



An  
Bord  
Pleanála

## Inspector's Report

### ABP-321798-25

<b>Development</b>	Retention of demolition of timber dwelling, construction of single storey dwelling, construction of extension, provision of new vehicle entrance and retention construction of fuel shed.
<b>Location</b>	Clongorey, Newbridge, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	2461231
<b>Applicant(s)</b>	Ciara and Dean Curran
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Ciara and Dean Curran
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	25 <sup>th</sup> April 2025
<b>Inspector</b>	Aoife McCarthy

## **1.0 Site Location and Description**

- 1.1. The site has a stated area of 0.33 hectares, and is located at Clongorey, Newbridge, Co. Kildare.
- 1.2. The site is located c.5.5km to the north of Newbridge town and 4.5km to the south-east of Kilmeague village. The site is rural and wider environs is rural in character.
- 1.3. The site is accessed off a local road which extends south-west from the L7087 (local road). A grassed laneway bounds the site to the north-western site boundary.
- 1.4. The site is set within a wider landbank also in the ownership of the Applicant.
- 1.5. The site includes a metal gated entrance, a single storey mono pitch dwelling, with space for car parking, a metal single storey shed, grassed garden area, and is otherwise greenfield in nature. The site is bound with mature hedgerow to the south-west; with intermittent hedgerow/tree planting to the north-west, and otherwise open to grassed area to the west.

## **2.0 Proposed Development**

- 2.1. The proposed development consists of:

A) The retention of the demolition of a historic derelict timber dwelling, B) The retention of the construction of a single storey dwelling for the purpose of replacing the derelict dwelling, C) The construction of an extension to the south-west of the existing dwelling (63.7m<sup>2</sup>), and D) The retention of the construction of a 53.6m<sup>2</sup> fuel shed and all associated site and development works.
- 2.2. The proposed development has a total floor area of (110.7m<sup>2</sup> GFA).
- 2.3. The application also includes the provision of a replacement site access to the public road and wastewater treatment plant, which did not feature on the public notices.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The Planning Authority issued a Notification of a Decision to Refuse Permission on the 21<sup>st</sup> January 2025 for the following reasons:

1. Policy HO P11 of the Kildare County Development Plan 2023 - 2029 requires Applicants to demonstrate compliance with Table 3.4 of the Plan in terms of local need criteria. It is considered that the Applicant has not demonstrated compliance with the rural housing local needs criteria as outlined in Section 3.13.3 and Table 3.4 of the Plan. The development is contrary to Policy HO P11 of the Kildare County Development Plan 2023 - 2029 and is, therefore, contrary to the proper planning and sustainable development of the area.

2. Section 3.14 of the Kildare County Development Plan 2023-2029 seeks to ensure that, notwithstanding compliance with local need and other technical criteria, the receiving rural area has capacity to accommodate additional residential development. Objective HO O59 of the Kildare County Development Plan 2023-2029, seeks to carefully manage Single Rural Dwelling Densities to ensure that the density of one-off housing does not exceed 30 units per square kilometre. The proposed development, when taken in conjunction with the level of existing development in the vicinity, exacerbates an excessive density of development in this rural area, and leads to a density of one-off housing in excess of 30 units per square kilometre at the location of the site. In addition, having regard to the density of rural housing in the wider area, it is considered that the proposed development contributes to a coalescence of areas of excessive rural housing density, eroding the rural character of the area and increasing its suburban, peri-rural character. The proposed development is contrary to Section 3.14 and Objective HO O59 of the Kildare County Development Plan 2023–2029, and is, therefore, contrary to the proper planning and sustainable development of the area.

3. Policy HO P27 of the Kildare County Development Plan 2023 – 2029 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)’. Based on the inadequate details submitted with the application, it has not been adequately demonstrated that the existing wastewater treatment has the capacity to facilitate the subject development satisfactorily, or if a proposed new tertiary wastewater treatment system is proposed. The development is prejudicial to public health, constitutes an unacceptable risk of water pollution, is contrary to Policy HO P27 of the Kildare

County Development Plan 2023 – 2029 and is, therefore, contrary to the proper planning and sustainable development of the area.

4. Policy HO P20 of the Kildare County Development Plan 2023-2029 sets out the policy for replacement dwellings, however, the structure, which is subject to retention of replacement, was erected circa 2013-2016 and did not replace any existing structure on the subject site.

Additionally, any previous dwelling on site was a temporary structure and not a permanent dwelling and the existing structure on site is not on the same footprint and is not of the same or similar floor area of any previous structure on site.

Therefore, the existing structure on site does not comply with policy HO P20 of the Kildare County Development Plan 2023-2029. Having regard to the foregoing, the development for retention is contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Report (21<sup>st</sup> January 2025)**

- The planning report is the basis of the planning authority decision.
- The report includes a description of development and site context, planning history, including reference to enforcement proceedings, as referenced below.
- The report includes planning policy as set out in the Kildare County Development Plan 2023-2029.
- The site is located within Zone 1 of the CDP. The applicant has not demonstrated compliance with the relevant provisions of Section 3.13.3 of the CDP.
- The proposed dwelling exceeds the minimum standards of the Housing Sustainable Urban Housing Guidelines.
- The proposed retention of the mono-pitch steel framed fuel storage shed is noted.
- From a review of historical maps, various structures have been on site since 2003 (as detailed in the previous application (**P.A. Reg. Ref.: 24/60480**),

however, it appears that no structures were on site for a period 2011 and 2013.

- An assessment of historical planning applications (as completed under P.A. Reg Ref.: **23/345** and **23/60615**) confirmed that planning permission has never been sought for a residential dwelling since 1963.
- No map has been included with the letter from KCC relating to the location of a prefab/temporary structure on site.
- If the structure was a temporary structure, it cannot be considered as a replacement dwelling under HO P20 of the Development Plan. The Applicants have not demonstrated that the replacement structure is on the same location and of the same, or similar floor area as any previous structure on site.
- Objective HO O59 is relevant as the dwelling does not have the benefit of planning permission and is not a replacement dwelling. As a result, the application warrants a full planning assessment on all relevant criteria associated with one off rural housing.
- Site level density is 40 units /sq.km. In addition, there is severe pressure in the immediate and wider areas, and it is therefore considered appropriate to have regard to this wider context. The proposal would contribute to a wider pattern of linear sprawl and would be contrary to Section 3.14 and Policy HP O26 and HO O59 of the Development Plan.
- Permission is sought for a new vehicular entrance onto the local road and closure of the existing entrance.
- Having regard to misleading / insufficient information, the development is considered contrary to HO P27 of the Development Plan.
- No issues arising with respect to AA or EIA.

### 3.2.1. Other Technical Reports

**Environmental (Water Services):** No objection subject to condition.

**Transportation, Mobility and Open Spaces Department:** No objection subject to condition.

### 3.3. Prescribed Bodies

3.3.1. None received.

#### 3.4. **Third Party Observations**

3.4.1. None received.

### 4.0 **Planning History**

#### 4.1. **Subject Site**

4.1.1. **P.A. Ref. 24/60480:** Permission refused by Kildare County Council in July 2024 for A) The retention of the demolition of a historic derelict timber dwelling, B) The retention of the construction of a single storey dwelling for the purpose of replacing the derelict dwelling, C) The construction of an extension to the south-west of the existing dwelling, and D) The retention of the construction of a 53.6m<sup>2</sup> fuel shed and all associated site and development works, and services.

4.1.2. The reasons of refusal are as below;

1. Applicant has not demonstrated compliance with the rural housing local needs criteria (Section 3.13.3 and Table 3.4 refer); and is therefore contrary to Policy HO P11 of the Kildare County Development Plan 2023 – 2029.
2. The proposed development, when taken in conjunction with the level of existing development in the vicinity, exacerbates an excessive density of development in this rural area, and leads to a density of one-off housing in excess of 30 units /sq km at the location of the subject site. The proposed development contributes to a coalescence of areas of excessive rural housing density, eroding the rural character and increasing its suburban, peri-rural character, and is therefore contrary to Section 3.14 and Objective HO O59 of the Kildare County Development Plan 2023 – 2029, area.
3. The applicant has not demonstrated that subject site has the capacity to absorb development sensitively or that adequate sightline can be achieved without the removal of extensive hedgerow and is therefore contrary to Policy HO P26 of the Kildare County Development Plan 2023 – 2029, constituting a traffic hazard.
4. It has not been adequately demonstrated that the existing waste water treatment has the capacity to facilitate the subject development satisfactorily.

The proposed development is prejudicial to public health, constitutes an unacceptable risk of water pollution, is contrary to Policy HO P27 of the Kildare County Development Plan 2023 – 2029.

- 4.1.3. **P.A. Ref. 23/60315:** Permission refused by Kildare County Council in December 2023 for [retention] for the replacement of the derelict dwelling, C) The construction of a 51m<sup>2</sup> extension to the south-west of the existing dwelling, and D) The retention of the construction of a 53.6m<sup>2</sup> fuel shed and all associated site and development works. The application was refused for four reasons as per those relating to P.A. Reg. Ref: 24/60480.
- 4.1.4. **P.A. Ref. 23/345:** Permission refused by Kildare County Council in May 2023 for A) the demolition of a derelict timber dwelling, B) the construction of a 47m<sup>2</sup> single storey dwelling in place of the derelict dwelling, and C) the construction of a 53.6m<sup>2</sup> fuel shed and all associated site and development works. The application was refused for 6 no. reasons, including the four as applied to 24/60408 and 23/60315; the 2 no. additional reasons are as follows:
1. The proposed development represents a substandard form of residential development for a 3 bedroom dwelling by reason of inadequate total gross floor area of 47sqm and inadequate room size for the living area and bedrooms. The proposed development is, therefore, contrary to the development management standards, as set out in Chapter 15 of the Kildare County Development Plan 2023 - 2029 and Table 5.1 of the Quality Housing for Sustainable Communities, 2009 (DEHLG),
  2. The proposed development, by virtue of the poor quality design and inappropriate siting does not accord with the policy HOP12 of the Kildare County Development Plan 2023 – 2029 and the principles of Section 4 of the Rural Design Guide Appendix 4 of the Kildare County Development Plan 2023 - 2029.

#### **Enforcement Files**

- 4.1.5. The Planner's Report includes ref to the following enforcement file;

**Enforcement File: UD8139:** Enforcement Notice issued 10/04/24, noted to refer to the following alleged unauthorised development:

1. Construction of dwelling and all associated works without the benefit of the required planning permission.
2. Construction of shed and all associated works without the benefit of the required planning permission.
3. Storage of cars/vehicles/storage container and caravan on site.

## 5.0 Policy Context

### 5.1. Project Ireland 2040 National Planning Framework - First Revision, 2025

5.1.1. **National Objective 28:** 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. Eastern and Midland Regional Spatial & Economic Strategy (RSES), 2019-2031

**Regional Policy Objective (RPO) 4.8:** Local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and settlements.

### 5.3. Sustainable Rural Housing – Guidelines for Planning Authorities, 2005



- 5.3.1. The guidelines refer to criteria for managing rural housing requirements whilst achieving sustainable development. The application relates to a person on the grounds of forming part of the rural community. The Guidelines state that,
- Such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first home near their family place of residence.
- 5.3.2. Circular Letter PL 2/2017 issued on 31<sup>st</sup> May 2017, refers to an infringement notice against Ireland in 2007, in relation to housing needs criteria contained in the 2005 Guidelines. This notice was subsequently deferred pending the outcome of an infringement case taken against Belgium, on which the European Court of Justice (ECJ) delivered its Judgement in 2013. Updated and revised Guidelines are proposed by the Department of Housing, Local Government and Heritage. However, there is no date at present for when these will be published.
- 5.3.3. Section 4.8 states the following:
- In assessing the design aspects of specific rural housing proposals, planning authorities should make well balanced and informed judgements on the merits of each proposal, taking on board the degree to which a site is sensitive in visual and other terms, the character of surrounding development and the wider area and the need to encourage innovation in design and construction techniques, while avoiding an overly prescriptive approach, such as an outright ban on particular materials e.g. brick, across all proposals in a given area in relation to the designs and finishes chosen.
- 5.4. **Quality Housing for Sustainable Communities, Best Practice Guidelines 2007**
- 5.4.1. These Guidelines set out national planning policy and guidance in relation to housing design.

- 5.4.2. The guidelines include the following relevant target for a single storey 3B/5P dwelling; target floor area (82m<sup>2</sup>); minimum main living room (13 m<sup>2</sup>) aggregate living area (34m<sup>2</sup>); aggregate bedroom area (32m<sup>2</sup>) and storage (5m<sup>2</sup>).

#### **Quality Housing for Sustainable Communities, Best Practice Guidelines 2024**

- 5.4.3. These Guidelines set out national planning policy and guidance in relation to the creation of settlements that are compact, attractive, liveable and well designed.
- 5.4.4. Development standards for housing are set out in Chapter 5, including SPPR 1 in relation to separation distances (16m between opposing windows serving habitable rooms above ground floor level), SPPR 2 in relation to private open space (3-bed 40 m<sup>2</sup>), SPPR 3 in relation to car parking and SPPR 4 in relation to cycle parking and storage.

#### **5.5. Kildare County Development Plan 2023-2029**

#### **5.6. Sustainable Rural Housing (Section 3.13)**

- 5.6.1. The Plan states the following:

It will be an objective of the Council to facilitate the provision of single housing in the countryside based on the core considerations of:

- demonstrable 'economic or social' need to live in a rural area and build their home, and

siting, environmental and design criteria for rural housing in statutory guidelines and plans having regard to the viability of smaller towns and rural settlements and the

'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 Department of Housing, Local Government and Heritage have indicated that new Rural Housing Guidelines are being prepared to address rural housing issues and to take account of the Flemish Decree, the NPF and broader settlement context. In the interim, Kildare Development Plan must establish a policy to facilitate those who can demonstrate a genuine housing need and a social and/or economic need to live in rural County Kildare. Urban generated rural housing will not be considered. For the

purposes of demonstrating compliance, this plan has provided a definition of 'Economic' and 'Social' need in the context of rural housing policy.'

- Economic: A person (or persons) who is (are) actively engaged in farming/agricultural activity on the landholding on which the proposed dwelling is to be built, meeting either of the following:
  - i. A farmer of the land or son, daughter, niece or nephew of the farmer who it is intended will take over the operation of the family farm... or
  - ii. An owner and operator of farming/horticultural/forestry/bloodstock/animal husbandry business on an area less than 15ha, who is engaged in farming activity on a daily basis, where it is demonstrated through the submission of documentary evidence that the farming/agricultural activity forms a significant part of their livelihood, including but not limited to intensive farming.
- Social:
  - i. A person who has resided in a rural area for a substantial period of their lives i.e. 16 years within 5km (Zone 1) or 5km (Zone 2) of the site where they intend to build.

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

Table 3.4 – Schedule of Local Housing Need Criteria in accordance with NPF (NPO 19)

Category B – Social (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.

Zone 1 Areas under Strong Urban Influence

Applicants must have grown up and spent 16 years<sup>1</sup> living in the rural area of Kildare and who seek to build their home in the rural area on their family landholding. Where no land is available in the family ownership, a site within 5km of the applicant's family home may be considered.

5.6.2. It is the policy of the Council to:

**HO P11** Facilitate, subject to all appropriate environmental assessments proposals for dwellings in the countryside outside of settlements in accordance with NPF Policy NPO 19 for new Housing in the Open Countryside in conjunction with the rural housing policy zone map (Map 3.1) and accompanying Schedule of Category of Applicant and Local Need Criteria set out in Table 3.4 and in accordance with the objectives set out below. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.

**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 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 O48** Encourage the appropriate re-use and adaptation of the existing rural residential building stock as a sustainable alternative to new build.

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<sup>1</sup> Documentary evidence will be required. Examples of appropriate documentary evidence include, but are not limited to, copies of original birth certificates, bank statements, utility bills and copies of official school record.

## **Siting and Design Objectives**

**HO 050** 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 low-carbon 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.

**HO 051** 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 052** 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 P20** Facilitate, where it is demonstrated by an applicant that a dwelling is no longer suitable for habitation, its replacement with a new dwelling subject to the applicant demonstrating and submitting the following with the application:

- I. The structure must last have been used as a dwelling and the external walls must be identifiable/visible.
- II. A report from a suitably qualified competent person shall be submitted to verify that the dwelling is habitable (or not) and that replacement of the dwelling is the most sustainable option.
- III. Documentary evidence of the most recent date of occupation.
- IV. Normally a condition to demolish the existing dwelling will be included in any grant of permission.
- V. Normal planning considerations will be taken into account in the assessment of planning applications for replacement dwellings.

In cases where an applicant/occupant wishes to replace an existing habitable dwelling on the same footprint and of the same or similar floor area there will be no requirement to comply with local need criteria identified in this Plan.

**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<sup>2</sup> 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.

**HOO59** Carefully manage Single Rural Dwelling Densities to ensure that the density of one-off housing does not exceed 30 units per square kilometre<sup>3</sup>, unless the applicant is actively engaged in agriculture, or an occupation that is heavily dependent on the land and building on their own landholding.

Rural density limits set out in Objective HO O59 will not apply to applicants restoring or refurbishing existing farm structures or non-habitable dwellings who comply with the local need criteria.

Policy **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.

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<sup>2</sup> Negative environmental effects may include, inter alia, impacts on; groundwater quality, landscape character, protected habitats and designated sites. Impacts will be site specific and therefore differ from site to site and have regard to Appendix B of the 'SEA Guidelines for Regional Assemblies and Planning Authorities'.

<sup>3</sup> The sq. km. shall, in all instances, be measured from the centre point of the application site

## **5.7. Natural Heritage Designations**

- 5.7.1. There are no European sites within the subject site.
- 5.7.2. The closest European site to the subject site is the Mounds Bog SAC (Site Code: 002331), located c.820m to the south-west of the site.
- 5.7.3. The closest designated site is the Mounds Bog pNHA (Site Code: 000395), which shares a boundary with Mounds Bog SAC.

## **5.8. EIA Screening**

- 5.9. The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. A First Party Appeal has been lodged on behalf of the Applicant on the 4<sup>th</sup> February 2025, the grounds of which is summarised below:
  - The planning authority have not approached this application with an open mind.
  - Planning code does not require applicants to comply with the rural housing policy circumstances where an existing on-site development is being replaced.
  - It is unreasonable for a local authority to deny consent on the basis of the location of Mrs. Curran's original family home, located within a small village in where land is zoned and therefore occupancy controlled.
  - The rural housing test does not apply in the case, as a new dwelling is replacing previous or (a sequence of houses) on this site, with reference to

recent consideration by the Council on another site (**KCC Reg. Ref.: 2460480**).

- It is wholly unreasonable to rigidly adhere to the eligibility criteria having regard to the specific circumstances in this case. The appeal sets out detail with respect to the village origin, as assessed below.
- The Council's objection overlooks the fact that this land already accommodates a replacement house and has already been included in the density measurement.
- Policy HO 059 seeks to control an increase in new housing on greenfield sites and not to unduly restrict the redevelopment of existing residential sites.
- With respect to Reason 3, the Council could have either read with a scale rule or sought FI. The Planning Authority has not assessed the proposed wastewater treatment system. The applicant would be prepared to lodge a revised drawing with these distances specified during the course of this appeal, or to accept by way of condition.
- With respect to Reason 4, the Council erected the original dwelling on this site; has mislaid its paper file, and now suggest that the present dwelling did not replace an earlier home. None of the previous dwellings on site were temporary structures.
- This development does not result in any increase in the number of houses in the area.
- The planning rationale associated with policy HO P20 of the Development Plan is ill-conceived; the planning authority could have refused permission relating to the floorspace, the height or location from an amenity perspective. The Planner's Report does clarify the rationale for this reason of refusal. A denial of consent in these circumstances is contrary to section 7.15 of the Development Management Guidelines.
- In conclusion, who would be affected by the proposed development and in what way would this affectation arise?



- The erection of a dwelling on land which has accommodated a dwelling since the 1960s, does not trigger a need to comply with the rural housing test. This has been accepted by the Board as sufficient to constitute lawfulness in the absence of any previous planning permissions (**P.A. Reg. Ref.:22/1044; PL16.318710** refers).
- The legitimate use of the land is for residential purposes and planning code does not require compliance with a set of eligibility characteristics in such circumstances.

## **6.2. Planning Authority Response**

- 6.2.1. The Planning Authority notes the content of the First Party Appeal and confirms its decision in this instance.

## **6.3. Observations**

- 6.3.1. None received.

## **6.4. Further Responses**

- 6.4.1. None received.

## **7.0 Assessment**

- 7.1.1. Having examined the application details and all other documentation on file, including the report of the local authority, having inspected the site and having regard to the relevant local and national policies and guidance, I consider the main issues in this appeal relates are as follows:

- Principle of Development
- Design
- Drainage
- Traffic and Access
- Other Matters

## **7.2. Principle of Development**

- 7.2.1. The proposed development relates to permission including retention of the demolition of a previously derelict dwelling, retention of an as-constructed dwelling;

permission for an extension to the as-constructed dwelling; retention permission of a fuel shed and all associated works. I note that the proposed development includes the provision of a new access road and replacement tertiary wastewater treatment system to serve the proposed development. Neither of these components have been included in the public notices. I consider that these elements are integral to the proposed development, including the component to be retained.

7.2.2. These matters are assessed hereunder prior to assessing with respect to relevant planning considerations.

- **Replacement Dwelling**

7.2.3. The Applicant is seeking, inter alia, retention permission for the demolition of the former historic derelict timber structure and the retention of the as constructed dwelling on site. The Planning Authority does not accept that the proposed development and development to be retained, is a replacement dwelling.

7.2.4. The documentation sets out that the subject site has been in ownership of the applicant's (Mrs. Curran's) family since the early 1800s, subsequently passing to Mrs. Curran's grandparents in 1960, and ultimately to the applicant's uncle. The site is stated to have contained a clay/thatched cottage, replaced with a timber frame house by the Kildare County Council in 1967 for Mrs. Curran's grandmother. This cottage was replaced again, by KCC with an on-site effluent system in 1978 as a place of residence for Mrs. Curran's uncle, where he resided until 2004.

7.2.5. The applicant (Mrs. Curran) has grown up in Kilmeague village, stated to have moved to a mobile home on the subject site in 2014, and subsequently to the on-site as constructed dwelling in 2022.

7.2.6. As such, based on the information submitted with the application, I am satisfied that the site accommodated a dwelling, which was replaced by Kildare County Council with a timber dwelling in 1967 and again in 1978 and that this final dwelling remained on site until 2004. I accept that there was a dwelling in permanent use on the site from circa 1960 to 2004. From 2004 onwards, I have sought independent evidence of the presence or otherwise, of a dwelling through a review of aerial photos over time, in a similar process to the P.A.

- 7.2.7. It is noted that these resources are relatively limited during this time period. It has been possible to confirm the presence and appearance of a structure on site for the year, 2009 (Google Maps Streetview), as per Photograph 1 of the First Party Appeal (Photo 1 of the appended photos refers). Geohub MapGenie (Tailte Éireann) mapping also appears to confirm the presence of this former cottage on site in 2012 and no longer on site by the time of 2018 aerial mapping. (Figures 2 and 3 as appended to this Report refer).
- 7.2.8. In this context, the Planner's Report carried out a similar review and concluded that there appears to have been no structures on site for the period during 2011-2013. It is difficult to confirm the presence or not of a structure in this photo, having regard to the extent of shadow within this shot. I would similarly be unable to rule out the presence of a structure on site for the years 2012 and 2013 based on historic mapping (Google Earth Pro), (Figures 4 and 5 as appended refer).
- 7.2.9. The question therefore arises as to whether the absence of a residential structure on the site removes the established use of the site for residential purposes, given that there was a residence on site for residential purposes on the appointed day? which was the 1<sup>st</sup> October 1964, with the commencement of the Local Government Planning and Development Act, 1963.
- 7.2.10. I note that the site has been serviced by KCC and so I consider that the residential use has not been lost. Therefore, I would accept that the use of the site for residential purposes is acceptable in principle.
- 7.2.11. In this context, the subsequent query is whether the use has been abandoned?
- 7.2.12. With respect to occupancy, the site has in my opinion, an established residential use, having regard to the presence of a dwelling from the 1960s up until 2004. I consider that there was no occupation until 2014, a gap of 10 years. As such, it could be considered that the residential use of the site has been abandoned. However, as the site remains in the ownership of the applicant and it appears the site has not been used for any other purposes during this timeframe; I therefore conclude that residential use has not been abandoned, in this case.

### **Policy HO P20 -Replacement Dwelling Policy**

7.2.13. This section provides a response to relevant criteria as provided under Policy Objective **HO P20**:

- I. The structure must last have been used as a dwelling and the external walls must be identifiable/visible*

The structure has been demolished. The last use of the structure was as a dwelling. Further to the site visit, I understand that the current dwelling has been constructed on the footprint of the former dwelling, and that as a result, no external walls are identifiable or visible relating to the former structure.

- II. A report from a suitably qualified competent person shall be submitted to verify that the dwelling is habitable (or not) and that replacement of the dwelling is the most sustainable option*

The application is not accompanied by a specific report with respect to the condition of the dwelling. Notwithstanding, I am satisfied from the information submitted with the application, that the former dwelling was no longer habitable.

- III. Documentary evidence of the most recent date of occupation.*

The site was occupied from the 1960s to 2004 and from 2014 to present, (as assessed below.)

- IV. Normally a condition to demolish the existing dwelling will be included in any grant of permission.*

Not applicable as the dwelling has been demolished.

- V. Normal planning considerations will be taken into account in the assessment of planning applications for replacement dwellings.*

These matters are addressed within the subsequent sections of this appeal. Notwithstanding, at a high level it is considered that the proposed development would not impact on the visual and residential amenities of the wider site environs. The proposed development would be acceptable, on the basis that the dwelling is served by the new site access and wastewater treatment system, as assessed separately below.

- 7.2.14. From a review of the file and drawings, the replacement dwelling inclusive of the proposed extension does not have the same footprint or floor area of the now demolished timber dwelling. There is therefore, in my opinion, no dispensation available to the Applicant with respect to meeting housing need requirements of the Plan.
- 7.2.15. The Planner's Report states that the structure which was replaced was temporary and not a permanent dwelling; and therefore, could not be considered as a replacement dwelling under the above noted policy. These dwellings/structures were present on the site for at least 44 years. I also note that policy **HO P20** does not include any such exclusion.
- 7.2.16. The first party outline that rural housing policies are generally not applied to proposals which entail the erection of replacement houses, with reference to a series of precedent cases. These include a case, whereby the Board Inspector considered the replacement of one dwelling on site accorded in principle, and therefore set aside the requirement to apply the rural housing guidelines (**P.A. Reg. Ref.: 06/6456; PL27.222856**).
- 7.2.17. Whilst this position is noted, in my opinion, the wider rural housing policy framework, and specific wording of **HP P20** do not support such a broad-brush approach to the replacement of dwellings.
- 7.2.18. The first party also argues that, notwithstanding the lack of permissions, residential use has been established on the site; and therefore, the need to comply with the rural housing policy should not apply. Again, whilst I agree with the characterisation of the site as residential, again, I consider that the wider planning policy framework and specific wording of this policy does not support the absence of local need.
- 7.2.19. In conclusion, I concur with this policy and consider that local need does apply.
- **Local Need**
- 7.2.20. The application relates to the provision of a rural dwelling, located within Zone 1 (Areas under Strong Urban Influence) of the Development Plan, under Category B – Social Housing need.
- 7.2.21. As detailed above, the documentation sets out that the subject site has been in the ownership of the applicant's family (Mrs. Curran's) since the 1800s, comprising a

thatched cottage from c.1960, replaced twice by the Council (1967 and 1978), and as a place of residence until 2004.

- 7.2.22. The applicant (Mrs. Curran) has grown up in Kilmeague village (within 4.5km of the subject site); moving to a mobile home on site in 2014, and to the on-site dwelling for retention, with her family in 2022.
- 7.2.23. From a review of the documentation as submitted, I am satisfied that the applicant has direct familial ties to this site and therefore meets the requirements of the Plan with respect to housing need.
- 7.2.24. I am also satisfied the Mr's Curran meets the housing need time target of 16 years, having resided since birth at the family home in Kilmeague (a Village within the Settlement Strategy of the Plan) before moving to the subject site in 2014.
- 7.2.25. In this context, I refer the Board to, albeit dated precedent, as raised by the First Party, whereby Kildare County Council concluded that time living with the Applicant's grandparents within a zoned settlement, counted towards the time period as a permanent local resident within a rural area (**KCC Reg. Ref.: 11/19** refers).
- 7.2.26. In conclusion, having reviewed the file, I consider that the applicant (Mrs. Curran) meets the housing need requirements for Social Housing Need within a rural Area under Urban Pressure, as referenced under **HO P11** the Development Plan.

- **Density of Development**

- 7.2.27. As assessed above, it is considered that the subject dwelling does not constitute a replacement dwelling under Policy **HP P20** of the Development Plan. It also does not constitute an additional dwelling, having regard to the established presence of a residence on this site.
- 7.2.28. In this context, it is considered that Policy Objective **HO P26** relates to the assessing the capacity of the receiving environment to absorb new development and is therefore not applicable to the subject proposal, relating to an established unit on this site.
- 7.2.29. Notwithstanding, I consider it appropriate to have regard to the environmental and planning considerations arising; noting the single storey modest scale of the proposal, established mature hedgerow to the public road and adjacent laneway;

ensuring the proposed development does not give rise to adverse residential or visual impacts within the site and environs.

7.2.30. I note that the Planning Authority have assessed the proposed development against Objective **HO O59**. In this context, the Plan seeks to ensure that density of one-off housing does not exceed 30 units per sq.km. The P.A recorded a density of 40 units within 1km<sup>2</sup> of the subject site. From a review of this assessment, as noted by the first party, this density assessment includes the subject site and as such should more appropriately be recorded at 39 units per sq.km.

7.2.31. The Planning Authority conclude that the proposal would contribute to the erosion of the rural character of the area, increasing its suburban, peri-rural character, and have refused permission on the basis of excessive density at this site. In the event that the Board agree with this assessment provision, I refer the Board to section 3.14 of the Plan, confirming that this density assessment toolkit is not intended to be used as an absolute tool, noting that,

“there may be instances where the existing pattern of development may facilitate some consolidation of one-off housing due to the prevailing pattern in the area, local topographical conditions or in very enclosed country (defined by mature trees and hedgerows). In these instances, the planning authority may deem a site to have the capacity to absorb additional residential unit/s without any significant adverse visual/physical/environmental impact on the countryside.”

7.2.32. I would therefore consider that this density level to be acceptable, having regard to the scale, height and design of the proposed development, as discussed above.

7.2.33. In conclusion, it is considered that Policy Objective **HO P26** and Objective **HO O59** do not apply to the subject proposal, constituting an established residential unit. I do not consider that permission should be refused on this basis.

- **Pattern of Development**

7.2.34. From a review of the file, the subject site is located within a wider landbank fronting to the local road in agricultural use. There is in addition, lands to the north-east, also in agricultural use. As a result, the proposed development therefore, does not extend or create a ribbon of development at this location, as restricted under **HO P13** of the Development Plan.

### 7.3. Design

- 7.3.1. The subject application proposes a single storey extension to the south-west of the existing dwelling; with internal redesign, to now provide a 3 bed (5 person) unit (c.110.7m<sup>2</sup> GFA).
- 7.3.2. The extension results in the introduction of additional doors in the north-eastern elevation and south-western elevation, with rendered finish throughout.
- 7.3.3. The proposed dwelling meets the relevant standards as set out in the Sustainable Housing Guidelines 2024 and the Quality Housing for Sustainable Communities 2007, albeit noting storage provision of 2.4m<sup>2</sup>, which in my opinion is acceptable, having regard to scale and internal design of this dwelling. The layout will provide passive supervision of private open space to the south-east of the site.
- 7.3.4. In this context, I consider the scale and design of dwelling to be acceptable, and do not consider that permission should be refused on this basis.

### 7.4. Access and Traffic

- 7.4.1. The subject site is served by single vehicular access point, from the adjoining local road. The proposed development includes the closure of this existing entrance and provision of a replacement recessed access to the south-west of the house, with driveways to the house and also the shed.
- 7.4.2. From a review of the file and site visit, I note this alternate access point is at a wider point in the local road with suitable levels between the site and public road.
- 7.4.3. The revised access point can also provide adequate sightlines at this location. The Transportation Department recommend a series of conditions, relating to, *inter alia*, ensuring the roadside verge is kept free of obstruction and relocation of front boundary hedge, with which I concur. I consider the proposed access to be safer than the existing.
- 7.4.4. However, the public notices have not included this component of the development, and as such the public would therefore be unaware of this significant change, which is, in my opinion, integral to the acceptability of the overall proposal. I recommend that the application is refused on this basis. This is a new issue in the context of this appeal. The Board may wish to seek that revised public notices are sought to this



effect. However, having regard to the other substantive reasons for refusal set out above, it may not be considered necessary to pursue the matter further.

- 7.4.5. The Board has the option of seeking revised public notices or refusing permission on the basis that the existing access is substandard, or that the public notices are inadequate.

## **7.5. Drainage**

- 7.5.1. The subject site is currently connected to the public mains which provides water supply to the site. The drawings include soakaways to address surface water drainage from the dwelling and shed structure, as illustrated on the Site Layout Plan.
- 7.5.2. Based on the information as submitted, I am satisfied that the site can accommodate water supply and surface water on site.

- **Effluent Treatment System**

- 7.5.3. The house is currently served by a single chamber septic tank draining directly to a soak pit on site, installed by the County Council to serve the original dwelling.
- 7.5.4. It is proposed to install a tertiary wastewater treatment system discharging treated effluent to a constructed partially raised mounded sand polishing filter with final discharge to groundwater, replacing the on site.
- 7.5.5. From a review of the documentation, it is noted that the Applicant's Site Characteristics Form confirms that the site is located in an area with a moderately vulnerable locally important aquifer. The trial hole depth was 2.1m, and the soil types are noted to consist of peaty clays, sandy silt/clay within the surface with clay vert sandy gravelly sit/clay intermixed with cobbles within the subsurface. Bedrock was not encountered in the trial hole. Water was found at 1.8m below ground level, which may rise to 1.2m and recorded by the Council at 0.6m below. The form indicates the site to have a sub-surface value of 54.78mm and surface value-rating of 3.86min/25m, noting low permeable subsoil.
- 7.5.6. The applicant proposes to install a soakpit to the north-west and south-east of the property and to the north of the existing shed for retention. I note that the Environment (Water Services) Department of Kildare County Council had no objection to the proposed site conditions.

- 7.5.7. Based on the information as submitted, and in the event that the Board decide to grant permission for the proposed development, I am satisfied that the site can accommodate wastewater on site, and that the proposed development would not be prejudicial to public health.
- 7.5.8. I note the planning authority refused permission on the grounds that there was insufficient information, relating to distances between the subject house and dwellings in the vicinity. However, having regard to the distances between the septic tank and percolation area, and houses in the vicinity, I am satisfied that EPA Code of Practice for Wastewater Treatment Systems for Single Houses (2021), separation distances are met.
- 7.5.9. However, the public notices have not included this component of the development. As above, the public would therefore be unaware of this proposal, which is, in my opinion, critical to the acceptability of the proposed development. Therefore, a proposal that would improve this situation is a positive improvement in public health. However, no mention has been made in the public notices.
- 7.5.10. This is a new issue in the context of this appeal. The Board may wish to seek that revised public notices are sought to this effect. However, having regard to the other substantive reasons for refusal set out below, it may not be considered necessary to pursue the matter.
- 7.5.11. The Board has the option of seeking revised public notices or refusing permission on the basis that the public notices are inadequate.

#### **7.1. Other Matters – Development Contributions**

- 7.1.1. From a review of the Kildare County Development Contributions Scheme 2023-2029, it appears that payment of contributions under section 48 of the Planning and Development Act 2000, as amended, would apply in this instance.
- 7.1.2. No such reference has been made within the Planner's Report or Response to the Appeal from the Council. Notwithstanding, in event the Board decide to grant permission, I recommend the inclusion of a condition to this effect.

## **8.0 AA Screening**

- 8.1. Screening the need for Appropriate Assessment: Screening Determination (Stage 1, Article 6(3) of Habitats Directive).
- 8.2. I have considered the Retention of dwelling and workshop, permission for extension to dwelling, new vehicular access and wastewater treatment plant and all associated works, in light of the requirements S177U of the Planning and Development Act 2000 as amended.
  - 8.2.1. The closest European site to the subject site is the Mounds Bog SAC (Site Code: 002331), located c.820m to the south-west of the site.
- 8.3. No nature conservation concerns were raised in the planning appeal.
- 8.4. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.
- 8.5. The reason for this conclusion is as follows:
  - The small scale and nature of the subject proposal.
  - The distance from nearest European site.
- 8.6. 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.
- 8.7. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

## **9.0 Recommendation**

- 9.1. I recommend that Permission and Retention Permission is refused for the reasons and considerations as set out below. I note these are new issues in the context of this appeal, and in the context of new issues, I recommend that section 137 notices are issued to the Applicant for comment.

## 10.0 Reasons and Considerations

1. The proposed development (including development to be retained) includes the provision of a new access and wastewater treatment plant, neither of which are referenced in the public notices. The public notices for the development (including development to be retained) are therefore inadequate. It is considered that it would be inappropriate to grant planning permission under these circumstances.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Aoife McCarthy  
Planning Inspector  
28<sup>th</sup> May 2025

# Form 1

## Form 1 - EIA Pre-Screening

<b>Case Reference</b>	321798-25
<b>Proposed Development Summary</b>	Retention of demolition of timber dwelling, construction of single storey dwelling, construction of extension, provision of new vehicle entrance and retention construction of fuel shed.
<b>Development Address</b>	Clongorey, Newbridge, Co. Kildare
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes,  - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.  <input type="checkbox"/> No,
<b>2. Is the proposed development of a CLASS specified in <u>Part 1</u>, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in <b>Part 1</b> .  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8	

<p>of the Roads Regulations, 1994.</p> <p><b>No Screening required.</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p><b>EIA is Mandatory. No Screening Required</b></p>	
<p><input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p><b>Preliminary examination required. (Form 2)</b></p> <p><b>OR</b></p> <p><b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b></p>	<p>Class 10(b)(i) Construction of more than 500 dwelling units – Sub Threshold.</p>

<p><b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b></p>	
<p><b>Yes</b> <input type="checkbox"/></p>	<p><b>Screening Determination required (Complete Form 3)</b></p>
<p><b>No</b> <input checked="" type="checkbox"/></p>	<p><b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b></p>

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

## Form 2 - EIA Preliminary Examination

<b>Case Reference</b>	321798-25
<b>Proposed Development Summary</b>	Retention of demolition of timber dwelling, construction of single storey dwelling, construction of extension, provision of new vehicle entrance and retention construction of fuel shed.
<b>Development Address</b>	Clongorey, Newbridge, Co. Kildare
<b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b>	
<b>Characteristics of proposed development</b>  (In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	This application includes the construction of a single storey extension to an existing dwelling and all associated works. The operational development will be served by a tertiary wastewater treatment system, connecting to municipal services in terms of water supply. The operational development includes a replacement vehicular site access. The development, by virtue of its type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change. It presents no risks to human health.
<b>Location of development</b>  (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	The subject site is located within a Category 1 Rural Area under the County Development Plan. The closest settlement is Newbridge, located a distance of 5.5km from the subject site.  The development is removed from sensitive natural habitats, designated sites, protected views, protected structures as designated within the Development Plan.  The subject site is not located within or adjacent to any Natura 2000 sites. Mounds Bog Special Area of Conservation is situated c.850m south of the site.
<b>Types and characteristics of potential impacts</b>  (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration,	Having regard to the limited scope of works, distance of the site from sensitive habitats, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.

cumulative effects and opportunities for mitigation).	
Conclusion	
Likelihood of Significant Effects	Conclusion in respect of EIA
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.	
There is a real likelihood of significant effects on the environment.	

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

DP/ADP: \_\_\_\_\_ Date: \_\_\_\_\_

(only where Schedule 7A information or EIAR required)