as the reason for refusal refers to the proposal being within the Zone of



Notification for the monuments and while notifying the DAU they did not carry out the wishes of same which would have facilitated the applicant proving or otherwise that the proposal would or would not impact on the archaeological heritage concerned. The Planning Authority have applied the policies without providing either the applicant or the prescribed body with the opportunity to confirm or otherwise whether it is actually appropriate that the policy should be applied. To take such a leap in the absence of the information considered appropriate to determine same provides that the objectives cannot be considered to be clearly stated as it applies to this proposal. I therefore consider that the objectives are not clearly stated, insofar as the proposed development is concerned and that this provision of Section 37(2)(b) would apply in this instance.

- 7.3.7. I do not consider that subsection (iii) would apply, that being permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government.
- 7.3.8. In relation to subsection (iv) that permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan, while the site has a very clear planning history this relates to the development of a one-off house which is subject to rural housing policy.
- 7.3.9. As I consider the proposal would comply with Section 37(2)(b)(ii) the Board, if they are minded to grant permission, have the ability to do so in respect of the material contravention.

#### **7.4. Impact on Archaeological Heritage**

- 7.4.1. There are a number of matters arising in respect of the potential impact of the development on the archaeological heritage of the national monument to the east of the subject site. While I have addressed the matter of the material contraventions above, there are a number of matters of note as it applies to the first reason for refusal. Of particular note is that the basis for the concern relates to the location of the application site within the Zone of Notification of a number of national

monuments including KD015-007001 deserted settlement and also within the Zones of Notification of Oughterard Church and Round Tower (KD015-007003, KD015-007005 and RPS B15-01). It then refers to the location of the site in close proximity and adjacent to the aforementioned National Monuments which it is considered leads to a material contravention of policies AH1 and AH2. It then concludes that by reason of its location on a prominent and elevated site within the zones of notification of National Monuments that the proposal would injure and interfere with a National Monument, would be contrary to policies AH1 and AH2 and would set an undesirable precedent for similar development of this nature and would therefore be contrary to the proper planning and development of the area.

7.4.2. However, not all of the site is within the zone of Notification as pointed out by Rob Goodbody in his very informative report. Also, as pointed out by Mr. Goodbody, the zone of notification is just that, the zone within which applications should be notified to the NMS. While the NMS was notified, the response was not engaged with by the Planning Authority who relied instead upon the Heritage Officers recommendation to refuse permission which does not provide any rationale or analysis for the recommendation proposed. The National Monuments Service through the DAU did not recommend permission be refused for the development. They state that the proposed development would involve ground disturbance close to RM KD015-007001 (settlement shrunken) which is subject to statutory protection. They then outline the further information that they required. This was not requested by the Planning Authority who preferred instead to refuse permission.

7.4.3. Furthermore, the further information request from the NMS would have required more time than the appeal period allows (4 weeks) so it would not have been possible for the applicant to get the necessary licence, undertake the testing and prepare a report. However, he has engaged an archaeologist to do same if necessary.

7.4.4. Finally, the only element of the proposal that was within the zone of notification has been removed for same and is now proposed in a location that is outside of the zone thereby reducing the potential for interference with subsurface archaeology. I consider that the policies referenced AH1 and AH2, elements of which were quited in the reason for refusal, are not contravened on the basis of the potential for interference has been significantly reduced by the relocation of the works proposed.

However, should the Board be minded to grant permission, given the matters arising and the failure of the Planning Authority to facilitate the testing considered necessary by the NMS, a condition requiring archaeological monitoring of the works required to facilitate the development should be attached notwithstanding the proposal to place the polishing filter above ground level.

## **7.5. Wastewater Treatment**

- 7.5.1. As outlined in the appeal documentation, it is proposed to amend the location of the proposed wastewater polishing filter which is proposed to for the welfare facilities (toilet) within the barn. The purpose of the amended location, as outlined above, is so that it is no longer located within the zone of notification for National Monuments.
- 7.5.2. The environment section of Kildare County Council had outlined a request for further information in relation to this matter and sought a site suitability report prepared by manufacturers/suppliers of the wastewater treatment system based on site visit and including site layout plan showing all WWT systems, streams, drains and wells.
- 7.5.3. I have reviewed the revised site characterisation form which indicates compliance with the EPA Code (2009) and the site specific wastewater treatment system details submitted. I consider that the matter has been satisfactorily addressed. If the Board are minded to grant permission, the first condition should require that the development is carried out as per the plans submitted to the Board on appeal.

## **7.6. Impact on Scenic View**

- 7.6.1. In their second reason for refusal the planning authority states that the application site is located on a noted Scenic Route, Oughterard Road (L2009) as identified in Table 14.5 of the Kildare County Development Plan 2017-2023. They then refer to Policy SR1 at Section 14.9 and Objective LO 6 at Section 14.10 respectively of the Plan, which seek to preserve scenic views by avoiding development that could disrupt such views or have a negative impact on the surrounding landscape. They then concludes that because the development is located on an elevated site on a listed Scenic Route that would have a negative impact on the surrounding landscape and would be contrary to the aforementioned policy and objective.

- 7.6.2. The Planners report provides no narrative for this refusal reason, stating instead that the works are significant in terms of the location of the site adjacent to the public road that is a designated scenic route. There is no analysis of what is the purpose of the designation and what the view entails and how a development on the eastern side of the road would impact views to the west of this route.
- 7.6.3. Furthermore, as outlined by the appellant, the scenic view (10) refers to views of the west plains on the Oughterard Road. The appellant refers to paragraph 10 of page 123 and to reference to the extensive views of the Kildare plains which are available from local road (L2009) with open and long distance vistas of the lowlands to the 'west'. As outlined by the appellant, the appeal site is east of the L2009 and on Boston Hill behind a hedgerow and trees so the developments subject of the appeal could not impact the view.
- 7.6.4. In conclusion there is no basis for this reason for refusal and if the Board are minded to refuse permission I would recommend it is not included.

## 7.7. Development Contribution

- 7.7.1. While the Kildare Development Contribution Scheme at Section 12(o) exempts equine relates development up to 600 sq.m, Section 12(q) provides that such exemptions cannot be applied if the development is subject to retention permission. Therefore, the proposal would be subject to a development contribution should the Board be minded to grant permission.

## 7.8. Appropriate Assessment

- 7.8.1. The site is not located within or directly adjacent to any Natura 2000 sites. The following site is the most proximate:

- Red Bog SAC – c. 9.4km

Red Bog SAC (site code 000397)

- 7.8.2. This site is of conservation interest for the following habitats:

- Transition mires and quaking bogs [7140]

- 7.8.3. Site specific Conservation Objectives have been published for the site. The conservation objective for this qualifying interest is to:

*‘To maintain the favourable conservation condition of Transition mires and quaking bogs in Red Bog, Kildare SAC’*

- 7.8.4. There is no direct link or connection between the appeal site and the above site which is 9.4km distant.
- 7.8.5. Taking into consideration the nature and scope of the proposed development, the distance from designated sites, the lack of a direct hydrological link between the appeal site and designated sites, the wastewater treatment system and dungsteds proposed to serve the barn, the details provided on the site characterisation form and the nature of existing residential and agricultural development in the immediate vicinity, I am of the opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site. I do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

- 8.1.1. I recommend that planning permission should be granted subject to the conditions outlined below.

## **9.0 Reasons and Considerations**

- 9.1. Having regard to the agricultural/equine use of the barn structure, the location of the development below the brow of the hill upon which the National Monuments are located, it is considered that, subject to compliance with the conditions set out below, the proposed development would not detract from the visual amenity of the area, would not affect the setting of the National Monuments and would not impact on the scenic route. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans

and particulars received by the Board with the appeal on 3<sup>rd</sup> September 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. The barn structure shall be used for agricultural purposes only.

**Reason:** In the interest of orderly development.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

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

4. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and

(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

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

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

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Una Crosse  
Senior Planning Inspector

January 2022