



An
Bord
Pleanála

Inspector's Report ABP-314060-22

Development	New agricultural entrance along with all associated site development and facilitating works.
Location	Bishopsland, Ballymore Eustace, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	22474
Applicant(s)	John O'Shea
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party v. Decision
Appellant(s)	Michael & Joan Mooney
Observer(s)	John Cassidy Sean Mooney
Date of Site Inspection	20 th December, 2022
Inspector	Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located in the rural townland of Bishopsland, Ballymore Eustace, Co. Kildare, approximately 1.0km east of Ballymore Eustace village centre and 1.6km west of the N81 National Road, where it occupies a position along the southern side of Local Road No. L2025 c. 35m east of its junction with the service road that leads to the Ballymore Eustace Water Treatment Works and neighbouring lands. The surrounding area is typically rural in character with intermittent instances of one-off housing and agricultural outbuildings, although notable exceptions include the nearby Water Treatment Works (approximately 450m to the south / southwest) and the GAA playing fields c. 850m further east.
- 1.2. The site itself has a stated site area of 6.96 hectares, is rectangular in shape and forms part of a larger agricultural field (*N.B.* For the purposes of clarity, the Board is advised that the stated site area would appear to mistakenly refer to the entirety of the field / landholding). It is bounded by a line of mature trees along its northern boundary with the remaining site boundaries undefined at present. The wider field is bounded by a combination of mature trees and hedgerows to the north, south, east and west. Access to the site is presently achieved via an existing field entrance onto the service road to the west.

2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a new splayed agricultural entrance arrangement onto the adjacent public road (Local Road No. 2025) with associated site development works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 14th June, 2022 the Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to 11 No. conditions which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

- Condition No. 2 – States that the proposed access is to be used for agricultural purposes only.
- Condition No. 3 – Requires the existing boundary planting to be retained, except where shown for removal on the site layout plan. All new planting is to be of native species and completed within the next available planting season upon construction of the access.
- Condition No. 4 – Refers to archaeological mitigation.
- Condition No. 5 – Requires the entrance to be constructed generally in accordance with Drg. No. E/3639-5 with the outer piers to be set back 2.4m from the road edge.
- Condition No. 6 – Refers to surface water drainage.
- Condition No. 7 – Refers to roadside drainage.
- Condition No. 8 – Refers to the required sightlines.
- Condition No. 9 - Refers to the maintenance of sightlines.
- Condition No. 10 – Refers to construction management.
- Condition No. 11 - Refers to construction management.

3.2. Planning Authority Reports

3.2.1. *Planning Reports:*

Details the site context and the applicable policy considerations before indicating that the proposal is acceptable and will not seriously injure the amenities of the area or of property in the vicinity. It concludes by recommending a grant of permission, subject to conditions.

3.2.2. *Other Technical Reports:*

Heritage Officer: No objection.

Area Engineer: Notes that the site notice is in place.

Roads, Transportation & Public Safety Dept.: No objection, subject to conditions.

Water Services: No objection.

3.3. Prescribed Bodies

3.3.1. *Department of Housing, Local Government and Heritage*: Notes that the proposed development is close to the area of archaeological potential established around Recorded Monument No. KD029-039--- (linear earthwork) which is subject to statutory protection in the Record of Monuments and Places established under Section 12 of the National Monuments (Amendment) Act, 1994. The Recorded Monument is believed to be a surviving portion of the defensive earthwork constructed to defend the area known as The Pale in the 15th Century. Therefore, it is recommended that a condition requiring the following archaeological mitigation be attached to any grant of permission:

- No groundworks for construction or landscaping shall take place within 20m of the extended perimeter of Recorded Monument No. KD029-039--- (linear earthwork).
- Extreme care should be taken to ensure that the Recorded Monument is not damaged by vehicles entering or leaving the site.
- The buffer area shall not be used as a site compound or for storage.
- Should planting take place within this buffer zone, only plants with shallow root systems shall be chosen.

3.4. Third Party Observations

3.4.1. A total of 3 No. submissions were received from interested third parties and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The land in question is already accessible via a long-established agricultural entrance.
- The detrimental impact on visual amenity and biodiversity associated with the loss of mature tree planting.
- Traffic safety concerns given the high traffic volumes and speeds along this section of roadway.

4.0 Planning History

4.1. On Site:

4.1.1. PA Ref. No. 221425. On 24th January, 2023 the Planning Authority issued a notification of a decision to refuse permission to John O'Shea & Anita McLoughlin for a) a proposed single storey dwelling b) a stable block with manure pit and effluent tank, c) new vehicle entrance, d) treatment system & percolation area along with all associated site development and facilitating works.

- It is the policy of the County Development Plan, 2017-2023 under Policy RH2 to focus the provision of one-off housing in the rural countryside to the category of 'local need', subject to compliance with normal planning criteria including siting and design considerations. Based on the information submitted with the application, it is considered that the applicant has not adequately demonstrated compliance with the Local Need Criteria, as outlined in Table 4.3(b) of the County Development Plan, 2017-2023. The proposed development would therefore contravene materially Section 4.1.3 of the Kildare County Development Plan, 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.
- Policy RH10 seeks to control piecemeal and haphazard development of rural areas close to settlements having regard to the impact of such development on settlement consolidation, on provision of infrastructure, and on the viability of urban public transport. Policy RH11 seeks to preserve and protect the open character of transitional lands outside of settlements in order to prevent linear sprawl and to maintain a clear distinction between urban areas and the countryside. The proposed development, given its location, would contribute towards the erosion of the distinction of the urban area of Ballymore Eustace from the open countryside and would constitute an unsustainable and undesirable pattern of development in the transitional lands on the western outskirts of the settlement. The proposed development would therefore contravene Policy RH10 and RH11 of the Kildare County Development Plan, 2017-2023 and would be contrary to the proper planning and sustainable development of the area.

4.2. **On Adjacent Sites:**

- 4.3. PA Ref. No. 221371. On 16th January, 2023 the Planning Authority issued a notification of a decision to grant permission to Irish Water for the installation of 4,280m² (880kW) ground mounted solar photovoltaic (PV) panels and all associated and ancillary works at Ballymore Eustace Water Treatment Plant, Bishopsland, Ballymore Eustace, Co. Kildare.

5.0 **Policy and Context**

5.1.1. **Kildare County Development Plan, 2023 – 2029:**

Chapter 3: Housing:

Section 3.16: Access and Entrances:

HO P30: Require that proposals retain and maintain existing hedgerows in all instances, with the exception only of the section required to be removed to provide visibility at the proposed site entrance. On such cases, proposals for replacement hedgerows, including details of composition and planting must be submitted with any application which requires such removal.

HO P32: Require that the design of entrance gateways should be in keeping with the rural setting. All applications for a dwelling in a rural area should include detailed drawings and specifications for entrance treatments. The roadside boundary should ideally consist of a sod/earth mound/ fencing planted with a double row of native hedgerow species.

Chapter 4: Resilient Economy & Job Creation:

Section 4.19: Agriculture:

RE P13: Support and facilitate sustainable agriculture, horticulture, forestry and other rural enterprises at suitable locations in the County where there will be no potential for likely significant effects on a European Site or on a site that shares a hydrological connection to a European Site.

RE O89: Protect agriculture and traditional rural enterprises from haphazard and/or incompatible development.

Chapter 5: Sustainable Mobility & Transport:

Section 5.8: Local Roads:

TM O102: Minimise the extent of hedgerow removal in order to achieve adequate sightlines. However, where it has been satisfactorily demonstrated that there is no other suitable development site (for planning reasons) any removed hedgerow shall be replaced with native hedgerow species. Opportunities should be sought to translocate existing species rich hedgerows, where possible, and subject to proper biosecurity protocols.

Chapter 9: Our Rural Economy:

Section 9.3: Rural Economy & Rural Enterprise:

RD P1: Support and promote rural enterprises and encourage appropriate expansion and diversification in areas such as sustainable agriculture, forestry, peatlands, peatlands rehabilitation and sustainable peatland related tourism, food, crafts, renewable energy at suitable locations in the county, particularly where they contribute to a low carbon and resilient economy.

RD O2: Facilitate agriculture, horticulture, forestry, tourism, energy production and rural resource-based enterprise within the rural settlements and in appropriate rural locations subject to relevant development management standards.

RD O6: Encourage the conservation and promotion of biodiversity in all rural development activities whilst supporting the restoration, preservation, and enhancement of ecosystems dependent on agriculture and forestry.

Section 9.4: Agriculture / Agri-Food Sector:

RD P2: Support the future and continued development of agriculture and the agri-food sector in County Kildare.

RD O10: Encourage the development of environmentally sustainable agricultural practices, to ensure that development does not impinge on the visual amenity of the countryside and that the quality of the natural environment (watercourses, wildlife habitats and areas of ecological importance) is maintained and protected from the threat of pollution to support the achievement of climate targets.

Chapter 12: Biodiversity & Green Infrastructure:

Section 12.1: Biodiversity:

BI P1: Integrate in the development management process the protection and enhancement of biodiversity and landscape features by applying the mitigation hierarchy to potential adverse impacts on important ecological features (whether designated or not), i.e. avoiding impacts where possible, minimising adverse impacts, and if significant effects are unavoidable by including mitigation and/or compensation measures, as appropriate. Opportunities for biodiversity net gain are encouraged.

Section 12.9: Trees, Woodlands and Hedgerows:

BI P6: Recognise the important contribution trees and hedgerows make to the county biodiversity resource climate mitigation, resilience and adaptation.

BI O26: Prevent, in the first instance, the removal of hedgerows to facilitate development. Where their removal is unavoidable, same must be clearly and satisfactorily demonstrated to the Planning Authority. In any event, removal shall be kept to an absolute minimum and there shall be a requirement for mitigation planting comprising a hedge of similar length and species composition to the original, established as close as is practicable to the original and where possible linking to existing adjacent hedges. Ideally, native plants of a local provenance and origin should be used for any such planting. Removal of hedgerows and trees prior to submitting a planning application will be viewed negatively by the planning authority and may result in an outright refusal.

- BI O27:* Require the retention and appropriate management of hedgerows and to require infill or suitably sized transplanted planting where possible in order to ensure an uninterrupted green infrastructure network.
- BI O29:* Require the undertaking of a comprehensive tree survey carried out by a suitably qualified arborist where development proposals require felling of mature trees; the tree survey shall assess the condition, ecological and amenity value of the tree stock proposed for removal as well as mitigation planting and a management scheme. It should be noted that rotting and decaying trees are an integral part of a woodland ecosystem and can host a range of fungi and invertebrates, important for biodiversity. While single or avenue trees that are decaying may be removed, others that are part of group or cluster may be subject to retention.

Chapter 13: Landscape, Recreation & Amenity

Section 13.3: Landscape Character Assessment:

The proposed development site is located within the '*Eastern Uplands*' Landscape Character Area shown on Map Ref.: V1-13.1.

Section 13.3.1: Landscape Sensitivity:

Eastern Uplands: Class 3 (High Sensitivity): Areas with reduced capacity to accommodate uses without significant adverse effects on the appearance or character of the landscape having regard to prevalent sensitivity factors.

- LR P1:* Protect and enhance the county's landscape, by ensuring that development retains, protects and, where necessary, enhances the appearance and character of the existing local landscape.
- LR O1:* Ensure that consideration of landscape sensitivity is an important factor in determining development uses. In areas of high landscape sensitivity, the design, type and the choice of location of the proposed development in the landscape will be critical considerations.
- LR O4:* Ensure that local landscape features, including historic features and buildings, hedgerows, shelter belts and stone walls, are retained,

protected and enhanced where appropriate, so as to preserve the local landscape and character of an area.

Section 13.4: *Areas of High Amenity:*

In addition to Landscape Character Areas and the sensitivity of these areas to development, there are certain special landscape areas within the county, some of which overlap with sensitive landscapes. For the purposes of this Plan these areas have been defined as Areas of High Amenity. They are classified because of their outstanding natural beauty and/or unique interest value and are generally sensitive to the impacts of development.

Section 13.4.12: *East Kildare Uplands:*

The Eastern Uplands are located in the east of the county and are part of the Wicklow Mountain complex. The topography rises from the lowland plains, through undulating terrain to the highest point of 379m above sea level (O.D.) at Cupidstownhill, east of Killeel. The elevated nature of this area provides a defined skyline with scenic views over the central plains of Kildare and the neighbouring Wicklow Mountains which further define the skyline and the extent of visibility. The East Kildare Uplands are rural in character with a number of scenic views from elevated vantage points. The general land use on the uplands is pasture, with some tillage, quarrying and forestry.

Along a number of roads, which cross the upper and lower slopes of the uplands, there are long-distance views towards the Kildare lowlands and the Chair of Kildare. The sloping land provides this area with its distinctive character and intensifies the visual prominence and potential adverse impact of any feature over greater distances. Public roads traversing the slope provides an increased potential for development to penetrate primary and secondary ridgelines when viewed from lower areas and in a few areas the recent pattern of ribbon development obscures views across the plains of Kildare. In the Eastern Kildare Uplands, nearly all ridgelines are secondary when viewed from the lowland areas, as the Wicklow Mountains to the east define the skyline (i.e. form primary ridgelines). Gently undulating topography and shelter vegetation provided by conifer and woodland plantation can provide a shielding of built form. Views of the River Liffey Valley as well as of the Poulaphouca Reservoir are available from the hilltops and high points on some of the local roads.

LR P2: Protect High Amenity areas from inappropriate development and reinforce their character, distinctiveness and sense of place.

Chapter 15: Development Management Standards:

Section 15.2: General Development Standards:

Section 15.2.4: Soft Landscaping

Section 15.7: Transport:

Section 15.7.6: Access Requirements:

Where the removal of hedgerow is required in order to achieve sight lines, the minimum amount of hedgerow shall be removed (see Section 15.2.4 above). Any new boundary should be planted with suitable indigenous species as outlined in section 15.2.4.

Section 15.9: Employment Including Extractive Industry and Agricultural Buildings:

Section 15.9.8: Agricultural Developments:

The removal of hedges to accommodate agricultural developments shall only be permitted with the written agreement of the Planning Authority and shall only be considered as a last resort. It is important that hedgerows are retained in order to maintain and enhance existing green infrastructure networks in the interests of biodiversity. When retaining boundary hedgerows, the council requires suitably sized infill planting where possible. A landscaping plan is required as part of an application for agricultural development and should include screening and shelterbelt planting, composed principally of native species as listed in section 15.2.4.

Section 15.17: Built and Natural Heritage

Section 15.17.4: Natural Heritage, Green Infrastructure and Biodiversity

5.2. Natural Heritage Designations

- 5.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:
- The Poulaphouca Reservoir Proposed Natural Heritage Area (Site Code: 000731), approximately 1.3km south of the site.

- The Poulaphouca Reservoir Special Protection Area (Site Code: 004063), approximately 1.5km southeast of the site.
- The Liffey Valley Meander Belt Proposed Natural Heritage Area (Site Code: 000393), approximately 1.7km west-northwest of the site.

5.3. EIA Screening

- 5.3.1. Having regard to the minor nature and scale of the proposed development, the site location outside of any protected site, the nature of the receiving environment, the limited ecological value of the lands in question, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- Construction of the proposed entrance will necessitate the felling of an approximately 33m length of native tree planting (within an otherwise unbroken tree line that extends over 1km of road frontage) which will seriously detract from the visual amenity of this approach road to Ballymore Eustace.
- The disturbance arising from the extensive site works and the laying of hardcore surfacing extending 15m into the field will adversely impact on local wildlife, including foraging / commuting corridors and habitat cover etc., contrary to the objective of the Development Plan to preserve the Eastern Uplands Landscape Character Area. (Class 3 Sensitivity).
- The proposal contravenes Section 10.5.2 and Policy AG2 of the Development Plan as it involves the removal of native trees and the construction of an expansive agricultural entrance that will detract from the visual amenity of the surrounding countryside and adversely impact on wildlife habitats.

- Clarity is required as to which trees are proposed for removal. It is also unclear if additional trees will need to be removed to achieve sightlines.
- The reference to “existing hedge” on Drg. No. 4458-03 is incorrect. There is no existing hedge but rather a continuation of the tree line to either side of the planting proposed for removal.
- There are inconsistencies in the proposed entrance arrangement shown on Drg. Nos. 4458-02 & 4458-03 as follows:
 - Drg. No. 4458-02 shows the 15m wide splayed opening commencing at the tree lined boundary and extending 9m into the field up to the 5m wide entrance gate. This results in an overall gate setback of c. 14m from the road edge.
 - Drg. No. 4458-03 shows the 15m wide splayed opening commencing at a point set back 2.4m from the road edge and extending 9m into the field up to the 5m wide entrance gate. This results in an overall gate setback of c. 11.4m from the road edge.

Clarification is required as regards these ambiguities and the exact positioning of the proposed entrance (as well as the particular trees proposed for removal).

- The Planning Authority has failed to refer to Objectives GL14 & GL15 of the Development Plan as regards the protection of demesne trees and hedgerow:
 - GL14: Contribute towards the protection where possible of the trees which are considered an important component of demesne landscapes.
 - GL15: Encourage the protection of historic hedgerows or significant hedgerows which serve to link habitat areas to each other and the surrounding countryside.

The roadside trees bounding the development site served to define the Wolfe Demesne and should be preserved (the eastern and western wooded boundaries of the demesne are shown on Figure 3 of the grounds of appeal).

- While it is acknowledged that agriculture as a land use is “most compatible” with the highly sensitive ‘Eastern Uplands’ landscape, it is not accepted that this should be used to justify the proposed removal of mature trees and the insertion of an expansive entrance into the existing continuous tree line of native species.
- The site is presently accessible via an existing field entrance from the adjacent roadway to the Irish Water / Ballymore Eustace Water Treatment Works (which also serves adjoining farmland and 2 No. dwelling houses). This has been the situation for more than 50 No. years and has not changed since the applicant’s acquisition of the site.
- Although it has been claimed that the applicant has ‘*no legal right of way and as such access to the landholding is impeded*’, no evidence has been provided to confirm that this is the situation. Irish Water has not withdrawn access from any of the landholders to their respective properties and there are established ‘rights of way’ along the road in question.
- While the appellants are supportive of the applicant’s agricultural pursuits, there are concerns that the continuing use of the existing agricultural entrance has not been fully investigated and that the proposal may lead to the unnecessary destruction of an historic demesne landscape.
- The existing field entrance can continue to accommodate all types of agricultural machinery (as has been the case in the past). For example, hay is presently being made on site using the existing entrance.
- Rather than stating that “*the removal of c. 30m of native trees is regrettable*”, the situation is avoidable (with minimal disruption of wildlife and no felling of trees in accordance with the objectives of the Development Plan).

6.2. Applicant Response

- The report of the case planner states that the proposed entrance will require the removal of c. 30m of mature tree planting, however, this is incorrect and it appears that the planner may have misread the dimensions shown on Drg.

No. 4458-02 which shows a measurement of 33m as equating to the overall length of the northern / roadside site boundary.

- It is apparent from Drg. No. 4458-02 Rev. A that a 12m stretch of ash trees is to be removed (corresponding with Drg. No. 4458-02: '*Entrance Plan & Elevations*' which outlines that the maximum width of the proposed entrance will be 15m at a location set back 2.4m from the road edge). The existing hedge line is located 7.2m behind the near edge of the carriageway and, therefore, the depth of the margin ensures that a maximum of 12m of hedging will be removed.
- A full survey was undertaken in advance of the planning application in order to determine the most suitable location for the proposed entrance without the need to remove any mature trees. The subject location is the most suitable along the boundary of the site with the public road.
- The depth of the roadside margin allows for sightlines of 120m to be achieved without the need to disturb the remainder of the hedge line.
- The proposed entrance has been designed in accordance with Kildare County Council's '*Approved Detail for Agricultural Entrances E3639-5*'. Furthermore, the 15m wide splay of the opening at the roadside along with the 9m depth of the entrance allows for the safe entry & exit of agricultural vehicles to / from the development site.
- The construction of the entrance will not require extensive site works. It is proposed to install a post and rail fence with gates and to plant oak trees (at 3m intervals within the fence line) flanking both sides of the entrance wings. Native hedging will also be planted on the field side of the entrance wings to join the existing tree line along the roadside boundary.
- In support of the proposed development, the Board is referred to the accompanying landscaping report prepared by Hayes Ryan Landscape Architects. This report details that it is proposed to remove a line of multi-stem ash trees typical of hedgerows in the area and that the trees directly in front of the new entrance would appear to have either self-seeded or may have been planted at relatively close spacings as a former hedge-line at this location. Consequently, it is stated that the growth habit of the trees to be removed is

quite elongated, with multi-stemmed and numerous forked bases, and generally tall elongated narrow trunks with foliage predominantly at the upper levels. An approximately 12m length of these poorer ash trees and some understorey hawthorn will be removed to facilitate the new entrance.

- The trees proposed for removal are of the weaker type contained in hedgerow and generally consist of poorly formed multi-stemmed specimens.
- Adjacent ash trees appear to be showing early symptoms of Ash-Dieback disease (typical symptoms include a lack of foliage towards the end of branches with clumps of foliage towards the centre of the tree and the beginning of a thinning canopy).
- The Landscape Architects agree that the 2 No. large pine trees to either side of the proposed entrance are of a substantial stature and maturity. Therefore, these trees are to be retained.
- It has been recommended that the works be carried out with input and guidance from an arborist to ensure the protection of adjacent trees.
 - The higher road level relative to the field facilitates minimal excavation.
 - The sub-base build-up will utilise a cellular confinement layer to the arborists recommendation in order to protect adjacent trees.
 - A permeable material should be used for the surface finish and sub-base build-up.
 - Existing ash stumps should be removed with a stump grinder rather than extensive excavations.
 - The timber post supports for the fencing should be spot excavated to minimise the impact on the roots of adjoining trees.
- The subject landholding has previously been accessed via an existing farm entrance on the adjacent private roadway serving the Ballymore Eustace water works. This access road runs parallel to the application site, however, during the applicant's acquisition of the lands, it was found that there was no legal right of way registered for the landholding to access the public road via the private access road. In effect, the applicant has no legal access to the

landholding thereby resulting in the lodgement of a proposal to develop a new independent agricultural entrance onto the public road.

- The accompanying correspondence from the applicant's legal representatives states that there is "*No existing right of way in favour of this property*". It further outlines that while there is an existing registered right of way for 2 No. dwelling houses located to the rear of the water works, these are not legally connected to the applicant's lands.
- In order to further improve the agricultural holding, the applicant will need to seek funds from a finance company. This will not be possible unless he has full control over the access to the lands.

6.3. Planning Authority Response

None.

6.4. Observations

6.4.1. John Cassidy:

- There is already an existing long-established entrance providing agricultural, pedestrian and vehicular access to the lands in question. This entrance has been used daily by former owners and their tenants and is within 75m of the proposed entrance (c. 35m from Local Road No. L2025).
- Since his acquisition of the lands, the applicant has used the existing entrance for the purposes of spraying, fertilising, mowing, and the baling of hay over the entirety of the holding. In this regard, it is of note that the existing access accommodated the movement of various agricultural machinery, including articulated lorries.
- The applicant has erected a new gate at the existing agricultural access. This clearly indicates that the applicant is satisfied that he has a right to use the entrance and to develop same.
- With respect to traffic turning on or off Local Road L2025, there has never been any issue with any resident, landowner, service provider, pedestrian or member of the public.

- The applicant has failed to demonstrate a need for the proposed entrance given that he already has adequate agricultural access to his land and is using same.

6.4.2. Sean Mooney:

- The existing field entrance from the adjacent service road was recently used by farm machinery to access the landholding. Hay was cut and baled on site before being removed by articulated lorry trailers via the existing entrance with no apparent difficulty. This would indicate that the existing entrance arrangement is capable of safely accommodating the movement of large farm machinery.
- With respect to the applicant's claim that he has '*no legal right of way and as such access to the landholding is impeded*', it is clear that Irish Water have not prevented access via the existing entrance and that the applicant has exercised this right of access on numerous occasions since his purchase of the land.
- The field in question has been exclusively used for agricultural purposes to date. There have never been any buildings on this land and, therefore, it is surprising that the application documentation refers to a '*pre-existing connection to a wastewater treatment*'.
- The applicant has not demonstrated why it is necessary to remove 33m of mature tree planting to provide a new entrance when he is already using an existing access without impediment.

6.5. Further Responses

None.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Visual impact & biodiversity considerations
- Other issues
- Appropriate assessment

These are assessed as follows:

7.2. The Principle of the Proposed Development:

- 7.2.1. The proposed development involves the opening of a new agricultural access onto an adjacent public road (Local Road No. L2025) and will necessitate the removal of a section of the existing roadside tree line and the underlying hedgerow. In this respect, concerns have been raised as regards the need for the proposed entrance in the first instance as well as the likely negative impacts on visual amenity and biodiversity considerations stemming from the associated loss of mature trees and / or hedgerow.
- 7.2.2. The proposed development site forms part of a larger agricultural field (c. 6.96 hectares) which is presently accessed via an existing field gate onto an adjacent local service road that provides access to the Ballymore Eustace Water Treatment Works and neighbouring lands. While it has been acknowledged that access to the wider landholding has historically been available via the aforementioned entrance arrangement, it was seemingly discovered during the applicant's acquisition of the lands that there was no legal right of way registered in favour of the property over the existing access road. Accordingly, the case has been put forward that it will be necessary for the applicant to open a new entrance directly onto the public road to the north (as distinct from the 'private' service road to the west) in order to secure continued access to his lands with a view to procuring further funding that will allow for future investment in the improvement of the holding.
- 7.2.3. The broader policy objectives of the County Development Plan aim to preserve existing trees, woodlands and hedgerows so as to protect and enhance biodiversity

and landscape features. In this regard, it is of relevance to note that Objective TM O102 seeks to minimise the extent of hedgerow removal required to achieve adequate sightlines while referencing the need for it to be satisfactorily demonstrated (for planning reasons) that there is no other more suitable development site available that would negate the requirement to remove hedgerow. Section 12.9: '*Trees, Woodlands and Hedgerows*' of the Plan further elaborates on the valuable contribution of hedgerows to the landscape and visual amenity of the county as well as their wider environmental benefits in terms of providing for biodiversity and wildlife habitat. This recognition is then given effect by Objective BI O26 which seeks to prevent the removal of hedgerows to facilitate development in the first instance before stating that where their removal is unavoidable, same must be clearly and satisfactorily demonstrated to the Planning Authority. Therefore, it is my interpretation of the applicable policy provisions that the Development Plan envisages some measure of 'test' whereby there is a requirement to demonstrate to the Planning Authority a need to remove a section of hedgerow in the absence of a viable alternative or substitute.

- 7.2.4. In establishing the need (if any) for the proposed entrance arrangement, cognisance must be taken of the established means of access available from the service road to the west via the existing field gate. While the applicant has submitted that there is no right of way registered in favour of his property over that access road thereby implying that the roadway is in private ownership and thus not a public road, I would suggest that any entitlement to avail of the existing access arrangement serving the applicant's landholding requires further consideration. Firstly, having conducted a site inspection, it is of note that the access road to the water treatment works and beyond is seemingly open to the public with no obstruction or signage indicating otherwise. Furthermore, the installation of streetlighting and a footpath extending from the main road, in addition to the presence of a pedestrian crossing over the carriageway to provide access to a nearby amenity walkway, would lend some credence to the possibility that the roadway in question is intended to be publicly accessible (although it may not have been formally designated as a public road). Secondly, notwithstanding the apparent absence of any registered right of way to the applicant's landholding, there would seem to be a reasonable prospect of there being an established right of way to the lands for agricultural purposes given the

historical usage of the existing field gate. This is compounded by the fact that the existing field gate has been both upgraded and widened in recent years with the previous single steel gate having been replaced with twin timber gates.

- 7.2.5. Therefore, having regard to the requirements of Objective Nos. TM O102 & BI O26 of the Development Plan, it is my opinion that further clarity is required as regards the status of the existing access road to the west and the established entrance arrangement serving the wider landholding so as to avoid the unwarranted removal of mature trees & hedgerows.
- 7.2.6. In addition to the foregoing, it is of note that the existing field gate would seem to be adequate for all practical purposes as regards the agricultural use of the wider landholding. Indeed, this issue has been raised by both the appellant and the observers to the appeal with reference being made to the use of the existing access by various farm machinery during the cutting & baling of hay on the holding before its subsequent transportation off site. Given the upgrading works already carried out to the field gate, the adequacy of the existing service road, and noting the preference from a traffic safety perspective for agricultural machinery etc. to access the landholding from the minor roadway (thereby avoiding the unnecessary manoeuvring of vehicles onto / off the main carriageway), I am unconvinced that there is any clear need for the proposed new agricultural access.
- 7.2.7. By way of further comment, I note that the location of the proposed agricultural access corresponds with the siting of the vehicular entrance that was intended to serve the dwelling house recently refused permission on the wider holding under PA Ref. No. 221425 (the appeal period for which has yet to expire at the time of writing).
- 7.2.8. On balance, it is my opinion that in the absence of further clarity / investigation as to the status of the existing well-established agricultural access arrangement to the lands from the service road leading to the Ballymore Eustace Water Treatment Plant, a demonstratable case has not been made pursuant to the requirements of Objective Nos. TM O102 & BI O26 of the Development Plan that would serve to justify the proposed removal of mature trees & hedgerows.

7.3. **Visual Impact & Biodiversity Considerations:**

- 7.3.1. The proposed development site is located within the '*Eastern Uplands*' Landscape Character Area as shown on Map Ref.: V1-13.1: '*Landscape Character Areas*' of the

Kildare County Development Plan, 2023 – 2029 which in turn has been designated as a landscape of ‘*High Sensitivity*’ (Class 3) by reference to Table 13.2: ‘*Landscape Sensitivity Classification to Landscape Character Area*’ wherein it is stated that these areas have a ‘*reduced capacity to accommodate uses without significant adverse effects on the appearance or character of the landscape having regard to prevalent sensitivity factors*’. In this regard, I would draw the Board’s attention to Objective LR O1 which emphasises that the design, type and the choice of location for proposed development will be a critical consideration in the assessment of proposals in areas of high landscape sensitivity. Cognisance should also be taken of Objective LR O4 which seeks to ensure that local landscape features, including hedgerows and shelter belts, are retained, protected and enhanced where appropriate, so as to preserve the local landscape and character of an area.

- 7.3.2. In addition to the foregoing, the application site would seem to be located within the ‘*East Kildare Uplands*’ which have been identified as an ‘*Area of High Amenity*’ in Section 13.4.12 of the Development Plan wherein it is the policy of the Planning Authority (Policy LR P2) to protect such areas from inappropriate development and to reinforce their character, distinctiveness and sense of place. In this regard, it appears that the designation of the ‘*East Kildare Uplands Area of High Amenity*’ corresponds with that of the ‘*Eastern Uplands Landscape Character Area*’.
- 7.3.3. In a local context, this particular section of roadway is characterised by a considerable stretch of near continuous tree / hedge line along the southern side of the carriageway which makes a notable contribution to the overall character of the surrounding rural landscape (as well as the approach to the village of Ballymore Eustace).
- 7.3.4. The opening of the proposed entrance onto the adjacent roadway will require the removal of an approximate 12m length of the existing tree / hedge line along the northern site boundary. In this regard, I would reiterate the broader policy provisions of the Development Plan which seek to preserve existing trees, woodlands and hedgerows so as to protect and enhance biodiversity and landscape features, with particular reference to the requirement under Objectives TM O102 & BI O26 that a demonstratable case be made for the removal of hedgerow in the absence of a viable alternative or substitute.

- 7.3.5. In support of the proposed development and, more particularly, the associated tree / hedgerow removal, the applicant's response to the grounds of appeal has been accompanied by a landscaping report (prepared by Hayes Ryan Landscape Architecture) which details that the roadside site boundary in general consists of a mature tree line of predominantly Ash trees interspersed with Scots Pine, Larch, Beech and under-storey Hawthorn. It subsequently states that the tree line / hedgerow proposed for removal consists of a series of multi-stemmed Ash trees which have either self-seeded or been planted at relatively close spacings as a former hedge-line in this location. The growth habit of these specimens is described as being quite elongated, with multi-stemmed and numerous forked bases, and generally tall elongated narrow trunks with foliage predominantly at the upper levels. In effect, the case has been put forward that the trees proposed for removal are of a weaker and poorly formed variety while there would also appear to be evidence that some of these trees are displaying symptoms of Ash-dieback disease and thus it would be reasonable to expect that the trees are in decline with a limited useful life expectancy,
- 7.3.6. While I would acknowledge the contents of the landscaping report and the rationale for the removal of certain trees and hedgerow that may be of poor quality, unsound or diseased etc., in my opinion, any such loss must be assessed in the context of the relevant provisions of the Development Plan and the need for a clear case to be made for the removal of any tree line and / or hedgerow. Cognisance must be taken of the impact of hedgerow loss on the rural landscape both visually and on biodiversity considerations, particularly when that loss could occur within a broader or more continuous line of planting. This is of particular importance in the subject instance given the site location within the highly sensitive 'Eastern Uplands' Landscape Character Area and the 'East Kildare Uplands' Area of High Amenity.
- 7.3.7. Therefore, given the need for greater clarity as regards the status of the existing access arrangement from the roadway serving the Ballymore Eustace Water Treatment Plant, and noting that a demonstratable case has not been made pursuant to Objective Nos. TM O102 & BI O26 that would serve to justify the proposed removal of the existing mature trees & hedgerow, I am not satisfied that the proposed development would not have an unwarranted negative impact on visual amenity and biodiversity considerations within this sensitive rural landscape.

7.4. Other Issues:

7.4.1. *The Accuracy of the Submitted Plans and Particulars:*

Concerns have been raised as regards the accuracy of the submitted plans and particulars which detail the proposed entrance arrangement and its relationship with the public road. More specifically, it has been submitted that Drg. Nos. 4458-02 & 4458-03 are inconsistent in their depiction of the proposed entrance relative to the roadway as follows:

- Drg. No. 4458-02 shows the 15m wide splayed opening commencing at the tree lined boundary and extending 9m into the field up to the 5m wide entrance gate thereby resulting in an overall gate setback of c. 14m from the road edge.
- Drg. No. 4458-03 shows the 15m wide splayed opening commencing at a point set back 2.4m from the road edge and extending 9m into the field up to the 5m wide entrance gate thereby resulting in an overall gate setback of c. 11.4m from the road edge.

In this regard, I would concur with the appellant that the splayed entrance arrangement shown on Drg. No. 4458-02: '*Site Layout Map*' does not correspond with that shown with Drg Nos. 4458-03: '*Entrance Plan & Elevation*' and E3639-5: '*Entrance Details for Planning Purposes*' which both depict the 15m wide splayed opening commencing at a point set back 2.4m from the road edge. While the applicant's response to the grounds of appeal has sought to clarify the matter by asserting that the maximum width of the proposed entrance will be 15m at a point recessed 2.4m back from the road edge, it has also been submitted that the existing hedge line is located 7.2m back from the carriageway due to the wide grass margin. This would seem to imply that the outermost entrance piers will be set forward of the existing site boundary within the grass margin. In my opinion, it is this aspect of the proposal which gives rise to confusion as to the exact positioning of the proposed entrance relative to both the carriageway and the existing tree / hedge line. Accordingly, I would suggest that the matter could be clarified by showing the proposed entrance in the context of both the roadway and the existing tree / hedge line.

7.4.2. *Archaeological Considerations:*

The proposed development is located in close proximity to the area of archaeological potential associated with Recorded Monument No. KD029-039--- (linear earthwork) which extends along the western boundary of the larger agricultural field of which the subject site forms part. Therefore, considering the works required to facilitate the proposed development, including the need for ground excavation, archaeological mitigation should be required by way of condition in line with the recommendations of the Department of Housing, Local Government and Heritage.

7.5. **Appropriate Assessment:**

- 7.5.1. Having regard to the minor nature and scale of the development under consideration, the site location outside of any protected site, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the 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**

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

9.0 **Reasons and Considerations**

1. Having regard to the site location within the Eastern Uplands Landscape Character Area and the East Kildare Uplands Area of High Amenity, the provisions of the Kildare County Development Plan, 2023 – 2029 which aim to protect and enhance the county's landscape and to preserve existing trees, woodlands and hedgerows so as to protect and enhance biodiversity and landscape features, with particular reference to Objectives. TM O102 & BI O26, and noting the agricultural access arrangements already in place to the lands in question, it is not considered that a demonstratable case has been made in accordance with the requirements of the Development Plan which

would warrant the removal of the existing roadside boundary trees and hedgerow necessary to facilitate the proposed development. The Board is not satisfied that the proposed development would not seriously injure the visual amenities of this sensitive rural landscape and, therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

9th February, 2023