



An
Bord
Pleanála

Inspector's Report ABP-319181-24

Development	The construction of a house with garage, wastewater treatment system and all associated site works.
Location	Kilmurry, Clane, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	23802
Applicant	Daryl Skelly
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant	Michael O Rourke
Observer(s)	None.
Date of Site Inspection	24/09/2024
Inspector	Matthew O'Connor

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1.0 Site Location and Description

- 1.1. The appeal site (stated area 0.32ha) is located in the townland of Kilmurry some 4km to the northwest of Clane, some 5km to the northeast of Prosperous and some 3.3km to the southeast of rural village of Staplestown Co. Kildare.
- 1.2. The appeal site is generally rectangular in shape and comprises undeveloped lands in agricultural use and accessible via an existing farm gate on the eastern side of the L-1023 (Local Road). The topography of the site and surrounding area is generally flat. The roadside boundary comprises a dense hedgerow with narrow open drain along the verge. The northern (side) boundary contains a linear stand of mature trees and the southern (side) boundary contains a post and rail fence with hedging inter-mixed with planted trees. The eastern boundary is undefined as it is within the grassed field.
- 1.3. The surrounding locality is characterised by a considerable number one-off rural dwellings in individual and linear settings of varying styles and arrangements, agricultural lands and associated agricultural holdings which address the public road. There are no Protected Structures or National Monuments within or immediately adjoining the appeal site. The site is not located within a Flood Zone.

2.0 Proposed Development

- 2.1. The development subject to this appeal comprises:
 - construction of a detached part two-storey, part single storey dwelling and a single-storey garage.
 - alterations to existing agricultural entrance to create a shared domestic entrance with internal agricultural access to the rear.
 - Installation of proprietary wastewater treatment system.
 - associated site works and landscaping.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1 The Planning Authority granted permission subject to 23 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Report(s)

- The first Planner's Report had regard to the submitted documentation, locational context of the site, site planning history, policy framework of the Development Plan and inter departmental/referral reports.
- Further Information was sought in relation to 2 no. items:
 - The design and siting of the dwelling and garage should be reconsidered
 - the submission of a letter from a Commissioner of Oaths/Solicitor confirming that the applicant has not owned or previously been permitted a dwelling previously.
- The second Planner's Report dated provides an analysis of the applicant's Further Information response which was considered to be acceptable and therefore forms the basis of the decision to grant permission.

3.2.2. Other Technical Reports

- Environmental Health Officer – No response received.
- Roads Department – No objection, subject to conditions.
- Area Engineer – No objection, subject to conditions
- Water Services – No objection, subject to conditions.
- Environment - No objection, subject to conditions.

3.3. Prescribed Bodies

- Uisce Eireann - No objection, subject to conditions.

3.4. Third Party Observations

3.4.1 One third party observation was received by the Planning Authority. The following issues raised as summarised as follows:

- Site Access and Traffic Safety concerns from proposed entrance
- The development will present a major environmental hazard by way of pollution to nearby wells. Concerns also raised with nearby lakes and watercourses.
- The Site Notice is not correct/appropriate. Pages from the submitted Application Form are missing.

- The density of population for the area was deemed too high in 1980 and the lands were frozen from development.
- The design, scale and layout of the house and garage is out of character with the surrounding area.
- Residential amenity concerns regarding overlooking and impact on privacy.
- Development will have a negative impact on area due to its carbon footprint.

4.0 Planning History

4.1. Subject Site

211074 – Permission **REFUSED** for the construction of a detached two/one storey dwelling (233.8 sqm) and single storey garage (33.4 sqm), vehicular entrance from the public road to serve the proposed dwelling, installation of a new proprietary waste water treatment system together with all associated landscaping, site works and services.

The refusal reasons in respect of the permission element are stated as follows:

1. Policy RH9(IV) of the Kildare County Development Plan 2017-2023 seeks to ensure that, notwithstanding compliance with the local need criteria, Applicants comply with all other siting and design considerations, including the capacity of the area to absorb further development. In conjunction with the level of existing development in the vicinity it is considered that the proposed development would exacerbate an excessive density of development in this rural area, would contribute to the increasing suburbanisation of the area, would materially contravene Policy RH9(IV) of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

2. Policy RH10 of the Kildare County Development Plan 2017-2023 seeks to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements. It is considered the proposed development, by reason of its location in proximity to the rural settlement of Staplestown and the town of Clane, would further exacerbate the level of development in proximity to these settlements where lands are zoned and designated for residential purposes. To further promote development at the location proposed, having regard to the level of existing development in the area, the precedent that the proposed development would set for further development in this area, would contribute to the further unsustainable

development of this rural area. The proposed development would materially Policy RH10 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

5.1.1. The Kildare County Development Plan 2023-2029 is the relevant Development Plan for the subject site. Chapter 3 relates to Housing and Section 3.13: Sustainable Rural Housing is of relevance to the subject development.

5.1.2. Having regard to Map 3.1 (Rural Housing Policy Zones) of the Development Plan, the appeal site is located within 'Zone 1' (Areas under Strong Urban Influence). For an applicant to be considered for a one-off dwelling in the rural area of Kildare, compliance with the policy provisions outlined in Section 3.13.3 (Compliance with the Rural Housing Requirements) is required whereby a genuine housing need and a social and/or economic need to live in rural County Kildare is demonstrated. To this end, urban generated rural housing will not be considered.

5.1.3. For the purposes of demonstrating compliance, the Development Plan provides a definition of 'Economic' and 'Social' need in the context of rural housing policy which is set out below:

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 purpose) is defined as a landowner with a holding of >15ha which must be in the ownership of the applicant's immediate family for a minimum of seven years preceding 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.*

Social:

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

Table 3.4: Schedule of Local Need Criteria in accordance with the NPF (NPO 19)

Applicant Category	Rural Housing Need Assessment Criteria	
Category A - Economic	Zone 1: Areas under Strong Urban Influence	Zone 2: Stronger Rural Areas
i. A farmer of the land or the son/daughter/niece/nephew of the farmer who it is intended will take over the operation of the family farm or iii. An owner and operator of a farming/horticultural/forestry / bloodstock/animal husbandry business on an area less than 15ha.	A farmer (for this purpose) is defined as a landowner with a holding of >15ha which must be in the ownership of the applicant's immediate family for a minimum of seven years preceding the date of the application for planning permission. The owner/operator [as referred to in Category A (ii)] must be engaged in that farming activity on a daily basis, as their main employment. Same must be demonstrated through the submission of documentary evidence to include confirmation that the farming/agricultural activity forms a significant part of the applicant's livelihood, including but not limited to intensive farming.	
Category B - Social	Zone 1: Areas under Strong Urban Influence	Zone 2: Stronger Rural Areas
i. A person who has resided in a rural area for a substantial period of their lives within an appropriate distance of the site where they intend to build on the family landholding	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	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

	family home may be considered.	ownership, a site within 5km of the applicant's family home may be considered.
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Note: 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 other requirements of the plan and demonstrate that the development would not prejudice the environment and the 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.

5.1.4. The following Development Plan chapters and associated policies/objectives are considered to be most relevant in respect of the subject development:

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.

HO O43: Require applicants to demonstrate that they do not own or have not been previously granted permission for a one-off rural dwelling in Kildare.

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: Recognise and promote the agricultural and landscape value of the rural area and prohibit the development of urban generated housing in the rural area.

Section 3.13.4 of the Development Plan relates to the Siting and Design. The following policies are considered to be relevant:

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.*
- (iii) All other technical considerations are addressed.*

Proposals for development which would extend the ribbon will not be considered under this policy.

In addition, the following objectives of the Development Plan in relation to Siting and Design are of relevance:

HO O50: Require that new dwellings incorporate principles of sustainability and green principles in terms of design, services and amenities with careful consideration in the choice of materials, roof types (i.e. green roofs), taking advantage of solar gain/passive housing and the provision of lowcarbon and renewable energy technologies as appropriate to the scale of the development and to support microgeneration in all residential, commercial, agricultural and community development planning. Other sustainable principles could include the use of Sustainable Urban Drainage Systems

(such as attenuation ponds and grass lined swales), the use of gravel or grasscrete rather than permanent paving/tarmac for driveways, landscaping and planting for biodiversity/pollinators and adequate waste segregation and storage space, as set out in Section 15.4 of Chapter 15 (Development Management standards) and the Rural House Design Guide contained in Appendix 4.

HO O51: Require all applications to demonstrate the ability to provide safe vehicular access to the site without the necessity to remove extensive stretches of native hedgerow and trees All applications will be considered on a case-by-case basis, having regard to, the quality of the hedgerow, age and historical context, if an old town boundary hedgerow, species composition, site context and proposed mitigation measures.

HO O52: Recognise the biodiversity and ecosystem services value of established hedgerows within rural and urban settings and 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 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 instated.

Section 3.14 of the Development Plan is relevant as it relates to Rural Residential Density. The following policy and objective are of relevance:

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 effects¹⁰ 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.

Section 3.15 relates to Environmental and Technical Considerations. Domestic/On site Wastewater Treatment Systems is covered in Section 3.15.1 of the Development Plan is relevant to the consideration of the appeal:

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.

Section 3.16 of the Development Plan relates to Accesses and Entrances. The following policies are of note:

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. On such cases, proposals for replacement hedgerows, including details of composition and planting must be submitted with any application which requires such removal.

HO P32: Require that 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.

Section 3.15: Environmental and Technical Considerations

Section 3.15.1: Domestic/On site Wastewater Treatment Systems

Section 3.16: Access and Entrances

Section 3.18: Technical Considerations for Rural Housing Proposals in County Kildare

Chapter 15: Development Management Standards.

The following appendices of the Kildare County Development Plan 2023-2029 are also considered to be relevant:

- Appendix 4 – Rural House Design Guide
- Appendix 10 – Rural Housing Policy Report
- Appendix 11 – Single Rural Dwelling Density Toolkit

5.2. National Planning Policy

5.2.1. Project Ireland 2040 - National Planning Framework (NPF)

National Policy Objective 19:

Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- *In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;*
- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.*

5.2.2. EPA Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021.

5.3. Natural Heritage Designations

5.3.1. The appeal site is not located within any designated Natura 2000 sites. The nearest designated sites are the Ballynafagh Bog Special Area of Conservation (Site Code: 000391) which is located approximately 3.61km to the southwest of the site and the Ballynafagh Lake Special Area of Conservation (Site Code: 001387) which is located

approximately 3.73km to the southwest of the site. Both sites are also indicated as proposed Natural Heritage Areas. The appeal site is located approximately 4.15km to the east of the Hodgestown Bog NHA (Code: 001393) and approximately 1.61km to the south of the Donadea Wood pNHA (Site Code: 001391).

5.4. EIA Screening

5.4.1. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Planning & Development Regulations 2001(as amended), I have concluded at preliminary examination that 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. See Form 1 and Form 2 attached to this report.

6.0 The Appeal

6.1. Grounds of Appeal

The Third Party appeal has been received in relation to the Planning Authority's decision to grant permission. The grounds of appeal reiterate many of the matters raised in the Appellant's original planning submission to the Planning Authority. The grounds of appeal can be summarised as follows:

- The dwelling should be limited to and occupied by a single dwelling. There should be no commercial, workshop or other non-domestic use on the site.
- There is a history of unauthorised development on the adjacent site which could be duplicated on the appeal site.
- The redevelopment of the site as a commercial operation in addition to what is currently proposed would have a negative visual impact and would set an undesirable precedent.
- The amended entrance to be shared by two households is insufficient and will impact on the wall/property of appellant's residence. Trailers accessing the site will have difficulty entering and exiting the shared entrance. The entrance layout is not correct and should be recessed.
- The initial design was for a smaller dwelling which has been revised to a larger house.

- The height and massing of more commercial units would be out of scale and character with the local area which is low level one and two storey dwellings. The proposed development must be appropriate in scale and density with the local built environment.
- The previously proposed dwelling was recessed but current proposal is out to the verge. The footprint of the building should be set back to minimise impact on the adjoining dwelling.
- The proposed dwelling will result in residential amenity impacts such as overbearing, overlooking and loss of privacy.
- The appeal site holds water and is at risk of flooding. An oral hearing is requested regarding issues of flooding and drainage.
- Run-off from the dwelling will need to be engineered to drains as the site does not have a natural fall. The development should not interfere with existing land or roadside drainage.
- Irrigation problems raised in previous application have not been addressed in current application.
- Engagement from EPA is requested as the development will not be managed appropriately in terms of wells and water sources.
- The commercial activity on adjoining site may contaminate local water sources and impact on ecology and biodiversity. Water from the site eventually connects to the River Liffey.
- Concern on impacts of wells

6.2. Applicant Response

6.2.1. A response has been received on behalf of the applicant which addresses the contents of the Third Party appeal. The items raised are summarised as follows:

- The application is for a single dwelling and there is no intention to carry out commercial development on the site.
- There is a longstanding disagreement between the applicant's father and appellant which is unrelated to the subject application.

- To address the appellants concerns regarding surface water, a BRE Digest 365 test has been carried out. No objections were raised by Water Services and Environment Section of Planning Authority to the proposal.
- The proposed access does not adjoin the appellant's property and will not interfere with the appellant's entrance. The existing field entrance will be modified to access proposed development. No proposed changes to the existing agri-yard entrance.
- Appellant incorrectly refers to the entrance serving two households.
- Roads Section of Planning Authority raised no objection to proposal.
- Proposed dwelling is 24 metres from parent's property and 58 metres from appellant's dwelling. Proposed dwelling will not have any visual impact.
- There are no first floor windows proposed on north facing elevation of dwelling which could result in overlooking.
- The nearest window on appellant's property is 58 metres to north of proposed dwelling and so there is no basis for suggesting a loss of privacy.
- The proposed dwelling was revised on foot of a Further Information request and was deemed acceptable by the Planning Authority from a design and visual perspective.
- Appellant has raised no specific concerns raised regarding flooding. The applicant has prepared a Stage 1/Stage 2 Flood Assessment which screens out any potential flood risk at the subject property.

6.3. Planning Authority Response

6.3.1. A response has been received from the Planning Authority which confirms its decision.

6.4. Observations

6.4.1. None.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, having conducted a site inspection and having regard to the relevant local/national policies, objectives and guidance, I am satisfied that the main issues to be considered are those raised by the Third Party in their grounds of appeal. I am satisfied that no other substantive issues arise. This appeal can be addressed under the following headings:

- Principle of Development (Compliance with Rural Housing Policy)
- Siting and Design
- Impact on Residential Amenity
- Site Access
- Flooding and Site Services.
- Enforcement Matters.

7.1. Principle of Development (Compliance with Rural Housing Policy)

7.1.1. I note that the Third Party has not raised the applicant's rural housing need as an issue in their respective grounds of appeal. Nevertheless, a key consideration for the assessment of any planning application for a single one-off house in a rural area is the compliance with rural housing policy. The applicant must therefore demonstrate their compliance with the parameters outlined in Section 3.13.3 (Compliance with the Rural Housing Requirements) of the Development Plan to be considered for a one-off rural dwelling. To this end, Policy HO P11 of the Development Plan seeks to facilitate, subject to 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 of the Development Plan), the accompanying Schedule of Category of Applicant and Local Need Criteria set out in Table 3.4 of the Development Plan and the relevant objectives (HO O43 – HO O49) of the Development Plan.

7.1.2. The appeal site is located within 'Zone 1' (Areas under Strong Urban Influence) as indicated in Map 3.1 of the Development Plan. To determine compliance with the Rural Housing Policy, an applicant must either have a demonstrable 'economic' or 'social' need to live in the rural area of Kildare. An 'economic' need is defined as a person (or

persons) who is (are) actively engaged in farming/agricultural activity on the landholding on which the proposed dwelling is to be built; or, a 'social' need, which is defined as a person who has resided in a rural area for a substantial period of their lives i.e. 16 years within 5km (Zone 1) of the site where they intend to build.

7.1.3. The relevant criteria for considering an 'economic' or 'social' need is set out in Table 3.4: 'Schedule of Local Need Criteria' of the Development Plan (see section 5.1.3 of this report), and relates to NPO 19 of the National Planning Framework. On the submitted Rural Housing Planning Application Form, the applicant has indicated that they comply with Category A(i) – an economic need, and, Category B – a social need. I note that the applicant's home is located to the immediate north of the appeal site and is demonstrated as being in the ownership of the applicant's parent(s) who have provided a Letter of Consent to the applicant. In support of the planning application, the applicant submitted evidential documentation to demonstrate both their social and economic need. I have reviewed this documentation which includes, but is not limited to, personal information of the applicant's birth, education, sports membership, financial/banking statements, insurance and motor particulars, financial records of agri-business, involvement in agri-contractor business, family landholding records and livestock documentation.

7.1.4. I note that a planning application for a dwelling on this location (Reg. Ref. 21/1074) was refused permission however, the Planning Authority in their respective assessment, considered that the applicant demonstrated a local need in accordance with the rural housing policy. The Planning Authority's initial assessment of the current application sought Further Information and requested that the applicant submit a letter confirming that they do not own or have been previously permitted a dwelling. The applicant provided a letter indicating that they do not own a dwelling which has been stamped/witnessed by a Solicitor/Commissioner of Oaths. The response to the Request for Further Information was deemed acceptable by the Planning Authority.

7.1.5. From an examination of the information and evidential documentation submitted on the appeal file, I am of the view that the applicant has demonstrated that they are local to the subject area and have a 'social' need by way of residing in Kilmurry for a considerable portion of their life and are actively engaged with the local community. In addition, I am satisfied that the applicant has demonstrated an 'Economic' need to reside in Kilmurry by way of their connections to farming/agriculture via the family's

agricultural business (which the applicant is a co-director) but also that the family have farming connections on the lands in the Kilmurry area for a considerable period of time which have been detailed in landholding and rent records along with various livestock documentation associated with the family. Furthermore, the lands to which the application relates are in the control of the applicant's family farm who reside adjacent to the subject site and the applicant has detailed by way of a witnessed letter that they are not in the ownership of a dwelling and has never been previously granted planning permission for a dwelling in County Kildare.

7.1.6. Therefore, I am satisfied that the applicant has sufficiently demonstrated a bona fide need for a dwelling house on the subject lands which is in compliance with the Rural Housing Need Assessment criteria of Category A(i) – an economic need (through the family's farming/agricultural connections), and, Category B(i) – a social need (through the applicant having spent a substantial period of their life in the area). I do not consider that the proposed development would exacerbate the extent of existing development in the area so as to contravene the rural housing policies or applicable objectives of the Development Plan. I consider that the proposed development would, therefore, be acceptable.

7.2. Siting and Design

7.2.1. The appellant raises concern with the siting and design of the proposed dwelling and has indicated that the development must have regard to the scale and density of the local built environment. It is the appellant's consideration that the proposed development must be appropriate in scale and density with the local built environment. The appellant claims that previously the proposed house was recessed but under the current application it is out to the verge on the site. The appellant indicates that in order to minimise impacts on the adjoining dwelling (not specified) the footprint of the building should be set back.

7.2.2. I note that the Planning Authority in their initial assessment had concerns with the siting and positioning of the proposed dwelling (a two storey, 4-bed house with a floor area of 254sq.m). These concerns related mainly to the design of the northern elevation and the location of the proposed detached garage and its siting. The applicant was invited, by way of a request for Further Information, to revise design of the proposal to a similar design approach of the previous application on the site. The

revisions to the dwelling submitted by the applicant in response to Further Information was deemed acceptable to the Planning Authority.

- 7.2.3. In considering the subject development, I note Policy HO P12 (Chapter 3) of the Development Plan which seeks to ensure that the siting and design of proposed dwellings integrates appropriately with its physical surroundings and the natural/cultural heritage of the area whilst respecting the character of the receiving environment. Additionally, proposals for rural dwellings must comply with Appendix 4: Rural House Design Guide and Chapter 15 Development Management Standards of the Development Plan. The proposed dwelling, as approved, is contemporary in design and indicated as having four bedrooms with a stated floor area of 266sq.m. The dwelling is part two-storey, part single-storey and roughly 'L' shaped with a pitched roof height of approximately 7.8 metres. The primary front (road facing) elevation measures 19.5 metres in length and the dwelling has an overall depth of approximately 28 metres which includes the attached car port and garage element. I am of the view that the mass of the proposed dwelling has been appropriately broken up with the narrow form of the two storey element, the flat roof serving the single storey portion and the connection of the carport/garage area to the rear. The dwelling is shown to be finished with a painted render finish on the principle elevations of the two storey part with timber cladding to the rear element. The roof detail is indicated as natural slate with a sedum green roof to the single storey area.
- 7.2.4. The proposed dwelling is orientated to be west facing so as to address the public road with the principle two-storey elevation however, the main entrance to the dwelling will be on the north (side) elevation. I note that the proposed dwelling is to occupy a generally central location on the application site with a general set-back of approximately 13.3 metres from the roadside hedgerow. The setback of the dwelling is behind that of the appellant's dwelling (which is located approximately 55-60 metres to the north); slightly forward of the neighbouring property to the immediate north (applicant's parent's dwelling) which has a generous setback from the road; and, is generally in line with the neighbouring property to the south.
- 7.2.5. Having reviewed the submitted particulars, I am satisfied that the contemporary design approach of proposed dwelling is broadly in accordance with the policy objectives and design principles included within Policy HO P12 and Appendix 4: Rural House Design Guide of the Development Plan in terms of siting, design, layout and materials. The

proposed dwelling would therefore be acceptable having regard to the surrounding rural area and the prevailing built character of dwellings in the locality.

7.2.6. In terms of residential density, I have calculated approximately 24 no. dwellings within a c. 1km radius of the subject site which is in accordance with the 'Rural Residential Density' for this area type as set out in Section 3.14 of the Development Plan and with Objective HO O59 which states that the density of one-off housing will be carefully managed to ensure that it does not exceed 30 units per square kilometre. In addition, I am of the view that the consideration of the dwelling constitutes a gap site, as per policy HO P14 of the Development Plan and would not result in the further erosion of the rural character in this locality due to the existing prevalence of one-off housing in the immediate vicinity which is long established. Overall, I am satisfied that the proposed house is acceptable.

7.3. Impact on Residential Amenity

7.3.1. The appellant claims that the proposed dwelling will result in overlooking and overbearing on their property. According to the appellant, there are a number of windows facing the appellant's house which will result in a loss of privacy.

7.3.2. As noted in the previous section, the design and siting of the proposed dwelling was revised on foot of a Request for Further Information. In this regard, I refer the Board to the absence of windows on the north-facing (side) elevation at first floor on the proposed dwelling which eliminates any potential for direct overlooking of the appellant's property some 55 - 60 metres to the north. Therefore, having regard to the considered design of the proposed dwelling and the associated distance between the proposed dwelling and the appellant's property, I am satisfied that the proposed development will not result in any direct overlooking of the appellant's property.

7.3.3. While concerns have also been raised by the appellant in relation to a loss of privacy as a result of the proposed development, I do not consider that the development of a single dwelling on its own site some 55 - 60 metres to the south and separated by the front curtilage of another residence along with the presence of a mature stand of trees will give rise to any loss in privacy which may be currently enjoyed by the appellant.

7.3.4. Additionally, it is my view that the proposed development will not result in overbearing impact. Having regard to the siting and distance of the proposed dwelling, I am satisfied that the proposed dwelling will be viewed in the context of its own site and

that the location of the appellant's dwelling some 55 – 60 metres to the north is more than sufficient so as to not have an overbearing or domineering in appearance when viewed from the setting of the appellant's property.

7.3.5. Overall, with regard to potential impacts of the proposed development on the residential amenity of the appellant's dwelling, I am satisfied, having reviewed the available information and having conducted a site inspection, that the proposed dwelling will not give rise to any negative impacts on the residential amenity of appellant's property by reason of overlooking, overbearing or loss of privacy by reason of its siting, design and layout in addition to the separation distances between the proposal and the appellant's property.

7.4. Site Access

7.4.1. The appellant claims that the proposed entrance is to serve two households and would be insufficient and that the width of the altered entrance will impact on the entrance to the wall/property of the appellant's property. It is further claimed by the appellant that 40ft trailers which already access the appeal site will have difficulty entering/exiting the shared entrance and that large plant machinery/large vehicles will require larger turning angles in order to negotiate the access.

7.4.2. I note that the proposed development will be accessed from the L-1023, a local road and the applicant has sought to alter the existing agricultural entrance to create a shared entrance with a domestic access for the proposed dwelling and recessed agricultural gate to the field. The application was referred to the Roads, Transportation and Public Safety Department and the Maynooth Municipal District Engineer of Kildare County Council who respectively raised 'no objection' to the proposed development - subject to conditions.

7.4.3. In considering the matters raised by the appellant, I note that the entrance will not serve two houses but only the site of the proposed dwelling and the agricultural lands to the rear of the application site. The amendments to the existing entrance are some 35 metres to the south of the appellant's property and contained on the one landholding, therefore, there would no impacts arising from the development on the appellant's entrance or wall. From my review of the file, the entrance to which the appellant refers serves the neighbouring property to the north of the appeal site which does not form part of the subject proposal in any way and is not relevant to this appeal.

7.4.4. Following an inspection of the lands and having reviewed the details of the proposed entrance which can achieve compliance with required sightlines, I consider that the proposed entrance arrangement is appropriate and accords with policies HO P30 and HO P32 of the Development Plan respectively. I have formed this view based on the lightly trafficked nature of the local road and the likelihood of reduced traffic speeds due to the overall condition, width and alignment of the carriageway along with the adequate provision of sightlines. I am satisfied that the proposed development will not endanger public safety by reason of traffic hazard.

7.5. Flooding & Site Services

7.5.1. The appellant claims that the appeal site is at risk of flooding and has the potential for holding water. It is indicated in the appeal that the proposed dwelling should not result in the interference of existing land or roadside drainage. The appellant is also dissatisfied with the proposed site water drainage and waste water treatment. The appellant states that the run-off from the dwelling will need to be engineered to drains due to the levels/fall of the site. Concern is also raised regarding impacts on local wells in proximity to the appeal site and potential loss of biodiversity and impacts on ecology as a result of the proposed development. The appellant has requested an Oral Hearing in relation to flooding and drainage but has not included the required fee. I will assess the grounds raised by the appellant under the following sub-headings:

Flood Risk

7.5.2. The applicant's response to the appeal has included a Site Specific Flood Risk Assessment (SSFRA). The report notes that the site slopes gently in a west to east direction and that there are no mapped significant or major surface hydrological features within or adjacent to the subject site. The SSFRA indicates that the subject site is not susceptible to predictive, indicative, historic or anecdotal fluvial, pluvial or groundwater flooding. The assessment categorises potential primary and direct flood risk to the site as being low. Furthermore, the assessment also points out that the appellant has not provided any technical or quantifiable supporting hydrological information/data to demonstrate sources of flooding and drainage issues on the lands or how the development may result in an adverse impacts on the area from a flooding perspective.

7.5.3. During my inspection of the site, I observed the lands and associated site boundaries to be dry and in good condition with no apparent evidence of standing water or features

associated with ponding on the land. I also note that the Planning Authority raised no concern with respect to the Flood Risk as part of their assessment of the application. To this end, I consider that the information in the SSFRA is reasonable for it be concluded that there is no reasonable flood risk associated with the appeal site.

Wastewater Treatment

- 7.5.4. In assessing the proposed wastewater treatment for the dwelling, I note that Policy Objective HO P27 of the Development Plan requires *‘all applications to demonstrate, to the satisfaction of the Planning Authority that the proposed development site can accommodate an on-site wastewater treatment system in accordance with the EPA Code of Practice for Wastewater Treatment Systems for single houses (2021), the County Kildare Groundwater Protection Scheme, and any other relevant documents / legislation as may be introduced during the Plan period’*.
- 7.5.5. I have reviewed the Site Suitability Report with the submitted appeal file and I note that the site is in an area with high groundwater vulnerability. The Site Characterisation Form notes that the water table was encountered at 2.0 metre in the 2.4 metre deep trial hole. The soil/sub-soil is classified as topsoil and sandy silt/gravelly silt which is loose to uncompact between 0.1m – 0.6m and firm between 0.6m to 2.0m. The surface test result is indicated as 16.58 and the sub-surface test result is indicated at 24.64. The results are generally consistent with the ground conditions which I observed on the site. Section 4.0 (Conclusion of Site Characterisation) of the Site Characterisation Form indicates that the site is suitable for development and Section 5.0 (Selected DWWTS) proposes to install a Secondary Treatment System and Soil Polishing Filter to discharge to ground water.
- 7.5.6. There is a report from the Environment Section of Kildare County Council on the appeal file which indicates no objection to the proposed wastewater treatment system, subject to conventional conditions in relation to installation and maintenance. Having regard to the information on file and having inspected the appeal site, I am satisfied that the proposed disposal and treatment of wastewater to be acceptable and can accord with the EPA's Code of Practice for Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021.

Impact on Wells

- 7.5.7. The appellant claims that the proposed development may cause risk to pumps and wells in the immediate vicinity of the appeal site. A submitted map, prepared and annotated by the appellant claims there are 10 no. pumps and wells in the vicinity of the appeal site along with a village pump. According to the appellant, 4 no. wells/pumps are in use and 6 no. wells/pumps are out of use.
- 7.5.8. The proposed development will be connected to the public water mains and as noted, the dwelling will be served by a domestic wastewater treatment system. The Site Suitability Report on the appeal file indicates that there are no wells within 100m of the proposed dwelling and that the area is on a mains supply. The report further states that the site has adequate space to achieve all minimum separation distances. I have been unable to verify the presence of wells proximate to the appeal site, however, in noting the proposed location of the domestic wastewater treatment system and having regard to the map provided by the appellant, I am satisfied, that the proposed development would meet the required separation distances between neighbouring houses, wells and watercourses as set out in Table 6.2 of the EPA Code of Practice for Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021.

Surface Water Drainage

- 7.5.9. The appellant is concerned with site drainage and notes that run-off from the dwelling will need to be engineered due to the site levels which are opposite to the proposed drainage. The applicant indicates that there should be no interference with the existing land or roadside drainage from the proposed development.
- 7.5.10. I note that the applicant proposes the installation of two soakaways to manage surface water drainage (one to the northeast corner of the site and one to the southeast corner of the site. As previously noted, there is an existing shallow open drain along the roadside boundary and at the time of my site inspection, I observed the site was dry and I did not identify any features or associated vegetation to suggest any apparent drainage issues. Additionally, the report from the Water Services Section of Kildare County Council on the appeal file indicates no objection to the proposed development, subject to conditions relating to collection and discharge.
- 7.5.11. The applicant's response to the appeal has included a Soakaway Design as per BRE Digest 365 in respect of the site. Having regard to the information on file and having

inspected the appeal site, I am satisfied that the surface water management on the site by way of soakaways would be acceptable having regard to the prevailing site conditions.

- 7.5.12. In terms of negative impacts on biodiversity and ecology, I am satisfied that the foul and surface water drainage proposals are appropriate to treat the foul and surface water in the surrounding site context. The site consists of an undeveloped grassed field which supports limited foraging for mammals. The established hedgerow may support nesting and roosting for birds. I note that the applicant has not proposed to remove any existing trees or hedgerows and that the Landscape Plan demonstrates provision of additional planting on the site. Therefore, I do not consider that the proposed development would result in impacts/loss of biodiversity or ecology in the area.

7.6. Enforcement Matters

- 7.6.1. The appeal refers extensively to the adjoining property to the north of the application site and claims that there is extensive unauthorised works and other commercial operations/development which are alleged to not have the benefit of planning permission. It is claimed by the appellant that there are a number of unauthorised development complaints regarding the neighbouring site to the north and there is concern that unauthorised works could be duplicated on the appeal site. The appellant also indicates that the site should be limited to a single dwelling and not be used for commercial/workshop or any other non-domestic use.
- 7.6.2. In considering the subject proposal, I note that the application relates to a single dwelling and no alternative uses are proposed on the site. In this regard, I am satisfied that the proposed development is as described in the statutory notices. With respect to the alleged works and unauthorised activity on adjoining property to the north of the appeal site, I note that such references to such works/use/development are not a matter for consideration in this appeal and fall outside of the Board's remit as such matters do not relate to the appeal site or the subject development. In the interests of clarity, the assessment of this appeal represents my *de novo* consideration of all planning issues strictly relating to the proposed development and the matters which have been raised by the appellant regarding the subject proposal.

8.0 Appropriate Assessment (Screening)

- 8.1. I have considered the subject development, which comprises the construction of a new dwelling in light of the requirements S177U of the Planning and Development Act 2000 (as amended).
- 8.2. The subject development is located in a rural area approximately 3.61km from the Ballynafagh Bog Special Area of Conservation (Site Code: 000391) and approximately 3.73km from the Ballynafagh Lake Special Area of Conservation (Site Code: 001387) which are nearest European Sites respectively. The subject development comprises a single dwelling and has no hydrological or other connection to any European site.
- 8.3. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment as there is no conceivable risk to any European site. The reason for this conclusion is as follows:
- The scale and nature of the development;
 - The distance to the nearest European site and the lack of connections; and,
 - Taking into account the screening determination of the Planning Authority.
- 8.4. I conclude on the basis of objective information, that the proposed development would not have a likely significant effect on any European site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore a retrospective Appropriate Assessment (Stage 2) under Section 177V of the Planning and Development Act 2000 (as amended) is not required.

9.0 Recommendation

- 9.1. I recommend permission be GRANTED subject to the conditions set out in the following reasons and considerations.

10.0 Reasons and Considerations

- 10.1. Having regard to the provisions of the Kildare County Development Plan 2023-2029 with respect to rural housing, the specific characteristics of the site and its surrounds, it is considered that, subject to compliance with the conditions set out below, the proposed development would be an appropriate form of development, would not seriously injure the character and visual amenities of the area, would not seriously injure the amenities of residential property in the vicinity and would not endanger public

safety by reason of access, traffic generation, drainage, or otherwise. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 21st July 2023 and 12th January 2024, 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 interest 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. 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) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site and shall comply with the requirements of the planning authority for such works and services. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

(b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interest of traffic safety and to prevent flooding or pollution.

4. (a) The wastewater treatment system hereby permitted shall be installed in accordance with the recommendations included within the site characterisation report submitted with this application on 21st July 2023 and shall be in accordance with the standards set out in the document entitled “Code of Practice - Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)” – Environmental Protection Agency, 2021.

(b) Treated effluent from the wastewater treatment system shall be discharged to a polishing filter which shall be provided in accordance with the standards set out in the document entitled “Code of Practice - Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)” – Environmental Protection Agency, 2021.

(c) Within three months of the first occupation of the dwelling, the developer shall submit a report to the planning authority from a suitably qualified person (with professional indemnity insurance) certifying that the wastewater treatment system and associated works is constructed and operating in accordance with the standards set out in the Environmental Protection Agency document referred to above.

Reason: In the interest of public health and to prevent water pollution.

5. The developer shall enter into water connection agreements with Uisce Éireann.

Reason: In the interest of public health.

6. (a) Sight distance triangles from the proposed entrance shall be maintained and kept free from obstruction.

(b) The existing front boundary hedge shall be retained except to the extent that its removal is necessary to provide for the revised entrance to the site.

Reason: In the interest of traffic safety.

7. (a) The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.

(b) The external walls shall be finished in neutral colours such as grey or off-white unless otherwise agreed in writing with the planning authority prior to the commencement of development and carried out as agreed.

Reason: In the interest of visual amenity.

8. 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.

9. 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.

Matthew O Connor
Planning Inspector

14th October 2024

Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-319181-24			
Proposed Development Summary	The construction of a house with garage, wastewater treatment system and all associated site works.			
Development Address	Kilmurry, Clane, Co. Kildare			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X	
		No	No further action required	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes			EIA Mandatory EIAR required	
No	X		Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No		N/A		No EIAR or Preliminary Examination required
Yes	X	Class 10, (b), (i) (threshold is 500 dwelling units)	Proposal is significantly below threshold.	Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-319181-24	
Proposed Development Summary	The construction of a house with garage, wastewater treatment system and all associated site works.	
Development Address	Kilmurry, Clane, Co. Kildare	
<p>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development.</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment.</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The proposal comprises 1 no. house in a rural area.</p> <p>The proposal will not give rise to the production of significant waste, emissions or pollutants.</p>	<p>No</p> <p>No</p>
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and / or permitted projects?</p>	<p>The size of the dwelling would not be described as exceptional in the context of the existing environment.</p> <p>There are no significant developments within the vicinity of the site which would result in significant cumulative effects/considerations.</p>	<p>No</p> <p>No</p>
<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining, or does it have the potential to significantly impact on an ecologically sensitive site or location, or protected species?</p>	<p>Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, as well as the criteria set out in Schedule 7 of the Planning</p>	<p>No</p>

Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area, including any protected structure?	and Development Regulations 2001 (as amended); 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.	No
Conclusion		
There is no real likelihood of significant effects on the environment. EIA is not required.	There is significant and realistic doubt regarding the likelihood of significant effects on the environment. Schedule 7A Information required to enable a Screening Determination to be carried out.	There is a real likelihood of significant effects on the environment. EIAR required.

Inspector:

Date:

DP/ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)