



An
Bord
Pleanála

Inspector's Report

ABP-311764-21

Development	House with garage and tertiary treatment and infiltration system.
Location	Daars North, Sallins, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	211193
Applicant(s)	Noel Sweeney
Type of Application	Permission
Planning Authority Decision	Refused
Type of Appeal	First Party
Appellant(s)	Noel Sweeney
Observer(s)	None
Date of Site Inspection	11 th January 2021
Inspector	Alaine Clarke

1.0 Site Location and Description

- 1.1. The site is located in Daars North, which is located c.2.7km south-east of Clane and c.3.2km north-east of Sallins in Co. Kildare. The site is located on the northern side of a local road which is west of the Sherlockstown Road in a rural part of Kildare. The general area is in use for agricultural purposes with a number of golf courses further afield (including Killeen, Millicent and the K-Club). There are a substantial number of one-off houses in the general vicinity of the site.
- 1.2. The site is stated as being 1.64Ha in area and is roughly rectangular in shape. It is relatively flat and surrounded on all sides with mature hedgerows and trees. There is an agricultural gate fronting onto the local road. The local road is narrow with limited opportunities for two cars to pass. There are deep water-filled drains running both sides of the local road. There is also a water-filled drain running along the western site boundary. A discharge pipe enters this drain from the site along the western boundary.
- 1.3. On the day of site inspection, ground conditions on site were wet underfoot, with the general area of the location of the proposed house water-logged. Some marsh grass was evident on this part of the site. The trial holes remain exposed and are completely water-logged to ground level.
- 1.4. There are two dwellings to the immediate south-east of the site. An open drain runs along the eastern boundary. Other dwellings are located to the northwest. There are scattered agricultural buildings in proximity and on the northern side of the local road.

2.0 Proposed Development

- 2.1. The proposed development comprises:
 - A dormer bungalow with an overall height of c.6.8m and a stated gross floor space of 189sq.m.
 - A mono-pitch garage with an overall height of c.3.5 and stated gross floor space of 81sq.m.
 - A tertiary treatment system and infiltration area.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 12th October 2021, Kildare County Council issued a Notification of Decision to REFUSE permission for two reasons as follows:

1. It is the policy of the Council as stated in the Kildare County Development Plan 2017-2023 (CDP), namely policy RH2, to manage the development of one-off housing in the county. In this regard the onus is on the Applicant to demonstrate that they comply with the rural housing policy of the County Development Plan. Having regard to the documentation submitted in relation to this planning application, the Applicant has not demonstrated compliance with category 2(i) of the 'local need' criteria as outlined in Table 4.3 of the County Development Plan. As a result, the proposed development would materially contravene policy RH2 and would therefore be contrary to the proper planning and sustainable development of the area.

2. Policy RH9 of the Planning Authority, as set out in the Kildare County Development Plan 2017-2023 is to ensure that, notwithstanding compliance with the local need criteria, Applicants comply with all other siting and design consideration, including the capacity of the area to absorb further development. In conjunction with the level of existing development in the vicinity and the extensive planning history on the site, it is considered that the proposed development would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities and would contribute to the increasing suburbanisation of the area. The development would therefore be contrary to Policy RH9(iv) and the proper planning and sustainable development of the area.

- 3.1.2. I note that reason for refusal No. 1 makes reference to material contravention of the county development plan, specifically policy RH2 which relates to compliance with local need criteria.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

The report of the Planning Officer notes the location of the site and sets out the planning decisions relating to the site and relevant national and development plan policy. The report notes, with respect to local need, that the assessment is under separate cover for the purposes of data protection. The report acknowledges the proliferation of one-off housing in the area; an area described as lacking in community infrastructure. The report states that the proposed dwelling is reflective of similar type development throughout Kildare, that the development should have no adverse impact on the scale and character of the existing dwelling and have no unacceptable effect on the amenities enjoyed by the occupants of adjacent buildings. The report notes that it is unclear whether the applicant proposes to connect to the public mains. Concluding the report, the planner recommends that permission should be refused for the reasons set out in greater detail at section 3.1 above.

3.2.2. The Board should note that the local need assessment referenced in the report of the Planning Officer has not been received by An Bord Pleanála. The Board should further note that matters relating to local need were requested from Kildare County Council. I am satisfied, however, that all relevant information relating to the applicant's case for local need has been submitted and is sufficient to make an informed decision.

3.2.3. Other Technical Reports

- Environment Section – no objection subject to conditions;
- Roads, Transportation & Public Safety Dept. – no objection subject to conditions including that existing land and roadside drainage should not be impaired and a culvert shall be provided along the existing road frontage;
- Naas Municipal District Office – no objection and advises to refer to Transportation Report;
- Water Services – Recommends 3 no. standard conditions including that the drain at roadside frontage shall be culverted only at the location of the entrance; drains shall otherwise be retained.

3.3. Prescribed Bodies

Irish Water – no objection subject to 2 no. standard conditions regarding connection agreement and capacity requirements.

3.4. Third Party Observations

None received.

4.0 Planning History

Appeal site:

- PL09.305596 (KCC Reg. Ref. 17/756): Following the quashing of the decision by order of the High Court under Appeal Ref. PL09.249234, the case was remitted back to the Board. Permission was subsequently refused (to applicants Aidan and Loretta Damer) for a dwelling and heliculture business for one reason relating to non-compliance with rural housing policy, including siting considerations and the capacity of the area to absorb further development.
- ABP Ref. 247167 (KCC Reg. Ref. 16/598): The Board decided to refuse permission in January 2017 following the Council's refusal of permission, for a house, snail farm and agricultural buildings for one reason relating to the pattern of development in the area and non-compliance with rural housing policy which would result in a precedent being set.
- ED/00621: Section 5 referral – concluded polytunnel, farm shed, netted area constituting a snail farm was development and was not exempted development.

5.0 Policy Context

5.1. National Policy Context

5.1.1. National Planning Framework

Section 5.3 of the NPF refers to 'Planning for the Future Growth and Development of Rural Areas' and includes, inter-alia, national policy objective 19.

- National Policy Objective 19 includes:

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

5.1.2. Sustainable Rural Housing Guidelines (2005)

- The Sustainable Rural Housing Guidelines issued by the Department of the Environment Heritage and Local Government are based on the presumption that people who are part of the rural community should be facilitated by the planning system in all rural areas. The site of the proposed development is in an area identified as an 'Area under Strong Urban Influence' as defined in the guidelines.
- Appendix 4 of the Guidelines refers to ribbon development and advises that planning authorities will, in some circumstances, need to form a view as to whether a proposal would contribute to or exacerbate ribbon development for example where 5 or more houses exist on any one side of a given 250 metres of road frontage.
- Wastewater treatment facilities in rural areas should be located, constructed and maintained to the highest standards to ensure minimal impacts on water quality and particularly groundwater quality.

5.1.3. EPA Code of Practice (CoP) on Wastewater Treatment and Disposal Systems serving Single Houses (updated March 2021)

- The 2021 CoP replaces an earlier version, published in 2009. The updated version applies to the proposed development.
- The most significant changes relate to:
 - Additional options in low permeability soils;
 - that Willow bed evapotranspiration systems;
 - De-sludging calculator.

5.2. Kildare County Development Plan 2017 – 2023

- 5.2.1. Map 4.4 in Volume 1 of the Plan indicates that Daars North is located in 'Rural Housing Policy Zone 1'.
- 5.2.2. An applicant must meet one of the following categories to be considered for a one-off dwelling:
- A) is a member of a farming family actively engaged in farming the family land (Category 1), or a member of the rural community (Category 2), and
- B) meets one of the local need criteria set out in Table 4.3(a) and (b) Schedule of Local Need.
- 5.2.3. Category 2 applicants in Zone 1 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 under the following criteria:
- (i) Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare as members of the rural community and who seek to build their home in the rural area on their family landholding and who currently live in the area. Where no land is available in the family ownership, a site within 5km of the original family home may be considered;
- (ii) Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare, as members of the rural community who have left the area but now wish to return to reside near to, or to care for immediate family members...;
- (iii) Persons who can satisfy the Planning Authority of their commitment to operate a full time business from their proposed home

- 5.2.4. Immediate family members are defined as mother, father, son, daughter, brother, sister or guardian.
- 5.2.5. Applications for rural one off dwellings will be considered, subject to the policies and objectives set out in the county development plan, where it is demonstrated that the development would not prejudice the environment and the rural character of the area. In this regard factors such as sensitivity of the receiving environment, the nature and extent of existing development and the extent of existing development on the original landholding will be considered.
- 5.2.6. The following policies are relevant:
- **RH2** Manage the development of one off housing in conjunction with the rural housing policy...and local need criteria... Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.
 - **RH3** Require applicants to demonstrate that they are seeking to build their own home in the rural area in Kildare for their own full time occupation. Applicants will be required to demonstrate that they do not own or have not been previously granted permissions for a one off rural dwelling in Kildare and have not sold this dwelling or site to an unrelated third party, save in exceptional circumstances.
 - **RH4** Restrict residential development on a landholding, where there is a history of development through the speculative sale or development of sites, notwithstanding the applicant's compliance with the local need criteria.
 - **RH9** notwithstanding compliance with local need criteria, applicants should comply with all other normal siting and design considerations including inter alia:
 - (iv) The capacity of the area to absorb further development. In particular the following factors will be examined: the extent of existing development in the area, the extent of ribbon development in the area, the degree of existing haphazard or piecemeal development in the area and the degree of development on a single original landholding.

(vi) The ability of a site in an unserviced area to accommodate an on-site waste water disposal system in accordance with the EPA Code of Practice for Wastewater Treatment Systems for single houses ...

- **RH12** Discourage ribbon development (defined as five or more houses alongside 250 metres of road frontage)...

5.2.7. Chapter 14 deals with landscape classification. The site is located in an area classified as 'Northern Lowlands', Class 1 Low Sensitivity, described as an area with the capacity to generally accommodate a wide range of uses without significant adverse effects on the appearance or character of the area.

5.2.8. Chapter 16 provides advice on Rural Design.

5.2.9. Chapter 17 details development management standards.

5.3. **Natural Heritage Designations**

The site is located proximate to the following designated sites:

- Ballynafagh Bog SAC and proposed Natural Heritage Area (site code 000391) is c.7.7km to the west;
- Mauds Bog SAC (site code 000395) is c.11km to the south-west;
- Red Bog SAC (site code 000397) is c.12km to the south-east
- Grand Canal proposed Natural Heritage Area (site code 002104) is c.2.6km to the south-east.

5.4. **EIA Screening**

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

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been submitted by the applicant. In summary, the following points are stated:

- The applicant and family have been residing in the townland of Daars North for approx. 50 years. He states he had his own house but had to surrender same; that presently he resides at the family home in the same townland, adjacent to the site and owned by his brother.
- The site has been lying derelict and overgrown; the development will be a major improvement;
- The planning history should have no bearing on this application;
- The family home in which the applicant is residing is to be sold and the applicant shall have nowhere to live.
- Seeks to have permission granted.

6.2. Planning Authority Response

A response to the first party appeal was received from the Council. The Council advise that it has reviewed the appeal and has no further comment to make and refers the Board to the Planning Officer's report and the various technical reports on file.

6.3. Observations

No observations received.

7.0 Assessment

- 7.1. Having examined the application details and all other documentation on file, including the appeal, and having inspected the site, and having regard to the

relevant local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Refusal Reason No. 1: Rural Housing Local Needs Policy
- Refusal Reason No. 2: Density of the Rural Area
- Site suitability for effluent treatment – New Issue
- Roads and Sightlines – New Issue
- House Design
- Appropriate Assessment.

7.2. Refusal Reason No. 1: Rural Housing Local Needs Policy

7.2.1. The first reason for refusal relates to the applicant's compliance with local needs policy. The applicant submits the following information to demonstrate compliance with policy RH2:

- that he and his family have resided in Daars North for approx. 50 years;
- that he had his own house but had to surrender same for financial reasons;
- that he presently resides in the family home adjacent to the site, owned by the applicant's brother, which he submits must be sold soon.

I note that the site adjoins the applicant's brother's residence where the applicant states he currently resides.

7.2.2. Turning to policy RH2 and Tables 4.3(a) and 4.3(b) of the county development plan, the applicant has indicated that he is applying for permission under local need category 2(i) i.e., persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare as members of the rural community and who seek to build their home in the rural area on their family landholding and who currently live in the area.

7.2.3. No supporting information is submitted with the application to indicate that the applicant is actively engaged in farming, I therefore consider the applicant does not fall for consideration under 'category 1' – a member of a farming family who is actively engaged in farming the family landholding. I concur with the applicant

therefore, that he falls to be considered under 'category of Applicant 2' – a member of the rural community who must also demonstrate compliance with any of the three criteria in Table 4.3(b).

- 7.2.4. I further concur with the applicant, based on documentation submitted with the application, that he is to be considered under criterion 2(i) of Table 4.3(b) i.e., persons who have grown up and spend substantial periods of their lives living in the rural area. I note that criteria 2(ii) and 2(iii) of Table 4.3(b) is not relevant as these relate to returning members of the rural community and those who wish to operate a rural business for which no supporting evidence has been submitted.
- 7.2.5. Among the documentation submitted with the application is a letter from the applicant's doctor stating that the applicant has lived in Daars, Sallins for the past 40 years. Although no map accompanies the letter confirming the various location of the applicant's residences over these 40 years, and acknowledging that there is a Daars North and Daars South townlands, I am satisfied that the applicant is one who could be considered to qualify for a house in this rural area. This qualification is, however, subject to the restrictions of Policy RH3 and Policy RH4.
- 7.2.6. As referenced above, policy RH3 requires applicants to demonstrate that they are seeking to build their own home in the rural area in Kildare for their own full-time occupation and to demonstrate that they do not own or have not been previously granted permissions for a one off rural dwelling in Kildare and have not sold this dwelling or site to an unrelated third party, save in exceptional circumstances.
- 7.2.7. The applicant has stated that he was previously granted permission for a dwelling in County Kildare, that he sold same and moved into the family home. From an inspection of Kildare County Council's planning register I note that planning reg. ref. 04/2351 granted permission to a Noel Sweeney for the demolition of a chalet and replacement with a two-storey house, which may relate to the current applicant. This site is located c.210m west of the current site. It is noted that the Planning Officer's report of 04/2351 notes that the applicant advised that he previously built a house on a site in Daars South (on a site given to him by his mother in 1986). He further states that he sold that house in 2001 to return to the family home to look after his mother.
- 7.2.8. I note the applicant's confirmation that he has been granted permission for a house in the rural area previously, which he states he had to 'surrender' to the bank. No

evidence to this effect is submitted to support this statement. Policy RH3 requires applicants to demonstrate that they do not own a rural dwelling or have not sold a rural dwelling for which they were previously granted permission to an unrelated third except in exceptional circumstances. The applicant has not submitted evidence to substantiate statements to demonstrate (i) that he does not own a rural dwelling and (ii) that he did not sell the house(s) which he was granted permission to a third party under exceptional circumstances. On the basis of lack of evidence to substantiate compliance with policy RH3, I conclude that the proposed development would be contrary to policy RH3 of the Kildare County Development Plan.

- 7.2.9. Policy RH4 seeks to restrict residential development on a landholding, where there is a history of development through the speculative sale or development of sites, notwithstanding the applicant's compliance with local need criteria. On the issue of landownership, I note the applicant states that the site is owned by the applicant's brother. Land registry details are attached to the planning file and indicate that the land was transferred to Francis Sweeney from Aidan Damer in 2021. I note that according to details on the previous planning applications pertaining to the site, that the site has been under various different ownerships over the past twenty years.
- 7.2.10. On the basis of the information on file and the planning history of the site I consider that there is a history of speculative development associated with the lands and conclude that the proposed development, notwithstanding the applicant's compliance with local need criteria under RH2, would therefore be contrary to policy RH4.
- 7.2.11. I note that the planning authority's reason for refusal states that the proposed development materially contravenes policy RH2 of the county development plan. This policy refers to the general approach to the application of the local rural housing policy and is not in my view, as concluded at section 7.2.5, accurately applied so as to justify the reference to policy RH2 in a reason for refusal of permission in this instance. The Board should not, therefore, consider itself constrained by Section 37(2) of the Planning and Development Act, 2000, as amended.

7.3. Refusal Reason: Density of the Rural Area

- 7.3.1. The second reason for refusal cited by the planning authority centres on density in the rural area and the capacity of the area to absorb further development and to increased suburbanisation of the area.
- 7.3.2. I note that Policy RH9(iv) requires that consideration must be given to the capacity of the area to absorb further development, factors to be examined include the extent of ribbon development in the area, the degree of existing piecemeal development in the area and the degree of development on a single original landholding.
- 7.3.3. With respect to ribbon development, I note the policy set out in the Rural Housing Guidelines 2005 and policy RH12 of the county development plan seeks to discourage ribbon development. The proposed house would be the 5th house in less than 250m of road frontage. Based on my assessment, I consider that the proposed development would contribute to ribbon development.
- 7.3.4. I note the issue of density was considered in detail in the assessment of the most recent appeal decision on this site, ref. ABP-305596-15. Having undertaken a site visit, I share the opinion of the Planning Inspector and the Board in their consideration of ABP-305596-15 that there is an excessive proliferation of one-off houses in the townland of Daars North and that the area in general is under pressure from urban generated dwelling, and to permit another dwelling would be to exacerbate this existing pattern of development.

7.4. Site Suitability for Effluent Treatment – New Issue

- 7.4.1. There are number of differences between this application and the previously decided applications on the site in respect of wastewater treatment. In the first instance, the location of the proposed houses and associated wastewater treatment system varies by up to c.120m, albeit on the same site/within the same field. Secondly, the previous applications sought permission for a septic tank and pumping system to a willow facility. While the Planning Authority previously raised concerns regarding the suitability of the willow facility, in particular a proposal to discharge overflow to a surface water drain, the Inspector considered that in the event of a grant of permission, a condition to install a surface water treatment could be installed avoiding any overflow from the wastewater facility entering the surface water system.

- 7.4.2. The current proposal seeks permission for a tertiary treatment system and an infiltration treatment area with discharge to groundwater, using a sand filter with base of gravel at 300mm above existing ground level. The site characterisation report notes that the percolation value tests were undertaken in the summer of 2021. The surface percolation test result is indicated to be 43.00 and the sub-surface percolation test result is indicated to be 53.00. The results indicate that the percolation values of the soil and subsoil are within the acceptable ranges for a domestic wastewater treatment system. The report concludes that a tertiary system is necessary and an additional precaution is taken by installing 500mm soil between the base of gravel (under) the sand filter and the water table.
- 7.4.3. As noted above, at the time of site inspection the trial holes remained open and were filled with water. There was significant surface water ponding on site at the location of the proposed house. The deep drain along the road frontage was water-filled, c.0.5m below ground level. The drain along the western boundary, while it contained water did not look to be as deep with water as that along the southern boundary. There is a pipe discharging direct from the site into the western drain, and it appears a recent development judging from exposed gravel at location of outfall. It appears the pipe traverses the site in an east-west direction noting the slight depression on the land.
- 7.4.4. Notwithstanding the results of the site suitability assessment, having regard to the saturation levels on site, surface water drainage and the level of water in the adjoining southern drain, I have concerns regarding the ability of the site to adequately accommodate a wastewater treatment system. I note the recommendation of the site characterisation report to install a tertiary treatment system and the reference to mottling at 600mm below ground level. Mottling of the soil layers can indicate either the depth of the water table in winter or impermeability within the soil and subsoil, while mottling above 500mm usually indicates a site is unsuitable for discharge to ground. Having inspected the site in winter I have reservations as to the site's suitability to adequately accommodate a wastewater treatment system notwithstanding the findings of mottling at 600mm below ground level.
- 7.4.5. In conclusion, based on the material submitted with the application and my site inspection, I consider that the application site is unsuitable for the safe disposal of

domestic effluent and, notwithstanding the mitigation measures – installation of a tertiary wastewater treatment system and an infiltration treatment area – included in the application, and having regard to the general density of housing in this unsewered rural area, the proposed development would create a serious risk of groundwater pollution.

7.5. Roads and Sightlines – New issue

- 7.5.1. The site is located along a narrow local road with deep drainage ditches either side. This section of the road is relatively straight. Sightlines of 70m to the east and west of the existing entrance were shown on a site layout plan submitted with the application. The report of the Planning Officer notes that the Roads, Transportation and Public Safety Department raised no objection subject to standard conditions. I note the Roads, Transportation and Public Safety Department require lines of sight at the entrance as provided in accordance with TII Document DN-GEO-03060. While details of the design speed of the road are not provided by the Roads, Transportation and Public Safety Department, the TII document requires sightlines of 70m where the design speed is 50 km/h, while sightlines of 150m are required for roads with a design speed of 80km/h. In the absence of clarity of the design speed of the public road I am unable to conclude that the proposed sightlines of 70m are acceptable in this instance. Should the Board be minded to grant permission, it may therefore wish to seek clarity on this point.

7.6. House Design

- 7.6.1. The proposed house design is a modest dormer bungalow. The houses in the immediate vicinity comprise a mixture of house types, including bungalows and dormer bungalows. I consider the house design to be generally in keeping with the character of the houses in the area and generally acceptable in terms of visual amenity.

7.7. Appropriate Assessment

- 7.7.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment and proximity to the nearest European site being Ballynafagh Bog SAC, c.7.7km to the west, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site. In reaching this determination, I note that there is no surface water connection between the site and Ballynafagh Bog SAC. I further note that the site is in a different groundwater body to Ballynafagh Bog.

8.0 Recommendation

I recommend that planning permission should be refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1. Having regard to the location of the site within an "Area Under Strong Urban Influence" as identified in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April, 2005 and in an area where housing is restricted to persons demonstrating compliance with Local Need Criteria in the Kildare County Development Plan 2017 – 2023, and where it must be demonstrated that the development would not prejudice the environment and the rural character of the area, and to the prevailing pattern and density of development in the area, it is considered that the applicant has not demonstrated compliance with Policies RH3 and RH4 which seek to restrict speculative development or Policy RH9 which seeks to ensure that development complies with all other normal siting and design considerations, including the capacity of the area to absorb further development. The proposed development would be contrary to the "Sustainable Rural Housing

Guidelines for Planning Authorities”, would contravene policies and RH3, RH4 and RH9 as set out in the Kildare County Development Plan 2017 – 2023 and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the poor soil conditions and water levels observed on and in the vicinity of the site, the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government 2005 which recommend, in un-sewered rural areas, avoiding sites where it is inherently difficult to provide and maintain wastewater treatment and disposal facilities, and to the density of development in the area, the Board is not satisfied, notwithstanding the proposal to use a tertiary wastewater treatment system and infiltration treatment area, that effluent from the development can be satisfactorily treated and disposed of on site and would not give rise to a risk of groundwater pollution. The proposed development would, therefore, be prejudicial to public health.

Alaine Clarke
Planning Inspector

27th January 2022