



An
Bord
Pleanála

Inspector's Report

ABP-313458-22

Development	Retention of existing dwelling; and permission for external changes, conversion of a porch to habitable space, garage/fuel store for domestic use, septic tank and treatment system, and associated site works
Location	Mucklon, Enfield, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	22171
Applicant(s)	Bridget Danagher
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Bridget Danagher
Observer(s)	Stephen O'Reilly (and others) Noel and Bridget Ryan
Date of Site Inspection	18 th January 2023
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The appeal site has an address at Mucklon, Enfield, Co. Kildare, A83 E368. It is approximately 6km south of the Enfield and 15km west of Maynooth.
- 1.2. The property accommodates an existing single storey dwelling, tarmac driveway, a garden (at the back of the house) and grassy areas further to the front and rear of the site. The property is situated at the end of a narrow and partially surfaced laneway which leads to an agricultural field.
- 1.3. The laneway also provides access to two existing detached dwellings, on its northern side, which are situated to the rear of a house facing directly onto a main road. The house directly west of the appeal site is at A83 V304.
- 1.4. The site is on elevated ground and there is a slight rise in ground level as one moves from west to east. Its boundaries are defined by a combination of timber fencing and low-lying hedges. The north, east and south boundaries adjoin farming land and open grassland. There are no apparent drainage ditches or surface water features on the site.
- 1.5. The character of the surrounding area is rural with sporadic one-off housing, most of which comprises single dwellings on spacious plots of lands. This pattern of development is mainly linear and most dwellings face directly onto the public road. In more recent years, dwellings have been constructed on backland sites to the rear of other existing residential properties.
- 1.6. The site has a stated area of roughly 0.4ha.

2.0 Proposed Development

- 2.1. The proposed development is for the retention of an existing dwelling; and permission for external dwelling modifications, conversion of a porch area to habitable space, a garage/fuel store for domestic use, installation of a septic tank and treatment system and associated site works.
- 2.2. Access is proposed from the existing laneway, which serves an adjoining agricultural field to the east and the two dwellings situated to the west.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority refused permission on 4th April 2022 for 2 no. reasons: -

- The proposed development would contravene Policy RH9 of the Kildare County Development Plan 2017-2023 which is to control piecemeal and haphazard development. The proposal would contravene this policy for this reason, and when taken in conjunction with the existing development in the vicinity of the site, would consolidate and contribute to the build-up of ad-hoc development in an open rural area, would militate against the preservation of the rural environment, lead to demands for further public services and community facilities and set an undesirable precedent for further residential development in the vicinity.
- The proposed development constitutes haphazard backland development as it situated to the rear of dwellings positioned along a public roadway and accessed from a laneway that is substandard in width and surface specifications. This is considered contrary to Policy RH14 of the Kildare County Development Plan 2017-2023 where only family members can be considered for backland development in rural areas.

3.2. Planning Authority Reports

3.2.1. Planning Report

- The Applicant would appear to satisfy the requirement for Local Need as per the provisions of Rural Housing Policy and Table 3.4(b) of the Kildare County Development Plan 2017-2023, which is in relation to schedule of need. The previous applications on the site for a dwelling also considered that the Applicant complied with this policy.
- Section 4.12.3 and Policies RH2, RH9 and RH14 of the Development Plan which are in relation to Rural Housing and the capacity of the area to absorb further development and control of haphazard development. Policy RH9

states that notwithstanding compliance with local need criteria Applicants are required to comply with further criteria relating to siting and design.

- There are five previous refusals on the site for a house. The reasons for refusal were that it was considered the proposed development would contravene Policies RH9 (to control piecemeal and haphazard development), RH14 (only family members can be considered for backland development in rural areas) and RH5 of the previous County Development Plan (2011-2017) (siting and design considerations).
- The area has experienced excessively high levels of one-off housing over a 15-20 year period. This has been outlined in numerous previous refusal decisions by the Planning Authority and An Bord Pleanála. There are 21 no. dwellings within a 400m stretch of rural road in Mucklon. Development pressure has overflowed onto the side lanes which provides access to agricultural fields and the proposal represents a haphazard and progression of further piecemeal development.
- The site is considered backland as the public roadway is to the west of the site with one dwelling addressing it. The laneway runs perpendicular off it. The Applicant owns the site and is not a family member to the houseowner fronting the public road, or the other two houses on the laneway. The site is elevated and there may be negatives impacts in terms of existing wells and associated percolation area.

3.2.2. Other Technical Reports

Roads and Transportation: No objection, subject to standard conditions.

Environment Health Officer: Requested further information, noting that the Site Characterisation Form submitted with the application is in excess of 5 years. Furthermore, Sections 3.2 and 3.3 of the form indicate that trial holes tests and percolation tests were carried out during August 2016. It was, therefore, recommended that a new report be submitted as further information.

Environment (Inspection Report): Requested further information. The site is within the Outer Protection Zone of a Source Protection Area which results in a

Groundwater Protection Response of R2³. The Applicant should comment on the implications for the Septic Tank and Percolation Area design

Water Services: No objection, subject to standard conditions.

3.3. Prescribed Bodies

Irish Water: No objection subject to conditions.

3.4. Third Party Observations

The Planning Authority received one third party observation. The main issues raised are as follows:

- The previous An Bord Pleanála (ABP) Decision to refuse permission for a dwelling on the site were for reasons relating to backland development and public health – these also apply to the current proposal.
- Unauthorised development has taken place on the site. There is an ongoing court case in relation to this matter.
- This form of background development significantly affects the rural residential amenity in the area
- The proposal would set an undesirable precedent for the area.
- The elevated siting and scale of the proposed development would result in inappropriate overlooking of the adjacent property.

4.0 Planning History

Subject Site

Reg. Ref. 21/198: The Planning Authority **refused** permission in April 2021 for the removal of a log cabin on the site and construction of a dwelling (3-bedroom bungalow), garage/fuel store for domestic use, septic tank and treatment system and associated site works.

ABP Ref. 302198-19 (Reg. Ref. 18/547): The Board **refused** permission in January 2019 for the construction of four-bedroom bungalow, garage/fuel store for domestic

use, septic tank and treatment system and associated site works. The reasons for refusal are as similar to those referenced in the Planning Authority's most recent decision to refuse permission and reference Policies RH9 and RH14, which are in relation to piecemeal and haphazard development, and haphazard backland development, respectively (see Section 3.1 above).

The Planning Authority **refused** permission in July 2018.

Reg. Ref. 17859: The Planning Authority **refused** permission in September 2017 for the construction of a bungalow, garage/fuel store for domestic use, septic tank and treatment system and associated site works.

Reg. Ref. 17131: The Planning Authority **refused** permission in April 2017 for the construction of a house, garage/fuel store for domestic use, new vehicular access and associated site works.

Reg. Ref. 161173: The Planning Authority **refused** permission in January 2017 for the construction of a house, garage/fuel store for domestic use, installation of a septic tank, connection to a private well and associated site works.

Surrounding Area

Reg. Ref. 16/532: The Planning Authority **granted** permission in September 2016 for the construction of a house, garage/fuel store for domestic use, installation of a septic tank, removal of the existing septic tank serving the adjoining house and upgrade of the existing vehicular entrance to form a combined double entrance and all associated site works.

The site now accommodates a detached house (A83 WN84), which is roughly 160m west of the appeal site.

Reg. Ref. 18/1293:

The Planning Authority **granted** permission in July 2019 for the erection of a single dwelling, erection of garage/fuel store for domestic use, installation of proprietary waste water treatment system with soil polishing filter and all associated siteworks.

Enforcement

File Ref. UD 7274: There is a current enforcement file in relation to the subject site. The Planner's Report also states that there are related ongoing legal proceedings.

5.0 Policy Context

5.1. Kildare County Development Plan 2023-2029

The Kildare County Development Plan 2023-2029 ('Development Plan') was adopted by the Elected Members of Kildare County Council on 9th December 2022. The Plan came into effect on 28th January 2023.

Chapter 3 – Housing

Section 3.13 Sustainable Rural Housing

- The identification of Areas Under Strong Urban Influence in County Kildare takes account of the following:
 - High levels of commuting pattern (as per NPF/RSES guidance)
 - Proximity to cities/towns or to major transport corridors with ready access to urban areas
 - Ready access to a good road network with ready access to the larger urban areas

Zone 1 – Areas under Strong Urban Influence

In 'Areas under Strong Urban Influence', it will be an objective of the Council to facilitate the provision of single housing in the countryside based on the core considerations of:

- *demonstrable 'economic or social' need to live in a rural area and build their home, and*
- *siting, environmental and design criteria for rural housing in statutory guidelines and plans having regard to the viability of smaller towns and rural settlements and the provision and availability of serviced sites in these areas.*

Section 3.13.3 Compliance with the Rural Housing Requirements

'Rural generated housing demand will be facilitated having regard, inter alia, to the applicant's genuine local and housing need, together with the protection of key economic, environmental, natural and heritage assets, such as the road network,

water quality, sensitive landscapes, habitats, and the built heritage. The Department of Housing, Local Government and Heritage have indicated that new Rural Housing Guidelines are being prepared to address rural housing issues and to take account of the Flemish Decree, the NPF and broader settlement context. In the interim, Kildare Development Plan must establish a policy to facilitate those who can demonstrate a genuine housing need and a social and/or economic need to live in rural County Kildare. Urban generated rural housing will not be considered. For the purposes of demonstrating compliance, this plan has provided a definition of 'Economic' and 'Social' need in the context of rural housing policy.'

- *Economic: A person (or persons) who is (are) actively engaged in farming/agricultural activity on the landholding on which the proposed dwelling is to be built, meeting either of the following:*
 - i. A farmer of the land or son, daughter, niece or nephew of the farmer who it is intended will take over the operation of the family farm... or*
 - ii. An owner and operator of farming/horticultural/forestry/bloodstock/animal husbandry business on an area less than 15ha, who is engaged in farming activity on a daily basis, where it is demonstrated through the submission of documentary evidence that the farming/agricultural activity forms a significant part of their livelihood, including but not limited to intensive farming.*

- *Social:*
 - i. A person who has resided in a rural area for a substantial period of their lives i.e. 16 years within 5km (Zone 1) or 5km (Zone 2) of the site where they intend to build.*

'Cluster type developments of five houses or less may be considered in rural areas on family farm holdings for applicants who are family members or adjacent to urban boundaries where no other land is available and comply with the social or economic element of the rural housing policy, where there has not been speculative sale of sites.'

Table 3.4 – Schedule of Local Need Criteria in accordance with the NPF (NPO 19

Category B – Social

- (i) *A person who has resided in a rural area for a substantial period of their lives within an appropriate distance of the site where they intend to build on the family landholding.*

Zone 1 Areas under Strong Urban Influence

Applicants must have grown up and spent 16 years¹ living in the rural area of Kildare and who seek to build their home in the rural area on their family landholding. Where no land is available in the family ownership, a site within 5km of the applicant's family home may be considered.

3.14 Rural Residential Density

'A quarter of the building stock (in both rural and urban areas) in County Kildare is comprised of rural one-off housing and this figure is generally consistent with the national average, however, when assessing the overall density per square kilometre of single rural dwellings nationally, in 2002, Kildare was just one of six counties to have an average rural density in excess of 7 dwellings per square kilometre.

National guidelines and the County Development Plan policy has generally been formulated to manage rural housing to avoid a proliferation of one-off houses, extensive ribbon development, piecemeal and haphazard development that erode the intrinsic character of the Irish countryside, which is both an economic resource and a tourism asset.

One of the evaluation criteria is the examination of Single Rural Dwelling Density (SRDD) at the scale of a square kilometre surrounding the proposed site for a one-off house.

- In general, SRDDs of less than 15 units per square kilometre will be acceptable.*

¹ Documentary evidence will be required. Examples of appropriate documentary evidence include, but are not limited to, copies of original birth certificates, bank statements, utility bills and copies of official school records.

- *In very enclosed landscapes with well-defined hedgerows and/or mature trees, which would partly screen or enclose one-off houses, RRDs of c. 15 – 25 per square kilometre may be open for consideration.*
- *Where the RRD exceeds 30 units per square kilometre there will be a presumption against further one-off houses, however in certain circumstances the above limits on RRD may be exceeded subject to the exceptions outlined in Section 3.14 of Chapter 3 of Volume 1.*

This guideline provides a quantitative assessment of qualitative criteria such as piecemeal and haphazard development. It is not intended to be a rigid tool and there may be instances where the existing pattern of development may facilitate some consolidation of one-off housing due to the prevailing pattern in the area, local topographical conditions or in very enclosed country (defined by mature trees and hedgerows). In these instances, the planning authority may deem a site to have the capacity to absorb additional residential unit/s without any significant adverse visual/physical/environmental impact on the countryside. Generally, such one-off housing would be facilitated only in very exceptional circumstances, where there is a significant need demonstrated, for example, those actively engaged in agricultural or in an occupation heavily dependent on the land...'

Objective HO P11

Facilitate, subject to all appropriate environmental assessments proposals for dwellings in the countryside outside of settlements in accordance with NPF Policy NPO 19 for new Housing in the Open Countryside in conjunction with the rural housing policy zone map (Map 3.1) and accompanying Schedule of Category of Applicant and Local Need Criteria set out in Table 3.4 and in accordance with the objectives set out below. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.

Objective HO P26

Sensitively consider the capacity of the receiving environment to absorb further development of the nature proposed through the application of Kildare County Councils 'Single Rural Dwelling Density' Toolkit (see Appendix 11) and facilitate where possible those with a demonstrable social or economic need to reside in the area. Applicants will be required to demonstrate, to the satisfaction of the planning

authority that no significant negative environmental effects will occur as a result of the development.

In this regard, the Council will:

- *examine and consider the extent and density of existing development in the area,*
- *the degree and pattern of ribbon development in the proximity of the proposed site.*

Objective HO P16

Consider proposals for backland development for family members only. Proposals for such development must demonstrate that the proposed development would not have a negative impact on third parties/neighbouring property owners by way of overlooking/ orientation of dwelling. Sufficient screening will be required to be provided and proposal for this shall be submitted with the planning application and must be in place prior to occupation of the dwelling. Particularly sensitive design approaches should be considered in these instances.

Objective HO O59

Carefully manage Single Rural Dwelling Densities to ensure that the density of one-off housing does not exceed 30 units per square kilometre², unless the applicant is actively engaged in agriculture, or an occupation that is heavily dependent on the land and building on their own landholding.

Appendix 4 – Rural House Design Guide

‘When considering building a new home in rural County Kildare, the approach to site selection is crucial.’

This includes refining the location and Applicants considering if they comply with the Rural Housing Policy pertaining to the area.

² The sq. km. shall, in all instances, be measured from the centre point of the application site

Appendix 11 – Single Rural Dwelling Density Toolkit

‘National guidelines and the County Development Plan policy has generally been formulated to manage rural housing to avoid a proliferation of one-off houses, extensive ribbon development, piecemeal and haphazard development...’

‘When the density or intensity of one-off houses becomes overly concentrated in any one particular area, the rural character of the area is gradually eroded... The intrinsic rural character is gradually transformed into a suburban, peri-rural character.’

5.2. Project Ireland 2040 – National Planning Framework (NPF)

5.2.1. National Policy Objective (NPO) 19 states it is an objective 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.
- **In rural areas elsewhere**, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2.2. NPO 15 seeks to support the sustainable development of rural areas by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

5.3. Sustainable Rural Housing Guidelines for Planning Authorities, 2005

5.3.1. The subject site is located within an ‘Area under Strong Urban Influence’ as identified in Map 1: Indicative Outline of the NSS rural areas types in the Sustainable Rural Housing Guidelines for Planning Authorities, 2005. The Guidelines note that in these areas the objective should be on the one hand to facilitate the housing requirements

of the rural community, as identified by the Planning Authority in the light of local conditions, while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the development plan.

- 5.3.2. Circular Letter SP 5/08 was issued after the publication of the guidelines on 30th September 2009. The letter states that all planning applications for houses in rural area, regardless of where the applicant comes from, or whether they qualify under specific criteria, must continue to be determined on the basis of proper planning and sustainable development of the area, in accordance with Development Plan policies regarding overarching environmental concerns, including the protection of natural assets, landscape, siting and design, traffic safety, etc.

5.4. **Eastern and Midland Regional Assembly Regional Spatial & Economic Strategy (RSES) (2019-2031)**

- 5.4.1. Section 4.8 of the RSES recognises the major contribution that rural places make towards regional and national development in economic, social and environmental terms. Rural areas in the Region, including the Gaeltacht area, contribute to Ireland's unique culture and identity, and provide significant natural resources, biodiversity, environmental qualities and landscape features.
- 5.4.2. The NPF and RSES make a distinction between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and rural areas outside these catchments. In such areas a more flexible approach based primarily on siting and design will apply.
- 5.4.3. For some rural areas, urban and commuter generated development has undesirably affected the character and cohesion of these locations. Simultaneously, in less accessible rural locations, population levels have declined and it has been difficult to sustain basic services and community facilities at these locations.
- 5.4.4. Regional Policy Objective (RPO) 4.80 states that 'local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable

economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

- 5.4.5. RPO 4.81 states that 'in rural areas outside the Rural Areas Under Strong Urban Influence local authorities shall encourage sustainable growth in areas that have experienced decline or stagnation, facilitate the provision of single houses in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.5. Natural Heritage Designations

No natural heritage designations apply to the subject site.

The closest European Site is Ballynafagh Lake SAC (Site Code: 001387), which is approximately 7.2km to the south. This site is also designated as a pNHA (Site Code: 00391).

The Ballynafagh Bog SAC (Site Code: 000391) is approximately 8km to the southeast.

The Long Derries, Edenderry SAC (Site Code: 000925) is approximately 12km to the southwest.

The River Boyne and River Blackwater SAC (Site Code: 002299) is approximately 14.5km to the north.

The River Boyne and River Blackwater SPA (Site Code: 004232) is approximately 13km to the west.

5.6. EIA Screening

Having regard to the limited nature and small scale of the proposed development, which is for retention of a single dwelling and wastewater treatment system, 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

Background

- The Applicant has a genuine need for a dwelling in this rural area as she is native to the area and currently living with her partner and two children in the dwelling. She meets the local needs criteria as previously recognised by the Planning Authority and as set out in the Ministerial Guidelines.
- If the current enforcement proceedings are confirmed, and permission refused for the current proposal, the Applicant will be without a home.

First Reason for Refusal

- The Sustainable Rural Housing Guidelines, 2005 are clear that the needs of intrinsic members of the rural community should be met, even in areas of strong urban based pressures.
- The Planning Authority has permitted two dwellings on sites within the immediate vicinity of the site (Reg. Ref. 16/532 and 18/1293). Application Reg. Ref. 16/532 was permitted, despite being refused previously on the basis that the 'absorption capacity of the area had been reached'.
- The Board's attention is drawn to ABP Ref. PL08.307356 where after a long series of application, appeals and court hearings, a significant factor in granting permission was the Applicant's ties to the local area (in Kerry). It is submitted that Ms. Danagher would also have a functional economic and social requirement for housing in this area, where she grew up, has a cultural background and works.
- There are only 30 no. dwellings within a 1km radius of the site. The density of housing is therefore particularly low and the addition of one further dwelling would not materially influence this. [Fig. 3 of the Appeal refers].
- Due to the cost and lack of housing options in County Kildare, obtaining permission for the existing house is the only viable option available to the Applicant to allow them to live in their own home.

Second Reason for Refusal

- The Council has not provided any empirical evidence to support its view that the proposed development constitutes backland development. There is no legislative definition for 'backland development' and the normal meaning of this is considered a dwelling to the rear of an existing house.
- The proposed development is for a dwelling to the side of an existing house (not to its rear). There is a row of three dwellings to the west and two of these front onto the same laneway. There would be no visual or residential amenity impacts arising.
- The Planner's Report is a subjective opinion and the description of the proposed dwelling as 'backland' is a departure from the traditional understanding of backland development which means to the rear. The dwelling would have independent access onto a road that has been in situ since 1939 and should be treated in the same manner as the local road to the west. A dwelling with an independent access to a public road does not constitute backland development.
- There is a precedent of another dwelling receiving permission on a similar laneway (Reg. Ref. 12/897).
- The Council's Transportation Department has no objection and is satisfied with the proposal to upgrade the existing laneway.
- The site forms part of a larger undeveloped agricultural field. However, this was the only site the Applicant was able to purchase within 5km of the family home. The County Development Plan allows for this where land is not available at the family home. The dwelling would be the fourth along the laneway which would not constitute ribbon development (i.e., a row of 5 dwellings with 250m).
- The topography of the agricultural field is unsuitable for further houses and proposed planting around the site perimeter would ensure the property is separate from the field.

Other

- The Applicant has two sisters who obtained permission for a rural dwelling previously, which is a material consideration given the Judicial Review relating to one-off housing 'Porter & Anor vrs an Bord Pleanala 2016/604'.

6.2. **Planning Authority Response**

- The Appellant has not addressed the previous reasons for refusal.
- The area does not have any capacity for more one-off housing. There are 25 no. rural dwellings in a 500m radius.
- The Planner's Report clearly sets out the why the site is considered as backland development and why it contravenes Policies RH9(iv) and RH14 of the Kildare County Development Plan 2017-2023.

6.3. **Observations**

Two observations have been made to the Board.

One observation of support for the application was received, which includes the signatories of several people living in the area. The observation raises the following main issues:

- Full support and backing provided to the Applicant to retain her family home.
- The Applicant is an integral and contributing part of the local community who has strong familial links to the area extending back almost a century.
- There is a housing crisis where there are very few rental properties available and house prices are out of control.

An observation from the residents at Hillview, Mulgeeth (A83 V304), which is the house immediately west of the appeal site, raises the following issues:

- There have been six applications on the site to date for a proposed dwelling. Five of these have been refused permission and the sixth is the current one.
- The reasons for refusing permission is that the proposed development constitutes backland development and inappropriate ribbon development.

The Board also noted in a previous Decision (Refusal) that they had concerns regarding public health given the location of the percolation area uphill of existing domestic boreholes.

- The development took place in complete contempt of previous refusal decisions. Enforcement Notice (UD7274) directed for the removal of the log cabin and restoration of the site to its former condition, agricultural land.
- The unauthorised development reduces the rural setting and no further development should take place in such proximity to Hillview. If permission is granted, this could set a precedent for further sites to be sold off the agricultural site for more houses. The site is on an elevated site, is imposing and infringes on privacy.
- The laneway does not date from 1939 and has been recently extended to reach the subject site. The site was purchased with no planning permission and there is no regard for the planning application process.
- The subject application is very different to the other examples cited by the Applicant (i.e., Reg. Refs. 16/532 and 18/1293) as these were built on family land and adjacent the Applicant's mother's home. There is no family link to the subject site.
- The area is dense with housing for what is a rural setting (25 houses along a 500m stretch of road).
- In summary, the current application does not address the previous reasons for refusal.

7.0 Assessment

The main planning considerations relevant to this appeal case are:

- Piecemeal and haphazard development
- Backland Development
- Other Issues
- Appropriate Assessment

[Note: The *Kildare County Development Plan 2023-2029* ('Development Plan') was adopted by the Elected Members of Kildare County Council on 9th December 2022. The Plan came into effect on 28th January 2023.]

7.1. Potential for piecemeal and haphazard development

- 7.1.1. The Planning Authority's first Reason for Refusal is that the proposed development would exacerbate an excessive density of development in the area, which is rural in nature. Also, when taken in conjunction with the existing development in the vicinity of the site, it would consolidate and contribute to the build-up of ad-hoc development in an open rural area. This, the Planning Authority states, would militate against the preservation of the rural environment, lead to further demands being placed on public services and community facilities, and set an undesirable precedent for further residential development in the vicinity.
- 7.1.2. I note that the Planning Authority did not raise any issues with the Applicant's bona fides insofar as compliance with the criteria for local need is concerned, stating that they, i.e., the Applicant, would appear to comply with this. I would concur with this and consider the Applicant satisfies the requirement for local need as set out in the schedule under Table 3.4 of the Development Plan. The Applicant has demonstrated that she has grown up living in a rural part of the county and has provided sufficient documentary evidence in this regard. The previous applications on the site for a dwelling were refused permission. However, this was not due to the Applicant being considered to fail the housing need test.
- 7.1.3. In terms of the character of the area, I note that the appeal site is within an area of sustained pressure for development. It is part of an existing conglomeration of rural houses in the townland of Mucklon, in the north of the county, roughly 6km south of Enfield. The site is designated in the Sustainable Rural Housing Guidelines 2005 (Map 1 Indicative Outline of NSS Rural Area Types) as an 'Area under Strong Urban Influence'. It is also designated as 'Rural Housing Policy Zone 1' (RHPZ1) under Map 3.1 of the current County Development Plan (2023-2029)
- 7.1.4. Appendix 4 of the Development Plan is in relation to rural house design. It states that when considering building a new home in rural County Kildare, the approach to site selection is crucial. This includes refining the location and Applicant considering

if they comply with the Rural Housing Policy pertaining to the area. The Appendix also states that it may prove more difficult to find suitable sites in Zone 1 and that many parts within this area already have a high density of one-off rural dwellings. It goes on to state that applicants in these areas may find it difficult to find sites capable of absorbing further development.

7.1.5. Appendix 11 of the Development Plan provides a 'Single Rural Dwelling Density Toolkit'. It states that national guidelines and Development Plan policy has generally been formulated to manage rural housing to avoid a proliferation of one-off houses, extensive ribbon development, and piecemeal and haphazard development. When the density or intensity of one-off houses becomes overly concentrated in any one particular area, the rural character of the area is gradually eroded. The intrinsic rural character is gradually transformed into a suburban, peri-rural character and the critical question, therefore, becomes "at what point does that the character change" i.e., "what is the tipping point"?

7.1.6. Appendix 11 states that one of the evaluation criteria in this regard is the examination of 'Rural Residential Density' (RRD) at the scale of a square kilometre surrounding the site for a proposed one-off house. It reflects the policy approach to rural and one-off houses set out under Section 3.14 of the Development Plan, which is entitled 'Rural Residential Density' and the following categories are referenced: -

- In general, RRDs of less than 15 units per sq. km will be acceptable.
- In very enclosed landscapes with well-defined hedgerows and/or mature trees, which would partly screen or enclose one-off houses, RRDs of c. 30 per sq. km may be open for consideration.
- Where the RRD exceeds 30 units per sq. km there will be a presumption against further one-off houses. However, in certain circumstances the above limits on RRD may be exceeded, subject to the exceptions outlined in section 3.14 of Chapter 3 of Volume 1 (of the Development Plan).

7.1.7. Upon reviewing the file, and online mapping systems, I have calculated approximately 25 no. dwellings within a 1km radius of the subject site. [I note that the Applicant states in their appeal that are 30 no. dwellings within a 1km radius of the appeal site, and the Planning Authority references 25 no. units within a 500m radius.]

I note also that the Timahoe Wetlands is situated to the west and encroaches into the 1km calculation area.

- 7.1.8. The Development Plan states where the application site adjoins a large area of important habitat, such as a natural peatland or extensive cut-away bog, these areas may be excluded from the calculation area and the rural residential density should be applied on a pro-rata basis for the remainder of the circle. This is to avoid a more intense proliferation of one-off housing immediately adjoining key landscape and habitat features, or a much higher density of development emerging immediately beside key landscape features, which might erode the intrinsic rural character, amenity value or environmental quality of the landscape. Having regard to this, and applying the pro rata approach, I estimate that the RRD is approximately 30 units per sq. km. The policy states there is a presumption against further one-off houses in such cases and where it is considered there is already an intense concentration of rural housing development.
- 7.1.9. I acknowledge that this is a guideline only for helping to determine what constitutes excessive rural housing densities. It is not intended to be a rigid tool and there may be instances where the existing pattern of development may facilitate consolidation of one-off housing; for example, due to the prevailing pattern in the area, local topographical conditions, or in very enclosed country (defined by mature trees and hedgerows). In such instances, a site may potentially have the capacity to absorb an additional residential unit, without any significant adverse visual, physical or environmental impacts on the countryside. However, the Plan states that such one-off housing should generally only be facilitated in very exceptional circumstances, and where there is a significant need demonstrated, for example, those actively engaged in agricultural or in an occupation heavily dependent on the land (Objective HO 059 of the Development Plan refers).
- 7.1.10. The Applicant is not involved in any such occupation, such as intensive farming, animal husbandry, or the like. Therefore, I do not consider that they qualify for the 'very exceptional circumstances' as referenced under Objective HO 059.
- 7.1.11. During my physical inspection of the site, I observed that there is very limited road frontage left undeveloped in this part of Mucklon along the main public road, which is west of the site. It is clear to me that development pressure in this area has become

so acute that it is beginning to spread outwards and onto the small laneway fronting the site. The laneway is narrow, has a poor surface treatment and provides access to agricultural fields. If permitted, the proposed development would represent the fourth dwelling on this narrow route, in this rural area, where there is already a very high concentration of one-off houses.

7.1.12. Furthermore, it is apparent to me that due to the prevalence of one-off housing in the vicinity there is now a proliferation of ad-hoc rural housing development occurring and the rural density limit for the area is being exceeded. This has led to the intensity of one-off houses becoming overly concentrated, within which is a small rural townland, and its rural character gradually being eroded and transformed into a suburban, peri-rural area.

7.1.13. In summary, I conclude that the proposed development would contribute to an increasing pattern of suburbanisation in this rural area, which is under significant development pressure, and would exacerbate the continuation of further piecemeal and haphazard development. The proposal would, therefore, be contrary to the proper planning and sustainable development of the area and should be refused permission for this reason, in my opinion.

7.2. Backland Development

7.2.1. The Planning Authority's second Reason for Refusal is that the proposed development constitutes haphazard backland development as it is situated to the rear of a dwelling positioned along a public roadway and accessed from a laneway that is substandard in width and surface specifications.

7.2.2. The Applicant states that the Planning Authority has not provided any empirical evidence to support its view that the proposed development constitutes backland development. There is no legislative definition for 'backland development' and the normal meaning of this to be considered a dwelling to the rear of an existing house. The proposed development is for a dwelling at the side of an existing house, not to its rear, and it is asserted there would be no visual or residential amenity impacts arising.

7.2.3. The Glossary of Terms for the current Development Plan (2023-2029) does not provide a definition for 'backland development'. The previous Development Plan

includes the following description however, which I consider a useful reference point – ‘development, which takes place to the rear of existing structures fronting a street or roadway’.

- 7.2.4. In terms of its physical context and setting, I note that the subject site has been subdivided off an existing agricultural field and sits atop of a small hill with expansive views eastwards. It is the last house at the end of a laneway running off the main public road which is on a north - south axis and situated some 200m to the west. The lane is a narrow track leading to an agricultural field and its surface of a poor standard. There is insufficient space for two vehicles coming from opposite directions to pass.
- 7.2.5. There is a single detached dwelling fronting onto the public road (A83 WN84). Two further houses are accessed directly from, and face towards, the laneway. These houses are behind the established building line fronting the main road and therefore constitute backland development, in my opinion. I do not accept the Applicant’s argument that the laneway should be treated in the same way as the main road and consider it likely that the laneway’s original purpose was to function as an access into the adjacent farming land for agricultural vehicles and machinery and as a through-road to accommodate traffic, new residential housing, or similar. [Furthermore, I do not consider the subject development similar in nature to the example cited by the Applicant at Burtown, Athy (Reg. Ref. 12/897), as that proposal had independent frontage onto a slip road off the National Road N78, frontage onto a section of the N78 and was not situated to the rear of an existing dwelling.]
- 7.2.6. I note also that the Applicant owns the site and is not a family member to the house fronting the roadway, or either of the houses on the lane. Whilst the Development Plan allows for certain exceptions to be made for individuals to develop backland sites, I note this is only for active farmers and others whose livelihood depends on the land and who can justify a need to live at their landholding, for example, animal husbandry. Therefore, I conclude the proposed development is not in accordance with Objective HO P16 of the Development Plan, which requires proposals for backland development to be for family members only.

7.3. Other Issues

Precedence

- 7.3.1. The Applicant references various previous planning decisions, and a legal case, as part of their appeal. However, as a rule, all appeal cases should be assessed and determined on their own merits having regard to the sensitivity of the receiving environment and the specifics of the proposed development.
- 7.3.2. In relation to the legal case referenced by the Applicant (Porter & Anon vrs An Bord Pleanála), I have reviewed this, and consider that the circumstances pertaining to the subject appeal differ. In this case, the Board refused permission for reasons of intrusive design and that a housing need had not been sufficiently demonstrated. As noted above, there is no dispute in relation to the Applicant's rural housing need and no concerns were raised by the Planning Authority in their decision in terms of design.
- 7.3.3. The Applicant's reference to an appeal case involving a site in Baile na bPoc, outside Dingle, Co. Kerry (ABP Ref. PL08.307356) is noted. The Applicant submits that after a series of applications, appeals, and court hearings, a significant factor in the Board granting permission was the Applicant's ties to the local area. The previous reasons for refusal were largely based on adverse landscape impact, impact on views and prospects, and disposal of wastewater being prejudicial to public health. These issues were addressed through a subsequent application by making changes to the scale and height of the proposed house and a revised design. In my opinion, the permission bears no relevance to the subject appeal.
- 7.3.4. In summary, I do not consider the above-referenced examples to be of relevance to the subject application, which was refused by Kildare County Council for reasons due to excessive density of development in a rural setting and that it would constitute haphazard development on a backland site.

7.4. Appropriate Assessment

Having regard to the nature and small scale of the proposed development; which is for the retention of an existing dwelling, installation of a septic tank and treatment system and associated site works, and the distance from the nearest European site

and intervening land uses; no Appropriate Assessment issues arise. Therefore, 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.

8.0 Recommendation

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

9.0 Reasons and Considerations

- 9.1. Taken in conjunction with existing development in the vicinity, the proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities and would contravene the policy of the Planning Authority, including Objectives HO P26 and HO O59, as expressed in the Kildare County Development Plan 2023 - 2029, which is to manage rural residential density to avoid a proliferation of one-off houses, extensive ribbon development, and piecemeal and haphazard development that erodes the intrinsic character of the Irish countryside, which is both an economic resource and a tourism asset. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 9.2. The proposed development, because of its location and inadequate frontage, constitutes inappropriate backland development, which would be against Objective HO P16 of the Kildare County Development Plan 2023-2029, and would therefore be contrary to the proper planning and sustainable development of the area.

Ian Boyle
Planning Inspector

1st February 2023