



An
Bord
Pleanála

Inspector's Report ABP- 314716-22

Development	Construction of a single storey dwelling and all ancillary works.
Location	Gilltown, Donadea, Naas, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	22/849.
Applicant	Denis and Denise Browne.
Type of Application	Permission.
Planning Authority Decision	Refusal of Permission.
Type of Appeal	First Party v Refusal of Permission.
Appellant	Denis and Denise Browne.
Observer(s)	None
Date of Site Inspection	22 nd March 2023
Inspector	Enda Duignan.

1.0 Site Location and Description

- 1.1.** The address of the appeal site is Gilltown, Donadea, Naas, Co. Kildare. The site is located within the rural area of County Kildare, c. 1.4km to the south-west of the rural settlement boundary of Staplestown. The site has a stated area of c. 0.283ha and is located on the eastern side of a local road. The site currently comprises a detached single storey dwelling which is served by an area of amenity space to its front, side and rear. A detached pitched roof shed is also located to the dwelling's rear. The site is accessed via a recessed vehicular entrance, centrally located within the site's roadside boundary. The site's western roadside boundary is characterised by hedging which is interspersed with trees of varying maturities.
- 1.2.** With respect to the site surrounds, there is a large concentration of one-off rural dwellings along the surrounding local road network. The remainder of the lands within the surrounds of the site are typically in agricultural use.

2.0 Proposed Development

- 2.1.** The proposal seeks planning permission for the subdivision of the existing site and the construction of a new single storey dwelling and wastewater treatment system (wwts), within the side amenity space of the existing site.
- 2.2.** The proposed dwelling has a stated floor area of c. 106sq.m. and shall comprise an entrance hall, bathroom, utility, kitchen/living/dining room and three (3) no. bedrooms. The dwelling will have a part flat/part pitch roof with a gable projection to the front. Materials and finishes shall comprise a combination of render and natural stone cladding for the principal elevations with a slate and pressed metal roof.
- 2.3.** The proposal seeks to modify the existing vehicular entrance and a right-of-way has been identified on the submitted Site Layout Plan. The dwelling is proposed to be served by an area of amenity space on its eastern and western sides and a wastewater treatment system and percolation area is proposed to the front of the dwelling in the south-western corner of the appeal site.

3.0 Planning Authority Decision

3.1. Decision

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

1. Policy RH9 (iv) of the Kildare County Development Plan 2017-2023 seeks 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.

3.2. Planning Authority Reports

3.2.1. Planning Report

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

In terms of the Applicant's rural housing need, the Planning Authority was satisfied that the Applicant had demonstrated compliance with the local need criteria. Included within the planning file was the 'Rural Housing Application – Assessment of Local Need'. Notwithstanding this, the Planning Authority noted that the proposal has been refused on three previous occasions based on the lack of capacity of the rural area to accommodate further piecemeal and ad hoc development. It is stated that this particular rural area of the county has experienced excessively high levels of one off

housing over the last 15-20 years and it was noted that there are approximately 35 one off dwellings within a 1km radius of the subject site. The Planning Authority also refer to multiple refusals for one off housing in recent times within the wider rural area due to the issue of capacity. It is stated that this type of linear development leads to the loss of the rural character of the area and the level of development in the area currently is considered to be excessive. The proposal was therefore considered to contravene Policy RH9 (iv) of the Kildare County Development Plan 2017-2023 and would result in the further degradation of the rural area. A refusal of planning permission was recommended by the Planning Authority for 1 no. number reason

3.2.2. Other Technical Reports

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

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

Area Engineer: Report received stating no objection.

Environment Department: Report received recommending additional information. The additional information related to proposed wastewater treatment system. It was noted that infiltration areas were not in accordance with the EPA Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021.

3.2.3. Prescribed Bodies

None.

3.2.4. Third Party Observations

None.

4.0 Relevant Planning History

4.1. Appeal Site

21/1242: Planning permission refused by the Planning Authority in October 2021 for the subdivision of the existing site and the construction of a new single storey dwelling and wastewater treatment system (wwts). The application was refused for the following 1 no. reason:

1. Policy RH9 (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.

20/1215: Planning permission refused by the Planning Authority in December 2020 for the subdivision of the existing site and the construction of a new single storey dwelling and wastewater treatment system (wwts). The application was refused for the following 2 no. reasons:

1. Policy RH9 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 RH9 (iv) the capacity of the area to absorb further development. It is considered the proposed development, in conjunction with the extent of level of existing and permitted development in the vicinity would exacerbate an excessive density of development in this rural area and would contribute to the increasing suburbanisation of the area. Having regard to the foregoing the proposed development would materially contravene Policy RH9 (iv) of the Kildare County

Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

2. Policy RH10 of the Kildare County Development Plan 2017-2023 seeks to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements. It is considered that the proposed development by reason of its location in proximity to but not within the confines of Staplestown a 'rural settlement' as shown on Map 2V-2.33 of the Kildare County Development Plan would further exacerbate the level of development in proximity to Staplestown where 'settlement expansion' areas have been identified. To promote development at the location proposed would not be in accordance with the provisions of the Kildare County Development Plan 2017-2023 and would not be in accordance with the proper planning and sustainable development of the area.

20/677: Planning permission refused by the Planning Authority in August 2020 for the subdivision of the existing site and the construction of a new single storey dwelling and wastewater treatment system (wwts). The application was refused for the following 2 no. reasons:

1. Policy RH9 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 RH9 (iv) the capacity of the area to absorb further development. It is considered the proposed development, in conjunction with the extent of level of existing and permitted development in the vicinity would exacerbate an excessive density of development in this rural area and would contribute to the increasing suburbanisation of the area. Having regard to the foregoing the proposed development would materially contravene Policy RH9 (iv) of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.
2. Policy RH10 of the Kildare County Development Plan 2017-2023 seeks to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements. It is considered that the proposed

development by reason of its location in proximity to but not within the confines of Staplestown a 'rural settlement' as shown on Map 2V-2.33 of the Kildare County Development Plan would further exacerbate the level of development in proximity to Staplestown where 'settlement expansion' areas have been identified. To promote development at the location proposed would not be in accordance with the provisions of the Kildare County Development Plan 2017-2023 and would not be in accordance with the proper planning and sustainable development of the area.

5.0 Policy and Context

5.1. National Policy

5.1.1. Climate Action Plan 2023 (CAP23)

5.1.2. Project Ireland 2040 National Planning Framework (NPF) Local Policy

National Policy Objective (NPO) 19 states it is an objective to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere. In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.1.3. Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES).

Section 4.8 (Rural Places: Towns, Villages and the Countryside) of the RSES indicates that support for housing and population growth within rural towns and villages will help to act as a viable alternative to rural one-off housing, contributing to the principle of compact growth. Regional Policy Objective (RPO) 4.80 is relevant to the development proposal which notes that 'Local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in

these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

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

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

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

5.1.6. EPA Wastewater Treatment and Disposal Systems Serving Single Houses, Population Equivalent \leq 10 (2009).

5.2. Local Policy

5.2.1. Kildare County Development Plan (CDP), 2023-2029.

The site is located outside a designated settlement boundary within the rural area of the county Kildare. As per Map 3.1 (Rural Housing Policy Zones) of the current CDP, I note the appeal site is located on lands identified as 'Zone 1'. In order for an Applicant to be considered for a one-off dwelling in the rural area of Kildare, an applicant must demonstrate compliance with the policy outlined in Section 3.13.3 (Compliance with the Rural Housing Requirements). In addition, the following policies are relevant to the consideration of this appeal:

- **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.

- **HO O43:** Require applicants to demonstrate that they do not own or have not been previously granted permission for a one-off rural dwelling in Kildare.
- **HO O44:** 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.
- **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.
- **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.
- **HO O47:** Recognise that exceptional health circumstances, supported by relevant documentation from a registered medical specialist, may require a person to live in a particular environment. Housing in such circumstances will generally be encouraged in areas close to existing services and facilities and in Rural Settlements. All planning permissions for such housing granted in rural areas shall be subject to a ten-year occupancy condition.

In terms of siting and design, polices are included within Section 3.13.4 of the current CDP. Policies of note include:

- **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.

- **HO P15:** Preserve and protect the open character of transitional lands particularly the approach roads to towns and villages and areas immediately outside of settlement boundaries in order to prevent linear sprawl near towns, villages and settlements and to maintain a clear demarcation and distinction between urban areas and the countryside and to protect the integrity of the agricultural uses in these areas.

In addition to the foregoing, relevant objectives of the CDP include:

- **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 low-carbon 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.
- **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.
- **HO O52:** Recognise the biodiversity and ecosystem services value of established hedgerows within rural and urban settings and where hedgerow must be moved to achieve minimum sight lines, a corresponding length of hedgerow of similar species composition (native and of local provenance) shall

be planted along the new boundary, while allowing occasional hedgerow trees to develop.

- **HO O53:** Retain, sensitively manage and protect features that contribute to local culture heritage and distinctiveness including;
 - o heritage and landscape features such as post boxes, pumps, jostle stones, etc.
 - o hedgerows and trees,
 - o historic and archaeological features and landscapes,
 - o water bodies,
 - o ridges and skylines,
 - o topographical and geological features and
 - o important scenic views and prospects.
- **HO O54:** Protect and maintain all surface water drainage within the curtilage of the site. Where site works impact on surface water drainage effective remedial works will be instated.

Section 3.14 (Rural Residential Density) of the current CDP is relevant to the consideration of the application and the following policies and objectives are of relevance:

- **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 effects¹⁰ will occur as a result of the development. In this regard, the Council will:
 - o examine and consider the extent and density of existing development in the area,
 - o the degree and pattern of ribbon development in the proximity of the proposed site.

- **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.

In terms of wastewater treatment, Section 3.15.1 of the CDP is relevant to the consideration of the appeal and Policy **HO P27** is included as follows:

- Require all applications to demonstrate, to the satisfaction of the Planning Authority that the proposed development site can accommodate an on-site wastewater treatment system in accordance with the EPA Code of Practice for Wastewater Treatment Systems for single houses (2021), the County Kildare Groundwater Protection Scheme, and any other relevant documents / legislation as may be introduced during the Plan period.

Policy objectives for site access and entrances are contained within Section 3.16 of the CDP and include:

- **HO P28:** Avoid the creation of new accesses for one-off dwellings onto national roads, to comply with the requirements of the Spatial Planning and National Roads Guidelines, DECLG (2012).
- **HO P29:** Restrict new accesses for one-off dwellings onto regional roads, where the 80km/hr speed limit applies in order to avoid the premature obsolescence of regional roads, (see Chapter 5), through the creation of excessive levels of individual entrances and to secure investment in non-national roads.
- **HO P30:** Require that proposals retain and maintain existing hedgerows in all instances, with the exception only of the section required to be removed to provide visibility at the proposed site entrance. On such cases, proposals for replacement hedgerows, including details of composition and planting must be submitted with any application which requires such removal.
- **HO P31:** Strictly control developments which require vehicular access from public roads that were formerly towpaths or from existing towpaths along the Grand Canal and Royal Canal. This is in addition to restrictions relevant to the

Canals' designation as Proposed Natural Heritage Areas (pNHAs). It is policy to consider housing applications for established families only along roads that were formerly towpaths along the Canals and that such developments will be strictly controlled.

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

Relevant appendices of the CDP include:

Appendix 4 – Rural House Design Guide

‘When considering building a new home in rural County Kildare, the approach to site selection is crucial.’

This includes refining the location and Applicants considering if they comply with the Rural Housing Policy pertaining to the area.

Appendix 11 – Single Rural Dwelling Density Toolkit

‘National guidelines and the County Development Plan policy has generally been formulated to manage rural housing to avoid a proliferation of one-off houses, extensive ribbon development, piecemeal and haphazard development...’

‘When the density or intensity of one-off houses becomes overly concentrated in any one particular area, the rural character of the area is gradually eroded... The intrinsic rural character is gradually transformed into a suburban, peri-rural character.’

5.3. Natural Heritage Designations

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

000391) c. 2.3km and c. 2.8km to the south of the site respectively. The Natural Heritage Area: Hodgestown Bog is also located c. 140m to the south-west of the appeal site.

5.4. EIA Screening

Having regard to the nature and scale the development which consists of a single house in an un-serviced rural location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A First Party appeal has been prepared and submitted on behalf of the Applicant. The main grounds of appeal made can be summarised as follows:

- It is stated that the appeal is based on the demonstratable need of the Applicant to reside at this location and her need arises from the serious nature of her mother's health issues and her mother's dependence on having help at hand continuously. It is stated that the Applicant's mother's condition is documented within the rural housing planning assessment which is supported by her general practitioner's certificate in the form of the letter submitted with the application. There is also a sworn affidavit from the applicant's mother in relation to her condition and caring need, which was also submitted with the application.
- It is stated that the reason for refusal does not take account of the current position of the applicant viz a viz the fact that this is her current permanent place of residence and will continue to remain so. It is indicated that her work related absence was in relation to her employer's requirement for her to spend time in the company's Canadian headquarters. The Applicant has returned to her home and will continue to reside in, commute from, participate in all social activity and continue to avail of all community facilities as she has been doing all her life. As a result of her permanent residence at this location,

there will be no change in the requirement for services of any nature as a result of her being allowed to build her own home on this site.

- It is stated that the Applicant will have to be available to care for and support her parents. There will be no additional burden on any services or facilities beyond what exists at present as a result of this planning permission being granted. It is stated that Policy RH9 (iv) of the Kildare County Development Plan 2017-2023 will not be contravened in any way by the Applicants and the proposal will not represent any increase in the need for any services or facilities at this location.
- The appeal submission wishes to draw the Board's attention to the fact that two planning applications were granted in the immediate vicinity of the subject site (Ref. 21/0895 and Ref. 21/1517) and it is noted that these were granted after the Applicant was refused permission on three separate occasions. While it is acknowledged that there is no precedence in planning and that each application is decided on its own merits, it is stated that the Planning Authority refers to a number of planning applications granted within a 1km radius of the subject site and also to the fact that there are a number of refusals for one off houses. It appears that the same criteria was not applied in this instance when assessing the extent of development in the area. With the applications that have been approved, it is assumed that the Planning Authority granted these two planning permissions because of some overriding circumstances of the applicants, that the current Applicant was not privy to. It is considered that this represents the Planning Authority showing compassion for the situations regarding these applicant's circumstances. It is stated that this is welcomed if this is the case, and the Applicant is merely seeking parity for herself and her family.
- Regardless of any perceived precedence, the fact that these two applications were granted planning permission after the Applicant was refused, on a number of occasions, must bring into question the fairness of those decisions to refuse. It is difficult to understand the inconsistency in the decision making in these applications.

- It is stated that if the Board's inspector assesses all the information within the application and appeal in a fair and just matter, they trust that they can only come to one conclusion and overturn the decision of the Planning Authority to refuse planning permission. It is stated that this application should be granted in the interest of fairness and natural justice.
- The appeal submission refers to the additional information request from the Environmental Section of the Planning Authority and this requested information now accompanies the appeal submission.
- In conclusion, it is stated that the joint applicant in this application wishes to build a modest single story dwelling on her family lands. It is noted that she has proven that she has a demonstratable social need to continue residing in this area and her need derives from her mother's serious medical condition. The Applicant's father's work does not allow an element of working from home and his work requires him to travel and be away from home for at least three days at a time. It is stated that the Applicant is predominantly working from home and has full flexibility as to when she has to frequent her company's office. She can therefore support her mother's needs and ensure her safety and a reasonable quality of life. The issue of capacity of the area and it not being able to absorb further development, does not arise for the reasons outlined within the planning application and appeal and therefore, the proposal is in compliance with the relevant policy of the County Development Plan.

6.2. Planning Authority Response

A response has been received from the Planning Authority dated 27th October 2022 which confirms its decision and has no further comments or observations to make.

6.3. Observations

None.

6.4. Further Responses

None sought.

7.0 Assessment

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

- Compliance with Rural Housing Policy
- Rural Residential Density
- Siting & Dwelling Design
- Wastewater Treatment
- Appropriate Assessment

7.1. Compliance with Rural Housing Policy

7.1.1. Compliance with rural housing policy is a core consideration for any planning application for a one-off house in a rural area. Section 3.13.3 (Compliance with the Rural Housing Requirements) of the current CDP notes that rural generated housing demand will be managed having regard, inter alia, to an applicant's genuine local need, together with the protection of key economic, environmental, natural and heritage assets, such as the road network, water quality, important landscapes, habitats and the built heritage. This section of the current CDP notes that the Department of Housing, Local Government and Heritage have indicated that new Rural Housing Guidelines are being prepared to address rural housing issues and to take account of the Flemish Decree, the NPF and broader settlement context. In the interim, it is stated that the Local Authority 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. The policy also clearly stipulates that urban generated rural housing will not be considered.

7.1.2. As noted in the foregoing, an applicant must either have 'economic' or 'social' need to live in the area to be considered for a one-off dwelling in the rural area of Kildare. A 'economic' need is defined as a person (or persons) who is (are) actively engaged in farming/agricultural activity on the landholding on which the proposed dwelling is to be

built. This is not applicable to the Applicant in this instance as they are not actively engaged in farming. Of relevance to this appeal is 'social' need, which is defined under the County Development Plan as 'A person who has resided in a rural area for a substantial period of their lives i.e. 16 years within 5km (Zone 1) or 5km (Zone 2) of the site where they intend to build.'

7.1.3. As per Map 3.1 of the current CDP, the appeal site is located within 'Zone 1' (Areas under Strong Urban Influence). In 'Areas under Strong Urban Influence', the CDP notes that it will be an objective of the Council to facilitate the provision of single housing in the countryside based on the core considerations of:

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

It is policy under HO P11 of the Plan to facilitate, subject to all appropriate environmental assessments proposals for dwellings in the countryside outside of settlements in accordance with NPF Policy NPO 19 for new Housing in the Open Countryside in conjunction with the rural housing policy zone map (Map 3.1), the accompanying Schedule of Category of Applicant and Local Need Criteria set out in Table 3.4 and in accordance with the relevant objectives (i.e. HO O43 – HO O49) of the Plan. In terms of meeting the relevant criteria under Policy HO P11, the Applicant has outlined within their completed Rural Housing Planning Application Form that they qualify for a rural house at this location under Zone 1 Category 2(i). Under the previous CDP (i.e. 2017-2023), Zone 1 Category 2(i) and was detailed as follows:

- 'Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare as members of the rural community and who seek to build their home in the rural area on their family landholding and who currently live in the area. Where no land is available in the family ownership, a site within 8km of the original family home may be considered.'

Given the circumstances of the Applicant, the relevant criteria to consider under this appeal, as per Table 3.4 (Schedule of Local Need Criteria in accordance with the NPF (NPO 19)) of the recently adopted CDP, is Category B (Social) (i), Zone 1. This

category is defined as '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'. The policy notes that Applicants must have grown up and spent 16 years living in the rural area of Kildare and who seek to build their home in the rural area on their family landholding. Where no land is available in the family ownership, a site within 5km of the applicant's family home may be considered.

7.1.4. In support of the application, the Applicant had submitted documentation to demonstrate their local need which included:

- Copy of the Applicant's Birth Certificate with an address as Gilltown, Donadea.
- Letter from Staplestown National School confirming the Applicant's attendance between 1994-2022 and confirming the Applicant's Gilltown address.
- Letter from Clane Secondary School confirming the Applicant's attendance between 2002-2007 and confirming the Applicant's Gilltown address.
- Letters from a bank and mobile phone provider dated 2020 & 2021 confirming the Applicant's Gilltown address.
- A letter of the Applicant's GP outlining the mother of the Applicant's medical history.
- A letter outlining why the Applicant needs to resident adjacent to her mother.

I note that it is confirmed in the completed Rural Housing Planning Application Form that the Applicant has never been previously granted planning permission for a dwelling in County Kildare and I note that is the fourth planning application for a dwelling at this location, with the 3 no. previous applications being refused by the Planning Authority. Whilst I am satisfied that Applicant has spent a substantial period of their life in this rural area and they now have a strong desire to continue to reside at this particular location so that they can assist in their mother's care, I do not consider that this justification is sufficient to require a new house in a rural area under strong urban influence given, inter alia, regional and national policy support for the revitalisation of smaller towns, villages and rural settlements and the evident proliferation of one off houses in this particular location. Given the Applicant's circumstances and her requirement to assist in her mother's care, an alternative solution may be to extend the existing property to provide a family flat in accordance

with the policy set out in Section 15.4.14 of the current CDP. This is a way of providing additional accommodation with a level of semi-independence for an immediate family member

- 7.1.5. In terms of national planning guidance, the site's identified location in an area under strong urban pressure under the Development Plan (i.e. Zone 1) is consistent with Sustainable Rural Housing Guidelines for Planning Authorities, 2005, which similarly identifies the site and its wider rural setting. I note that the Regional Spatial Economic Strategy – Eastern & Midland Region, 2019-2031, under RPO 4.80 sets out that Local Authorities shall manage growth in rural areas under strong urban influence by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstratable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.
- 7.1.6. In addition, the National Planning Framework (NPO 19) at locations such as the appeal site, requires developments like this to demonstrate a functional economic or social requirement for housing need in areas under urban influence, with this being stated as a necessity. Whilst the Applicant appears to have a strong desire as opposed to a need to live in this rural (i.e. not engaged full time in agriculture), this in itself does not override the public good necessity for such applications to meet local through to national planning provisions. These provisions seek to safeguard such rural locations from the proliferation of what is essentially a type of development that planning provisions seek to channel to appropriate serviced land within settlements where they can be more sustainably absorbed whilst safeguarding the rural environment from further diminishment of its character and predominant rural land use based function.
- 7.1.7. In keeping with this, I note that National Policy Objective 3a of the National Planning Framework seeks to deliver at least 40% of all new homes nationally within the built-up footprint of existing settlements. In addition, NPO 33 seeks to prioritise the provision of new homes at locations that can support sustainable development as well as at an appropriate scale of provision relative to location. There are settlements within the

wider area, including those with infrastructural services such as mains drainage and potable water through to other services as well as amenities, where there is capacity to absorb additional residential development in a sustainable manner than at this location. In considering this appeal, I have also had regard to the recently published Climate Action Plan 2023 (CAP23) which acknowledges that decades of focus on dispersal of residential settlements, commercial zones, and workplaces in peripheral areas, instead of concentrating on central areas and locations served by public transport, has led to an over-reliance on the private car.

- 7.1.8. Therefore, to permit the proposed development sought under this application would result in a haphazard and unsustainable form of development in an un-serviced area and it would give rise to inefficient and unsustainable provision of public services and infrastructure at remote from settlement locations. Further, it would also undermine the settlement strategy set out in the current CDP that seeks to direct this type of development to appropriately zoned land within settlements. For these reasons the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area. Should the Board come to a different decision on this matter, I consider that an occupancy condition restricting occupancy of the house specifically to the Applicant should be attached to any grant of permission as set out in Policy HO O45 of the current CDP.

7.2. Rural Residential Density

- 7.2.1. Appendix 11 of the current CDP provides a 'Single Rural Dwelling Density Toolkit'. It states that national guidelines and Development Plan policy has generally been formulated to manage rural housing to avoid a proliferation of one-off houses, extensive ribbon development, and piecemeal and haphazard development. When the density or intensity of one-off houses becomes overly concentrated in any one particular area, the rural character of the area is gradually eroded. The intrinsic rural character is gradually transformed into a suburban, peri-rural character and the critical question, therefore, becomes "at what point does that the character change" i.e., "what is the tipping point"?

7.2.2. Appendix 11 states that one of the evaluation criteria in this regard is the examination of 'Rural Residential Density' (RRD) at the scale of a square kilometre surrounding the site for a proposed one-off house. It reflects the policy approach to rural and one-off houses set out under Section 3.14 of the Development Plan, which is entitled 'Rural Residential Density' and the following categories are referenced:

- In general, RRDs of less than 15 units per sq. km 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 sq. km 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 (of the Development Plan).

7.2.3. The Planning Authority refused this planning application as it was 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. Similar reasons for refusal were provided in the 3 no. preceding applications for the site. Appendix 4 of the current Plan relates to 'rural house design' and it states that when considering building a new home in rural County Kildare, the approach to site selection is crucial and it is noted that it may prove more difficult to find suitable sites in Zone 1 and that many parts within this area already have a high density of one-off rural dwellings. It goes on to state that applicants in these areas may find it difficult to find sites capable of absorbing further development. Upon reviewing the file and online mapping systems, I have calculated approximately 33 no. dwellings within a c. 1km radius of the subject site. The policy states there is a presumption against further one-off houses in such cases.

7.2.4. I note that this is a guideline only for helping to determine what constitutes excessive rural housing densities and it is not intended to be a rigid tool. It is also acknowledged that there may be instances where the existing pattern of development may facilitate

consolidation of one-off housing; for example, due to the prevailing pattern in the area, local topographical conditions, or in very enclosed country (defined by mature trees and hedgerows). In such instances, a site may potentially have the capacity to absorb an additional residential unit, without any significant adverse visual, physical or environmental impacts on the countryside. However, it is policy of the current CDP that such one-off housing should generally only be facilitated in very exceptional circumstances, and where there is a significant need demonstrated, for example, those actively engaged in agricultural or in an occupation heavily dependent on the land (Objective HO O59 of the Development Plan refers). The Applicant is not involved in any such occupation, such as intensive farming, etc. Therefore, I do not consider that they qualify for the 'very exceptional circumstances' as referenced under Objective HO 059 of the Plan.

- 7.2.5. During my physical inspection of the site, I observed there to be what only could be described as a proliferation of one-off housing along the surrounding road network. It is evident to me that development pressure in this area has become acute and due to the prevalence of one-off housing in the vicinity, there is now a proliferation of ad-hoc rural housing development occurring and the rural density limit for the area has been exceeded. This has led to the intensity of one-off houses becoming overly concentrated, within which is a small rural townland, and its rural character gradually being eroded and transformed into a peri-rural area. For this reason, the proposed development is considered to be contrary to Objective HO 059 of the County Development Plan and should therefore be refused planning permission.

7.3. Siting & Dwelling Design

- 7.3.1. The proposal seeks to modify the existing entrance by providing a new recessed entrance which will provide access to the appeal site. I note that no elevations or detailed plans of the revised entrance accompany either the application or appeal. The proposal will result in the subdivision of the existing site and a new single storey dwelling will be constructed within the side amenity space of the existing property. The dwelling will have a 'H' shaped floor plan, comprising 2 no. gable side, pitched roof elements which are connected by a flat roof link containing a bedroom and the

entrance hall. The dwelling has a maximum height of c. 5.3m, which generally aligns with the height of the existing dwelling on site. The proposal also seeks to match the front building line of the existing property. A new 1.8m high block wall with planting is proposed to delineate the site from the existing dwelling. I note that the subject proposal differs from a typical application for a one-off dwelling in a rural area as it seeks to subdivide the site and construct the dwelling within the established amenity space of the existing property. Having regard to the overall scale, height and architectural form of the proposed dwelling, its setback from the site frontage and the presence of existing boundary vegetation, I am generally satisfied that the proposal is in accordance with the pertinent policy of the current CDP including Section 3.13.4 (Siting and Design) and Appendix 4 (Rural Design Guide), and it is therefore acceptable having regard to the visual amenity of the surrounding area. Notwithstanding this, a refusal of planning permission is recommended in this instance as outlined in Section 7.1 and 7.2 of this report.

7.4. Wastewater Treatment

- 7.4.1. Assessment of the wastewater treatment element of a rural one-off house is a standard consideration. I note that Policy Objective HO P27 of the current CDP requires ‘... all applications to demonstrate, to the satisfaction of the Planning Authority that the proposed development site can accommodate an on-site wastewater treatment system in accordance with the EPA Code of Practice for Wastewater Treatment Systems for single houses (2021), the County Kildare Groundwater Protection Scheme, and any other relevant documents / legislation as may be introduced during the Plan period. The proposal seeks to upgrade the existing dwelling’s septic tank to provide a secondary wastewater treatment system and an additional secondary wastewater treatment system to serve the proposed dwelling, both of which are to be located within the front amenity area of each dwelling. The site characterisation report notes that the site is in an area with a locally important aquifer of high vulnerability. The Site Characterisation Form notes that groundwater was encountered at 1.6m in the 2.3m deep trial hole. Bedrock was not encountered at a depth of 2.3m. The soil was top soil – clayey loam in the upper 200mm, clay between 200mm and 900mm and gravelly sand and silt 900mm. There was also a reference to

mottling at 800mm below ground level. I note that the Site Characterisation Form identifies a Groundwater Response of R1 and it is stated within Section 5 that proposed wastewater treatment system is designed in accordance with the EPA Code of Practice (2012).

7.4.2. The T test result was 19.33. A P test was also carried out giving a result of 20.03. I consider the results to be generally consistent with the ground conditions observed on site. Section 3.1 of the Site Characterisation Form states the ground condition was firm at the time of inspection. The site comprises an existing garden area which was firm underfoot and had no indication of, for example, water ponding, outcrops etc. Section 4.0 (Conclusion of Site Characterisation) of the Site Characterisation form states that the site is suitable for development including a secondary treatment system, all of which are discharging to ground water. Section 5.0 (Recommendation) of the Site Characterisation Form recommends that a packaged wastewater treatment system and soil polishing filter be installed on site. I note there is a report on file from the Planning Authority's Environment Section which recommended additional information to be requested as the infiltration areas were not in accordance with the EPA Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021. There was also a requirement to submit a details and labelled cross section drawing showing the ground level of the dwelling, the gradient of the pipe, the invert level of the polishing filter and the depth of polishing filter from the highest know water table/rock. I note that section diagrams of the 2 no. treatments systems and polishing filters have been submitted with the appeal and confirmation that both systems have been designed in accordance 2021 EPA Code of Practice. Having regard to the information on file and having inspected the appeal site, I am generally satisfied that the Applicant's proposals for the disposal and treatment of wastewater are acceptable. Should the Board be minded to grant permission for the proposed development, I would recommend the inclusion of a condition which shall require the design and installation of the proposed WWTS to comply with the EPA Code of Practice Domestic Waste Water Treatment Systems, Population Equivalent ≤ 10 (2021).

7.5. Appropriate Assessment

- 7.5.1. The nearest designated are the Ballynafagh Lake Special Area of Conservation (Site Code: 001387) and the Ballynafagh Bog Special Area of Conservation (Site Code: 000391) c. 2.3km and c. 2.8km to the south of the site respectively. I note the un-serviced nature of this rural location which means that the site does not benefit from access to public mains drainage. I also acknowledge the prevalence of agricultural activities and the significant number of one-off dwellings in the site's vicinity.
- 7.5.2. Despite these factors, I am nonetheless of the opinion that taking into consideration the modest nature, extent and scope of the proposed development and based on best scientific information alongside having regard to the documentation on file which includes a Site Characterisation Report, that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

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

9.0 Reasons and Considerations

1. The site of the proposed development is located within an "Area Under Strong Urban Influence" as set out in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April 2005 and on lands identified as 'Zone 1' in the Kildare County Development Plan, 2023-2029. Furthermore, the subject site is located in an area that is designated as an area under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, to facilitate the provision of single housing in the countryside, based on the core consideration of demonstrable economic or social need to live in a rural area and the viability of smaller towns and rural settlements. Having regard to the documentation submitted with the planning application and appeal, the

Board is not satisfied that the Applicant has a demonstrable economic or social need to live in this rural area, or that the housing need of the Applicant could not be met elsewhere in a town or rural settlement. The proposed development would result in a haphazard and unsustainable form of development in an un-serviced area, it would contribute to the encroachment of random rural development in the area and it would give rise to inefficient and unsustainable provision of public services and infrastructure at remote from settlement locations. The proposed development is therefore contrary to the proper planning and sustainable development of the area.

2. Taken in conjunction with extent of existing development in the surrounding area, the proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities and would contravene the policy of the Planning Authority, including Policy HO P26 and Objective HO O59, as expressed in the Kildare County Development Plan 2023 - 2029, which is to manage rural residential density to avoid a proliferation of one-off houses, extensive ribbon development, and piecemeal and haphazard development that erodes the intrinsic character of the Irish countryside. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Enda Duignan

Planning Inspector

29/03/2023