



An
Bord
Pleanála

Inspector's Report ABP-318048-23

Development	Construction of bungalow, effluent treatment system, upgrading an existing agricultural entrance to form a recessed vehicular entrance and associated site works.		
Location	Killybegs, Prosperous, County Kildare.		
Planning Authority Ref.	23742.		
Applicant(s)	George Murphy.		
Type of Application	Permission	PA Decision	To grant permission.
Type of Appeal	Third party	Appellant	1. Mr Ger Ennis 2. Ms Joanne Donoghue
Observer(s)	None		
Date of Site Inspection	11 th December 2023	Inspector	Richard Taylor

Context

1. Site Location/ and Description:

The site is located approximately 0.9km southeast of Prosperous village, within the Killybegs area of Kildare. It is within a rural area and accessed off a rural road, the L6002. The site is broadly rectangular in shape. The topography slopes gently away from the adjacent public road to the northeast, with a fall of approximately 7m. The site currently comprises part of a larger agricultural field used for grazing.

There is an access gravel road that traverses northeastwards adjacent to the northern site boundary. Boundary treatments generally comprise mature typical field hedge vegetation of varying height and interspersed by mature trees. The northeastern boundary is undefined, however there is a farm access track that traverses in a southern direction that forms the eastern boundary. Beyond the farm track there is a collection of agricultural buildings, all single storey in height and of typical agricultural outbuilding design, finished in a mixture of block walls with sheet corrugated metal cladding and roofs. The southern boundary is largely undefined, save for a section approximately 60m in length in the southwestern corner which also comprises mature vegetation and trees approximately 6m in height. This forms the boundary with a dwelling immediately to the south. The aspect of the site is orientated broadly in a southwest (front) to northeast (rear) layout. There are fields surrounding the site to the southwest, south and east. These are also within the ownership of the applicant and are approximately 11.9 hectares in area, consisting of three adjoining fields.

The site is adjacent to a row of 4 residential properties to the southwest, all of which also have broadly rectangular shaped plots. To the northwest there is a further detached dwelling adjacent to the site access. There is a further dwelling to the northwest which is approximately 230 metres from the northern site boundary. Both of these dwellings are occupied by the appellants in this case. All dwellings are generally 2 storeys or single storey in height and finished in render with pitched roofs.

2. Description of development:

The proposal comprises a single storey house approximately 263 square metres in floor area. It has a ridge height of 5.43 metres at the highest point, 3 metres eaves height, and is broadly “H” shaped in layout comprising two rectangular sections, with recessed link element. It is 22.2 metres in width, with one section 17.35 metres in depth and other 15.3 metres at the widest point. Finish materials comprise nap plaster and stone to the walls, with a slate roof. Site development works include an upgrade of the existing agricultural entrance to a recessed entrance, wastewater treatment system and percolation area located adjacent to the roadside boundary and entrance.

3. Planning History:

There is no history for the application site. The following applications for adjacent lands are relevant:

21/724: refusal of permission for construction of a bungalow, effluent treatment system, upgrading an existing agricultural entrance to form a recessed regular entrance and all associated ancillary site works. 5 refusal reasons were attached to the decision and summarised as follows:

1. Contrary to policy RH 9: taken in conjunction with the level of existing development in the vicinity, the proposed development would exacerbate an excessive density of development and contribute to the increasing suburbanisation in this rural area.
2. Contrary to policy RH 10: the development by reason of its location in proximity to but not within the confines of Prosperous, will further exacerbate the level of development in proximity to where land has been zoned for new residential development.
3. Contrary to policy RH11: the site is located approximately 550 metres to the south of the development boundary of Prosperous and the proposal would erode the separation of Prosperous from the open countryside and constitute an unsustainable and undesirable pattern of linear sprawl development in the transitional lands on the outskirts of the town.
4. It has not been demonstrated that the site is suitable for the provision of an on-site wastewater system due to the water table being less than 300 millimetres below ground level and if permitted would be prejudicial to public health.
5. Contrary to policy RH2: the applicant has not sufficiently demonstrated compliance with a category of the “local need” criteria and the circumstances of the applicant are consistent with the requirements of policy RH18 in demonstrating that there is a full time viable commercial agricultural enterprise that is location dependent and necessitates a dwelling on-site.

4. National/Regional/Local Planning Policy (see attached)

- 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 below 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 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
 - (i) 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 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 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 P15: Preserve and protect the open character of transitional lands particularly the approach roads to towns and villages and areas immediately outside of settlement boundaries in order to prevent linear sprawl near towns, villages and settlements and to maintain a clear demarcation and distinction between urban areas and the countryside and to protect the integrity of the agricultural uses in these areas.
- 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 proposal 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.
- EPA guidelines Code of Practice: Domestic Wastewater Treatment Systems (DWWTS) (Population equivalent ≤ 10)

5. Natural Heritage Designations

- The site is located approximately 1.7 kilometres southeast of Ballynafagh 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 site is located in an area that has a rural residential density of approximately 25 units per 0.96 square kilometres as per Geo-directory residential points and Google Maps. The proposal is considered compliant with objective HO 059 which seeks to ensure that the density of one-off housing does not exceed 30 units per square kilometre.

The application site meets the policy HO P14 definition of a gap site.

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

The plan seeks to carefully consider the position of dwellings. Structures should be in line with or behind the established building line. The siting is acceptable.

The design of the dwelling is 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 built, archaeological, or natural heritage features within or adjacent to the site.

The existing covered walker, dry stores and stables are located outside of the application site boundary and do not form part of this application.

Concerns relating to the construction of a large-scale yard and outbuildings, increased noise, traffic and lights, construction phase, waste creation and management are considered.

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

Developer contributions totalling £16281.20 in accordance with section 8.1 of the contributions schedule 2023-2029 are applicable.

The decision is subject to 23 conditions. These include an occupation condition specific to the applicant for a period of not less than 10 years.

7. Third Party Appeal. Grounds:

- The applicant's wife is not listed on the planning application form. The application should have been made in joint names as the applicant's wife is a joint owner of the lands as stated in land registration folio documentation (appended).
- The applicant lives locally and has a full-time plumbing business (supporting evidence appended) and has a demonstrated pattern of property development and sale, referring to two other properties within County Kildare where the applicant and or the applicant's wife are named on Land Registry documents. Further reference and evidence to property ownership within Counties Wicklow and Wexford. The applicant has no demonstrable economic need to construct a house to live at this location. They do not meet the economic need tests or social needs tests in the development plan as is not local to the area or involved in agriculture on a daily basis as their main employment.
- The applicant's plans are not utilising an infill site location but a backland off road location.
- Large scale yard buildings have been constructed near the boundary with no planning permission there is no indication of scale of the proposed equine business and requirements to support same, staff accommodation, office buildings etc. The addition of a dwelling will complete an equine facility and accommodation on a greenfield site. This is contrary to the National Planning

Framework (2018), national and regional policy objectives and sets a precedent for one off development dwellings.

- The development will devalue the lands of the appellant used for horses which will be impacted by the proximity of a new residential building. The applicant's proposal is situated to maximise the use and value of the landholding with minimal impact to the layout of the applicant's grounds.

9. Applicant Response:

- The applicant and his wife are both from farming families and the applicant has grown up on a farm. The family farm is in County Wexford raising sheep which is now in the ownership of another family member. The applicant has always wished to return to agriculture and acquired the site and neighbouring lands in 2017. Evidence is provided of equestrian pursuits and racing. The applicant also seeks to breed sheep. This requires close monitoring and management particularly during lambing season. These activities are not undertaken on a casual or part time basis, provide a livelihood for the applicant, and supports the local economy.
- The applicant statement refers to the planning report highlighting that it concluded that the proposal was compliant with relevant policy considerations. They also refer to the planning conditions and state they fully intend to comply with all associated requirements.
- They note that the location of the appellants residences, the closest of which is approximately 230 metres to the north of the northern site boundary. The other appellant's address is located further beyond to the north.
- **Land Ownership:** the appeal site and farmlands are jointly owned by the applicant and his wife. Article 22 (2) (g) of the Planning and Development Regulations 2001 (as amended) requires only that where the applicant is not the legal owner of the land or structure concerned that the written consent of the owner is obtained to make the application. The applicant is the registered legal owner of the land in question jointly with his wife. He has sufficient interest and control over the lands to make a valid planning application. The previous application was also submitted on the same basis. Contrary to the appellants opinion, there is no planning requirement for the application to be

jointly made. Nor is there any requirement for the applicant's spouse to provide her consent for making the application.

- **Planning history:** commentary is provided in relation to a range of issues discussed in the planning report of the previously refused planning application, which was located within the southernmost field, south of the current application and to the southeast of the southernmost dwelling within the row of existing dwellings to the west of lands in the ownership of the applicant. In summary, the current application addresses issues raised within the history case.
- **Siting /location of proposed house:** it is noted that this has not been addressed in detail by the planning report. The siting has regard to the detailed commentary provided in the previous refused proposal. The location of the dwelling would ensure that development occurs closer to the settlement boundary of Prosperous, set back from the roadside edge to mitigate further ribbon development by filling in a roadside gap site. It would also mitigate urban sprawl further into the countryside in a manner that is consistent with the development plan policies HOP 13 and HOP 14. The southern field would be kept free from development and continued for agricultural purposes and ensure the preservation of a rural gap separating 2 existing ribbons of residential development along the Killybegs road frontage in accordance with policy HOP 15. The proposal would not exacerbate or extend the existing ribbon pattern of development. Immediately to the north of the infill site are two fields of approximately 89 metres. If the proposed dwelling was placed along the road frontage and between these two existing ribbons of development, it would have resulted in the joining up of those two existing ribbons resulting in a single continuous ribbon of eight dwellings with combined roadside frontage of approximately 314 metres. This would result in a long ribbon of roadside development along a key approach road into Prosperous, contrary to the plan and HOP 15 in particular.
- **Unauthorised development:** the existing agricultural buildings erected near the common boundary with Prosperous stud were erected in good faith on the understanding that it is exempted development not requiring planning permission. The planning status of these structures fall wholly outside the

scope of the subject planning application and is immaterial to the appeal. Sufficient remedy exists for the planning authority and applicant to regularise the planning status of these buildings if required.

- **Scale of development and further ancillary development:** the appellant has not been privy to all supporting information that has been submitted, including the business plan that clearly sets out the scale and extent of operations for the equine business. It is envisaged that the business would comprise a modestly scaled operation comprising the following:
 1. Breeding - the applicant aims to keep 3 to 4 brood mares on the site in order to produce two to three live foals per year of which the majority will be sold on.
 2. point to point horses - the core of the business would be to speculate with high quality store (a young horse bred for national hunt racing but as yet unbroken) point to point horses that will be purchased from the spring or summer sales.
 3. livery - the applicant has a pipeline of potential customers that require stabling and/or breaking and pre-training of thoroughbred horses. It is envisaged boarding, for up to four horses, and breaking plus pre-training services could be offered to customers.

It is not envisaged that any significant amount of outside labour would be required to assist with the running of the farm. As such no on-site accommodation for staff would be required or any other and ancillary facilities as claimed by the appellant. Adequate measures to control development are available to the Planning Authority in the current planning legislation to ensure that development does not occur in an uncontrolled or unauthorised manner. Furthermore, condition 1 requires that the development shall be carried out in accordance with the plans and particulars received by the Planning Authority. The applicant is aware that the grant of planning permission would only relate to the development as shown and described in the supporting details. Any other development would require a separate planning application unless it would constitute exempted development.

- **Impact on property value:** the appellant argues that the value of his lands to accommodate horses will be impacted by the proximity of the proposal. However, the appellant does not provide any further justification for the statement as to explain how the proximity of the dwelling would influence his lands and horses. Given that the Prosperous stud is already joined by two houses at the southwestern corner of the stud with only a common rear boundary separating these houses from the stud lands, the proposed dwelling will be set back from the common boundary and separated by an internal access road and therefore not impact on these lands. The lands almost directly opposite the proposed location of dwelling but within the Prosperous stud lands is compromised to a degree in terms of functionality due to the presence of a substantial pylon and overhead transmission lines. On the eastern side Prosperous stud is adjoined by a dwelling and agricultural field to the rear. It is considered that the appellant is concerned about the construction phase impacts such as noise and general disturbance might impact the well-being of his horses. The appellant's horses would be well used to the movement of agricultural machinery on the appellants lands. This is supported by the comments of well-known horse trainer Arthur Moore's observation response at the application stage. The adjoining dwelling to the east is located 44 metres of the location where the appellant's horses are kept. The construction period for the proposal would be short lived and any impact would be temporary in nature.
- **Need and history of speculative property development:** the plan is fully aligned with national and regional planning policies and guidance to facilitate those that can demonstrate a genuine housing need and a social or economic need to live in rural County Kildare. There is no policy requirement in the plan that would prevent or disqualify an applicant for a one-off rural house on the basis of previous property development and ownership unless the applicant has "being previously granted permission for a one-off rural dwelling in Kildare". Objective HO O43 of the plan refers. Supporting information is provided to confirm that the applicant nor his wife have ever been granted permission for a rural dwelling in Kildare. None of the properties that they have, or currently own have a bearing on their rural

housing need. At the time of making the application the applicant resided in rented accommodation in Prosperous, whilst the dwelling in Clane was constructed, and in order to be near the farm to facilitate multiple daily trips to care for the animals. Additional commentary is provided in relation to the issues raised by the appellant's regarding other properties in Kildare, Wicklow and Wexford. Condition 3 requiring occupation of the development by the applicant for a minimum period of 10 years will preclude property speculation as required by objective HO O45.

- Need Policy comments: the terminology in the policy provisions are important considerations. It is submitted that:
 - a. it is not a requirement of the plan that farming or agricultural activities must be the only form of employment of an applicant, otherwise the policy would explicitly state that farming activity on a daily basis as their “only employment” instead of “main employment”.
 - b. Limiting the applicant's income potential and employment activities to only farming or agricultural activities would be contrary to rural employment and agricultural diversification objectives and guidance contained under sub-section 3.2.3 of the Sustainable Rural Housing Guidelines For Planning Authorities (2005). The applicant and his wife are from farming backgrounds and have been part of rural communities for generations as evidenced by the supporting information.
 - c. “significant part of the applicant's livelihood” would also not suggest that the majority of the applicant's income must be generated from activities associated with farming. It simply requires a significant portion of the applicant's income to be generated from such activities. The subject farm has not been inherited or acquired as a running concern. The applicant has had to invest significantly and must continue to do so to fully establish the farm. The applicant's accountant confirm that the applicant is no longer employed with Tri-tech Engineering Limited, and the plumbing business has had no turnover in the annual accounts prepared since 2017. The applicant is concentrating on the farming enterprise. This is confirmed by accounts submitted to the Office of Revenue since 2017. From this information, it is evident the applicant's main employment is farming and financial accounts

information confirms activities are of a magnitude that would constitute a significant proportion of the applicant's livelihood.

- **Full time occupation:** the appellant has made unsubstantiated and speculative assertions about farming activity carried out by the applicant, the viability of the farm, and need for a rural dwelling at this location. The application was accompanied by significant evidence of the applicant's circumstances and farming activities, including the following:
 1. horse racing: details including results from 2020, 2021, and 2022, sales details of horses in 2022 and 2023 with photographic evidence horse passport and mare cover details. Photographic evidence is included showing the applicant at various events dating back to 1996. Intentions of the applicant are set out in a business plan that includes 3 or 4 brood mares at the farm. Photographic evidence is submitted showing horses on the farm dating from July 2017 when the farm was purchased.
 2. Sheep farming activities: Purchase of 64 lambs in September 2017, reared and sold in September 2018. Purchase of 6 texel sheep in March 2018 that were subject to breeding and sold in January 2020. Purchase of 54 Sheep yielding 84 lambs which were sold in July 2022. The applicant experienced a high number mortality rate of 10% due to not being present on site. To increase sheep rearing operations the applicant seeks the proposal to support the operations. Photographic evidence of sheep farming activity between 2018 and 2022 is provided. The applicant currently holds a flock of 25 texel sheep.
 3. Silage and machinery: over the past six years the applicant has made significant investments in farming machinery. This has enabled the applicant to grow and bail 260 hay bales this year on the land. This is supported by photographic evidence.
 4. Farming infrastructure, buildings and improvements: Since acquiring the land in 2017 the applicant has incurred significant expenses and invested in significant improvements to facilitate a viable farm. These include stables for horses, a covered horse walker and the dry sheds for storing hay, feed, and farming equipment. Accounting details and expenses to verify the level of financial investment since 2017 is included in support of the application.

5. Expenses summary from 2017 to 2021, taxation information, horse and sheep sale and purchase details, letter of support for living at site in interest of animal welfare from applicant's veterinarian are also included.

The applicant is fully committed to farming the land and the level of intensity and productivity over recent years would not be possible without significant effort and investment by the applicant. These activities cannot be diminished as "hobbyist" farming activities.

- The third parties have not made any observations under the previously refused planning application. It appears that the revised location of the dwelling in a position closer to the common boundary with their property has prompted them to object to the proposal.

10. PA Response:

- The planning authority response is dated 16th October 2023 and notes the content of the third-party appeals. It refers to the planning reports, and reports of the technical departments, 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:

The site is located approximately 1.7 kilometres to the southeast of the closest designated site, Ballynafagh Bog Special Area of Conservation (SAC). 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.
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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) Application form / Applicant details.
- (b) Principle of Development / Case of Need / history of speculative property development.
- (c) Gap Site.
- (d) Impacts on Amenity and property value.
- (e) Planning status of existing agricultural buildings.

(a) Application form / Applicant details.

2.2. The appellant stated that the application should have been made in joint names as the applicant's wife is a joint owner of the lands as stated in land registration folio documentation. In response, the applicant confirms that the appeal site and farmlands are jointly owned by the applicant and his wife. The Planning and Development Regulations 2001 (as amended) requires only that where the applicant is not the legal owner of the land or structure concerned that the written consent of the owner is obtained to make the application. The Council has not commented on this issue.

2.3. The legal basis for information to be included (and other requirements) within a planning application is set out in Article 22 of the Planning and Development Regulations 2001 (as amended). Paragraph 22(2)(g) states the following:

- (g) where the applicant is not the legal owner of the land or structure concerned –*
 - (i) the written consent of the owner to make the application*

In this case the applicant has indicated that they are the owner, and in control of, the subject lands to which the application relates. The applicant's wife appears to be in joint ownership. There is no evidence to suggest that there is any dispute in relation to ownership or control of the relevant lands from any other party, including the applicant's wife. Therefore, I consider the legal requirements to have been satisfied. There are no grounds to refuse the application on this basis.

(b) Principle of Development / Case of Need / history of speculative property development.

- 2.4. The appellant disputes the case of need for a dwelling by the applicant. The applicant's case is based on an economic need. The Council conclude that the applicant complies with the requirements for social need set out in Chapter 3 of the development plan.
- 2.5. 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 on the basis of employment/economic or social needs. In this case the applicant is seeking a dwelling on economic needs. Table 3.4 - Schedule of Local Need Criteria in the plan states:

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. Note; A farmer (for this purposes) 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 the date of the application for planning permission. The leasing of agricultural land to supplement lands within an applicant's ownership for farming, may be considered for the purposes of calculating the minimum land area of 15ha. The applicant shall submit details of said lease with the relevant planning application indicating that the lease is in place for a period of 10 years or more from the date of the application. 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.*

The applicant and the Council consider that criterion (ii) is satisfied in this case. Supporting information is set out within the rural housing planning application form, The following is noted:

- a) The applicant has not resided in the rural area of County Kildare for 16 years. They have never owned or previously been granted planning permission for a dwelling in County Kildare. Their current accommodation is rented. The dwelling will be occupied by the applicant.
- b) Evidence is appended to support the case of economic need. In summary this includes details on equine and sheep agricultural activities, involvement, breeding, and husbandry of horses. Participation and horse racing including racing achievements between 1st November 2020 and 11th December 2022 at various racing locations are included. Economic information includes accounts related to expenses and sales of both horses and sheep. Tax returns and a business plan are also included relating to the farming enterprise.
- c) Evidence from other parties supporting the applicant includes a letter of support from the applicants appointed veterinary surgeon, accountant confirming the financial position of both previous businesses and current farming enterprise, and Phillip Rothwell racing confirming the applicant's involvement in horse racing "from the 1990's."

2.6. The wording of subsection (ii) as set out above, provides allowance for a dwelling subject to evidence that the applicant is engaged in farming activity on a daily basis and is a significant part of their livelihood. I note that the applicant currently resides within rented accommodation at the nearby settlement of Prosperous. I interpret the economic information as a significant financial investment in various aspects related to animal husbandry. The documentary evidence also shows the applicants

involvement in horse racing in recent years, but also confirms historic involvement in 1996, 2000, and 2008 of racing events won by the applicant's horses. In addition, the erection of agricultural related buildings to the rear of the site and acquisition of the site and associated agricultural lands I consider to be a significant investment by the applicant and sufficient to demonstrate that the farming activities by the applicant go beyond a "hobby interest". I am satisfied the information provided supports the applicant's position that they are seeking to establish and further grow their farming enterprise. I am also satisfied that the quantum of animals and agricultural lands would necessitate daily attendance at the site to undertake related management and maintenance duties. Financial evidence provided demonstrates significant expenditure and revenue from the agricultural activities of the applicant and therefore constitutes "a significant part of their livelihood."

2.7. The third-party evidence also refers and highlights public advertisement of other business enterprises in which the applicant is engaged, and such activities are an indicator that the applicant is not involved in farming on a daily basis. The wording of the policy allows for a degree of flexibility in relation to daily farming activities. It does not require an applicant to be involved exclusively in farming. Similarly, third party evidence does not conclusively demonstrate that the applicant is significantly involved within the other business operations that are cited. The existence of online advertising and registration as a Company Director do not, in themselves, demonstrate that the applicant is substantially involved in any such business to the extent that farming activities are impacted. Taking account of other financial and other party evidence submitted, I consider that the requirement of daily farming activity is satisfied. Accordingly, I conclude that criterion (ii) of the policy need test has been met.

2.8. The appellant refers to other properties and applications for planning permission that the applicant has had involvement and benefits from these developments within Kildare and other Council areas. They consider this is contrary to policy and evidence that the applicants do not have a demonstrable housing need for a rural dwelling. The wording of the economic need policy does not require or preclude applicants with previous history of residential ownership, only that they do not own or have not been previously granted permission for a one-off rural dwelling in Kildare as discussed at objective HO O43. The applicant's previously owned properties are

located within settlements and/or other council areas. Accordingly, the proposal does not conflict with HO O43. I also note that the Council has included a planning condition which requires the development, if approved, to be retained within the ownership of the applicant for a minimum period of 10 years. This measure would preclude any speculative development. Accordingly, there are no grounds to withhold permission on this basis.

(b) Gap Site

- 2.9. The appellants consider that the application site does not comply with policy on gap sites, stating it is in a backland off-road location.
- 2.10. The applicant states that the set back from the roadside edge to mitigate further ribbon development by filling in a roadside gap site. It would also mitigate urban sprawl further into the countryside in a manner that is consistent with the development plan policies HO P13 and HO P14. If the proposed dwelling was placed along the road frontage and between these two existing ribbons of development, it would result in a long ribbon of roadside development along a key approach road into Prosperous. The Council concluded that the application site meets the policy definition of a gap 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 4 dwellings 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. Visually this dwelling reads with the existing agricultural access on the application site and additional dwellings to the southwest, when viewed on approach from the public road from a northwesterly and southwesterly direction. Accordingly, I consider that the site is located within a gap of an existing row of dwellings 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 an economic 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 agricultural 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. The previously refused application is located further to the southeast and visual assessment of the pattern of existing development at this location confirms that no alternative site exists. 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.

The dwelling is to be located within an area set back approximately 140 metres from the site frontage. It is located close to the existing agricultural buildings erected by the applicant to the rear. The policy requires the site to be located "within a line of existing and permitted dwellings", and "fully occupy the gap between existing and permitted dwellings". The application site meets this criterion, as it does not specify that any dwelling must be in line with adjacent buildings.

I consider that it is not possible to locate a dwelling within the front part of the site adjacent to the frontage and adjacent dwellings due to the overhead power lines that traverse the front half of the application site.

The rural design guide is also a material consideration. This deals with a number of layout and design considerations. Section 2.2 refers to guiding principles that should be incorporated into the site selection process. This includes the principle of clustering, which involves the location of a new home close to an existing dwelling(s), farm buildings or other structures. I also note at Section 2, page 6, it states that "rather than addressing the road frontage directly, applicants should consider locating the dwelling further back within the depth of the site and perpendicular to, or at an angle to, the road as this can often create a more interesting approach to the dwelling, improve orientation for solar gain and improve

privacy and residential amenity.” I also note that section 3.4 relates to set back distances from public roads. This requires a range of minimum setback distances dependent on the road type to which any site would access. A setback of 18.5m on urban/country roads would be applicable in this case. It goes on to state that “Designers and applicants should also follow a general rule of thumb whereby the larger a dwelling the further it should be set back from the road. Appropriate screening should also be incorporated.” Taking account of these design guidance principles, I consider that the design and layout response is appropriate and therefore acceptable.

The location of the dwelling would retain the visual gap present at the site frontage, as public views of the dwelling would be obscured by existing buildings adjacent to the road frontage and field boundary vegetation.

I do not, however, agree with the applicant that there is a ribbon of development to the north of the site due to the significant gap between the dwelling immediately adjacent and further dwelling to the north.

In relation to this criterion the site is restricted due to the overhead power lines on the front section of the site. In addition, due to the layout, it would not be possible to accommodate more than one dwelling within the area available. The agricultural access to lands to the rear is retained to the northern side of the site. As discussed above, I consider that the site is located within a line of existing dwellings and therefore conclude at 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) Amenity and devaluation.

- 2.14. The appellant considers that the proposal will devalue the lands of the appellant used for horses which will be impacted by the proximity of a new residential building, and states “the applicant’s proposal is situated to maximise the use and value of the landholding with minimal impact to the layout of the applicant’s grounds.”
- 2.15. At the closest point, the gable of the proposed dwelling is approximately 36.9m from the northern site boundary. This boundary comprises mature typical field hedging interspersed by a number of mature trees. The impact on amenity from noise and

other disturbance is not likely to be significant taking account of the separation distances to the appellants dwelling and lands, and evidence to the contrary has not been provided. Noise and activity associated with the construction period would be for a limited period. Ongoing noise or disturbance would not be significant given the residential nature of the proposal and limited associated servicing and vehicle trips. The existing vegetation and supplementary vegetation 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 in the event that permission is granted to ensure appropriate details are provided. I am also satisfied that the proposed dwelling would not result in any adverse amenity impacts on the existing dwelling to the northwest of the site, due to a combination of the single storey design of the dwelling, window locations, and separation distances. The proposal would also not adversely impact on the existing neighbouring dwelling to the southwest, again due to the single storey design and extensive separation distances.

- 2.16. The appellant also considers that the proposal will result in an undesired precedent in Kildare and nationally if the application is approved. The nature of the application and associated supporting economic need is specific to this application. As stated above, I have reviewed the supporting economic information, and I am satisfied that the case of need satisfies the relevant policy considerations. Any case of need for a rural dwelling will be specific to the circumstances of the proposal, and I do not consider that this proposal, if approved, would result in an undesirable precedent.

(d) Planning status of existing agricultural buildings.

- 2.21 The existing agricultural buildings located to the north of the application site have been erected by the applicant on the understanding that they constitute exempted development. The Council have not commented on the planning status of these buildings, other than to state that they are located outside of the application site. There is no evidence from any party that confirms that they are unlawful or otherwise. Notwithstanding this, it is correct to state that they are located outside of the application site, and the determination of the current proposal is not predicated on the lawful status of these buildings. I therefore consider that the status of these buildings is a matter for the Council and the applicant and outside the remit of this appeal and consideration by the Bord.

(e) 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. On the basis of 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 and rural design guide.

3.0 Recommendation

3.1. I recommend that permission for the development be granted.

4.0 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 03/07/2023, 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. a) The external finish and design detail of the dwelling shall be as shown on the plans date stamped received by the planning authority on 3rd July 2023.
b) The roof of the proposed dwelling shall be blue/black slates or tiles.

Reason: In the interest of visual amenity.

4. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details 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) the establishment of a hedgerow along all side and rear boundaries of the site, and

(b) planting of trees along the western, southern, eastern and northern boundaries of the site.

All trees and shrubs shall be from table 15.1 (a) native trees and shrubs from the Kildare County Development Plan 2023-2029. The planting scheme shall be carried out in full no later than the first planting season after the first occupation of the dwelling.

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 order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

5. 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.

6. (a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum a radius of two metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.
(b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work is shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.

(c) 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: To protect trees and planting during the construction period in the interest of visual amenity.

7. (a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) Prior to the 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 in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

8. 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.

9. 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.

10. 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.

11. (a) Prior to the commencement of development, the site access and visibility sightline splays at the entrance shall be provided in accordance with the site layout drawing, submitted to the planning authority on 3rd July 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.

Reason: in the interests of Traffic Safety.

12. Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Surface water from the site shall not be permitted to drain onto the adjoining public road.

Reason: In the interest of traffic safety.

13. 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.

14. 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.

15. 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

Date: 1st March 2024