



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312655-22

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<b>Development</b>	A 1.5 storey house, one storey detached garage, effluent treatment system & polishing filter.
<b>Location</b>	Moone, Athy, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	2111597
<b>Applicant(s)</b>	Jonathan & Jennifer Browne
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Jonathan & Jennifer Browne
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	29 <sup>th</sup> of November 2022.
<b>Inspector</b>	Karen Hamilton

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## 1.0 Site Location and Description

- 1.1. The subject site forms part of a large agricultural field located c. 825m to the north of Moone village, Co. Kildare. The site is located along the west of a local road which provides a connection between Moone village and the R717 which has direct access onto the M9. The boundary treatment along the local road consists of mature hedging. There are no rural dwellings directly adjacent to the subject site although from c. 90 to the north many rural dwellings are located along both sides of the road.

## 2.0 Proposed Development

- 2.1. The proposed development would comprise of:
- Permission for 1.5 storey house, one storey detached domestic garage, effluent treatment system & polishing filter, recessed entrance, and all associated works.

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to refuse permission for two reasons as stated below:

1. Policy RH9 (iv) in the Kildare County Development Plan 2017-2023 provides that notwithstanding compliance with local need criteria, applicants must comply with all other normal siting and design considerations for rural housing, including the capacity of the area to absorb further development. Policy RH10 and RH11 of the Plan seeks to control the level of piecemeal and haphazard development of rural areas close to villages and settlements, such as the village of Moone, where lands are zoned for residential purposes. Taken in conjunction with existing and permitted development in the area, it is considered that the cumulative impact of the proposed development would exacerbate a pattern of urban sprawl and ad hoc housing in the rural area and contribute to the gradual suburbanisation of the rural area and the steady erosion of its rural character. It is therefore considered that the proposed development would materially contravene Policy RH9, RH10 and Policy RH11

of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

2. Taken in conjunction with existing and permitted development in the area, the proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities. Policy RH4 seeks to “Restrict residential development on a landholding where there is a history of development through speculative sale or development of sites, notwithstanding the applicant’s compliance with the local need criteria. It is considered that the proposed development would contravene objective RH4 of the Kildare County Development Plan 2017-2023 and would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed. The proposed development, would, therefore be contrary to the proper planning and sustainable development of the area.

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

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

The report of the area planner reflects the decision to refuse permission and the issues raised are summarised as follows:

##### Rural Housing Policy

- From the information submitted it would appear the applicant may comply with the provisions of Category 2 (i) of Table 4.3 (b) of the development plan.
- From the personal information submitted, the applicant would appear to comply with the local need criteria.
- There are concerns in relation to compliance with RH4 where permissions have been granted to family members of the landholder.
- The applicant was previously refused permission under Reg Ref 211106, the proposal is similar.

- There are three separate permissions (family members) all of which are conditioned with a sterilisation agreement relating to lands surrounding the site.
- Policy RH4 restricts residential development on a landholding where there is a history of development through speculative sale or development of sites, notwithstanding compliance with local need.
- There are concerns with the overall development along this stretch of the road (Zone 2, Map 4.4).
- The proposed dwelling would be the 10<sup>th</sup> access and the 9<sup>th</sup> dwelling along this stretch of the road.
- The proposed development is located c. 20m outside the Village Plan boundary of Moone and would contravene polices RH10 and RH11 of the development plan.

#### Siting and Design

- The proposal is c. 19m from the edge of the road and is like the previously refused dwelling.
- The applicant was advised at pre planning that a landscape plan would need submitted which has not been submitted.
- Given the topography of the site, the lack of proposed landscaping and the visibility of the site along the road it is considered an alternative house design is required.

#### 3.2.2. Other Technical Reports

Environmental Health Service: No objection subject to conditions.

Environment Section: No objection subject to conditions.

Roads, Transportation and Public Safety Department: No objection subject to conditions.

Water Services: No objection subject to conditions.

### 3.3. Prescribed Bodies

Irish Water (IW): No objection subject to conditions.

### 3.4. Third Party Observations

None received.

## 4.0 Planning History

### Reg Ref 211106

Permission refused to Jonathan and Jennifer Browne for a 1.5 storey house and associated works for the same two reasons as the appeal application as listed below:

1. Policy RH9 (iv) in the Kildare County Development Plan 2017-2023 provides that notwithstanding compliance with local need criteria, applicants must comply with all other normal siting and design considerations for rural housing, including the capacity of the area to absorb further development. Policy RH10 and RH11 of the Plan seeks to control the level of piecemeal and haphazard development of rural areas close to villages and settlements, such as the village of Moone, where lands are zoned for residential purposes. Taken in conjunction with existing and permitted development in the area, it is considered that the proposed development would exacerbate a pattern of urban sprawl and random housing in the rural area and contribute to the gradual suburbanisation of the rural area and the steady erosion of its rural character. It is therefore considered that the proposed development would materially contravene Policy RH9, RH10 and Policy RH11 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.
2. Taken in conjunction with existing and permitted development in the area, the proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities. Policy RH4 seeks to "Restrict residential development on a landholding where there is a history of development through speculative sale

or development of sites, notwithstanding the applicant's compliance with the local need criteria. It is considered that the proposed development would contravene objective RH4 of the Kildare County Development Plan 2017-2023 and would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed. The proposed development, would, therefore be contrary to the proper planning and sustainable development of the area.

#### Lands in the vicinity

##### **Reg Ref 02/726**

Permission granted to Michael and Catherine Hennessy for a bungalow and all other associated works.

##### **Reg Ref 01/617**

Permission granted to Thomas Hennessy for a dormer dwelling and all other associated works.

##### **Reg Ref 01/616**

Permission granted to Michael and Catherine Hennessy for a bungalow and all other associated works.

##### **Reg Ref 00/2208**

Permission granted to Nora Hennessy for the construction of a dormer house and associated works.

## **5.0 Policy Context**

### **5.1. Project Ireland 2040, National Planning Framework (NPF)**

**NPO19** seeks to

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

- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic



or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements’

## 5.2. Sustainable Rural Housing Guidelines for Planning Authorities (2005)

- A distinction to be made between ‘Urban Generated’ and ‘Rural Generated’ housing need.
- Appendix 3 sets out that in areas under strong urban influence, urban generated development should be directed to areas zoned for new housing development in cities, towns and villages in the area of the Development Plan.

## 5.3. Kildare County Development Plan 2017-2023

### Rural Housing Need

The site is located on lands zoned for Rural Housing Policy Zone 2.

A member of the rural community 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 and meet one of the local need criteria set out in Table 4.3 (a) and (b) Schedule of Local Need.

### Siting and Design

**Policy RH 9:** Ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations (Refer to Chapter 16 for further guidance) including the following:

- (i) The location and design of a new dwelling shall take account of and integrate appropriately with its physical surroundings and the natural and cultural heritage of the area and respect the character of the area. Development shall have regard to Chapter 16 Rural Design Guidelines (and any subsequent changes to these guidelines) and Chapter 17 Development Management Standards.

- (ii) Appropriate landscaping of proposed development using predominantly native species as per Table 17.2 of this Plan.
- (iii) The protection of features that contribute to local attractiveness including; landscape features, hedgerows, trees, historic and archaeological landscapes, water bodies, ridges, skylines, topographical features, geological features and important views and prospects.
- (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.

**Policy RH 10:** Control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements having regard to potential impacts on:

- (i) The orderly and efficient development of newly developing areas on the edges of towns and villages;
- (ii) The future provision of infrastructure such as roads and electricity lines; and
- (iii) The potential to undermine the viability of urban public transport due to low density development.

The site is located c. 820m to the north of the village of Moone (Section 2.5.11 of Volume 2 provides guidance on Moone)

**Policy RH11:** Preserve and protect the open character of transitional lands outside of settlements in order to prevent linear sprawl near towns, villages and settlements and to maintain a clear demarcation and distinction between urban areas and the countryside. This will not apply to persons building on family land where another family site is not available to them

**Volume 2:** Village Plans and Settlements

## 5.4. Natural Heritage Designations

The site is located:

- 2.5km to the southwest of the Ballycore Rath pNHA (code 001751),
- c. 10 km north of the River Barrow and River Nore SAC (002162), and
- c.9km east of Slaney River Valley SAC (000781).

## 5.5. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any 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 grounds of appeal are submitted by the applicant in relation to the PA reason or refusal as summarised below:

#### 6.1.1. Planning History

- The main reason for refusal for Reg Ref 21/110 and Reg Ref 21/1597 was to prevent overdevelopment of this rural area.
- The road frontage and lands which are beside the subject site are sterilised (Reg Ref 02/726).
- Since 2019 only 9 planning applications have been granted in the Moone area none of these are beside the proposed site (list of permissions included).

#### 6.1.2. Site Availability/ rural need

- A letter from the local estate agent confirms no other sites for sale in the local Moone area.
- We need to live close to our parents.

#### 6.1.3. Policy RH4 of the Development Plan (speculative development)

- This is the only site for sale from the original landholding and therefore it cannot be a speculative development as the lands will be sterilised and limited in the future.
- It is proposed to serve the site with a well and septic tank and no infrastructure will be provided.

#### 6.1.4. Additional documentation

- Letter to the PA referring to the local needs of the applicant.
- Copy of refusal reasons.
- Copy of previous refusal reasons (Reg Ref 21/1597).
- Copy of Preplanning Report.
- Letter of consent from the owner of the site.
- Map illustrating the previous permissions on the site and the associated areas for sterilisation.
- Letter from auctioneers stating that this is the only site available for sale in the immediate area.

### 6.2. **Applicant Response**

The applicant is the appellant.

### 6.3. **Planning Authority Response**

No further comments received from PA in relation to the grounds of appeal.

### 6.4. **Observations**

No observations were received.

## 7.0 Assessment

The main issues of the appeal can be dealt with under the following headings:

- Principle of Rural Housing Need
- Appropriate Assessment.

### 7.1. Principle of Rural Housing Need

#### Introduction

- 7.1.1. The site is located within the rural area of County Kildare, c. 820m to the northeast of the village of Moone and c. 3km to access the M9 (Junction 3). The proposed development is for a rural dwelling. The applicants are not currently the landowners although have a written agreement from the owner who has an address in Co. Louth. This proposal is the second application for a similar development. The previous application was refused by the PA (Reg Ref 211106) for the same reasons.

#### Local Needs criteria

- 7.1.2. The site is located on lands zoned for Rural Housing Policy Zone 2. The local needs criteria in the Kildare County Development Plan 2017-2023 allows a member of the rural community to live in the rural area where they can 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 and meet one of the local need criteria set out in Table 4.3 (a) and (b) Schedule of Local Need.
- 7.1.3. The applicant has applied to live in the countryside based on their current residence in the family home alongside aging parents and an uncle. The applicant states they have social links to Moone. The applicants current address is Peelhall, outside the village of Ballitore, c. 3km to the north of the site. Both applicants currently work within Newbridge and the supporting information refers to the need to provide support for parents. The PA report notes the applicant's supporting documentation as the following:
- Birth certificate,
  - Primary school and Secondary School letters,

- Address records for 2014 and 2021,
- Residence within 4km of parents dwelling.

7.1.4. The PA are satisfied the applicant can meet with the local needs criteria. I note both the applicant's supporting documentation and the PA report relating to the applicants' local needs criteria.

7.1.5. The applicant's requirement to live at this location appears to be based on the need for the applicant to support ageing parents and other elderly relatives. I note the applicants current address is very close to the village of Ballitore, a village which provides a wide range of housing options and supporting community services. I am concerned the justification for locating a dwelling on the subject site, with a rural area, does not fall within the local needs criteria as immediate family ties, notwithstanding the reference in Table 4.3 (b) of the Kildare County Development Plan 2017-2023. In this regard, I note the onus on the applicant to provide details of the family landholding and other lands within the family ownership. This aside, the Board will note the substantive reason for refusal below, based on a contravention of the development plan, which I consider reasonable to address the impact of additional rural housing at this location.

#### Planning History and Speculative development

7.1.6. The subject site forms part of a large agricultural field which appears to be linked to an existing farmhouse and yard. The documentation submitted indicates that the site forms part of the Hennessey family farm holding. There is a history of planning permissions for one-off rural dwellings for members of the Hennessy family on this land holding and along the same stretch of road which the subject site is located.

7.1.7. The application is accompanied by a letter of permission from the owner of the site, Con Hennessy, permitting the applicant to enter into pre-planning consultation and a subsequent application and thereafter reside in any permitted house. It is stated that this site is the only inheritance left to himself, the landowner.

7.1.8. Policy RH4 of the Kildare County Development Plan 2017-2023 seeks to "*Restrict residential development on a landholding where there is a history of development through speculative sale or development of sites, notwithstanding the applicant's compliance with the local need criteria*". The PA reason for refusal notes this policy

and considered that notwithstanding the applicant's local needs status Policy RH4 of this plan restricts residential development on a landholding where there is a history of development through speculative sale or development of sites.

- 7.1.9. The grounds of appeal note that no further sites are for sale on this landholding and therefore the proposed development cannot be described as speculative development. In addition, it is noted that lands around the site will be sterilised and therefore limited for future development.
- 7.1.10. The grounds of appeal were accompanied by a map illustrating the location of the pervious grants of permission on the site and overall land holding and illustrates those areas to be sterilised as part of those applications. In relation to the sterilisation of lands, I note these agreements are historically linked to the regulation of lands for an agreed period of time, usually 7-10 years.
- 7.1.11. The submitted map does not illustrate the subject site although it appears to be located on lands sterilised and associated with Site No 3 (permission for Thomas Hennessey Reg Ref 01/617). This aside, no details have been submitted with the grounds of appeal or within the application documentation clearly indicating the intention or otherwise for the development of site previously granted within the overall landholding. Therefore, it is reasonable to assume that having regard to the planning history on the site, there are pressures on the site and surrounding area for development and having regard to the applicants' personal circumstances (i.e., employment and family dwelling location) it is my opinion that the proposal may be defined as speculative. In this regard, I consider the proposal should be refused as a contravention of Policy RH 4 of the development plan.

Location close to Moone and within the countryside

- 7.1.12. The PA first reason for refusal refers to the location of the subject site close to villages and settlements and the siting and design criteria of the development. The reason for refusal refers to both Policy RH 9, RH 10 and Policy 11 of the development plan as detailed below.
- 7.1.13. **Policy RH 9:** Ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations (Refer to Chapter 16 for further guidance) including the following.....(criteria to determine the ability of the site to absorb additional development).

- 7.1.14. **Policy RH 10:** Control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements having regard to potential impacts on:
- (i) The orderly and efficient development of newly developing areas on the edges of towns and villages;
  - (ii) The future provision of infrastructure such as roads and electricity lines;
  - (iii) The potential to undermine the viability of urban public transport due to low density development.
- 7.1.15. **Policy RH11:** Preserve and protect the open character of transitional lands outside of settlements in order to prevent linear sprawl near towns, villages and settlements and to maintain a clear demarcation and distinction between urban areas and the countryside. This will not apply to persons building on family land where another family site is not available to them.
- 7.1.16. The grounds of appeal are accompanied by a letter from an estate agent to confirm the absence of any site for sale within the Moone area. In addition, the applicant refers to their need to live at this location, close to their family.
- 7.1.17. The site is located c. 2km from the built-up area of Moone and c. 3km from the built-up area of Ballitore. National, regional, and local planning policy aims to direct development into settlements which is necessary to ensure the protection of the rural countryside as a natural resource. Rural dwellings are permitted in instances where the applicant can clearly indicate compliance with local needs criteria. As stated above, I have concerns in relation to the applicant's need to live at this location. In this regard, I have considered the applicant's family dwelling and the availability of housing in the settlements in the vicinity.
- 7.1.18. The siting and design criteria in the development plan (Policy RH9, RH 10 and RH 11) supports the development of rural settlements and the need to prevent any urban sprawl in the vicinity. I note the surrounding area has already been placed under significant pressure with many one-off rural dwellings c. 100m to the north of the site. The further grant of permission and continuation of this rural housing on the subject site and wider landholding would further exacerbate this sprawl and be contrary to policy RH 9, RH 10 and RH 11.



## Conclusion

- 7.1.19. Having regard to the location of the site in the countryside on a field currently used for agriculture and within the vicinity of two rural villages, Ballitore and Moone, and notwithstanding the applicant's personal circumstances, it is considered the PROPOSED development is not acceptable at this location. In this regard I consider the policies and objectives of the development plan in relation to rural settlement strategy which directs growth into designated settlements are particularly relevant.
- 7.1.20. The implementation of these policies and objectives from the development plan is necessary to ensure the sustainable growth of rural villages and settlements, the delivery of community services and infrastructure and the preservation of the rural environment as an important natural resource. To permit this proposed development would lead to additional pressure in an area already under significant overdevelopment and exacerbate a pattern of urban sprawl which radiates from the village of Moone. Therefore, I consider the proposal should be refused having regard to Policy RH 4, RH 9, RH 10 and RH 11 of the development plan.

## **7.2. Appropriate Assessment**

- 7.2.1. The closest European Site, the Slaney River Valley SAC (000781) is located c. 9km to the east of the site. No Appropriate Assessment Screening was submitted with the application although the PA undertook a screening assessment and concluded no significant effects on any European Site.
- 7.2.2. Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, no Appropriate Assessment issues arise and it is not considered that the 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. It is recommended the proposed development is REFUSED for the following reasons and considerations.

## 9.0 Reasons and Considerations

1. Policy RH4 of the Kildare County Development Plan 2017-2023 seeks to “Restrict residential development on a landholding where there is a history of development through speculative sale or development of sites, notwithstanding the applicant’s compliance with the local need criteria”. The subject site is located on an agricultural landholding which has a planning history for planning permissions for relatives of the landowner. Notwithstanding a letter of consent from the landowner of the site, it is considered that there has been a history of excessive development along this stretch of the road which taken in conjunction with the existing development of the area would give rise to excessive density. It is considered that the proposed development would contravene objective RH4 of the Kildare County Development Plan 2017-2023 and would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed. The proposed development, would, therefore be contrary to the proper planning and sustainable development of the area.
2. Policy RH9 (iv) in the Kildare County Development Plan 2017-2023 provides that notwithstanding compliance with local need criteria, applicants must comply with all other normal siting and design considerations for rural housing, including the capacity of the area to absorb further development. Policy RH10 and RH11 of this Plan seeks to control the level of piecemeal and haphazard development of rural areas close to villages and settlements, such as the village of Moone, where lands are zoned for residential purposes. Taken in conjunction with existing and permitted development in the area, it is considered that the cumulative impact of the proposed development would exacerbate a pattern of urban sprawl and ad hoc housing in the rural area and contribute to the gradual suburbanisation of the rural area and the steady erosion of its rural character. It is therefore considered that the proposed development would materially contravene Policy RH9, RH10 and Policy RH11 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

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Karen Hamilton

Senior Planning Inspector

07<sup>th</sup> of December 2022