



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319089-24

|                                     |                                                                                                                                |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| <b>Development</b>                  | Removal of condition 7 of Reg Ref. 73/1155. Demolition of a shed for the construction of a house and all associated site works |
| <b>Location</b>                     | Fishery Lane, Kingsfurze, Naas, Co. Kildare                                                                                    |
| <b>Planning Authority</b>           | Kildare County Council                                                                                                         |
| <b>Planning Authority Reg. Ref.</b> | 23997                                                                                                                          |
| <b>Applicant(s)</b>                 | Claire Malone                                                                                                                  |
| <b>Type of Application</b>          | Permission                                                                                                                     |
| <b>Planning Authority Decision</b>  | Refuse Permission                                                                                                              |
| <b>Type of Appeal</b>               | First Party                                                                                                                    |
| <b>Appellant(s)</b>                 | Claire Malone                                                                                                                  |
| <b>Observer(s)</b>                  | None                                                                                                                           |
| <b>Date of Site Inspection</b>      | 21 <sup>st</sup> November 2024                                                                                                 |
| <b>Inspector</b>                    | Clare Clancy                                                                                                                   |

## Contents

|                                                                     |    |
|---------------------------------------------------------------------|----|
| 1.0 Site Location and Description .....                             | 4  |
| 2.0 Proposed Development .....                                      | 4  |
| 3.0 Planning Authority Decision .....                               | 5  |
| 3.1. Decision .....                                                 | 5  |
| 3.2. Planning Authority Reports .....                               | 6  |
| 3.3. Prescribed Bodies .....                                        | 7  |
| 3.4. Third Party Observations .....                                 | 7  |
| 4.0 Planning History .....                                          | 7  |
| 5.0 Policy Context .....                                            | 8  |
| 5.1. National Planning Framework (NPF) – Project Ireland 2040 ..... | 8  |
| 5.2. Section 28 Ministerial Guidelines .....                        | 9  |
| 5.3. Development Plan .....                                         | 9  |
| 5.4. Natural Heritage Designations .....                            | 12 |
| 5.5. EIA Screening .....                                            | 13 |
| 6.0 The Appeal .....                                                | 13 |
| 6.1. Grounds of Appeal .....                                        | 13 |
| 6.2. Planning Authority Response .....                              | 16 |
| 6.3. Observations .....                                             | 16 |
| 7.0 Assessment .....                                                | 16 |
| 7.1. Compliance with Rural Housing Policy .....                     | 16 |
| 7.2. Precedent .....                                                | 22 |
| 7.3. Compliance with Development Standards .....                    | 22 |
| 7.4. Removal of Condition 7 of P.A. Ref. 73/1155 .....              | 23 |

|                                        |    |
|----------------------------------------|----|
| 7.5. Other Matters .....               | 23 |
| 8.0 AA Screening.....                  | 24 |
| 9.0 Recommendation.....                | 25 |
| 10.0 Reasons and Considerations.....   | 25 |
| Appendix 1 – Form 1: EIA Pre-Screening |    |

## **1.0 Site Location and Description**

- 1.1. The appeal site is located in the townland of Kingfurze, Naas, Co. Kildare. It is located approximately 580 m to the east of Naas settlement boundary and approx. 658 m to the south of the settlement boundary of Johnstown village. There is an existing recessed agricultural access serving the site off the adjoining local road which is known as Fishery Lane. The site forms part of a farm holding. There is an existing agricultural dry store shed located within the appeal site. The roadside boundary is defined by mature trees and hedgerows which is characteristic of the general area. The sites rear and northwestern boundaries are undefined.
- 1.2. The ground levels within the site are consistent with the levels of the adjoining public road and the site and adjoining farm lands are relatively flat. The wider area is relatively low lying in nature. The family home of the appellant adjoins the site to the southeast. There is an existing dwelling located to the northwest of the site. A parcel of farm land separates the appeal site from this adjoining dwelling.

## **2.0 Proposed Development**

- 2.1.1. Permission is sought for the following:
  - i. The removal of condition 7 of P.A. Ref. 73/1155 in relation to a sterilisation agreement relative to landholding from which the appeal site is being taken.
  - ii. The removal of an existing agriculture structure.
  - iii. Construction of a single storey dwelling and garage, alterations to the existing agricultural entrance, provision of wastewater treatment system and polishing filter and ancillary site development works.
- 2.1.2. The subject site has a stated area of 0.3 ha. The existing agricultural building has an area of 102 m<sup>2</sup>. The proposed dwelling will have a gross floor area of 164 m<sup>2</sup>, a max roof ridge height of 5.47 m, and the proposed garage will have a gross floor area of 37 m<sup>2</sup> and a max roof height of 4.8m.
- 2.1.3. Along with the standard drawings, site suitability assessment, landscape report and plan, a design statement report and a Flood Risk Review of the appeal site, the application was accompanied by:

- Landowner's letter of consent, folio and land registry details of the landholding.
- Supporting documentation relating compliance with rural housing need.

### 3.0 Planning Authority Decision

#### 3.1. Decision

By Order dated 23<sup>rd</sup> January 2024, Kildare County Council decided to refused permission for the subject development for the following 3 reasons:

1. Objective HO 059 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, unless the applicant is actively engaged in agriculture, or an occupation that is heavily dependent on the land and building on their own land holding'*. In conjunction with the level of existing development in the vicinity which is measured at over 33 units per square kilometre, it is considered that the proposed development would further exacerbate an excessive density of development in this rural area. The proposed development would materially contravene Objective HO 059 and Policy HO P26 of the Kildare County Development Plan 2023 – 2020 and would therefore be contrary to the proper planning and sustainable development of the area.
2. It is the policy of the Kildare County Development Plan under HO P15 to preserve and protect the open character of transitional lands immediately outside of settlement boundaries, 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. Having regard to the existing pattern and density of development in the area and the nature and location of the proposed dwelling, it is considered the proposed development would detract from the open character of the transitional lands on the approach road to Naas and Johnstown which would be contrary to HO P15 and to the proper planning and sustainable development of the area.
3. Section 15.7.7 of the Kildare County Development Plan 2023-2029 states that permitted developments in rural areas must be set back a minimum of 18.5 m from county roads. Having regard to the information submitted, the planning authority have calculated that the proposed development would be approx. 15 m from Fishery

Lane. It is considered that the proposed set back distance would fail to protect the residential amenity of the dwelling / occupants, as well as being contrary to section 15.7.7 and the proper planning and sustainable development of the area.

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

#### **3.2.1. Planning Reports**

One planning report dated 23<sup>rd</sup> January 2024 forms the basis of the assessment and recommendation refusal. The main points are summarised as follows:

- The removal of condition 7 of P.A. Ref. 73/155 was acceptable subject to conditions.
- The planning authority concluded that the applicant demonstrated a 'social' housing need which complied with Table 3.4 and policy HO P11 of the CDP.
- The site is located in an area of low sensitivity – 'Northern Lowlands Landscape Character Area' which has the capacity to accommodate rural housing (Table 13.3 of the CDP).
- The location of the site from zoned lands in Nass was noted to be approx. 560 m, and from the settlement boundary of Johnstown was approx. 155 m. Given the close proximities to these settlements and the extent of existing development in the area, the proposed development would be contrary to policy HO P15.
- The capacity of the area was assessed having regard to policy HO P26 and objective HO O59. In accordance with these policy and objectives, the Rural Residential Density (RRD) was determined to be 33 existing dwellings within 1 sq. km and consequently was contrary to objective HO O59.
- The design, scale and material finishes of the proposed dwelling and garage were considered generally acceptable for the location. The setback distance of the dwelling from the public road was considered to be 15 m which was less than the requirement of 18.5 m and was considered to be at variance with the set standards as prescribed in Section 15.7.7 Development Management Standards.
- The proposed access was considered acceptable noting that the Roads Department raised no objections and recommended conditions.

- The proposal to connect to the adjoining public mains and to service the site with an Oakstown 6PE wastewater treatment system were considered to be acceptable.

### 3.2.2. Other Technical Reports

- Transportation, Mobility, Open Spaces Department 19<sup>th</sup> December 2023 – No objection subject to conditions.
- Water Services 22<sup>nd</sup> November 2023 – Notes the Flood Risk Review submitted with planning application. No objections raised subject to conditions.
- Naas Municipal District 03<sup>rd</sup> January 2024 – No objections raised subject to conditions.
- Environment Section 15<sup>th</sup> January 2024 – No objections raised subject to conditions.
- Environment SIF 15<sup>th</sup> January 2024 – Noted the trial hole open, no mottling observed, both trial hole and percolation hole were satisfactory. No objections raised.

### 3.3. Prescribed Bodies

- Irish Water 03<sup>rd</sup> January 2024 – No objections raised subject to standard conditions including pre-connection agreement.

### 3.4. Third Party Observations

None.

## 4.0 Planning History

### Appeal Site

- 4.1.1. P.A. Ref. 21/1702 – Claire Malone refused permission for single storey dwelling for 2 reasons. The grounds for refusal related to exacerbation of an excessive density in the area, and the level of haphazard and piecemeal development in proximity to the adjacent settlements of Naas town and Johnstown village.

### Same Landholding

- 4.1.2. P.A. Ref. 23/165 – Claire Malone refused permission for a single storey dwelling. The grounds for refusal related to the location of the proposed wwts within a flood plain and the unsuitability of the site to accommodate the wwts, and contrary to HO P15 and HO P26 of the development plan and the exacerbation of an excessive density in the area, contributing to the further erosion of the rural character.
- 4.1.3. P.A. Ref.: 09/137 – Permission granted for a single storey extension to the existing dwelling (family home).
- 4.1.4. P.A. Ref. 12/955, ABP Ref. 09/241689 – The Board granted permission for a dormer dwelling to Stephen Dunbar (familial relation).
- 4.1.5. P.A. Ref.: 73/1155 – Permission granted for a bungalow. Subject to Section 47 sterilisation agreement.

## **5.0 Policy Context**

### **5.1. National Planning Framework (NPF) – Project Ireland 2040**

- 5.1.1. **NPO 15:** Seeks to support the sustainable development of rural areas and to manage the growth of areas under urban influence to avoid over-development.
- 5.1.2. **Policy Objective 19:** Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence within the commuter catchment of cities and larger 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 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 small towns and rural settlements.

## 5.2. Section 28 Ministerial Guidelines

### 5.2.1. Sustainable Rural Housing Guidelines for Planning Authorities (2005)

- Section 4.3 relates to the assessment of housing circumstances for housing proposals in a rural area, particularly those rural areas closest to cities and large towns experiencing substantial pressure for development noting that balanced assessments will need to be made regarding the circumstances and merits of the application.
- In relation to exceptional health circumstances, planning authorities should recognise that such health circumstances supported by relevant documentation may require a person to live in a particular environment or close to family support.
- In such cases and in the absence of any strong environmental, access or traffic reasons for refusal, a planning authority should grant permission subject to conditions regarding occupancy.

## 5.3. Development Plan

### 5.3.1. Kildare County Development Plan 2023-2029 (CDP) is the operative plan. Policies and objectives relevant to the proposed include the following:

### 5.3.2. Chapter 3 Housing

- Section 3.13 Sustainable Rural Housing – acknowledges the potential for rural settlements but also a continuing need for housing for people who live and work in the countryside.
- Section 3.13.2 An Evidence-based Approach
  - The appeal site is located within an ‘Area under Strong Urban Influence’ (Zone 1) – Map Ref: 3.1.
  - Rural dwellings will be facilitated in Zone 1 subject to a demonstrable economic or social need to live in the rural area and to compliance with siting, environmental and design criteria for rural housing.
- Section 3.13.3 Compliance with the Rural Housing Requirements

- Table 3.4 – *Schedule of Local Need Criteria in accordance with the NPF (NPO18)*:

This outlines the approach applied to the Zones identified on Map 3.1 under 2 categories; Category A Economic or Category B Social. I note that this table does not include provisions for those with medical need for rural housing.

Zone 1 – ‘Areas under Strong Urban Influence’ it is 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’.

Category A Economic:

- (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 15 ha.

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.

**Policy 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 O47:** Recognise that exceptional health circumstances, supported by relevant documentation from a registered medical specialist, may require a person to live in a particular environment. Housing in such circumstances will generally be encouraged in areas close to existing services and facilities and in Rural Settlements.

- Section 13.13.4 Siting and Design

**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 houses, villages and settlements and to maintain a clear demarcation and distinction between urban areas and the countryside and to protect the integrity of agricultural uses in these areas.

- Section 3.14 Rural Residential Density – seeks to manage proliferation of one-off housing which erodes the intrinsic rural character of areas by assessing such applications, having regard to the overall rural residential density in the area.

**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 (Appendix 11) and facilitate where possible those with the 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 environmental effects will occur as a result of the development. 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 development.

**HO O59:** Carefully manage Single Rural Dwelling Densities to ensure that the density of one-off housing does not exceed 30 units per square kilometer\* (the sq. km. shall be measured from the centre point of the application site), unless the applicant is actively engaged in agriculture, or an occupation that is heavily dependent on the land and building on their land holding.

- Section 3.13.5 Restoration / Refurbishments of Traditional Structures

Promotes and encourages the retention and sensitive refurbishment of vernacular buildings in the county. In particular, derelict dwellings within the rural countryside presents opportunities for restoration and / or partial or full demolition as the case may be. Policies in this regard include:

**HO P22:** Positively accept any brownfield **residential** site, non-habitable dwelling or farm buildings irrespective of their condition, as a viable alternative to a new residential

build in a rural area. Rural density figures or limits will not apply to applicants who comply with the local need criteria\*(Rural density limits as per HO O59 will not apply to applicant restoring or refurbishing existing farm structures or non-habitable dwellings who comply with the local need criteria).

### 5.3.3. Chapter 15 Development Management Standards

- Section 15.7.7 Building Lines

Provides the policy on minimum setback distances for permitted developments in rural areas along national, regional and county roads as set out in Table 15.7. For county roads, the minimum setback distance is 18.5 metres.

### 5.3.4. Appendix 11 – Single Rural Dwelling Density Toolkit

- Provides the evaluation criteria on the assessment of applications for one-off housing in the rural area having regard to the overall rural residential density in the area.
- One of the evaluation criteria is the examination of ‘Rural Residential Density’ (RRD) at the scale of a square kilometer surrounding the site for a proposed one-off dwelling. It reflects the policy approach to rural one-off houses set out in Section 3.14 Rural Residential Density of the development plan and the following categories are referenced: -
  - In general, RRDs of less than 15 units per sq. km will be acceptable.
  - In very enclosed landscapes with well defined hedgerows and or mature trees, which would partially screen or enclose one-off houses, or RRDs of circa 30 per sq. km maybe open for consideration.
  - Where the RRD exceeds 30 per sq. km there will be a presumption against further one-off houses, however in certain circumstances the above limits on RRD may be exceeded subject to the exceptions outlined in section 3.14 of Chapter 3 of Volume 1 of the CDP.

## 5.4. Natural Heritage Designations

pNHA 002104 Grand Canal – approx. 3.2 km to the west of site.

pNHA 001395 Liffey At Osbertown - approx. 5.2 km to the west of site.

pNHA 00397 Red Bog Kildare – approx. 6.2 km to the southeast of site.

SAC 000397 Red Bog Kildare – approx. 6.2 km to the southeast of site.

SPA 004036 Poulaphouca Reservoir – approx. 8.6 km to the southeast of site.

pNHA 00731 Poulaphouca – approx. 8.6 km to the southeast of site.

## **5.5. EIA Screening**

- 5.5.1. Having regard to the nature, size and location of the proposed development comprising the construction of dwelling on a site with a stated area of 0.3 ha, and to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. Refer to Appendix 1 and 2 in relation to this.

## **6.0 The Appeal**

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

- 6.1.1. This is a first party appeal received from Claire Malone. The grounds of appeal can be summarised as follows:

#### **Planning History and Precedent**

- A detailed description of the planning history relating to the applicant is given. It includes details relating to the pre-planning meetings between the appellant and the planning authority which informed the site selection. In particular, it is stated that the planning authority suggested the demolition of the existing agricultural structure and locating the dwelling on its footprint.
- ABP Ref. PL 09.241689 – the Board granted permission for a dwelling on this site which is located approx. 200 m to the north of the appeal site which is the applicant's brothers site.
- Other planning applications relating to other applicants in the immediate area are referenced, in particular P.A. Ref. 22/508 in the context of 'exceptional health circumstances' which was assessed under the previous development plan under

RH8. The planning authority did not provide a rationale in relation to compliance RH8 in its assessment in this case.

## **Reasons for Refusal**

### **Reason 1**

- Refusal reason 1 relates to Objective HO O59 of the development plan which refers to management of single rural dwelling densities. The appellant applied for permission on the basis of HO O47 which relates to 'exceptional circumstances' and which does not require compliance with objective HO O59.
- The appellant demonstrated compliance with Objective HO O47 which was not referenced in the planning report. Kildare County Council adopt a policy of keeping sensitive personal information private. It is not clear how the applicant's circumstances were assessed or why she did not comply with Obj. HO O59.
- Requests the Board to assess the applicant's compliance with Objectives HO O47 details for which are appended in the appeal submission, and also HO O59.
- Regarding compliance with Obj. HO O59, it is stated that 27-30 units per sq km. is a more correct assessment of density than 33 as cited in the planning report.
- Appendix 11 of the CDP provides that the number of dwellings allowable in a 1 sq. km area depends on the degree of screening afforded. The site is screened with mature trees and hedgerows.
- The radius includes 2 side roads (Fishery Lane and Westown road). Only 1 or 2 houses may be seen when travelling the main road. The number of dwellings 27-30 is more evident from an aerial photo / map than on the ground. A max of 15 dwellings can be seen along Fishery Lane from Tipper Road. A 1 km route through the area involves passing 15 houses.
- Compliance with HO P26 and footnote 10, it is submitted that in the context of the Kildare CDP, policies are higher priority than objectives. Footnote 10 refers to impacts being site specific.

### **Reason 2**

- In relation to Policy HO P15, the appeal site is not located 'immediately outside' of the Naas settlement boundary. 'Immediately' is not defined.

- The site is located 1.8 km from Naas and 725 m from Johnstown (Appendix B).
- The densities between the site and Naas are very low at approx. 13.5 per sq. km, and between the site and Johnstown, 1 dwelling giving a density of 2.5 per sq. km. The racecourse provides space between Naas and the site which will not be developed and curtails urban sprawl.
- The site is not 'transitional' given that it is located 1.8 km from Naas as the crow flies and 2.2 km by road. The area and in particular Fishery Lane is not open in character and is not an approach road to Naas or Johnstown. Landscaping is proposed to augment existing screening.

### Reason 3

- The planning authority incorrectly noted the setback distance approx. 15 m from Fishery Lane. The site layout plan indicates a setback distance of 18.5 m. The appellant's family home is noted to be much closer to the road. Flexibility should be allowed in situations where there is an established building line.

### **Exceptional Aspects of the Planning Application not Considered by the Council**

- The brownfield nature of the site which contains an agricultural structure on the same footprint as the proposed dwelling. Policy HO P22 is relevant, the proposal comes within its scope. It was previously proposed to reconstruct the existing steel framed farm shed which would have met this policy but was advised at a pre-planning meeting to demolish it.

### **No Alternative Available Sites**

- The planning history relating to the family landholding and part of which is identified as a flood risk area, inhibits the selection of a suitable alternative site. No local third party sites are available to the applicant within 5 km of the family home.
- Any existing or newly built houses with the necessary space and environment for art / design work would be too expensive to consider.

### **Exceptional Health Circumstances**

- The applicant's health circumstances limit her career options. Supporting documentation was provided to the application, but the planning report gave no consideration or whether it was acceptable to comply with Obj. HO O47 of the

CDP. An example of a precedent case granted where Policy RH8 (the forerunner of HO O47 in the 2017 CDP) was noted to apply by the planning authority.

## **6.2. Planning Authority Response**

The Planning Authority confirms its decision, notes the first party appeal and has no further observations. It refers the Board to the planning reports, internal departmental reports in relation to the assessment of the application.

## **6.3. Observations**

Catriona Malone 14<sup>th</sup> March 2024

- Additional information provided in relation to the appellant's health following referral to clinic / hospital outside of Ireland.

## **7.0 Assessment**

Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the report/s 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:

- Compliance with Rural Housing Policy
- Precedent
- Compliance with Development Standards
- Removal of Condition 7 of P.A. Ref. 73/1155
- Other Matters

### **7.1. Compliance with Rural Housing Policy**

- 7.1.1. The appeal site is located within an 'Area under Strong Urban Influence' (Zone 1). In order to qualify for consideration for a house in such areas, the applicant is required to demonstrate an 'economic' or 'social' need to live in the rural area. In this regard the CDP sets out 3 categories under which a rural housing need is required to be

assessed. Table 3.4 lists Category A – Economic and Category B – Social, and the assessment criteria relevant to these categories. In addition, the development plan recognises other circumstances which may be considered and in this case, objective HO O47 is relevant which relates to exceptional health circumstances of an applicant.

7.1.2. The first party states that permission was sought on the basis of compliance with HO O47 which does not require compliance with objective HO O59, and that it is unclear how the applicant's circumstances were assessed to comply with this objective, as the planning report does not provide this assessment. The applicant argues that 27-30 dwellings per sq. km is a more correct assessment of density. The other issues raised by the first party are that the planning authority in its assessment did not give due consideration to a number of exceptional factors which includes for inter alia, existing mature hedgerow on all sides of the subject site, and along most of the roads within the 1 sq. km radius, resulting in the visual presence of the proposed dwelling on the ground being enclosed.

7.1.3. I note from the appeal details that the first party i.e. the applicant, is seeking to build a house in this location on the basis of 'exceptional health circumstances'. I note from the planning application details that the applicant sought to demonstrate a local housing need in relation to compliance with 'Category B – Social' need to live in the rural area and accordingly, the applicant ticked this criteria on the planning application form. The applicant submitted the required supporting documentation to substantiate her local housing need.

7.1.4. 'Social Need' is defined in Table 3.4 of the CDP for Zone 1 as follows:

- 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'.

7.1.5. Rural Housing Need Assessment Criteria for Zone 1 in Table 3.4 is as follows:

- Zone 1 Areas Under Strong Urban Influence – Applicants must have spent 16 years living in the rural area of Kildare and who seek to build their home in the rural area on their family land holding. Where no land is available in the family ownership, a site within 5km of the applicant's family home may be considered.

- 7.1.6. On the basis of the information submitted as detailed in Section 2.1.3 above, I note that the planning authority was satisfied that the proposed development was in compliance with the rural housing policy as set out in Table 3.4 and policy HO P11 of the CDP. Notwithstanding, the planning authority adjudicated the merits of the proposal in relation to the capacity of the receiving area in terms of density, having regard to policy HO P26 and objective HO O59 of the CDP. I note that the applicant highlighted in the updated 'Planning Statement' document submitted with the application details that she was diagnosed with a medical condition. I further note that the planning authority<sup>1</sup> did not explicitly assess this in the planning report in terms of compliance with objective HO O47 'exceptional health circumstances', as I find no reference to it in the planning report or on the documentation contained on the appeal file. Permission was refused on the basis that the proposed development would materially contravene objective HO O59 and policy HO P26 of the CDP which relate to rural residential density.
- 7.1.7. Having reviewed all of the appeal file details it is evident to me that the applicant has resided in her family home for a substantial period, in her case 16+ years and continues to do so. The appeal site is being taken from the family landholding with the family home immediately adjoining the site. Given the substantial documentation provided in support of the applicant's rural housing need, I am satisfied that she has demonstrated her intrinsic links to the area and I would concur with the opinion of the planning authority that the applicant has demonstrated a rural housing need which is in accordance with Table 3.4 Category B – Social and policy HO P11 of the CDP.

#### **Rural Residential Density Toolkit**

- 7.1.8. Notwithstanding the aforementioned, there is a requirement, whether under policy HO P11 or HO O47, for proposals for new dwellings in rural areas to comply with all other policies and objectives set out in the CDP, in particular HO P15, HO P26 and HO O59. These policies and objective relate to the capacity of the receiving environment in terms of existing residential density and new single rural dwellings. In particular it is a specific objective of the council under HO O59 to carefully manage and ensure that

---

<sup>1</sup> I would note for the Board that the planning authority's assessment of the supporting documentation provided in relation to the applicant's economic or social need under 'seperate cover' does not provide a separate planning report to assess compliance with rural housing policy.

the density of new single rural dwellings does not exceed 30 units per sq. km, unless the applicant is actively engaged in agriculture or such occupation which depends on the lands and building on their landholding. I would note for the Board that the applicant is not engaged in an agricultural occupation or other occupation dependent on land, and did not put forth such a case for this test. The planning authority deemed that the subject site is located in an area that has a residential density of 33 existing dwellings.

- 7.1.9. Following a site inspection, I note that the appeal site is located approx. 580 metres to the east of the settlement boundary of Naas, which is designated as a 'Key Town' in the Settlement Hierarchy for county Kildare. It is located approx. 658 m to the south of Johnstown village. Outside of these urban areas, the immediate area in which the site is located is characterised by agricultural land with one-off housing along the local road network approaching these settlements. I note that the topography of the wider area is low lying. I note that the site is located within an area designated as the 'Northern Lowlands' (landscape character area). Such designation has capacity to absorb residential development.
- 7.1.10. Section 3.14 of the CDP relates to Rural Residential Density and policy HO P26 of the CDP relates to the Kildare County Council Density Toolkit (Appendix 11 of the CDP). HO P26 is a development plan policy to manage the capacity of the receiving environment in terms of new proposals for one-off housing while HO O59 is an objective which states that *'it is the objective of the council to ensure that the density of one-off housing does not exceed 30 units per sq km'*. The exception to this is if an applicant is actively engaged in agriculture or an occupation that is heavily dependent on the land on their own holding. Another caveat is RRDs of c. 30 units per sq km may be open for consideration where the site is located within a very enclosed landscape and has the benefit of well defined hedgerows or mature trees.
- 7.1.11. I acknowledge the lack of scientific certainty to this approach and I note the appellants appraisal and the figures which differ from the planning authority, but having objectively undertaken the test myself, I would concur with the planning authority's position. It is acknowledged in the policy that there may be instances where the existing pattern of development may facilitate consolidation of one-off housing, for example due to the prevailing pattern of the area, local topographical conditions, or in very enclosed country (defined by nature trees and hedgerows) which may potentially have the capacity to absorb an additional residential unit without any significant

adverse visual, physical or environmental impacts to the area. However the proviso set out in Appendix 1 of the development plan states that such one-off housing should generally only be facilitated in very exceptional circumstances and where there is a significant need demonstrated for example, those actively engaged in agricultural activity or in an occupation heavily dependent on the land (objective HO O59 refers).

7.1.12. While the applicant has set out circumstances which she argues are exceptional in her case to overcome the requirements to comply objective HO O59, it is my consideration that as she is not involved in any such agricultural occupation, intensive farming, animal husbandry or similar, I do not consider that the applicant qualifies for the 'very exceptional circumstances' as referenced in objective HO O59. As such, having regard to the location of the site relative to Naas town and Johnstown village, I conclude that the proposed development would exacerbate the density of development in this area and would further contribute to the erosion of the rural character of the area. I therefore recommend that permission is refused as the proposal would be at variance with policy HO P26 and objective HO O59 of the CDP.

7.1.13. Notwithstanding the above, I further consider that HO P15 of the CDP arises. It is the objective of this policy to preserve and protect the open character of transitional lands particularly on the approach roads to towns and villages to prevent linear sprawl near such settlements. The appellant submits that this would not arise as a result of the proposed development, given its enclosed nature which is defined by mature hedgerows and trees and the proposals put forth in the landscaping plan. The site is located in close proximity to Naas town and Johnstown. It is evident that the approach roads from the appeal site to these settlements are under pressure from rural generated housing. This is also substantiated by the RRD level within 1 sq. km of the appeal site. In that regard I would concur with the planning authority's assessment and consider that the proposal would exacerbate the issue further if permitted which would be contrary to policy HO P15 of the development plan.

#### **Exceptional Health Circumstances**

7.1.14. Through the appeal, the applicant has put forth a case to comply with objective HO O47 of the CDP. This objective facilitates a housing need of an applicant with exceptional health circumstances that may require a person to live in a particular environment. I would note that the objective states that housing for such

circumstances will be encouraged in areas close to existing services and facilities in Rural Settlements.

7.1.15. The applicant has provided a letter from a registered medical professional that describes the applicant's health circumstances which requires her to work from home and the need for a dwelling close to family. A letter from a supporting organisation of the medical condition is also provided. The applicant has also provided a personal statement in relation to her medical circumstances and subsequent information provided by Catriona Malone on the 14<sup>th</sup> March 2024 which I have reviewed and noted. The appellant also refers to a precedent case under P.A. Ref. 22/508 whereby the planning authority granted permission for such a case.

7.1.16. I note that the wording of objective HO O47 refers to exceptional circumstances that 'may require a person to live in a particular environment'. I note that the site is being taken from the family landholding and the location of the family home relative to the appeal site. I also note that the site is located in close proximity of Naas town (c. 580 m to the east) and Johnstown village (c. 685 m to the north). Based on the details provided, I am not satisfied that the applicants case has been appropriately justified in the context of 'exceptional health circumstances' that would require her to live in the particular environment of the application site. Having regard to the sites' location relative to nearby urban settlements and where significant levels of rural housing development has taken place on the edges of these settlements, it is my consideration that the submitted documentation does not indicate why the applicant's particular health circumstances could not be achieved within existing adjoining urban settlements or why such medical needs require the need for the construction of a new single dwellings at this location in the rural area.

7.1.17. Having regard to the foregoing, I am not convinced that the applicant's medical condition requires her to reside in a new dwelling in an area of Strong Urban Influence and it is therefore my conclusion that the applicant does not meet the criteria for a rural housing need under objective HO O47. I recommend refusal on this basis.

Notwithstanding the aforementioned, should the Board come to a different opinion or decision on this matter, I consider the inclusion of an occupancy condition restricting occupancy of the dwelling specifically to the applicant in the event of a grant.

### **Section 3.13.5 Restoration / Refurbishments of Traditional Structures**

7.1.18. In relation to HO P22, it is argued that the appellant qualifies under this objective on the basis of the provision of a dwelling in lieu of the removal of the existing farm building on the site. Section 3.13.5 of the CDP relates specifically to the restoration / refurbishment of traditional structures where it is a policy of the council to retain such structures. Partial or full demolition may be permissible in the case of a derelict dwelling, however the policy does not go as far as to include farm buildings. Pursuant to my site inspection, I noted that the farm building proposed to be demolished is a dry agricultural shed. I do not consider it to be a vernacular or a traditional structure and therefore it does not come within the scope of this policy.

#### **7.2. Precedent**

7.2.1. The appellant refers to a number of planning applications both granted and refused permission for one-off dwellings. One is granted in the immediate area whereby the appellant notes precedent attributed to same in terms of compliance with policy in relation to exceptional health circumstances. I note that this application was assessed under the previous county development plan. The two others referenced are located in others parts of the county, both refused and deemed contrary to objective HO O50 of the CDP. It is my consideration that the subject appeal should be considered on its own merits and on a site-specific basis, having regard to national and local planning policy and other relevant planning considerations.

#### **7.3. Compliance with Development Standards**

7.3.1. The third reason for refusal relates to the setback of distance of the proposed dwelling from the adjoining public road. The first party argues that the planning authority is incorrect in its assessment of the proposed setback distance on the site layout plan submitted. I note that the planning authority concluded that the setback distance of the dwelling proposed was approx. 15.5 m from Fishery Lane.

7.3.2. Section 15.7.7 of Chapter 15 Development Management Standards outlines the policy requirement relating to building lines in relation to adjoining road networks. I note that the policy states 'where developments are permitted in rural areas along national, regional and county roads, that it is a policy of the council to require compliance with

the minimum setback requirements set out in Table 15.7'. For local county roads, the set back distance is specified in Table 15.7 as 18.5 metres.

- 7.3.3. I have reviewed the site layout plan submitted and I note that it indicates a setback distance of 18.5 from the southwest building line of the accommodation block of the dwelling. I consider this to satisfy the requirements of Table 15.7. The wording of the policy clearly states that the setback requirements relate to permitted development. In this regard, should the Board be minded to grant the development, I recommend the inclusion of a condition requiring the setback distance to be 18.5 metres from the adjoining public road in accordance with Table 15.7 of the CDP.

#### **7.4. Removal of Condition 7 of P.A. Ref. 73/1155.**

Permission is sought to remove of Condition 7 of P.A. Ref. 73/1155. The Sustainable Rural Housing Guidelines for Planning Authorities 2005 offers guidance in relation to sterilisation agreements. In general it states that these agreements were used to regulate over development in rural areas mainly through urban generated development. Given the lapse of time, the case can be considered on its own merits and in this regard, I consider it appropriate to remove condition 7, in the event of a grant.

#### **7.5. Other Matters**

##### Flood Risk

- 7.5.1. I note that a Flood Risk Review of the appeal site was submitted with the application details. This identifies two locations in proximity of the appeal site that are subject to a flood risk. I note that there is a watercourse that runs along the northern boundary of the landholding from which the site is being taken. The Flood Risk Review refers to the OPW CFRAM maps in its site appraisal. Notwithstanding this, I note that the area in which the appeal site is located, and the wider adjoining lands is currently under review by the OPW, as hydrological conditions have changed.
- 7.5.2. Having reviewed the Strategic Flood Risk Assessment (SFRA) carried out for the Kildare County Development Plan 2023-2023, I note that the study area for the SFRA relates to the areas identified in Table 2-1 of the SFRA which is confined to Town

Environs, Towns, Villages and Settlements, as identified in Table 2-1. Larger towns within the County are subject to their own Local Area Plans (LAPs) and SFRAs.

- 7.5.3. During my site inspection I observed the lands and associated site boundaries to be dry. There was no evidence of rock outcrop or any distinguishing water thriving vegetation such as rushes. While conditions were dry on the day of site inspection, there was no apparent evidence of standing water or features associated with ponding on the land. I note that the planning authority raised no specific concern in regard to Flood Risk in the assessment, and the Environment Section noted the submission of the Flood Risk Review of the site and did not raise any concerns in relation to a potential flood risk. On that basis, I consider that from the information contained in the Flood Risk Review, it is reasonable for it to be concluded that there is no reasonable flood risk associated with the appeal site.

## **8.0 AA Screening**

- 8.1.1. I have considered the subject development which comprises the removal of an existing agricultural structure, construction of a single storey dwelling, garage, wastewater treatment system and ancillary site development works, in light of the requirements S177U of the Planning and Development Act 2000 (as amended).
- 8.1.2. The subject site is located in a rural area and the closest European site is the Red Bog Kildare SAC (Site Code 000397) located approx. 6.2 km to the southeast, and the Poulaphouca Reservoir SPA (Site Code 0040036) located approx. 8.6 km to the southeast of the site.
- 8.1.3. The proposed development comprises of the removal of an agricultural shed the construction of a dwelling house, garage and associated effluent treatment system.
- 8.1.4. No nature conservation concerns were raised in the planning appeal.
- 8.1.5. 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 European Site. The reason for this conclusion is as follows:
- Nature of works proposed and the limited scale of the development.
  - Location of the development and the separation distance to the European sites and lack of connections.

- The screening report carried out by the planning authority.

I conclude that 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 (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

## **9.0 Recommendation**

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

## **10.0 Reasons and Considerations**

1. It is the policy of the Kildare County Development Plan 2023-2029 under HO P11 that development in the countryside outside of settlements should be strictly limited to those with a demonstrable need. The proposed development, which does not cater for locally derived housing need and does not meet the criteria for rural housing need set out in Objective HO O47, would conflict with Policy HO P11 and would be contrary to the proper planning and sustainable development of this rural area under Strong Urban Influence.

Taken in conjunction with existing development in the vicinity, the proposed development would give further rise to an excessive density of development and overdevelopment of a rural area and would therefore contravene Policy HO P26 and objective HO O59 of the Kildare County Development Plan 2023-2029. The proposed development therefore would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the sites' location in close proximity to the settlement boundaries of Nass town and Johnstown, and to existing development in the vicinity, and having regard to Policy HO P15 of the Kildare County Development Plan 2022-2023, in which it is the policy of the planning authority to 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, it is considered that the proposed development would

militate against the preservation of the rural character of the area, would consolidate and further contribute to the overdevelopment of the area and 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.

---

Clare Clancy  
Planning Inspector

07<sup>th</sup> January 2025

# Form 1

## EIA Pre-Screening

|                                                                                                                                                                                                                |                                                                                                                                |                                                                                              |                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|----------------------------------------------|
| <b>An Bord Pleanála<br/>Case Reference</b>                                                                                                                                                                     | 319089-24                                                                                                                      |                                                                                              |                                              |
| <b>Proposed Development<br/>Summary</b>                                                                                                                                                                        | Permission to remove existing agricultural structure, construct dwelling, garage, wwts, all associated site development works. |                                                                                              |                                              |
| <b>Development Address</b>                                                                                                                                                                                     | Fishery Lane, Kingsfurze, Naas, Co. Kildare                                                                                    |                                                                                              |                                              |
| <b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b><br>(that is involving construction works, demolition, or interventions in the natural surroundings) |                                                                                                                                | <b>Yes</b>                                                                                   | ✓                                            |
|                                                                                                                                                                                                                |                                                                                                                                | <b>No</b>                                                                                    | No further action required                   |
| <b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>                                                            |                                                                                                                                |                                                                                              |                                              |
| Yes                                                                                                                                                                                                            | ✓                                                                                                                              | Part 2, 10 Infrastructure Projects<br>10(b)(i) construction of more than 500 dwellings units | Proceed to Q3.                               |
| No                                                                                                                                                                                                             |                                                                                                                                |                                                                                              | No further action required                   |
| <b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>                                                                                                  |                                                                                                                                |                                                                                              |                                              |
| Yes                                                                                                                                                                                                            |                                                                                                                                |                                                                                              | EIA Mandatory<br>EIAR required               |
| No                                                                                                                                                                                                             | ✓                                                                                                                              |                                                                                              | Proceed to Q4                                |
| <b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>                                                                                   |                                                                                                                                |                                                                                              |                                              |
| Yes                                                                                                                                                                                                            | ✓                                                                                                                              | Min. 500 dwellings units and / or an area greater than 10 ha                                 | Preliminary examination required<br>(Form 2) |
| <b>5. Has Schedule 7A information been submitted?</b>                                                                                                                                                          |                                                                                                                                |                                                                                              |                                              |
| No                                                                                                                                                                                                             | ✓                                                                                                                              | Pre-screening determination remains as above (Q1 to Q4)                                      |                                              |
| Yes                                                                                                                                                                                                            |                                                                                                                                | Screening Determination required                                                             |                                              |

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

## Form 2

### EIA Preliminary Examination

|                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| <b>An Bord Pleanála Case Reference</b>                                                                                                                                                                                                                                                                                                                                                                                | ABP 319089-24                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                              |
| <b>Proposed Development Summary</b>                                                                                                                                                                                                                                                                                                                                                                                   | Permission to remove existing agricultural structure, construct dwelling, garage, wwts, all associated site development works.                                                                                                                                                                                                                                                                                                                                                                                                                  |                              |
| <b>Development Address</b>                                                                                                                                                                                                                                                                                                                                                                                            | Fishery Lane, Kingsfurze, Naas, Co. Kildare                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                              |
| <p>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>Examination</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>Yes/No/<br/>Uncertain</b> |
| <p><b>Nature of the Development.</b></p> <p><b>Is the nature of the proposed development exceptional in the context of the existing environment.</b></p> <p><b>Will the development result in the production of any significant waste, emissions or pollutants?</b></p>                                                                                                                                               | <p>The proposed development is located in a rural area, to the east of the settlement boundary of Naas.</p> <p>The proposed development entails the demolition of an agricultural shed the construction of a dwelling house and associated effluent treatment system.</p> <p>Due to the limited scale of the development I do not consider that the operation of the proposal would result in any significant waste, emissions or pollutants. Effluent disposal would be treated by a wastewater treatment system and percolation area</p>      | <b>No</b>                    |
| <p><b>Size of the Development</b></p> <p><b>Is the size of the proposed development exceptional in the context of the existing environment?</b></p> <p><b>Are there significant cumulative considerations having regard to other existing and / or permitted projects?</b></p>                                                                                                                                        | <p>The appeal site has a stated area of 0.3 ha.</p> <p>The proposed dwelling has a gross floor area of 164 m<sup>2</sup>. The garage has a proposed floor area of 24 m<sup>2</sup>.</p> <p>The proposed agri structure to be removed has a gross floor area of 102 m<sup>2</sup>.</p> <p>Having regard to the limited scale of the proposed development and the details contained in the site characterization report in relation to the treatment of effluent disposal arising from the subject dwelling, I do not consider that there are</p> | <b>No</b>                    |

|                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                         | significant cumulative considerations having regard to existing and or permitted projects.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                    |
| <b>Location of the Development</b><br><br><b>Is the proposed development located on, in, adjoining, or does it have the potential to significantly impact on an ecologically sensitive site or location, or protected species?</b><br><br><b>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area, including any protected structure?</b> | <p>The proposed development is not located within, or immediately adjoining, any designated ecological site.</p> <p>The nearest pNHA site is the Grand Canal (Site Code 002104) approx. 3.2 km to the west of the site. The nearest European Site designated site is SAC 000397 Red Bog Kildare approx. 6.2 km to the southeast of the site.</p> <p>Having regard to the separation distance between the subject site and any designated sites, I do not consider that the proposed development would have the potential to significantly affect other significant environmental sensitivities in the area.</p> | <b>No</b>                                                                                          |
| <b>Conclusion</b>                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                    |
| <p>There is no real likelihood of significant effects on the environment.</p> <p>EIA is not required.</p> <p>✓</p>                                                                                                                                                                                                                                                                                                      | <p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p> <p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p>                                                                                                                                                                                                                                                                                                                                                                                              | <p>There is a real likelihood of significant effects on the environment.</p> <p>EIAR required.</p> |

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

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

(only where Schedule 7A information or EIAR required)