



An  
Bord  
Pleanála

## Inspector's Report ABP- 313899-22

<b>Development</b>	Erection of a single storey house and garage.
<b>Location</b>	Lowtown, Robertstown, Naas, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council.
<b>Planning Authority Reg. Ref.</b>	22/424.
<b>Applicant</b>	Eithna Herbert.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party v Refusal of Permission.
<b>Appellant</b>	Eithna Herbert.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	3 <sup>rd</sup> October 2022
<b>Inspector</b>	Enda Duignan.

## **1.0 Site Location and Description**

- 1.1.** The appeal site has a stated area of c. 0.456ha. and is located within the rural area of Lowtown, Robertstow, Naas, Co. Kildare. The site is located on the northern side of a local road which runs along the Grand Canal Way and is situated c. 800m to the west of the existing settlement of Robertstow. The site is accessed from an existing agricultural entrance through an agricultural field and is set back c. 100m from the existing roadway. The western and southern boundaries of the site are characterised by hedging and mature trees and there is currently no formal eastern or northern site boundary. I note the lands are currently in agricultural use. In terms of topography, the appeal site is relatively flat.
- 1.2.** With respect to the site surrounds, a number of dwellings are located to the west of the appeal site with the remainder of the lands within the surrounds appear to be in agricultural use.

## **2.0 Proposed Development**

- 2.1.** The proposal seeks planning permission for the construction of a new dwelling on site, along with a waste water treatment system (wwts), driveway, garage and associated site works.
- 2.2.** The proposed single storey dwelling will have a pitched roof form and shall comprise a lobby, entrance hall, sitting room, shower room, boot room, utility, kitchen/dining room, and lounge. A single storey pitched roof garage is also located on the north-eastern side of the proposed dwelling. In terms of the palette of materials and finishes, the proposed dwelling will have rendered walls with a natural stone porch and a slate roof.
- 2.3.** The proposal seeks to modify the existing agricultural entrance and to provide a new driveway which will lead from the entrance to the proposed garage and a car parking area to the front (south) of the dwelling. The proposed development includes the provision of a timber post and rail fence with selected native planting to form the new boundaries of the appeal site.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Kildare County Council refused planning permission for the development for the following 1 no. reason:

1. "Policy RH3 of the Kildare County Development Plan, 2017-2023, seeks to ensure that Applicants demonstrate that they have not previously been granted permission for a one off rural dwelling in Co. Kildare. Having regard to the previous permission granted to the Applicant under PL 00/1352 for a rural one off dwelling near the subject site and based on the information submitted with the application, it is considered, the Applicant does not comply with Policy RH3 of the Plan. To permit an additional rural one off dwelling to the Applicant would be contrary to the provisions of Policy RH3 of the Kildare County Development Plan, 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area."

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

##### **3.2.1. Planning Report**

The Kildare County Council Planning Report forms the basis for the decision. The report provides a description of the appeal site and an overview of the policy at regional and local level that is relevant to the development proposal. The proposal also sets out the planning history that is relevant to the development proposal.

In terms of the design and siting of the proposed dwelling, the Planning Authority have raised no concerns with the proposed development and the proposal is considered to comply with the Rural Design Guidelines of the Kildare County Development Plan, 2017-2023. However, in terms of local housing need, the Planning Authority indicate they do not consider that the Applicant has a housing need, and the proposal is not consistent with Policy RH3 of the Kildare County Development Plan, 2017-2023. A refusal of planning permission was therefore recommended by the Planning Authority. Included within the planning file was the 'Rural Housing Application – Assessment of Local Need'. The report dated 27<sup>th</sup> May 2022 concluded that the local need had not sufficiently been demonstrated and a refusal of permission was recommended.

### 3.2.2. Other Technical Reports

Transportation: Report received stating no objection subject to compliance with conditions.

Water Services: Report received stating no objection subject to compliance with conditions.

Environment: Report received requesting additional information.

### 3.2.3. Prescribed Bodies

Irish Water: Report received stating no objection subject to compliance with conditions.

### 3.2.4. Third Party Observations

None.

## 4.0 Relevant Planning History

### 4.1. Appeal Site

None

### 4.2. Surrounds

**00/1352**: Planning permission granted by the Planning Authority to Eithna Herbert for the construction of a bungalow, detached garage and biodisc treatment system on family lands.

The dwelling permitted under PL 00/1352 appears to have been constructed and is located c. 500m to the east of the appeal site.

## **5.0 Policy and Context**

### **5.1. National Policy**

#### **5.1.1. Project Ireland 2040 National Planning Framework (NPF) Local Policy**

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.

This will be subject to siting and design considerations. In all cases, the protection of ground and surface water quality shall remain the overriding priority and proposals must definitely demonstrate that the proposed development will not have an adverse impact on water quality and requirements set out in EU and national legislation and guidance documents.

#### **5.1.2. Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES).**

Section 4.8 (Rural Places: Towns, Villages and the Countryside) of the RSES indicates that support for housing and population growth within rural towns and villages will help to act as a viable alternative to rural one-off housing, contributing to the principle of compact growth. Regional Policy Objective (RPO) 4.80 is relevant to the development proposal which notes 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.

**5.1.3. Quality Housing for Sustainable Communities, 2007 (Department of the Environment, Heritage and Local Government).**

**5.1.4. Sustainable Rural Housing Guidelines for Planning Authorities, 2005.**

The overarching aim of the Guidelines is to ensure that people who are part of rural community should be facilitated by the planning system in all rural areas, including those under strong urban based pressures. To ensure that the needs of rural communities are identified in the development plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities is accommodated. Circular Letter SP 5/08 was issued after the publication of the guidelines.

**5.1.5. Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021.**

**5.2. Local Policy**

**5.2.1. Kildare County Development Plan (CDP), 2017-2023.**

The site is located within a rural area of the county Kildare. Relevant policies contained within the Kildare County Development Plan (CDP), 2017-2023 are set out under the Rural Design standards (Chapter 16) and the Development Management Standards (Chapter 17). As per Map 4.4 of the current CDP, I note the appeal site is located on lands identified as 'Rural Housing Policy Zone 1'. In order for an Applicant to be considered for a one-off dwelling in the rural area of Kildare, an applicant must demonstrate compliance with the policy outlined in Section 4.12.7 (Rural Housing Policy). In addition, the following policies are relevant to the consideration of the application:

- **RH 1:** Ensure that the planning system guides development to the appropriate locations in rural areas thereby protecting natural and man-made assets in those areas.
- **RH 2:** Manage the development of one off housing in conjunction with the rural housing policy zone map (Map 4.4) and accompanying Schedules of Category

of Applicant and Local Need Criteria set out in Table 4.3. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.

- **RH 3:** Require applicants to demonstrate that they are seeking to build their home in the rural area in Kildare for their own full time occupation. Applicants will be required to demonstrate that they do not own or have not been previously granted permissions for a one off rural dwelling in Kildare and have not sold this dwelling or site to an unrelated third party, save in exceptional circumstances.
- **RH 4:** Restrict residential development on a landholding, where there is a history of development through the speculative sale or development of sites, notwithstanding the applicant's compliance with the local need criteria.
- **RH 5:** Restrict occupancy of the dwelling as a place of permanent residence for a period of seven years to the applicant / occupant who complies with the relevant provisions of the local need criteria.
- **RS 6:** Recognise and promote the agricultural and landscape value of the rural area and prohibit the development of urban generated housing in the rural area.
- **RH 7:** Encourage the appropriate re-use and adaptation of the existing rural residential building stock in preference to new build. **RH 8** Recognise that exceptional health circumstances, supported by relevant documentation from a registered medical practitioner, may require a person to live in a particular environment. Housing in such circumstances will generally be encouraged in areas close to existing services and facilities and in Rural Settlements. All planning permissions for such housing granted in rural areas shall be subject to a seven year occupancy condition.

In terms of siting and design, policies are included within Section 4.13.1 of the current CDP. Section 4.13.2 also provides specific policies with respect to access and entrances.

### **5.3. Natural Heritage Designations**

There are no European designated sites within the immediate vicinity of the site. The nearest designated site is the Ballynafagh Area of Conservation (Site Code: 001387),

c. 1.5km to the north-west of the site. I note that the site is partially located (vehicular entrance) within the 'Proposed Natural Heritage Area: Grand Canal' to the south of the site.

#### **5.4. EIA Screening**

Having regard to the nature and scale the development which consists of a single house in an un-serviced rural 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 main points made can be summarised as follows:

- It is stated within the appeal submission that this is a single issue case which requires the Board to determine whether a farmer can live on a large family farm, or whether she must commute from a nearby town or village in order to work this holding.
- The Applicant is a recent divorcee and must sell her martial home (by Court Order). The key question is whether a local resident is eligible for a home on her own farm in such circumstances or whether the fact that she obtained permission for a rural house at the turn of the century automatically disqualifies her from securing a fresh consent, as the Council implies.
- The Appeal submission notes that it is axiomatic that, given the absence of any physical, functional, aesthetic, technical, ecological or environmental reasons for refusal, that the development should not be supported.
- Policy RH3 of the current CDP does not contain a complete or an outright ban on applicants seeking consent for a second or third house in the countryside, with its actual text expressly and explicitly containing the words 'save in exceptional circumstances'. It is impossible to conclude that that Planning Authority's interpretation of Policy RH3 was correct in this case, or that its application of this provision was exhaustive.



- It is purported that an applicant can be deemed to exhibit 'exceptional' circumstances in three situations, namely where they experience financial difficulties, where they experience medical problems or where an individual experiences a matrimonial break-up.
- It is noted that the internal assessment of the Applicant's eligibility by the Planning Authority does not seem to have been aware of the forerunners to Policy RH3 (i.e. policy of previous development plans) and it is submitted the report of the Planning Officer may have adopted a completely different approach if they had been aware of this policy, or if they had otherwise placed weight on the precedent cases which were highlighted in the original planning application.
- Reference is made within the appeal submission to multiple precedent cases where exceptional circumstances were excepted by the Planning Authority.
- It is axiomatic that a large landholding of 90-acres cannot be worked remotely, and it is noted that the Applicant holds a herd number and has completed courses in farming as well as having been educated in agricultural practices by her father as a young girl.
- The Applicant now has a fragmented farm, part of which is held in a single folio and requires an on-site farmhouse so they can undertake agricultural duties on a daily and / or monthly basis. An extensive list of tasks associated with the Applicant's farming activities has been outlined within the Appeal submission and it is stated that it would not be possible for the Applicant to undertake these tasks other than from a farmhouse. It is stated that the Applicant's need for a farmhouse for economic reasons constitutes 'exceptional circumstances' as required under Policy RH3 of the current CDP and is consistent with other decisions including Reg. 16/796.
- The Appeal submission refers to the extensive documentation demonstrating the Applicant's local ties to the area. Given the Applicant's changed circumstances, it is considered that they are a member of the rural community and that as a result, they have a social need for a replacement dwelling in this part of the Co. Kildare countryside.

- The Appeal submission refers to appendix D (correspondence from IFG Financial), appendix E (Exchange of messages with PTSB) and appendix F (e-mails to and from Ambit Financial Services), and it is unclear why these were not taken into account by the Planning Authority in their assessment.

## **6.2. Planning Authority Response**

A response has been received from the Planning Authority dated 12<sup>th</sup> July 2022 which confirms its decision and has no further comments or observations to make.

## **6.3. Observations**

None.

## **6.4. Further Responses**

None sought.

## **7.0 Assessment**

The main issues are those raised in the grounds of appeal and the Planning Report, and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Compliance with Rural Housing Policy
- Siting & Dwelling Design
- Waste Water Treatment
- Appropriate Assessment

## **7.1. Compliance with Rural Housing Policy**

- 7.1.1. Compliance with rural housing policy is a core consideration for any planning application for a one-off house in a rural area. It was cited as the singular reason for refusal under the current application and forms a primary issue in the grounds of appeal by the Applicant. Section 4.12.7 (Rural Housing Policy) of the current CDP notes that rural generated housing demand will be managed having regard, inter alia, to an applicant's genuine local need, together with the protection of key economic,

environmental, natural and heritage assets, such as the road network, water quality, important landscapes, habitats and the built heritage. In order for an applicant to be considered for a one-off dwelling in the rural area of Kildare, an applicant must:

- (A) Meet one of the following categories of applicant:
  1. A member of a farming family who is actively engaged in farming the family landholding. Or,
  2. A member of the rural community. And
- (B) Meet one of the local need criteria set out in Table 4.3 (a) and (b) Schedule of Local Need.

7.1.2. As noted in Section 5.2.1 of this Report, there are a number of policies that are directly relevant to the consideration of this application for a rural house. I note that the Planning Authority refused the proposed development as a local need was not sufficiently demonstrated (i.e. had previously been granted planning permission for a dwelling under PL 00/1352) and the proposal was deemed to be contrary to Policy RH3 of the current County Development Plan which is included as follows:

- “Require applicants to demonstrate that they are seeking to build their home in the rural area in Kildare for their own full time occupation. Applicants will be required to demonstrate that they do not own or have not been previously granted permissions for a one off rural dwelling in Kildare and have not sold this dwelling or site to an unrelated third party, save in exceptional circumstances.”

7.1.3. It is evident from the material on file that the Applicant has previously been granted planning permission and currently owns and resides in a dwelling located within the surrounds of the appeal site. This point has not been contested within the appeal submission. However, the Appellant has argued that the policy has been incorrectly applied by the Planning Authority and the assessment has failed to have regard to the ‘exceptional circumstances’ that they state are relevant in this instance. I note that what constitutes exceptional circumstances is not explicitly defined under the CDP. Policy RH8 of the current CDP does refer to ‘exceptional health circumstances’. As Policy RH3 does not contain the reference to ‘health’, I would accept the Appellant’s contention that there are a broader range of matters that could constitute ‘exceptional

circumstances'. I acknowledge the material on file in support of the application and appeal including a letter from the Applicant's solicitors and a statutory declaration from the Applicant which outlines the rationale as to why they are in a position where they are required to sell their existing residence (i.e. a matrimonial break-up). In circumstances such as this, I consider it unreasonable for a prospective applicant to be prohibited from building a home in their local area in perpetuity. I am therefore satisfied that exceptional circumstances do exist in this specific instance. Notwithstanding this, Policy RH3 cannot be read in isolation and there are other policy objectives that are directly relevant to the assessment of the application, critically Policy RH2.

- 7.1.4. As per Map 4.4 of the current CDP, the appeal site is located within 'Rural Housing Policy Zone 1'. Lands within this zoned are described as "Northern, central and eastern areas of the county (along the border with Wicklow) – more populated areas with higher levels of environmental sensitivity and significant development pressure." Policy RH2 of the CDP seeks to "Manage the development of one off housing in conjunction with the rural housing policy zone map (Map 4.4) and accompanying Schedules of Category of Applicant and Local Need Criteria set out in Table 4.3. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application". In terms of meeting the relevant criteria under Policy RH2, the Applicant has outlined within their completed Rural Housing Planning Application Form that they qualify for a rural house at this location under Zone 1 Category 1(i) and Zone 1 Category 2(i).
- 7.1.5. Zone 1 Category 1(i) relates directly to "Persons engaged full time in agriculture (including commercial bloodstock/ horticulture), wishing to build their home in the rural area on the family landholding and who can demonstrate that they have been engaged in farming at that location for a continuous period of over 7 years, prior to making the application." Although it is clear from the documentary evidence submitted in support of the appeal that the Applicant is actively involved in agriculture, critically, it would appear that agriculture is not the Applicant's full time profession. It is detailed in the Applicant's Rural Housing Planning Application Form that they are a 'part time farmer',

a point which is reiterated in the Planning Authority's assessment of the application. I note that it is also a point which is not disputed in the appeal submission. As the Applicant is not engaged full time in agriculture, I do not consider that the Applicant qualifies for a rural house at this location as per the requirements of Zone 1 Category 1(i).

7.1.6. Further to the above, Zone 1 Category 2(i) relates directly to "Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare as members of the rural community and who seek to build their home in the rural area on their family landholding and who currently live in the area. Where no land is available in the family ownership, a site within 5km of the original family home may be considered." I note that criteria 2(ii) and 2(iii) of Table 4.3(b) is not relevant as these relate to returning members of the rural community and those who wish to operate a rural business for which no supporting evidence has been submitted. On the basis of the documentary evidence on file (i.e. letter from national school, utility bills, folio details etc.), I am satisfied that Applicant has spent substantial periods of their life in this rural area and the Applicant is one who could be considered to qualify for a house in this rural area, as per the requirements of this specific policy in the CDP.

7.1.7. In terms of national planning guidance, the site's identified location in an area under strong urban pressure under the Development Plan (i.e. Rural Housing Policy Zone 1) is consistent with Sustainable Rural Housing Guidelines for Planning Authorities, 2005, which similarly identifies the site and its wider rural setting. I note that the Regional Spatial Economic Strategy – Eastern & Midland Region, 2019-2031, under RPO 4.80 sets out that Local Authorities shall manage growth in rural areas under strong urban influence by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstratable 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.

- 7.1.8. In addition, the National Planning Framework (NPO 19) at locations such as the appeal site, requires developments like this to demonstrate a functional economic or social requirement for housing need in areas under urban influence, with this being stated as a necessity. Whilst the Applicant appears to have a strong desire as opposed to a need to live in this rural (i.e. not full time engaged in agriculture), this in itself does not override the public good necessity for such applications to meet local through to national planning provisions. These provisions seek to safeguard such rural locations from the proliferation of what is essentially a type of development that planning provisions seek to channel to appropriate serviced land within settlements where they can be more sustainably absorbed whilst safeguarding the rural environment from further diminishment of its character and predominant rural land use based function, i.e. agriculture.
- 7.1.9. In keeping with this, I note that National Policy Objective 3a of the National Planning Framework seeks to deliver at least 40% of all new homes nationally within the built-up footprint of existing settlements. In addition, NPO 33 seeks to prioritise the provision of new homes at locations that can support sustainable development as well as at an appropriate scale of provision relative to location. There are settlements within the wider area, including those with infrastructural services such as mains drainage and potable water through to other services as well as amenities, where there is capacity to absorb additional residential development in a sustainable manner than at this location.
- 7.1.10. Therefore, to permit the proposed development sought under this application would result in a haphazard and unsustainable form of development in an un-serviced area and it would give rise to inefficient and unsustainable provision of public services and infrastructure at remote from settlement locations. Further, it would also undermine the settlement strategy set out in the current CDP that seeks to direct this type of development to appropriately zoned land within settlements. For these reasons the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area. Should the Board come to a different decision on this matter, I consider that an occupancy condition restricting occupancy of the

house specifically to the Applicant should be attached to any grant of permission as set out in Policy RH5 of the current CDP.

## **7.2. Siting & Dwelling Design**

- 7.2.1. Works are proposed to the existing agricultural entrance to facilitate access to the appeal site. In terms of the Applicant's larger landholding, I am satisfied that the proposal has had regard to the key principles of the CDP with respect to site selection. Although the site is carved out from a larger field, I note that the site benefits from existing natural boundaries to the south and west and the dwelling is set back substantially from the public road to the south. I do not consider that in this instance the development of this site could lead to ribbon development nor the eventual merging of individual settlements. Overall, I am satisfied that the site selection in this instance is acceptable, and the proposed development is generally in accordance with the policy objectives and design principles included within Section 4.13.1 (Siting and Design) and Chapter 16 (Rural Design) of the current CDP.
- 7.2.2. As noted in the foregoing, works are proposed to the existing agricultural entrance to provide a new recessed vehicular entrance with automated gates. The appeal site has an irregular shape owing to the ownership boundaries. A new gravel driveway will run from the entrance adjacent to the existing field boundary, leading to a car parking area to the front of the dwelling. The proposed dwelling will have a single storey form and will be sited within the eastern portion of the site. A pitched roof garage is also proposed to be located to the north-east of the dwelling. The dwelling will have a traditional architectural expression with vernacular features such as a pitched roof form. In terms of the palette of materials and finishes, the proposed dwelling will have rendered walls with a natural stone porch and a slate roof. I note the dwelling is set back c. 110m from the existing road side boundary and will be partially screened from the public road by existing boundary vegetation. Having regard to the overall scale, height and architectural form of the proposed dwelling, its setback from the site frontage and the presence of existing boundary vegetation, I am generally satisfied that the proposal is in accordance with Section 4.13.1 (Siting and Design) and Chapter 16 (Rural Design) of the current CDP and it is therefore acceptable having regard to

the visual amenity of the surrounding area. Notwithstanding this, a refusal of permission is recommended as outlined in Section 7.1 of this report.

### **7.3. Access & Sightlines.**

- 7.3.1. In terms of site access, Section 16.6.2 (Entrances) of the current CDP notes that vehicular entrances to new rural houses must provide clear visibility and the design of the entrance must comply with the policies and controls set out in Section 17.7 of Chapter 17 (Development Management Standards). The proposed development seeks to modify the existing agricultural entrance to provide a new vehicular entrance in the same position. I note that sightline distances of c. 100m to the west and c. 120m to the east are identified on the submitted Site Layout Plan. I also note that the proposal does not necessitate the removal of any existing boundary vegetation to achieve these sightlines. The Planning Authority's Transportation section in their report dated 20<sup>th</sup> May 2022 have also indicated that they have no objection to the proposed development subject to compliance with standard conditions. On balance, I am satisfied that the proposed vehicular entrance is acceptable at this location and the proposed development would not therefore endanger public safety by reason of a traffic hazard.

### **7.4. Waste Water Treatment**

- 7.4.1. Assessment of the wastewater treatment element of a rural one-off house is a standard consideration. I note that Policy Objective RH 9 of the current CDP highlights that development proposals for rural dwellings must have regard to "The ability of a site in an unserviced area to accommodate an on-site waste water disposal system in accordance with the EPA Code of Practice for Wastewater Treatment Systems for single houses (2009), the County Kildare Groundwater Protection Scheme, and any other relevant documents / legislation as may be introduced during the Plan period". The site characterisation report notes that the percolation value tests were undertaken in March of 2022. The site is in an area with a locally important aquifer of moderate vulnerability. The Site Characterisation Form notes that groundwater was encountered at 1.35m in the 2.2m deep trial hole. Bedrock was not encountered at a depth of 2.2m. The soil was clay/loam in the upper 300mm and clay below 300mm. The soil was



clay/cobbles below 1.1m. There was also a reference to mottling at 850mm below ground level. Table E1 (Response Matrix for DWWTSs) of the EPA Code of Practice Domestic Wastewater Treatment (Population Equivalent  $\leq 10$ ), 2021, identifies an R1 response category i.e. Acceptable subject to normal good practice (i.e. system selection, construction, operation and maintenance in accordance with this CoP).

7.4.2. The T-test result was 71.54. A P-test was also carried out giving a result of 38.14. I consider the results to be consistent with the ground conditions observed on site. I note the Planning Authority's Environment Section requested additional information to be submitted prior to a determination on the application being made, including a revised Site Layout Plan showing the exact location of all drains bordering and/or adjacent to the site in compliance with the minimum distances as set out in Table 6.2, P28, EPA Code of Practice "Domestic Wastewater Treatment Systems (Population Equivalent  $\leq 10$ )". I note a separation distance of c. 10m should be provided between the waste water treatment system and a 'open drain or drainage ditch' as per Table 6.2. It is not explicitly clear from the information on file that this separation distance is achieved.

7.4.3. Though the trial hole and percolation test holes appear to have been filled in, this area of the site comprises an agricultural field with no indication of, for example, water ponding, outcrops etc. Table 6.4 (Percolation Values) of the Code of Practice states that, based on the T-test result, the site may be suitable for the development of a secondary treatment system and soil polishing filter and a tertiary treatment system and infiltration/treatment area all of which are discharging to groundwater. Section 5.0 (Recommendation) of the Site Characterisation Form recommends that a secondary treatment system and soil polishing filter be installed on site (Oakstown Effluent Treatment System and Percolation). Section 5.0 also sets out the works required in this specific instance, a summary of which include:

- 300mm of soil to be placed above ground level to achieve a minimum of 900mm above mottling level recorded (i.e. -0.85mm).
- 250mm depth of washed gravel to be placed on earth mound.

- 150mm washed gravel placed above pipes and a geotextile placed on top and finished with a minimum of 300mm of topsoil. It is stated that the finished mound will be c. 1m above ground level.

7.4.4. Overall, I am generally satisfied that the Applicant's proposals for the disposal and treatment of wastewater are acceptable. However, I note that it is unclear whether the proposal has provided adequate separation distances as per Table 6.2 of the Code of Practice. Should the Board be minded to grant permission for the proposed development, I would recommend the inclusion of a condition which shall require the design and installation of the proposed WWTS to comply with the EPA Code of Practice Domestic Waste Water Treatment Systems, Population Equivalent  $\leq 10$  (2021).

## **7.5. Appropriate Assessment**

- 7.5.1. The nearest designated site is the Ballynafagh Area of Conservation (Site Code: 001387), c. 1.5km to the north-west of the site. I note the un-serviced nature of this rural location which means that the site does not benefit from access to public mains drainage or water supply. I also acknowledge the prevalence of agricultural activities and a number of one-off dwellings in the vicinity.
- 7.5.2. Despite these factors, I am nonetheless of the opinion that taking into consideration the modest nature, extent and scope of the proposed development and based on best scientific information alongside having regard to the documentation on file which includes a Site Characterisation Report, that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## **8.0 Recommendation**

I recommend that the planning application be refused for the following reasons and considerations.

## 9.0 Reasons and Considerations

1. The site of the proposed development is located within an “Area Under Strong Urban Influence” as set out in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April 2005 and on lands identified as ‘Rural Housing Policy Zone 1’ in the Kildare County Development Plan, 2017-2023. Furthermore, the subject site is located in an area that is designated as an area under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, 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 and the viability of smaller towns and rural settlements. Having regard to the documentation submitted with the planning application and appeal, the Board is not satisfied that the Applicant has a demonstrable economic or social need to live in this rural area, or that the housing need of the Applicant could not be met in a smaller town or rural settlement. It is considered, therefore, that the Applicant does not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. The proposed development would result in a haphazard and unsustainable form of development in an un-serviced area, it would contribute to the encroachment of random rural development in the area and it would give rise to inefficient and unsustainable provision of public services and infrastructure at remote from settlement locations. The proposed development is therefore contrary to the proper planning and sustainable development of the area.

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Enda Duignan

Planning Inspector

22/11/2022