



An
Bord
Pleanála

Inspector's Report PL.93.248547

Development	285 residential units, public open space, car parking and associated site works.
Location	Knockboy, Waterford.
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	16/833
Applicant(s)	Jackie Greene Construction Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	James O'Sullivan
Observer(s)	None
Date of Site Inspection	25 th September 2017
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The subject site is a suburban site situated on the eastern periphery of Waterford City. The public road in which the subject site adjoins is known as Knockboy Road (or Ballygunner Hill) and this public road takes its access off the Dunmore Road situated to the north.
- 1.2. The Knockboy Road rises steadily from its junction with the Dunmore Road and the appeal site is elevated with views overlooking River Suir Valley to the north.
- 1.3. The overall size of the subject site is 8.9 ha (22 acres) and the shape of the site is irregular.
- 1.4. The appeal site is currently in agricultural use and it is adjoined by St. Mary's Cemetery to the south, suburban houses on individual sites to the north, agricultural fields to the east and suburban housing estates to the west. The general character of the area is urban – rural fringe.
- 1.5. The appeal site has an established agricultural field entrance which accesses onto Knockboy Road. This vehicular entrance is situated in the south-west corner of the appeal site.
- 1.6. The gradient of the appeal site generally falls in a south to north direction however the gradient rises steeply from the western boundary, where it adjoins the public road, to the centre of the site.
- 1.7. There are two overhead power / utility lines that traverse the site. Firstly, at the eastern end of the site and running in a south / north direction. A second power line runs along the southern boundary of the site, adjoining the cemetery and runs in a west / east direction and eventually in a south to north direction.
- 1.8. The boundary along the southern perimeter of the site, adjoining the cemetery, comprises of mature evergreen trees. The western boundary comprises of fencing with established low rise hedgerows and mature trees. The remainder of the site boundaries comprise mature hedgerows, typical of agricultural fields.

2.0 Proposed Development

- 2.1. The proposed development consists of 285 no. dwellings / maisonettes.

- 2.2. The proposed site layout is characteristic of a suburban housing estate consisting of two-storey detached and semi-detached dwellings with rear gardens and three-storey maisonettes.
- 2.3. The proposal also includes the provision of public open space which is located almost in a linear form in an east-west orientation across the centre of the subject site.
- 2.4. The proposed development includes the provision of car parking provision amounting to two spaces per unit and a visitor space for every four residential units.
- 2.5. The proposed development will be served by public water main and public sewer.

Additional information was sought in relation to the following;

- a. hedgerow retention and provision of single storey housing,
- b. clarification of accuracy of drawings,
- c. additional site sections required,
- d. additional site sections along the boundary of the site,
- e. identify areas where retaining walls / gabion baskets will be identified,
- f. revised site layout identifying car parking with housing units,
- g. revised site layout providing for area set back from houses to footpath at sites 3, 20, 87, 203 and 205,
- h. contract details in relation to neighbouring lands zoned open space,
- i. revised site layout having regard to modifications to ground levels and boundary treatment, and
- j. identify locations for external bin storage.

- 2.6. The following table is a schedule of the permitted residential units;

<u>Type of Units</u>	<u>No. of Units</u>
<i>Detached</i>	16
<i>Semi-detached</i>	192
<i>Apartments</i>	60

3.0 Planning Authority Decision

Waterford City and County Council decided to **grant** planning permission subject to 23 no. conditions.

Condition no. 2 (d) and 2 (e) omits four housing units in lieu of car parking.

The remainder of the conditions are standard.

3.1. Planning Authority Reports

3.1.1. The main issues raised in the planner's report are as follows;

Planner's Report

- The area of the site is less than 10ha and therefore is sub-threshold in relation to EIS requirements.
- A submitted AA Screening concludes that the proposed development will have no impact on the wider Natura 2000 network and that there is no potential for significant effects on the River Suir SAC.
- Access and layout is like that previously approved.
- Retention of mature hedgerow recommended.
- Additional car parking provision required.

3.1.2. Water Services Section; - No objections subject to conditions.

3.2. Third Party Observations

There are four third party submissions and the issues have been noted and considered.

4.0 Planning History

- L.A. Ref. 15/711 – Permission **granted** for 179 no. dwellings and 12 no. serviced sites by the Local Authority. This permission was subsequently

appealed to An Bord Pleanála by a third-party appellant (appeal ref. 246629). However, the applicants **withdrew** their planning application / appeal on the 12th December 2016.

5.0 Policy Context

5.1. Development Plan

Waterford City Development Plan, 2013 – 2019, is the operational Development Plan.

The subject site is predominately zoned 'Undeveloped Residential' (subject to planning). A small portion of the site situated to the east of the site is zoned 'open space'.

In accordance with Appendix 2 of the Development Plan the appeal site is designated Phase 2 residential land. Phase 2 lands may be considered for development provided that proposals satisfy a core strategy justification and, where applicable, satisfactorily demonstrate that existing infrastructural deficiencies have been addressed to facilitate the development.

Section 8.6 of the City Development Plan advises that an appropriate residential mix is in place for future residential development.

Chapter 13 sets out Development Management Standards. The following is relevant;

- 13.1 Residential Development
- 13.2 Qualitative and Quantitative Design Standards
- 13.24 Parking Standards
- 13.27 Cycle Parking

6.0 National Policy

Sustainable Residential Development in Urban Areas, 2009

The Guidelines promote higher densities in appropriate locations. A series of urban design criteria is set out, for the consideration of planning applications and appeals. Quantitative and qualitative standards for public open space are recommended. In general, increased densities are to be encouraged on residentially zoned lands, particularly city and town centres, significant 'brownfield' sites within city and town centres, close to public transport corridors, infill development at inner suburban locations, institutional lands and outer suburban/greenfield sites. Higher densities must be accompanied in all cases by high qualitative standards of design and layout. Chapter 6 sets out guidance for residential development in small towns and villages. Appendix A of this document sets out guidance for measuring residential density.

Sustainable Urban Housing: Design Standards for New Apartments, Dec. 2015

These guidelines provide recommended guidance for internal design standards, storage areas and communal facilities, private open spaces and balconies, overall design issues and recommended minimum floor areas and standards.

7.0 The Appeal

The following is the summary of a first party appeal submitted by the applicant's agent;

Introduction

- The appellant is a farmer and owns farmland between the Dunmore Road and the River Suir.
- The appellant has no objections to housing provided that they can be adequately serviced and any development has no adverse impacts on his lands.

- The appellant contends that the existing storm and sewage infrastructure serving all the lands to the south of Dunmore Road at Knockboy and locally is currently incapable of supporting the existing development.
- It is submitted that surface water infrastructure discharges into open drains on the appellant's land and there is also public sewage infrastructure on the appellant's land with overflows and outfalls discharging to the River Suir.
- The appellant's landholding is used to attenuate surface water.
- Surface water from developed lands to the south and elsewhere enters the appellant's land via pipework under the Dunmore Road and into a stream.
- The surface water is held in a network of drainage channels on his land pending release into the River Suir through a tidal flap.
- It is submitted that during periods of heavy rain the drainage channels are incapable of holding the volumes of storm water which enter the appellant's lands and flooding occurs.
- An accompanying report from IE Consulting outlines overall concerns in relation to storm and sewage network.

Background

- A previous application for housing on the same site was granted planning permission by the Local Authority.
- The Board, following an appeal granted a request for an oral hearing. The Board also requested that the applicant submit an EIS. The application was withdrawn in December 2016.

Current Proposal

- The current proposal is for a greater number of dwellings on a reduced site area.
- The reduced site area arises from the omission of a field in the previous proposal.

- The current application is not accompanied by an EIS.
- The current application does not address issues in relation to capacity of foul sewer system or surface and natural drainage system to cater for the proposed development. These were issues highlighted to be heard in a previously granted oral hearing.

Ground of appeal no. 1

- The application is not accompanied by an EIS and there is no evidence that an EIA Screening was carried out as required in the previous application.
- The site area has been reduced but this only came about by the applicant omitting a field from the development.
- It is contended that the applicant has carried out project splitting.
- It is submitted that an EIA Screening would have determined that the nature and scale of the current proposal would have had similar or greater impacts than the previous scheme and therefore would have required an EIS.

Ground of appeal no. 2

- The application is not accompanied by an NIS.
- The AA Screening did not include any robust assessment of the cumulative impact of the existing, permitted and proposed development in the vicinity to assess the potential impacts on the River Suir SAC.
- This was an issue which the Board previously required the applicant to address.
- It is submitted that the AA Screening has been addressed based on the existing sewage infrastructure and surface water infrastructure working adequately.
- It is contended that the existing sewage infrastructure is not working adequately and regularly causes pollution in the SAC and the NHA and on the appellant's lands. This is demonstrated in the submitted IE Consulting report.

- The appellant is not aware of the Irish Water embarking on a contract to upgrade the existing sewers on his land as noted in the Planner's report.
- The last contact between Irish Water and the Waterford City and County Council was September 2016.
- The surface water arrangements of the previous application were a concern to the Board and were due for further assessment at the oral hearing. The basis for the oral hearing is therefore flawed.
- It is submitted that mitigation measures would be required to address the sewer and surface water infrastructure and these should be quantified as part of the Stage 2 NIS.

Ground of Appeal no. 3

- The applicant justifies development on this phase 2 land due to the lack of land becoming available in Phase 1 land.
- It is submitted that since 2015 more land has become available in designated Phase 1 land.
- This is evident when studying commencement notices. There has been a rise in commencement notices since 2013.
- It is considered that the development of Phase 2 lands is not justified and will exacerbate the impact of existing development and the potential development of phase 1 lands.
- The current development will compound problems of sewage and problems of flooding.
- It is submitted that the development of phase 2 residential development is premature pending the adoption of the National Planning Framework, the preparation of the Spatial and Economic Strategy and the adoption of the City Development Plan.

Ground of Appeal no. 4

- It is contended that as the proposed development will exacerbate flooding and pollution of the appellant's land. This property will therefore be devalued.

Summary of submission by IE Consulting Water-Environmental-Civil

Introduction

- This is an existing stream running through the applicant's land.
- The stream is tidally influenced and has a flap valve where it exits the lands to prevent tidal water inundation to the lands.
- The lands are protected from tidal inundation from the estuary by an earthen embankment.
- There is an existing surface water outfall to the existing stream.
- There is a public foul sewer running through the appellant's land.
- The foul sewer connects to a municipal pump station located beside the western boundary of the appellant's lands.

Surface water concerns

- It is submitted that in the previous planning application to Waterford City and County Council additional information was sought in relation to surface water.
- The local authority requested that that a comprehensive survey was undertaken of the existing surface water drain, culvert, stream from the proposed development to its outfall in the River Suir.
- The applicant responded by stating that a survey was not required as it was proposed to construct a new separate surface water pipeline which will connect to the existing public sewer as such a surface water survey was not required.

- In addition, the Local Authority requested that the applicant contact the Local Authority about the formation of a constructed wetland project in association with other developers.
- In response, the applicant claimed that as the proposal for surface water drainage has been revised and there is no need to contribute to a constructed wetland project.
- It was also submitted that the design discharge has been reduced to significantly less than the greenfield runoff rates which were presented in Appendix D, 'Allowable Discharge'.
- The potential impact of discharge to the stream will not be addressed by the proposed surface water pipeline.
- It is submitted that there is still potential for adverse impacts on the stream and potential for an increase in flood risk to the appellant's lands. This issue has not been addressed instead it has been circumvented by the applicant.
- It is submitted that irrespective of discharge rates, surface water discharge from the proposed development will discharge to the stream located on the appellant's land.
- The appellant's land experiences fluvial flooding and it is contended that this flooding has worsened in the last 15 years as more development has occurred upstream.
- It is submitted that surface water will be directly routed to the stream and this will increase overall volume of runoff entering this stream increasing flood risk.
- It is accepted that the run-off levels may not be significant however given that these lands are in a tidal area any additional volume of surface water run-off may be retained within the appellant's lands until tides recede resulting in flooding.
- The applicant has not addressed the local authority request that the applicant shall part provide a constructed wetland project to address issue of surface water.

- It is unclear whether the proposed attenuation is using SDS Geolight system or a Storm Tech system.
- Geolight system does not allow for easy silt removal.
- Catch pits are usually placed upstream to remove silt.
- The surface water drainage drawings do not include catch pits.
- Sediments can potentially bypass catch pits and flow into attenuation systems resulting in blockage over time and this has the potential to result in uncontrolled discharge over time.
- It is submitted that the total combined attenuation storage volume varies. It is stated as 2,800m³ in the Engineering Planning Report and 2648m³ in the micro drainage report.
- It is submitted that the flow control device, i.e. the hydro-brake, could be bypassed by the build up of silt upstream.

Foul Water Concerns

- It is submitted that the overflow pipe from the pumping station travels through the appellant's land.
- This overflow pipe has two manholes.
- In 2014 one manhole lifted with raw sewage discharging onto the appellant's land.
- A second manhole also lifted with raw sewage discharging to the appellant's land.
- It is submitted that the existing foul water pump station has inadequate hydraulic capacity.
- It submitted that given high rainfall and high tide that overflow is unable to flow to the estuary and this puts pressure on the system and manhole.
- It is submitted that the estimate of the existing foul sewer's capacity does not take account of the impact that surface water flows are currently having on the existing network.

8.0 Applicant's Response

- The following is a summary of a response submitted by the applicant;

Background

- Planning permission was previously granted by Waterford City and County Council and appealed to An Bord Pleanala.
- The Board requested an EIS. The Board highlighted some issues that needed to be addressed and these included (a) the capacity of the foul water system and the local natural drainage system, and (b) residential density.
- The applicant withdrew this planning application / appeal and lodged a new planning application.

Current Application

- Permission granted by Local Authority for 285 no. houses subject to 23 no. conditions.
- Density of the proposal increased from 23 units to 35 units per hectare.
- Surface water will be attenuated on the site before discharging into the public system. It is acknowledged that surface water entering the public system will ultimately discharge to the appellant's site.
- The rate of discharge will be less than the Greenfield flows.
- The comprehensive engineered surface water system is proposed to alleviate the flood concerns, even though the appellant's land is located on a flood plain within lands designated Flood Zone A and B.
- The Water Services Department in Waterford City and County Council are satisfied with the proposal and note it is an improvement on existing greenfield run-off rates.

- Conditions have been attached which require the ongoing upkeep and maintenance of the attenuation system to ensure maximum discharge does not exceed a maximum discharge of 3.0 l/sec.
- Foul sewer will discharge into the existing public sewer.
- The upgrading of these pipes for the existing public sewer is part of works to be undertaken by Irish Water in consultation.
- Waterford City and County Council has agreed to purchase open space lands for a future community park.

First Party Concerns

Condition no. 2 (b)

- It is requested that this condition is altered to allow the applicant construct a concrete post and panel boundary fence of min. 1.8m high like that proposed on the northern boundary of the proposed development.
- This alteration to the condition will allow the construction of this boundary have a continuous footing and therefore will have a limited impact nor will it undermine the double ditch or any roots of the cemetery boundary.

Condition no. 2 (d) and 2 (e)

- It is submitted that there is no reason to justify the omission of 4 no. maisonettes as they are fully consistent with the Development Plan and the Sustainable Homes Standards and Guidelines.
- It is contended that the applicant should have been afforded an opportunity to consider the redesign or suggest an amendment.

Condition 2(f)

- The redesign of house no. 124 is unjustified.
- The house forms part of a street and provides for potential future attic conversion.

- The height and scale of the house is in keeping within the overall planned estate.
- It is argued that a significant separation distance and the proposed landscape buffer zone proposed to the adjacent property in Rockmount is more than sufficient to ensure that the properties at Rockmount are adequately screened.
- It is contended that the ridge height should be retained.

Condition 5 (a)

- It is submitted that in construction terms the developer will firstly construct underground services for the development and when the main services are in place the developer will then construct houses.
- Putting the main services in place will cost the developer approximately 40% of the overall estate development costs.
- It is contended that the bond should be based on payment amounts on works carried out.
- The value of the bond should diminish as the development works progress and a sliding scale or a mechanism be available to agree this.
- It is submitted that a bond to the amount of €2,680,000 where the land acquisition for this site was less than half this amount is not equitable but could be detrimental to the development of these lands.
- It is submitted that a practical solution is required otherwise homebuilding will be limited to companies that can access these funds.

Condition no. 7 (a)

- The wording of this condition is unclear.
- It is suggested that the wording of this condition should be made clear.

Condition no. 9 (d)

- The Board is referred to SUDS components illustrated on MAL drawings no.'s D1818-C-04, 05 and 07 which illustrate features that will be designed into all house plots to attenuate rain falling on-plot before the residual and treated runoff is discharged to the public sewer.
- The costs associated with implementing individual rainwater harvesting will alter the economic viability of the project.
- It is suggested that rainwater harvesting is omitted from this condition.

Response to grounds of Appeal no. 4

- The response in relation to flooding and pollution is contained in submission by Muir Associates.
- The existing sewage holding tanks will be redesigned and the contractor is now on site.
- A comprehensive surface water system will be engineered to ensure that surface water is discharged at a decreased rate to the current rate.
- Surface water will be controlled to a rate of 3.0 l/sec which is less than greenfield rates.
- The Water Services section of Waterford City and County Council are satisfied with surface water discharge and foul water discharge from the proposed development.

Response to grounds of Appeal no. 3

- It is noted that the City Development Plan will allow the development of Phase 2 lands prior to Phase 1 lands subject to satisfying a core strategy justification.
- It is submitted that the development of Phase 1 in Waterford City has not come forward since the adoption of the City Plan in 2013. Therefore, the development of the City has stagnated.

- This has restricted the city achieving its gateway status.

Response to grounds of Appeal no. 1

- An EIA is not required having regard to Schedule 5, Part 2, 10 – Infrastructure Projects, given the size of the site.
- It is contended that the proposed development would not have significant effects on the environment. The Planning Authority also considered that an EIA was not required.
- In the previous application, the size of the site exceeded 10ha and this triggered the requirement of an EIA.
- It is submitted that the lands designated open space are excluded from this development. Waterford City and County Council agreed to purchase these open space lands for a future community park.

Response to grounds of Appeal no. 2

- It is considered that there is no direct impact on Lower River Suir SAC (site code 002137) and the River Barrow and River Nore SAC (site code 002162) as (a) the location in relation to the boundaries of the SAC, (b) the site does not include key habitats relating to the conservation objectives of the designated sites and will not require any resources from this site, (c) considering the low ecological value overall.
- There is no potential for water run-off impacts or indirect habitat loss or deterioration of the Natura 2000 sites because of drainage from the proposed development.
- As no adverse impacts are likely to occur a Stage 2 AA / Natura Impact Statement is not required.
- The Heritage Officer has no objections to the proposed development.

9.0 The Oral Hearing

An oral hearing, in respect of the file PL93.248547, was held in the Tower Hotel, Waterford on Monday 9th of October 2017. An appendix to this report is attached which contains a signed sheet of attendees and a list of documents presented to the oral hearing. The proceedings were digitally recorded and a copy is also attached to this file. There were three parties who presented at the oral hearing and those who presented to the hearing were as follows;

- Jackie Greene Construction Ltd. (Applicant).
- Waterford City and County Council
- James O'Sullivan (Appellant).

Proceedings got under way with my opening statement. Participants were informed that the purpose of the oral hearing is an information gathering exercise to assist me in considering the merits of the case and in drafting my report and recommendation to the Board in relation to the proposed development.

With respect to the format of the hearing this followed the Agenda which was issued to the parties on the 27th of September 2017. In this section of my report I have briefly summarised the proceedings of the oral hearing. In my assessment, which follows, I refer specifically, where necessary, to relevant submissions during the hearing. Where pertinent, I refer to the relevant time segment of the recording to enable the Board to more easily access submissions or responses.

The first party was asked to state their case and outline the grounds of their response to the third-party appeal. Owen Hickey BL, on behalf of Jackie Greene Construction Ltd. outlined that Niall Harrington, Architect and Senior Partner of Fewer Harrington Architects would summarise the proposed development and respond to the grounds of the appeal. Mr. Harrington outlined the planning process

to date including the previous planning application, which was appealed to the Board and subsequently withdrawn by the applicant. Mr. Harrington then subsequently responded to the grounds of appeal. Mr. Harrington concluded that an NIS was not required nor was a EIS Screening and there is demand for the proposed houses having regard to Waterford's core strategy. Mr. Tom Walshe, Chartered Engineer, on behalf of the applicant then read his submission into the record. This submission responds specifically to the third-party appeal in relation to surface water and foul sewage network.

Waterford City and County Council then presented their case. This included Hazel O'Shea, Senior Executive Planner, reading her submission into the record. This submission outlined that the proposed development was sub-threshold in relation to requiring an EIS and there were no significant effects on the environment. Following the presentation by Ms O'Shea, Bernadette Guest, Heritage Officer, and Pat McCarthy, Senior Engineer, outlined their submissions in relation to AA Screening and storm and sewage infrastructure respectively. Ms Guest read her submission into the record which concluded that she was satisfied with the conclusion of the AA Screening in that the proposed development will have no adverse impact on the wider Natura 2000 network and there is no potential for significant effects on the River Suir SAC (Site Code 002137). Mr McCarthy, outlined that there is adequate capacity in relation to the foul water network and confirmed that works carried out by Irish Water have been completed. These works addressed capacity deficiencies arising from infiltration into the public sewer. This submission also outlined that the development is served with the installation of a new surface water drain on Knockboy Road which will discharge to an existing storm water culvert on Dunmore Road.

Following the submissions from Waterford City and County Council the appellant was invited to present their submission to the hearing. This submission included presentations by Mr James O'Sullivan, landowner and third party appellant, Mr.

Christopher Hughes, BL, Mr. Peter Thomson, Planning Consultant, Niamh O'Malley, Environmental Engineer, and Deborah D'Arcy, Ecologist. Mr. O'Sullivan submitted that expanding housing developments on the Dunmore Road has increased flood risk to his land. He also argues that the surcharges have resulted in lifting manholes and consequent sewage entering his land. Mr O'Sullivan argues that attenuation alone will not address his concerns and his submission included video evidence of the current overflow system which included outflow from the waste water pumping station to the River Suir. Mr. Peter Thomson, Planning Consultant, read his submission into the record. This submission included objections to the proposed development on several grounds and these included validity of the application, EIS and NIS required and the housing development is inconsistent with core strategy. Niamh O'Malley, Environmental Engineer, read her submission into the record. This submission argues that the surface water and foul water drainage are inadequate to serve the proposed development. Finally, Deborah D'Arcy, Ecologist, read her submission into the record. This submission outlined the need to investigate the implications for the qualifying interest, saltmarsh, having regard to increased volumes of surface water released by the stream, the increased freshwater influence, contamination of the saltmarsh habitat and the potential impact on increased recreational use on the saltmarsh.

The hearing concluded with questions between the parties and closing statements.

10.0 **Assessment**

- Principle of Development
- Core Strategy Justification
- Density
- Part V
- Foul Drainage

- Surface Water Drainage
- Flood Risk
- AA Screening
- EIA Screening
- Impacts on established Residential Amenities
- Residential Amenities for future occupants
- Traffic / Access
- Childcare Provision

10.1. **Principle of Development**

10.1.1. The appeal site is located within the eastern edge of Waterford City.

10.1.2. The National Spatial Strategy, 2002 – 2020, designated Waterford City as a ‘gateway’ for the south-east region and its objective was to realise a critical mass to drive the region. The strategy promotes a strong urban-rural structure needed throughout the country to complement development in the east, the strategy therefore builds on identified gateways and hubs.

10.1.3. One of the key approaches taken by the N.S.S. to achieve balanced regional development is set out in Section 1.1 (iv) ‘Planning’ of the N.S.S. which states that ‘Ireland needs to renew, consolidate and develop its existing cities, towns and villages – i.e. keeping them physically compact and public transport friendly as possible and minimising urban sprawl, Where greenfield development is necessary it should take place through the logical extension of existing cities, towns and villages’. The N.S.S. encourages more sustainable development which will mean maximising access to and encouraging use of public transport, cycling and walking.

- 10.1.4. In general, terms the strategy of the N.S.S. is to consolidate urban areas whether they are gateways, hubs, county towns or small villages. A principle of the strategy is the locating of development within existing urban centres which would support and strengthen the development of that urban centre and allow for integrated mixed-use development which would reduce demand for unsustainable transportation modes and which would invigorate and revitalise demand for local services within the centre.
- 10.1.5. The Draft National Planning Framework – Ireland, 2040, sets out the growth targets for the regional cities in Ireland. It is targeted that Waterford City and Suburbs which has a population of 54,000 (2016) will grow by 50-60% which will amount to an additional 29,000 persons by 2040.
- 10.1.6. The South East Regional Planning Guidelines, 2010 – 2022, sets out a settlement strategy (Section 4) for the region. Waterford City is identified as a ‘Regional Gateway’ and guidance is set out in Section 4.1 of these guidelines. The guidance considers that a significant population increase would be necessary to achieve a critical mass to allow the City to reinforce and develop its role as the economic driver of the south-east region.
- 10.1.7. The proposed development is a greenfield housing development located on the edge of a Gateway city and the proposal is consistent with the national and regional policy objectives.
- 10.1.8. In accordance with the provisions of the Waterford City Development Plan, 2013 – 2019, the appeal site is zoned. The clear majority of the appeal site is zoned ‘Undeveloped Residential Phase 2’.
- 10.1.9. The residential zoning within the Waterford City Development Plan, 2013 – 2019, has three distinct residential phasing’s and these are identified in Appendix 2 (Phasing Map) of the City Development Plan.

10.1.10. The majority of the proposed development site is zoned for residential development and the proposed residential development is therefore consistent with this zoning objective.

10.1.11. Overall and having regard to the location of the proposed development which is a suburban location within a gateway city I would consider that the principle of residential development should be acceptable provided that the proposal has adequate residential amenity, adequately safeguards the amenities of the adjoining properties, would not result in a traffic hazard, protects the environment and would be in accordance with the provisions of the Waterford City Development Plan, 2013 – 2019.

10.2. **Core Strategy Justification**

10.2.1. Chapter 2 of the Waterford City Development Plan, 2013 – 2019, sets out the core strategy for the City and it is notable that the appeal site is zoned ‘undeveloped residential’ phase 2.

10.2.2. Section 2.2.3 of the City Development Plan, 2013 – 2019, sets out that all housing applications on Phase 2 ‘residential land’ shall be accompanied by a core strategy justification statement which demonstrates that the proposed development is consistent with the Core Strategy. I have reviewed Section 2.2.3 of the City Development Plan, and the proposed development is generally consistent with Section 2.2.3. However, one of the criteria requires a demonstration that there is demand for the proposed development having regard to existing housing vacancy, unfinished estates and volume of unit types in the area. This was the most disputed criterion in relation to the Core Strategy justification at the oral hearing.

- 10.2.3. The applicants included, as part of their planning application to Waterford City and County Council, a Core Strategy Justification Statement¹. This CSJS concludes that there has been very limited housing activity in the City since the adoption of the City Development Plan in 2013 and on Phase 1 lands. The CSJS identified 8 parcels of land across the City which have a possibility of delivering housing within the timeframe of the current development plan.
- 10.2.4. In the submitted written appeal, the appellant's planning agent argues that the development of Phase 2 residential land is not justified based on the lack of development on Phase 1 lands as evidenced by the lack of commencement notices. It is also argued that the development of these Phase 2 lands is premature based on the inadequate existing storm and sewage network and pending the replacement of the new City Development Plan which must have regard to the National Planning Framework.
- 10.2.5. During the oral Hearing Mr Harrington², responded to the appeal by stating that the proposed development is consistent with the core strategy on the basis that there is a school located nearby and that all the services, i.e. water and foul, are in place and furthermore a lot of the phase 1 land in the immediate location has not been developed. Mr. Harrington submitted that the proposed houses, given their floor areas, represent a gap in the housing market. Mr. Harrington also outlines that the development of these Phase 2 lands would not be premature having regard to the current development plans objective to increase the population by 5,000 and provide 1,900 homes. Mr. Harrington also refers to the draft National Planning Framework which sets out that Waterford City will be required to double its population. I would accept that given the evidence that there is a planning justification for the provision of a sizable number of houses in Waterford City.

¹ Received by the planning authority on the 22nd December 2016

² 13:52:07–13:55:53

10.2.6. Ms O'Shea³, Waterford City and County Council, submitted to the hearing that Waterford City and County Council has identified a need for 1,222 additional households for social housing, Although I would note that it was not identified the actual number required in Waterford City. Ms O'Shea also outlines that there is an immediate need for 700-800 houses in Waterford City and this number was identified by the Housing Agency in February 2017. It is submitted that the appellant's argument that development of Phase 2 lands is not required is not justified having regard to the underperformance of Waterford City as a gateway city. Finally, Ms O'Shea outlines that the NPF has identified Waterford City and suburbs increasing its population by 50-60-% increasing by 29,000 persons and reaching a target population of 83,000 by 2040.

10.2.7. Mr. Peter Thomson⁴, Planning Consultant, outlined to the hearing that from the period May 2017 – September 2017 there has been renewed planning applications including fresh planning applications for housing developments including the extension to the duration of existing permissions. Accordingly, it is argued that the development of Phase 2 lands is premature.

10.2.8. During the cross-questioning Mr. Peter Thomson queried whether there was any update in relation to the Core Strategy justification statement prepared by the applicants in December 2016. Mr Harrington confirmed that there is no update to the justification statement however submitted that the four of examples of the new planning applications referred to in Mr. Peter Thomson's submission were located between 6 – 8 km from the appeal site, i.e. Kilbarry and Carrickphierish. As such it is considered that they are not a viable consideration.

³ 14:23:42–14:25

⁴ 15:12:41–15:13:30

10.2.9. Ms O'Shea⁵ confirmed to the hearing that Waterford City and County Council have not undertaken a review of housing completions for this oral hearing but are maintaining an active watch and it is their view that there is a justification for the development of these phase 2 lands. Ms O'Shea finally concluded that there was a housing shortage in the city and that the phasing of residential land was introduced at a time, i.e. 2013, when there was problem with unfinished housing estates and presently there is a housing shortage.

10.2.10. I previously noted above that the proposed development was consistent with Section 2.2.3 of the City Development Plan, however the issue of demand and phasing was challenged. I would note that although the appellants have outlined a recent increase in the number of planning applications for housing developments that these sites are not located within the immediate location of the appeal site and the general housing demand, both nationally and in Waterford, has risen significantly since 2013. Furthermore, national guidance and policy considers that Waterford is underperforming as a gateway and there is pressure on the City to deliver a greater quantum of housing within the environs of the City. I would conclude that the delivery of housing developments in Waterford have not realised their targets as set out in the Core Strategy in 2013 and there is sufficient evidence available to confirm that the proposed development is consistent with the Core Strategy. I would be satisfied, based on the information available, that the proposed development is consistent with the core strategy.

10.3. **Density**

10.3.1. Waterford City and County Council permitted 268 housing units on this appeal site. The appeal site measures 8.9 ha and therefore the net residential density for the permitted development is 30.1 units per hectare.

10.3.2. In relation to the Sustainable Residential Development for Planning Authorities, 2009, I would consider that paragraph 5.11 is most relevant to the proposed

⁵ 17:46:33-17:47:30

development. Paragraph 5.11 recommends that in outer suburban greenfield sites in large cities that densities of 35-50 dwellings per hectare are recommended. As outlined above the residential density of the proposed development would be below this guidance.

- 10.3.3. Paragraph 3.1.1 of the Waterford City Development Plan, 2013 – 2019, sets out guidance in relation to residential density. The Development Plan considers that high density residential development will not be a feature of the housing market in the short to medium term. The Development Plan acknowledges that in outer greenfield sites densities of 35-50 units to hectare are required and that the national guidelines discourage densities of less than 30/ha however the guidelines acknowledge that there is limited provision required for lower densities to facilitate housing choice.
- 10.3.4. Paragraph 5.12 of the of the Sustainable Residential Development for Planning Authorities, 2009, is relevant as this allows for the provision of lower densities in limited cases.
- 10.3.5. The documentation supporting the application and the evidence by Mr Harrington at the oral hearing argues that the individual house types proposed provides for an identified gap in the local housing market. In that regard it is submitted that the proposed houses provide for larger living spaces which includes two downstairs living rooms and the optional attic conversion. These houses will therefore provide for expanding families or households wishing to upgrade without leaving the local area.
- 10.3.6. Mr. Niall Harrington, outlined to the oral hearing that the planning application lodged with Waterford City and County Council provided for a residential density in accordance with the requirements of An Bord Pleanála as per their consideration of the previous application. Mr. Harrington also outlined that the proposal provides for a high-quality design and the revised scheme still retains the numbers and this is

important as the proposed development will provide for first time buyers and households upgrading from the 3-bed semi-detached houses.

- 10.3.7. During the oral hearing Brendan Cullinan⁶, District Planner, Waterford City and County Council, outlined that the permitted number of housing units is 268 and that at the additional information stage the local authority requested the applicant to redesign the eastern side of the proposed development having regard to the topography of the site. In this regard three-storey maisonette type housing were replaced by two-storey detached houses which reduces the overall density at the site.
- 10.3.8. Brendan Cullinan also outlined the justification for condition 2(d) and 2(e) of the Local Authority notification to grant permission. Condition no. 2 (d) and 2 (e) omits 4 no. maisonettes thus further reducing the overall residential density of the proposed development. The Local Authority outlined at the oral hearing the reason for omitting the 4 no. units was due to the shortfall in car parking spaces.
- 10.3.9. Ms O'Shea, outlined to the oral hearing in her closing statement that the original application submitted to the Local Authority provided for a higher residential density however there were concerns in relation to the development in the north east of the site as the Planning Authority had concerns with this upper area having regard to visual impact from the rural area and skyline impacts. Ms O'Shea submits that the removal of roads and open space from the site would provide a density of 37.6 units / ha and furthermore should the upper area be removed from the development then the overall residential density would be higher.
- 10.3.10. It is notable that the appellants make no objection to the proposed development on the grounds of residential density.

⁶ 17:09:38-17:10:42

10.3.11. I would consider that an examination of potential densities achievable on the appeal site highlights a significant housing provision shortfall. In this regard the number of houses permitted is 268 units. However, should the proposal provide 35-50 dwellings per hectare then the overall housing development would be in the region of 312 – 445 housing units. Therefore, permitting the residential density as permitted by the local authority would amount to a shortfall of 44 – 177 units which is on average 111 units.

10.3.12. It is national guidance in accordance with the 'Sustainable Residential Development in Urban Areas, 2009', to promote and encourage higher residential densities where appropriate, i.e. within proximity to cities and towns. I would note the location of the appeal site is within a built-up area with established services and amenities with public transportation connections to the City Centre. The proposed development, in my view, represents a significant shortfall in housing provision and in the absence of any demonstration or evidence that the existing residential densities in the local district achieved 35 – 50 units per hectare I would conclude that the proposed development is contrary to national guidelines.

10.4. **Part V**

I would note that correspondence on the file indicates that the applicants have agreed to transfer 22 maisonette units and 7 no. semi-detached units in fulfilling their Part V agreement in relation to 285 housing units. The Local Authority's Planner's Report outlines that correspondence from the Housing Section in Waterford City and County Council is satisfied with the Part V agreement.

10.5. **Foul Drainage**

10.5.1. The foul drainage for the proposed development will connect to an existing public sewer immediately west of the appeal site at Knockboy village. The indicative location of this public sewer is highlighted on an aerial map⁷ that accompanied the third-party appeal submission. This public sewer travels towards a pumping station,

⁷ Drawing ref. IE1405-001

i.e. Island View pumping station, which adjoins the western boundary of the appellant's land holding. Following the pumping station the foul drainage, via a rising main, travels to Water Park where it crosses the River Suir to the wastewater treatment plant at Belview⁸. There are two overflow pipes from the pumping station, one of which is redundant and this was confirmed to the oral hearing. However, the active overflow pipe which runs through the appellant's land has three manholes along its route before overflowing into the River Suir Estuary.

10.5.2. The application documentation⁹ outlines that there is sufficient capacity to accommodate the proposed development. Mr. James O'Sullivan objected to the planning application on the basis that there was insufficient capacity in the foul drainage network and this was causing surcharges via the manholes and resulting in raw sewage entering his land. Mr. O'Sullivan's land is used for agricultural purposes however the raw sewage which entered his land via the manholes has adversely impacted on his agricultural land. The Water Services Section of Waterford City and County Council has no objections to the proposed development and I would note that the Planners report¹⁰ acknowledged that Irish Water have been contracted to carry out upgrade works of the foul sewage network and these include work relevant to Mr. James O'Sullivan's land.

10.5.3. During the oral hearing Mr. Tom Walshe, on behalf of the applicant, responded to the claim that there is inadequate capacity in the foul sewer network for the proposed development. Mr. Walshe outlined that the impact of the foul flow from the proposed development on the pump station was proportionately very small, approximately 5%. However, it was submitted that the proposed improvement works, for which Irish Water has responsibility, would reduce the proportional contribution of the proposed development to less than 1%. Secondly Mr. Walshe outlines that the overall foul sewage network in Waterford City does not conform with modern good practice

⁸ The Waste Water Treatment Plant commissioned in 2010.

⁹ Engineering Planning Report

¹⁰ Dated 23rd February 2017

standards as it is a combined sewage with surface water. Therefore, an overflow system is required to manage heavy rainfall as the network cannot be designed to cater for peak storm flows.

10.5.4. Mr. Pat McCarthy¹¹ in his submission to the oral hearing includes the Engineering Report from Muir and Associates which sets out the calculations and the capacity compliance and Mr. McCarthy concurs with these calculations. This would therefore counter argue the appellant's main assertion that there is inadequate capacity within the foul sewer network. He also stated at the hearing that the upgrade works by Irish Water are now complete and these works included re-routing of surface water from the combined network and therefore in theory increasing capacity. Mr. McCarthy outlined that most pumping stations require an overflow and it is not unusual and it is designed in a situation for which the catchment has a combined system such as the existing catchment. The designed overflow will operate all year around and it is a direct result of what is happening in the catchment due to malfunction and rainfall.

10.5.5. James O'Sullivan¹² outlined to the hearing the problems he has encountered with surcharges of the manholes and the impact that this has had on his land. Mr. O'Sullivan also provided video evidence¹³ (video recording on 2nd October 2017) of the overflow entering the River Suir Estuary. In the cross-questioning Mr McCarthy confirmed to the hearing that the works carried out by Irish Water would address these concerns as the works would ensure that there is a significant reduction of raw sewage entering the appellant's land. The improvement works carried out by Irish Water included infiltration works and as part of this storm water connection from road gullies was disconnected from the public sewer and this reduces the amount of potential infiltration to the public sewer and would also reduce the pressure on the overflow.

¹¹ 14:31:38-14:34:48

¹² 14:41

¹³ 14:48:28-14:49

Ms Niamh O'Malley in her submission to the hearing, outlined that in 2014 manhole no. 1 lifted resulting in raw foul effluent discharging onto the appellant's land. It is acknowledged that the manhole has since been repaired and reinforced with additional concrete. It is also submitted that there was evidence of a second manhole lifting in May 2016 which has since been repaired and reinforced with concrete. It is argued by Ms O'Malley that the system is most likely a combined system, including foul and surface water, and therefore an overflow system is required to alleviate the system during storm events. However, Ms O'Malley submits that the overflow system has inadequate hydraulic capacity to cater for flows discharging into it and therefore is directly contributing to raw foul effluent discharges to the appellant's land. During the cross-examination Ms O'Malley questioned Mr. McCarthy whether the overflow pipe is an emergency or combined sewer overflow and Mr. McCarthy suggested that it was combined however Ms O'Malley confirmed to the hearing the EPA licence in relation to the overflow pipe was for an emergency overflow and that an emergency overflow is only to be used in instances such as power failures rather than in constant use as observed in the video evidence by Mr. James O'Sullivan. I would consider that the video evidence suggests that the overflow pipe is not used solely for emergency purposes. Mr McCarthy suggested that it is possible the redundant overflow pipe maybe the emergency overflow.

10.5.6. Mr James O'Sullivan outlines that historically raw sewage has poisoned his land and that when the City Council negotiated the wayleave the City Council assured Mr. O'Sullivan that the overflow pipe will be an extreme emergency system and it would rarely be in use and this is contrary to the actual constant use that currently prevails.

10.5.7. I would conclude that it has been evident from the proceedings of the hearing that raw sewage was entering Mr. O'Sullivan's land via a manhole. However, the hearing heard from Mr. McCarthy that Irish Water have completed works to address this issue by reinforcing concrete at the manhole. Irish Water have also carried out infiltration works which would effectively improve capacity. However, there are some issues in relation to the overflow pipe. I would accept and acknowledge that the overflow is a design overflow however it is unclear whether the overflow is an

emergency overflow or a combined overflow and this may ultimately determine the overall volume of overflow emitting to the River Suir at this point.

10.5.8. Overall I would consider that allowing for the proposed works by Irish Water that capacity issues are largely addressed. The only outstanding issue is the nature of the overflow and whether this overflow is combined or emergency overflow and whether this overflow is likely to result in a greater amount of emissions as opposed to emergency overflow. Overall I would conclude, based on the information available, that there is adequate foul sewer capacity to accommodate the proposed development.

10.6. **Surface Water Drainage**

10.6.1. It is proposed that discharge of surface water from the proposed development will be served by a new surface water drain, i.e. a piped gravity system, on the Knockboy Road, which is indicated on IE consulting drawing¹⁴ and this drains to an existing storm water culvert on the Dunmore Road before discharging to a local stream. The stream continues through existing farmland which is James O'Sullivan's land and has an outfall to the River Suir Estuary.

10.6.2. In the current proposal, the applicant proposes to reduce surface water run-off to below greenfield run-off levels or to predevelopment levels. The documentation submitted with the application¹⁵ outlines that it is proposed to reduce the rate of run-off to 3.0 l/s rather than the more onerous 18 l/s. The proposed attenuation methods are outlined in detail in the submitted Engineering Report and in summary include surface water attenuation in underground storage facilities, SUDS and flow control devices.

¹⁴ IE1405-001

¹⁵ Engineering Planning Report

- 10.6.3. During the oral hearing, Ms Niamh O'Malley, outlined the appellant's concerns in relation to surface water proposals. In this regard the appellant is concerned that the proposed surface water from the proposed development, which ultimately discharges to a stream that runs through Mr. O'Sullivan's lands will result in flooding of his land. Principally it is argued that the stream running through Mr. O'Sullivan's land is tidal and protected from tidal or storm surges by a tidal flap. Ms O'Malley argues that as additional run-off will now be entering the stream from the proposed development and given a storm event it is possible that the run-off will be retained in the stream and may cause flooding of the lands. Ms O'Malley also pointed out that as the proposed development system does not have a buffer storage and given the low release rate of 3.0 l/s this may give rise to storage issues and in turn potential flooding.
- 10.6.4. In addition, Ms O'Malley argues technical deficiencies with the proposed attenuation system and these include the issue of silt built up, inadequate provision of catch pits, the likelihood of high velocities which will amount to silt bypassing catch pits and inadequate size of the hydro-brake which determines the control flow.
- 10.6.5. Ms O'Malley outlines in her submission to the oral hearing that the proposed geocellular modular attenuation system does not allow for easy inspection and maintenance with CCTV equipment and the potential removal of silt build-up. It is submitted that the proposed surface water details do not include provision for any catch-pits which are important for the removal of silt. Without the provision of catch-pits up-stream it has the potential to allow silt enter the geo-light system and is therefore difficult to remove. In relation to high velocities preventing silt from being able to settle out in the catch pits Ms O'Malley outlines that Department of Environment guidance recommends a maximum pipe velocity of 3.65m/s. However it is submitted that pipe flow at half full depth is likely to be higher than 3.65 m/s which is above the recommended limit. It is contended that high velocities may allow silt bypass catch pits and flow directly into an attenuation system causing blockage over time.

- 10.6.6. However, in relation to these technical issues of the proposed attenuation system I would consider that the submission by Mr. Walshe to the oral hearing and his cross examination¹⁶ of Ms O'Malley broadly addresses these concerns. This submission outlines the legal maintenance obligations of the system. It is also important to note that condition no. 9 of the local authority permission requires a storm tech attenuation system rather than a SDS Geolight system as originally proposed by the applicant. This would address some of the concerns outlined by Ms O'Malley.
- 10.6.7. The appellant is also concerned that the applicant's proposals do not address further information requests in the previous application (appeal ref. 246629). In the previous application (L.A. Ref. 15/711) Waterford City and County Council requested additional information requiring the applicant to submit (a) a comprehensive survey of the existing surface water drain / culvert / stream from the proposed development to its outfall to the River Suir Estuary and secondly (b) to investigate the possibility of a constructed wetland project in association with other developers.
- 10.6.8. Ms O'Malley also submits that no assessment has been undertaken to determine the impact of discharging surface water from the proposed development site into the stream running through the appellant's property. It is contended that the proposed surface water system will be directly piped to the stream as presently run-off from the appeal site does not discharge directly into these lands.
- 10.6.9. Niamh O'Malley questioned Mr. Walshe regarding the assessment in relation to existing surface water run-off rates and whether all the 18 l/s run-off ends up in Mr. O'Sullivan's land. Mr. Walshe responded by stating that contours and the rainfall were assessed and that the contours are definit. Mr Walshe also stated that the wooded area on the opposite side of the public road, i.e. Knockboy Road, is effectively a valley with east and west contours sloping into this wooded area. Mr Walshe concluded that all the runoff from the development site would end up in Mr. O'Sullivan's land. Following questioning Mr. Walshe confirmed to the hearing that

¹⁶ 18:03 – 18:15

there was no impact assessment in relation to the difference between fuse and point discharge. As the proposal consists of a point discharge Ms O'Malley makes the point that the volume of discharge will now be greater. Mr. Walshe also confirms that there is no provision for long-term attenuation storage and that the argument is made by Ms O'Malley that could result in the attenuation tanks becoming full should a 100-year weather is followed by a 5-year weather event in a short period. Mr Walshe confirms to the hearing that restricted attenuation rates where there is another weather event soon after that will have consequences as attenuation may make it worse.

10.6.10. It is my view, based on the submitted documentation and the evidence to the hearing that the proposed development will result in a significant reduction in run-off water. In this regard Mr. Walshe¹⁷ submitted to the oral hearing that approximately 200 ha of developed land drain to the sea through the appellant's land, however as the appeal site is approximately 9 ha in size it is estimated that in the predevelopment situation the applicant's land contributes to 2-3% of the overall surface water flow passing through the appellant's land. Mr. Walshe estimates that should the proposed development proceed that this will reduce to less than 0.5% due to off-site controls.

10.6.11. I would note that Mr. McCarthy, Senior Engineer, in his submission to the hearing includes the Engineering Report from Muir and Associates which sets out the calculations and the capacity compliance and he concurs with these calculations. I would also acknowledge that the appellant has raised concerns in relation to the technical workings of the proposed attenuation system. However, I would consider that it has been adequately demonstrated that any shortcomings would be addressed by conditions of a permission and good maintenance standards.

10.6.12. Overall, having regard to the proposed on-site surface water attenuation and the reduction of the rate of run-off to 3 l/s I would consider that the surface water run-

¹⁷ 14:01:45-14:02:26

off from the proposed development is unlikely to cause significant impact on the established surface water capacity.

10.7. **Flood Risk**

- 10.7.1. In terms of assessing a potential flood risk I would note that the Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009, sets out a sequential test for assessing flood impact.
- 10.7.2. The appeal site is in area that would be designated Flood Zone C in accordance with these guidelines. The proposed development, i.e. houses, is a highly vulnerable development in accordance with the Table 3.1 of the guidelines and having regard to Table 3.2 of the guidelines the proposed residential development would be appropriate on the appeal site which is in Flood Zone C.
- 10.7.3. As noted in Section 10.6.9 above surface water from the immediate area to the appeal site and the its catchment drain towards an existing stream which is located some 500 metres from the appeal site. This stream in turn flows towards the River Suir where it drains. At the northern point of this existing stream, where it enters the River Suir, there is a tidal flap which prevents water entering stream at high tide. At low tide the stream flows into the River Suir thus providing a surface water drain for the catchment. The primary concern as outlined above is that during a spring tide or storm event that the water in the stream will be retained and should these events coincide with a period of high rainfall then this may give rise to flooding.
- 10.7.4. The proposed development, as outlined above has a surface water retention system whereby discharge rates are reduced to 3 l/s from existing greenfield rates of 18 l/s.
- 10.7.5. The submission from Mr. Walshe is significant when considering potential flood risk. Mr. Tom Walshe submitted to the oral hearing that approximately 200 ha of developed land drain to the sea through the appellant's land, however as the appeal

site is approximately 9 ha it is estimated that in the predevelopment situation the applicant's land contributes to 2-3% of the overall surface water flow passing through the appellant's land. Mr. Walshe estimates that should the proposed development proceed that this will reduce to less than 0.5% due to off-site controls.

10.7.6. I have reviewed the website www.floodmaps.ie and there is no recorded history of flooding on the appeal site.

10.7.7. Overall I would conclude that the proposed development would be appropriate in terms of flood risk and I would consider based on the information available that the proposed development would not create a flood risk on the appellant's land.

10.8. **AA Screening**

10.8.1. The Board will note that activities, plans and projects can only be permitted where it has been ascertained that there would be no adverse effect on the integrity of a Natura 2000 site, apart from in exceptional circumstances.

10.8.2. The Department of Environment, Heritage and Local Government Guidelines on 'Appropriate Assessment of Plans and Projects in Ireland, 2009,' recommend that the first step in assessing the likely impact of a plan or project is to conduct an Appropriate Assessment Screening to determine, on the basis of a preliminary assessment and objective criteria, whether a plan or project, alone or in combination with other plans or projects, could have significant effects on a Natura 2000 site in view of the site's conservation objectives. The Guidelines recommend that if the effects of the screening process are '*significant, potentially significant, or uncertain*' then an appropriate assessment must be undertaken.

10.8.3. The submitted AA Screening, which accompanied the planning application, assessed potential impacts of the proposed development on existing Natura 2000 Sites. The subject site is not actually located within a designated site, however there

is an SAC, i.e. the Lower Suir cSAC (site code 002137) located approximately 1km north of the appeal site and also the River Barrow and River Nore cSAC (site code 002162) is located approximately 5km east of the appeal site. The Tramore Dunnes and Back Strand cSAC and Tramore Back Strand SPA are located approximately 10km to the south.

10.8.4. The Lower River Suir has the following qualifying Annex I habitats and Annex II species;

- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation [3260]
- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0]
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]
- *Taxus baccata* woods of the British Isles [91J0]
- *Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029]
- *Austropotamobius pallipes* (White-clawed Crayfish) [1092]
- *Petromyzon marinus* (Sea Lamprey) [1095]
- *Lampetra planeri* (Brook Lamprey) [1096]
- *Lampetra fluviatilis* (River Lamprey) [1099]
- *Alosa fallax fallax* (Twaité Shad) [1103]
- *Salmo salar* (Salmon) [1106]
- *Lutra lutra* (Otter) [1355]

10.8.5. The AA Screening report, submitted by the applicant, concludes that the proposed development will have no direct impacts on established Natura 2000 sites given

principally the separation distance. In terms of indirect impacts the AA Screening outlines that as surface water drainage is adequately controlled there is no concern in relation to surface water run-off from the proposed development adversely impacting on the Natura 2000 sites. The AA Screening also submits that there is adequate capacity within the foul sewer network and there is no potential for indirect impacts on the River Suir SAC. In terms of cumulative impacts the AA screening concluded that having regard to the established policies and objectives of the City Development Plan and other current planning applications there is no potential for cumulative and in-combination impacts with other known plans or projects in the local area.

- 10.8.6. The response to appeal argues that the runoff rates are lower than existing greenfield rates. It is considered that the only potential for a cumulative impact is considered through adverse water quality. There is no potential for flooding due to lower runoff rates and there is no potential for cumulative impacts as the foul sewer has adequate capacity.
- 10.8.7. B Guest¹⁸ Heritage Officer, Waterford City and County Council submitted to the oral hearing that the relevant question is whether there is potential for significant impacts on the River Suir SAC (site code 002137) from the proposed development and in this regard, significant impacts are defined as loss, fragmentation, disruption or will there be disturbance to habitats and species listed as qualifying interests. B Guest outlined that the relevant habitats and species to this area of the SAC are saltmarsh, otter, shad, lamprey and salmon. In conclusion B. Guest submitted that given the measures to deal with surface water and foul sewage that there will be no potential for significant impacts, i.e. impacts that will cause loss, fragmentation, disruption or disturbance. In relation to cumulative impacts it was submitted that there are no other known current or proposed developments in this local area that will give rise to significant impacts.

¹⁸ 14:26:40-14:27:04

10.8.8. Deborah D'Arcy¹⁹, ecologist on behalf of the appellant, submitted to the hearing that saltmarsh, which is a qualifying interest for the River Suir, is located adjacent to the appellant's boundary with the River Suir. It was outlined to the hearing that this area of saltmarsh has been the subject of impacts in the past and this is reported by McCorry and Ryle (2009), and one of the reasons causing the impact is pollution due to raw sewage. In general, Ms D'Arcy argues that there is likely to be significant impacts on the saltmarsh habitat due to the potential for flood risk, impacts of the hydrology and salinity of the immediate area and this needs investigation. Ms D'Arcy also states that there is likely to be significant impacts due to the weakness in the existing foul sewer drainage network, the potential for build up of silt in the system and the potential for surface water to back up onto the road and ultimately to by-pass the attenuation system. There are also concerns with the overflow pipe which originates from the pumping station. Ms D'Arcy outlines that the outfall of raw sewage could have a negative impact of salmon, twaite shad, otter and Atlantic salt meadows.

10.8.9. The submission from Ms D'Arcy also highlights that Atlantic salt meadows are located to the west of the sewage overflow pipe and also adjacent to where the stream enters the River Suir. It is argued in relation to the Atlantic salt meadows that the release of increased volumes of freshwater could result in an increased freshwater influence on the saltmarsh leading to changes to the vegetation structure and zonation. It was also submitted that the recreational users are having a negative impact on the saltmarsh.

10.8.10. B Guest²⁰ confirmed to the hearing that saltmarsh meadows are located adjacent to Mr. O'Sullivan's land, adjoining the River Suir and therefore in close proximity to the pumping station overflow pipe. Ms Guest also stated to the hearing that the proposed development will have no significant impact on the other qualifying interests referred to in her submission as the proposal will not introduce artificial barriers to migration and will not create conditions that would interfere with access to

¹⁹ 16:08-16:08:30

²⁰ 17:05:47-17:06:19

spawn further upstream at Carrick-On-Suir. Ms Guest also concluded that given that there was no direct access from the proposed development to the saltmarsh that no significant impacts are likely on this qualifying interest by recreational users. However I would note that the Map A (zoning map) of the Waterford City Development Plan, 2013 – 2019, provides for a riverside walk along Mr. O’Sullivan’s land adjacent to the saltmarsh.

10.8.11. Mr McCarthy²¹, in response to questions from Christopher Hughes, BL, stated that the overflow from the pumping station was dilute sewage and although this overflow flows directly into the SAC that this is a design overflow and is typical for pumping stations. Mr McCarthy concluded that there were no impacts on the SAC because it was a dilute sewage.

10.8.12. Christopher Hughes questioned B. Guest whether the overflow from the pumping station was taken into account in the AA Screening assessment. Ms Guest was unable to answer this question however Deborah D’Arcy submitted to the hearing that the Ecologist who prepared the AA Screening based her conclusions on the engineering report, both foul and surface water, and the assessment did not take account of the point source of pollution from the overflow pipe. B Guest was asked to comment and she outlined that the EPA monitored the River Suir in the period, 2010 – 2015, and it was recorded as having a moderate quality. It is submitted that the EPA review will assess the estuary in it widest context rather than a point source.

10.8.13. Ms D’Arcy argued that the cumulative impact of the AA Screening has had no regard to developments existing, proposed and in planning and addressing the issues that all the drainage falls into the stream, the cumulative impact on the recreational use of the saltmarsh. Ms D’Arcy concluded that the oral hearing identified inadequacies of the existing foul and surface water network, and the cumulative impact of the 200ha catchment.

²¹ 17:18:56-17:21:56

10.8.14. I would consider that a crucial point in considering the AA Screening is the overflow pipe and potential implications for the River Suir SAC. It became evident during the course of oral hearing that the AA Screening Report did not adequately consider the overflow pipe from the pumping station to the River Suir Estuary. The AA Screening report relied soundly on the grounds that the existing foul sewer and surface water infrastructure was functioning adequately, although this is largely correct it became evident at the oral hearing that the overflow pipe from the pumping station was emitting sewage to the SAC. The proposed housing development will be served by the existing foul drainage network which collects sewage from the site of the proposed development and is piped to the pumping station. I would acknowledge Mr. McCarthy's contribution when he stated that all pumping stations have a designed overflow and this designed overflow results in a point discharge of dilute sewage to the River Suir SAC.

10.8.15. In addition to the above point it also emerged at the oral hearing whether the overflow discharge is emergency overflow or combined sewer overflow and this issue was not comprehensively clarified. This is important as an emergency overflow is only used in certain circumstances such as a storm event whereas a combined overflow is used regularly. I would consider that having regard to these issues that the overall outcome of the AA Screening is uncertain.

10.8.16. In conclusion therefore the AA Screening does not include an assessment of likely impacts from the point source of the overflow pipe or indeed the contribution that the proposed development, alone or in combination with other proposed developments, will have on the point source and in turn the implications of the foul sewage is likely to have on the SAC.

10.8.17. The guidelines are clear and Chapter 3, paragraph 3, states that '*if the effects are deemed to be significant, potentially significant, or uncertain, or if the screening process becomes overly complicated, then the process must proceed to Stage 2 (AA)*'. Based on the information available and the advice in the guidelines I would

recommend that a Stage 2 AA Screening would be required to address concerns however given the substantial refusal reason outlined above I would recommend a refusal reason.

10.9. **EIA Screening**

- 10.9.1. The size of the appeal site is a relevant consideration in determining whether an EIS is required in accordance with the provisions of the Planning and Development Regulations, 2001 (as amended).
- 10.9.2. Section 10 (b) (iv) of Schedule 5, Part 2 of the Planning and Development Regulations, 2001 (as amended) states that urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 ha elsewhere is development that requires an EIS.
- 10.9.3. The appeal site is located within a built-up area where the functional development plan is the Waterford City Development Plan, 2013 – 2019, however the site is not located within a business district.
- 10.9.4. The size of the site in the current application which is 8.9ha falls below the 10-ha threshold and therefore an EIS is not required having regard to Section 10 (b) (iv) of Schedule 5, Part 2 of the Planning and Development Regulations, 2001 (as amended).
- 10.9.5. Schedule 7 of the Planning and Development Regulations, 2001, sets out criteria for determining whether a development would or would not be likely to have significant effects on the environment. This criterion includes characteristics of the proposed development, location of the proposed development and characteristics of potential impacts.

10.9.6. In accordance with the 'EIA Guidance for Consent Authorities regarding Sub-threshold Development', 2003, the following is stated "*there is a requirement to carry EIA where competent/consent authority considers that a development would be likely to have significant effects on the environment*". The guidelines advise the criteria to be considered for the need for sub-threshold E.I.S. and this includes (i) characteristics of the proposed development, (ii) location of the proposed development, and (iii) characteristics of potential impacts as referenced in Schedule 7. The guidelines outline that there maybe projects below national thresholds in Schedule 5 of the Planning Regulations, 2001(as amended), which are likely to have significant effects on the environment by reference to the use of natural resources, production of waste, environmental emissions or the risk of an accident associated with the use or storage of dangerous substances or a combination of these factors. I would consider that based of the information available that the proposed housing development is unlikely to have significant effects on the environment having regard to the above criteria.

10.9.7. The guidelines also advise specifically in relation to housing developments that although the individual housing development maybe less than 500 units that in combination with other housing developments in the immediate area that the overall housing units could exceed 500 units. There is a current appeal before the Board (appeal ref. 248811) for the development of 117 houses. However, considering both this current appeal and appeal ref. 248811 the overall housing numbers are still less than 500 units. During the oral hearing Mr Thomson refers to project splitting as the current appeal site differs in size from the previous application. However I would note that Waterford City and County Council have agreed to purchase land from the applicant to use as a public amenity space. This land is located immediately to the east of the current appeal site. It was confirmed to the hearing, by Mr. Harrington, that the status of this legal transaction for the transfer of this land is currently sale agreed. I would consider as it is intended to use the land for public open space and as this same land is zoned open space that housing would not be developed on this land and therefore I would not consider that project splitting is a concern in this instance. During the oral hearing it was argued by the appellant's team that the size of the appeal site should have regard to the drainage network, both surface water

and foul, to facilitate the proposed development which passes through Mr. O'Sullivan's land. It was submitted that should the size of the site have regard to the drainage network that the overall cumulative size of the subject site would exceed 10 ha. I would consider that any assessment of the size of the site relates solely to the area within the red lin boundary on the application drawings.

10.9.8. The guidelines also advise that the environmental sensitivity of a geographical area may also mean that a project is likely to have significant effects on the environment.

10.9.9. The subject site is not actually located within a designated site, however there is an SAC, i.e. the Lower Suir cSAC (site code 002137) located approximately 1km north of the appeal site and also the River Barrow and River Nore cSAC (site code 002162) is located approximately 5km east of the appeal site. The Tramore Dunnes and Back Strand cSAC and Tramore Back Strand SPA are located approximately 10km to the south. Although in the AA Screening above I have determined that it is uncertain whether there are likely impacts from the point source to the SAC. I would consider that this would not necessarily apply that the proposed development is likely to have significant effects on the environment.

10.9.10. I would conclude that having regard to the characteristics of the proposed development, the location of the proposed development and the characteristics of the potential impacts, that the proposal is not likely to give rise to significant effects on the environment and that an EIS would not be warranted in this instance.

10.10. **Impacts on established Residential Amenities**

10.10.1. There are several existing residential properties located to the immediate north of the appeal site. These properties are generally located on sites at a lower level than the appeal site having regard to the topography of the local area.

10.10.2. The local authority requested at the further information stage that the applicant submit revised plans to address concerns in relation to potential impact on

established residential amenities. In this regard the north-east corner of the proposed development was revised. The revised site layout ensures that there are no opposing rear windows and therefore in my view this revised layout would protect established residential amenities.

10.10.3. The proposed house located in the most north-eastern corner of the proposed site layout is set back approximately 17 metres from the existing house to the immediate north and this in my view provides an adequate separation distance to prevent any undue impacts on the established residential amenities.

10.10.4. I would also note that house type E are located in proximity to the northern boundary of the appeal site and on the opposite side of this site boundary there are two established residential properties. However, these two residential properties are set back approximately 31 – 35 metres from the proposed houses within the appeal site. This in my view is an adequate set back distance and I would be satisfied based on the submitted plans that existing residential amenities would not be compromised by the proposed development.

10.11. **Residential Amenities for future occupants**

10.11.1. The proposed development provides for a range of house types and these include detached houses, semi-detached houses and maisonettes comprising of ground floor apartments and two-storey apartments over two floors.

10.11.2. I have reviewed the submitted site plan and the floor plans and in general the proposed floor areas are generous and would therefore provide a good standard of residential amenity for future occupants.

10.11.3. Section 13.2.2 of the City Development Plan sets out quantitative standards for housing developments. In summary, this includes minimum rear gardens ranging from 50 – 75 sq. metres, a minimum distance of 22 metres shall be maintained

between directly opposing rear windows and public open space provision shall be a minimum of 15% for green field development.

10.11.4. In terms of private open space provision for the proposed houses I would note from the revised site plan (drawing no. PP03/01) that rear gardens would generally provide a good standard of residential amenity for future occupants. However, there are a few exceptions and this includes house no. 86. House no. 86 is a 4-bed semi-detached property with a floor area of 152 sq. metres and the private open space is 50 sq. metres. This in my view would represent a poor form of residential amenity for future occupants in quantitative standards. In addition, house no. 191, which is also a 4-bed semi-detached property with a floor area of 152 sq. metres. The private open space for this property is 55 sq. metres which again is small and furthermore is east facing and the view from the rear garden is directly onto a two-storey gable wall which would offer a poor aspect for the future occupants of house no. 191. I would also note that house no. 236 would include a private rear garden of 54 sq. metres which again is relatively small and the adjoining property has a rear garden measuring approximately 53 sq. metres. In addition, both these rear gardens are north facing and in my view, would offer a poor form of residential amenity for future occupants. The private open space provision for house no. 254 would also, in my view, be substandard. The proposed rear garden measures approximately 53 sq. metres and the layout of the rear garden would in my view restrict its usability in terms of a private amenity space.

10.11.5. In terms of residential amenity, I would also be concerned with the proposed Blocks F-G and Blocks F1-G1. I would be concerned that house type G which is set back approximately 3 metres from the garden boundary would overlook the adjoining residential amenities and also result in perceived overlooking of adjoining residential amenities. This in my view would also apply to the following house numbers;

- 70 and 71
- 110 and 111

- 102 and 103
- 235 and 236
- 171 and 172
- 254 and 253
- 189 and 190
- 158 and 157

10.11.6. In relation to the proposed maisonettes I would note that the Sustainable Urban Housing: Design Standards for New Apartments, Dec. 2015, sets out minimum floor areas for two bedroom apartments. The recommended minimum floor area for a two-bed unit is 73 sq. metres. The ground floor maisonette has a floor area of 84 sq. metres and the first and second floor maisonette apartment has a floor area of 94 sq. metres.

10.11.7. The Sustainable Urban Housing: Design Standards for New Apartments, Dec. 2015, sets out minimum private open space provision for apartments. The guidelines recommend a minimum private open space for a two-bedroom apartment of 7 sq. metres. The ground floor maisonette is served by a ground floor terrace and the first and second floor maisonette is served by a balcony.

10.11.8. The proposed ground floor terraces and balconies are generally east and west facing, however the private amenity space of two of the blocks orientate in a north-west direction which would offer a relatively poor form of residential amenity. However, having regard to the generous floor areas in relation to the minimum recommended standards I would consider overall that the private residential amenity for the maisonettes is acceptable. I would also note that all of the proposed apartments have a dual-aspect orientation which would offer a good standard of residential amenity. The proposed maisonettes also offer semi-private open space to the rear of their respective blocks.

10.11.9. In conclusion, therefore I would have concerns in relation to private residential amenity proposed to serve a number of residential units within the proposed development and the standard on offer. This is effectively a new issue as the concern in relation to private amenity space for future occupants was not raised by the third-party appellant nor the Local Authority.

10.12. **Traffic and Access**

10.12.1. The planner's report outlines that the required car parking provision is two spaces per residential unit and one guest space for every four residential units. The total number of residential dwellings proposed is 208 and therefore the required car parking provision is 468 spaces. The proposed development includes the provision of 64 no. apartments in the form of 32 maisonettes. The local authority planners report outlines that the required car parking provision for maisonettes is 3 spaces per maisonette and one visitor space for every maisonette. As such the total required car parking provision for the proposed development is 580 car parking spaces and the proposed development is compliant with this requirement.

10.12.2. I would note that the Local Authority had concerns with the proposed car parking provision for maisonettes no. 33 – 50 inclusive. The submitted site layout plan (drawing no. PP03/01) illustrates 17 no. car parking spaces adjacent to the proposed maisonettes. The required car parking provision would be 31 spaces. I would concur with the local authority's concerns and I would support condition no. 2, should the Board favour granting permission.

10.12.3. It is proposed that the access to serve the proposed development will utilise the existing field entrance. The Traffic and Transportation Assessment that supports the planning application concludes that the sightline provision at this location would be adequate. The Local Authority has no concerns in relation to sightline provision.

10.12.4. In relation to DMURS the proposed road layout which provides for a curving road layout would generally mitigate against traffic speeding. The proposed

development also allows for footpath segregation along the main distributor road which is a positive feature. The proposal also provides for pedestrian permeability at a number of points to the front of the site, adjoining the Knockboy Road, which again is a positive feature.

10.12.5. Overall I would consider that traffic and access issues in relation to the proposed development are acceptable.

10.13. **Childcare Provision**

10.13.1. The Childcare Facilities – Guidelines for Planning Authorities, 2001 provide a framework to guide both local authorities in preparing development plans and assessing applications for planning permission, and developers and childcare providers in formulating development proposals. These Guidelines are intended to ensure a consistency of approach throughout the country to the treatment of applications for planning permission for childcare facilities. Section 2.4 of the Guidelines state ‘for all new housing estates, an average of one childcare facility for each 75 dwellings would be appropriate’.

10.13.2. However, the proposed development includes no childcare provision. There is no justification in the supporting documentation to argue the case not to provide a childcare facility within the proposed development.

10.13.3. Having regard to the substantial reasons of refusal as indicated in this report I would not recommend to the Board that this issue is pursued.

11.0 **Recommendation**

11.1. I have read the submissions on the file, visited the site, had due regard to the County Development Plan, and all other matters arising. I recommend that planning permission be refused for the reasons set out below.

12.0 Reasons and Considerations

- 12.1. Having regard to the nature, scale and housing density of the proposed development, the planning history of the overall site and the provisions of the “Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas” issued by the Department of the Environment, Heritage and Local Government (2009) in relation to housing density in outer suburban/greenfield sites in cities and larger towns, it is considered that the proposed development would result in an inadequate housing density that would give rise to an inefficient use of zoned residential land and of the infrastructure supporting it, would contravene Government policy to promote sustainable patterns of settlement and the draft policy provisions in the National Planning Framework, 2040, and would, therefore, be contrary to the provisions of the said Guidelines and draft policy provisions. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 12.2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site no. 002137, (Lower River Suir Valley) in view of the site’s Conservation Objectives. In such circumstances the Board is precluded from granting approval / permission.
- 12.3. The proposed residential development by virtue of inadequate private open space provision for a number of the proposed houses in combination with relatively poor orientations and aspects would give rise to a poor form of residential amenity, in both quantitative and qualitative terms. Furthermore the proposed housing development by reason of its design, layout and close proximity to the site boundaries of adjacent properties would result in overlooking and loss of privacy to the properties in their immediate vicinity. The proposed development would therefore set an undesirable precedent in the area, seriously injure the residential amenity of the area and would, therefore be contrary to the proper planning and sustainable development of the area.

Kenneth Moloney
Planning Inspector

8th November 2017