



An  
Bord  
Pleanála

## Inspector's Report PL09.249006

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<b>Development</b>	Development of 258 dwellings, a 2 storey crèche and a 2.85Ha park.
<b>Location</b>	Craddockstown, Naas, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council.
<b>Planning Authority Reg. Ref.</b>	16/1117.
<b>Applicant</b>	Cairn Homes Properties Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant subject to conditions.
<b>Type of Appeal</b>	Third Party vs. Grant and First party vs. conditions.
<b>Appellant</b>	1. Daithí Mac an Bhaird 2. Cairn Homes Properties Ltd.
<b>Observer</b>	Michael and Mary Nolan.
<b>Date of Site Inspection</b>	26th October 2017.
<b>Inspector</b>	Ciara Kellett.

## 1.0 Site Location and Description

- 1.1. The appeal site is located in Craddockstown to the south of Naas town centre. It is located to the east of the R411 road linking Naas to Ballymore Eustace, c.9.2km to the south. It is south of the Ballycane Road which is the southern ring road around Naas that provides access to the R445 Regional road which leads to the M7 Motorway.
- 1.2. The site is irregular in shape and is stated as being 12.56Ha. It is bounded by the Kings Gate apartment development, the Craddockstown Court and Ard na Laoi housing developments to the north, and Ban na Greine and Cluain Aoibhinn housing developments to the north-east. Agricultural fields form the eastern boundary and a field with permission for 5 no. dwellings (not yet constructed) and a detached dwelling forms the southern boundary. The R411 road forms the western boundary. The site is c. 1.5km south of the town centre.
- 1.3. The R411 is a single lane carriageway without verges, footpaths or cycle lanes. The site is outside the 50kph speed limit. There are a number of scattered dwellings along the R411 further south of the site.
- 1.4. The topography of the site varies but rises steeply from approximately 101AOD along the western boundary to approximately 121AOD on the eastern half of the site. The site is mainly in agricultural use and there are mature hedgerows and trees forming part of field boundaries throughout the site. A stream runs along the western boundary known as Broadfield Stream.
- 1.5. The application area includes a c. 386m section of the R411 Road to facilitate proposed upgrades. A Bord Gais gas mains wayleave runs north-south through the site. The western portion of the land contains the Naas Southern Interceptor Pumping Station (excluded from the site area) and a wayleave allows for access and underground services to the pumping station. A 38kV overhead powerline runs across the site in an east/west direction with a wooden poleset within the lands.
- 1.6. The western portion of the site is zoned 'F – Open Space and Amenity' and the eastern portion is zoned 'C9 – new residential' in the Naas Town Development Plan 2011 - 2017.
- 1.7. Appendix A includes maps and photos of the site.

## 2.0 Proposed Development

- 2.1. The development as initially proposed included 258 houses, comprising of 24 no. three storey four-bedroom Type A/A1, 78 no. two storey four-bedroom Type B/B1/B2, 128 no. two storey three-bedroom Type C/C1/C2, 4 no. two storey three-bedroom Type D, 4 no. two storey four-bedroom Type E, and 20 no. own door apartments/duplexes in 2 no. three storey blocks. In summary: 4 no.1 bedroom, 10 no. 2 bedroom, 138 no. 3 bedroom and 106 no. 4 bedroom dwellings. There are 30 dwelling units per hectare on residential zoned lands. 10% of the dwellings are proposed for compliance with Part V of the Planning and Development Act and are located throughout the development. Three character areas are proposed with variations on brickwork and render combinations used to differentiate the areas. The application form states that there is 32,374.6sq.m of works proposed.
- 2.2. A c.395sq.m two storey crèche is proposed with an overall height of c.7.6m as well as an associated play area, parking and set-down area, located in the northern portion of the site within the 'F' zoned designation.
- 2.3. A c.2.85Ha park is proposed for the western portion of the site (in the 'F' zoned portion of the land) with a 13m long feature wall with an overall height of c.3.3m, as well as 6 no. open spaces located throughout the residential scheme. Car parking to the north of the park for park users is proposed, as well as a series of cycle/footpaths and informal trails. The stream is integrated into the park design.
- 2.4. Upgrades to the R411 road include a footpath and cycle lane, and a new priority junction to provide access to the site.
- 2.5. Surface water from the residential development will discharge via attenuated outlets to the existing Broadfield Stream. Culverts of the stream are proposed to provide for pedestrian and vehicular access to the development.
- 2.6. A Planning Report, Architects Design Statement, Traffic and Transport Assessment, Waste Management Plan, Tree Survey, Appropriate Assessment Screening Report, Ecology Report, Construction Management Plan, Infrastructure Design Report, Site Specific Flood Risk Assessment, Photomontages, Landscape Report, and outdoor lighting report accompanied the application.

- 2.7. Following the request for Further Information, revised public notices were published, revising the type and style of houses to 10 no. 1 bedroom, 12 no. 2 bedroom, 134 no. 3 bedroom and 102 no. 4 bedroom type dwellings, changes to the layout and type of dwelling to the rear of the adjacent Ban na Greine development, an increase in public open space to 16.38% of the residentially zoned lands, amendments to the cycle path and pedestrian access arrangements and amendments to the drainage layout. No changes in the number of dwellings were proposed.
- 2.8. A Clarification of Further Information request was issued by the Council and the applicant's response resulted in further revised public notices. The applicant responded with a design that includes a reduction in the number of dwellings to 251 units and minor changes to the internal roads.

### 3.0 Planning Authority Decision

#### 3.1. Decision

The Planning Authority decided to grant permission subject to 55 conditions.

Conditions no.2, 3, 12 and 55 are being appealed by the First Party.

Condition no.2 requires amendments to the number of dwellings: to omit house no's 1-15 and to revise the scheme to provide for a maximum of 10 units reduced in height in this northerly location, to omit house no's.81 and 236, and to provide dual frontage to house no.82. As a result of these amendments, condition no.3 notes that the permission permits a total of 244 dwelling units.

Condition 5 notes that the development will be carried out in a phased manner.

Condition 12 states:

*Prior to commencement of development the developer shall submit, for the written agreement of the Planning Authority, a detailed design for the realignment of the R411 Ballymore Road, including the shared pedestrian and cycle facility. Details of the design, implementation, costing, phasing and site supervision (full time resident engineer) of these works shall be agreed in writing with the Planning Authority prior to commencement of development. The cost of the design, implementation and site supervision of these works*

*shall be borne solely by the applicant. The agreed realignment shall be constructed and implemented prior to the occupation of housing.*

**Reason:** *In the interest of pedestrian, cyclist and traffic safety.*

Condition 55 states that the applicant/developer is to pay Kildare County Council the sum of €1,590,877 as a Development Contribution.

### 3.2. Planning Authority Reports

3.2.1. The application was subject to a request for Further Information and Clarification of Further Information, both of which resulted in revised public notices. Therefore, there are a number of planning and technical reports on file. They can be summarised as follows with emphasis on the content of the final reports.

#### **First Planning Report:**

- The land is zoned under the current Naas Town Development Plan – C new residential and F Open Space and amenities. The proposal for 258 dwellings and a park complies with the land use policy objectives.
- Notes topography includes significant level differences of 15m between the eastern and western portions of the site and fluctuates by 5m on residentially zoned portion. Notes third party concerns with pedestrian links between the adjoining estates. Considers there are conflicts in the documentation relating to zoning and concerns with overall layout.
- Concerns include: location/siting of duplex and apartment units to the north of the site at a higher topographical point which would appear out of character with the adjoining residential properties; proposed dwellings towards north-east of the site siding onto dwellings in existing Ban na Greine development; proximity – potential overlooking to permitted scheme of 5 houses to the south of the site; and, an additional area of public open space should be provided within the scheme towards the southern portion of the site.
- Concern with housing mix – majority are 3 and 4 bedroomed and there are no single storey dwellings. Queries if apartments and duplexes are appropriate at this urban-rural transition. Preferable if more variety in design - lack of diversity in design.

- Viewpoints from Kilcullen Road required. Sections are required to clearly indicate topography.
- Design of crèche is acceptable but further information is required on boundary treatment, and details of delivery of the park.
- Issues raised by the Transport and Water services department need to be addressed.
- Site is not located within the flood risk area.

Further Information was requested on 20<sup>th</sup> December 2016 for 52 items under headings including: Area breakdown and zoning, Design and Layout, Housing Mix and Design, Waste storage, boundary treatment, public park, transportation issues, water services, Flood Risk assessment and Third Party submissions.

Following the response to the Further Information on 7<sup>th</sup> April 2017, the planning authority considered it to be significant, and the applicant was requested to re-advertise the fact that significant further information had been submitted.

### **Second Planner's Report:**

- Notes no change in dwelling numbers of 258, but there are revisions to type and mix including 22 no. own door apartment/duplexes in a single block. Notes increase of 683sq.m of public open space resulting in total of 14,002 sq.m open space and amendments to cycle path and pedestrian access arrangements.
- Considers revised housing mix is more appropriate. Notes concerns remain with apartments and duplexes in close proximity to existing single storey and two storey dwellings. Considers overall scheme would be improved with the omission of this block and expresses concern that as units are 'own door', they should not be considered apartments and should comply with standards for houses.
- Considers amendments to houses in close proximity to Ban na Greine to a dormer type dwelling, and a back-to-back layout rather than gable end/side on to be acceptable. Waste storage location, public open space amendments and public park amendments considered acceptable.

- Transport department continue to have concerns with a number of items including the straight lines within the development, the steep gradient of the access road which is not in compliance with DMURS.
- Considers that Clarification of Further Information is required for a number of items. A request for Clarification of Further Information was issued to the applicant on the 8<sup>th</sup> May 2017. Clarification was required with respect to concerns relating to the apartments and duplexes, adequate open space for the occupants of this block as well as concerns in relation to the siting and height of the block – requests omission of this block. Transport concerns with straight long sections of road, building line of corner units, boundary treatment to the north of the site, details of pedestrian and cycle access connections to Cluain Aoibhinn, flood storage lost at three culverts and third party submissions following the re-advertisement, formed part of the request.

### **Third Planner's Report**

The Third Planner's Report, following the clarification response from the applicant, considered that the response addressed the majority of issues.

- Noted that the northern block has been omitted and replaced with a series of three short terraces comprising 5 houses each and with reduced height by one storey. Reduction in units from 22 to 15 in this block. Still has concerns with house type adjacent to single storey dwellings - considers condition to amend this is required, and to permit no more than 10 units at this location and reduced to dormer in height.
- Notes Transportation Department have no objection to the proposed development subject to conditions. Pedestrian and cycling link drawing provided indicating a c.3m wide connection with Cluain Aoibhinn, indicating works up to the site boundary with Cluain Aoibhinn – lands within the ownership of the applicant.
- Considers the response to the clarification of further information addresses the issues raised and refers to a condition to be appended, to amend the layout at the northern end of the development.
- The Planner recommends a grant of permission subject to conditions.

The decision was in accordance with the Planner's recommendations.

### 3.2.2. Other Technical Reports

The application was referred to (summary):

- **Area Engineer** – Final Report - No objections subject to conditions.
- **Transportation** – Requests Further Information in relation to (inter alia) cycle track, old railway bridge abutment, drawing showing full extent of pedestrian/cycle route, internal road modifications, submit development phasing plan and time for completion, and revision to TIA to factor in other proposed developments in the area (Reg. Ref's referred). Clarification of Further Information requested relating to long sections of internal road, steep gradient of road, access to adjoining estate, and lines of site at junction noting speed limit of 80kph. Final Report - No objection subject to conditions.
- **Environment** - no objection subject to conditions.
- **Water services** – Following response to Further Information, no objection subject to conditions.
- **Housing** - No objection subject to Part V condition.
- **EHO** - No objection subject to conditions.
- **CFO** - No objection subject to conditions.
- **NRO** – No objections.
- **Parks Department** - Following response to Further Information, no objection subject to conditions.

### 3.3. Prescribed Bodies

The application was referred to:

- **Irish Water** – Following response to Further Information, no objection subject to conditions.
- **National Transport Authority** – The NTA supports the proposal with recommended conditions.



### 3.4. Third Party Observations

The application was subject to three rounds of public notices. A total of 22 submissions were made initially.

A number of submissions were made in relation to the impact on specific houses in the nearby housing estates. The developer of the recently permitted development of 5 houses to the south of the site referred to future access to the adjacent land for shared vehicle and pedestrian access and services. Common areas of concern were proximity of the houses to the back of existing houses, height differences, injury of residential amenities, lack of housing mix, opening of existing Sli Chluain perimeter could result in anti-social behaviour, apartment blocks located next to Cluain Aoibhinn, overlooking, boundary treatment, traffic on Ballycane Road, location of waste storage areas, through walkways, lack of variety in house types making it difficult to achieve lifelong community housing, open space, electricity cables, density of development, lack of crèche parking, and clustering of Part V dwellings is inappropriate.

Following the response to the request for Further Information, the application was re-advertised and 11 submissions were made. Concerns raised include size of bedrooms in bungalows, links with Cluain Aoibhinn, overlooking, boundary treatment to the north, traffic, residential amenities, concerns relating to specific houses, and boundary hedges.

Following the re-advertisement of the Clarification of Further Information, 6 additional submissions were made. Concerns include crèche and drop-off point, boundary treatment, and pedestrian links.

## 4.0 Planning History

The site has been subject to two planning applications - the planning applications are:

- **ABP Ref. PL73. 234574, KCC Reg. Ref. 08/500110** – Permission was refused in December 2009 by the Board for development of 31 Residential Units following a decision to grant permission by the Council in July 2009. The

Board's reason for refusal related to constraints at the Osberstown Waste Water Treatment Plant.

- **ABP Ref.PL73.227209, KCC Reg. Ref. 06/500135** – Permission was refused by the Board in June 2008, for the development of 303 residential dwellings and a crèche following a decision to grant permission by the Council in December 2007. The Board's reason for refusal related to constraints at the Osberstown Waste Water Treatment Plant.

There have been planning applications relating to the pumping station which is located within the middle of the site.

There have been a number of planning applications in the vicinity of the site including those for domestic extensions in individual houses. The key permissions are:

Site to the north-west:

- **KCC Reg. Ref. 04/500138** – Permission was granted in July 2006 for the development of 102 apartments, 10 no. single dwellings and a crèche which provided for access to the subject lands.

Site to the north:

- **KCC Reg. Ref. 97/500095** – Permission granted in October 1997 for the development of 10 detached 2 storey dwellings, 7 detached bungalows and 14 semi-detached houses (Cluain Aoibhinn).
- **KCC Reg. Ref 99/500172:** Permission granted in September 2000 for the development of 76 dwellings comprising a mix of semi-detached and detached two storey dwellings and bungalows and apartments (Ban na Greine).

Site to the south:

- **KCC Reg. Ref. 15/554:** Permission granted in March 2016 for the construction of 5 no. detached houses.

## 5.0 Policy Context

### 5.1. Naas Town Development Plan 2011 - 2017

The site is subject to the policies and objectives of the Naas Town Development Plan 2011 – 2017. Chapter 2 of the Naas Plan considers the Strategic Context and Core Strategy. Chapter 4 refers to Housing, Chapter 7 refers to Movement and Transport, Chapter 8 to Water Drainage and Environmental Services, Chapter 10 to Social, Community, Recreation and Amenity, Chapter 13 to Development Management and Chapter 14 to Land Use Zoning.

Chapter 2 notes that the Regional Planning Guidelines designate Naas as a Large Growth Town I. It notes that the population target for 2017 is 27,933 which in turn requires a new housing target of 3,610 units.

Chapter 4 Housing states that Outer Edge of Urban-Rural transition zoning areas should have a density of 20-35 units per Ha, and outer suburban/greenfield sites should have a density of 30-50 units per Ha. The Land Use Zoning Map identifies the site as being zoned “C9 – New Residential” and comprising 9Ha. The western portion of the subject site is zoned “F – Open Space and amenities”.

Housing policies include **HP4:**

*To require diversity in the density of development and in the form, size and type of dwellings within residential areas.*

**HP8:**

*To require diversity in the form, size and type of dwelling within residential schemes.*

**HP22:**

*To require the provision of Childcare Facilities in all new residential developments as appropriate. The indicative standard is one childcare facility, accommodating 20 children, for each 75 dwellings. This standard may be modified in any particular case where there are significant reasons for doing so.*

Chapter 7 includes Map 7.1 Road Hierarchy and Indicative Improvements. It is an objective to carry out a number of specific projects during the plan period including road improvements along the R411.

Chapter 8 notes that *The provision of additional treatment and network capacity in the Osberstown catchment is imperative to address current water quality issues, to facilitate development that has been unable to take place due to capacity constraints, and to permit Naas to fulfil its strategic settlement and economic role identified in the Regional Planning Guidelines.* Phase 2 of Osberstown was expected to increase capacity to 130,000PE by 2014.

Map 8.1 identifies areas where specific Flood Risk Assessments must be carried out. The subject site is not included in the map.

Map 10.1 is Open Space & Green Network. The western portion of the site is identified complete with indicative walking and cycling routes linking to other green open spaces to the north of the Ballycane Road.

Chapter 13 provides information in relation to minimum standards in terms of floor area sizes, storage space requirements, and private and public open space standards.

In chapter 14, the area is zoned “C – new Residential” which is *To Provide for New Residential Areas*. There are a number of sites specifically identified. The subject site is C9 and is considered to be 9Ha in area. The western section of the site is zoned “F – Open space and amenities” which is *To protect and provide for open space, amenity facilities and recreational uses*. A crèche is open for consideration in the F zoning.

## 5.2. Kildare County Development Plan 2017 – 2023

Chapter 4 of this Plan refers to Housing. Table 4.1 provides for different sites for housing. It is stated for ‘Outer Suburban/ Greenfield site’:

*Outer Suburban or ‘Greenfield’ sites are the open lands on the edge of large towns. The development of these sites may require the provision of new infrastructure, roads, sewers and ancillary social and commercial facilities, schools, shops, employment and community facilities. It is therefore*

*necessary to achieve net residential densities that make efficient use of these lands in the context of their location and provide a variety of housing types in order to justify the development of these sites. In certain cases, to facilitate a choice of housing types within the county, limited provision may be made within large towns for lower density schemes provided that, within a neighbourhood or district as a whole, appropriate densities are achieved.*

Densities for these sites are recommended at 30-50 units per hectare.

Chapter 17 refers to standards regarding the minimum rear garden area required. Table 17.5 indicates that 2 bedroom dwellings must have 55sq.m area, 3 bedroom dwellings must have 60sq.m, and four bedrooms and more, should have a minimum of 75sq.m of rear garden area.

### **5.3. Kildare Development Contribution Scheme 2015 – 2022**

Section 7 notes that contributions from residential development will be apportioned as follows: 47.5% for roads and 34.5% for recreation and amenity.

Section 8 notes that for residential developments below a dwelling area of 230sq.m, a rate of €50 per metre will apply.

Section 12 refers to Exemptions and Reduced Contributions. Social housing or Part V units are exempt.

### **5.4. Other Guidelines**

The DoEHLG Guidelines on ‘Sustainable Residential Development in Urban Areas’ (2009) outline sustainable approaches to the development of urban areas. These set out national policy of encouraging more sustainable urban development by the avoidance of excessive suburbanisation and the promotion of higher residential densities in appropriate locations.

### **5.5. Natural Heritage Designations**

There are a number of Natura 2000 sites within 15 km of the site as follows:

- Red Bog SAC Site Code 000397

- Mouds Bog SAC Site Code 002331
- Ballynafagh Lake SAC Site Code 001387
- Ballynafagh Bog SAC Site Code 000391
- Wicklow Mountains SAC Site Code 002122
- Pollardstown Fen SAC Site Code 0396
- Wicklow Mountains SPA Site Code 004040
- Poulaphuca Reservoir SPA Site Code 4063.

## 6.0 The Appeal

The application is subject to one no. third party appeal and a first party appeal against conditions. Both appeals are addressed separately.

The third party and first party appeals are detailed below.

### 6.1. Grounds of Third Party Appeal

The appeal in summary states:

- Does not object in principle, only wishes that development, **1.** shows due regard to existing dormer bungalow dwellings (No's. 18, 19 and 20 Ban na Greine), and **2.** mix of houses should include houses suitable for people with mobility issues.
- Considers development meets neither criteria and requests that the development is refused permission.
- Considers original proposal showed little regard for existing homes in Ban na Greine.
- Reference made to his submission at Further Information stage, which he considers that the Council did not provide clarification on, with respect to the queries raised in relation to the height of the dormer bungalow design to the rear of Ban na Greine, nor the potential solution offered by the appellant in relation to houses to the rear of the four bungalows that share a boundary with the development (one in Ard na Laoi and three in Ban na Greine).

- Appellant restates solution offered at Further Information stage, with respect to rearranging house types along the boundary to 18, 19 and 20 Ban na Greine. Requests the Board to consider the merits of the solution proposed.
- Considers proposal lacks provision for the elderly or those with mobility issues. Considers that not one of the dwellings is suitable for a person using a mobility aid, because no downstairs room in the 12 bungalows is sufficient in size to cater for a bed and wheelchair hoist, contravening “Technical Guidance Document M – Access and Use, 2010”. Refers to fire safety and mobility impaired persons in the event of stair lifts being suggested.
- The Council has shown no regard for its own Development Plan objectives in relation to an appropriate mix of houses.
- Appellant provides an overview of his submission to the Council on 24<sup>th</sup> April 2017 regarding his research on housing mix. Notes that the bungalow Type H, provides one downstairs bedroom of 9.1sq.m, which is unsuitable for a person using a manually operated wheelchair. Applicant has shown no effort to provide for that sizeable part of the population that suffer with limited mobility.
- Considers that this development should be halted until changes are made towards ensuring an appropriate mix of house types and sizes.
- Considers that the Board should ensure that the overall design approach is to create a community rather than a new housing development.

## 6.2. Applicant Response to Third Party Appeal

The applicant responded to the third party appeal. In summary, it states:

- Includes Shadow Diagrams with the response, stating that there will be no overshadowing of the existing houses at Ban na Greine.
- States that the proposals for the eastern portion of the land have significantly changed since the initial application. Changes include the replacement of the house types with dormer bungalows and a reduction in the number of units, as well as the height from 10.1m to 7.5m.

- The layout allowed for increases in separation distances between the proposed units and existing units at Ban na Greine. Unit no.77 which is directly to the west of the appellant's property is set back from the boundary by c.14m. Drawing enclosed with appeal illustrating separation distances.
- Notes that the dormer dwellings have a single storey elevation to the rear with no windows at roof level to ensure there is no risk of overlooking or overshadowing.
- Considers that the highly evolved design of unit no's. 69-80 protects the residential amenity of Ban na Greine.
- With respect to concerns over unit no's. 83-92, it is acknowledged that Ban na Greine are single storey houses and the proposed dwellings to the south are two storey, however it is submitted that this transition does not represent a significant increase in height. The dwellings are set back c.12.7m from the site boundary and achieve minimum separation distances as demonstrated in the drawing enclosed with the response.
- States that the design team reviewed the appellant's suggested solution for unit no's. 83-92, and attempted several variations on the proposed layout and design, to see if compromise could be reached. It was concluded that a change in house type would necessitate the removal of additional units which could not be made up elsewhere, and would impact on the viability of the scheme.
- With respect to residential mix, specifically in relation to the provision of accessible units, state that the design has been amended a number of times in response to the Planning Authority requests. At all stages the applicant has sought to guarantee a variety of unit types and sizes are provided.
- Consider unit no's. 69-80 are provided with a bedroom at ground floor to cater for the mobility impaired. The floor areas exceed the minimum standards set out in the Development Plan and have been designed with regard to the recommendations set out in the *Quality Housing for Sustainable Communities: Best Practice Guidelines 2007*.



- All units have been designed in accordance with the requirements of Section 3 of Part M of the Building Regulations 2010.
- Considers the proposed development provides for an appropriate mix of dwelling types and sizes, and is in accordance with the standards and requirements set out in the Development Plan and Building Regulations.

### 6.3. **Planning Authority Response to Third Party Appeal**

The Council responded to the first and third party appeals. With respect to the third party appeal, they state that the comments made are broadly similar to those made in the third party submissions lodged with the application. They state that the Planning Authority has no further comment to make in regard to the third party appeal.

### 6.4. **Other responses**

The third party and the planning authority were invited to comment on the applicant's response to the third party appeal.

In summary, the third party responded stating:

- Considers that the original proposal appeared to show no awareness of the existing dwellings, and changes to a badly planned initial proposal were logical.
- Recognition of appropriateness of placing bungalows to the rear of no.18 and 19 but not to the left of no.19 and to the rear of no.20 Ban na Greine.
- Considers applicants reference to altered profit projections due to reduction in number of dwellings resulting from changes is not the fault of the residents of No's. 18 and 19 Ban na Greine, but initial poor planning by the applicant.
- References alternative arrangement proposed and requests the Board to consider it.
- With respect to housing mix, does not consider 12 houses with downstairs bedrooms out of 236 houses, or slightly above 5%, to be an adequate mix.

- The Council have abdicated their responsibility to ensure housing mix and create a situation where wheelchair users would be segregated residentially.
- Applicant suggests proposal meets Best Practice Guidelines, but it is a mathematical impossibility to rotate a wheelchair or hoist in the bedrooms provided.
- The area for the park was zoned as such and the applicant is not going out of their way to be community minded by providing it.
- Requests the Board to disregard the suggestion relating to the viability of the scheme having regard to the current market conditions.

### 6.5. Observations

An observation was made on behalf of the residents who live to the south of the site. In summary, it states:

- Observers have no issue in principle to the proposed development.
- Reference is made to their permission for 5 houses to the south of the site (Reg. Ref. 15/554).
- It states that the layout as granted allowed for future access to adjacent lands for shared vehicular and pedestrian access and services. The current layout of the subject development does not provide for this. Proposed layout should be amended to allow for this access.
- Rear gardens along shared boundary indicate an area of 60sq.m which is less than the minimum area allowable under the Development Plan.
- Layout along the shared boundary provides for less than 22m between opposing first floor windows.

### 6.6. First Party Appeal against conditions

The First Party have lodged an appeal against conditions no's. 2, 3, 12 and 55. Condition 2 requires the omission of the house no's. 1-15 and replacement with a maximum of 10 houses reduced in height and designed as dormer dwellings, as well

as the omission of house no.81 and no.236. Condition no.3 refers to these omissions and states that the permission grants a total of 244 units.

Condition no.12 relates to the detailed submission of the road realignment works on the R411, including the shared pedestrian and cycle facilities and references that all costs shall be borne by the applicant. Condition no.55 refers to Development Contributions and requires the applicant to pay €1,590,877. In summary, the applicant states with respect to each condition:

Condition no.2:

- Submits that the condition will result in the omission of 7 no. units, and will require significant amendments to the highly evolved site layout which was amended following requests by the Council and the third parties.
- Condition 2(a) requires the introduction of a new building typology that will result in a low density of development which is considered unnecessary and unreasonable, given the context of the site.
- Units 1-15 have been designed to respond to the context of the northern portion of the site. These units have been revised from 20 no. apartment/duplex units to 15 terrace houses including a reduction in scale, height, bulk and massing.
- Shadow analysis drawings enclosed with response.
- Drawings are enclosed providing a comparison of the proposals as they have been revised. The response to the Clarification of Further Information resulted in the proposal in this section comprising 3 blocks of 5 no. two storey 2 and 3 bedroomed terraced houses. The height of the block reduced from 11.4m to 9.3m. Notes that no.7 Ard na Laoi's rear garden does not share a boundary with the proposed units – there will be no overlooking or overshadowing no.7.
- Separation distances between the units and the relevant neighbouring dwellings are provided.
- Notes revision of number from 20 to 15 has reduced the density to 30 units per Ha.

- As part of this appeal, further revisions to the design of these northern units have been investigated by the design team. A drawing is enclosed which further reduces the overall height to c.8.2m. The revised proposal comprises 3 terraces of dormer dwellings, providing accommodation in the roof space. These terraces will be substantially screened by the existing vegetation to the north. Request that the Board consider imposing a condition to provide these revised units.

Condition no.2(b) – omission of unit no.81:

- Condition to omit unit no.81 ignores the important role no.81 plays in management of traffic speed on street no.5, provision of passive surveillance to the public open space to the south, and creation of visual cohesiveness and balance on street no.3.
- Unit no.81 provides definition to street no.2. By removing unit no.81 the intersection of street no.2 and 5 will appear as an ambiguous space that lacks a clearly defined edge. It overlooks the northern portion of Area no.3 providing passive surveillance.
- DMURS is referenced and it is stated that the proximity of buildings and other well-defined edges helps to reduce traffic speeds. It is considered that the siting of unit no.81 complements other horizontal traffic calming measures and provides for a sense of enclosure for pedestrians.

Condition no.2(c) – omission of unit no.236:

- Consider this condition entirely unnecessary and would have an adverse impact on the visual amenity of street no.8.
- No.236 screens the rear gardens and southern elevations of units to the north and by stepping forward provides an appropriate termination to the northern end of street no.8.

Condition no.12 and no.55:

The applicant considers that conditions no's. 12 and 55 require the applicant to bear the costs of the provision of the public park and the road upgrades, in addition to the Development Contributions. In summary:

- Note that the public park and road upgrades (beyond those required for the development) are being provided by the applicant, in addition to the 15% open space.
- The park could be omitted without affecting the validity of the residential scheme in terms of its accordance with the standards set out in the Development Plan.
- Additional road upgrades represent another planning gain to the wider community.
- Considers that the cost of these works should be fairly apportioned by an offset on the Development Levies.
- Refers to Council's Development Contribution Scheme which notes that 47.5% of the contribution will be allocated to public roads (i.e. €755,666.58 of the total contribution to be paid). Considers that to pay for the road upgrades and the Development Contribution represents a double payment.
- The Council's Scheme notes that 34.5% of contributions will be allocated to recreation and amenity infrastructure. This represents €548,852.57 of the contribution levied. The park is not required to achieve the quantum of public open space.
- The park forms part of the Naas Open Space and Green Network as illustrated in the Naas Town Plan. The cost of providing this amenity should be offset against the portion of the development contribution that relates to recreation and amenity. Otherwise this is a double payment.
- Submit that condition 12 and 55 threaten the viability of the scheme.
- Concludes that the Development Contribution should be adjusted to reflect the cost of provision of the public park and road upgrades, or these works should be financed by the Council.

#### 6.7. **Planning Authority response to First Party Appeal**

In summary:

Condition no's. 2 and 3:

- Comments in the first party appeal are noted however, it is considered appropriate to reduce House No's. 1-15 to a maximum of 10 dwellings reduced in height, as there are serious concerns with the potential detrimental impact on the existing dwellings to the north.
- Following site inspections and detailed assessment, it was not considered that a higher built form is appropriate at this elevated part of the site adjoining dwellings lower in height.
- There were concerns that no.236 would have a negative impact on the adjoining dwelling by virtue of the stepping out to the front of the building line.
- Omission of no.81 was included as there were concerns that its positioning would negatively impact house no.80.

Condition no.12:

- It is highlighted that the section of the R411 Ballymore Road south of the development has very poor horizontal and vertical alignment, poor sight visibility, inadequate public lighting and no proper facilities for vulnerable road users and speeding of traffic is an issue at this section of road.
- Consider that full road improvement works as highlighted in the proposal are required.

Condition no.55:

- Development Contributions are calculated correctly in accordance with the Development Contribution Scheme.
- There was no provision or agreement in place to offset development contributions in respect of this scheme.

## 6.8. Other responses

The applicant and third party were provided an opportunity to respond to the Council's response to the appeals. The applicant responded. In summary:

- Applicant does not wish to comment further on conditions no's. 2 and 3, and refers to the first party appeal.

- Submits that the applicant's consulting engineers advise that the road upgrades proposed far exceed the minimum works required to ensure the appropriate and safe access to the proposed residential development.
- All works beyond those required are included as part of the Planning Authority's request, and represent considerable extra cost. No justification has been provided as to why the applicant is required to pay full costs of works which far exceed what is required.
- A letter was sent to the Council in July 2016 regarding the onerous costs alongside Development Contributions, but no response was received.
- Applicant has shown willingness to carry out additional works to secure objectives of the Development Plan, but as stated in the letter the cost of such works need to be fairly apportioned either by way of an appropriate offset in Development Contributions or in an alternative manner.
- The Council have not addressed the issue of double payment.
- Conclude that the attempt by the Council to force the applicant to provide the additional works, at no cost to themselves, and without recognition of the requirements of their own Development Contribution Scheme is entirely contrary to natural justice and without legal basis.
- Request that the Board amends the conditions to either reduce the development contributions required to reflect the substantial cost involved in the provision of the public park and additional road upgrades, or to condition these works are financed by the Council.

## 7.0 **Assessment**

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. I am satisfied that the principle of development is in compliance with the relevant statutory plans and guidelines. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Design of dwellings adjacent to existing housing development, Ban na Greine

- Housing Mix
- Access to the development south of the site
- Size of rear gardens of dwellings along southern boundary
- Dwellings No's. 1-15 / Density of Development
- Omission of Dwelling no.81
- Omission of Dwelling no.236
- Conditions no's. 12 and 55.
- Appropriate Assessment.

## **7.1. Design of Dwellings adjacent to existing housing development Ban na Greine**

7.1.1. The initial proposal included dwellings with their gable end facing the rear of the existing dwellings in the housing development of Ban na Greine, to the north-east of the site. This design was amended following Further Information to provide dwellings back-to-back with Ban na Greine, and the dwelling design was changed to that of a dormer bungalow, house Type H. The Type H dwellings are set out in three blocks, running north-south to the west of no's. 5,6,7 and 8 of Sli Chluain Aoibhinn and no's. 18,19 and 20 of Ban na Greine.

Sli Chluain Aoibhinn are not back-to-back directly – there is an access road between them and the new dwellings proposed, so the key concern of the appellant relates to the dwellings in Ban na Greine which will be back-to-back with no's. 73 - 80.

The Type H dwelling is of a dormer style and the rear roof slopes towards the ground floor, thereby resulting in no rear windows at first floor level. There are rooflights in the rear roof, but these are at a height which would prevent overlooking of the rear gardens of Ban na Greine. The applicant provided shadow diagrams in response to the appeal, which indicate that no overshadowing will occur. I consider the design of these dwellings will prohibit any overlooking or overshadowing issues with Ban na Greine.



The distances between the dwellings have also been addressed. The applicant provides a 1:200 scale drawing which indicates that there is a distance of 23.375m between the rear of no.77 and the appellant's dwelling, which is in excess of the 22m standard. I note that the distance between no.75 and no.18 Ban na Greine is slightly less, however, having regard to the fact that there are no windows at first floor in the Type H dwelling and the angles of both dwellings, I consider this to be acceptable.

- 7.1.2. Dwelling no's. 81 – 92 are to the south of no.19, 20 and 21 Ban na Greine. Dwellings 81 – 92 are Type B/B1 and C, and are two storey in height. The context elevation provided by the applicant indicates a distance of 23.385m between no.90 and no.20 Ban na Greine which is acceptable. However, the house types are 2 storey in this location and at a higher elevation to Ban na Greine.

There appears to be an error on the context elevation 05 drawing PL42 submitted with the response to the appeal, in terms of the noted ground levels. Assuming the ground level of Ban na Greine as stated in drawing PL41 is +117.38m, and a level of +119.30m at House no. 90, there is already a ground level difference of +1.92m. The ridge height of no. 90 is stated as being 9.684m and Ban na Greine dwellings are stated as having ridge heights of 7.525m in this area. The height difference is 11.604m from top of no.90 to ground level at Ban na Greine, or a c.4m difference in roof heights. I consider that house no's. 89 – 92 in particular, could have an overbearing effect on no.20 and 21 Ban na Greine.

I consider that amendments should be made to House no's. 81 – 92. I am of the opinion that House no's. 89 – 92 should be replaced with House Type H dormer bungalows. This has a twofold effect. It will reduce the potential overbearing effect on Ban na Greine houses, and will provide additional ground floor bedrooms (this will be addressed further in Section 7.2 below). Minor amendments may be required for House no's. 81 – 88, including providing 2 terrace blocks of 4 dwellings. House no. 81 to be type B1 and house no's. 82 and 83 to be C Type and House no.84 to be Type B. This is a similar design to house no's. 201 – 203. House no's 85 – 88, C Type, can move slightly west which will provide sufficient room for 4 Type H dwellings.

- 7.1.3. I have reviewed the appellant's suggestion with respect to changes to house types in this area of the development, and consider that there is some merit in his proposal.

He suggests replacing 4 Type H units, no's. 69 – 72, with 5 Type C dwellings, based on the fact that Sli Chluain Aoibhinn to the rear of no's 69 – 72 are two storey and some distance behind (i.e. the road will be between the houses). It is suggested that the 4 Type H could then be swapped with 5 of the House Type C along no's. 83 to 92 without any loss of units. It is further suggested that should another 4 Type H houses be put in place of the other 5 Type C/B houses, then only 1 unit will be lost overall and this will greatly satisfy the needs and entitlement of existing residents.

As noted, there is some merit in the proposal. However, I would have concerns that the residents of Sli Chluain Aoibhinn may not have an opportunity to comment on the proposed change back to two storeys of house no's. 69 – 72 unless the Board consider it appropriate.

I also consider house no.81 plays an important function in the provision of passive surveillance in this area and do not consider a dormer style dwelling appropriate in this corner location, should the Board consider replacing all house no's. 81 – 92 with Type H. As will be addressed below, the provision of additional ground floor bedrooms adds to the mix of house types also.

- 7.1.4. In conclusion, I am satisfied that House no's. 69 - 80 will not have a seriously injurious effect on the amenities of Ban na Griene dwellings. I recommend changes to the house type of no's. 89 – 92 to that of the Type H dormer dwelling to reduce any potential overbearing impact and the resultant changes to house no's. 81 – 88 to accommodate the 4 Type H houses.

## 7.2. Housing Mix

- 7.2.1. The appellant expresses concern with the mix of house types, particularly with respect to providing for those whose mobility is impaired. The appellant considers that not one of the 244 plus houses being proposed would be suitable for a mobility impaired person, as no bedroom in the 12 dormer bungalows is sufficient in size to cater for a bed and wheelchair.

The applicant considers that all units have been designed in accordance with the requirements of Section 3 of Part M of the Building Regulations 2010, in particular Section 3.3 which sets out minimum standards relating to circulation, and Section 3.4 which relates to sanitary facilities.

Quality Housing for Sustainable Communities 2007, provides information on minimum room sizes. It states that the area of a single bedroom should be a minimum of 7.1sq.m and a double bedroom 11.4sq.m. The ground floor bedroom of Type H is stated as being 9.1sq.m. There is a W.C. proposed at ground floor which is in accordance with Part M. The applicant is required to design all dwellings in accordance with Part M and I am satisfied that this is the case.

As noted in Section 7.1 above, to alleviate overbearing concerns I have recommended that should the Board consider granting permission, House no's. 89 – 92 are amended to a Type H dormer bungalow type dwelling, thus providing an additional 4 dwellings built and designed with bedrooms at ground floor.

The mix of house types, following the subject amendments, should the Board consider appropriate will be:

- 9 no. 2 bedroom dwellings
- 142 no. 3 bedroom dwellings
- 100 no. 4 bedroom dwellings

7.2.2. With respect to smaller sized units (i.e. one and two bedroomed units) the initial proposal submitted with the application provided one-bedroom ground floor units and two-bedroom duplexes over three storeys to the north of the site, adjacent to Ard na Laoi single storey bungalows. This initial proposal would have provided for a slightly better mix of dwelling types. However, I do not consider this location appropriate for apartments and duplex units due to the elevated topography and existence of the single storey dwellings (this will be discussed further below in section 7.5). I agree with the Planning Authority that apartments and duplex units in the northerly portion of the site, adjacent to single storey bungalows could negatively impact on existing visual and residential amenities.

*The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities 2015* notes that it is a matter for City and County development plans, local area plans and/or SDZ planning schemes to identify areas where apartment schemes may be located, and the general scale and extent of such developments. The Kildare County Development Plan 2017 – 2023, states that apartments should be located in Town Centres and proximate to public transport.

This site is 1.5km from the town centre and public transport and thus, I am satisfied that the Development Plan policy is reasonable with respect to apartments, notwithstanding that the Kings Court development comprises apartments.

I have reviewed the possibility of locating this type of block elsewhere in the development to provide for a better mix of houses. However, having regard to the outer edge and urban/rural transition, I understand the applicant's initial reasoning for locating these type of units in the northern section of the site, i.e. closer to the town centre and other apartment developments. However, I do not consider that location, in this particular case to be appropriate for reasons outlined above and in section 7.5 below. The Board may wish to consider replacing units along the south-east of the site, which currently backs on to the agricultural zoned lands, with apartment and duplex units. I submit that should the Board consider this, the applicant could be requested to submit revised plans for assessment.

### **7.3. Access to the development south of the site**

- 7.3.1. The observers to the appeal refer to the development they recently obtained planning permission for, Reg. Ref. 15/554. This permission is for 5 detached dwellings to the south of the site. The observers consider that there should be access from their site into the subject site, and that their layout as granted allowed for future access to the subject lands for shared vehicular and pedestrian access and services. The current layout of the subject development does not provide for this shared access.
- 7.3.2. I have reviewed the planning application Reg. Ref. 15/554. The Planner's Report states that the existing access to the existing dwelling will serve the 5 proposed dwellings and one other dwelling (Reg. Ref. 14/1013) – a total of 7. One of the drawings indicates a possible future link to lands to the north of the site which could provide access to those lands. However, the Planner carries on to say that because no master plan has been submitted with respect to the lands to the north (the subject site), the proposed indicative road link to the north is premature, and "*The Development will need to be assessed purely as a clustered scheme, therefore and whether the existing sites access and layout are appropriate to the location*". Access to the development is proposed through the existing entrance onto the R411, via the existing dwelling's entrance.

The Planner requested Further Information in relation to the communal open area to the west and access proposals via the existing entrance. Clarification of Further Information included a request to demonstrate that the existing entrance is suitable for the 7 dwellings and requested further landscaping details.

The landscape plan indicates trees and shrubbery where the proposed link is shown on the Site Layout. The applicant confirms sightlines etc. from the existing entrance are suitable.

- 7.3.3. The planning application for the 5 houses was assessed and permitted on the basis of use of the existing entrance onto the R411. The use of this entrance formed part of the Further Information and Clarification of Further Information requests by the Council. There can be no ambiguity that this entrance was assumed to be the access to the 5 dwellings. Notwithstanding this, the drawings do indicate a “possible” access to lands to the north.

The applicant of the subject site does state in response to the submissions made, that they are willing to discuss this access with the developers of the site to the south, but there appears to be no further reference in the documentation.

- 7.3.4. I am satisfied that the development to the south has been assessed and permitted as a standalone development. The subject development does not indicate any connection to the south, and neither development is reliant on access to the other to function.

While permeability is desirable, there is no such link proposed in the application before the Board. However, I am satisfied that pedestrian access could be provided, subject to a condition.

In conclusion, access between both sites is not a requirement for either development to function. Both sites have been assessed based on current access arrangements and both are deemed to be acceptable. I consider pedestrian access between both sites should be provided and can be conditioned, should the Board consider granting permission.

#### **7.4. Size of rear gardens of dwellings along southern boundary**

- 7.4.1. The observer states that rear gardens along the shared boundary are indicated as being 60sq.m. The observer considers this is less than the minimum area allowable under the Development Plan.
- 7.4.2. The Kildare County Development Plan 2017 – 2023 development standards indicate required minimum garden sizes for 2, 3 and 4+ bedroom dwellings.
- Four bedroom dwellings require a minimum of 75sq.m. Along the shared boundary of the two sites there are four bedroomed dwellings proposed. The drawings indicate all gardens are 75sq.m or higher. This is in full compliance with the development standards and is therefore acceptable.
- 7.4.3. In conclusion, rear garden areas of 75sq.m, for the four bedroomed dwellings along this boundary is acceptable.

#### **7.5. Dwellings No's. 1-15 / Density of Development**

- 7.5.1. The final layout of the site, following Clarification of Further Information, indicates three blocks of 5 no. terraced two storey houses along the northern boundary. The Planning Authority imposed condition no. 2 to revise the scheme to provide for a maximum of 10 units reduced in height in this location, in the interests of residential and visual amenities of the area.

The applicant, as part of the first party appeal, has submitted revised plans indicating dwellings with a reduced height – dormer type dwellings. The number of units remains at 15, 9 no. 2 bedroom and 6 no. 3 bedroom, in 3 no. terrace blocks. The overall height of the revised units is 8.211m at a maximum ridge height of +122.911m. No.7 Ard na Laoi has a maximum ridge height of +116.910m according to the drawing PL42 submitted with the appeal – a c.6m difference in height.

This section of the development was subject to numerous design changes over the course of the application. The original proposal included 22 units comprising a mix of 1 and 2 bedroom apartments and duplexes over 3 storeys. The Planning Authority had concerns due to the elevated nature of this part of the site compared to the surrounding existing residential developments.

- 7.5.2. I have visited the site and surrounding areas and can confirm to the Board that dwellings in Ard na Laoi, just to the north of the site, are single storey bungalows and at a much lower elevation than the location for unit no's. 1-15. There are apartments to the north-west of the site in the development known as Kingscourt. However, these apartments are separated from the other housing developments by a green area, address the R411 road, and are on approximately the same level. There is no overbearing impact from Kingscourt having regard to these facts.
- 7.5.3. The revised proposal for dwellings no's. 1 – 15 will alter the view to the south, from the green area between Ard na Laoi and Cluain Aoibhinn. However, there will be no direct overlooking from the new dwellings into any rear garden of these existing houses. No.7 Ard na Laoi will be the closest to the new development, however, any overlooking will be to the front garden – there will be no overlooking into the rear garden of no.7. The other dwellings are of a sufficient distance away so will not be overlooked or overshadowed. The existing hedgerow and shrubbery along the boundary between both areas should be protected during construction to ensure it maintains the screening it can provide. The Construction Management Plan could be conditioned to specifically identify how this could be done, should the Board consider granting permission.
- 7.5.4. The final density of development for the site is c.30 dwellings per hectare. The Naas Town Plan refers to new residential developments on the edge of towns. Chapter 4 Housing, states that Outer Edge of Urban-Rural transition zoning areas should have a density of 20-35 units per Ha, and outer suburban/greenfield sites should have a density of 30-50 units per Ha.

I consider that this site is an “outer suburban/greenfield” site and should provide for densities of 30-50 Hectares. This scheme is at the lower end of the scale. However, having regard to the fact that it is 1.5km from the town centre, and not located within 1km of a public transport node, I consider that 30 dwellings per Hectare is appropriate. Furthermore, having regard to the pattern of development in the area, I consider 30 dwellings per hectare acceptable. However, I do not consider that it should fall below this level and therefore, consider the applicants revised design to be acceptable which maintains 15 units (which also includes the only two-bedroom units in the development).

7.5.5. In conclusion, I consider the applicant's revised proposal submitted with the appeal of 15 no. dwellings in three terrace blocks with a dormer design, to be acceptable.

**7.6. Omission of Dwelling no.81**

7.6.1. Condition no.2(b) requires that dwelling no.81 is omitted and the design of dwelling no.82 is to be revised to provide dual frontage to no.82. The applicant considers that the condition to omit unit no.81 ignores the important role no.81 plays in management of traffic speed on street no.5, provision of passive surveillance to the public open space to the south, and creation of visual cohesiveness and balance on street no.3.

7.6.2. I agree with the applicant that unit no.81 plays an important role in passive surveillance, creation of a visual cohesiveness in the area, and slows traffic down at this junction of three streets.

7.6.3. In conclusion, I do not consider that the omission of unit no.81 is required for any meaningful purpose and consider that this condition should be removed.

**7.7. Omission of Dwelling no.236**

7.7.1. Condition 2(c) requires the omission of dwelling no.236 and its space incorporated into the adjoining dwelling. Dwelling no.236 was pulled forward of the building line of the other dwellings along this road over the course of the application. The applicant states no.236 screens the rear gardens and southern elevations of units to the north, and by stepping forward provides an appropriate termination to the northern end of street no.8.

7.7.2. I agree with the applicant and consider that the location of no.236 is acceptable, particularly as it overlooks the park and open area no.4.

7.7.3. In conclusion, I do not consider that the omission of unit no.236 is required for any meaningful purpose and consider that this condition should be removed.

**7.8. Conditions no's. 12 and 55.**

7.8.1. Condition no.12 refers to the works to be carried out on the R411 road and states that the costs are to be borne entirely by the applicant. Condition no.55 refers to



Development Contributions of €1,590,877. The applicant considers that conditions no's. 12 and 55 require the applicant to bear the costs of the provision of the public park and the road upgrades, in addition to the Development Contributions, which is effectively double charging. The applicant contends that the park could be omitted without affecting the validity of the residential scheme, in terms of its accordance with the standards set out in the Development Plan, and additional road upgrades represent another planning gain to the wider community (over and above those required for the functioning of the development).

The applicant states that the Council's Development Contribution Scheme indicates 47.5% of the contribution will be allocated to public roads (i.e. €755,666.58 of the total contribution to be paid), and 34.5% of contributions will be allocated to recreation and amenity infrastructure which represents €548,852.57. The applicant has not provided any estimate of what they consider the costs of the park to be, nor the additional costs of the roadworks they consider over and above those required.

7.8.2. The Planning Authority states that the roadworks as proposed are required for the development; the Development Contributions have been applied in accordance with the Development Contribution Scheme; and, there was no provision or agreement in place to offset development contributions in respect of this scheme.

7.8.3. The Kildare County Council Development Contribution Scheme 2015 – 2022, states at the outset, that:

*Section 48 of the Planning & Development Act 2000-2015, enables Planning Authorities, when granting a permission under Section 34 of the Act, to include conditions requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority, and that is provided, or that it is intended will be provided, by or on behalf of a local authority.*

In essence, it is for development benefitting the area of the Planning Authority – not just particular planning application developments.

7.8.4. I consider that both elements of the Development Contribution scheme should be considered separately, i.e. the roadworks and the park.

7.8.5. With respect to the park, the applicant is correct in stating that the park is not required for compliance with Development Plan standards, as the residential part of

the scheme does comply with open space standards of 15% as a standalone development. However, it could be argued that the park is not providing a benefit to the wider area, as it will be mainly used by the nearby residents of the new development and therefore Development Contributions for amenities in the wider area are appropriate to apply.

The roadworks could be viewed differently. The road upgrades are providing access to the development, but also improving that section of the R411 Ballymore Road which will be used by the wider community. The applicant and the Planning Authority express different views as to what constitutes the necessary improvement works to provide safe access to the development, and what is over and above those minimum works. The applicant has provided a drawing as part of the appeal indicating their opinion of the minimum roadworks required for the scheme which stop just south of the new access. Following the Clarification of Further Information, the overall roadworks drawing indicated works south of the new access including a cycle lane/pedestrian footpath for a considerable distance beyond the proposed new access.

The applicant has not provided costs as to what they consider over and above the minimum works, so it is not possible to provide the Board information with respect to the difference of opinion regarding costs.

I consider that it could be argued that in the case of the roadworks, an offset should be provided as it could be considered that 'double charging' is occurring, which is contrary to the Development Contributions Guidelines for Planning Authorities' published by the Department of Environment, Community and Local Government which states that *'The practice of "double charging" is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing "planning gain" in an equitable manner'*.

- 7.8.6. Notwithstanding this, I note that the Development Contribution Scheme does not provide for offsets for works. The Planning Authority in response to the First Party Appeal states that the Scheme does not make provision for offsetting contributions.
- 7.8.7. I consider that it could be argued that some of the roadworks being proposed by the applicant are over and above those required for the safe operation of the development. Additional works being proposed as part of this application could be

seen as a planning gain, and Development Contribution charges amended to reflect this.

- 7.8.8. As noted above, no information on costs has been provided by the applicant for either the park or the element of the roadworks which they consider above the minimum requirements. I consider that should the Board consider granting permission, a standard Section 48 condition should be applied. This condition provides that should no agreement be reached, it can be referred back to the Board for decision with the full facts.
- 7.8.9. Residential development (units below 230sq.m in area) is charged at €50 per sq.m. Should the Board agree with my interpretation of the Scheme and agree with the proposed changes I have recommended above in Section 7.1, the overall number of units will remain at 251 and not 244 as recommended by the Planning Authority in Condition no.3. I am recommending that the type of units in a number of instances will change (house no's.81 – 92), which will affect the overall charge, having regard to the charge being €50 per square metre. I consider that the figure should be determined between the applicant and the Planning Authority and refer back to the Board for determination in the case that this cannot be agreed.
- 7.8.10. In conclusion, I consider that there is a planning gain to the wider area for part of the roadworks being proposed, however, there is no provision in place in the Development Contribution Scheme which provides for such offsets.
- 7.8.11. Should the Board agree with my recommendations regarding the number of dwellings to remain at 251, the actual contribution will change from the figure quoted in Condition no.55 as well as providing for a reduction in the charge to be given for Part V units.

## 7.9. **Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

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

## 9.0 Reasons and Considerations

Having regard to the sites location within the Naas town boundary on lands zoned “C9 - New Residential” and “F – Amenity and Recreation” in the Naas Town Development Plan 2011-2017, to the nature, scale and design of the proposed development, the availability in the area of a wide range of social infrastructure, to the pattern of existing and permitted development in the area, and to the provisions of the Naas Town Development Plan 2011 - 2017, the Kildare County Development Plan 2017 – 2023, the Urban Design Manual - A Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009 and the Design Manual for Urban Roads and Streets (DMURS), issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would respect the existing character of the area and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 7<sup>th</sup> day of April 2017 and 12<sup>th</sup> day of June 2017, and by the further plans and particulars received by An Bord Pleanála on the 8<sup>th</sup> day of August 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to

commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The proposed development shall be amended as follows:
  - a. Replace house numbers 81 – 92 as follows: House numbers 81 – 88 are to be replaced with two terrace blocks of four dwellings of two storeys, and, replace House numbers 89 – 92 with dormer bungalows of Type H design as illustrated on MCORM Drawing PL37.
  - b. House numbers 1-15 are to be as detailed on MCORM Drawing PL38 received by An Bord Pleanála on the 8<sup>th</sup> day of August 2017.
  - c. The total number of dwellings permitted is 251 units.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interests of visual and residential amenity.

3. The development shall be carried out on a phased basis, in accordance with a phasing scheme which shall be submitted to, and agreed in writing with the planning authority prior to commencement of any development.

**Reason:** To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

4. Details of the materials, colours and textures of all the external finishes and boundary treatments to the proposed dwellings and crèche shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

5. Not more than 75% of residential units shall be made available for occupation before completion of the childcare facility unless the developer can demonstrate to the written satisfaction of the planning authority that a childcare facility is not needed.

**Reason:** To ensure that childcare facilities are provided in association with residential units, in the interest of residential amenity.

6. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be contoured, soiled, seeded, and landscaped in accordance with the landscaping proposals received by the planning authority and the detailed requirements of the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority.

**Reason:** In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

7. The developer shall retain the services of a suitably qualified Landscape Architect (or qualified Landscape Designer) throughout the life of the site development works and public park development. A Practical Completion Certificate shall be signed off by the Landscape Architect when all landscape works are completed to the satisfaction of the planning authority in consultation with the Parks and Landscape Services Department, and in accordance with the permitted landscape proposals.

**Reason:** In the interest of the proper planning and sustainable development of the area.

8. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces and the public park, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

**Reason:** In the interest of amenity and public safety.

9. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) including the powerlines that currently cross the site, shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interest of visual and residential amenity.

10. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

11. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

**Reason:** In the interest of urban legibility.

12. (a) The roads and traffic arrangements serving the site (including signage) shall be in accordance with the detailed requirements of the planning authority for such works and shall be carried out at the developer's expense. Details in this regard shall be submitted to and agreed in writing with the planning authority prior to commencement of development.  
  
(b) Footpaths shall be dished at road junctions in accordance with the requirements of the planning authority. Details of the locations and materials to be used in such dishing shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.  
  
(c) The internal road network to serve the proposed development (including junctions, parking areas, footpaths and kerbs) shall comply with the detailed standards of the planning authority for such road works.  
  
(d) The materials used, including tactile paving, in any roads/footpaths provided by the applicant shall comply with the detailed standards of the planning authority for such road works.

**Reason:** In the interests of traffic, cyclist and pedestrian safety.

13. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -
- a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
  - (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
  - (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

14. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable within each house plot shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

15. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached



within 8 weeks from the date of this order, the matter (other than a matter to which section 97(7) applies) may be referred by the planning authority or by any other prospective party to the agreement to the Board for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act, 2000, as amended, and of the housing strategy in the development plan of the area.

16. The construction of the development shall be managed in accordance with a detailed Construction Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise and dust management measures, site operational hours, off-site disposal of construction/demolition waste, signage, as well as specific measures to protect existing hedgerows and trees to the north of the site between the site and the Ard na Laoi residential development.

**Reason:** In the interest of public safety and residential amenity.

17. A detailed construction traffic management plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

**Reason:** In the interests of public safety and residential amenity.

18. The developer shall provide a footpath on the open space adjacent unit no.237 in order to provide future permeability between the development and the adjacent permitted residential development up to the boundary.

**Reason:** In the interest of residential amenity.

19. The developer shall construct the proposed link between the development and Sli Cluain Aoibhinn in accordance with DBFL Drawing 162040-2000 Rev C up to the boundary with Sli Cluain Aoibhinn to provide for future permeability.

**Reason:** In the interests of residential amenity.

20. (a) All areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.

(b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the dwellings are made available for occupation.

**Reason:** To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

21. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be determined by An Bord Pleanála.

**Reason:** To ensure the satisfactory completion of the development.

22. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Ciara Kellett  
Inspectorate

31<sup>st</sup> October 2017