



An
Bord
Pleanála

Inspector's Report ABP-315233-22

Development	Permission for (a) 5 no. sites each with provision for a detached dwelling house and individual wastewater treatment systems (b) recessed entrance off the main road, shared access road with footpath and surface water network and street lighting to common spaces (c) site boundary treatments, landscaping and all associated development works.		
Location	Mylerstown, Two Mile House, Naas, Co. Kildare.		
Planning Authority Ref.	221138.		
Applicant(s)	George Boland		
Type of Application	Permission	PA Decision	Refusal
Type of Appeal	First & Third Party	Appellants	George Boland and Ulric & Miriam Barry
Observer(s)	None		
Date of Site Inspection	13/07/2023	Inspector	Terry O' Leary

Context

1. Site Location/ and Description. The proposed 5 no. subject sites are located in an open field located on the L2023 in the townland of Mylerstown which is situated approximately 850m to the north-eastern side of the rural settlement of

Two Mile House in County Kildare. The overall site area is stated as comprising of c. 2.593 Hectares and is set out in grazing paddocks.

2. Description of development.

- Outline planning permission for 5 no. residential sites with individual on-site wastewater treatment systems.
- Recessed entrance from public road onto a shared access road with a footpath, surface water network and public lighting to common spaces.
- The provision of site boundary treatments, landscaping and all associated site development works to accompany the proposed development.

3. Planning History.

UD7028: Creation of an entrance onto the public road by the removal of a length of hedgerow c. 6m in length and a section of timber fencing with a gate installed where the fence was located. Case dismissed on the 3rd September 2019.

4. National/Regional/Local Planning Policy

4.1 Kildare County Development Plan 2017 -2023

Kildare County Council considered the application under the Kildare County Development Plan 2017-2023 which has now since expired. Chapter 4 of that plan referred to housing and set out the relevant policy objectives that plan related to one-off housing.

4.2 National Planning Framework

Project Ireland 2040 is the Government's overarching long-term policy platform to guide and manage the future growth and development of the country. The primary aim of Project Ireland 2040 is to improve the quality of life in Ireland for all the country's citizens by creating and promoting opportunities for people and protecting and enhancing our environment. In order to achieve this goal, the NPF includes a series of national policy objectives (NPOs), which sets out the intentions of the plan within specific areas, most notably Serviced Sites, Regeneration and

Renewal and Climate Resilience. NPO 18b of the NPF requires the Council to develop a programme to attract people to build their own homes and live in small towns and village. Under this Plan all small towns, villages and settlements were assessed for the provision of serviced development sites. Specific locations within the various settlements have been identified, where serviced sites could be located.

4.3 Kildare County Development Plan 2023 – 2029 (Current Plan)

The Kildare County Council Development Plan 2023 – 2029 is the current operative development plan and the following relevant policy objectives from that plan relate to the proposed development. Volume 2 is informed by the National Planning Framework (NPF) and Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Region (EMRA) Area. The following objectives relate to Rural Settlements;

Policy GO 1 – Provide for new residential development which is in accordance with the Core Strategy and Settlement Strategy

Policy GO 2 – Require that an appropriate mix of housing type, tenure, density and size is provided in all new residential developments to meet the needs of the county's population.

Policy GO 3 – Particularly support and encourage residential development on under-utilised land and/or vacant lands including “infill” and “brownfield” sites, subject to a high standard of design and layout (to include high quality permeability connections) being achieved.

Policy GO 4 – Provide viable alternatives to rural one-off housing in the form of serviced sites with adequate infrastructure to attract people to build their own homes and to live in more sustainable, serviced settlements.

Policy GO 26 - Connect where feasible, communal effluent treatment systems and individual one-off dwellings serviced by individual waste water treatment plants to the public network.

Policy GO 29 - Identify any deficiencies in the surface water drainage systems of the settlements and to facilitate the improvement of these systems where necessary subject to available resources.

Policy HO 24 - Promote and facilitate the provision of sustainable alternatives to one off housing through the designation of lands specifically for serviced sites across a series of villages and rural settlements in County Kildare.

Policy HO 059 - 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.

Policy HO P27 - 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.

5. Natural Heritage Designations

There are no protected structures / NIAH registered buildings or recorded national monuments within close proximity of the sites according to the Kildare County Council GIS system.

6. Development, Decision and Grounds of Appeal

PA Decision.

Kildare County Council refused planning permission for the proposed development for four reasons which can be summarised as follows;

1. The proposed 5 no. sites are located on lands which are deemed to be primarily agricultural. Having regard to the rural settlement pattern in the area it is considered that the proposed development would be contrary to Policy RH9 (iv) of the Kildare County Development Plan 2017-2023 which examines the capacity of an area to absorb further development. The proposed development 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 is to control the level of piecemeal and haphazard development of rural areas close to urban areas and settlements. It is considered that the proposed development by reason of its proximity to the rural settlement of Two Mile House would exacerbate the level of development in proximity to Two Mile House and would set a precedent that would contribute to the unsustainable development of this rural area and would not be in accordance with the proper planning of the area.
3. The planning applicant has not demonstrated to the satisfaction of the planning authority that surface water and wastewater can be adequately dealt with within the curtilage of the site and that the proposed development would not lead to conditions which would be prejudicial to public safety and be contrary to the proper planning and sustainable development of the area.
4. The applicant has not demonstrated to the satisfaction of the planning authority that the proposed development would not endanger public safety by reason of traffic amongst other issues and would therefore be contrary to the proper planning and sustainable development of the area.

7(a). First Party Appeal. Grounds:

- Contests that the planning application is an outline application only and that the details of the occupants of the individual dwellings would not be required for such an outline planning application.

- The proposal was to provide for 5 no. local need qualifying applicants building a home in the countryside.
- The proposed occupants would meet the local need criteria as set down in the Kildare County Development Plan 2017-2023. The sites would only be feasible for a small number of applicants within a set catchment radius who have grown up in the immediate area having substantial ties to the local community and that may otherwise have to leave the locality and relocate to an unfamiliar urban setting.
- Contesting that the application is not for a suburban development and there is no basis for the planning authority seeking to push the development into a nearby settlement.
- The proposed development of 5 no. houses on the subject site would not be out of context given the close proximity to the commercial development hub nearby and the possible future reclassification / zoning of nearby properties in future plans.
- The concerns about visual intrusion or visual obstruction can be controlled by conditions from the planning authority pertaining to style, height and bulk scale of the properties.
- Siting and boundary treatment will mean that dwelling separation distances are far in excess of the minimum requirements for overlooking and there would be no negative impacts observed by the adjoining owners.
- The planning proposal was intended to remove some of the unknowns regarding site suitability, access and other site obstacles giving the proposed applicants for permission consequent to a grant of outline permission more time to focus on local need compliance, high quality building design and other siting considerations.

7(b). Third Party Appeal. Grounds:

- While the Third-Party Appellants are content with the principle of the planning authority's decision to refuse permission, they do not believe that the reasons for refusal adequately portray the undesirability of the proposed development and reference Section 8.6 of the Development Management Guidelines to substantiate this concern.

- A fifth reason for refusal should be incorporated into the refusal in relation to rural housing policy whereby the granting of planning permission in the absence of details on the identity of the future residents cannot adequately satisfy the test for establishing rural housing need.
- That the planning authority have not directed that the proposed development be directed into a rural settlement such as Two Mile House and have not followed the policy requirements set down in Objective 19 of the National Planning Framework.
- The reasons for planning refusal do not acknowledge the impacts on the Third Party Appellant's property and that a further reason for refusal is justified in this regard.
- The proposal will negatively impact on the residential amenity of the Third Party Appellants specifically in relation to visual intrusion, loss of rural outlook and associated overlooking from the proposed development.

8. PA Response

The Planning Authority has reviewed the content of the first and third party appeals and has no further comment or observation to make.

Environmental Screening

9. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, 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.

10. AA Screening Having regard to the modest nature and scale of development and the absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 **Assessment**

The main issues for consideration in this appeal can be considered under the following headings;

- Principle
- Compliance with Rural Housing Policy
- Impact on Adjoining Residential Amenity
- Other Issues

2.1. **Principle**

Policy objective GO 4 of the Kildare County Development Plan 2023 – 2029 seeks to provide for viable alternatives to rural one-off housing in the form of serviced sites with adequate infrastructure to attract people to build their own homes and to live in more sustainable, serviced settlements with this policy shaped by the National Planning Framework and specifically Policy 18b. Notwithstanding the proximity of the subject sites to the commercial premises located nearby the proposed sites are currently zoned residential and do not have access to either adequate infrastructure and cannot be described as a serviced settlement. Section 2.10 of the Kildare County Development Plan 2023 – 2029 envisages the provision of serviced sites to create ‘build your own home’ opportunities within the existing footprint of rural settlements will provide an alternative to one-off housing in the countryside.

The proposed sites do not in my opinion provide an opportunity within the footprint of an existing settlement and are not a viable alternative to one-off housing and are contrary to Policy GO 4 of the County Kildare Development Plan 2023 – 2029.

2.2 Compliance with Rural Housing Policy

Section 3.13.3 of the Kildare County Development Plan 2023 – 2029 refers to rurally generated housing demand and that this type of demand will be facilitated having regard, *inter alia*, to the applicant's genuine local and housing need together with the protection of key economic, environmental, natural and heritage assets such as the road network, water quality, sensitive landscapes, habitats and the built heritage. The Kildare County Development Plan 2023 – 2029 establishes 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 First Party Appellant has proposed in their appeal that the planning authority can adjudicate in the application for permission consequent to a grant of outline permission whether compliance has been met for Policy HO P11 of the Kildare County Development Plan 2023 – 2029 which requires the planning authority 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 my opinion I do accept that the planning authority can apply the requisite economic and social tests for compliance with Section 3.13.3 of the Kildare County Development Plan 2023 – 2029 in a planning application consequent to a grant of outline permission but that a cluster development such as the one proposed is more suited to an existing rural settlement as provided for in the Kildare County Development Plan 2023 – 2029 – Volume 2. Consequently I do not believe that it would be appropriate to grant outline planning permission on rural lands for housing where no details of the economic or social needs of the future occupier have been considered or established.

2.3 Impact on Adjoining Residential Amenity

Policy objective HO 06 of the Kildare County Development Plan 2023 – 2029 seeks to ensure a balance between the protection of existing residential amenities, the established character of the area and the need to provide for sustainable residential development is achieved in all new developments. Policy HO 12 also seeks to

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.

The First Party Appellant proposed that the visual impacts of the proposed sites on surrounding developments can be mitigated by conditions applied in a grant of planning permission while the Third Part Appellants have noted that the proposed development is directly to the north of their home and will be impacted detrimentally. Certainly the impacts of visual impact can be mitigated enormously by the utilisation of boundary treatment and screening but in my opinion the rural aspect of this site is not compatible with a cluster design as proposed would adversely affect the adjoining residential amenity on agriculturally zones lands outside of a rural settlement.

2.4 Other Issues

2.4.1 Cumulative Impact of Septic Tanks & On-site Wastewater Treatment Systems

The current permitted development in the vicinity of the subject sites are all served by private on-site wastewater treatment systems. The cumulative impact of such a high concentration of septic tanks and other on-site wastewater treatment systems in a very concentrated area has the potential to negatively impact on a potentially vulnerable receptor. In the absence of site specific on-site wastewater assessments completed in accordance with the EPA Code of Practice for Wastewater Treatment Systems (2021) on the proposed sites it is not possible to determine if the prevailing ground conditions are suitable for the safe treatment and disposal on domestic effluent and would be prejudicial to public health as provided for in Policy HO P27 Kildare County Development Plan 2023 – 2029.

3 Recommendation

I recommend that permission for the development be refused.

4 Reasons & Considerations

1. It is the policy of the planning authority that development outside of designated urban centres should be strictly limited to local need. This is set out in the current Development Plan for the area, where it is the settlement policy to direct new residential development to designated development centres and to protect existing rural settlements outside these centres from urban overspill. The proposed development may conflict with the policies of the Development Plan and would be contrary to the proper planning and sustainable development of the area.
2. Taken in conjunction with existing (and permitted) development in the vicinity, 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, as expressed in the current Development Plan, to direct residential development to serviced centres. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. It is considered that, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive concentration of development served by septic tanks in the area. The proposed development, would, therefore, be prejudicial to public health.
4. In the absence of detailed designs for individual site layout, public lighting, road design, hydrological and wastewater drainage design the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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

Terry O' Leary

Planning Inspector

04/03/2024