



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314389-22

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<b>Development</b>	Construction of a two storey dwelling, stable building, services and entrance.
<b>Location</b>	Kilcarrig, Bagenalstown, Co. Carlow.
<b>Planning Authority</b>	Carlow County Council
<b>Planning Authority Reg. Ref.</b>	21418
<b>Applicant(s)</b>	John Gardiner and Claire Loughran Gardiner
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Shane Murray and Madeline Ronan Murray
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	7 <sup>th</sup> of June 2023
<b>Inspector</b>	Angela Brereton

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## 1.0 Site Location and Description

- 1.1. The site (stated area as c.1.0ha) is located in the townland of Kilcarrig on the eastern outskirts of Bagenalstown. The site is accessed from the R724, in the direction of the town of Fennagh c.9km to the northeast of the application site.
- 1.2. The site is currently greenfield and has not been developed. It appears relatively flat and has gated access to the road. There is an agricultural shed within the landholding to the rear of and outside of the subject site boundaries.
- 1.3. There are hedgerows and a low boundary wall along the site frontage, and hedgerows along the eastern boundary with the adjoining site of the two storey dwelling house to the east. This has some first-floor windows facing. There are also hedgerows along the northern and western site boundaries. The land to the west is currently undeveloped.
- 1.4. The entrance to the site is within the 50km/h speed limit for the town and the speed limit changes to 60km/h to the east of the site. There is a footpath along the site frontage which links the site with the town.
- 1.5. There is a row of houses on the opposite side of the road and an agricultural entrance. Kilcarrig Quarries is located further to the southeast and adjoins agricultural lands. There is a watercourse to the north of the site and Kilcarrig Bridge is further to the east.

## 2.0 Proposed Development

- 2.1. This proposal is for the construction of a two-storey dwelling, stable building, on-site wastewater treatment system, bored well, splayed entrance, and all associated site development works.

## 3.0 Planning Authority Decision

### 3.1. Decision

On the 25<sup>th</sup> of July 2022, Carlow County Council granted permission for the proposed development subject to 16no. conditions. These conditions generally

concern design and layout, landscaping and boundary treatment, access and infrastructural issues (water supply, surface water drainage, wastewater treatment and disposal of waste), relocation of service poles, construction management and development contributions.

Condition no.2 provides for a 7 year occupancy condition, pursuant to Section 47 of the Planning and Development Act 2000 (as amended).

Condition no.4 provides that no other residential dwelling shall be permitted on the overall agricultural landholding; and that the stables shall not be let or sold separately to the dwelling house and shall not be used for any commercial purpose other than a purpose incidental to agriculture.

Condition no.10 relates to the agricultural use of the stables and compliance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The Planner had regard to the locational context of the site, planning history and policy and to the internal reports and submissions made. Their assessment included the following:

- The application site is located in an area zoned 'Agricultural' in the Muinebheag/Royal Oak LAP 2017-2023. The purpose of this zoning is to ensure the retention of agricultural uses and protect them from urban sprawl and ribbon development.
- They have regard to the proposed development and to the impact on the character and amenities of local residents, access, landscaping etc.

#### **Further Information request**

- The applicants were requested to demonstrate compliance with the Agricultural land use zoning objective as set out in Table 12 of the Muinebheag/Royal Oak LAP 2017-2023.

- They note the proximity to a tributary of the River Barrow and River Nore and the applicants are advised to submit an AA Screening Report.
- In view of the site location they were requested to submit a Site-Specific Flood Risk Assessment Report in accordance with the *Planning System and Flood Risk Management Guidelines*.
- Details to be provided regarding the storage/disposal of effluent from the stables operations on site. As to how storage and effluent will be done in accordance with SI 605 of 2017 (European Communities Good Agricultural Practice for Protection of Waters) Regulations 2017.
- To engage with Irish Water through the submission of a Pre-Connection Enquiry (PCE) in order to determine the feasibility of a connection to the public water mains infrastructure rather than the proposal for own bored well.
- To submit a comprehensive landscaping scheme for the site.
- To address the concerns of adjacent neighbouring property owners to the east regarding the location of the proposed dwelling in proximity to the said boundary and the potential for overlooking and overshadowing.
- To submit a Shadow Study & Sun and Shadow Analysis report prepared by a qualified person.

#### First Party response

Peter Bolger Consulting Ltd Consulting Engineers F.I response on behalf of the Applicants includes the following:

- The proposed development provides limited housing for the applicants and includes the provision of agricultural use with the provision of stables and grazing paddocks, demonstrating a usage directly associated with agricultural.
- They include an AA Screening Report prepared by Panther Environmental.
- They include a Site-Specific Flood Risk Assessment.
- They provide details of the agricultural use of the site, including the disposal of effluent, etc. They refer to the revised site layout plan indicating the location of the dungstead where the manure will be stored over the closed period. They also have regard to soiled water storage.

- The proposed development will be serviced via the proposed bored well on site as indicated on the site layout drawing no connection to mains water is proposed.
- All proposed planting shall comprise native species, and a landscaping plan accompanied by a design rationale report has been submitted.
- They have submitted a Shadow Study/Sun & Shadow Analysis report.
- They provide a response to the concerns raised in the Submissions made.

### Planner's Response

They have regard to the F.I submitted and their response includes the following:

- Having regard to the location of the site within the agricultural zoning and the limitations imposed therein they consider it appropriate that the applicant be subject to an occupancy condition and that the overall landholding be restricted from further residential development.
- They have regard to the AA Screening carried out and concur that the proposed development is not likely, either along or in combination with other plans or projects to have a significant effect on the Lower Clorusk and subsequently the River Barrow and River Nore SAC in view of its conservation objectives. They refer to the AA Screening Conclusion.
- They note and consider the Flood Risk Assessment report carried out to be sufficient and to have addressed the Planning Authorities concerns regarding Flood Risk.
- The applicants have submitted a revised site layout plan which indicates the proposed location of the dungstead for the winter closure period. Details are noted regarding the disposal of effluent and soiled water run-off from the proposed stables use. These details have been reviewed by their Environment Section who does not object and recommends conditions.
- They note the response that there is to be a bored well on site, rather than connection to the public mains and that Water Services have no objection.
- The detailed landscaping plan as submitted will sufficiently screen the proposed development and help to enclose the development within its setting.

- They note the Sunlight and Shadow Analysis submitted, shows that adverse overshadowing does not occur.
- They have regard to the issues raised in the further third party submission, and note that these have been addressed and recommend conditions.
- They note the comments made in the internal reports and note they do not object subject to conditions.
- They refer to the Development Contributions Scheme 2017-2021 and provide a breakdown of the total levies applicable.
- They recommend that permission be granted subject to conditions.

### 3.3. Other Technical Reports

#### Muinebheag Municipal District

They recommend conditions regarding surface water drainage, access and front boundary treatment.

#### Environment Section

They do not object to the proposed wwts. They recommend a grant of permission subject to recommended conditions to include relative to construction management, amended Landscape Design to comply with the amended site layout of April 2022, control of invasive species.

#### Water Services

They note that the applicant is proposing their own bored well and on site wwts. They recommend that the applicant should be made aware that there is a water main in the road and if they wish to connect to water mains rather than bored well they should connect to the water mains rather than the bored well. Then they should apply to Irish Water New Connections.

#### Chief Fire Officer

They have no objections subject to recommended conditions.



### 3.4. Prescribed Bodies

#### Department of Housing, Local Government and Heritage

They recommend that in view of the location of the site in close proximity to the River Barrow and River Nore cSAC (site code: 002162), which is designated for a range of riverine species and habitats for which suitable water quality is required that a screening for AA be carried out. This should include consideration of the potential of the development to impact on water quality in the River Barrow and request an NIS if required and/or impose conditions as required to ensure adequate restoration if required.

#### Irish Water

They recommend conditions including relative to a connection agreement with Irish Water, to ensure adequate provision of water and wastewater facilities.

### 3.5. Third Party Observations

Submissions from including from the subsequent Third Party in summary include concerns relative to the following:

- Contrary to agricultural zoning.
- Location and scale of proposed development, separation distances, overlooking and overshadowing of adjoining property.
- Location of the proposed wwts and soil polishing filter, odours, and the possibility of effluent flowing into their property.
- They request consideration of sterilisation of lands condition on this large site.
- Entrance and traffic implications onto the R724.
- Stable works
- Lack of consideration for SAC.
- Inadequate details submitted. They also have concerns regarding the F.I submitted.

## 4.0 Planning History

The Planner's Report notes that there is no planning history on the GIS system for the subject site. They note planning applications on the adjoining sites which include the following:

- Reg.Ref.05/750 – Permission granted subject to conditions to James Keogh, for the construction of a 58 bedroom nursing home with 54no. two bedroom sheltered housing units, in addition to 14no. two storey private dwellings (8no. detached 4-bed and 6no. semi-detached 3-bed, new site entrance and all associated site works.

This was subsequently appealed to the Board Ref.PL01- 220684 refers to a Development Contributions appeal.

This permission was never implemented, and the as yet undeveloped land is to the west of the subject site.

- Reg. Ref. 10/270 – Permission granted subject to conditions, to Shane Murray & Madeline Ronan for the demolition of existing garage and garden wall, renovation and extension to existing two-storey dwelling, installation of solar tubes, new wastewater treatment system and all associated works.

This is the site to the east of the application site and is the home of the Third Party Appellants.

*On opposite side of the road:*

- Reg.Ref. 20/209 – Permission granted subject to conditions by the Council to Eoin and Karen Rea for a Dormer dwelling house with basement, dormer type garage with link to dwelling house, septic tank and percolation area, and all associated site works.

Subsequent to appeal, permission was refused by the Board - Ref. ABP-309214-21 refers. In summary the reason for refusal was due to lack of demonstrated compliance with planning policy and local need criteria.

This site was on the opposite side of the road to the proposed development, and outside the zoned land in the town boundaries.

A copy of the Inspector's Report and Board's decision are included in the History Appendix.

## 5.0 Policy Context

### 5.1. Project Ireland 2040 - The National Planning Framework

The National Planning Framework addresses the issue of 'making stronger urban places' and sets out a range of objectives which it considers would support the creation of high-quality urban places and increased residential densities in appropriate locations while improving quality of life and place. This contains several policies and objectives relevant to sustainable urban and rural development and these include:

**National Policy Objective 18a:** To support the proportionate growth of and appropriately designed development in rural towns that will contribute to their regeneration and renewal, including interventions in the public realm, the provision of amenities, the acquisition of sites and the provision of services.

**National Policy Objective 18b:** Develop a programme for 'new homes in small towns and villages' with local authorities, public infrastructure agencies such as Irish Water and local communities to provide serviced sites with appropriate infrastructure to attract people to build their own homes and live in small towns and villages.

**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.

**National Policy Objective 23** - Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.

**National Policy Objective 57:** Enhance water quality and resource management by ... ensuring flood risk management informs place making by avoiding inappropriate development in areas at risk of flooding in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities.

## 5.2. **Regional Spatial and Economic Strategy for the Southern Region**

The RSES 2020-2032 is a strategic document, which primarily aims to support the delivery of the programme for change set out in Project Ireland 2040, the National Planning Framework (NPF) and the National Development Plan 2018-27 (NDP).

**Regional Policy Objective: RPO 14** refers to towns in Carlow and includes:

To strengthen and support the role of Carlow Town as a self-sustaining regional and inter-regional economic driver supporting investment in the strategic employment development potential of the town, while promoting and facilitating economic integration between urban centres in the county including Tullow and Muine Bheag (Bagenalstown), other urban centres within the Southern Region and the Eastern and Midlands Region including the Dublin Metropolitan Area. Subject to the outcome of the planning process and environmental assessments the following are supported....

## 5.3. **Section 28 Ministerial Guidelines**

The following is a list of relevant Section 28 Ministerial Guidelines:

- 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' including the associated Urban Design Manual, 2009
- 'Design Manual for Urban Roads and Streets' (DMURS) 2019

- 'The Planning System and Flood Risk Management' 2009 (including the associated 'Technical Appendices').
- Quality Housing for Sustainable Residential Communities 2007

#### 5.4. Other Codes:

- SI. 605/2017 - European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017
- S.I No. 113/2022 – European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022

Ireland's Nitrates Action Programme is given effect by the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2022 (S.I. No. 113 of 2022). The regulations contain specific measures to protect surface waters and groundwater from nutrient pollution arising from agricultural sources.

#### **EPA Code of Practice for Domestic Wastewater Treatment Systems 2021**

Its purpose is to provide guidance on domestic wastewater treatment systems (DWWTSs) for single houses or equivalent developments with a population equivalent (PE) of less than or equal to 10. It sets out a methodology for site assessment and selection, installation and maintenance of an appropriate DWWTS.

The current CoP replaces the previous Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) issued in 2009. This CoP applies to site assessments and subsequent installations carried out on or after 7th June 2021.

#### 5.5. Carlow County Development Plan 2022-2028

##### Context and Core Strategy

Tullow and Muine Bheag are classified as District Towns and objectives include the following:

Objective S.01 - *Direct new development in accordance with the Core and Settlement Strategies which will provide for the sustainable development of the*

*County for the period 2022-2028 in accordance with the principles of compact growth, consolidation and regeneration.*

*Objective S.04: Promote consolidation and growth in the District Towns of Tullow and Muine Bheag along with targeted investment to improve local employment, services and sustainable transport options, building on existing assets.*

Section 2.8 provides the Settlement Hierarchy Policies. *Tullow and Muine Bheag (Bagenalstown) are designated as District Towns in the Settlement Hierarchy. This tier corresponds to the Towns and Villages tier of the RSES, which are described as settlements over 1,500 which provide a housing, employment or service function.*

*Muine Bheag (Bagenalstown) is the third largest settlement in County Carlow. It benefits from excellent transport links through its location on the Dublin-Waterford rail line and its proximity to the M9 as well as a strong employment base... There is therefore a growth, maximising the potential of its transport links and service capacity.*

District Towns – Policies CPS 6 – CPS 9 refer.

*CSP 9: To support the continued growth and sustainable development of Tullow and Muine Bheag with appropriate levels of growth as provided in Table 2.7 Core Strategy. As part of the review of the Local Area Plan sustainable compact growth of town centre zoned sites will be prioritised together with a renewed focus on the town centre first principles and the appropriate development of regeneration / opportunity sites.*

*Objective CS.O1 seeks: To carry out an Area Based Transport Assessment for the District Towns of Tullow and Muine Bheag as an iterative process with the review of the relevant Local Area Plan which will support and inform the implementation of transport, demand management and land use measures to ensure the sustainable integration of land use and transport planning with an emphasis on enabling sustainable transport and mobility objectives for the Plan area.*

Section 2.15 notes that an overriding objective of both the NPF and the RSES is the need to achieve compact growth. Table 2.7 provides the Core Strategy Table. This notes a housing target of 10% for Muine Bheag.

Notes include that: *As per Core Strategy of existing Muine Bheag / Royal Oak LAP 2017-2023- Zonings will be reviewed as part of LAP process in 2023/2024.*

### Agriculture

Section 14.4 refers to Agriculture and 14.4.1 provides the Policies.

Section 14.8 refers to the Equine Industry and 14.8.1 provides the Equine Policies.

Section 14.14 refers to Rural Enterprises and Section 14.14.1 provides the Policies.

Policy RE P1: *Facilitate agriculture, horticulture, forestry, tourism, energy production, small scale home-based enterprises and rural resource-based enterprises, subject to proper planning and environmental considerations.*

### Development Management Standards

Chapter 16 sets out development standards and criteria that will be applied as relevant in the assessment of planning applications.

### Appendices

Volume 2a of the Carlow CDP 2022-2028 provides the Appendices:

- I. Strategic Environment Assessment Report
- II. Natura Impact Report in support of AA
- III. Strategic Flood Risk Assessment for the County.

## **5.6. Munie Bheag/Royal Oak LAP 2017-2023**

### Vision and Development Strategy

The vision and development strategy is: *To build on Muine Bheag / Royal Oak's unique strengths including its distinct character of built and natural heritage and to provide a focused approach to planning for future growth in a coherent, sustainable, spatial fashion. The Plan aims to achieve a more consolidated urban form that facilitates a sustainable economic base and creates sustainable and integrated communities while balancing future development with the conservation and enhancement of the town's natural and built environment.*

The key objective of the Council is to provide for sustainable development that will enhance the vitality and prosperity of the town while not overburdening existing services.

### Agricultural Development

Section 4.6 relates to Rural and Agricultural Development. *Muine Bheag / Royal Oak and the surrounding area boasts some of the finest agricultural land in the region. The rural economy is an important component of the town's overall economy. There is approximately 72.8 hectares of agriculturally zoned land within the boundary.*

Policy EC 29: *To promote an environmentally sustainable agricultural / horticultural sector and a vibrant bloodstock industry, which contributes to a dynamic and successful rural economy.*

### Housing and Sustainable Neighbourhoods

The Strategic Approach is to provide for quality homes and sustainable neighbourhoods. Regard is had to the Core Strategy and Phasing of residential development and the creation of Sustainable Residential Areas.

Policies HP1 - HP 11 relate.

Section 6.10 refers to Sustainability and this includes: Utilise land effectively.

### Utilities Infrastructure, Climate Change and Environmental Management

Section 9.1 provides: *The future development and sustainable growth of Muine Bheag / Royal Oak is dependent on the satisfactory provision of infrastructure including water, wastewater, utilities, energy and good quality communication networks. Adequate capacity is necessary to support future development, in a manner that is environmentally and ecologically appropriate, cost effective and protective of public health.*

Section 9.2 notes: *The main challenge is to seek the provision of adequate waste water treatment to meet future demand due to economic development and population growth. Improving the efficiency of the existing networks and encouraging water conservation is also a key priority.*

Section 9.4.1 - Policies WSP 1 – WSP 8 and Objectives WS0 1 – WSO 9 relate to Water Supply and Quality.



Section 9.4.2 – Policies WW 1 – WW 5 and Objectives WWO 1 – WWO 4 relate to Waste Water Treatment. It is noted that the town has a waste water treatment plant designed for a treatment capacity of 4,000 (PE). That the current loading on the PE (2017) was estimated to be 8,363 PE. Therefore, it needs to be upgraded.

#### Chapter 12 Land Use Zoning Objectives

Map 16 provides the: Muine Bheag / Royal Oak Landuse Zoning / Objectives Map.

Regard is had to the Land Use Zoning Table 12. This provides the following Zoning Objective for land zoned for Agricultural Use: *To retain and protect agricultural uses.*

Table 13: Land Use Zoning Matrix – Agriculture zoning – Dwelling is open for consideration.

#### Appendices

Appendix 1 Strategic Environmental Assessment

Appendix 2 Appropriate Assessment

Appendix 3 Strategic Flood Risk Assessment.

### **5.7. Natural Heritage Designations**

The River Barrow and River Nore Special Area of Conservation Site Code 002162 is located c. 1.1km to the west of the site. Blackstairs Mountain Special Area of Conservation Site Code 000770 is located 10.4km south-east of the site.

### **5.8. EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A Third Party Appeal has been submitted by Shane Murray and Madeline Ronan Murray. Their family residence is directly adjacent to the proposed site on the eastern boundary. Their Grounds of Appeal are summarised under the following headings:

#### Entrance way and Traffic Implications

- Adequate sightlines have not been provided on this fast busy stretch of the R724, which is designated as a Regional Road with a general speed limit of 80km/h, with the entrance just inside the 50km/h. Stopping Sight Distances should be increased significantly in both directions.
- They consider that the Site Layout Plan is not a true reflection of the actual layout of the boundary walls, footpath, road edge, existing services etc. Therefore, the hatched area showing the visibility splay is not an accurate representation of what is happening onsite. A detailed topographical survey should have been carried out.
- They consider the Council's decision to grant is based on flawed documentation submitted. That the grant is flawed and contravenes the Council's advice and their own Development Plan.
- They provide a number of Photographs and Figures to demonstrate their concerns relative to sightlines and to the accuracy and clarity of the information submitted. They submit that the sightlines (90m stopping distance) are outside of the applicant's landholding.
- They also refer to the letter attached from Hayes Higgins Partnership (HHP), Chartered Engineers regarding concerns about sightlines and stopping distances.
- The existing building to the rear of their property or the entrance to the property on the opposite side of the road is not shown. Also, no sudden reduction in footpath width, or recently installed speed warning or ESB pole & lines are shown on this Site Layout Drawing (J744-PL03-02).

- A full auto-track for jeeps and horse boxes and horse lorries should have been carried out on the proposed entrance, with layout (at a better scale) including Stopping Sight Distances and longitudinal sections confirming site suitability demonstrated.
- The entrance would need to be of a significant scale to accommodate the proposed development, resulting in a very detrimental effect on the rural landscape of the R724 and significant portions of the existing hedgerow and granite walls being removed given the required splays and sightlines. They question whether the sight visibility to the west impinges on the lands to the west (outside of their landholding Figures 1.3 and 1.4 refer). They submit that this application should be refused relative to traffic safety issues.

#### Wastewater treatment plant, soil polishing filter and wells

- They are concerned about the location of the wwts and soil polishing filter due to the possibility of odours from them in the direction of their property.
- This includes the difference in height between the proposed soil polishing filter sited in the highest part of the site and their much lower level and the possibility of the system failing and the effluent flowing into their site/property, as the natural flow path of surface run-off will be in the direction of their property.
- They provide that as shown positioning the wwts at this location (up gradient of the proposed house) is a flawed design as the invert level of the pipes and depths of the wwts and soil polishing filter down gradient of the proposed dwelling (following the natural fall of the ground). Figure 2.1 shows their preferred location for the soil polishing filter.
- They note Irish Water comments about the use of a bored well, when there is public watermains available along the public road. Connection to this similar, to other properties in the area would be in the interest of public health. The application should be refused until the public health and environmental sustainability issues raised have been adequately addressed.

## Land Zoning

- They note that as per the Muine Bheag/Royal Oak LAP 2017-2023, the land where the subject site is located is currently zoned for agriculture. They have regard to the objective and consider that the applicant's have not demonstrated a genuine need to reside on this site.
- They note the Further Information submitted, including the letter from Ballyhane Stud, which states that the applicants have kept 3 ponies at the stud farm. They query whether a racehorse stud farm would be a facility that would normally accommodate three recreational ponies.
- The land was purchased by the applicants in February 2021, so they do not accept the F.I stating that *'both applicants directly associated with agricultural and have been for many years'*. Since purchasing the land, it has not been used for agricultural purposes. Nor are there grazing paddocks to accommodate their horses currently being kept at Ballyhane Stud.
- They submit that the size of the site for the grazing of horses will be considerably reduced by the large-scale dwelling house and the stables building proposed.
- They consider that the applicants bought the land with the sole purpose of building a large-scale urban type dwelling on this Agricultural zoned land.

## Location of the property and scale

- They note that as shown on the revised drawings in the F.I submission, the applicants have moved the proposed dwelling an additional 6.5m (i.e to give a separation distance of c. 23.5m) from their property. They note that the finished floor level (FFL) has not been reduced, so it will still be at a higher level and ridge height than their property.
- Given the scale of the site, this rural setting, there is no need for the dwelling to be located close to their property. They consider that the proposed dwelling should be centrally located on the site.
- They believe that the proposed dwelling in its current scale, height, orientation and design has little regard to their family home and other houses in the vicinity.

- They are concerned about overlooking and note the current proposal has 8 windows facing their private residence.
- A contiguous elevation has not been submitted to show accurately the removal of the granite wall and mature trees/hedging. In the absence of this and site plan with the required survey levels to the surrounding buildings, a comprehensive appraisal of the overlooking observation is not possible. Consequently, they submit that this application should be refused until the concerns of all parties have been adequately addressed.
- They include Photographs and Figures to demonstrate views of other houses in the area and their concerns.
- They refer to the 'Sunlight and Shadow Analysis Study Report' submitted as part of the planning application. They submit that it is not clear from the analysis whether it has taken into consideration the impact that the proposed FFLs would have on the surrounding land/property. They consider that this report is incomplete as it does not constitute a full analysis.

#### Agricultural Buildings and Equestrian Facilities

- To comply with Section 11.10.1 'New Buildings/Structures' of the Carlow CDP 2015-2021, they believe that the applicants should reposition the stable buildings and proposed dungstead at the bottom of the embankment (Figure 5.2 refers). That this would reduce the visual impact of the proposed development on the surrounding area.
- They query the accuracy of the drawings and provide that based on current standards (Teagasc 'Grassland for Horses') that there is insufficient space to graze one horse on the site.

#### Existing Trees and Hedgerows – Natural Heritage

- They refer to Section 9.1.6 of the Carlow CDP 2015-2021 regarding the importance of trees and hedgerows as a natural and landscape asset. They are concerned that an accurate Landscaping Plan or Survey have not been submitted and that there is a disparity between both.
- They note significant differences between the Site Layout Plan and the Landscape drawings submitted.

- That there is a lack of clarity as to which trees/hedgerows will need to be removed to facilitate the proposal. This includes relative to sightlines from the proposed entrance along the public road. They advise that any removal of such should not take place during nesting season.

#### Further Information Compliance

- The applicants did not respond to the Council's F.I request within the 6 month time period. The Appellants asked the Council for clarification on this matter and have not received any written confirmation on this matter.
- The applicant's submission did not respond to all of their concerns raised in relation to the proposed position of stable works.

#### Conclusion

- They do not consider that the F.I response made on behalf of the applicants addresses all the issues raised. The documents submitted are wholly inadequate and present significant concerns in terms of traffic safety, environmental and natural heritage impact, scale, overlooking and shadowing of a private residence, as well as location and adequacy of equestrian facilities. They also refer to the letter from their Engineers and request the Board to refuse planning permission for the proposed development.

#### **6.2. Applicant Response**

There is no response from the Applicant to the Grounds of Appeal, noted on file.

#### **6.3. Planning Authority Response**

They provide that having reviewed the appeal documentation, that the Planning Authority has no further comments and is satisfied that their position is addressed in the 2no. planning reports on file.

#### **6.4. Observations**

None noted.

## 7.0 Assessment

7.1.1. Having examined the application details and all other documentation on file, including the submission received in relation to the appeal, and the response on behalf of the applicant, having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Compliance with Planning Policy
- Design and Layout and Impact on the Character of the Area
- Agricultural Usage
- Access and Road Safety
- Drainage issues
- Flood Risk
- Appropriate Assessment

## 7.2. Compliance with Planning Policy

7.2.1. Regard is had to Policies in the National Planning Framework and to the Regional Spatial and Economic Strategy for the Southern Region (RSES) (Jan 2020). A major policy emphasis is placed on renewing and developing existing settlements rather than continual expansion and sprawl out into the countryside, at the expense of town centres and smaller villages. The Policy Section above includes regard to Policies and Objectives of note relevant to supporting sustainable development in the consolidation of towns and villages. It is of note that RPO 14 of the RSES includes reference to the urban centre of Muine Bheag.

7.2.2. It is noted that this proposal was considered by the Council, under the Carlow County Development Plan 2015-2021 and that their Assessment and as referred to in the Third Party Appeal, includes reference to a number of policies and objectives under this plan. This has now been superseded by the policies and objectives of the Carlow County Development Plan 2022-2028, and those of relevance have been noted in the Policy Section above and further in the Assessment below.

- 7.2.3. The Carlow County Development Plan 2022-2028 notes in the Settlement Hierarchy, that Carlow is the Key Town and Tullow and Muine Bheag are classified as District Towns. That these comprise well developed serviced settlements with a moderate level of jobs supporting services and community facilities. Noting that these are important towns at a district level and have capacity for continued commensurate growth to become more self-sustaining. Munie Bheag is given the status of the third town in the county, so it is not considered as a small town or village.
- 7.2.4. As shown on the Land Use Zoning Map of the Munie Bheag/Royal Oak LAP 2017-2023 (which is still the current LAP) the subject site is on the eastern outskirts within the development boundaries of Bagenalstown. It is zoned for Agricultural Use where the Objective is to retain and protect agricultural uses i.e.: *The purpose of this zoning is to ensure the retention of agricultural uses and protect them from urban sprawl and ribbon development. Uses which are directly associated with agriculture or which would not interfere with this use are open for consideration. This includes limited housing for members of landowners' families or persons who can demonstrate a genuine need to live in the agriculture zone, tourism related projects such as tourist caravan parks or campsites and amenity uses such as playing fields, or parks.*
- 7.2.5. It is noted that the land to the east is zoned 'Existing Residential' and this is where the Third Party resides. The land to the west is zoned 'New Residential – Phase1. This land, as is the subject site, is currently, greenfield and undeveloped. There are similar residential zonings on the land on the opposite side of the road, where there is a row of ribbon type houses, within the urban area. Therefore, the zoning of the subject site, as an infill agricultural site, in this location relative to land zoned residential, would appear to be out of context with that of the surrounding sites that are included within the urban boundary of Bagenalstown. As per the Zoning Matrix – A dwelling is 'open to consideration' on lands zoned 'Agricultural'.
- 7.2.6. As noted in the Agricultural Zoning, the LAP refers to limited housing for members of landowners' families or persons who can demonstrate a genuine need to live in the agriculture zone. It is not clarified that Local Needs criteria directly apply, within the urban boundary. However, it is noted that the Planner's Report refers to local need policies under the previous Carlow CDP and the Council's permission has included



condition no.2 relevant to a 7 year occupancy, pursuant to Section 47 of the Planning and Development Act 2000 (as amended).

- 7.2.7. While the site is within the town boundaries, it is of interest that the Agricultural Zoning relative to the County in the Carlow CDP 2022-2028 (Section 16.8.9) includes uses 'open for consideration': *This includes limited housing for persons who can demonstrate compliance with the rural housing criteria in Chapter 3... Map 3.2 'Rural Housing and Policy Zones' includes the rural area in the vicinity of Bagenalstown as within 'Rural Housing Policy Zone 1 – Rural Areas Under Urban Influence'.*
- 7.2.8. The Further Information response submitted on behalf of the applicant, provides that the proposed application and development specifically meets the zoning requirements for 'Agricultural Land' as defined in the Muine Bheag/Royal Oak LAP 2017-2023 by virtue of the proposed development consisting of limited housing of a single dwelling house for members of the landowner's family. The proposed development also provides for agricultural use with the provision of equine stables and grazing paddocks demonstrating a usage directly associated with agriculture. That the proposed development will allow the applicants to keep their livestock on agriculture zoned lands, protecting the lands from urban sprawl and ribbon development. They include a letter from Ballyhane Stud confirming that their three ponies are kept at Ballyhane Stud. They also provide that this proposal is of importance in providing equine therapy for a family member.
- 7.2.9. Of note on file, the Application Form for Certificate of Exemption, provides that the applicant resides in an address within the urban area of Bagenalstown. The Third Party submit that the applicants currently own and live in a home within Muine Bheag (approx. 2km from the site). They query the applicants need to build such a large-scale urban type house on this Agricultural zoned land, and are also concerned that the area of the site is not sufficient for the buildings including the stables and the grazing of horses. In this case, it has not been shown that the site is taken off a larger agricultural landholding, albeit the extension towards the stream at the rear (shown within the blue line boundary).
- 7.2.10. The zoning does provide for limited housing for members of landowners' families or persons who can demonstrate a genuine need to live in the agriculture zone. Having

regard to the issues raised and the documentation submitted, I am not convinced that it has been demonstrated that the applicants and proposed development would comply with the 'Agricultural Land Use' objective as noted in Table 12 which provides the 'Specific Land Use Zoning Objectives' of the Muine Bheag/Royal Oak LAP 2017-2023.

### 7.3. Design and Layout

- 7.3.1. The proposed development is to comprise of the construction of a two-storey dwelling, stable building, on-site wastewater treatment system, bored well, splayed entrance, and all associated site development works. It is proposed that the access be from the R724.

#### Dwelling House

- 7.3.2. Regard is had to the revised Site Layout Plan, which shows that the proposed house relatively centrally located, albeit closer to the eastern boundary, set back c.40m from the public road. The dwelling is to be part two storey/single storey and as stated on the application form to have a g.f.a of 291m<sup>2</sup>. The Floor Plans show 2no. bedrooms and living accommodation are to be provided on the ground floor, and 3no. bedrooms on first floor level. The ridge height of the proposed 2 storey element is shown as c.8.5m and of the single storey element as c.5.9m, both elements are to be linked by a single storey flat roofed mid-section area.
- 7.3.3. The Third Party note that the finished floor level (FFL) has not been reduced, so it will be set at a higher level and ridge height than their property. That the overall scale and size of this two-storey property (including the proposed FFL and ridge height) is not sympathetic to the surroundings and is not in keeping with visual amenity or the character of other smaller scale houses in the vicinity. In this instance, I would be concerned about the height, bulk and massing, in particular the length of the side elevation of the two-storey element, that it will appear of a larger scale than other houses, in the immediate area and will appear more dominant.
- 7.3.4. They also are concerned about overlooking. That this is particularly in view of the orientation of the existing and proposed properties and the fenestration proposed. It is noted that there will be 8no. windows in the side elevation facing their two-storey property. However, on site, I noted that there is a dense hedgerow/planting between

the properties which aids screening, particularly in the summer months. In this respect I note that the revised plans show the proposed house set back c.23.5m from the dwelling to the east. This would comply with the 22m separation distances as given in the Development Management Standards in Section 16.8.5 of the Carlow CDP 2022-2028 relative to Residential Amenity.

- 7.3.5. I would consider that the proposed house type in view of its design, height, bulk and massing may be considered to appear overly large and dominant and would not add to the character of the area. In this case while within the town boundaries, it is on the outskirts of the town. However, if the Board decides to permit, I would recommend conditions relative to external finishes, and landscaping including retention and augmentation of boundary hedgerows and planting.

#### Sunlight and Daylight

- 7.3.6. The Third Party concerns about overshadowing and loss of light have been noted. A Sunlight and Shadow Analysis Study Report has been submitted. This refers to the BRE 209 guidance document "Site layout Planning for Daylight and Sunlight a guide to good practice Second Edition – 2011." Section 16.8.5 of the CDP as noted above provides: *Minimise overshadowing by applying the recommendations of 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' – Second Edition (B.R.E.).*
- 7.3.7. The Sunlight and Shadow Analysis Report considers the shadows cast for the proposed development for the following dates:
- December 21<sup>st</sup> (Winter Solstice)
  - March 21<sup>st</sup>/September 21<sup>st</sup> (Equinox)
  - June 21<sup>st</sup> (Summer Solstice)
- 7.3.8. It is provided that the analysis ignores the existing boundary trees and hedging. This shows that with the exception of December 21<sup>st</sup> at 16.00pm there will be no overshadowing cast on the garden area of the property to the east. It concludes that overall, the impact of overshadowing would have a negligible adverse impact on the existing dwelling to the east. That the property to the east has no loss of light and is not impacted by overshadowing.

- 7.3.9. The Analysis notes that as mentioned under Section 3.3.17 of the BRE's Site Layout Planning for Daylight and Sunlight, that for a space to appear adequately sunlit throughout the year, at least half of the garden amenity area should receive at least 2 hours of sunlight on the 21<sup>st</sup> of March. That on this date almost 100% of the amenity areas of the property to the east would receive at least 2 hours of sunlight exceeding the BRE recommendations. That, it can be concluded that the proposed development does not impact on the amenity area of the dwelling to the east. The Analysis concludes that overall, the results demonstrate that the proposed development performance exceeds BRE recommendations in the BRE 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice.'
- 7.3.10. The Third Party are concerned that this Report is incomplete as it does not constitute a full sunlight and shadow analysis. That further analysis should have been carried out from 4pm until sunset of the effects of the proposed development on their property. However, taking into account the BRE recommendations and conclusion of the Sunlight and Daylight Analysis, the two storey height and distance of the proposed house and stables from the property to the east, that the proposal will not adversely impact daylight and sunlight to this property.

#### The Stables

- 7.3.11. As shown on the plans submitted, this building is to be located close to the northern (rear) boundary of the site. There are existing sheds on the landholding to the rear between the proposed stables and the stream (c.32m further to the north).
- 7.3.12. The proposed stable building is to have a g.f.a of 59.4m<sup>2</sup> and the floor plans show that that it is to be subdivided into 4no. stables. The ridge height of the building is shown as c. 4.5m. The external finish is given as napp plaster finish and black roof slates.
- 7.3.13. The Third Party concerns about the proposed location of the building are noted. They believe that the applicants should reposition the stable buildings and proposed dungstead at the bottom of the embankment adjacent to and at a similar FFL to the existing agricultural buildings, as opposed to their current position some c. 5m higher. That this would reduce the visual impact of the proposed development.
- 7.3.14. It is important that the stables building be seen to be integrated with the existing agricultural sheds to the rear of the site. However, I would consider that in view of

the set back that the low-profile design would be acceptable and would also be set further back from the stream to the north. It would not be desirable to locate the stables closer to the stream. Their proposed use and effluent disposal are discussed further in the context of the equine development in the Agricultural Usage Section below.

#### 7.4. Agricultural Usage

- 7.4.1. As been noted, the site is zoned for Agricultural use. In this case this is based on the provision of the 4no. equine stables and grass paddocks are also to be provided. The F.I includes that both applicants are directly associated with agriculture and have been for many years. That they currently keep their livestock at Ballyhane stud at considerable cost. That the proposed development will allow the applicants and their family to keep their livestock on the agricultural zoned lands, protecting the lands from urban sprawl or ribbon development. A letter has been submitted from Ballyhane Stud confirming that they have kept 3no. ponies there for the last 5 years. They also provide that the proposed development is of importance providing equine therapy.
- 7.4.2. The Third Party query the accuracy of the drawings and provide that based on current standards (Teagasc 'Grassland for Horses – A handbook on best grazing/forage management practices and techniques') that there is insufficient space to graze one horse on the site. This includes regard to 'Paddocks' and notes relative to 'Stocking rate': *A stocking rate of 1.5 horses/hectare (one horse per acre and a half) is a good general guideline as a stocking rate for grazing horses. Variations from this may be necessary, particularly where only small numbers are kept. Ponies require less.*
- 7.4.3. While such matters are considered under separate remit, it is noted that as given on the application form the site area is 1.0ha. The area of the site taken up by the proposed buildings, access route, hardstandings etc also need to be taken into account. The Third Party, query how planning permission can be granted to building a new house on lands zoned agricultural that are not capable of meeting the needs of animals (in this case horses).

- 7.4.4. It is also of note that Policy EQ P2 (Section 14.8.1) of the current Carlow CDP 2017-2022, seeks to: *Ensure that equine based developments are located on suitable and viable landholdings and are subject to normal planning and design considerations.* In addition, it needs to be considered whether the proposed use of the site for stables/paddocks is ancillary to the use of the site for the proposed house.
- 7.4.5. I noted, condition no.4 of the Council's permission relates to the restriction of use of the stables. If the Board decides to permit, I would recommend that it be conditioned that the use of the stables be ancillary to the dwelling house and not be used for any commercial purposes.

#### Disposal of Effluent

- 7.4.6. The applicant's response to the Council's F.I request refers to the revised Site Layout Plan J744-PL03-02, indicating the location of the dungstead where the manure will be stored over the closed period. They provide that all soiled water and seepage will be collected in a 1500 gallon tank.
- 7.4.7. Details include that the amount of livestock manure applied in any year to land on the holding, together with that deposited to land by livestock, shall not exceed an amount containing 170kg of nitrogen per hectare. That the total area of land available for spreading of manure is 0.51ha, the total nitrogen generated for a maximum of 4 no. horses = 200kg (50 x 4). It is proposed to spread 86kg on the paddocks, the balance 11kg is to be exported in accordance with Nitrates Regulations.
- 7.4.8. Horses are to be washed down on concrete surface beneath the stable overhang. All washdown water is to be discharged to the effluent collection tank and stored, to be applied to the lands via vacuum tanker during the open period. They note that the volume of water from horse washdown will not be more than 1000 litres and that sufficient capacity has been provided within the effluent storage tank.
- 7.4.9. It is noted that the Council's Environment & Water Services Section response to the F.I submitted considered the proposal to install a 1500 gallon effluent tank to collect the wash water from the horses and an effluent from the dungstead to be acceptable. They consider that the applicants have shown they have made provisions to deal with the nutrients produced from the horses. They recommend conditions including relative to surface water drainage and the collection and storage

of wash water associated with the horses. Also, that the operation of the proposed facility and farm facilities be in compliance with SI 113/2022 European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2017. Condition no.10 of the Council's permission relates. If the Board decides to permit, I would recommend that a similar type of condition be included.

## **7.5. Water Services**

- 7.5.1. It is proposed to service the site via a wastewater treatment system and the provision of a borehole. The latter is shown on the Site Layout Plan close to the western site boundary. The Council's Water Services Department noted that there is a water main in the road and that if the applicants wished to connect, they should apply to Irish Water New Connections.
- 7.5.2. The applicants F.I response noted that the proposed development will be serviced via a proposed bored well on site as indicated on the Site Layout drawing and no connection to mains water is proposed. The Planner's Report notes that the Council's Water Services Section has no objection to this.
- 7.5.3. Section 9.4.2 of the LAP includes that Irish Water have acknowledged that the Bagnalstown plant is overloaded and have advised that this plant is a candidate site for inclusion in the Emerging Capital Investment Plan. Policy WW4 discourages the provision of individual septic tanks within the plan boundary to minimise the risk of groundwater pollution. It is of note that the Muine Bheag WWTP has not as yet been upgraded. In current times, Uisce Éireann is commencing works to upgrade the Bagenalstown WWTP in Co. Carlow.
- 7.5.4. The proposed waste water treatment system and percolation area is shown to the front of the proposed dwelling close to the southeastern corner of the site. The Third Party are concerned about this location close to their property and in their submissions to the Council they asked that consideration be given to getting the applicants to move the wwts and soil polishing filter to the northwest side of the proposed property, or at least away from their boundary and positioned just inside the proposed new entrance (Figure 2.1 of their Appeal Statement refers). They are concerned that the proposed location for the percolation area in the southeast corner of the proposed development, would cause a serious risk of treated effluent

migration from the soil polishing filter, into their property, given the proposed finished floor levels, proximity of the property and preferential pathways for ground water.

- 7.5.5. It is noted that the application was submitted on the 2nd of November 2021 and the Site Suitability Assessment for On-Site Wastewater Management is dated 28<sup>th</sup> of September 2021, the Site Characterisation Form submitted with the application is dated 12th of October 2021, so the EPA CoP 2021 Guidelines are applicable. The Site Layout Plan shows that the proposed wwts and soil polishing filter is located c. 25m away from the house to the northeast. This is in accordance with the standards of the EPA CoP 2021 as per Table 6.2 which provides Minimum separation distances for the entire DWWTS.
- 7.5.6. Details on the Site Characterisation Form include that the vulnerability of the site is high and the aquifer is regionally important. The groundwater protection response is R1. Appendix E of the 2021 Guidelines provide details of 'Groundwater Protection Responses'. Table E1 refers. This includes that for this response a wastewater treatment system is acceptable subject to normal good practice (i.e. system selection, construction, operation and maintenance in accordance with this CoP).
- 7.5.7. The proposed design is for a 7 p.e. with a packaged treatment plan with 52.5m<sup>2</sup> soil filter. The subsurface percolation test for subsoil = 6.92 and the Surface Percolation Test for soil = 15.86. No water/rock was encountered at 2.10m below ground level and no mottling at 2.10m below ground level. As per the Site Characterisation form it is proposed to provide a secondary treatment system and polishing filter, due to the rapid sub-surface percolation rate. Details are given of the wastewater design specification. A packaged system is proposed.
- 7.5.8. The information submitted in terms of the wastewater treatment system does not highlight specific concerns and I note the PA is satisfied with regard to the information submitted. Provided it is properly installed and well maintained to current standards there do not appear to be issues with the wastewater treatment proposed.

## 7.6. Access

- 7.6.1. As shown on the Site Layout Plan access to the R724, this to be provided close to the southwest corner of the site, in the vicinity of the existing field gate. The Site



Layout Plan shows the visibility splays, which they provide are in accordance with Table 4.2 (49m required for 50km/h) Design Manual for Urban Streets (DMURS).

- 7.6.2. The Third Party are concerned that adequate sightlines have not been provided on this fast busy stretch of the R724, which is designated as a Regional Road with a general speed limit of 80km/h, with the entrance just inside the 50km/h. That as this proposed new entrance is sighted onto the R724 Regional Road, the Stopping Sight Distance should be increased significantly in both directions. In addition, they provide that a detailed topographical survey should have been carried out of the site and adjoining lands/properties so that the true impact of what the proposed entrance would have on the existing hedgerow and granite walls would be clearly illustrated.
- 7.6.3. They have included a report from Hayes Higgins Chartered Engineers, which notes that the Road Design and Safety should be based on the Design Speed of a roadway and not the speed limit. They refer to a survey they carried out noting an average speed in excess of the 50km/h. That the Road Design Guide TD 9/11, Table 1/2 states that for a 50km/h speed limit a design speed of 60km/h should be used. They have concerns about the use of DMURS in this area, where, as shown on Table 4.2 there are *Reduced SSD standards for application within cities, towns and villages*. They also refer to the Carlow CDP where a 150m sight line at 2.5m from the edge of the road should be required for a Regional Road with a speed limit of 80/60 (Section 16.10.7 of the current CDP refers) and 90m for a similar speed Local Road. They consider that the current proposal would result in the removal of existing hedgerows and walls along the roadway and extend sight triangles beyond the current land-owners site.
- 7.6.4. It is of note that the Muinebheag Minicipal District Engineer recommended that sightlines be set back 3m from the edge of the existing road. That sight lines are to be as per the CDP- 90m in both directions for county roads, 150m in both directions for regional road. They also noted that this site is within the 60km/h speed limit.
- 7.6.5. On site I noted that the proposed entrance is within the 50km/h zone but further along the roadside frontage of the site i.e: to the east the speed limit increases to 60km/h. While there is a footpath along the road frontage of the site, this is a fast busy stretch of Regional road on the outskirts of the town. The Site Layout Plan indicates that the existing hedgerow and stonewall will be sufficiently set back to

achieve sightlines. The applicants F.I response provides that the proposed entrance is within the urban speed limits and has been designed in accordance with DMURS. That it is not proposed to use the access for horse lorries.

However, I would consider that there is some discrepancy as regards to sight line distances taking into account the location of the entrance onto this stretch of the R724 at the edge of the town, and the issues raised. That sufficient documentation has not been submitted to show that they are achievable without adversely impacting on the stonewall, hedgerows and footpath along the site frontage and within the landholding as shown within the red line boundary of the site.

## **7.7. Flood Risk Management**

### Strategic Flood Risk Assessment

- 7.7.1. An SFRA by JBA Consulting was undertaken (2017) alongside the preparation of the Munie Bheag/Royal Oak LAP 2017-2023. The requirement for SFRA is provided under 'The Planning System and Flood Risk Management Guidelines for Planning Authorities' (DEHLG, 2009).
- 7.7.2. This has regard to the River Barrow and its tributaries in the Bagenalstown area, including the Dunleckney Stream to the north of the site. The pertinent flood risk history from both the consultation and OPW floodmaps.ie sources are summarised. It also has regard to Climate Change and Flood Risk Assessment. Where a site is within Flood Zone C but adjoining or in close proximity to Flood Zone A or B (as is the scenario with the rear (north) of the subject site, there could be a risk of flooding associated with factors such as future scenarios (climate change) or in the event of failure of a defence, blocking of a bridge or culvert. Risk from sources other than fluvial and coastal must also be addressed for all development in Flood Zone C. As a minimum in such a scenario, a flood risk assessment should be undertaken which will screen out possible indirect sources of flood risk and where they cannot be screened out it should present mitigation measures.
- 7.7.3. Section 6 of the LAP provides a Settlement Review and the subject site is included in Section 6.1 Map showing – Lands Upstream of Railway line. This shows the agricultural land use zoning for the site and the Dunleakney Stream at the rear (to

the north) of the site. That part adjacent to the stream is within Flood Zone A. It is noted that the subject site is not located with FZA or FZB.

#### Further Information submission - SSFRA

- 7.7.4. The Council's F.I request noted that on the basis of OPW Catchment Flood Risk Assessment and Management (CFRAM) mapping, the proposed development is located in an area of the application site which is at risk of flooding. The Dunleckney Stream is to the north of the site and is a tributary of the River Barrow. The applicant was requested to submit a Site-Specific Flood Risk Assessment report to be prepared in accordance with the requirements of '*The Planning System and Flood Risk Management Guidelines for Planning Authorities*' 2009 (DEHLG and OPW)'.
- 7.7.5. In response Peter Bolger Consulting LTD Consulting Engineers submitted a Site Specific Flood Risk Assessment (SSFRA). This has regard to the details outlined in the said Guidelines. This study is particularly focused on examining flooding risks on the site, on determining if the development altered flood risk, and in determining appropriate flood risk mitigation and management measures for any alteration of flood risk. The SSFRA includes the following:
- Plans showing the site and development proposals and its relationship with watercourses.
  - Survey of site levels relating relevant development levels to sources of flooding and likely flood water levels.

#### Drainage Catchment

- 7.7.6. The site falls within the catchment area of the River Barrow the existing drainage pattern of the site and the surrounding area is drained through surface and ground water and to the watercourse known locally as the 'Dunleckney Stream' as identified on the Site Layout Plan. The stream follows the northern boundary of the site and continues west, joined by other watercourses before eventually out falling approx. 1km to the west of the site to the River Barrow. The watercourse is a tributary of the River Barrow which forms part of the River Barrow and River Nore SAC. There are no other environmentally sensitive sites (such as SPA, NHA) within the study area.

#### Flood Mapping

7.7.7. The site, within the boundaries of Bagenalstown, is mapped as part of the Office of Public Works (OPW) Southern Eastern Catchment Flood Risk Assessment (CFRAM). The site has not been included as an area of further assessment under the Southeastern CFRAM study. Regard is had to OPW national Flood Hazard Mapping to identify past recorded floods in the vicinity of the site (Figure 5 of the SSFRA refers). It is noted that having regard to this and the historic Ordinance Survey Mapping that no record of flooding is recorded at this site location.

#### Flood Zones

7.7.8. Flood Zones as defined in Section 2.23 of the Guidelines document:

- Flood Zone A – Probability of flooding greater than 1 in 100 for river flooding;
- Flood Zone B – Probability of flooding less than 1 in 1000 for river flooding.
- Flood Zone C - Probability of flooding less than 0.1 in 1000 for river flooding.

7.7.9. Tables 3.1 and 3.2 of the Guidelines illustrate those types of development that would be appropriate to each flood zone and those that would be required to meet the Justification Test. It is noted that Residential Development is highly vulnerable. Buildings (such as stables) may be classified as less vulnerable. However, there would be some concern if the stables building were to be placed on lower ground closer to the stream at the rear of the site. The development site as a whole is identified as Zone C (low probably of flooding).

#### Mitigation Measures

7.7.10. The SSFRA notes that the subject site is relatively level falling gently in c.1:50 gradient towards the watercourse to the north. The existing ground levels are elevated in excess of 5m above the watercourse, no other alleviation measures were observed. The proposed development will minimise the impact of flooding with the use of permeable surfaces and soak pits allowing surface water to discharge to ground. It is proposed to discharge stormwater to ground via permeable surfaces and soakpits. The stormwater method of disposal is to be in accordance with the Council's SuDs policies and is to maintain the existing drainage pattern of the area and provide natural attenuation. Upon completion of the storm water discharge proposals outlined, the SSFRA provides that these mitigation measures are to have the effect of satisfactorily reducing the risk to an acceptable level while not

increasing flood risk elsewhere. They provide that the sensitivity to Climate Change is low, but that depths of flooding may increase with climate change.

- 7.7.11. As a result of the Zone C categorisation relative to the site, the SSFRA provides that it is considered acceptable to demonstrate that appropriate mitigation can be put in place and that residual risks can be managed to acceptable levels. As the site is within Zone C in accordance with Table 3.2, the Guidelines, the development is considered appropriate and a Justification Test is not applicable.

### Conclusion

- 7.7.12. The SSFRA concludes that the flood risk potential arising from or to the proposed development is negligible and would not have any adverse effect on the existing drainage pattern of the area or increase the risk of flooding at other locations.
- 7.7.13. It is noted that the Council's Environment Section does not object to the proposed development and do not query the findings of the SSFRA. They recommend conditions relative to surface water drainage and soakaways.
- 7.7.14. In view of the documentation submitted and having regard to the flood mapping, as noted above, I would consider it appropriate to conclude that flooding is not a significant issue on the subject site.

## **8.0 Appropriate Assessment – Screening**

### **Compliance with Article 6(3) of the Habitats Directive**

- 8.1.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- 8.1.2. In accordance with the obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a European site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision, by carrying out appropriate assessment. The first stage of assessment is 'screening'.

- 8.1.3. The methodology for screening for Appropriate Assessment as set out in EU Guidance and the Department of Environment, Heritage and Local Government is:
- 1) Description of the plan or project and local site or plan area characteristics.
  - 2) Identification of relevant European sites and compilation of information on their qualifying interests and conservation objectives.
  - 3) Assessment of likely significant effects-direct, indirect, and cumulative, undertaken on the basis of available information.
  - 4) Screening Statement with conclusions.

### **Project Description**

- 8.1.4. The proposed development is to comprise of the construction of a two-storey dwelling, stable building, on-site wastewater treatment system, bored well, splayed entrance, and all associated site development works.
- 8.1.5. In response to the Council's F.I request an Appropriate Assessment Screening Report has been submitted by Panther Environmental Solutions LTD. The purpose of this report is to examine the development for possible impacts on the integrity of the Natura 2000 network, in particular on the adjacent SAC – the River Barrow & River Nore (Site Code: 002162).
- 8.1.6. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:
- \* Construction related -uncontrolled surface water/silt/ construction related pollution
  - \* Habitat loss/ fragmentation
  - \* Habitat disturbance /species disturbance (construction and or operational)

- 8.1.1. In relation to the matter of habitat loss or alteration the proposed development site is to the south of the Dunleckney Stream (runs north of the site) which is to the east of and a tributary of the River Barrow and River Nore SAC. There will be no direct loss or alteration of the habitat. Regarding the issue of habitat/species fragmentation the proposed development would not result in any direct habitat loss or fragmentation.

### **European Sites**

- 8.1.2. In this case there are two Natura sites within a 15km radius of the site i.e:

The closest Natura 2000 site is the River Barrow and River Nore SAC (Site Code: 002162) which is located approximately 1.1km to the west of the site.

The Blackstairs Mountains SAC (Site Code: 000770) is c.10.8kms to the southeast.

The Qualifying Interests and General Conservation Objectives of these two Designated Natura 2000 sites are as shown on Table 1 below:

<b>European Site (code) and distance from proposed development</b>	<b>List of Qualifying interest/Special Conservation Interest</b>	<b>General Conservation Objectives</b>	<b>Connections (source, pathway receptor)</b>	<b>Considered in further screening Y/N</b>
<p>River Barrow and River Nore SAC 002162 c.1.1kms to the west</p>	<p>Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Reefs [1170] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glaucopuccinellietalia maritima) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260] European dry heaths [4030] Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]</p>	<p>To maintain or restore the favourable conservation condition of the Annex I habitats(s) and/or the Annex II species for which the SAC has been selected.</p>	<p>There is source – pathway – connectivity between the proposed development site and the River Barrow and River Nore SAC. The Dunleckney Stream is within 25m to the north of the site and is a tributary of the River Barrow and River Nore</p>	<p>Yes</p>

	<p>Petrifying springs with tufa formation (Cratoneurion) [7220]</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016]</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Austropotamobius pallipes (White-clawed Crayfish) [1092]</p> <p>Petromyzon marinus (Sea Lamprey) [1095]</p> <p>Lampetra planeri (Brook Lamprey) [1096]</p> <p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Alosa fallax fallax (Twaite Shad) [1103]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Lutra lutra (Otter) [1355]</p> <p>Trichomanes speciosum (Killarney Fern) [1421]</p> <p>Margaritifera durrovensis (Nore Pearl Mussel) [1990]</p>		<p>SAC. The site is therefore hydrologically connected.</p>	
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<p>Blackstairs Mountains SAC 000770 c.10.8km SE</p>	<p>Northern Atlantic wet heaths with Erica tetralix [4010] European dry heaths [4030]</p>	<p>To maintain or restore the favourable conservation condition of the Annex I habitats(s) and/or the Annex II species for which the SAC has been selected.</p>	<p>There is no source – pathway-receptor connectivity between the proposed development and the SAC  There is no potential for impact</p>	<p>No</p>
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River Barrow and River Nore SAC

8.1.3. No land area from within the designated boundaries is required to implement the proposed development. The development is not located within a site designated for nature conservation purposes but is within c.1.1kms to the east of the River Barrow and River Nore SAC. The proposed development is outside of the designated boundaries. As shown on the Site Layout Plan submitted, the Dunleakney stream, which is a tributary of the River Barrow is c.25m to the north of the proposed development site. In view of the proximity and hydrological connection this proposal has potential to impact on the integrity of the River Barrow and River Nore SAC and this is considered further in the Screening Rationale below.

Blackwater Stairs SAC

8.1.4. Note is had of the Table above and the qualifying interests and conservation objectives of this Natura 2000 site, which is c.10.8kms to the southeast of the application site. The project is not hydrologically connected to the Blackstairs Mountains SAC, which is in a different catchment and there is no source-pathway - receptor. Hence potential impacts on this Natura 2000 site are ruled out.

## **Assessment of likely Effects (Direct/Indirect)**

### Qualifying Interests

- 8.1.5. The site of the proposed development is a greenfield area, with hedgerows and planting along the site boundaries. As noted in Section 6 of the AA Screening Report it has no ecological interest, relative to impact on the Qualifying Interests of the River Barrow and River Nore SAC. This notes that there is a small area of marsh present along the watercourse to the northwest of the site boundary. No works will take place within this area or within the riparian zone of the Lower Clorusk. While there was no evidence of otter recorded during the ecological assessment, the Report provides that it is likely that otters are present within the vicinity. It is provided that no works will take place within or directly adjacent to the Lower Clorusk (also referred to as the Dunleckney Stream) located to the north of the site boundary. As shown on the Site Layout Plan, the site is set back c. 25m from the watercourse. That therefore the development would not have a significant potential upon otter due to habitat loss or fragmentation, given the limited landtake required, and of modified habitats, and given the availability of more suitable otter habitat in the general area.
- 8.1.6. It is not envisaged that protected species would be adversely impacted upon by noise from the proposed development as the surrounding area is located within an urban setting. Construction works will be carried out during daylight hours away from the River Barrow. Earthworks would be confined to the site with the main activities being the foundations, drainage network and any site levelling. Topsoil at the proposed site will be reused for landscaping. It is not envisaged that the proposed development during construction or operational stage will impact adversely in air emissions. The Screening Report provides that it is therefore considered that the proposed development would not result in any significant risk to the protected habitats and species of the River Barrow and River Nore SAC due to habitat fragmentation or loss, disturbance or reduction in species density.

### Water Quality

- 8.1.7. The Screening Report notes that the proposed development is located within the Barrow Catchment and would be hydrologically linked to the River Barrow and River Nore SAC. However, it would not be considered to impact upon the listed habitats and species of the SAC site due to deleterious effects on water quality, owing to the

location of the development, the nature and duration of works and the small scale of the development.

- 8.1.8. During the construction phase of the development, a deterioration in water quality can arise through the release of suspended solids during soil disturbance works, the release of uncured concrete and the release of hydrocarbons (fuels and oils). It is provided that Construction works would be confined to the proposed development footprint, with no works taking place within the riparian zone or aquatic habitat of the Lower Clorusk running along the northern site boundary.
- 8.1.9. The development site is located c.1.1km from the River Barrow main channel. Wastewater from the proposed development will connect to the proposed onsite wastewater treatment system. Waste will flow into the percolation area before releasing to groundwater. Stormwater will be captured on site by soakaways. It is not anticipated that there will be a deleterious effect on water quality within the Lower Clorusk or River Barrow as a result of the proposed development.
- 8.1.10. The Screening Report provides details of measures relative to construction methods for the proposed development, that seek to ensure that there will be no significant impact on the River Barrow and River Nore SAC. This includes that the stables will have a dungstead and effluent storage tank to prevent runoff directly entering the Lower Clonusk. Regard is also had to the wastewater treatment system proposed for the dwellinghouse. They note compliance with current regulations and guidelines.

### **Conclusion**

- 8.1.11. It is therefore considered that, due to the nature and location of the development, the relatively small scale and extent of construction works, no excavation works being within or proximate to the watercourse, the proposed development would not pose a significant risk upon the River Barrow and River Nore SAC site due to a deleterious effect on water quality during either the construction or operational phases. Regard is also had to the Tables provided in Appendices A and B of the AA Screening Report. Appendix A provides a List of all Qualifying Interests, and notes those listed for further examination in Appendix B. These present a Finding of No significant impact on the Qualifying Interests or the Conservation Objectives. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

## **In Combination Effects**

- 8.1.12. As noted in Section 6.3 of the Screening Report it is not considered that the proposed development would pose a significant risk upon any Natura 2000 site due to the deleterious effect on water quality, during either the construction or operational phase given the performance and capacity of the proposed waste water treatment system and the small volume of domestic wastewater, design of the stables and stormwater that would be generated by the development. It is considered that there would be no significant cumulative impacts upon water quality which could pose a risk to the River Barrow and River Nore SAC.
- 8.1.13. As discussed in Sections 6.1 – 6.3, it is considered that there would be no significant in-combination risk to any European site owing to the development. As there are no anticipated significant risks from the development and proposed works given the scale and nature or recent nearby developments, the type of proposed development, the distances of other developments in the area, it is considered that there would be no cumulative water, noise, or air impacts which would pose a significant risk to designated sites or species.

## **Screening Determination**

- 8.1.14. The proposed development was considered in light of the requirement of Section 177U of the Planning and Development Act 2000 as amended. Having regard to the nature and scale of the proposed development, to the intervening land use, and distance from European Sites, it is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European site (Site Code: 002162 - River Barrow and River Nore SAC) or any other European site, in view of the said sites' conservation Objectives, and Appropriate Assessment (and submission of an NIS) is not, therefore, required.

## **9.0 Recommendation**

- 9.1. I recommend that the proposed development be refused for the reasons and considerations below.

## 10.0 Reasons and Considerations

1. The proposed development site is located on land zoned for 'Agricultural' use, within the town boundaries of Bagenalstown as shown on the land use zoning map and as noted in Table 12 of the Muine Bheag/Royal Oak Local Area Plan 2017-2023 with an Objective:- *To retain and protect agricultural use*. It is considered that the stables use is ancillary to that of the proposed large-scale dwellinghouse and that it has not been demonstrated in the documentation submitted that the applicants, who already reside in the urban area of Bagenalstown have a genuine need to live in the agricultural zone, in accordance with this zoning objective.
2. It has not been demonstrated in the documentation submitted to the satisfaction of the Board, that sightlines at the proposed entrance are adequate or can be achieved along the site frontage of the applicant's landholding at this location on this fast busy section of the Regional Road - R724 on the outskirts of the town of Bagenalstown.

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.

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Angela Brereton  
Planning Inspector

26<sup>th</sup> of June 2023