



An
Bord
Pleanála

Inspector's Report

ABP-312483-22

Development	Retention of house and permission for installation of a wastewater treatment system and ancillary site works
Location	Johnstown, Bennekerry, Co. Carlow
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	21414
Applicant	Tara Dooley
Type of Application	Retention Permission
Planning Authority Decision	Refuse Retention
Type of Appeal	First Party
Appellant	Tara Dooley
Observer	Audrey Dooley
Date of Site Inspection	1 st November 2022
Inspector	Una O'Neill

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	5
3.3. Prescribed Bodies	7
3.4. Third Party Observations	7
4.0 Planning History.....	7
5.0 Policy Context.....	7
5.1. National Policy	7
5.2. Carlow County Development Plan 2022-2028	7
5.3. Natural Heritage Designations	12
5.4. EIA Screening	13
6.0 The Appeal	13
6.1. Grounds of Appeal	13
6.2. Planning Authority Response	14
6.3. Observations	15
7.0 Assessment	15
7.1. Rural Housing Policy – New Issue	16
7.2. Road Safety	19
7.4. Wastewater Treatment and Water Supply	21
7.5. Appropriate Assessment Screening	22
8.0 Recommendation.....	22

9.0 Reasons and Considerations.....	23
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1.0 Site Location and Description

- 1.1. The subject site, which has a stated area of 0.135ha, is located in a rural area known as Bennekerry in County Carlow. Carlow Town is located c. 5km west of the site and Bennekerry village settlement is c. 1.9 west of the site. The site is accessed off the regional road R726, which has a speed limit of 80 km/hr.
- 1.2. The site was originally the side garden of an existing semi-detached dwelling (original family home, now occupied by the applicant's brother). The site comprises a 95 sqm bungalow dwelling constructed in a timber chalet style and is accessed off the eastern side of the R726 via an existing vehicular access which serves the neighbouring semi-detached bungalow. There is a detached dwelling to the northeast, beyond which is a large 110kV ESB substation site. To the west are two semi-detached dwellings (the subject site being the original side garden of the neighbouring semi-detached dwelling), and beyond that an additional detached dwelling. On the opposite side off the R726, to the northeast, are three detached dwellings with individual vehicular accesses off the R726.

2.0 Proposed Development

- 2.1. The proposed development comprises the retention of a constructed timber bungalow house and permission for installation of a wastewater treatment system.

3.0 Planning Authority Decision

3.1. Decision

Permission REFUSED for the following reasons:

1. The development would result in the intensification of an existing direct access to a restricted regional road where the National Road policy applies (R726) and where it is a policy of the Council *'to exercise control over new development requiring access to regional roads...'* (ref Trans – Policy 4). Furthermore, it is the policy of the Carlow County Development Plan 2015-2021 as outlined in Section 5.2.3 *to control access for development on restricted regional roads (which includes the R726) to the same categories as*

those for the National Roads. Official policy in relation to development involving access to national roads and development along such roads is set out in the DoECLG ‘Spatial Planning and National Roads – Guidelines for Planning Authorities (January 2012)’ Section 2.5 states that *‘the policy of the planning authority will be to avoid the creation of any additional access point of the planning authority access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 km/hr apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant’.* Accordingly, the development if permitted would be contrary to the policies of the Council as set out in Section 5.2.3 and 11.19.2 of the Carlow County Development Plan 2015-2021, would set an undesirable precedent to further such development, and would therefore be contrary to the proper planning and sustainable development of the area.

2. The design and external finishes of the dwelling to be retained are not vernacular to the area and do not comply with stated Section 2.7.3 Design Siting Requirements *which requires that development is compatible with the vernacular of the area* and 2.7.8 Infill Housing as contained within the Carlow County Development Plan 2015-2021 which states *proposals should be designed to integrate successfully with existing pattern of development in terms of housing type, scale and details such as materials, finishes, building lines etc.* The development is out of character with the pattern of development in the immediate area and would materially contravene the provision of Section 2.7.3 and 2.7.8 of the Carlow County Development Plan 2015-2021.

3.2. Planning Authority Reports

3.2.1. Planning Report

The application was lodged with the planning authority on the 1st November 2021 and an order to refuse permission for retention was issued on 16th December 2021.

The Planning Officer's report generally reflects the decision of the Planning Authority. The following is of note:

- The site is an infill site as defined by the Carlow County Development Plan 2015-2021. Infill housing is not required to comply with local need criteria for rural dwellings. However, information in support of local need has been submitted in accordance with Policy 2.7.1.7 Social/Community, Medical and Personal Circumstances of the Carlow County Development Plan 2015-2021.
- It is stated in the development plan that the R726 will have access for development restricted to the same categories as those for national roads.
- Contrary to Trans Policy 4; Section 5.2.2 of the development plan and Trans Policy 3; Policy 11.19.2 National and Regional Roads in Section 5.2.2, 5.2.3 and 11.19.2 of the development plan.
- Proposal fails to comply with Spatial Planning and National Road Guidelines, 2012
 - section 2.5 states it is policy to avoid creation of any additional access point or generation of increased traffic from existing accesses to national roads to which speed limits of greater than 60km/hr apply. This applies to all categories of development, including individual houses in rural areas.
- The design of the dwelling and external finishes is not vernacular to the area and not in accordance with policies 2.7.3 Design Siting Requirements and 2.7.8 Infill Housing.

3.2.2. Other Technical Reports

Action Senior Engineer Transportation – Report states the proposal forms part of a mature development where access arrangements to the public road are already in place and have not presented a problem for road users. There is no roads related reason to refuse this application and a grant of permission is recommended.

Senior Engineer Environment – Report assesses the proposed wastewater treatment system against EPA Code of Practice 2009. No objection raised, subject to thirteen conditions.

Senior Executive Engineer, Water Services – It does not appear a water connection through IW was sought or granted. FI recommended for applicant to provide a copy

of details of water connection agreement with IW for the development or receipt for connection. Caretakers do not recollect carrying out a connection to the premises.

Chief Fire Officer – Report of 8.11.21 raises no objection.

3.3. Prescribed Bodies

Irish Water: No objection subject to conditions in relation to connection agreement and compliance with IW standards and conditions.

TII: The Authority will rely on the PA to abide by official policy in relation to development on/affecting national roads as outlined in the DoECLG Spatial Planning and National Road Guidelines for Planning Authorities, 2012.

3.4. Third Party Observations

None.

4.0 Planning History

Reg ref UD 20/36: Enforcement notice issued in relation to existing bungalow on the site, subject of this application.

5.0 Policy Context

5.1. National Policy

- Project Ireland 2040 National Planning Framework (2018)
- Sustainable Rural Housing Guidelines for Planning Authorities (2005)

5.2. Carlow County Development Plan 2022-2028

- **Chapter 2: Core Strategy**
 - Table 2.1 Settlement Hierarchy and Table 2.7 Core Strategy Table.

- Bennekerry is identified as Tier 5 in the Settlement Hierarchy, 'Smaller Serviced Rural Villages' (<200 population).
- Carlow Town is identified as a 'Key Town'.
- Policy CSP.1 Deliver compact and sustainable growth in Carlow Town with at least 30% of new homes delivered within the existing built-up footprint including development of strategic brownfield sites.
- Policy CS.P2 Deliver compact and sustainable growth in Carlow Town with at least 30% of new homes delivered within the existing built-up footprint including development of strategic brownfield sites.
- Policy CSP.12 Promote Serviced Villages as an attractive housing option for rural areas of the county through the promotion of quality of life, placemaking, and sufficient local service and infrastructure provision.
- **Chapter 3: Housing**

- **Section 3.16 Single Housing in the Countryside**

A recognition of the need for housing for people to live and work in Carlow's countryside requires careful planning to:

- Ensure that demand, particularly in the most accessible areas around towns villages and rural settlements, can be managed to avoid ribbon and over-spill development;
- Support revitalised towns, villages, and rural settlements;
- Achieve sustainable compact growth targets; and,
- Protect the County's countryside assets, resources, and environmental qualities.

- **Section 3.16.1 Rural Area Types** – Zone 1 Rural Areas Under Influence (this applies to the application site).

- **Section 3.16.2 Rural Generated Housing Need: Rural Housing Policy Zone 1:**

Having regard to:

- the viability of smaller towns and rural settlements in County Carlow; and,

- the need to protect the County's key economic, environmental, natural resources and heritage assets, such as important landscapes, habitats and built heritage, water quality, and the public road network,
- the Council shall consider a single house in the countryside for the permanent occupation of an applicant in Rural Areas Under Urban Influence where compliance with the criteria listed for Category 1 or Category 2 can be demonstrated as detailed in Table 3.5. Please note that compliance with only one of the Categories must be demonstrated.

Category 1: Criteria for Functional Economic Requirement

Category 2: Criteria for Functional Social Requirement.

Tables 3.5: Criteria for Functional Social Requirement - The applicant shall demonstrate with relevant documentary proof that they have a functional social requirement to live in this rural area, and wish to build a home for their own use. This includes persons who can demonstrate that they are living or have lived full-time in the local rural area for a minimum of 5 consecutive years at any stage prior to the making of the planning application, including returning migrants seeking a permanent home in their local rural area. For the purposes of this policy, 'local rural area' is defined as a site within an 8km radius of where the applicant is living or has lived.

Where an application for a rural house is being made on the basis of Category 1 or Category 2, the applicant shall also demonstrate:

- (a) compliance with all normal siting and design considerations (Refer also to Policy RH P6); and,
- (b) that they do not own or have not been previously granted permission for a single house in the countryside in County Carlow and have not sold this house to an unrelated third party, save in exceptional circumstances.

- **Section 3.16.3 Rural Housing – Policies**

- Policy RH.P1 Manage the demand for single houses in the countryside of County Carlow in accordance with the Rural Housing Policy Zones shown on Map Ref. 3.2 and the corresponding criteria listed in Section

3.16.2. Documentary proof of compliance with the criteria listed must be submitted with a planning application.

- Policy RH.P4 Recognise that local exceptional circumstances may require a person to live in a particular location. This includes (i) exceptional health needs, where supported by relevant documentation from a registered medical practitioner, or (ii) exceptional personal needs such as the requirement to sell a rural house on foot of a court order (e.g. following a divorce or legal separation), where supported by relevant documentation from a registered legal practitioner.

- **Section 3.16.5 Siting and Design – Policies**

- Policy RH.P6 Ensure, in addition to the requirement to comply with the rural housing policy criteria, that applicants demonstrate compliance with all normal siting and design requirements...

- **Section 3.16.8 Ribbon Development**

- Policy RH.P10 Discourage ribbon development, and to assess whether a development proposal will exacerbate ribbon development, having regard to:
 - i. The type of rural area and circumstances of the applicant;
 - ii. The degree to which the proposal might be considered infill development; (see Policy RH P11)
 - iii. The degree to which existing ribbon development would coalesce as a result of the proposed development; and,
 - iv. Local circumstances, including the planning history of the area and development pressures.

- **Section 3.16.9 Infill (Gap) Sites - Policies**

- Policy RH.P11 Give consideration to single housing on infill (gap) sites in a continuous line of existing houses with road frontage, provided the character, scale, layout, design, building line etc. of the existing pattern of development along the road frontage is respected, and subject to compliance with normal siting and design requirements. To qualify as an

infill (gap) site it must be adjoined on either side by a fully built and occupied dwelling/residential property.

- **Chapter 5: Sustainable Travel and Transportation**

- To maintain their strategic function, it will be necessary to exercise control over new development requiring access to regional roads, where the posted speed limit exceeds 50km/hr, where there are higher traffic levels and where there is a high proportion of recorded road traffic accidents.
- Table 5.4 Strategic Regional Roads – R726 is identified in this table.
- Map 5.2 Restricted Regional Roads – R726 is identified on this map.
- Policy RR.P2: Exercise control over new developments outside of designated settlements requiring direct access to the regional road network which could compromise the capacity, safety and efficiency of these routes.
- Policy RR.P3: Protect strategic regional roads listed in Table 5.4, against development where the posted speed limit exceeds 50km/hr applies in order to protect the carrying capacity of such roads except in exceptional circumstances;
 - Where development is of strategic, local, regional or national importance, and where there is a significant gain to the county through employment creation, or other economic benefit.
 - Where applicants are building on a family farm / landholding and comply with the relevant criteria for rural generated housing need, the rural house design guidelines including appropriate siting and development management standards and cannot provide access onto a nearby county road. In this instance, applicants will only be permitted to maximise the potential of an existing entrance which meets current traffic safety standards. The onus will be on the applicant(s) to demonstrate that there are no other accesses or suitable sites within the landholding.
 - Where it is proposed to demolish an existing habitable dwelling and replace with a new dwelling, where there is an existing entrance onto the regional road.

- Where a genuine need for a granny flat unit to an existing authorised habitable dwelling is proven and is designed in accordance with the Development Management Standards (Chapter 16) of this Plan and where there is an existing entrance onto the regional road.
- **Chapter 13: Rural Design Guide**
- **Chapter 14: Rural Development**
 - Section 14.3 Town, Villages, and Rural Areas – Bennekerry is identified as a Smaller Serviced Village.
 - Policy TV.P1: Promote sustainable rural towns and villages as the key component of delivering viable rural communities. In this regard the Council will seek to support implementation of Our Rural Future and to:

....Accommodate within the rural villages the residential needs of rural dwellers not engaged in agriculture or other rural economic enterprise in accordance with the core strategy.
- **Chapter 16: Development Management Standards**
 - **Section 16.10.9 National and Regional Roads** - Chapter 5: Sustainable Travel and Transportation provides specific policies and objectives with regard to development on National and Regional Routes. Development management shall seek to channel traffic from new development onto existing public local roads and in this way use established access points to gain entry onto national roads and shall have regard to the Policy Document, Spatial Planning and National Roads, Guidelines for Planning Authorities, (January 2012) published by the DoECLG.

5.3. **Natural Heritage Designations**

The River Barrow and River Nore SAC (002162) is located c. 6km west of the application site (as the crow flies) and the Slaney River Valley SAC (000781) is located c. 5km east of the site (as the crow flies).

5.4. EIA Screening

The proposal is for retention of an existing dwelling, to be served by a proposed on-site wastewater treatment system. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and proximity to the nearest sensitive location, 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 first reason for refusal by the PA mis-quotes Trans Policy 4, as this policy relates to new accesses. The proposal is to use an existing access, which has been there for 80 years.
- The report from the Roads Senior Engineer confirms the safety and adequacy of the existing access point and has related its use to the function and capacity of the road. The applicant is willing to put in place a land registered right-of-way as recommended by the Roads Senior Engineer.
- The policy facilitates safe access, not a blanket prohibition as interpreted by the planner's report.
- A separate application was permitted by the council for a dwelling with access onto this road (ref 17-110). This decision to refuse permission is discriminatory.
- The applicant complies with criteria for building a one-off dwelling in the rural area.
- In relation to the second reason for refusal, the proposal is an infill dwelling which complies with Section 2.7.8 of the Carlow County Development Plan 2015-2021.

- The development is in compliance with Section 2.7.3 Design Siting Requirements of the Carlow County Development Plan 2015-2021. The 'vernacular' of the area is varied, with varied building lines. There is no existing pattern of development in terms of housing type, scale, and details such as materials, finishes, building lines etc. The external finishes of the subject dwelling may be altered as ABP may require. Appendix included of photos of buildings in the area.
- The planners report makes no reference to Housing Policy 1, which supports provision of housing in a range of locations to meet the needs of the county's population and every household should have available an affordable dwelling of good quality, suited to its needs, in a good environment.
- The applicant bought timber chalet from company called logcabins4less who said the chalet did not need planning permission as it wasn't a typical brick house, which the applicant believed. Since then the business has been dissolved and a lot of people have been left out of pocket and without their chalets. The applicant did not construct the house out of malice but was misled by the builder.
- Due consideration has not been given to the application. The planner only visited the site for 5-10 minutes and did not inspect all areas. Applicant feels she is being discriminated against as she hadn't applied for permission before erecting the house. It is noted that neighbours applied for permission and got a new direct access onto the R726. There is an existing access to this road from the site, which has been in use for almost 100 years.
- The applicant is of limited means and all money has been spent on this chalet for herself and her son.

6.2. Planning Authority Response

None.

6.3. Observations

One observation has been received from Audrey Dooley of Polleton, Carlow. The observation is summarised as follows:

- Policy RR.P3 of the draft development plan does facilitate access to regional roads in certain circumstances. The objective of the policy is to exercise control over the level of development on regional roads to ensure traffic safety and capacity can be maintained on these strategic roads.
- Require a balanced approach to facilitate certain cases while acknowledging the need to maintain traffic safety on these strategic routes and the need to ensure that the capacity of the roads are not unduly compromised.
- The assessment of physical road safety matters and their capacities is a technical one. The Roads Engineer in Carlow CC recommended a grant of permission.
- The second reason for refusal relates to vernacular of the area – ‘makey-up’ copy and paste reason. Applicant should have been asked by way of FI to address or an appropriate condition attached.
- Housing Policy 1 not fully considered in the assessment – facilitate housing in a range of locations and access to an affordable, suitable, dwelling of good quality in a good environment.
- Retention permission should be granted.

7.0 Assessment

Retention permission is sought for a single storey timber house, which has been constructed and is occupied, and permission is sought for an on-site wastewater treatment system. Having examined the application details and all other documentation on file, including the submission received in relation to the appeal, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Rural Housing Policy – New Issue

- Road Safety
- Design
- Wastewater Treatment System

The Carlow County Development Plan 2022-2028 came into effect on 4th July 2022. I note the Planning Authority's assessment of this application was undertaken under the previous Carlow County Development Plan 2015-2021, which was also still in place at the time of the appeal submission. I assess hereunder the application against the current operative development plan, Carlow County Development Plan 2022-2028.

7.1. Rural Housing Policy – New Issue

- 7.1.1. The Planning Authority (PA) considered the development to be an infill house and at the time of the assessment the PA noted in their report that the applicant did not have to comply with the rural housing policy given it was an infill development, as per the then development plan policy. The applicant submitted a form relating to rural housing and the submission from the applicant's agent goes through the development plan policy in relation to rural housing and concludes the applicant complies with policy in this regard, noting the proposal is for an infill house and the applicant does not have to comply with the rural housing policy.
- 7.1.2. Section 3.16.2 of the Carlow County Development Plan 2022-2028 states '... In order for an applicant to be considered eligible for a single house in the countryside of County Carlow, they must be able to demonstrate that they comply with all the criteria listed for one of the Rural Housing Policy Zones'. Policy RH.P1 states 'Manage the demand for single houses in the countryside of County Carlow in accordance with the Rural Housing Policy Zones shown on Map Ref. 3.2 and the corresponding criteria listed in Section 3.16.2. Documentary proof of compliance with the criteria listed must be submitted with a planning application'. Policy RH.P4 states that local exceptional circumstances may require a person to live in a particular location, specifically exceptional health needs or personal needs such as the requirement to sell a rural house on foot of a court order (e.g. following a divorce or legal separation). Section 3.16.8 addresses policy in relation to ribbon development and Section 3.16.9 addresses policy in relation to infill (gap) sites. There is no

explicit exception or exclusion for the requirement to comply with rural housing policies in the case of ribbon development or on infill sites, as was the case in the previous development plan. I consider Section 3.16 Single Housing in the Countryside, and associated policies and criteria in relation to rural housing zones, are applicable in this application. As the development plan has changed since the adoption of the new plan in relation to its rural housing policy, the Board may consider this a new issue and may wish to seek the views of the parties.

- 7.1.3. The appeal site is located in a rural area of County Carlow, which is classified in the development plan under Map 3.2 as being 'Rural Housing Policy Zone 1 – Rural Areas Under Urban Influence'. The nearest settlement of Bennekerry (1.9km to the west) is classified as a level 5 'Smaller Serviced Rural Village' in the settlement hierarchy for Carlow (see table 2.1). Carlow Town is located 5km to the west and is identified at the top of the settlement hierarchy as a 'Key Town'.
- 7.1.4. The operative development plan states 'the Council shall consider a single house in the countryside for the permanent occupation of an applicant in Rural Areas Under Urban Influence where compliance with the criteria listed for Category 1 or Category 2 can be demonstrated as detailed in Table 3.5', subject to consideration also of the viability of smaller towns and rural settlements, the need to sustain the social and economic well being of rural communities, and the need to protect the County's key economic, environmental, natural resources and heritage assets. Table 3.5 clarifies that under category 1 an applicant must have a functional economic requirement to live in the rural area or under category 2 have a functional social requirement to live in the rural area.
- 7.1.5. The applicant has applied for retention of a constructed rural dwelling. While the current development plan was not in force at the time of the appeal submission, it is evident from the information on file that the applicant's proposal would fall for consideration into the category of 'a functional social requirement to live in the area', ie category 2. I note the applicant states the dwelling is located in the side garden of the original family dwelling, which is now occupied by her brother and a letter of consent has been submitted from the applicant's brother stating no objection to her accessing the R726 via the existing access to his land/dwelling, with land folio registration details attached. It is stated in the submitted application form on file (which includes a section relating to rural dwellings), that the applicant is a retail

assistant in a supermarket in Tullow (9.9km from the dwelling subject of this retention application) and is also a voluntary career for her brother who lives next door. The applicant states that she has lived for five consecutive years in the rural area from 1971-1994 having returned to live in the area in 2017, due to the sale of her previous dwelling in Wexford following a marital separation agreement (a document from the applicant's solicitor in relation to the marital separation is included in the application). I note sufficient documentary evidence in relation to five consecutive years is not on file, as the applicant did not need to comply with the rural housing policy requirements under the previous development plan. Notwithstanding this, I will proceed with my assessment on the basis of consideration of the applicant's functional social requirement to live at this location based on the documentation before me.

- 7.1.6. National Policy Objective 19 in the National Planning Framework (NPF) states in relation to areas under urban influence, that it will be necessary for applicants to demonstrate 'a functional economic or social requirement for housing need' (National Policy Objective No. 19), stating that the provision of single housing in rural areas under urban influence is to be based on the core consideration of a demonstrable economic or social need to live in a rural area having regard to the viability of smaller towns and rural settlements. The Sustainable Rural Housing Guidelines 2005 further state that the housing requirements of persons with roots or links in rural areas are to be facilitated and that planning policies should be tailored to local circumstances.
- 7.1.7. While I would accept that the applicant has close family links to the area and has a housing need, I would have serious reservations as regards the validity of the applicant's functional social need to reside at this specific site. Given the close proximity of the subject site to Bennekerry village and Carlow Town, and as the applicant's main employment does not necessitate her residence in the rural area in question, I consider that the existing settlements in the immediate locality would be capable of satisfactorily addressing the applicant's residential needs. I refer the Board to Policy CSP.2 in relation to Carlow Town and CSP.12 which applies to Bennekerry village. I consider that this rural dwelling proposed for retention would exacerbate issues around the sustainable development of existing serviced urban areas, which would contravene policy CSP.2 and CSP.12, given this area is under significant development pressure due its proximity to existing urban centres and

settlements. The Board will note in relation to NPO 19 that it is a core consideration in rural areas under urban influence, that the provision of single housing in the countryside is based on demonstrable economic or social need to live in a rural area, as well as the requirement to have regard to the viability of smaller towns and rural settlements, with the latter point being, in my opinion, of particular import in this case. Having regard to the totality of the National Planning Framework, Sustainable Rural Housing Guidelines for Planning Authorities (2005), the relevant provisions of the operative Carlow County Development Plan 2022-2028, and the location of the site proximate to Bennekerry village and Carlow Town, I am not satisfied that the applicant has demonstrated adequate compliance with the policy objectives in relation to dwellings in rural areas under urban influence, having regard to the viability of smaller towns and rural settlements and Key Town of Carlow. The submission of additional documentary evidence would not alter my opinion in relation to this issue.

- 7.1.8. In relation to issue of ribbon and infill development, I note the following policies. Policy RH.P10 seeks to 'Discourage ribbon development, and to assess whether a development proposal will exacerbate ribbon development, having regard to... The type of rural area and circumstances of the applicant; The degree to which the proposal might be considered infill development; (see Policy RH P11)...'. The proposal results in a fifth dwelling positioned within a c. 113m length of road frontage. As stated under 3.16.8 of the development plan, 'The Sustainable Rural Housing Guidelines (2005) defines ribbon development in the countryside as five or more houses alongside 250 metres of road frontage'. The proposal results in a fifth dwelling positioned within a c. 113m length of road frontage. The constructed dwelling has therefore resulted in what is classified as ribbon development along this stretch of road. While I have had regard to the infill nature of the site, the proposal would in my opinion be contrary to policy RH.P10 to discourage ribbon development.

7.2. Road Safety

- 7.2.1. The second refusal reason from the PA relates to the intensification of an existing direct access to a restricted regional road, with reference to Trans Policy 4 of the previous development plan and the Spatial Planning and National Roads Guidelines for Planning Authorities DECLG (2012) also referenced.

- 7.2.2. The grounds of appeal notes Trans Policy 4 relates to new entrances, while the entrance in use is an existing entrance, which is stated to have been in existence for eighty years. The appellant notes that the Roads Engineer did not raise any safety concerns in relation to the entrance. The observer submission considers the draft development plan (which has since been adopted), specifically policy RR.P3, which facilitates access to regional roads in certain circumstances.
- 7.2.3. The R726 is a single carriageway regional road, designated in the development plan as a restricted regional road. The speed limit at this location is 80km/hr and there is a solid white line along the centre of the road to the front of the existing vehicular access to the appeal site. The Roads Engineer Report on the file states the road has a typical carrying capacity of c. 5780 vehicles a day.
- 7.2.4. Policy RR.P3 (referred to by the observer), states 'Protect strategic regional roads listed in Table 5.4, against development where the posted speed limit exceeds 50km/hr applies in order to protect the carrying capacity of such roads except in exceptional circumstances'; and one such circumstance listed is '...Where applicants are building on a family farm / landholding and comply with the relevant criteria for rural generated housing need, the rural house design guidelines including appropriate siting and development management standards and cannot provide access onto a nearby county road. In this instance, applicants will only be permitted to maximise the potential of an existing entrance which meets current traffic safety standards...'. I do not consider the application complies with the relevant criteria for rural generated housing need having regard to proximity of existing settlements and support of the viability of these settlements, therefore exceptional circumstances do not apply and the policy to protect regional roads is applicable.
- 7.2.5. The Road Engineers Report from the County Council states the proposal forms part of a mature development where access arrangements to the public road are already in place and have not presented a problem for road users, stating there is no roads related reason to refuse permission. It is noted by the applicant in the submitted documentation that during the construction of the nearby motorway overpass, the applicant provided land to Carlow County Council at its road frontage to allow for road widening and the installation of a footpath, and the existing post and rail timber fence at the roadside boundary was installed by Carlow County Council with planting of beech hedge by the Dooley family. I note that while the entrance has not caused

problems in the past and the council has undertaken works in the relatively recent past which affected the entrance, the Roads Engineer does not comment on whether the entrance meets current traffic safety standards with regard to sightlines.

Regardless of this point, the proposal will result in an intensification of use of an existing entrance and while policy RR.P3 allows maximisation of existing entrances in exceptional circumstances, the proposal is contrary to policy RR.P3 in that the applicant does not comply with the relevant criteria for rural generated housing need, therefore the carrying capacity of the road is required to be protected from additional traffic.

7.3. Design

- 7.3.1. The second reason for refusal as issued by the PA relates to the design and external finishes of the dwelling to be retained, which are considered to be not vernacular to the area and it is considered the dwelling does not integrate successfully with the existing pattern of development in terms of housing type, scale and details such as materials, finishes, building lines etc. and would therefore materially contravene the provisions of Section 2.7.3 and 2.7.8 of the Carlow County Development Plan 2015-2021.
- 7.3.2. The current development plan comprises a Rural Design Guide in chapter 13. While the existing dwelling could be described as not vernacular in terms of its finishes and I note some weathering issues, the rural dwellings in this area are of notably varied designs and scale. Given the location of the subject dwelling between houses and having regard to the surrounding landscape, in my opinion the dwelling is not an overly visible or obtrusive feature. Given the more substantive issue in this appeal relates to the rural housing policy and access onto a regional road, I do not consider a refusal reason in relation to the design and finishes is warranted.

7.4. Wastewater Treatment and Water Supply

- 7.4.1. The site is located in an area identified as having a locally important aquifer, with an extreme vulnerability rating. The bedrock type is identified as granite and other igneous intrusive rocks. Ground conditions were recorded as firm and dry. Trial holes were dug to 2.4m and no ground water was encountered. Soil conditions are indicated as sandy clay. The EPA Code of Practice (CoP) (2021) indicates that the

site falls with the R2(1) response category where an on-site system is acceptable subject to normal good practice. The T-test result was 19.56. As per the CoP, where the percolation value is 3–50, a septic tank and percolation area is acceptable, as is a secondary treatment system.

7.4.2. The information submitted in terms of the wastewater treatment system proposed does not highlight specific concerns and I note the PA is satisfied with regard to the information submitted. The proposal has not been raised as an issue as part of this appeal.

7.4.3. In terms of water supply, IW has identified that a water connection agreement is required. It is not clear if the applicant has already connected to the public water mains without permission as the application form states that connection is via the existing water mains. Either way, this is an issue which could be addressed by way of condition should the Board be minded to grant permission.

7.5. Appropriate Assessment Screening

7.5.1. The site is not located within any designated site. The site is not directly connected to any European Site and there are no direct hydrological connections from the site to any European site.

7.5.2. As the proposed development has no source-pathway-receptor to any European site, it does not have the potential to have an effect on any European site and there is no potential for it to have likely significant effects on any site in combination with any other plan or project. It is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any European site and that a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

8.1. It is recommended that retention permission for house and permission for installation of wastewater treatment system is REFUSED for the reasons and considerations set out hereunder.

9.0 Reasons and Considerations

1. The subject site is located in a rural area, which is identified by the Carlow County Development Plan 2022-2028, as being under urban influence and is identified in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005, as being in an Area Under Strong Urban Influence. Furthermore National Policy Objective 19 of the National Planning Framework (2018), outlines that in such areas it is policy to “facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area...having regard to the viability of smaller towns and rural settlements”. Rural Housing Policy Zone 1 of the Carlow County Development Plan 2022-2028 also outlines that in such areas, a single house in the countryside for the permanent occupation of an applicant is subject to compliance with a functional economic or social requirement, while having regard to the viability of smaller towns and rural settlements and the need to protect key assets. Having regard to the proximity of the site to Bennekerry village and Carlow Town and to the documentation submitted with the application and with the appeal, it is considered that the applicant has not demonstrated a functional social need, or economic need, to live at this specific location in this rural area in accordance with national policy. The proposed development, in the absence of any definable or demonstrable social need for the house at this specific location, would contribute to the encroachment of random rural development in the area, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The development would also exacerbate ribbon development, contrary to Policy RH.P10 of the Carlow County Development Plan 2022-2028. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Policy RR.P3 of the Carlow County Development Plan 2022-2028 states that it is policy to protect strategic regional roads listed in Table 5.4, against development where the posted speed limit exceeds 50km/hr applies in order

to protect the carrying capacity of such roads except in exceptional circumstances. The R726 is listed in the development plan as a strategic regional road and Map 5.3 lists the R726 as a restricted regional road. Having regard to the designation of the R726 in the development plan, to the rural housing policy applicable to the area, and to the high speed and traffic volumes along the R726, it is considered that the development would be contrary to the requirements of Policy RR.P3 of the Carlow County Development Plan 2022-2028 to protect strategic regional roads and would be contrary to the proper planning and sustainable development of the area.

Una O'Neill
Senior Planning Inspector

12th January 2023