



An
Bord
Pleanála

Inspector's Report

ABP-313984-22

Development	Construction of a detached single storey dwelling required in conjunction with an existing and expanding agricultural enterprise.
Location	The Green Avenue, Newland West, Naas, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	22455
Applicant(s)	Holly Clarke.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Holly Clarke.
Observer(s)	None.
Date of Site Inspection	8 th February 2023
Inspector	Lucy Roche

1.0 Site Location and Description

- 1.1. The appeal site is in the rural area of Co. Kildare, c3km northeast of the M9 / M7 Junction, c3km southwest of Naas and c1km north of the settlement of Two Mile House. The site is located on the southern side of 'The Green Avenue', a local road (L-6068), which connects to the R448 c. 1.8km to the east.
- 1.2. The appeal site has a stated area of 2.27ha and comprises a relatively flat agricultural field which is bounded by a mix of hedgerow and trees of varying maturity on all sides. The site benefits from c86m of road frontage and is served by an agricultural entrance. A ditch extends along the northern (roadside) site boundary, between the hedgerow and the verge and public road.
- 1.3. The site is set out in grass. A roofed structure comprising snail farm is positioned centrally within the site, c190m from the roadside boundary. A hardcore driveway extends along the eastern site boundary leading from the field entrance to the snail farm structure.
- 1.4. With respect to the site surrounds, lands are predominantly in agricultural use with a similar topography to that of the appeal site. There are a number of one-off dwellings in the vicinity of the site including one on the lands bordering the site to the east and a row five to the northeast, on the opposite side of the public road. Immediately to the west of the row of five dwellings and opposite the proposed development site is the entrance to Green Avenue Landscapes Ltd, the operational status of which is unclear.

2.0 Proposed Development

- 2.1. Permission has been sought for the construction of a detached single storey dwelling in conjunction with an existing and expanding agricultural enterprise.
- 2.2. The proposal also seeks permission for:
 - A detached domestic garage,
 - The upgrading of the existing agricultural entrance
 - Internal stone access road to serve the dwelling, garage, polytunnels and snail farm. The road extends along the sites north-eastern boundary.

- New treatment plant Oakstown BAF6PE and percolation area
- 2 No. Poly-Tunnels (176 sqm each),
- Hard and soft landscaping and all associated ancillary site works.

2.3. Table 2.1 below provides a summary of the key aspects of the proposed development:

Table 2.1 – Development Details		
Site Area	2.27ha	
Dwelling	Type / Design	Detached 3 bed, single storey dwelling with pitched roof and covered loggia to SW elevation. 'T' shaped form.
	GFA	170sqm (as stated)
	Location on site	Set back c78m from the roadside, in line with neighbouring dwelling to the east
	Height	4.8 meters
	Finish	Slate roof, nap plaster to external walls, metal cladding to single storey entrance lobby; dark grey rainwater goods, hardwood larch screen to NW side of loggia
Garage	Details	Detached single storey domestic garage incorporating WC and workshop.
	Location	Forward and to the NW of the proposed dwelling
	GFA	48sqm
	FFL	97.65m
	Height	C4.8m above FFL
Polytunnels	Details	2no polytunnels, sited end to end and located to the side (SW) of the existing snail farm.

	GFA	176sqm (each); 352sqm (total)
	Dimensions	W 8m; L 22m, H 3.2m.
Access	Proposal to upgrade existing agricultural entrance. 160m sightlines	
Services	New on-site wastewater treatment and disposal system – Oakstown BAF 6PE Connection to public mains water	

3.0 Planning Authority Decision

3.1. Decision

3.2. Kildare County Council did by order dated the 7th of June 2022 decide to refuse permission for development at The Green Avenue, Newland West, Naas, Co. Kildare, for one reason as follows:

1 Policy RH2 of the Kildare County Development Plan 2017-2023 seeks to manage the development of one-off housing in accordance with the Council's Local need criteria. RH18 of the Kildare County Development Plan 2017-2023 seeks to provide for one housing associated with rural enterprise. Based on the information and documentation provided with the planning application, the applicant has not demonstrated compliance with the requirements of the council's rural housing policy as set out in Policy RH2 of the Kildare County Development Plan 2017-2023, which was formulated having regard to Government Policy as set out in the 'Sustainable Rural housing Development Guidelines for Planning Authorities (2005) which constitute Ministerial Guidelines under Section 28 pf the Planning and Development Act 200 (as amended). Additional, having regard to the size of the application site, the applicant has not demonstrated compliance with the requirements of the Councils Policy for rural housing related to rural enterprise, as set out in Policy RH18 of the Kildare County Development Plan 2017 – 223. Therefore, it is considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

3.3. Planning Authority Reports

3.3.1. Planning Reports

- 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 relevant planning policy at national and local level (it is noted that the Kildare County development Plan 2017-2023 was the operative plan at the time). The report also provides examples of planning applications similar to the development proposal and a summary of the pre-planning consultation undertaken prior to lodgement of the application. Regard is had to the interdepartmental reports received.
- In terms of the applicant's rural housing need, the Planning Authority notes the nature of the applicant's business however as the application site is significantly lower than the minimum required, the applicant does not comply with policies RH2 or RH18 the Kildare County Development Plan 2017 – 2023. To grant permission for a rural enterprise on a site that falls short of one of the minimum requirements of RH18 would set an undesired precedent for similar development in the county.
- With respect to design and layout, water services and access, no issues were raised by the planning authority.
- The report concluded with a recommendation to refuse permission as per the planning authority decision.

3.3.2. Other Technical Reports

<u>Environment:</u>	No objection subject to compliance with conditions
<u>Transportation:</u>	No objection subject to compliance with conditions
<u>Municipal District Engineer:</u>	No objection subject to compliance with conditions

3.4. Prescribed Bodies

None

3.5. Third Party Observations

None

4.0 Planning History

There is no relevant planning history pertaining to this site.

5.0 Policy Context

5.1. National Policy

5.1.1. Project Ireland 2040 - National Planning Framework (NPF):

Section 5.3 of the NPF refers to 'Planning for the Future Growth and Development of Rural Areas'. Under the heading of **Countryside**, it is stated '*It will continue to be necessary to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e., the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations.*'

National Policy Objective 19 includes:

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

National Policy Objective 23 refers to the rural economy and states:

Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bioeconomy, and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.

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 National Planning Framework – Project Ireland 2040

5.1.3. **Sustainable Rural Housing Guidelines 2005**

The overarching aim of the Guidelines is to ensure that people who are part of a 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.

5.1.4. **Circular SP5/08**

Circular SP 5/08 was issued by the Department of Environment Heritage and Local Government on 30th September 2009. In relation to Local Need Criteria Policies and Practices it states:

The overarching consideration for the local need assessment criteria in relation to residency, blood-line, local employment and agricultural activities must be that objectives and provisions in development plans and their application in the development management processes do not discriminate against planning applicants

wishing to establish a full-time home-based business in an area in favour of those who are deemed to qualify as “locals”

5.1.5. Also relevant:

- Code of Practice – Domestic Wastewater Treatment Systems (Population Equivalent ≤ 10), 2021.
- Climate Action Plan 2023 (CAP23)

5.2. **Local Policy**

5.2.1. The application was assessed by Kildare County Council in accordance with the policies and objectives of the Kildare County Development Plan 2017-2023. The Kildare County Development Plan 2023-2029 was adopted by Kildare County Council on the 9th of December 2022 and came into effect on the 28th of January 2023. I have assessed the proposal under the provisions of the operative Development Plan, namely the Kildare County Development Plan 2023-2029.

5.2.2. **Kildare County Development Plan 2017-2023**

The application was assessed by Kildare County Council in accordance with the policies and objectives of the Kildare County Development Plan 2017-2023. The following is relevant to the Council’s decision to refuse permission:

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.

Section 4.13.3 (Housing application on the basis of equine (or other) rural enterprise)

Where an applicant seeks permission for a one-off house on the basis of a full time rural dependent business (equine or other) from their proposed home / landholding in the rural area and where it will contribute to and enhance the rural community the

Council will consider facilitating such applicants in accordance with Local Need Criteria set out in Table 4.3.

It is the policy of the Council to:

RH 18 Ensure that planning applications for a rural dwelling on the basis of the establishment of a full-time viable commercial equine or other rural enterprise on site will generally be favourably considered, having regard to the following criteria: (i) The landholding shall comprise a minimum of 5 Hectares. (ii) All other siting and design considerations will be taken into account in assessing the application. (iii) It must be demonstrated that the nature of the enterprise is location dependent and intrinsically linked to a rural location

5.2.3. **Kildare County Development Plan 2023-2029 (KCDP)**

5.2.4. The subject site is located in the rural area outside of designated settlements. Chapter 3, Section 3.13 – Sustainable Rural Housing is relevant.

5.2.5. The subject site is identified as an ‘Area under Strong Urban Influence’ as per Map 3.1 of the KCDP.

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

5.2.6. Section 3.13.3 Compliance with the rural Housing requirements provides a definition of ‘economic’ and ‘social’ need:

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.

5.2.7. Table 3.4 provides a Schedule of Local Need Criteria in accordance with the NPF (NPO 19)

Applicant Category	Rural housing Need Assessment criteria	
	Zone 1	Zone 2
Category A – Economic A farmer of the land or the son/ daughter/ niece/ nephew of the farmer who it is intended will take over the operation of the family farm or	A farmer (for this purpose) is defined as a landowner with a holding of >15ha which must be in the ownership of the applicant's immediate family for a minimum of seven years preceding the date of the application for planning permission.	

<p>(ii) An owner and operator of a farming/ horticultural/ forestry/ bloodstock/ animal husbandry business on an area less than 15ha.</p>	<p>The owner/operator [as referred to in Category A (ii)] must be engaged in that farming activity on a daily basis, as their main employment. Same must be demonstrated through the submission of documentary evidence to include confirmation that the farming/agricultural activity forms a significant part of the applicant's livelihood, including but not limited to intensive farming.</p>	
<p>Category B – Social</p>	<p>Zone 1</p>	<p>Zone 2</p>
<p>(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.</p>	<p>Applicants must have grown up and spent 16 years 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.</p>	<p>Applicants must have grown up and spent 16 years 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.</p>

5.2.8. Relevant Policy / Objectives.

It is the policy of the Council to:

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.

5.2.9. Section 3.14 Rural Housing Density

It is the policy of the Council to:

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.

It is an objective of the Council:

HO O59 Carefully manage Single Rural Dwelling Densities to ensure that the density of one-off housing does not exceed 30 units per square kilometre¹¹, unless the applicant is actively engaged in agriculture, or an occupation that is heavily dependent on the land and building on their own landholding.

Note: As per Kildare Residential Density Toolkit the Single Rural Dwelling Density (SRDD) in this area equates to 13 units per square kilometre which is deemed acceptable under the KCDP.

5.3. Natural Heritage Designations

- 5.3.1. There are no European designated sites on or within the immediate vicinity of the site. The nearest designated site is the Mouds Bog Special Area of Conservation (Site Code: 002331), c. 6.2km to the north-west of the site.

The Grand Canal pNHA is located c1.2km to the north-west.

5.4. EIA Screening

- 5.5. Having regard to the nature and scale the development which comprises a single house and poly-tunnels for agricultural use, 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

This is a first party appeal lodged on behalf of the applicant, Holly Clarke, against the decision of Kildare County Council to refuse permission for the development of lands at The Green Avenue, Newland West, Naas, Co. Kildare. The grounds of appeal can be summarised as follows:

- The applicant did not fill out a rural housing application form because the details required in the form were not considered relevant to the assessment of the applicant's application.
- The applicant has lived nearly all her life (26 years) in the rural village of Two Mile House and has links to this rural area. She has a qualification in

horticulture and intends to establish her own business with supporting advice from her parents who owned Johnstown Garden Centre for many years.

- The proposed dwelling is required to aid in the operation of an established start-up horticultural business which the applicant seeks to expand. This business will be complemented by the established snail farm on the site. The business is location dependent, and the applicant has to live at this location for reasons of security and monitoring.
- The applicant's snail farm is currently operational but in its early stages. Notwithstanding, the primary element of the business and the applicant's purpose in purchasing the site is for the plant nursery.
- The applicant applied for a dwelling in Zone 1, in accordance with the provisions of Category 2(ii) of Table 4.3(b) of the KCDP 2017-2023:

Persons who can satisfy the Planning Authority of their commitment to operate a full-time business from their proposed home in the rural area where they have existing links to that rural area and that the business will contribute to and enhance the rural community and that the nature of such enterprise is location dependent and intrinsically linked to a rural location.

- The application was however assessed based on local need criteria that apply in cases of a standard planning application for a rural dwelling rather than an application for a rural business with a dwelling.
- The applicant's business plan was dismissed in its entirety simply because the size of the site is below 5ha which is considered unreasonable.
- The assessment should have been restricted to the tests outlined in Rural Housing Policy Zone 1, Table 4.3(a) Category of applicant 2, subcategory (iii) of the KCDP 2017-2023 which relates to Policy RH2. There is no text in this subcategory which refers to a minimum size of a site being required to operate a rural business.
- Given the proposed dwelling involves a rural-based business which contributes to the rural community and is compatible with a business specified in local need criteria in the Kildare CDP 2017-2023 (agriculture/horticulture) and is location dependent, and the applicant will work full-time in the

business, all necessary criteria are met. It is wholly unreasonable for the Council to have refused permission based on non-compliance with Policy RH2

- With respect to Policy RH18. The Council adopted a very black and white approach with no consideration of the fact that a 5ha site is not required for this business.
- The planner's report does not address the Easthill Farm Case in Newtownmountkennedy, Wicklow (ABP Ref: PL27.304432) where the High Court quashed a refusal of planning permission by the Board to an organic farmer to build a home on his small holding.
- Reference is made to Circular SP 5/08 – the applicant does not have to be from the local area and there is no reference to the rural business having to be a certain size. Precedent should be given to national planning guidelines over county development plan where there is conflict.
- The reason for the planning authority's reference to the decision to refuse permission for the development sought under KCC Ref:21/1481 is unclear. Each application must be assessed under its own merits.
- Included in the grounds of appeal is:
 - A copy of the applicant's qualification in Horticulture
 - Examples of successfully operating nurseries on small plots in Ireland
 - Copies of KCC decision and their assessment of the applicant's local need

6.2. Planning Authority Response

The planning authority in its response received 11th of July 2022, confirm its decision and has no further comments or observations to make.

6.3. Observations

None

7.0 Assessment

7.1. Introduction:

- 7.1.1. Having examined the application details and all other documentation on file, (including the submissions received in relation to the appeal), and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issue in this appeal is compliance with Kildare County Councils Rural Housing Policy which formed the basis of the Councils decision to refuse permission. Proposals for wastewater treatment and appropriate assessment also merit consideration.

7.2. Compliance with Rural Housing Policy:

- 7.2.1. Compliance with rural housing policy is a core consideration for any planning application for a one-off house in a rural area. Chapter 3, Section 3.13 (Sustainable Rural Housing) of the Kildare County Development Plan 2023-2029 (KCDP 2023) is relevant in this regard. It is noted that the application was assessed by Kildare County Council under the Kildare County Development Plan 2017-2023 which was the operative plan for the area at the time.
- 7.2.2. Section 3.13.3 (Compliance with the Rural Housing Requirements) of current KCDP 2023 notes that 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, it is stated that the 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. It is also clearly stipulated that urban generated rural housing will not be considered.
- 7.2.3. Policy HO P11 of the KCDP 2023 seeks to 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), the accompanying Schedule of Category of Applicant and Local Need Criteria set out in

Table 3.4 and in accordance with the relevant objectives (i.e. HO O43 – HO O49) of the Plan.

- 7.2.4. The National Planning Framework (NPF) requires as an overall objective in relation to rural housing that a distinction be made between areas under urban influence, i.e., within the commuter catchment of cities and large towns and centres of employment, and elsewhere. As per the rural housing policy zone map (Map 3.1), the appeal site is located within 'Zone 1 - Areas Under Strong Urban Influence. In 'Areas under Strong Urban Influence', the CDP notes that 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. This would accord with NPF Policy NPO 19.
- 7.2.5. As noted in the foregoing, an applicant must either have 'economic' or 'social' need to live in the area to be considered for a one-off dwelling in the rural area of Kildare. An 'economic' need is defined as 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. 'Social' need is defined this as '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.' I am satisfied on the basis of the information provided in support of this application that qualification on the basis of 'social' need is not relevant in this case as the applicant is a long-term resident of the rural settlement of Two Mile House which is located c1km to the south of the site and has not resided in the rural area.
- 7.2.6. As set out in the information / documentation submitted in support of the application and appeal, the applicant is seeking to qualify for a rural house at this location under Zone 1 Category 2(iii) of the previous KCDP (i.e., 2017-2023), as follows:

(iii) Persons who can satisfy the Planning Authority of their commitment to operate a full-time business from their proposed home in the rural area where they have existing links to that rural area and that the business will contribute to and enhance the rural community and that the nature of such enterprise is location dependent and intrinsically linked to a rural location.

- 7.2.7. Given the circumstances of the applicant, the relevant criteria to consider under this appeal, as per Table 3.4 (Schedule of Local Need Criteria in accordance with the NPF (NPO 19)) of the recently adopted KCDP (2023-2029), is Category A(ii) - An owner and operator of a farming/ horticultural/ forestry/ bloodstock/ animal husbandry business on an area less than 15ha.
- 7.2.8. It is noted that Kildare County Council refused permission for the proposed development based, in part, on non-compliance with the requirements of Policy RH18 of the previous KCDP (2017-2023) which, when in force, required a minimum landholding of 5ha for new rural dwellings proposed on the basis of the establishment of a full-time viable commercial equine or other rural enterprise. Category A(ii) of the KCDP (2023-2029) applies to farming / agricultural enterprise on areas less than 15ha with no minimum landholding size stipulated.
- 7.2.9. The Rural Housing Need Assessment Criteria for Category A(ii) does however stipulate that the owner/operator [as referred to in Category A (ii)] must be engaged in that farming activity on a daily basis, as their main employment. Same must be demonstrated through the submission of documentary evidence to include confirmation that the farming/agricultural activity forms a significant part of the applicant's livelihood, including but not limited to intensive farming.
- 7.2.10. In accordance with the information / documentation submitted in support of the application and appeal: The applicant purchased the 2.27ha landholding at The Green Avenue, Newland West, Naas, Co. Kildare in 2020 for the purpose of starting a horticultural business – Garden Delights Nursery. The proposed dwelling is required to operate the now established start-up horticultural business which the applicant seeks to expand to provide a full-time income. The horticultural business is to be complemented by the applicants existing snail farm which has been

established on site since c2020 but is still in its very early stages. The business is location dependent, and it is necessary for the applicant to reside on site for reasons of security and monitoring etc.

- 7.2.11. The information provided also sets out the applicant's background in the horticultural industry. In accordance with the details provided the applicant has gained experience working (both part and full time) in the family business, a garden centre owned by the applicants' parents. She has a degree Wildlife Biology and is currently employed, full-time, at commercial nursery in Naas.
- 7.2.12. The documentation submitted in support of the application also includes: a business plan which provides five-year financial projections for the snail farm and horticultural business; a letter from Teagasc stating that the application site has many attributes that lend itself to use as a nursery (i.e., flat, sheltered site with good road access, close to urban centres) and a letter from the Department of Agriculture food and the Marine confirming that the applicant has obtained a herd number for the snail farm.
- 7.2.13. Having considered the information / documentation submitted in support of the application and appeal and having inspected the site, I am satisfied that the applicant is engaged in farming / agricultural activity on her lands at The Green Avenue; however, I am not satisfied that the applicants farming / agricultural activity meets with the rural housing need assessment criteria as set out in Table 3.4 - *Schedule of Local Need Criteria in accordance with the NPF (NPO 19)* of the KCDP 2023-2029.
- 7.2.14. The rural housing need assessment criteria as set out in Table 3.4 of the KCDP 2023-2029 requires the owner/operator of a farming/ horticultural etc business on an area less than 15ha to be engaged in that farming activity on a daily basis, as their main employment and that it be demonstrated that said farming/agricultural activity forms a significant part of the applicant's livelihood.
- 7.2.15. It in case, it is evident from the information / documentation submitted in support of the application and appeal that applicant's businesses (snail farm and nursery) are in their early stages of development. The applicant is in full time employment (outside of her farming activity at The Green Avenue) and has not demonstrated that she is

currently in receipt of an income from her businesses. On this basis I conclude that the applicant has not established a demonstrable economic need to live on the application site.

- 7.2.16. The proposed development, in absence of any identified local based need for the house at this location, would result in a haphazard and unsustainable form of development in this rural area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.3. Wastewater Treatment

- 7.3.1. Assessment of the wastewater treatment element of a rural one-off house is a standard consideration. I note that Policy Objective HO P27 of the current CDP requires ‘... all applications to demonstrate, to the satisfaction of the Planning Authority that the proposed development site can accommodate an on-site wastewater treatment system in accordance with the EPA Code of Practice for Wastewater Treatment Systems for single houses (2021), the County Kildare Groundwater Protection Scheme, and any other relevant documents / legislation as may be introduced during the Plan period.’
- 7.3.2. A Site Characterisation Report was submitted with the application. This report includes the following details:

Table 7.1 - Details from Site Characterisation Report		
Soil type	BminPD Mineral poorly drained	
Subsoil	Surface water gleys	
Aquifer Vulnerability	High	
Groundwater Protection Response	R1 Acceptable subject to normal good practice (i.e. system selection, construction, operation and maintenance in accordance with this CoP).	
Slope	Relatively flat (<1:20)	
Groundwater flow Direction	Southwest of site	
Ground Condition	Good, firm on top, no ponding	
Potential targets at risk	Groundwater.	
Trial Hole Depth	3.0	
Percolation Test	Surface (p-Test)	39.81
	Subsurface (T-Test)	23.08

- 7.3.3. The site characterisation report outlines the results of the trial hole assessment which was carried out in July 2021. The trial hole was dug to a depth of 3m. Bedrock was not encountered. The water table was encountered at a depth of 2.1m below ground level, with mottling observed at a depth of 0.71m, indicating saturation for part of the year. I consider the results to be generally consistent with the ground conditions observed on site. A raised percolation area will be required on site.
- 7.3.4. The report concludes that site is suitable for development and is suitable for either a secondary treatment system or tertiary treatment system with discharge to ground. The report recommends a tertiary treatment system and infiltration/treatment area with site improvement works including the removal of the top 300mm of soil and its replacement with sub-soil (T-value 23.08) to form a raised percolation bed.
- 7.3.5. Having regard to the information on file and having inspected the appeal site, I am generally satisfied that the applicant's proposals for the disposal and treatment of wastewater are acceptable. 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 ≤ 10 (2021).

7.4. **Appropriate Assessment**

7.4.1. The nearest designated site is the Mouds Bog Special Area of Conservation (Site Code: 002331), c. 6km 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 wider vicinity. Notwithstanding, having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest European site, I am satisfied that no appropriate assessment issues arise and 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**

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

10.0 **Reasons and Considerations**

1.	<p>Policy HO P11 of the Kildare County Development Plan 2023-2029 seeks to 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 in the plan.</p> <p>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</p>
----	---

<p>Environment, Heritage and Local Government in April 2005 and on lands identified as 'Zone 1' in the Kildare County Development Plan, 2023-2029.</p> <p>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.</p> <p>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. It is considered therefore that the applicant does not come within the scope of the local need criteria as set out in the Kildare County Development Plan, 2023-2029.</p> <p>The proposed development, in the absence of any identified local based housing need for the house at this location, would result in a haphazard and unsustainable form of development in this rural area, would contribute to the encroachment of random rural development in the area and would mitigate against the preservation of the rural environment and the efficient preservation of public services and infrastructure. The proposed development would be contrary to ministerial guidelines and to national policy and to the provisions of the Kildare County Development Plan 2023 to 2029 and would therefore be contrary to proper planning and sustainable development of the area.</p>
--

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Lucy Roche
Planning Inspector

14th April 2023