



An
Bord
Pleanála

Inspector's Report ABP315568-23

Development	Construct a new single storey dwelling including new recessed double vehicle entrance and wastewater treatment system and percolation area.
Location	Upper Brownstown, The Curragh, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	221276
Applicant(s)	Juliet Relihan
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Juliet Relihan
Observer(s)	None
Date of Site Inspection	13 th July 2023
Inspector	Terry O' Leary

1.0 Site Location and Description

1.1. The site is located in the rural area of Brownstown Upper which is approximately 900m west of Cut Bust and approximately 800m south of Brownstown. The proposed site comprises of part of a large garden to the rear of an existing dwelling to the southern side of the site. The site is accessed by an overgrown private laneway which adjoins the local public road located to the southern side of the site. The site is abounded and screened by mature trees and low level shrubbery on the northern, western and eastern sides with hedging to the southern side at the boundary with the applicant's family home. The site area is outlined as comprising of 0.39 ha / 0.96 acres or thereabouts.

2.0 Proposed Development

2.1. Original proposal as submitted on the 27/10/2022 seeks permission for the following;

- Proposed new single storey dwelling
- New double recessed vehicle entrance
- New treatment system and percolation area along with all associated site development and facilitating works

3.0 Planning Authority Decision

3.1. Decision

Kildare County Council refused permission for the proposed development on the 19/12/2022 citing two reasons for the decision to refuse. The following summarises these reasons for refusal;

1. Policy RH9 of the Kildare County Development Plan 2017 – 2023 seeks to ensure that notwithstanding compliance with local need criteria, applicants must comply with all other siting and design considerations including the capacity of the area to absorb further development. The proposed development when considered in conjunction with the level of existing development in the vicinity and the extension planning history within the area, it is considered that the proposed development

would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities and would contribute to the increasing suburbanisation of the area.

2. Policy RH10 of the Kildare County Development Plan 2017 – 2023 seeks to control the level piecemeal and haphazard development of rural areas close to urban centres and settlements. The proposed development by reason of its proximity to Cut Bush village would further exacerbate the level of development in proximity to this settlement where lands are designated for settlement expansion purposes. To further promote development at the location proposed, having regard to the level of existing development in the area, and the precedent that the proposed development would set for further development in this area would contribute to the further unsustainable development of this rural area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Basis for the Planning Authority Decision. Includes;

- Applicant has demonstrated compliance with Policy RH2 of the Kildare County Development Plan 2017 – 2023 for local need assessment.
- Significant number of existing houses in this rural location however and there are already 6 no houses along the local road within 225m of the proposed site.
- The immediate surrounding location is already suffering from ribbon development characteristics.
- Proposed development is considered to be haphazard and piecemeal and be contrary to Policy RH9(iv) of the Kildare County Development Plan 2017 – 2023.
- The subject site is located within close proximity (approximately 800m) to the rural settlement of Cutbush where lands are identified for village and settlement expansion and reference is made to a previous planning refusal (22/778) and re-states concerns regarding pattern of development in the area.

3.2.2. Other Technical Reports

MD Engineer:	No objection subject to conditions
Transportation:	No objection subject to conditions
Environment:	No objection subject to conditions
EHO:	No objection subject to conditions
Water Services:	No objection subject to conditions

4.0 Planning History

22/778 – Permission refused on 17/08/2022 to Juliet Relihan for proposed new single storey dwelling, recessed vehicle entrance and new treatment system and percolation area along with all associated site development and facilitating works.

21/1268 – Permission refused to Andrew O’ Brien for reinstatement of existing outbuilding to original use as a dwelling on the grounds of the family landholding. It was considered in this refusal that the capacity of the area to absorb and further development had been exhausted. This site is located to the western side of the subject site for Appeal ABP 315568-23.

5.0 Policy and Context

5.1. Kildare County Development Plan 2017 – 2023 (Expired Plan)

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 the following relevant policy objectives from that plan relate to one-off housing;

Policy 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.

Policy RH 3 - Requires applicants to demonstrate that they are seeking to build their home in the rural area in Kildare for their own full-time occupation. Applicants will be required to demonstrate that they do not own or have not been previously granted permissions for a one-off rural dwelling in Kildare and have not sold this dwelling or site to an unrelated third party, save in exceptional circumstances.

Policy RH9 - Ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations. The capacity of the area to absorb further development. In particular, the following factors will be examined; the extent of existing development in the area, the extent of ribbon development in the area, the degree of existing haphazard or piecemeal development in the area and the degree of development on a single original landholding

Policy RH10 - Control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements having regard to potential impacts on:

- i) The orderly and efficient development of newly developing areas on the edges of towns and villages;
- (ii) The future provision of infrastructure such as roads and electricity lines;
- and (iii) The potential to undermine the viability of urban public transport due to low density development.

Policy RH 11 - To preserve and protect the open character of transitional lands outside of settlements 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.

Policy RH14 - Only consider family members for back-land development. The proposed development shall have no negative impact on third parties/ neighbouring property owners and viable sites with sufficient independent percolation areas will be required in order to meet technical guidelines. Sufficient screening will be required to screen the house from adjacent homes and this has to be in place prior to occupation of the house.

Only single storey bungalow (including attic accommodation) type houses will be allowed in such backland locations to limit visual impact and overlooking.

5.2. 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 one-off housing in Zone 1 which refers to areas under strong urban influence. In Zone 1 areas such as the subject site it will be an objective of the Council to facilitate the provision of single housing in the countryside based on the core considerations of a demonstrable economic or social need to live in a rural area and siting, environmental and design criteria for rural housing in development plans.

5.3. Natural Heritage Designations

There are no features of built or natural heritage located within the vicinity of the site.

5.4. EIA Screening

Having regard to the nature and modest scale of the proposed development comprising a single house, its location remote from sensitive and ecological sites, and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the grounds of appeal;

- Future care needs of aging family and need to reside close to family home.
- Active member of the local community and need to remain reside in the locality.

- Proposed development complies with Policy RH12 of the Kildare County Development Plan 2017 – 2023 as proposal is on family land and that back-land development does not constitute as ribbon development.
- Refers to Grant of Planning Permission 20/308 as a precedent for this appeal.
- Appellant currently resides at the family home and that the proposed development will not, if fact put additional pressure on local services.
- Lack of viable affordable alternatives in the vicinity to satisfy local housing need.
- The proposed development would be accurately described as “infill” development rather than “ribbon” or “haphazard”.
- Refers to Kildare County Council Technical Reports having no objection to the proposed development.

6.2. **Planning Authority Response**

The Planning Authority has reviewed the content of the first party appeal and has no further comment or observation to make. The Planning Authority refers An Bord Pleanála to the Planning Authority’s Planning Reports and the reports of the various technical departments referred to during the assessment of the planning application.

6.3. **Observations**

None

6.4. **Further Responses**

None

7.0 **Assessment**

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

- Capacity
- Precedent
- Cumulative Impact of Septic Tanks
- Ribbon Development
- Appropriate Assessment Screening

7.1. Capacity

There are currently 8 existing dwelling houses within 150 meters of the proposed site on the south-western, southern, south-eastern and eastern sides. The planning authority have confirmed that the applicant complies with local need criteria from Policy RH2 of the Kildare County Development Plan 2017-2023 but are concerned about the capacity of the rural area to absorb further development. The lack of public services and community facilities are referred to also as well as the potential suburbanisation of the Upper Brownstown area. The applicant contends that the Upper Brownstown area is not heavily developed and that it principally accommodates farmland and agricultural building and has provided an aerial map illustrating approximately 24 residential units within a 500-meter radius of the proposed site. Furthermore, the applicant challenges the planning authority's determination that the proposed dwelling would put additional pressure on the public services and community facilities as she currently resides in the family home adjacent to the proposed site.

It is my view that the applicant does meet the local need criteria from Policy RH2 of the Kildare County Development Plan 2017-2023. Nevertheless, the proposed site configuration and surrounding density of existing and permitted development is contrary to Policy RH9(iv) and that the proposed dwelling would contribute to a suburbanisation of the Upper Brownstown area. I recommend therefore, that the appeal should not succeed in relation to planning authority's first reason for refusal.

7.2. Precedent

The planning authority have cited Policy RH10 of the Kildare County Development Plan 2017 – 2023 as the instrument to control rural development that is piecemeal and haphazard within close proximity of urban centres and settlements. In this instance the planning authority believes the proposed development would constitute the unsustainable development of the Brownstown Upper rural area due to its close proximity to the village of Cut Bush which is designated for settlement expansion purposes. The applicant contends however that the availability of housing and specifically affordable housing remains low in Cut Bush village notwithstanding the designation for settlement expansion. The applicant has referred to national housing policy and the need for households to have access to good quality housing that is appropriate to its circumstances and in a community of its choice. The applicant has also referred again to her compliance with Policy RH2 of the Kildare County Development Plan 2017 – 2023 under local need criteria as justifying the proposed development at the subject site.

Once again it is my view that the applicant meets the local need criteria from Policy RH2 of the Kildare County Development Plan 2017-2023 but that this compliance with Policy RH2 should not take precedence over the proper planning and sustainable development of the Brownstown Upper rural area. The current density of permitted one-off dwellings in such a concentrated rural area does demonstrate a haphazard style of development and would set an improper precedent for others seeking to establish their own home close to an area designated for village expansion.

7.3. Cumulative Impact of Septic Tanks

The current permitted development in the vicinity of the subject site are all served by private on-site wastewater treatment systems. The cumulative impact of such a high concentration of on-site wastewater treatment systems in a very concentrated area has the potential to negatively impact on the vulnerable receptor. This receptor is a regionally important aquifer and the karsified nature of the bedrock will facilitate the very swift transit of effluent through the fissures in the rock formation. A regionally

important aquifer can be used to provide drinking water resources to a wide population so it is critical that such receptors are protected from possible contamination from point sources. The proposed septic tank system for the subject site is the most basic wastewater treatment available and will offer no mechanical aeration of the faecal sludge. More advanced on-site wastewater treatment systems ensure that pathogens and contaminants receive a higher standard of treatment prior to discharge to a percolation area or tertiary treatment area. In this instance the very high concentration of basic septic tank systems in such a concentrated area is considered to pose a risk to the karsified aquifer.

There is some ambiguity in the planning application particulars as the proposed drinking water source outlined in Section 20 (Services) of the submitted planning application form states "private well". The 1:500 site layout plan Drg. Ref. 4486-02 also refers to drinking water being sourced from new bored well. Notwithstanding these references to the proposed water supply being from a private bored well there is reference to a connection also to the public watermain at the public road. Section 3.1 of the Site Characterization Report Form submitted for the on-site assessment completed for the proposed site does not categorically confirm that no borewells exist in the local area and the report form merely states "none known". Critically such a high concentration of septic tank systems in a concentrated area would need to be cognisant of any actual borewells that are used for human water extraction.

It is my view that the existing density of septic tank systems in the Brownstown Upper local area poses a threat to the karsified regionally important aquifer and would be prejudicial to public health.

7.4. Ribbon Development

There currently exists 6 no. houses along the local road and within 225m of the proposed site. The planning authority have determined that the area is already experiencing ribbon development but the applicant contends that the proposal is more accurately described as "infill" and that the proposal does not extend linear development along the roadside and that it infills a vacant site. My own view is that the proposed development is more accurately described as backland development and I believe that the planning applicant complies with the requirements of Policy

RH14 of the Kildare County Development Plan 2017-2023 which prescribes to only consider family members for back-land development. There would not be an intensification of the ribbon of houses along the road and proposed development shall would have no negative impact on third parties / neighbouring property owners if the site was appropriately screened.

While Policy RH14 is complied with for the proposed development I do believe that Policy RH9 is compromised insofar as there is not capacity in the local area to absorb further development due to the current density of existing permitted development.

7.5. Appropriate Assessment Screening

Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, the nature of the receiving environment the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage.

8.0 Recommendation

8.1. Having regard to the foregoing I recommend that planning permission be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. 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 (which policy is considered to be reasonable). The

proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. 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.

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

3rd August, 2023