



An  
Bord  
Pleanála

## Inspector's Report ABP-315538-23

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<b>Development</b>	A 1 1/2 storey dwelling, a domestic garage and an onsite domestic wastewater treatment system (DWWTS) etc.
<b>Location</b>	Blackhall, Bodenstown, Sallins, County Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	221273
<b>Applicant(s)</b>	Paul Cully and Michelle Dunne.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Paul Cully and Michelle Dunne.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	25 <sup>th</sup> June 2023.
<b>Inspector</b>	Lucy Roche

## 1.0 Site Location and Description

- 1.1. The appeal site is in the rural townland of Blackhall in Co. Kildare, c1km north of Sallins and 2.5km to the south of Clane. The site is located on the northern side of unnamed local road, which connects to the R407, c.0.1km to the west. The general area is in use for agricultural purposes. Bodenstown Graveyard is located c200m to the east, on the opposite side of the local road. There are a number of one-of residential houses in the vicinity of the site. The appeal site is accessed via an existing entrance and private cul-de-sac off the local road. The cul-de-sac currently serves three residential units. If developed, the appeal site would comprise the fourth and final dwelling within this cluster.
- 1.2. The site itself has a stated area of 0.215ha, it is rectangular in shape and relatively flat. The site is bounded by mix of hedgerow and trees of varying maturity along its southern (roadside) boundary, by timber post and rail fence to the east and west and by laurel hedging to the north - this forms the boundary serving the adjoining residential property to the north.

## 2.0 Proposed Development

- 2.1. Permission has been sought for the construction of a 1 1/2 storey dwelling, a domestic garage, and an onsite domestic wastewater treatment system (DWWTS) and all associated development works and landscaping.
- 2.2. Table 2.1 below provides a summary of the key aspects of the proposed development:

Table 2.1 – Development Details		
Site Area	0.215ha	
Dwelling	Type / Design	1 ½ storey / dormer structure with four bedrooms; simple rectangular form with pitched roof.
	GFA	150sqm (as stated)
	Height	7.327meters

	Finish	Blue/black slate to roof; render to external walls
Garage	Details	Single storey, detached with pitch roof.
	Location	Northwest corner of the site.
	GFA	37sqm
	Height	5.195m
Access	Access to the site is proposed via a new entrance on the western side of an existing private cul-de-sac which currently serves three residential dwellings. The roadside boundary to the west of the junction of the cul-de-sac and local road (comprising lands to the southeast of the appeal site) is to be set back to improve sightline distances.	
Services	Foul:	New on-site wastewater treatment and disposal system
	Water supply	Connection to public mains
	Surface Water	Soakpit

### 3.0 Planning Authority Decision

#### 3.1. Decision

- 3.1.1. Kildare County Council did by order dated the 12<sup>th</sup> of December 2022 decide to refuse permission for development at Blackhall, Bodenstown, Sallins, Co. Kildare, for one reason as follows:

*It is the policy of the Council as stated in the Kildare County development Plan 2017-2023 (CDP) namely Policy RH2, to manage the development of one-off housing in the county. In this regard the onus is on the applicant to demonstrate that they comply with the Rural housing policy of the CDP. Having regard to the documentation submitted in relation to this planning application, the Applicants have not demonstrated compliance with any category of the 'local need' criteria as*

*outlined in Table 4.3(a) or (b) of the CDP. As a result, the proposed development would materially contravene policy RH2 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

- The Kildare County Council's Planning Report forms the basis for the decision. The report provides a description of the appeal site and an overview of the policy at national and local level that is relevant to the development proposal (it is noted that the Kildare County Development Plan 2017-2023 was the operative plan at the time of assessment). The proposal also sets out the planning history that is relevant to the development proposal and details the departmental reports received.
- In terms of the applicant's rural housing need, it was considered that the applicants failed to demonstrate compliance with rural local need criteria and therefore do not comply with Policy RH2 of the Kildare County Development Plan 2017 – 2023.
- The assessment raised no significant issues with respect to the location, siting or design of the proposed development, impact on residential amenity, water supply, drainage, or proposed access arrangements.
- The report concluded with a recommendation to refuse permission as per the planning authority decision.

### 3.2.2. Other Technical Reports

Water Services: No objection subject to compliance with conditions

Environment: Requests further information.

The report notes inconsistencies between the Site Characterisation Form, Site Suitability Assessment and the drawings submitted. A revised Site Characterisation

Form, Site Suitability report and site layout plan are requested. The trial holes are requested to be left open. The report also requests the submission of a detailed and labelled cross-section drawing.

Transportation: No objection subject to compliance with conditions

### 3.3. Prescribed Bodies

Irish Water No objection subject to condition

### 3.4. Third Party Observations

None

## 4.0 Planning History

KCC Ref:22/757 Permission refused to current applicants (2022) for dwelling etc. for one reason - the Applicants failed to demonstrate compliance with 'local need' criteria.

KCC Ref:20/329 Permission granted to Mr. M Donoghue (2020) for alterations to previously approved development KCC Ref: 15/1070. Permission expired 06/02/2021.

KCC Ref:10/672 Permission granted to Mr. M Donoghue (2011) for dwelling etc. Permission extended under KCC Ref: 15/1070

## 5.0 Policy Context

### 5.1. Local Policy

The application was assessed by Kildare County Council in accordance with the policies and objectives of the Kildare County Development Plan 2017-2023. The Kildare County Development Plan 2023-2029 was adopted by Kildare County Council on the 9th of December 2022 and came into effect on the 28<sup>th</sup> of January

2023. I have assessed the proposal under the provisions of the operative Development Plan, namely the Kildare County Development Plan 2023-2029.

**5.1.1. Kildare County Development Plan 2017-2023**

Kildare County Council's decision to refuse permission for this development follows assessment of the policies and objectives of the Kildare County Development Plan 2017-2023. The following is relevant to the Council's decision to refuse permission:

RH 2 Manage the development of one-off housing in conjunction with the rural housing policy zone map (Map 4.4) and accompanying Schedules of Category of Applicant and Local Need Criteria set out in Table 4.3. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.

**5.1.2. Kildare County Development Plan 2023-2029 (KCDP)**

5.1.3. The subject site is in the rural area outside of designated settlements. Chapter 3, Section 3.13 – Sustainable Rural Housing is relevant.

5.1.4. The subject site is identified as an 'Area under Strong Urban Influence' as per Map 3.1 of the KCDP.

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

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

5.1.5. Section 3.13.3 Compliance with the rural Housing requirements provides a definition of 'economic' and 'social' need:

Economic:

A person (or persons) who is (are) actively engaged in farming/agricultural activity on the landholding on which the proposed dwelling is to be built, meeting either of the following:

- (i) A farmer of the land or son, daughter, niece, or nephew of the farmer who it is intended will take over the operation of the family farm.  
or
- (ii) An owner and operator of farming/horticultural/forestry/bloodstock/animal husbandry business on an area **less than 15ha**, who is engaged in farming activity on a daily basis, where it is demonstrated through the submission of documentary evidence that the farming/agricultural activity forms a significant part of their livelihood, including but not limited to intensive farming.

Social

- (i) A person who has resided in a rural area for a substantial period of their lives i.e. 16 years within 5km (Zone 1) or 5km (Zone 2) of the site where they intend to build.

Cluster type developments of five houses or less may be considered in rural areas on family farm holdings for applicants who are family members or adjacent to urban boundaries where no other land is available and comply with the social or economic element of the rural housing policy, where there has not been speculative sale of sites.

5.1.6. Table 3.4 provides a Schedule of Local Need Criteria in accordance with the NPF (NPO 19)

Applicant Category	Rural housing Need Assessment criteria	
Category A – Economic	Zone 1	Zone 2
A farmer of the land or the son/ daughter/ niece/ nephew of the farmer who it is intended will take over the operation of the family farm.	A farmer (for this purpose) is defined as a landowner with a holding of >15ha which must be in the ownership of the applicant’s immediate family for a minimum of seven years preceding	

<p>or</p> <p>(ii) An owner and operator of a farming/ horticultural/ forestry/ bloodstock/ animal husbandry business on an area less than 15ha.</p>	<p>the date of the application for planning permission.</p> <p>The owner/operator [as referred to in Category A (ii)] must be engaged in that farming activity on a daily basis, as their main employment. Same must be demonstrated through the submission of documentary evidence to include confirmation that the farming/agricultural activity forms a significant part of the applicant's livelihood, including but not limited to intensive farming.</p>	
<b>Category B – Social</b>	<b>Zone 1</b>	<b>Zone 2</b>
<p>(i) A person who has resided in a rural area for a substantial period of their lives within an appropriate distance of the site where they intend to build on the family landholding.</p>	<p>Applicants must have grown up and spent 16 years living in the rural area of Kildare and who seek to build their home in the rural area on their family landholding. Where no land is available in the family ownership, a site within 5km of the applicant's family home may be considered.</p>	<p>Applicants must have grown up and spent 16 years living in the rural area of Kildare and who seek to build their home in the rural area on their family landholding. Where no land is available in the family ownership, a site within 5km of the applicant's family home may be considered.</p>

5.1.7. It is the policy of the Council to:

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.



#### 5.1.8. Section 3.14 Rural Housing Density

*It is the policy of the Council to:*

HO P26      Sensitively consider the capacity of the receiving environment to absorb further development of the nature proposed through the application of Kildare County Councils 'Single Rural Dwelling Density' Toolkit (see Appendix 11) and facilitate where possible those with a demonstrable social or economic need to reside in the area. Applicants will be required to demonstrate, to the satisfaction of the planning authority that no significant negative environmental effects will occur as a result of the development. In this regard, the Council will:

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

It is an objective of the Council:

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<sup>11</sup>, unless the applicant is actively engaged in agriculture, or an occupation that is heavily dependent on the land and building on their own landholding.

**Note:**      As per Kildare Residential Density Toolkit the Single Rural Dwelling Density (SRDD) in this area equates to 16 units per square kilometre which is deemed acceptable under the KCDP.

5.2.      The Sallins Local Area Plan 2016-2022 and Sallins Town Centre Urban Design & Public Realm Study are also relevant to the assessment of this application.

#### 5.3.      **National Policy and Guidance:**

##### 5.3.1.      Project Ireland 2040 - National Planning Framework (NPF):

Section 5.3 of the NPF refers to 'Planning for the Future Growth and Development of Rural Areas'. Under the heading of **Countryside**, it is stated '*It will continue to be*

*necessary to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e., the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations.'*

*National Policy Objective 19 includes:*

*.....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...'*

### 5.3.2. 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 National Planning Framework – Project Ireland 2040

### 5.3.3. Sustainable Rural Housing Guidelines 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.

5.3.4. The Code of Practice – Domestic Wastewater Treatment Systems (Population Equivalent  $\leq 10$ ), 2021.

#### **5.4. Natural Heritage Designations**

5.4.1. There are no European designated sites on or within the immediate vicinity of the site. The nearest designated site is the Ballynafagh Bog SAC (site code 000391), c7km to the northwest. The Mouds Bog SAC (Site Code: 002331) is c. 9.7km to the south-west of the site.

The Grand Canal pNHA is located c2km to the south.

#### **5.5. EIA Screening**

5.6. Having regard to the nature and scale the development which comprises a single house in the rural area 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**

6.1.1. This is a first party appeal lodged on behalf of the applicants, Paul Cully and Michelle Dunne, against the decision of Kildare County Council to refuse permission for the development of a single dwelling in the rural area of Blackhall, Bodenstown, Sallins, Co. Kildare. The grounds of appeal can be summarised as follows:

- It is submitted that the development at this location is consistent with the aims and provisions of the Kildare County Development Plan being in an area of clustered development, located in a multi-modal transport corridor, and made by qualified applicants with acute identified local need consistent with the

identified categories of the rural housing policy set out in the Kildare County Development Plan 2017-2022 within 2km of their historical homestead.

- The proposed site is a mere 2km from the home in which Mr. Paul Cully grew up and in which he now resides with Ms. Michelle Dunne for the past three years. The applicants registered their intention to marry on the 20<sup>th</sup> of October 2022.
- The Applicant, Ms. Dunne, grew up in the rural community of Grangeclare, Kilmeague, c11.64km from the site. She now wishes to reside within 5km of her family home to care for her father-in-law and within 12km to care for her own family.
- The applicant's uncle owns and resides on a landholding of 8 acres (c500m to the east of the site). This land previously belonged to the applicants' grandparents and great grandparents. The applicants father previously worked in an agricultural capacity on this land.
- Both applicants work in the local area. Mr Paul Cully as a Vehicle Diagnostics Technician in Naas and Ms. Michelle Dunne as a Sales Executive in Ladystown, Naas.
- Both applicants are active members of Sallins GAA Club.
- Recent utility bills are not available as the applicants live with their parents / future parents in law.
- A sworn statutory declaration accompanies the application along with supporting documents of school attendances, birth certificates etc.
- There is no urban area of Sallins. An urban area is a city with a population of greater than 50,000 persons. A rural area is an area with a population of less than 1,500 persons.
- Sallins has been designated as a small town in the most recent census of population and Sallins Local Area Plan.
- For the first 12 years of Mr. Cully's life, Sallins was designated as an outright rural area, only recently having been classified as a small town in the 2016 KCDP and as a town in the upcoming draft KCDP. The local Authority Planner

is suggesting that the current designation of the town of Sallins has some form or retrospective effect to extinguish the historical factual matrix of its designated at appropriate times. This is obviously contrary to common sense, reason and fairness within the meaning of *White V Dublin City Council* (2002) IEHC 68 as set out by the Supreme Court.

- Does the new designation of Sallins as a small town have the retrospective effect of rendering all previous designations invalid. Clearly it does not, and this appears to be the only reason why the application was refused and cannot be upheld as any form of appropriately logical approach.
- The KCDP does not specify that in a case where there are two applicants, which family land/home is used for the test and the effect of “splitting” the applicants in such a manner is an offence to the constitution which validates the special right of marriage.
- The applicants have a need to be housed close to Mr. Cully’s father due to his exceptional health circumstances.
- The Local Authority accept that the design of the development is acceptable and the principle of development at the site is in line with the KCDP.
- The Board is asked to uphold this appeal and grant planning permission for the development.

The following documentation has been submitted in support of this appeal:

- Birth certificates of the applicants, the applicants’ fathers, and grandfathers
- Sworn Declarations from both applicants.
- Letters from schools attended.
- Map showing the location of the applicant’s current place of residence in Sallins and its distance from the appeal site (c2km)
- Map showing the location of the applicants (Paul Cully) uncles’ home (c600m to the east of the appeal site) and landholding of c8 acres that previously belonged to Paul's grandparents.
- A letter from a medical practitioner outlining the health circumstances of the applicant’s father, Philip Cully

- Letter from the applicant's father, Philip Cully in support of the application
- Land registry Documentation for the appeal site.

## 6.2. **Planning Authority Response**

The Planning Authority having reviewed the content of the first party appeal has no further comment or observation to make. They refer the Board to the planning and interdepartmental reports on file.

## 6.3. **Observations**

None

## 7.0 **Assessment**

### 7.1. **Introduction**

- 7.1.1. Having examined the application details and all other documentation on file, (including the submissions received in relation to the appeal), and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issue in this appeal is compliance with Kildare County Councils Rural Housing Policy which formed the basis of the Council's decision to refuse permission. Proposals for wastewater treatment and appropriate assessment also merit consideration.

### 7.2. **Compliance with Rural Housing Policy:**

- 7.2.1. The main issue in this appeal is compliance with Kildare County Councils Rural Housing Policy which formed the basis of the Council's decision to refuse permission. I note that the application was assessed by Kildare County Council in accordance with the policies and objectives of the Kildare County Development Plan 2017-2023. The information / documentation submitted in support of the application and the appeal support the applicant's qualification for a rural house at this location under the rural need assessment criteria set out in the KCDP 2017-2023, in particular: Zone 2 Category 2(ii), 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 who have left the area but now wish to return to reside near to, or to care for immediate family members, seeking to build their home in the rural area on the family landholding or on a site within 8km of the original family home.*

- 7.2.2. The Kildare County Development Plan 2023-2029 (KCDP 2023-2029) was adopted by Kildare County Council on the 9th of December 2022 and came into effect on the 28<sup>th</sup> of January 2023 (following the lodgement of this appeal). The applicants need for a new dwelling at this location will therefore be assessed against the rural need assessment criteria of the KCDP 2023-2029. Chapter 3, Section 3.13 (Sustainable Rural Housing) of the Kildare County Development Plan 2023-2029 (KCDP 2023) is relevant in this regard.
- 7.2.3. Section 3.13.3 (Compliance with the Rural Housing Requirements) of current KCDP 2023 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 Kildare Development Plan must establish a policy to facilitate those who can demonstrate a genuine housing need and a social and/or economic need to live in rural County Kildare. It is also clearly stipulated that urban generated rural housing will not be considered. For the purpose of the plan, urban generated rural housing is defined as *housing pressure generated by proposals, or an application made for a dwelling in a rural area by persons originating and/or working in urban areas.*
- 7.2.4. Policy HO P11 of the KCDP 2023 seeks 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.

- 7.2.5. The National Planning Framework (NPF) requires as an overall objective in relation to rural housing that a distinction be made between areas under urban influence, i.e., within the commuter catchment of cities and large towns and centres of employment, and elsewhere. The methodology used for Kildare include a commuting analysis of flows to the Dublin Metropolitan Area (DMA) and then the individual settlements of Naas, Newbridge, Maynooth, Celbridge, Leixlip, Kildare Town, Athy, Kilcock, Sallins, Portlaoise, Portarlington, Edenderry, Carlow Town and Blessington. As per the rural housing policy zone map (Map 3.1), 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 having regard to the viability of smaller towns and rural settlements and the provision and availability of serviced sites in these areas. This would accord with NPF Policy NPO 19.
- 7.2.6. 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. An '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. I am satisfied on the basis of the information provided in support of this application and appeal that qualification on the basis of 'economic' need is not relevant in this case as neither applicant is actively engaged in farming/agricultural activity on the landholding on which the proposed dwelling is to be built.
- 7.2.7. 'Social' need is defined this as 'a person who has resided in a rural area for a substantial period of their lives. In Zone 1 - Areas of Strong Urban Influence, this means 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.



- 7.2.8. In accordance with the information / documentation submitted in support of this appeal the applicant, Mr. Paul Cully, was born, reared and currently resides at an address at Main Street, Sallins, Co. Kildare, c2km to the south of the appeal site. The applicant's family home and current place of residence is shown to be located within the development boundary of Sallins, c100m to the south of the Grand Canal on lands zoned for town centre uses. Notwithstanding the proximity of the applicant's family home to the appeal site (c2km), as a long-term resident of a settlement, the applicant Mr. Paul Cully, would not meet with the rural housing need assessment criteria as set out in Table 3.4 - *Schedule of Local Need Criteria in accordance with the NPF (NPO 19) of the KCDP 2023-2029*.
- 7.2.9. It is the contention of the applicant as set out in the grounds of appeal that for the first 12 years of his life, Sallins was designated a rural area and that it was only recently been classified as a small town in the 2016 KCDP. It is further contended that the recent designation of Sallins as a small town does not render all previous designations invalid. I have reviewed the historic planning policy documents for Kildare, and I note that Sallins was listed as a settlement (village) under the Kildare County Development Plan 1999. The Sallins Local Area Plan 2016-2022 details the history and evolution of Sallins. In accordance with this document Sallins originated as a settlement with the construction of the Grand Canal in 1780. Figure 6 (page 26 of the Sallins LAP) shows the historical footpath of Sallins in the early 19<sup>th</sup> Century, I note that the site of the applicant's family home is shown within the developed area of Sallins at that time (1837). Therefore, on the basis of the information available, it is my opinion that the applicant, Paul Cully, is a native and long-term resident of the settlement of Sallins and is not from the rural area.
- 7.2.10. In accordance with the details submitted the applicant, Michelle Dunne, has been a resident of the settlement of Sallins since 2019 and prior to this was a resident of the rural area of Grangeclare, Kilmeague. The exact location of Michelle Dunnes family home has not been shown; however, it is stated as being c11.64km from the appeal site. As Ms. Dunnes family home is not within 5km of the appeal site she does not meet the Local Need Criteria set out in Table 3.4 of the KCDP for a rural dwelling at this location.

7.2.11. As per the details set out in the grounds of appeal, the applicants bought the subject site at Blackhall to build their family home, to be close to Mr. Cully's family and to help care for Mr. Cully's father, Phil Cully, who is suffering from ill health. While I accept and acknowledge the desire of the applicants to live close to family, I am not satisfied that the applicants need for a dwelling in this regard could not be met within the town of Sallins or within other designated settlements, such as Clane or Naas, both of which are located within 5km of the Mr. Cully's family home.

7.2.12. On the basis of the foregoing, I conclude that the applicants have not established a demonstrable economic or social need to live on the application site. The proposed development, in absence of any identified local based need for the house at this location, would result in a haphazard and unsustainable form of development in this rural area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

### 7.3. **Wastewater Treatment**

7.3.1. 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.'

7.3.2. A Site Characterisation Report was submitted with the application. This report includes the following details:

<b>Table 7.1 - Details from Site Characterisation Report</b>		
Soil type	Glaciofluvial Sands and Gravel	
Subsoil	Glaciofluvial Sands and Gravel	
Aquifer Category/ Vulnerability	Locally Important / High	
Groundwater Protection Response	R1 Acceptable subject to normal good practice (i.e. system selection, construction, operation and maintenance in accordance with this CoP).	
Slope	Relatively flat (<1:20)	
Groundwater flow Direction	North	
Ground Condition	Firm	
Potential targets at risk	Groundwater.	
Trial Hole Depth	2.1m	
Percolation Test	Surface (p-Test)	35.00
	Subsurface (T-Test)	36.00

7.3.3. The site characterisation report outlines the results of the trial hole assessment which was carried out in January 2020. The trial hole was dug to a depth of 2.1m. Bedrock and water table were not encountered. No mottling was observed. The report concludes that site is suitable for development and is suitable for either a secondary treatment system or tertiary treatment system with discharge to ground. The report recommends a tertiary treatment system and infiltration/treatment area. Having regard to the information on file and having inspected the appeal site, I am generally satisfied that the site would be suitable for on-site wastewater disposal.

7.3.4. Drawing No.07 'Drainage and DWWTS' details proposals for a SEPCON BAF 6PE Plus unit with discharge to a 90m<sup>3</sup> pumped bed polishing filter before final discharge to ground. The Environment section in their report to the Planning Authority on the 29<sup>th</sup> of November 2022 requested further information including, a revised site layout plan showing the proposed DWWTS and the exact location and extent of all WWTs, streams, ditches, wells etc in the vicinity of the site and, a detailed and labelled cross-section drawing of the proposed DWWTS. They also requested that the trial holes be re-opened for inspection. Should the Board be mindful to grant permission

for the proposed development, they may wish to address the issues raised by way of a further information request or by way of condition.

#### **7.4. Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest European site, I am satisfied that no appropriate assessment issues arise and that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **8.0 Recommendation**

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

### **9.0 Reasons and Considerations**

- 1 Policy HO P11 of the Kildare County Development Plan 2023-2029 seeks 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) 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 in the plan.

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 applicants have a demonstrable economic or social need to live in this rural area. It is considered therefore that the applicants do not come within the scope of the local need criteria as set out in the Kildare County Development Plan, 2023-2029.

The proposed development, in the absence of any identified local based housing need for the house at this location, would result in a haphazard and unsustainable form of development in this rural area, would contribute to the encroachment of random rural development in the area and would mitigate against the preservation of the rural environment and the efficient preservation of public services and infrastructure. The proposed development would be contrary to ministerial guidelines and to national policy and to the provisions of the Kildare County Development Plan 2023 to 2029 and would therefore be contrary to 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.*

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Lucy Roche  
Planning Inspector

25<sup>th</sup> June 2023