



An  
Bord  
Pleanála

## Inspector's Report

### ABP-317736-23

<b>Development</b>	Single storey house, upgrade of existing agricultural entrance to recessed entrance, wastewater treatment system and percolation area with all associated site development works including new internal access road to agricultural fields at rear.		
<b>Location</b>	Baysland, Naas, County Kildare.		
<b>Planning Authority Ref.</b>	23192.		
<b>Applicant(s)</b>	Nicole Mooney.		
<b>Type of Application</b>	Permission	<b>PA Decision</b>	To grant permission.
<b>Type of Appeal</b>	Third party	<b>Appellant</b>	Mr Gerome Donnelly
<b>Observer(s)</b>	None		
<b>Date of Site Inspection</b>	11 <sup>th</sup> December 2023	<b>Inspector</b>	Richard Taylor

#### Context

##### 1. Site Location/ and Description:

The site is located within the Baysland area of Kildare. It is within a rural area and accessed off a rural road, the L2019. The site is broadly rectangular in shape and whilst the topography is broadly level, the site is slightly elevated above the adjacent public road. The site currently comprises a detached building of typical

agricultural design and is almost entirely finished in gravel, save for a small area to the rear which comprises fenced off areas for the grazing of poultry. Boundary treatments generally comprise mature vegetation of varying height, whilst the southern boundary mostly comprises a block wall approximately 1.8 metres in height. The aspect of the site is orientated broadly in a northwest (front elevation) to southeast (rear) layout. There is a large agricultural field to the rear of the site in the ownership of the applicant's father.

The site is adjacent to a row of 6 residential properties to the southwest, all of which also have broadly rectangular shaped plots. To the southeast and rear of the site there is a further detached dwelling. All dwellings are generally 2 storeys or single storey in height and finished in render with pitched roofs. The general topography falls to the north, and there is a watercourse approximately 220 metres to the northeast along the public road from the site at the closest point. This generally traverses from southeast to northwest and forms the boundary of the agricultural field to the rear in the ownership of the applicant's father. There is a roadside boundary wall and verge opposite the site, with lands to the rear comprising wooded areas with agricultural lands beyond.

## **2. Description of development:**

The proposal comprises a single storey house approximately 167 square metres in size. It has a ridge height of 6.174 metres, 2.8 metres eaves height, and is broadly "L" shaped in layout. It is 16.8 metres in width and 12.3 metres in depth at the widest point. Finish materials comprise nap plaster to the walls, with a concrete tile or slate roof. The proposal also includes extending the curtilage of the existing site into an adjacent agricultural field to provide a rear garden area. Site development works are also proposed and include an upgrade of the existing agricultural entrance to recessed entrance, wastewater treatment system and percolation area, with including new internal access road to agricultural fields at rear of the site.

## **3. Planning History:**

22/103: Permission sought by Nicole Mooney for single storey house, upgrade of existing agricultural entrance to recessed entrance, wastewater treatment system,

and percolation area along with all associated site development works. Application withdrawn.

21/973: Permission refused to Nicole Mooney for a single storey house, upgrade of existing agricultural entrance to recessed entrance, wastewater treatment system, and percolation area along with all associated site development works.

#### **4. National/Regional/Local Planning Policy**

- National and regional policies:
- National Planning Framework (NPF) Project Ireland 2040, National Policy Objective 19.
- Eastern and Midland's Regional, Spatial and Economic Strategy (RSES).
- Sustainable rural housing guidelines 2005.
- The Kildare County Development Plan 2023-2029 was adopted by the PA on 9th December 2022 and took effect on 28th January 2023. It has regard to national and regional policies in respect of development in rural areas, including proposals for single dwellings.
- Key documents and policies of relevance to the appeal are as follows:
- Chapter 3 Relates to the Council's requirements for one off housing.
- 3.13 Sustainable Rural Housing
- 3.13.1 Defining our Rural Housing Policy Zones. In accordance with the findings of the evidence-based report, the approach outlined will apply to the Zones identified on Map 3.1. Zone 1 - Areas under Strong Urban Influence and Zone 2 – 'Stronger Rural Areas'.
- The application site falls within zone 1. The plan states the following in relation to this zone:  
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 having regard to the viability of smaller towns and rural

settlements and the provision and availability of serviced sites in these areas.

- 3.13.3 Rural housing requirements: Rural generated housing 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 plan seeks to facilitate those who can demonstrate a genuine housing need and a social and or economic need to live in rural County Kildare. Urban generated rural housing will not be considered. 'Economic' and 'Social' need in the context of rural housing policy are defined as follows:
  - Economic: Considerations include a person (or persons) who is (are) actively engaged in farming or agricultural activity on the land holding 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 5 kilometres (zone 1) or five kilometres (zone 2) of the site where they intend to build.

Applications for rural one-off dwellings will be considered, subject to the policies and objectives set out in the County Development Plan. Applicants will be expected to comply with all of the requirements of the plan and demonstrate that the development would not prejudice the environment and rural character of the area. In this regard, factors such as the sensitivity of the receiving environment, the nature and extent of the existing

development and the extent of development on the original landholding will be considered.

- HO P8: Ensure that groups with specialist housing needs, such as older persons, people with disabilities, the homeless, Travellers, those in need of emergency accommodation including those fleeing domestic violence, are accommodated in a way suitable to each of their specific needs.
- 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.
- Objectives:
- 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:... 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.
- 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 P13: Restrict further development which would exacerbate or extend an existing pattern of ribbon development, defined as 5 or more houses along 250 metres on one side of any road.
- HO P14: The Council will seek to resist further development which would serve to extend ribbon development, save in circumstances where a “gap site” is evident within the existing ribbon pattern, where one individual dwelling is proposed. Such proposals will be considered, regardless of the density of the area, only in the following circumstances:
  - (i) The applicant can demonstrate an Economic or a Social Need (as outlined in Table 3.4),
  - (ii) existing or shared accesses are used where practicable, and it is demonstrated (through the submission of documentary evidence) that no alternative site exists outside of the ribbon where the development is proposed.
  - (iii) a ‘Gap Site’ is defined as a site located within a line of existing and permitted dwellings, where one dwelling only will be accommodated, and other than agricultural access to lands to the rear (if required), the site should fully occupy the gap between existing and permitted dwellings.
  - (iv) All other technical considerations are addressed.Proposals for development which would extend the ribbon will not be considered under this policy.
- HO P16: Consider proposals for backland development for family members only. Proposals for such development must demonstrate that the proposed development would not have a negative impact on third parties/neighbouring property owners by way of overlooking/ orientation of dwelling. Sufficient screening will be required to be provided and proposals for this shall be submitted with the planning application and must be in place prior to occupation of the dwelling. Particularly sensitive design approaches should be considered in these instances.
- Objectives:
- HO O50: Require that new dwellings incorporate principles of sustainability and green principles.

- HO O51: demonstrate the ability to provide safe vehicular access to the site without the necessity to remove extensive stretches of native hedgerow and trees.
- HO O52: (retention of hedgerows) 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.
- 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 reinstated.
- 3.14 Rural Residential Density
- 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.
- 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.
- 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.

- 3.16 Access and Entrances:
- 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. In such cases, proposals for replacement hedgerows, including details of composition and planting must be submitted with any application which requires such removal.
- HO P32: 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.
- 3.18 Technical Considerations for Rural Housing Proposals in County Kildare.
- Chapter 15 Development Management Standards.
- Kildare Rural Housing Design Guidelines.
- Code of Practice: Domestic Wastewater Treatment Systems (DWWTS) (Population equivalent  $\leq 10$ )

## **5. Natural Heritage Designations**

- The site is located approximately 4.8 kilometres northwest of Red Bog SAC (site code 000397). This is the nearest Natural heritage designation to the site. There are no features of built or natural heritage within or adjacent to the site.

## **Development, Decision and Grounds of Appeal**

### **6. PA Decision:**

The application site meets the policy definition of a gap site. This is contingent on the cessation of the current habitable use of the existing shed building on the site.

The applicant meets the requirements for social need as set out in chapter 3 of the development plan and the principle of development is therefore acceptable.

The design of the dwelling is considered to be acceptable and complies with design standards for rural dwellings as set out in Appendix 4 of the plan.

There will be no adverse impacts on the amenities of the area or property within the vicinity.

There are no objections to the proposal from the Environment Department and Water Services section of the Council. The Transportation Department have no objections in relation to access, parking, and road safety related issues.

The decision is subject to 22 conditions. Of note these include an occupation condition specific to the applicant for a period of not less than 10 years. In addition, there is a condition requiring that the existing shed shall be used for agricultural purposes only, and not used for human habitation or any commercial purpose whether or not such use might otherwise constitute exempt development.

**7. Third Party Appeal.** Grounds:

- It is unclear from the report how the local needs criteria have been assessed. The applicant works some 30 kilometres from the site is evidence that this is an urban generated need.
- The applicant was previously refused planning in the same area (reference 21973) with overdevelopment cited as one of the reasons for refusal, nothing has materially changed with this new application. The original landholding has been the subject of extensive speculative planning applications by the landowner and associated family members, and of those none are now owned or occupied by the applicants.
- The site in question is already fully occupied with both a very large agricultural building (currently being occupied as a residence and subject to planning enforcement proceedings) as well as the established entrance to the lands to the rear. Any attempt to impose another building on the already fully occupied site is not in keeping with the accepted meaning of a gap site.
- The requirement to create a new access road and entrance to the rear agricultural lands and its associated traffic would have a negative impact on the appellants family home adjacent and to the northeast of the site. This was raised as part of the planning observation and has not been given any consideration in the report.
- The proposed site is subject to a way leave on a significant portion of the site making it unsuitable for further development. The siting of the proposed

percolation area in close proximity to the roadside is in breach of EPA guidelines for the sighting of wastewater treatment systems. This states there should be a minimum of 10 metres between such systems and any open drains and drainage ditches. There is only 6.8 metres separation as shown on the drawings.

#### **9. Applicant Response:**

- The appellant has included a separate submission from Baysland, Haynestown and Newtown residents group, care of PJ O'Neill, Newtown, Eadestown, Naas, County Kildare. This group and address do not exist. No Eircode address was supplied, and it was not signed. The content of this submission should not be taken into consideration as it is not the appellants original submission, the appellant has not demonstrated that he is party to this submission, and the applicant is suspicious of it's origins. It is requested that the Bord dismiss this submission.
- Speculative planning: this is not a speculative planning application. The planning history was fully acknowledged in the supporting planning statement. The applicant's family have endured tragic circumstances and found themselves living in an agricultural shed. There is no possibility that this could have been by design. The applicant has returned from England to care for remaining family members and their health requirements.
- Gap site: The appellants arguments that it is not a gap site because there is an existing building on the site which is occupied is without foundation. The existing shed is inhabited by the applicant's family without the benefit of planning permission. The level of accommodation is very basic and reflective of the desperate situation the family are in. The temporary use of an agricultural shed for residential use should not be taken into account in terms of considering if a proposed dwelling is a gap site or not. The physical building is the key consideration in terms of assessing the "gap" test. The new dwelling will be situated between the shed and the neighbouring dwelling and therefore is a gap site. The site is still located between the neighbouring dwelling and applicants dwelling and is a gap site even without the existing shed.

- Impact of access: the proposed access to the rear field is for agricultural use only and will involve minimal traffic movements involving harvesting of hay and infrequent movement of animals. There is a tall, mature, dense hedgerow between the access route and the appellants dwelling and this will screen views of the access and mitigate noise. Any noise would be infrequent and short lived.
- Wayleave: the wayleave referred to by the appellant was restricted to the construction phase of the appellants dwelling only, relating to water supply/surface water. A legal agreement is attached which refers to a 12 month period or until such time as necessary to complete said works. This is confirmed by the applicant's solicitor. This is not a permanent wayleave as argued by the appellant who is fully aware of this as they were party to the contents of this agreement.
- On site treatment system: the applicant invites a condition of planning permission to be submitted to Kildare County Council showing the minimum separation distance is to be met for written agreement prior to the commencement of development. There is sufficient space available to meet the necessary distances and is therefore achievable.
- Employment: the applicant is actively seeking employment closer to home to care for the medical needs of her family members. A job offer was secured near Kildare town however the conditions of employment were not considered acceptable by the applicant (evidence of contract appended). The applicant continues to seek work locally, however, this is difficult due to her specialised skills/expertise.
- A petition is appended to the applicants a statement consisting of 15 signatories confirming "support/no objections to the proposal, the Baysland, Haynestown and Newtown residents group is not known to them, and are not speaking on behalf of the residents of the community."

#### **10. PA Response:**

- The planning authority response is dated 31st August 2023 and notes the content of the appeal. It confirms the decision, referring to the planning reports,

internal department reports and prescribed bodies reports in relation to the assessment of the application. No additional detailed comments are provided.

## **Environmental Screening**

### **11. 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.

### **12. AA Screening:**

Having regard to the modest nature and scale of development, and 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**

2.1. Having examined all the application and appeal documentation on file and having regard to relevant local and national policy and guidance, I consider that the main issues are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. The main issues, therefore, are as follows:

- (a) Principle of Development / Case of Need.
- (b) Gap Site.
- (c) Residential amenity.
- (d) Wayleave / drainage issues.
- (e) Speculative development
- (f) Technical Issues

(a) Principle of Development / Case of Need.

2.2. As background to this case the applicant's family have undertaken conversion works to the existing agricultural building on site and are currently residing in this building. The Council's evidence confirms that this is subject to enforcement investigations. For clarity these enforcement investigations do not fall within the remit of this appeal and are a matter for the Council.

2.3. The appellant disputes the case of need for a dwelling by the applicant. The applicant's case is based on a social need. The Council conclude that the applicant complies with the requirements for social need set out in Chapter 3 of the development plan.

2.4. The relevant policy considerations for rural housing includes a needs test as set out in section 4 above. The plan allows for rural one-off housing based on employment or social needs. Table 3.4 - Schedule of Local Need Criteria in the plan for cases of social need states:

*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.*

2.5. Supporting information is set out within the rural housing planning application form, The following is noted:

Dwelling will be occupied by the applicant and two immediate family members. The applicant's father is the owner of the site.

The applicant is a member of the rural community, confirmed by letter detailing involvement and voluntary support for equestrian activities at Naas.

Applicant's birth certificate confirms place of residence at Baysland at the time.

Correspondence from primary and secondary schools located at Naas, confirming attendance.

Various correspondence including financial statements confirming residence at Baysland. The applicant confirms they have resided within the Baysland area for all of their life save for a four-year period, approximately 23 years in total.

Correspondence from three sources confirming additional special circumstances.

There is agricultural activity at the site and adjacent lands undertaken by the applicant's father. The applicant is undertaking an increased role and management of related activities.

Land registry information confirming site in ownership of the applicant's father since April 2004.

- 2.6. I have reviewed the submitted evidence, and I am satisfied that it demonstrates that the applicant has social links to the Baysland area. The applicant has not sought to demonstrate need on the basis of agricultural/ economic activity. The policy outlined above facilitates an alternative social need test on the grounds of residency, and the applicant satisfies the requirement of being a local resident for a minimum of 16 years.
- 2.7. In addition to the residency requirements, the case for need is supplemented on the basis of special requirements of other members of the immediate family of the applicant. This is confirmed and supported by written evidence from three separate parties. On the basis of this information, I conclude that the applicant also satisfies policies HO P8 and HO O47 and the associated allowance for housing in specialist circumstances. Furthermore, it is apparent from the supporting evidence and on-site assessment that a degree of agricultural activity is undertaken at this location. Whilst this appears small in scale, it further supports a requirement to live at this location. Taking all of these factors into account, I conclude that the applicant satisfies the policy requirements in relation to need.

(b) Gap Site

- 2.8. The appellant considers that the application site does not constitute a gap, stating that the "site is already fully occupied with both a very large agricultural building as well as the established entrance to the lands to the rear. Any attempt to impose another building on the already fully occupied site is not in keeping with the accepted meaning of a gap site."
- 2.9. The applicant states that the physical building is the key consideration in terms of assessing the "gap" test. "The new dwelling will be situated between the existing shed and the neighbouring dwelling (to the southwest), and therefore is a gap site.

The site is still located between the neighbouring dwelling and applicants dwelling and is a gap site even without the existing shed.”

- 2.10. The Council concluded that the application site meets the policy definition of a gap site. This is contingent on the cessation of the current habitable use of the existing shed building on the site.
- 2.11. The relevant considerations for the assessment of a gap site are set out within policies HO P13 and HO P14. HO P13 seeks to “restrict further development which would exacerbate or extend an existing pattern of ribbon development, defined as 5 or more houses along 250 metres on one side of any road.”
- 2.12. In this case, there are 6 dwellings adjacent to the southwest all with frontage to the same public road as the application site. There is a further dwelling immediately adjacent to the northeast, however this is set back from the public road by approximately 66 metres. Notwithstanding the setback, this dwelling is evident from the public road along with its associated access. Visually this dwelling and associated curtilage and access read with the existing agricultural building on the application site and additional dwellings to the southwest, when viewed on approach from the public road from a northwesterly direction. The proposed dwelling is located adjacent to the existing agricultural building on site and would therefore occupy a gap between the dwelling adjacent to the southwestern boundary and the agricultural building. Accordingly, I consider that the site is located within an existing row of development and would not exacerbate or extend this row as required by the policy and is therefore acceptable.
- 2.13. HO P14 sets out four criteria for the assessment of gap site proposals. The first relates to need which has been considered above and it is concluded that the applicant meets a social need. The remaining criteria are as follows:
- (ii) existing or shared accesses are used where practicable, and it is demonstrated (through the submission of documentary evidence) that no alternative site exists outside of the ribbon where the development is proposed.*

There is an existing access to the site. The proposal seeks to use this access with further improvements proposed as set out in the supporting drawings. I note that the Council consulted with the roads infrastructure section who have no objections to the proposed details. I therefore consider the proposal meets this policy test.

*(iii) a 'Gap Site' is defined as a site located within a line of existing and permitted dwellings, where one dwelling only will be accommodated, and other than agricultural access to lands to the rear (if required), the site should fully occupy the gap between existing and permitted dwellings.*

In relation to this criterion the site is restricted due to the existing agricultural building on site which is to be retained. The dwelling is to be located within an area between this building and the southwestern boundary. Accordingly, it would not be possible to accommodate more than one dwelling within the area available. The agricultural access to lands to the rear is proposed to the northern side of the agricultural building. As discussed above, I consider that the site is located within a line of existing dwellings and therefore conclude that the proposal meets the definition of a gap site within the policy.

(iv) All other technical considerations are addressed.

Technical considerations will be considered further in the assessment below.

(c) Residential amenity.

- 2.14. The appellant considers that the proposal will adversely impact on their residential amenity specifically in relation to the new access road and associated traffic. The applicant states that traffic associated with the access will be limited and accordingly there will be no adverse impacts. The Council consider this aspect of the proposal to be acceptable.
- 2.15. Third party concerns relate to a proposed agricultural access road that will traverse along, and adjacent to, the northeastern site boundary. This is necessary to facilitate access to the agricultural land to the rear which is in ownership of the applicant's father. The layout drawing indicates the route and details of the proposed access. It varies in width between approximately 4 and 5 metres, with planting indicated along both sides of the route including along and adjacent to the northeastern site boundary with the appellant's dwelling. At the closest point the site boundary is approximately 13 metres from the appellant's dwelling. The route traverses in a southeasterly direction, offset from the existing boundary along and away from the gable of the appellants dwelling, and varies between 18 and 20 metres at the closest point. I note from my site visit that the lands to the rear were subject to grazing by sheep. I note from the supporting plans and information that these are the only

agricultural lands within the ownership of the applicant's father. The northeastern site boundary comprises mature hedging approximately 2.5 metres in height, with further typical field hedging interspersed by mature trees within the section at the closest point with the appellant's dwelling. This section is reasonably substantial with sections in excess of four metres in height. Based on the evidence, I consider that the agricultural activities at the site are limited in scale. Associated operations and vehicle movements to and from lands to the rear are therefore likely to be limited and infrequent. The roads infrastructure consultation did not highlight any concerns in this regard. The impact on amenity from noise another disturbance is not likely to be significant taking account of the separation distances to the appellant's dwelling and evidence to the contrary has not been provided. The existing vegetation and supplementary landscaping as part of the proposal would provide adequate screening into the site and assist in safeguarding amenity. I consider that a detailed landscaping scheme should be provided for agreement through a planning condition if permission is granted. I am also satisfied that the proposed dwelling would not result in any adverse amenity impacts on the existing dwelling to the northeast of the site, due to a combination of the single storey design of the dwelling, window locations, and the retention of the existing agricultural shed which is located between both dwellings. The proposal would also not adversely impact on the existing neighbouring house to the southwest, again due to the single storey design and nature of the intervening boundary wall treatment.

(d) Wayleave / drainage issues

- 2.16. The appellant states that proposed site is subject to a wayleave on a significant portion of the site making it unsuitable for further development. The siting of the proposed percolation area in close proximity to the roadside is in breach of EPA guidelines for the siting of wastewater treatment systems. This states there should be a minimum of 10 metres between such systems and any open drains and drainage ditches. There is only 6.8 metres separation as shown on the drawings.
- 2.17. The applicant states that the wayleave referred to by the appellant was restricted to the construction phase of the appellant's dwelling only, relating to water supply/surface water. A legal agreement is attached which refers to a 12-month period or until such time as necessary to complete said works. This is confirmed by the applicant's solicitor. This is not a permanent wayleave as argued by the appellant

who is fully aware of this as they were party to the contents of this agreement. The applicant invites a condition of planning permission to be submitted to Kildare County Council showing the minimum separation distance is to be met for written agreement prior to the commencement of development. There is sufficient space available to meet the necessary distances and is therefore achievable.

- 2.18. The planning report by the Council confirms that the wastewater treatment system has been reviewed by the Environment Department and has no objections to the proposed development subject to conditions.
- 2.19. The application is supported by a soil test report which confirms the suitability of the proposed wastewater treatment system to treat effluent being discharged from the proposed dwelling based on residential demands of a three-bedroom, 5 person dwelling. The assessment informing the report included a number of trial test holes, and confirms that the existing septic tank facilities will be removed. The percolation area is located approximately 6.8 metres from the front/northwestern site boundary and approximately 5.5 metres from the northern site boundary.
- 2.20. Code of Practice: Domestic Wastewater Treatment Systems (DWWTS) (Population equivalent  $\leq 10$ ) is the relevant guidance and is referenced within the plan at policy HO P27. This 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 guidelines. Table 6.2: stipulates minimum separation distances from the entire DWWTS in relation to features, buildings and other structures. The following separation distances (metres) are of relevance to this case:

<b>Features</b>	<b>DWWTS –periphery of tank/plant and Infiltration / treatment area (m)</b>
Watercourse/stream	10
Open drain or drainage ditch	10
Adjacent tank/plant and percolation area, polishing filter or infiltration area	10
On-site dwelling house	7 (infiltration/ treatment area) (tank/plant) 10

	(free water surface constructed wetland) 10
Neighbouring dwelling house	7 (tank/plant) 25 (free water surface constructed wetland) 10 (infiltration/ treatment area)
Surface water soakaway	5
Road	4
Slope break/cuts	4
Trees	3
Site boundary	3

2.21 On comparing the locational characteristics of the proposed wastewater system against the separation distances set out in the table above, the proposal exceeds all of the minimum distances specified in the guidelines. In addition, I would note that the Environment Section of the Council and the Water Authority with whom consultation was undertaken, have no objections to the proposal. In the absence of evidence to the contrary, I conclude that the proposal is in compliance with the guidelines and policy as stipulated in the plan.

2.22 The appellant also considers that the proposal is contrary to a wayleave agreement between the appellant and the landowner, namely the applicant's father. I consider that this matter is a civil issue between the relevant parties and also that it would not preclude granting of permission on this basis. Whether or not this legal agreement precludes the proposed siting of the wastewater system is therefore a matter for the applicant. It is a matter for the applicant to ensure that any other necessary consents outside the scope of the planning legislation are appropriately addressed in accordance with their respective requirements and timescales. Accordingly, this is not a matter that would warrant withholding permission on this basis.

(e) Speculative development

2.23 The appellant considers that the site has been subject to speculative proposals and that permission should be withheld on this basis. The applicant disputes this assertion, and the Council have not commented on this issue.

2.24 I have been directed to two separate applications by the appellant. I have not been provided with the details of these applications but note that one was withdrawn. The

reasons for the withdrawal have not been provided. The second application, based on the limited information provided, does not relate to the appeal site but rather another location within lands in ownership of the applicant's father. This application was refused. I am not persuaded that the existence of these applications amounts to speculative development given the decision and withdrawal of these cases. Each case must be assessed on its own merits.

(f) Technical Issues

- 2.25 An additional criterion of the policy relating to assessment of gap sites requires proposals to comply with all technical issues. Such issues include access, traffic, parking, drainage, flooding, and design as set out in sections 3.15- 3.18 of the plan. Based on the positive responses from the various consultees, I am satisfied that the proposal responds appropriately to all technical issues. In addition, I consider that the design of the dwelling is compatible with the design guide requirements and is appropriate in terms of scale massing, fenestration, materials and amenity provision taking account of the design and layout of existing neighbouring buildings in the locality.

## 5.0 Recommendation

- 5.1. I recommend that permission for the development be granted.

## 6.0 Reasons & Considerations

Having regard to the policies of the Kildare County Development Plan 2023-2029, and all material considerations, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the zoning objective for the site, that the applicant has demonstrated a local housing need, would not detract from the visual amenity of the area, would provide an acceptable standard of residential amenity for the prospective residents, would not seriously injure the residential amenity of surrounding properties, and would not endanger public safety by reason of access, traffic generation, drainage proposals, or otherwise. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the planning authority on 01/03/2023 and 20/06/2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interests of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least ten years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.  
(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The development hereby permitted shall be carried out in full accordance with the details received by the planning authority on 20th June 2023. The permitted dwelling shall be occupied as a single housing unit for domestic

related purposes only. On occupation of the dwelling hereby permitted, the use of the existing shed as a dwelling shall cease. Thereafter the existing shed shall only be used for purposes incidental to the dwelling hereby permitted, including the ancillary storage of agricultural equipment and household items for domestic purposes only.

Reason: in the interests of clarity and to regulate the use of the development in the interest of the proper planning and sustainable development of the area.

4. The external finishes of the dwelling shall be in accordance with the information received on 1st March 2023. The use of reconstituted stone, brick or dry (pebble) dash shall not be permitted. The roof shall comprise blue/black slates or tiles.

Reason: in the interests of visual amenity and orderly development.

5. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) A plan to scale of not less than [1:500] showing –

(i) Existing trees, hedgerows, shrubs specifying which are proposed for retention as features of the site landscaping.

(ii) The measures to be put in place for the protection of these landscape features during the construction period.

(iii) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder and which shall not include prunus species.

(iv) Details of screen planting which shall not include cupressocyparis x leylandii.

(v) Hard landscaping works, specifying surfacing materials, and finished levels.

(b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment.

(c) The planting shall be carried out in accordance with the agreed scheme and shall be completed within the first planting season following the commencement of construction works.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

6. Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.

Reason: In the interest of public health.

7. Where the applicant proposes to connect to a public water/wastewater network, the developer shall enter into water and wastewater connection agreements with Uisce Éireann prior to the commencement of development and adhere to the standards and conditions set out in that agreement.

Reason: In the interest of public health.

8. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 1st March 2023, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.  $\leq 10$ )" – Environmental Protection Agency, 2021. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed

and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

9. (a) Prior to the commencement of development, the site access and visibility sightline splays at the entrance shall be provided in accordance with proposed entrance drawing 01-06-2023, received by the planning authority on 20th of June 2023 and retained thereafter.

(b) The area within the visibility sightline splay shall be cleared to provide a level surface no higher than 250 millimetres above the level of the adjoining carriageway and shall be retained and kept clear thereafter.

(c) All necessary measures shall be taken by the applicant/developer to prevent the spillage or deposit of any materials including clay rubble or other debris on adjoining roads during the course of development. In the event of any such spillage or deposit, immediate steps shall be taken to remove the material from the road surface at the applicant/developers own expense.

(d) no building material or plant shall be used or stored on the public road without the prior consent of the Municipal District Engineer. All vehicles relating to tradespeople shall be accommodated within the site and no parking shall take place on the public road.

Reason: in the interests of Traffic Safety.

10. Prior to the commencement of development, the applicant is shall liaise with the relevant statutory body and arrange for the relocation of the existing utility pole adjacent to the site entrance. Evidence of the agreed arrangements shall

be submitted to the planning authority prior to the commencement of development. The cost of any such works shall be borne by the applicant. The relocation of the existing utility pole shall be completed in accordance with the agreed arrangements prior to the occupation of the dwelling hereby permitted.

Reason: in the interests of Traffic Safety.

11. The applicant shall ensure that if electrical charge points are provided at the driveway of the new dwelling to allow for the night-time charging of electric vehicles, linked to the individual domestic electricity meter. The electric vehicle charger shall be compatible with The Sustainable Energy Authority of Ireland's Triple E Register.

Reason: to promote the use of night-time renewable energy.

12. The existing septic tank and associated pipework shall be decommissioned removed and disposed of in accordance with the Waste Management Acts 1996-2016, and regulations made thereunder.

Reason: in the interest of best practice guidelines for the management and reduction of construction and demolition waste in order to avoid pollution.

13. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of sustainable waste management.

14. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation

from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

15. The noise level during the construction phase shall not exceed 70 dB(A) (LAeq 1 hour) rated sound level at any point along the boundary of the site between 0800 and 1800 hours, Monday to Friday inclusive (excluding bank holidays), between 0800 and 13.00 hours on Saturdays, and shall not exceed 45 dB(A) (LAeq 1 hour) at any other time. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the residential amenities of property in the vicinity of the site.

16. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

17. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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.

---

Richard Taylor

Planning Inspector

16th February 2024