



An
Bord
Pleanála

Inspector's Report

ABP-322052-25

Development	Construction of bungalow with associated works.
Location	Ballyraggan, Rathvilly, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	2461329
Applicant(s)	Gerard Young
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First-Party
Appellant(s)	Gerard Young
Observer(s)	None
Date of Site Inspection	19 th May 2025.
Inspector	Catherine Hanly

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1.0 Site Location and Description

- 1.1. The site is located in the townland of Ballyraggan and positioned approximately 6 km to the south-east of the town of Castledermot.
- 1.2. The site is positioned to the north of the L8098 road. There is a bend on the L8098 road approximately 218 m to the west of the south-western corner of the site. The site is bound to the west by a residential dwelling and to the north and east by agricultural fields. The field is currently accessed by an agricultural field gate located on the western boundary of the site off the driveway leading to the dwelling located to the west of the site.
- 1.3. The site measures 0.331 ha and consists of a relatively flat grassed area which is located in the south western corner of a larger field in agricultural use. The site is bound to the west by a mixture of trees and hedgerow which separate the site from the neighbouring driveway leading to the residential dwelling, with the exception of the south-west corner where the boundary is comprised of post and wire fencing.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - A bungalow with an elevated roof to allow for ease of future conversion.
 - A secondary sewage treatment system with pumped discharge to a soil filtration bed as per regulations.
 - A domestic vehicular entrance to the requirements of the roads section of Kildare County Council
 - A bored well
 - All ancillary site works in association with the above.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Notification of the Decision to Refuse Permission issued on 13/02/2025 for 2 no. reason, as follows:

3.1.2. 1. *“Policy HO P11 of the Kildare County Development Plan 2023-2029 seeks to facilitate proposals for dwellings in the countryside outside of settlements in accordance with the National Planning Framework Policy NPO 19 in conjunction with the rural housing policy zone map and accompanying Schedule of Category of the Applicant and Local Need Criteria. In order to establish genuine local need, the Applicant was assessed against Category B (i) of Zone 1 as set out in Table 3.4 of the Kildare County Development Plan 2023-2029. Based on the information submitted with the application, the Applicant has not demonstrated that they have genuine local housing need. The proposed development is therefore contrary to policy HO P11 of the Kildare County Development Plan 2023-2029 and to the proper planning and sustainable development of the area.”*

3.1.3. 2. *“Having regard to the potential impact of the proposed development on the immediate natural environment where it would be necessary for the removal of extensive hedgerow planting to provide for sight lines, resulting in the disconnect of existing green infrastructure and negatively impacting on well-established flora and fauna and the character of the rural amenity, the proposed development would be contrary to Objectives LR04, TMO102 and BIO26 of the Kildare County Development Plan 2023-2029 which seek to minimise and prevent hedgerow removal in order to achieve adequate sightlines and facilitate development and if granted would be contrary to the proper planning and sustainable development of the area.”*

3.2. Planning Authority Reports

3.2.1. Planning Report

- It is concluded that an Environmental Impact Assessment Report is not required.

- Appropriate Assessment: It is not considered that there will be any impact on the nearest SAC/ SPA.
- Having regard to the zoning and landscape character area of the site, the principle of development is generally acceptable.
- The applicant has applied for a dwelling in zone 1 under the provisions of Category B Social of table 3.4 of the Kildare County Development Plan 2023 – 2029 (*Kildare CDP*). The applicant has not demonstrated that they comply with the criteria for local need.
- Having regard to the application, the applicant’s current living situation and the fact that they own another dwelling outside the County, it is considered that they do not have genuine local need.
- The applicant currently lives in the adjacent site with his son. The applicant may wish to examine the possibility of a family flat on the son’s land.
- No evidence of any previous speculative sale on other sites within the landholding was found.
- The development complies with objective HO O59 in relation to rural density in the area.
- The trial holes were filled and would need to be re-opened. A revised site assessment and details of the wastewater treatment system are required.
- Whilst the notice describes the dwelling as a bungalow, it is in fact a 1 and half storey house.
- There is an established hedgerow along the site boundary where the entrance is proposed. Given that the applicant’s son lives in the adjacent site, there is an opportunity for a dual entrance and access via the established access laneway. The removal of hedgerow is contrary to objective LR04 of the *Kildare CDP*.

3.2.2. Other Technical Reports

- Area Engineer: Recommends the inclusion of 8 no. conditions.
- Environment: Recommends requesting further information in relation to 3 no. items.

- Environmental Health Officer: Recommends requesting further information in relation to 1 no. item.
- Roads/ Transportation: No objection, subject to 8 no. conditions.
- Water Services: No objection, subject to 3 no. conditions.

3.3. Prescribed Bodies

3.3.1. No reports were received from prescribed bodies.

3.4. Third Party Observations

3.4.1. No Third-Party observations were received by the Planning Authority.

4.0 Planning History

4.1. Relevant Planning history for the site:

- **Ref. 20/188.** Construction of a dwelling, effluent system and entrance. 2020 **Refusal.** Refused for 2 no. reasons in relation to failure to demonstrate compliance with the local need criteria and due to insufficient detail to determine the achievement of sightlines and the removal of native hedgerow to facilitate the entrance. This application was submitted by the same applicant as that involved in the subject First-Party appeal.

5.0 Policy Context

5.1. Kildare County Development Plan 2023 - 2029

5.1.1. The site is located on unzoned land.

5.1.2. The site is located on lands identified as south-eastern uplands which have a landscape sensitivity level of 2. Table 13.3 identifies that rural housing has medium compatibility with development on land located in the south-eastern uplands.

Rural Housing

5.1.3. Section 3.13.3 relates to compliance with the rural housing requirements. Applicants must submit documentary evidence highlighting compliance with table 3.4 in section 3.13.3 of the *Kildare CDP* in relation to economic and or social need.

5.1.4. 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 (ii) 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	Applicants must have grown up and spent 16 years living in the rural area of Kildare and who seek to build their home in the rural area on their family landholding. Where no land is available in the family ownership, a site within 5km of the

	applicant's family home may be considered.	applicant's family home may be considered.
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- 5.1.5. Policy 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”.*
- 5.1.6. Policy 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.”*
- 5.1.7. Section 3.14 relates to Rural Residential Density. It states that the Single Rural Dwelling Density (SRDD) *“is not intended to be a rigid tool and 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. Generally, such one-off housing would be facilitated only in very exceptional circumstances, where there is a significant need demonstrated, for example, those actively engaged in agricultural or in an occupation heavily dependent on the land.”*
- 5.1.8. Policy HO P26: *“Sensitively consider the capacity of the receiving environment to absorb further development of the nature proposed through the application of Kildare County Councils ‘Single Rural Dwelling Density’ Toolkit (see Appendix 11) and facilitate where possible those with a demonstrable social or economic need to reside in the area. Applicants will be required to demonstrate, to the satisfaction of the planning authority that no significant negative environmental effects will occur as a result of the development. In this regard, the Council will:*
- examine and consider the extent and density of existing development in the area,*
 - the degree and pattern of ribbon development in the proximity of the proposed site.”*

- 5.1.9. Objective 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.”*
- 5.1.10. Objective 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.”*
- 5.1.11. Objective 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.”*
- 5.1.12. Objective HO O44: *“Restrict residential development on a landholding, where there is a history of development through the speculative sale or development of sites to an unrelated third party.”*
- 5.1.13. Objective 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.”*
- 5.1.14. Objective 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.”*
- 5.1.15. Objective 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.”*
- 5.1.16. Objective 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.”

5.1.17. Objective HO O53: *“Retain, sensitively manage and protect features that contribute to local culture heritage and distinctiveness including;*

- heritage and landscape features such as post boxes, pumps, jostle stones, etc.*
- hedgerows and trees,*
- historic and archaeological features and landscapes,*
- water bodies,*
- ridges and skylines,*
- topographical and geological features and*
- important scenic views and prospects”*

5.1.18. Objective 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.”*

5.1.19. Appendix 4 contains the Rural House Design Guide. Sections 3 and 4 outline key considerations in relation to site analysis and layout and house design respectively.

Landscape

5.1.20. Objective LR O4: *“Ensure that local landscape features, including historic features and buildings, hedgerows, shelter belts and stone walls, are retained, protected and enhanced where appropriate, so as to preserve the local landscape and character of an area.”*

Transport

5.1.21. Objective TM O102: *“Minimise the extent of hedgerow removal in order to achieve adequate sightlines. However, where it has been satisfactorily demonstrated that there is no other suitable development site (for planning reasons) any removed hedgerow shall be replaced with native hedgerow species. Opportunities should be sought to translocate existing species rich hedgerows, where possible, and subject to proper biosecurity protocols.”*

Biodiversity

- 5.1.22. Objective BI O26: *“Prevent, in the first instance, the removal of hedgerows to facilitate development. Where their removal is unavoidable, same must be clearly and satisfactorily demonstrated to the Planning Authority. In any event, removal shall be kept to an absolute minimum and there shall be a requirement for mitigation planting comprising a hedge of similar length and species composition to the original, established as close as is practicable to the original and where possible linking to existing adjacent hedges. Ideally, native plants of a local provenance and origin should be used for any such planting. Removal of hedgerows and trees prior to submitting a planning application will be viewed negatively by the planning authority and may result in an outright refusal.”*

Development Management

- 5.1.23. Section 15.4 in chapter 15 contains the development management standards for residential development.

5.2. Sustainable Rural Housing Guidelines for Planning Authorities, 2005

- 5.2.1. Section 1.2 makes the distinction between rural and urban generated housing.
- 5.2.2. Section 4.3 relates to the assessing housing circumstances.
- 5.2.3. Section 4.7 relates to occupancy conditions.

5.3. Quality Housing for Sustainable Communities, 2007

- 5.3.1. Section 5.1 sets out the space provision and room sizes for typical dwellings.

5.4. Natural Heritage Designations

- 5.4.1. The following distances are noted between the site and natural heritage designations:

Site	Approximate Distance from the Subject Site
Slaney River Valley Special Area of Conservation	4.8 km

Holdenstown Bog Special Area of Conservation	5.3 km
Holdenstown Bog Proposed Natural Heritage Area	5.3 km
River Barrow and River Nore Special Area of Conservation	4.4 km
Corballis Hill Proposed Natural Heritage Area	3.3 km
Oakpark Proposed Natural Heritage Area	9.7 km

5.5. EIA Screening

- 5.5.1. 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 in this instance. The grounds of the appeal can be summarised as follows:

Planning Policy & Case Law

- Sustainable Development: A Strategy for Ireland highlights the importance of careful land use planning.
- The National Planning Framework focuses on the importance of providing new homes.
- Sustainable Rural Housing emphasises the importance of renewing established communities in rural towns and tailoring policies to local circumstances.

- In the case of Brophy and Nulty v An Bord Pleanala, it was found that compliance with the County Development Plan trumped adherence to national planning policy.
- The Rural Development Programme – Ireland 2014 – 2020 identifies that there is no one size fits all approach to rural development. The programme is based around 5 key themes focusing on supporting sustainable communities, supporting enterprise and employment, maximising our rural tourism and recreation potential fostering culture and creativity in rural communities and improving rural infrastructure and connectivity.
- The Core Strategy in the Development Plan envisages that 730 no. dwellings will be constructed outside the towns villages and rural settlements over the life of the plan. One-off housing in the countryside comprises one strand in the development hierarchy.

Rural Housing Need

- The Planning Authority did not identify any shortcomings in the evidence submitted and Further Information was not requested.
- The Planning Authority did not consider if the applicant satisfied the tests set out in Circular SP5/08.
- Every effort should be made to facilitate new dwellings in the open countryside.
- This is the applicant's fourth submission to the County Council. Two previous applications were invalidated.
- A farmhouse must be erected on site to protect valuable items and to facilitate animal husbandry.
- There is a history of previous applications for new dwellings in the countryside for those working in the equestrian industry.
- The rural housing test only requires the applicant to comply with the social or economic element.

- It is common for the applicant to stay with his son who resides next door to the site.
- Should the Assessment of Local Need place weight on the fact that the applicant was born in Kilkenny, there is a history of planning cases where permission was granted for applicants who were born in different counties.
- A large part of the applicant's income is derived from farming. The applicant is now retired from his role as an accountant and needs to increase his agricultural activities to provide a sustainable income.
- There is no requirement for the operation to have begun or reached a level of intensity. This was shown in PL06S.309969.
- In the assessment of local need the Planning Authority intimates that the First-Party's ownership of a property in Carlow Town might prevent qualification for a house in Kildare. The appellant sold the property in 2021. There is a history of cases approved by An Bord Pleanála where previous ownership of dwellings did not result in the refusal of permissions.
- The Planning Authority recommends that the appellant explore the option of a family flat. This does not accord with the Development Plan

Site Entrance

- A small amount of vegetation would need to be removed for the creation of the vehicular entrance. Public safety would not be impacted.
- The development would not prejudice the rural environment.
- The local road serving the site, L-8089 carries little traffic.
- Page 84 in the Sustainable Rural Housing Guidelines refers to the removal of existing roadside boundaries where it is necessary for a new entrance.
- The entrance is proposed on the outside of a bend in the alignment of the road, thereby reducing hedgerow removal. The entrance would require 11m of hedgerow to be removed. The hedgerow is not of value. A short section of overgrowth would need to be pruned to a height of 1.05 m.

- Policy LR O4 in the Development Plan does not seek to preserve all features in the countryside.

Landscape

- The site does not contain any mature stands of trees, vegetation, rock outcrops, mountains or cliff edges, rivers or lakes, protected structures and no items of any environmental, town planning or ecological significance.
- The site is located within the class 2 (medium sensitivity) area of the south-eastern uplands.
- The site comprises 5.6 ha and is adequate to allow various farming activities to take place.

Design

- The Planning Authority did not consider the development to be inappropriate.

Wastewater

- The Environmental Health Officer requested further information in relation to the submission of an updated site assessment in accordance with the EPA 2021 Code of Practice “Domestic Waste Water Treatment Systems” and the submission of a detailed and labelled cross-section drawings showing the ground level of the dwelling, the gradient of the pipe from the dwelling to the septic tank, the invert level of the percolation trench or polishing filter, cross section of the percolation area/ polishing filter and the depth from ground level to water table and a revised site suitability report from the manufacturers of the proposed wastewater treatment system. A copy of the paperwork requested is now submitted.

EIA and AA

- The Council deemed that an EIAR and NIS were not required.

6.2. Revised Proposal

- 6.2.1. The appellant submitted a Percolation Filter Plan drawing, a Proposed Section through Sewer/ Treatment System drawing, financial information for the appellant, a letter from Kildare County Council confirming that the appellant has been on the register of electors since 2007, a document prepared by O'Reilly Oakstown which assesses the soil test report and confirms the suitability of their Oakstown BAF 6 PE Wastewater Treatment System to treat effluent, details of professional indemnity insurance and a site suitability report (including the site characterisation form).

6.3. Planning Authority Response

- 6.3.1. The Planning Authority's response to the grounds of appeal can be summarised as follows:
- The Council is of the opinion that a genuine rural housing need has not been established.
 - The Planning Authority confirms its decision and asks that the Board refer to the Planner's Report, internal department reports and prescribed body reports.

6.4. Observations

- 6.4.1. No observations were submitted to An Bord Pleanala.

7.0 Assessment

- 7.1. Having examined the application details and all other documentation on file, including the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Rural Housing Need
- Access
- Design
- Site Services

7.2. Rural Housing Need

- 7.2.1. In accordance with the Rural Housing Policy Zones Map in the *Kildare CDP*, the site is located in zone 1 which encompasses areas under strong urban influence. I note the 2 no. applicant categories and the rural housing need assessment criteria set out in table 3.4 of the *Kildare CDP*.
- 7.2.2. I have reviewed the supporting documentation submitted by the applicant to identify how he complies with the rural housing need criteria. The applicant has applied under category B for social reasons. Table 3.4 in the *Kildare CDP* states that a person can apply under category B when they have resided in the rural area of a substantial period of their lives within an appropriate distance of the site where they intend to build on the family landholding. Table 3.4 further states that in zone 1, applicants must have grown up and spent 16 years living in the rural area of Kildare.
- 7.2.3. Section 4 of the Rural Housing Application Form identifies all of the relevant documents required to accompany the application. The appellant has ticked that all documents have been submitted. However, I note that the Eircode for the dwelling where the applicant resided, letter from the school which he attended and birth certificate have not been submitted.
- 7.2.4. However, I note from the evidence submitted that the appellant who was originally born in Kilkenny spent 9 no. years renting the farmhouse located to the west of the subject site between 2003 and 2012. In 2012 the farmhouse was purchased by the appellant's son and the appellant continued to live in the farmhouse. I calculate that the appellant has lived at the adjacent property for a period of 22 no. years. Furthermore, I note that the evidence submitted supports that the appellant has resided in the area for 22 no. years.
- 7.2.5. Whilst the appellant did not grow up in the area, I am satisfied that he has spent a substantial portion of his life in the area.
- 7.2.6. I note the report from the Planning Authority states that having regard to their application, their current living situation and the fact that they own another dwelling outside the County, they do not have a genuine local need as per section 3.13.3 of the *Kildare CDP*.

- 7.2.7. From the submitted documentation, I note that the appellant previously owned a rental property in Carlow Town. It is confirmed in the declaration that this property has been sold. The declaration also confirms that the appellant previously purchased his marital home and has since separated. I note that the marital home is located in Carlow. Furthermore, I note objective HO O43 in the *Kildare CDP* requires applicants to demonstrate that they do not own or have not been previously granted permission for a one-off rural dwelling in Kildare. In this instance, the appellant has shown that they have not owned or been granted permission for a one-off dwelling in Kildare.
- 7.2.8. From an examination of the documentation, including records of managing the farm, receipts for animals and animal care, financial details including a tax return, details of the Green, Low-Carbon, Agri-Environmental Scheme and details of the herd number, I am satisfied that the appellant has been actively engaged in farming activity on the subject site. I consider that he has a genuine social need to live in this area on his own landholding. Furthermore, noting his living situation, I consider that he also has a genuine housing need.
- 7.2.9. I note that the appellant has not applied under category A which requires a landholding of greater than 15 ha. The appellant in this instance owns a landholding of 5.4 ha.
- 7.2.10. To conclude, I am therefore satisfied that the appellant meets the rural housing need assessment criteria under category B, for social reasons, as the appellant has resided at the adjacent property for a period of 22 no. years. Notwithstanding the fact that the appellant meets the rural housing need criteria, the application must identify how the development does not prejudice the environment and rural character of the area. This is examined in further detail in the following sections of this report.

7.3. Access

- 7.3.1. The development is proposed to be accessed by a new entrance in the south-western corner of the site, adjacent to the existing entrance to the dwelling to the west. The dwelling to the west of the site is owned by the applicant's son and the applicant is currently residing there.
- 7.3.2. I note the report from the Transportation, Mobility and Open Spaces Department which have no objection to the development subject to 8 no. conditions. Condition no. 1 recommended by the Transportation, Mobility and Open Spaces Department

requires the entrance to accord with Drawing E/3639-1 which is attached to the Transportation, Mobility and Open Spaces Department report. Drawing E/3639-1 identifies an opening 11 m minimum in width for the entrance.

- 7.3.3. From my site inspection, I noted that there is a high established hedgerow containing trees along the southern roadside boundary of the site. A minimum of 11 m of this hedgerow would be required to be removed to facilitate the proposed vehicular entrance.
- 7.3.4. I note the report from the Planning Authority which states that removal of the hedgerow is considered unnecessary given that the applicant's son lives in the neighbouring house. The Planning Authority state that there is an opportunity for a dual entrance via the established access laneway. The Planning Authority consider that the removal of the hedgerow is contrary to objective LR O4 in the *Kildare CDP*, which seeks to retain, protect and enhance hedgerows in order to preserve the local landscape and character of the area. The Planning Authority subsequently included this as a reason for refusal stating that the development would result in the disconnect of existing green infrastructure and negatively impact on well established flora and fauna and the character of the rural amenity. The refusal reason also stated that the development was contrary to objective TM O102 which seeks to minimise the removal of hedgerow in order to achieve adequate sightlines and objective BI O26 which seeks to prevent the removal of hedgerows to facilitate development.
- 7.3.5. I note the grounds of appeal which state that the hedgerow is not of value and that only a small amount of vegetation would need to be removed.
- 7.3.6. Following my site inspection and noting the established nature of the hedgerow which contains a variety of species including trees, I consider that the hedgerow represents an important part of the existing green infrastructure which contributes to the character of the rural area.
- 7.3.7. I note objective TM O102 in the *Kildare CDP* which seeks to minimise the extent of hedgerow removal in order to achieve adequate sightlines. The objective further states that where it has been satisfactorily demonstrated that there is no other suitable development site, any removed hedgerow shall be replaced with native hedgerow species.

- 7.3.8. I also note objective BI O26 in the *Kildare CDP* which state that where the removal of the hedgerow is unavoidable, same must be clearly and satisfactorily demonstrated to the Planning Authority.
- 7.3.9. Noting that the applicant's son is the owner of the adjacent property to the west, I agree with the Planning Authority that there is an opportunity to provide a dual entrance via the established access laneway to the west of the site. Whilst access off the existing laneway may still require the removal of some hedgerow, this approach would retain the hedgerow along the southern roadside boundary of the site which may mostly screen the proposed development from the roadside, thereby preserving the local landscape and the rural character of the area. Objectives LR O4, TM O102 and BI O26 seek to retain hedgerows where appropriate. Given the circumstances with the appellant's son residing in the adjacent property and the quality of the hedgerow, I consider that in this situation, it is appropriate to retain and preserve the hedgerow along the roadside. I am not satisfied that the appellant has adequately demonstrated that a vehicular entrance could not be provided off the laneway to the west of the site which may reduce the extent of hedgerow removal.
- 7.3.10. I therefore concur with the Planning Authority that the development contravenes objectives LR O4, TMO 102 and BI O26 of the *Kildare CDP*. I recommend that the appeal is refused on this basis.

7.4. Design

- 7.4.1. A single storey bungalow is proposed with a pitched roof. The dwelling is set back from the road and into the site. The dwelling is proposed to contain 3 no. bedrooms at ground floor. Windows are proposed in the gable ends at first floor level with the drawings identifying a design for a possible future attic conversion for a further 2 no. bedrooms and bathroom.
- 7.4.2. I note the report from the Planning Authority which states that the dwelling is a 1 and half storey house and that the dwelling would effectively comprise a 5 bedroom house over 2 floors if the attic is converted. The Planners Report does not raise any concerns regarding the design of the house.
- 7.4.3. I have reviewed the proposed drawings and I consider that the design, including the massing, form, roof design, windows of the dwelling is in accordance with the design

principles set out with the Rural House Design Guide which is contained in appendix 4 of the *Kildare CDP*.

Size

- 7.4.4. I note that the size of the dwelling, both as a single storey dwelling and with the attic converted accords with the minimum gross floor areas for three and five bedroom dwellings set out in *Quality Housing for Sustainable Communities*.

Ribbon Development

- 7.4.5. At my site inspection, I noted that there were 4 no. dwellings on the northern side of the L8098 road across a length of approximately 331 m. As such, I consider that the proposed development does not conflict with Policy HO P13 in the *Kildare CDP*, which seeks to restrict development that would extend an exiting pattern of ribbon development. I therefore consider that the proposed development would not result in ribbon development.

Density & Landholding

- 7.4.6. The Planning Authority stated that the development accords with objective HO O44 in the *Kildare CDP*, in that the no evidence has been found of any previous speculative sale or development of other sites with the landholding. I have examined details of the site, and I concur with the Planning Authority and thus I am satisfied that the development complies with objective HO O44 of the *Kildare CDP*.
- 7.4.7. With regards to rural density, I have used the Rural Density Toolkit, which indicates that there are 12 no. existing dwellings in the permitted area of 1.00 km². I therefore consider that the development complies with objective HO O59 of the *Kildare CDP* which seeks to ensure that the density of one-off housing does not exceed 30 units per square kilometre.

7.5. Site Services

- 7.5.1. The applicant proposes to install a waste water treatment system to treat effluent discharged from the dwelling.

- 7.5.2. The Environment Section in the Planning Authority submitted a report requesting Further Information in relation to a Site Characterisation Assessment in accordance with the EPA 2021 Code of Practice, a detailed cross section drawing and a Site Suitability Report from the manufacturers of the proposed wastewater treatment system.
- 7.5.3. The Environmental Health Service have also requested further information in relation to a Site Assessment and Site Characterisation form in accordance with the EPA Code of Practise on Domestic Waste Water Treatment Systems 2021. Details were also requested in relation to photographic evidence, site plans (including finished floor and ground levels), cross sections and design details of the on-site system. The report further requested that in order to facilitate the site assessment, the applicant was requested to re-open the trial holes.
- 7.5.4. I note that the appellant has submitted a Percolation Filter Plan drawing, a Proposed Section through Sewer/ Treatment System drawing, a document prepared by O'Reilly Oakstown which assesses the soil test report and confirms the suitability of their Oakstown BAF 6 PE Wastewater Treatment System to treat effluent, details of professional indemnity insurance and a site suitability report (including the site characterisation form).
- 7.5.5. I note the contents of the report prepared by O'Reilly Oakstown which identifies that they have assessed the Soil Test Report and confirms the suitability of their Oakstown BAF PE Wastewater Treatment System to treat effluent being discharged by the proposed dwelling.
- 7.5.6. In relation to site photographs, the appellant has referred the Board to the original report by Mark Byrne Engineering. I have reviewed the original report and I note the photographs which identify views across the site and the trial holes from 2020.
- 7.5.7. I note that the Site Characterisation Form has been prepared on the latest template in accordance with the EPA Code of Practise on Domestic Waste Water Treatment Systems 2021. Following my analysis of the Site Characterisation Form, I note that the trial holes date from 2020 and that the trial holes were not re-opened in order to facilitate a new site assessment as requested by the Environmental Health Officer. However, following my analysis of the Site Characterisation Form, I note that the site contains good soil characteristics which are suitable for the proposed development. I

also note that the trial holes date from January in 2020, which would be an appropriate time of year to obtain results.

- 7.5.8. The Environmental Section in the Planning Authority requested that the cross section drawing identify the invert level of the percolation trench or polishing filter. I have examined the proposed section drawing through the treatment system and I note that this detail has not been identified. However, I note that section 5 in the Site Characterisation Form outlines that the polishing filter will be constructed 300mm below ground level. Should the Board consider granting permission, I recommend that a condition is included requiring the applicant to submit a drawing to the Planning Authority identifying the invert level of the polishing filter.
- 7.5.9. The development proposes to install a well in the north-western corner of the site, at the rear of the dwelling. I note the report from the Water Services Department which had no objection to the proposed well subject to the inclusion of a condition requiring that prior to occupation, the water from the well should be tested for drinking water quality. Should the Board consider granting planning permission, I recommend that condition is included. The Water Services Department also recommended 2 no. conditions in relation to surface water drainage. Should the Board consider granting planning permission, I recommend that these conditions are also included.

8.0 AA Screening

I have considered the proposed dwelling and secondary sewage treatment system in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located approximately 4.4 km from the River Barrow and River Nore Special Area of Conservation.

The proposed development comprises a dwelling, a secondary sewage treatment system, a vehicular entrance and a bored well.

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.

The reason for this conclusion is as follows:

- The site is located approximately 4.4 km from the River Barrow and River Nore Special Area of Conservation and there is a lack of connections.
- Taking into account the determination by Planning Authority.

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 Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 **Water Framework Directive**

9.1. The proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

9.2. I refer the Board to Appendix 2 for my screening assessment.

10.0 **Recommendation**

10.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

11.0 **Reasons and Considerations**

1. The proposed development would result in the removal of a well-established hedgerow in order to provide a vehicular entrance to the site. The removal of the hedgerow would result in the disconnect of existing green infrastructure and would negatively impact on well-established flora and fauna and the character of the rural area. As a result, the development would contravene objectives LR O4, TM O102 and BI O26 in the Kildare County Development Plan 2023 – 2029 which seeks to retain, protect and

enhance hedgerows so as to preserve the local landscape and character of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

Catherine Hanly
Planning Inspector

5th June 2025

12.0 Appendix 1 Form 1 - EIA Pre-Screening

Case Reference	ABP 322052-25
Proposed Development Summary	Construction of bungalow with associated works.
Development Address	Ballyraggan, Rathvilly, Co. Kildare
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (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, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	

<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
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?	
<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 of the Roads Regulations, 1994. No Screening required.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	
<input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR	The class is 10(b)(i) Construction of more than 500 dwelling units. The development is for the construction of 1 no. dwelling and therefore is sub-threshold.

<p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	
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<p>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)?</p>	
<p>Yes <input type="checkbox"/></p>	<p>Screening Determination required (Complete Form 3)</p>
<p>No <input checked="" type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p>

Inspector: _____ **Date:** _____

13.0 Appendix 2 Form 2 - EIA Preliminary Examination

Case Reference	
Proposed Development Summary	Construction of a bungalow and associated works.
Development Address	Ballyraggan, Rathvilly, Co. Kildare
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
<p>Characteristics of proposed development</p> <p>(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).</p>	<p>The development involves the construction of 1 no. house on a 0.331 ha site. The site is located in a rural area.</p>
<p>Location of development</p> <p>(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</p>	<p>The site is not located in or immediately adjacent to any European site.</p> <p>The closest Natura 2000 site is River Barrow and River Nore Special Area of Conservation which approximately 4.4 km away.</p>

<p>environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	
<p>Types and characteristics of potential impacts</p> <p>(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p>Localised construction impacts will be temporary. The proposed development would not give rise to waste, pollution or nuisances beyond what would normally be deemed acceptable.</p>
Conclusion	
Likelihood of Significant Effects	Conclusion in respect of EIA
<p>There is no real likelihood of significant effects on the environment.</p>	<p>EIA is not required.</p>
<p>There is significant and realistic doubt regarding the likelihood of significant effects</p>	

<p>on the environment.</p>	
<p>There is a real likelihood of significant effects on the environment.</p>	

Inspector: _____ **Date:** _____

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

(only where Schedule 7A information or EIAR required)

14.0 Appendix 3

Screening the need for Water Framework Directive Assessment Determination.

The subject site is located in Ballyraggan in Rathvilly, Co. Kildare. The nearest water body is the Graney East River.

The proposed development comprises the construction of a bungalow and associated site works.

No water deterioration concerns were raised in the planning appeal.

I have assessed the development proposed at the site in Ballyraggan and I have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.

The reason for this conclusion is as follows:

- The nature of the development
- The site is located approximately 0.48 km from Graney East River and there is a lack of a hydrological connection.

Conclusion

I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.