



An
Bord
Pleanála

Inspector's Report ABP-314109-22

Development

(1) Proposed construction of new contemporary style, one and a half storey type dwelling, with five bedrooms, home office, integrated domestic storage, green roof, and solar panels. (2) Detached ancillary shed to rear of house for both domestic use and proposed apiary business. (3) Effluent treatment system, and all associated ancillary site works. (4) Replacement of existing forest gate entrance to new recessed residential use entrance, with traditional style new gates and piers.

Location

Dunmurraghill, Donadea, Naas, Co. Kildare.

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

22532

Applicant(s)

Benjamin Cunningham & Claire Kehoe

Type of Application

Permission

Planning Authority Decision

Refusal

Type of Appeal

First Party v. Decision

Appellant(s)

Benjamin Cunningham & Claire Keogh

Observer(s)

None.

Date of Site Inspection

27th March, 2023

Inspector

Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located in the rural townland of Dunmurraghill, Co. Kildare, approximately 6.8km north of the village of Prosperous and 7.5km southwest of Kilcock, along the eastern side of a local roadway between Ballagh Crossroads and Donadea Forest Park. The surrounding landscape is generally characterised by undulating rural countryside interspersed with instances of bogland and wooded areas / forestry, although there are notable concentrations of one-off residential development along several of the roadways in the wider area, particularly in the vicinity of Ballagh Crossroads.
- 1.2. The site itself has a stated site area of 0.97 hectares, is irregular in shape, and comprises a parcel of commercial woodland nearing maturity. It is bounded by existing housing to the north, farmland to the east and by further forestry to the south with the public road to the west. Access to the lands is presently available via an existing field gate / forestry entrance.

2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a substantial, two-storey dwelling house incorporating an integrated home office and a non-habitable garage (with a stated floor area of 397m² and an overall parapet height of 7.075m). The overall design of the construction is particularly contemporary in its appearance and is based on an irregular plan with an asymmetrical architectural treatment employing a variety of ridge and parapet heights. External finishes include napp plaster, aluminium framed windows and doors, a brise soleil (recycled plastic with a dark wood finish) and a combination of concrete and green (flat) roofing.
- 2.2. It is proposed to construct a detached shed (floor area: 24m²) to the rear of the house for both domestic use and purposes associated with the applicant's planned apiary / bee-keeping business.
- 2.3. Vehicular access to the site will be obtained from the adjacent roadway via a new entrance arrangement and an extensive gravel driveway (while the existing field gate / forestry access is to be closed off, this is situated beyond the confines of the site).

2.4. Provision has also been included for the installation of a packaged wastewater treatment plant with treated effluent to be disposed to ground by way of a polishing filter. A water supply will be obtained from the public mains.

3.0 **Planning Authority Decision**

3.1. **Decision**

3.1.1. On 28th June, 2022 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following single reason:

- Policy RH(iv) of the Kildare County Development Plan, 2017-2023 is to ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations, including the capacity of the area to absorb further development. In conjunction with the extent of existing development in the area, and the degree of existing haphazard or piecemeal development in the area, it is considered that the proposed development would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities, and would contravene Policy RH9(iv) of the Kildare County Development Plan, 2017-2023. The proposed development is therefore considered to be contrary to the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

3.2.1. *Planning Reports:*

Details the site context, planning history, and the applicable policy considerations (since superseded through the adoption of the Kildare County Development Plan, 2023-2029), including the site location within 'Rural Housing Policy Zone 1' (i.e. an 'Area under Strong Urban Influence'), before stating that the applicants have sufficiently demonstrated compliance with the 'local need' requirements of the applicable rural housing policy. However, the report proceeds to note that the wider area is characterised by a considerable saturation of one-off rural housing to the effect that it does not have the capacity to accommodate any additional dwellings in

the absence of social and community facilities as well as physical infrastructure. It is further stated that notwithstanding the rural enterprise proposed on site, the proposal will nonetheless contribute to a private car-based form of development and will contribute to the erosion and suburbanisation of the countryside through an increasing density of residential development in a rural area with no capacity to absorb same. In this regard, while it is acknowledged that the dwelling will be well screened, visual impact is deemed to be only one factor in assessing the basis for developing a dwelling in a rural area. Following further consideration of the design specifics and other technical matters, the report concludes by recommending that permission be refused for the reason stated.

3.2.2. *Other Technical Reports:*

Maynooth Municipal District: No objection, subject to conditions.

Environment: No objection, subject to conditions.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

- 3.4.1. A single submission was received from Seán Ó Fearghaíl T.D. in support of the proposed development.

4.0 **Planning History**

4.1. **On Site:**

- 4.1.1. PA Ref. No. 21330. Was refused on 11th May, 2021 refusing Benjamin Cunningham and Claire Kehoe permission for 1. Proposed construction of new contemporary style, one and a half storey type dwelling, with five bedrooms, home office, integrated domestic storage, green roof and solar panels. 2. Detached ancillary shed to rear of house for both domestic use and proposed apiary business. 3. Effluent treatment system, and all associated ancillary site works. 4. Replacement of existing forest gate entrance to new recessed residential use entrance with traditional style new gates and piers.

- Policy RH(iv) of the Kildare County Development Plan, 2017-2023 is to ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations, including the capacity of the area to absorb further development. In conjunction with the extent of existing development in the area, and the degree of existing haphazard or piecemeal development in the area, it is considered that the proposed development would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities, would contribute to the increasing suburbanisation of the area, and would contravene Policy RH9(iv) of the Kildare County Development Plan, 2017-2023. The proposed development is therefore considered to be contrary to the proper planning and sustainable development of the area.

4.1.2. PA Ref. No. 20812. Was refused on 10th September, 2020 refusing Benjamin Cunningham and Claire Kehoe permission for 1. Proposed Construction of New Contemporary Style, one and a half storey type dwelling, with five bedrooms, home offices, integrated domestic storage, green roof and solar panels. 2. Detached ancillary shed to rear of house for both domestic use and proposed apiary business. 3. Effluent treatment system, and all associated ancillary site works. 4. Replacement of Existing Forest Gate entrance to new recessed residential use entrance with traditional style new gates and piers.

- Policy RH(iv) of the Kildare County Development Plan, 2017-2023 is to ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations, including the capacity of the area to absorb further development. In conjunction with the extent of existing development in the area, and the degree of existing haphazard or piecemeal development in the area, it is considered that the proposed development would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities, would contribute to the increasing suburbanisation of the area, and would contravene Policy RH9(iv) of the Kildare County Development Plan, 2017-2023. Furthermore, the level of tree removal within the application site would contravene RH9(iii) which seeks to retain features

which contribute to local attractiveness. The proposed development is therefore considered to be contrary to the proper planning and sustainable development of the area.

5.0 Policy and Context

5.1. National and Regional Policy

5.1.1. ***Project Ireland 2040 - The National Planning Framework (2018):***

National Policy Objective 15:

- Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

National Policy Objective 19:

- Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:
 - In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;
 - In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.1.2. ***Eastern and Midland Regional Spatial & Economic Strategy (RSES), 2019-2031:***

Section 4.8: '*Rural Places: Towns, Villages and the Countryside*' of the RSES states that:

‘A key challenge is to ensure that in planning for rural places, responses are uniquely tailored to recognise the balance required between managing urban generated demand in the most accessible rural areas, typically in proximity to Dublin and other towns, whilst supporting the sustainable growth of rural communities and economies, including those facing decline. In general, those rural places in proximity to large urban centres have experienced significant growth and urban generated pressures and require levels of growth to be managed in order to ensure that there is a requisite service level for the existing population’.

It further states that the rural housing planning policy of local authorities should be evidence-based and accommodate rural-generated housing consistent with the settlement framework contained in the RSES and the ‘Sustainable Rural Housing, Guidelines for Planning Authorities, 2005’, or any successor thereof, and should be accommodated within the Housing Needs Demand Assessment, reflecting the housing needs of the county as a whole.

In this regard, Regional Policy Objective (RPO) 4.80 states that:

- Local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and settlements.

5.1.3. **‘Sustainable Rural Housing, Guidelines for Planning Authorities, 2005’**

These Guidelines promote the development of appropriate rural housing for various categories of individual as a means of ensuring the sustainable development of rural areas and communities. Notably, the proposed development site is located in an ‘Area under Strong Urban Influence’ as indicatively identified by the Guidelines. Furthermore, in accordance with the provisions of the Guidelines, the Kildare County Development Plan, 2023-2029 includes a detailed identification of the various rural area types specific to the county at a local scale and ‘Map Ref: V1-3.1: Rural

Housing Policy Zones of the Plan details that the site is located within *'Zone 1: Areas under Strong Urban Influence'*.

5.2. Development Plan

5.2.1. *Kildare County Development Plan, 2023-2029:*

Chapter 3: Housing:

Section 3.13: Sustainable Rural Housing:

Section 3.13.2: An Evidence-based Approach:

Zone 1 - Areas under Strong Urban Influence:

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

- demonstrable 'economic or social' need to live in a rural area and build their home, and
- siting, environmental and design criteria for rural housing in statutory guidelines and plans

having regard to the viability of smaller towns and rural settlements and the provision and availability of serviced sites in these areas.

Section 3.13.3: Compliance with the Rural Housing Requirements:

Rural generated housing demand will be facilitated having regard, inter alia, to the applicant's genuine local and housing need, together with the protection of key economic, environmental, natural and heritage assets, such as the road network, water quality, sensitive landscapes, habitats, and the built heritage. The Department of Housing, Local Government and Heritage have indicated that new Rural Housing Guidelines are being prepared to address rural housing issues and to take account of the Flemish Decree, the NPF and broader settlement context. In the interim, Kildare Development Plan must establish a policy to facilitate those who can demonstrate a genuine housing need and a social and/or economic need to live in rural County Kildare. Urban generated rural housing³ will not be considered.

For the purposes of demonstrating compliance, this plan has provided a definition of 'Economic' and 'Social' need in the context of rural housing policy, as set out below:

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.

Note: 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. The leasing of agricultural land to supplement lands within an applicant's ownership for farming, may be considered for the purposes of calculating the minimum land area of 15ha. The applicant shall submit details of said lease with the relevant planning application indicating that the lease is in place for a period of 10 years or more from the date of the application.

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.

Table 3.4 - Schedule of Local Need Criteria in accordance with the NPF (NPO 19):

Applicant Category	Rural Housing Need Assessment Guide	
Category A - Economic	Zone 1: Areas under Strong Urban Influence	Zone 2: Stronger Rural Areas
<p>i. 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</p> <p>or</p> <p>iii. An owner and operator of a farming/horticultural/forestry/bloodstock/animal husbandry business on an area less than 15ha.</p>	<p>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> <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>	
Category B - Social	Zone 1: Areas under Strong Urban Influence	Zone 2: Stronger Rural Areas
<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.</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.</p>

	Where no land is available in the family ownership, a site within 5km of the applicant's family home may be considered.	Where no land is available in the family ownership, a site within 5km of the applicant's family home may be considered.
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Note: Applications for rural one-off dwellings will be considered, subject to the policies and objectives set out in the County Development Plan. Applicants will be expected to comply with all other requirements of the plan and demonstrate that the development would not prejudice the environment and the rural character of the area. In this regard, factors such as the sensitivity of the receiving environment, the nature and extent of the existing development and the extent of development on the original landholding will be considered.

Policy HO P11: Facilitate, subject to all appropriate environmental assessments proposals for dwellings in the countryside outside of settlements in accordance with NPF Policy NPO 19 for new Housing in the Open Countryside in conjunction with the rural housing policy zone map (Map 3.1) and accompanying Schedule of Category of Applicant and Local Need Criteria set out in Table 3.4 and in accordance with the objectives set out below. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.

Objective HO 043: Require applicants to demonstrate that they do not own or have not been previously granted permission for a one-off rural dwelling in Kildare.

Objective HO 044: Restrict residential development on a landholding, where there is a history of development through the speculative sale or development of sites to an unrelated third party.

Objective HO O45: Restrict occupancy of the dwelling as a place of permanent residence for a period of ten years to the applicant who complies with the relevant provisions of the local need criteria.

Objective HO O46: Recognise and promote the agricultural and landscape value of the rural area and prohibit the development of urban generated housing in the rural area.

Section 3.13.4: *Siting and Design:*

The design of all new dwellings in rural areas should respond sensitively and appropriately to the characteristics of the receiving environment. Dwellings should be designed to be absorbed into the existing landscape features, including topography, existing field boundaries and green infrastructure. Applying good rural design principles and appropriate site selection criteria will ensure that new dwellings will integrate with the character and natural setting of the specific rural area while also delivering high quality, energy efficient homes. Further to the policies and objectives set out below, detailed guidance is provided in the Kildare Rural Housing Design Guide in Appendix 4.

Policy HO P12: Ensure that the siting and design of any proposed dwelling shall integrate appropriately with its physical surroundings and the natural and cultural heritage of the area whilst respecting the character of the receiving environment. Proposals must comply with Appendix 4 Rural House Design Guide and Chapter 15 Development Management Standards.

Objective HO O50: Require that new dwellings incorporate principles of sustainability and green principles in terms of design, services and amenities with careful consideration in the choice of materials, roof types (i.e. green roofs), taking advantage of solar gain/passive housing and the provision of lowcarbon and renewable energy technologies as appropriate to the scale of the development and to support microgeneration in all residential, commercial, agricultural and community development planning. Other sustainable principles could include the use of Sustainable Urban Drainage Systems (such

as attenuation ponds and grass lined swales), the use of gravel or grasscrete rather than permanent paving/tarmac for driveways, landscaping and planting for biodiversity/pollinators and adequate waste segregation and storage space, as set out in Section 15.4 of Chapter 15 (Development Management standards) and the Rural House Design Guide contained in Appendix 4

Objective HO O51: Require all applications to demonstrate the ability to provide safe vehicular access to the site without the necessity to remove extensive stretches of native hedgerow and trees All applications will be considered on a case-by-case basis, having regard to, the quality of the hedgerow, age and historical context, if an old town boundary hedgerow, species composition, site context and proposed mitigation measures.

Objective HO O53: Retain, sensitively manage and protect features that contribute to local culture heritage and distinctiveness including:

- heritage and landscape features such as post boxes, pumps, jostle stones, etc.
- hedgerows and trees,
- historic and archaeological features and landscapes,
- water bodies,
- ridges and skylines,
- topographical and geological features and
- important scenic views and prospects.

Section 3.14: *Rural Residential Density:*

Policy HO P26: Sensitively consider the capacity of the receiving environment to absorb further development of the nature proposed through the application of Kildare County Councils 'Single Rural Dwelling Density' Toolkit (see Appendix 11) and facilitate where possible those with a demonstrable social or economic need to reside in

the area. Applicants will be required to demonstrate, to the satisfaction of the planning authority that no significant negative environmental effects will occur as a result of the development. In this regard, the Council will:

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

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

Section 3.15: *Environmental and Technical Considerations*

Section 3.15.1: *Domestic/On site Wastewater Treatment Systems*

Section 3.16: *Access and Entrances*

Section 3.18: *Technical Considerations for Rural Housing Proposals in County Kildare*

Chapter 9: Our Rural Economy:

Section 9.3: *Rural Economy & Rural Enterprise:*

Policy 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.

Objective RD O1: Encourage the development of appropriately scaled alternative rural based small-scale enterprises that are appropriate in rural areas. All planning applications for one off enterprises in rural

areas shall have regard to the criteria listed in Table 9.1 of the Plan.

Objective 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.

Objective RD O3: Promote resource efficiency and support the shift toward a low-carbon and climate resilient economy in the agriculture (including signpost farms), food, and forestry sectors in County Kildare.

Objective RD O5: Require new buildings and structures:

- To be sited as unobtrusively as possible.
- To be clustered to form a distinct and unified feature in the landscape.
- To utilise suitable materials and colours.
- To utilise native species in screen planting to integrate development into the landscape.

Objective 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.

One-off enterprises in the rural area may be situated in the open countryside only where the council is satisfied that there is a demonstrable need for the enterprise at the specific location in the first instance and where it complies with the criteria outlined in Table 9.1 below:

Table 9.1 - Criteria for Assessment of One-off Enterprises in Rural Areas:

Proposals for the development of one-off new small-scale enterprises in rural areas outside of designated employment centres will be assessed against the following criteria:

- Development proposals shall be limited to small-scale rural based business development with a floor area at circa 200 square meters and shall be appropriate in scale to its location.
- The development will enhance the strength of the local rural economy.
- The proposed development will normally be located on the site of a redundant farm building / yard or similar agricultural brownfield site.
- There is a demonstrable social and economic benefit to being located in a rural area.
- The proposal shall include a comprehensive planting plan of native species to screen the development.
- The proposal will not adversely affect the character and appearance of the landscape.
- The proposal will not be detrimental to the amenity of nearby properties, and in particular the amenities of nearby residents.
- The existing or planned local road network and other essential infrastructure can accommodate extra demand generated by the proposal.
- The proposal shall be accompanied by a mobility plan catering for employees' home to work transportation.
- Adequate proposals to cater for any waste arising at the facility.
- All advertising should be kept to a minimum and be suitable in design and scale to serve the business.
- Proper planning and sustainable development.
- The proposals should conform to all other objectives of the County Development Plan.

Section 9.4: Agriculture / Agri-Food Sector:

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

Objective 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.

Objective RD O11: Facilitate the development of alternative farm enterprises, and appropriate small scale start-up rural enterprise in the countryside with the intention to supplement existing farm incomes e.g., converting redundant farm buildings for other farm-based activities such as agri-food, tourism, crafts, and energy whilst balancing this with the need to protect, promote, and enhance the viability and environmental quality of the existing rural economy and agricultural land.

Chapter 12: Biodiversity & Green Infrastructure:

Policy 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:

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

Chapter 13: Landscape, Recreation & Amenity:

Section 13.3: Landscape Character Assessment:

The proposed development site is located within the ‘Northern Lowlands’ Landscape Character Area as shown on Map Ref.: V1-13.1.

Section 13.3.1: Landscape Sensitivity:

Northern Lowlands: Class 1 (Low Sensitivity): Areas with the capacity to generally accommodate a wide range of uses without significant adverse effects on the appearance or character of the area.

Policy 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.

Objective 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.

Objective 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.

Chapter 15: Development Management Standards:

Appendix 4: Rural House Design Guide

Appendix 10: Rural Housing Policy Report

Appendix 11: Single Rural Dwelling Density Toolkit

5.3. Natural Heritage Designations

5.3.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Donadea Wood Proposed Natural Heritage Area (Site Code: 001391), approximately 320m southeast of the site.
- The Hodgestown Bog Natural Heritage Area (Site Code: 001393), approximately 4.4km southwest of the site.
- The Ballynafagh Lake Proposed Natural Heritage Area (Site Code: 001397), approximately 5.0km south of the site.

- The Ballynafagh Lake Special Area of Conservation (Site Code: 001387), approximately 5.0km south of the site.
- The Ballynafagh Bog Proposed Natural Heritage Area (Site Code: 000391), approximately 5.5km south of the site.
- The Ballynafagh Bog Special Area of Conservation (Site Code: 000391), approximately 5.5km south of the site.
- The Royal Canal Proposed Natural Heritage Area (Site Code: 002103), approximately 8.2km northeast of the site.
- The Grand Canal Proposed Natural Heritage Area (Site Code: 002104), approximately 8.8km south of the site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the development proposed, the site location outside of any protected site and 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

- The sole issue requiring a determination by the Board is whether the environs of the appeal site has reached a watershed, specifically in terms of its ability to accommodate the proposed development i.e. an additional dwelling house. All other issues of a type which affect applications for one-off rural housing have been addressed to the satisfaction of the Planning Authority and thus the Board is invited to carry the Council's acceptance of the physical, functional, architectural, aesthetic, ecological, environmental, road safety and public health arrangements forward into its analysis of the subject appeal.

- The initial planning application was accompanied by a submission which discusses the site location and context as well as the key policy provisions applicable. It also details how both the Council and the Board have previously granted permission for housing in rural areas of Co. Kildare which already had a greater quantum of residential development than the surrounds of the subject site. The Board is requested to take cognisance of the contents of this submission in its determination of the appeal.
- The single reason for refusal suggests that the area in which the appeal site is located cannot absorb the proposed dwelling, however, no part of the Council's assessment supports the rationale for such a view. This is of particular note given that the Kildare County Development Plan, 2017 does not include any density standards for rural housing and as the proposed dwelling will be surrounded on all sides by dense, visually impenetrable forestry.

It is not accepted that Dunmurragehill, Donadea, Co. Kildare, has reached a tipping-point in terms of its ability to absorb the well-screened dwelling house proposed.

- Policy RH9(iv) of the Kildare County Development Plan, 2017 aims for consideration to be given to the following in the assessment of applications for rural houses:

'The capacity of the area to absorb further development. In particular, the following factors will be examined:

- *the extent of existing development in the area*
- *the extent of ribbon development in the area*
- *the degree of existing haphazard or piecemeal development in the area*
- *and the degree of development on a single original landholding'.*

It is the subjective nature of this particular policy on which the appeal turns.

Notwithstanding the foregoing, the Council has failed to engage in a proper assessment of the proposed development as required by Section 7.15 of the *'Development Management, Guidelines for Planning Authorities, 2007'* which states that:

'A statement of objectives in a development plan should not be regarded as imposing a blanket prohibition on particular classes of development and does not relieve the planning authority of responsibility for considering the merits or otherwise of particular applications. A brief reference to an objective or policy statement is not, therefore, adequate as a reason for refusal if it is not made clear what the objective is, how it would be contravened by the proposed development, and why that contravention would be contrary to the proper planning and sustainable development of the area. A reason for refusal must, as far as possible, bring out the reasonableness of applying the provisions of the plan in the particular case. Accordingly, caution should be exercised when refusing permission on the grounds that the proposed development would materially contravene the development plan. Where such a reason is given, it must be clearly shown that specific policies/objectives of the plan would be breached in a significant way'.

The report of the case planner expresses the view, without explaining its underlying basis, that *'The site is situated in a rural area with a very high saturation of one-off housing . . . there is no further capacity to provide rural dwellings in this area . . .'* This is a conclusion for which no rationale has been provided and it is noted how this assessment also candidly accepts that the proposed dwelling will not be visible given the levels of screening available. Therefore, the ground upon which the refusal of permission rests is clearly at variance with the *'Development Management Guidelines'*.

- The particulars submitted in support of the application identify a host of previous case histories in which permission was granted for rural housing in Co. Kildare by either the Planning Authority or on appeal (with the exception of ABP Ref. No. PL09.224721, all of the cases referenced therein have been determined since the year 2005).

Policy RH3 of the Kildare County Development Plan, 2005 took account of *'the capacity of the area to absorb further development'* while Policy RH5 of the Kildare County Development Plan, 2011 identified *'The capacity of the area to absorb further development'* as a consideration. Policy RH9(iv) of the Kildare County Development Plan, 2017 further states that *'the extent of*

existing development in an area' will be included in any analysis of rural housing.

These cases serve as a barometer as to how the absorption test might be applied and although different development plans have existed since 2005, all of these instruments contained an equivalent provision relating to the capacity of a rural area to accommodate new housing.

- The case planner has sought to downplay the relevance of previous case histories on the basis that planning applications are assessed on their own merits. However, there is a need for consistency in decision-making and the manner in which particular policies have previously been applied is of relevance in the assessment of later cases, a view that accords with the *'Development Management Guidelines'* which state the following:

'Consistency in the interpretation of development plan policies is essential if public confidence in the planning system is to be maintained, although of course decisions on individual applications will vary in light of the land use considerations that apply to them. Achievement of consistency requires that suitable management structures be in place in planning authorities . . . All reasonable efforts should be made to research the planning history of sites and their general environs, including details of any pre-application consultation, as this is very important to help ensure that planning authorities take a consistent approach to planning proposals in a particular area over time'.

- At no point does the assessment by the Planning Authority explain why it considers the environs of the appeal site to be over-developed. Neither does the analysis quantify the density of housing in the area or identify a level of rural development which would otherwise be considered acceptable. These omissions are of particular importance given that Donadea Forest Park is adjacent to the appeal site and comprises an area of 600 No. acres with no dwellings, a fact which itself gives reason to query the Council's conclusions on issues of housing density.
- With respect to the Council's opposition to the proposal on the basis of its location in a rural area lacking certain public services, while arguments

relating to a shortage of local facilities may be pertinent in more remote parts of the county, it is difficult to endorse any such concerns in the subject instance given the juxtaposition of the appeal site with town centres and villages elsewhere within this part of the county.

- No part of the Development Plan stipulates that a full range of services / facilities must be proximate to a site in the countryside in order to grant permission for a dwelling house. Notwithstanding that the subject site is closer to schools, shops and offices than many smaller settlements in the countryside, the rural housing test does not seek to restrict the location of new dwellings based on their proximity to daily services. In this regard, the Board is requested to consider the '*Action Plan for Rural Development*' which aims to unlock the potential of rural Ireland through a framework of supports at national and local level which will ensure that people who live in rural areas have increased access to services.
- In relation to the assertion by the case planner that the area in question exhibits '*a high saturation of development*' on the basis of '*a complete lack of services including retail, education and employment etc.*', such a statement overlooks the arrangements in the Core Strategy as regards housing in the open countryside and dwellings in small unserved hamlets and villages. Any underperformance of individual tiers within this pyramid would place increased pressure on the remaining centres in the settlement strategy and, as the adopted targets are closely related to water and sewage constraints, such towns and villages would not be able to accommodate the shortfall from the open countryside.
- The Development Plan does not contain any numerical limit or guideline on the density of rural housing which can be accommodated in any particular area. The decision to refuse permission for the subject proposal stems from a wholly subjective opinion on the level of housing in Donadea.
- The refusal of permission is heavily reliant on the lack of services such as shops and schools, however, given that these facilities are almost always located in towns, this criticism relates to one-off rural housing as a matter of generality and not to the merits of the proposal under consideration.

- It is submitted that the provisions of Policy RH9(iv) are primarily visual. Moreover, given the nature of the site and the fact that the new dwelling will be screened from view, it is not accepted that the proposed dwelling would adversely impact on the character of the area.

6.2. **Planning Authority Response**

None.

6.3. **Observations**

None.

6.4. **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 / rural housing policy
- Appropriate assessment

These are assessed as follows:

7.2. **The Principle of the Proposed Development / Rural Housing Policy:**

7.2.1. From a review of the available information, it is apparent that the pertinent issue in the assessment of the subject proposal concerns the application and interpretation of the relevant rural housing policy provisions of the Kildare Development Plan, 2023-2029 (In this regard, I would advise the Board that the Kildare Development Plan, 2017-2023, which informed the Planning Authority's determination of the planning application, has since been superseded by the Kildare Development Plan, 2023-2029). More specifically, it will be necessary to determine whether the wider site surrounds have the capacity to absorb the proposed development without giving rise to an excessive proliferation of one-off houses, extensive ribbon development, or

other piecemeal and haphazard development, which would serve to erode the intrinsic rural character of the countryside. In this regard, I would draw the Board's attention in particular to Section 3.14: '*Rural Residential Density*' as well as Appendix 11: '*Single Rural Dwelling Density Toolkit*' of the Development Plan (along with the associated mapviewer).

7.2.2. In terms of assessing the overall principle of the proposed development, it is of relevance in the first instance to note that the subject site is located within an '*Area under Strong Urban Influence*' as indicatively identified by the '*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*'. These '*Areas under Strong Urban Influence*' are described as exhibiting characteristics such as their proximity to the immediate environs or the close commuting catchments of large cities and towns (such as Dublin and the M4 & M7 Corridors) and will generally be under considerable pressure for the development of housing due to their proximity to these urban centres or the major transport corridors accessing them. In this respect, I would also draw the Board's attention to the Eastern and Midland Regional Spatial & Economic Strategy and, in particular, to Regional Policy Objective (RPO) 4.80 which requires local authorities to manage urban generated growth in '*Rural Areas Under Strong Urban Influence*' (i.e. the commuter catchment of Dublin, large towns and centres of employment) 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 settlements. Furthermore, within any such '*areas under urban influence*', the National Planning Framework ('Project Ireland 2040: Building Ireland's Future') states that it will be necessary for applicants to demonstrate '*a functional economic or social requirement for housing need*' (with National Policy Objective No. 19 stating that the provision of single housing in rural areas under urban influence is to be based on the core consideration of a demonstrable economic or social need to live in a rural area and the siting and design criteria for rural housing contained in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements).

7.2.3. In accordance with the '*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*', the Kildare County Development Plan, 2023-2029 includes a detailed identification of the various rural area types specific to the county at a local

scale with *'Map Ref: V1-3.1: Rural Housing Policy Zones'* confirming that the proposed development site is located within *'Zone 1: Areas under Strong Urban Influence'*. Within these areas it is an objective of the Planning Authority 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 adherence to the siting, environmental and design criteria for rural housing set out in statutory guidelines and plans, while having regard to the viability of smaller towns and rural settlements and the provision and availability of serviced sites in these areas. Section 3.13.3: *'Compliance with the Rural Housing Requirements'* of the Plan subsequently defines *'Economic'* and *'Social'* need in the context of the rural housing policy with the various qualifying criteria set out in Table 3.4: *'Schedule of Local Need Criteria in accordance with the NPF (NPO 19)'*. These provisions are then given effect by Policy HO P11 which aims to facilitate proposals for dwellings in the open countryside, subject to all appropriate environmental assessments, in accordance with the applicable objectives.

- 7.2.4. While the assessment undertaken by the Planning Authority as regards the applicants' eligibility for a rural dwelling house at the location proposed was conducted in the context of the previous Development Plan which has since been superseded by the Kildare County Development Plan, 2023-2029, having reviewed the available information, including the various particulars submitted with the application, it would appear that the applicants continue to satisfy the relevant eligibility requirements. In this respect, it has been submitted that Mr. Cunningham is originally from the immediate locality and is acquiring the site from his parents while both he and Ms. Kehoe presently reside with family members a short distance away. Cognisance should also be taken of Ms. Kehoe's planned apiary business.
- 7.2.5. Notwithstanding that the applicants have been held to comply with the rural housing eligibility criteria, Policy HO P11 of the Development Plan states that proposals for dwellings in the open countryside will be facilitated, subject to all appropriate environmental assessments. Moreover, applicants for one-off dwellings are expected to comply with all other requirements of the Development Plan and to demonstrate that the proposed development will not prejudice the environment and the rural character of the area. In this regard, factors such as the sensitivity of the receiving

environment, the nature and extent of existing development, and the extent of development on the original landholding are to be considered.

7.2.6. At this point, I would refer the Board to Section 3.14: '*Rural Residential Density*' of the Plan which states that national and local policy has generally been formulated to manage rural housing to avoid a proliferation of one-off houses, extensive ribbon development, or piecemeal and haphazard development, that serve to erode the intrinsic character of the Irish countryside, which is both an economic resource and a tourism asset. It is further acknowledged that the application of criteria such as haphazard and piecemeal development patterns can be problematic for applicants and, therefore, in order to provide for a better understanding of the issue, applications for one-off housing in the countryside are to be assessed having regard to the overall rural residential density in an area. In this respect, it is envisaged that one of the evaluation criteria will be an examination of the Single Rural Dwelling Density (SRDD) at the scale of a square kilometre surrounding the proposed site for a one-off house.

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

7.2.7. This guideline is described as providing a quantitative assessment of qualitative criteria such as piecemeal and haphazard development, although it is not intended to be a rigid tool. It is accepted that there may be instances where the existing pattern of development may facilitate some level of consolidation, however, in such instances, additional housing will generally only be permitted in very exceptional circumstances, where there is a significant need demonstrated, for example, those actively engaged in agricultural or in an occupation heavily dependent on the land.

- 7.2.8. These provisions are given effect by Policy HO P26 of the Development Plan which aims to *'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'* while *'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, consideration is to be given to the extent and density of existing development in the area as well as the degree and pattern of ribbon development in proximity of the proposed development site. By extension, Objective HO O59 states that the density of one-off housing will be carefully managed to ensure that it does not exceed 30 units per square kilometre, unless the applicant is actively engaged in agriculture, or an occupation that is heavily dependent on the land and building on their own landholding.
- 7.2.9. With respect to the subject proposal, it is apparent that the application site is located in an *'Area under Strong Urban Influence'* which is under considerable pressure for development as evidenced by the notable concentrations of one-off residential development along several of the roadways in the wider area, particularly in the vicinity of Ballagh Crossroads (approximately 240m north of the proposed site entrance). Indeed, through the application of the Council's own *'Rural Residential Density Toolkit'* (Appendix 11 of the Development Plan) and its associated mapviewer function, it can be established that there are presently 43 No. existing dwellings within a permitted area of 0.89km² (measured from the centre point of the application site and excluding that part of Donadea Forest Park which falls within the radius of the permitted area). Such a density of development is already considerably in excess of the RRD of 30 No. units / km² where there is a presumption against further one-off houses in such areas.
- 7.2.10. In my opinion, the restrictive policies of the Development Plan as outlined in the preceding paragraphs (and elsewhere in this report) are reasonable and consistent with national policy in terms of the proper planning and sustainable development of the area. To permit an additional dwelling house at the location proposed will serve to exacerbate the existing excessive proliferation / concentration of rural housing in this part of the open countryside. I would have reservations as regards the wider

impact and the further erosion of the rural character of the surrounding area attributable to the continued development of one-off piecemeal housing at the location proposed. In this regard, I would reiterate that there is already a considerable concentration of one-off residential development located along the roadways in the wider area (including a cul-de-sac of housing to the north of Ballagh Crossroads) which give rise to a somewhat 'suburban' appearance to parts of the landscape. This form of development is unsustainable in rural areas, including at the appeal site, and would lead to an increased demand for the uneconomic provision of further public services and facilities in this rural area. Whilst the visual impact of the proposed development could be held to be somewhat limited given the site context (including the extent of screening afforded by existing woodland / forestry) and the prevalence of existing housing in the area, I am inclined to conclude that any further continuation of the existing pattern of development would be detrimental to the overall amenity and intrinsic character of the surrounding rural landscape. Cognisance should also be given to the potential implications arising from the increasing proliferation of individual domestic wastewater treatment systems in the vicinity and the cumulative impact of same on groundwater quality.

- 7.2.11. On balance, it is my opinion that the proposed development would be contrary to the Policy HO P11 and the rural settlement strategy set out in Section 3.13: '*Sustainable Rural Housing*' of the Development Plan as well as Section 3.14: '*Rural Residential Density*' and the associated provisions made under Policy HO P26 and Objective HO 059.

7.3. **Appropriate Assessment:**

- 7.3.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, the wastewater treatment and disposal arrangements proposed, 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 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

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld 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. Policy HO P11 of the Kildare County Development Plan, 2023 to 2029 seeks to ensure that proposals for dwellings in the countryside outside of settlements are facilitated, subject to all appropriate environmental assessments, while Policy HO P26 of the Plan aims to ensure that, notwithstanding a demonstrable social or economic need to reside in the area, the capacity of the receiving environment to absorb further development of the nature proposed is given consideration and that applicants demonstrate that no significant negative environmental effects will occur as a result of the development. These policies are considered reasonable. It is considered that the proposed development, when taking in conjunction with the extent and density of existing development in the vicinity, would exacerbate the already excessive density of development in this rural area contrary to the provisions of Policy HO P11, Policy HO P26 and Objective HO 059 of the Development Plan, and would militate against the preservation of the rural environment and lead to demands for the uneconomic provision of further public services and community facilities. It is considered that the proposed development will contribute to an increasing pattern of suburbanisation in a rural area that is under significant development pressure and that it would exacerbate further piecemeal residential development in the area. The proposed development is, therefore, considered to be contrary to the proper planning and sustainable development of the area.

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.

Robert Speer
Planning Inspector

27th April, 2023