



An  
Bord  
Pleanála

## Inspector's Report ABP-300639-18

### Development

Permission to retain groundworks and complete 18 no. houses and all ancillary siteworks as per Planning Permission 00/994, and permission for 8 no. houses in lieu of 34 no. apartments and all associated site works.

### Location

The Glen, The Kilnacourt Woods, Portarlinton, Co. Laois.

### Planning Authority

Laois County Council

### Planning Authority Reg. Ref.

17/203

### Applicant(s)

Le Monde Holdings Ltd.

### Type of Application

Retention Permission and Permission.

### Planning Authority Decision

Grant Retention Permission and Permission subject to conditions.

### Type of Appeal

Third Party v. Decision.

### Appellant(s)

Noel Bodie (The Glen Residents Association).

### Observer(s)

None.

**Date of Site Inspection**

18<sup>th</sup> April 2018.

**Inspector**

Susan McHugh

## 1.0 Site Location and Description

- 1.1. The appeal site is located to the north of Portarlinton on the edge of an existing housing estate known as The Glen, Kilnacourt Woods. The subject site is partially developed with the foundations and site services for a number of houses and apartments already in place.
- 1.2. The site is separated from the River Barrow to the north by agricultural land and a small area of woodland. It is bounded to the east by open grassland and to the south and west by existing residential development.
- 1.3. The subject site is roughly 'L' shaped and has an area of 0.704ha.
- 1.4. The eastern part of the site is bounded to the west by a row of 8 no. two storey semi-detached houses No.s 105-98, which also face onto the existing access road to the site.
- 1.5. The northern part of the site is bounded to the west and south by existing two storey semi-detached houses, which gable onto the site. Directly to the north west of the site is an unfinished and unoccupied three storey apartment block.
- 1.6. The appeal site is flat in nature with a gentle slope towards the River Barrow located approx. 100m to the north. Typical ground levels across the site vary from 65m OD and 65.65m OD.
- 1.7. The site is currently grassed over and fenced off from adjoining houses in the estate. Access roads, footpaths, public lighting, ESB services, and manholes are visible on site.
- 1.8. A stream appears to run through the site which connects to the River Barrow.

## 2.0 Proposed Development

- 2.1. Permission is sought for;
  - Retention of groundworks and ground beams as constructed to 18 no. house sites comprising;
    - 8 no. (on sites 106-109, and 128-131), and

- 10 no. (on sites 132-136 and 155-159).

These are located along the eastern and northern sections of the overall site respectively.

2.2. Permission is also sought for;

- Completion of 18 no. two storey houses, comprising;
  - 2 no. blocks of four no. terraced dwellings,
  - 2 no. blocks of five no. terraced dwellings, and
  - all ancillary siteworks as per planning permission 00/994.
- Construction of 8 no. two storey houses, comprising;
  - 2 no. blocks of four no. terraced dwellings, (on sites 110-127 and 13 - 154).

These are in lieu of two apartment blocks (each with 17 no. apartments, 34 in total), and are located along the eastern and northern sections of the overall site respectively.

- all ancillary siteworks, including landscaping.

2.3. The application was accompanied by a Flood Risk Assessment (FRA) Report.

### 3.0 Planning Authority Decision

#### 3.1. Decision

The decision of the planning authority was to **grant** permission 21/12/2017 subject to 20 conditions. Conditions of note include:

Condition 1. Compliance with plans and particulars.

Condition 2.

*'Within 4 months of the date of the final grant of permission: -*

*(a) All works to complete, rectify and replace as necessary the water supply, foul sewer network, surface water network, public lighting, roads, footpaths, pumping station, landscaping and cycle track/path forming part of and serving the existing development as outlined in the Planning Authority's letter dated*

*23<sup>rd</sup> February 2017 shall be carried out in full to the written satisfaction of the Planning Authority;*

*(b) A full set of as constructed drawings of the existing development shall be submitted to the Planning Authority.*

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

Conditions 3 and 4.	Security Bond and Development Contributions
Condition 5.	Part V agreement.
Condition 6.	Irish Water agreement.
Condition 7.	Construction Management Plan.
Condition 8.	External finishes.
Conditions 9 and 10.	Boundary treatments, open space and landscaping requirements.
Conditions 11,12 and 20.	Site development works, DMURS standards, and repair works.
Conditions 13,14 and 15.	Undergrounding of service cables, public lighting an ESB requirements.
Conditions 15 and 16.	Naming and numbering, and security gates.
Condition 17.	Waste recycling, disposal, noise and hours of construction, and dust emission requirements.
Condition 18.	Surface or storm water requirements.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports (dated 8<sup>th</sup>, 12<sup>th</sup>, and 13<sup>th</sup> June 2017)

Basis for the planning authority decision. It includes:

- The **1<sup>st</sup> Senior Executive Planners** report dated **08/06/2017** noted that the proposed design and private open space of the development as proposed is acceptable having regard to the to the development originally permitted under P.A. Reg. Ref. 00/994.

- Considered reasonable that the development be completed in the manner proposed.
- In the context of the planning history and owners of the site, recommended a refusal of permission and the serving of a Section 35 Notice for past failures to comply in relation to the proposed development.
- The **Senior Planners** report dated **12/10/2017** (appears to be discrepancy as later reference in Planners report to **12/06/2017**) noted the planners report and recommendation, the request for further information from Irish Water and third-party submissions. Recommends that the applicant be advised of past non-compliance issues, and that further information be sought and requests that an amended report including a full assessment of the qualitative and quantitative control standards be prepared.
- The **2<sup>nd</sup> Senior Executive Planners** report dated **13/06/2017** noted in relation to open space that the intensity of development was considered acceptable, that the layout and design of the proposed development remains substantially similar to existing two storey terraced dwellings in the estate, no issues of visual or residential amenity, the provision of public open space within the overall estate, and private open space provided within the subject appeal site is acceptable, the vehicular access via the existing estate road, and car parking provision is acceptable. On the basis of the report from Irish Water and the Direction from the Senior Planner further information was recommended, with regard to the following;

In relation to P.A. Reg. Ref. 00/994 a number of issues are outstanding in terms of the completion of the existing residential development, reference to a letter dated 23<sup>rd</sup> February 2017 outlining a number of serious items required to be addressed prior to the estate being taken in charge within 3 months of the date of that letter, no further works have been carried out by the applicant, requested to submit a timeframe and schedule for completion of outstanding works under P.A. Reg. Ref. 00/994 prior to taking in charge, and further to a letter dated 23<sup>rd</sup> February 2017 outlining the serious items required to be addressed.

Requirements from Irish Water, and response to third party submissions.

- On 14/06/2017 a request for further information in relation to 3 items was sought in accordance with the Planner's recommendation.
- A response to the further information request was submitted on 30/11/2017.

The **3<sup>rd</sup> Senior Executive Planners** report dated **18/12/2017** following further information included: the response to item no. 1 details the works and notes having consulted with the Building Control Officer that the details in relation to the completion of works were acceptable. The response to item no. 2 in relation to obtaining water and waste water connections from Irish Water is acceptable. The response to item no. 3 notes that the planning application process is not the correct forum for addressing the issues of non-completion of the existing development but that conditions can be reasonably imposed in the event of a grant of permission. A grant of permission was recommended subject to conditions.

### 3.2.2. Other Technical Reports

**Building Control Officer:** Verbal report received undated.

### 3.3. Prescribed Bodies

**Irish Water:** **1<sup>st</sup> Report** dated 24/05/2017 recommends further information, in relation to obtaining water and waste water connections. **2<sup>nd</sup> Report** dated 13/09/2017 indicates that there is capacity currently available and subject to a valid connection agreement being put in place the proposed connection to the Irish Water Network can be facilitated.

**Inland Fisheries:** Report dated 15/05/2017 recommends no objection subject to conditions.

**An Taisce:** No report on file.

**National Parks and Wildlife Services:** No report of file.

### 3.4. Third Party Observations

Four no. third party observations were made in respect of the application from the following parties;

- Noel Bodie, on behalf of The Glen Residents Association, accompanied by various correspondence, and photographs including a letter dated 23/02/2017 from Laois County Council outlining outstanding works within the estate to be completed prior to taking in charge.
- Paul McCausland, on behalf of residents 1-12 The Glen, Kilnacourt Woods.
- Mark Gavin
- Cllr. Aidan Mullins

The issues raised are largely similar to those raised in the grounds of appeal, and can be summarised as follows;

- Outstanding repair works within the estate must be completed and taken in charge prior to any new works being approved.
- Concern regarding non- completion of previous permissions.
- Inadequate designated open/green space as required under the County Development Plan. Area of open space identified at the rear of the development, but proposals are unclear for the area.
- Area to rear of unfinished apartment block comprises a Special Area of Conservation.
- Increase in traffic in the estate, issues with width of junction at corner of No. 12 where there have been a number of accidents.
- No provision for youth facilities as required in the LAP.
- Lack of consultation between the developer and the residents.
- Applicant owns additional lands, and query future proposals.
- Queries whether the pumping station to the rear of The Glen has sufficient capacity to cater for the additional loading.



- Concern regarding potential antisocial behaviour given number of laneways proposed.
- History of flooding along the River Barrow in Portarlington.
- Lack of communal waste facilities, and issues with illegal dumping.
- Absence of purpose built shed for resident's association.
- Lack of signage to improve legibility.

## 4.0 Planning History

### 4.1.1. Parent Permission

**P.A. Reg. Ref. 00/994:** Permission **granted** June 2004 for permission to erect a residential development of 261 two storey houses and creche facility with 2 apartments over. This permission has been largely implemented with the exception of the appeal site and the adjoining site to the northwest. A total of 52 no dwellings were permitted on the part of the site subject of the current appeal.

**P.A. Reg. Ref. 09/524** Permission **granted** September 2009 for Extension of Duration of 00/994 for a period of two years.

**P.A. Reg. Ref. 11/287** Permission **granted** August 2011 for Extension of Duration of 00/994 and 09/524 for a period of three years. This permission expired in August 2014.

**P.A. Reg. Ref. 14/231** Permission **refused** September 2014 for Extension of Duration on P.A. Reg. Ref. 11/287 (09/524 and 00/994). The reason for refusal referred to noncompliance with Section 42 of the Planning and Development Act 2000 as amended, which restricts the number of times a planning authority can extend the appropriate period of an application.

### 4.1.2. Concurrent application on adjoining unfinished site to the northwest

**P.A. Reg. Ref. 17/202, ABP -300742-18** Permission **granted** by PA January 2018 to retain floor slabs as constructed and full planning permission for completion of two storey terrace of houses 202 to 205 and 224 to 227 (8 houses in total) either

side of existing apartment block granted permission under P.A. Reg. Ref. 00/994 and all ancillary siteworks at The Glen.

Condition no. 2 omitted house No.s 202-205 located on the western side of the apartment block in order to provide additional car parking. A first and third party appeal to the Board Ref. ABP -300742-18 was withdrawn February 2018.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The Laois County Development Plan 2017-2023 and Portarlington Local Area Plan 2012-2018 refer.

5.1.2. Under the **Portarlington Local Area Plan 2012-2018**, the site is zoned '**Residential 1** : *To protect and enhance the amenity of developed residential communities*'.

*'This zone is intended primarily for established housing development but may include a range of other uses particularly those that have the potential to improve the residential amenity of residential communities ..... Within this zoning category the improved quality of existing residential areas will be the Council's priority. In established residential areas in areas at risk of flooding as identified on the land use maps, where the replacement or the reconstruction of an existing dwelling is considered appropriate for wider planning reasons the planning authority should require that Development management justification test is carried out in accordance with the 'The Planning System and Flood Risk Management Guidelines' 2009.*

*There will be no increase in the number of residential units or households. There will be no adverse impact on the function of the floodplain, watercourse or conveyancing routes; Residual risk is addressed and reduced where possible, for example through relocation of buildings, and / or flood resilience / resistance measures applied to the site and buildings'.*

5.1.3. A number of relevant policies within the Portarlington Local Area Plan 2012-2018 include:

5.1.4. **Section 10** refers to **Flood Risk**

*'Aim: To develop, improve and extend flood alleviation measures throughout the town and rural hinterland so as to complement the overall strategy for economic and population growth and to achieve improved physical and environmental protection'.*

**5.1.5. Map 4 Flood Potential Map for Portarlinton Joint Local Plan Area**

This was informed by the Portarlinton Strategic Flood Risk Management Strategy 2007. In particular the appeal site is identified on Map 4. (see in pouch attached).

**5.1.6. Portarlinton Flood Risk Management Strategy 2007**

The study, *'recommends a series of mitigation measures in the form of floodwalls, levees, embankments and attenuation areas provided at various locations through the centre of Portarlinton along the banks of the River Barrow and the Blackstick Drain.*

*The strategy sets out 3 phases of works to address flood risk in the town.*

**5.1.7. It is the policy of the Councils to:**

**FRP 2:** *'avoid inappropriate development in areas at risk of flooding and ensure new development does not increase flood risk elsewhere, including that which may arise from surface water run off'.*

**FRP 3:** *'have regard to the recommendations of the South Eastern Catchment Flood Risk Assessment Management Study and to ensure that any development adjacent to these watercourses or their tributaries take cognisance of these reports/studies and to ensure the landuse is appropriate to the risk of flooding identified subject to the development management justification test.'*

**FRP 9:** *'ensure protection of Natura 2000 sites supporting rivers and streams by avoiding development on flood plains and ensure flood risk assessment policies, plans or projects are compliant with Article 6 of the Habitats Directive and avoid or mitigate native impacts on Natura 2000 sites.'*

**5.1.8. Section 13 refers to Natural Heritage**

**5.1.9. It is the policy of the Councils to:**

**NHP 2:** *‘encourage access to natural heritage and to promote access where it is practicable and does not affect the integrity of protected sites or conflict with their conservation objectives’.*

**NHP 3:** *‘maintain, protect and where possible enhance the conservation value of existing European designated sites in the town and any additional sites that may be proposed for designation during the period of the Plan’.*

**NHP 9:** *‘ensure that floodplains and wetlands, where appropriate, are retained for their biodiversity and flood protection value.’*

5.1.10. **Section 14** refers to Housing and Urban Design.

5.1.11. **Section 17** refers to Development Management Standards.

5.1.12. The **Draft Portarlinton Local Area Plan 2018-2024** is currently on display and shows no alterations to the land use zoning objective, flood risk area or SAC designations.

## 5.2. **National Policy**

5.2.1. National guidance on flood risk management is contained within the Department’s document *‘The Planning System and Flood Risk Management’*. In essence the guidelines seek to avoid development in areas at risk of flooding, substitute less vulnerable land uses and if avoidance and substitution are not possible, mitigate and manage risks. Less vulnerable development is considered to include commercial development.

5.2.2. Exceptions to the restrictions on development due to potential flood risks are provided through the use of a justification test. In this regard the Guidelines recognise that some existing urban centres may have been targeted for growth, and also recommend a precautionary approach.

5.2.3. The Guidelines are issued under Section 28 of the Planning and Development Act 2000 as amended and the Board is required to have regard to them.

### 5.3. Natural Heritage Designations

The River Barrow River Nore SAC (Site Code 002162) is located approximately 20m to the north of the site.

The Mountmellick SAC (Site Code 002141) is located approximately 6.6km to the south west of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The third party appeal is lodged by Noel Bodie, on behalf of the Glen Residents Associations, Portarlinton. The main grounds of can be summarised as follows:

- Decision of planning authority made in the absence of a detailed response from the applicant in relation to issues raised in third party submissions.
- Planning authority granted permission without compelling the applicant to complete the existing estate, which commenced 14 years ago, and there has been no work on the development since 2009.
- Notes petition submitted to planning authority under section 180 of the Planning and Development Act 2000, requesting that the estate be taken in charge November 2014, but to no avail. Further letters were submitted to the planning authority in April 2015 and January 2016 produced no results.
- In February 2017 the planning authority gave the applicant 3 months to complete the existing development. One year later none of the issues raised have been addresses. The decision of the planning authority to grant permissions to the new development allows a further 4 months to complete work on the existing development.
- Concerned that the applicant will not carry out the required works in the extra 4 months, and should be required to complete the existing development before starting any further work.

- A potential hazard particularly to young children identified by the planning authority in their assessment of the landscaping proposals has yet to be addressed by the applicant.
- Difficulties in getting street lights repaired.
- The completion of the existing development is separate from any new development and should not be made conditional on the granting of planning permission.
- Conditions attached to the grant of permission do not include requirements in relation to maintaining and cleaning the roads during construction or speed control measures.
- No reference to bin storage for the proposed apartment block, and the finished block which is part occupied has no bin storage area. Existing bin storage arrangements are a fire safety hazard.
- Concerns raised regarding flooding on the site of the proposed development and notes that sewage problems which require regular pumping have not been investigated.
- Asks that planning permission be refused until the applicant has fulfilled obligations under P.A. Reg. Ref. 00/994, so as to enable the planning authority to take the development in charge, and that other issues raised in the third party submission are properly addressed.

## 6.2. Applicant's Response to Appeal

6.2.1. A response to the third party appeal was lodged by Brian Connolly Associates, Consulting Engineers on behalf of the applicant. The response can be summarised as follows:

- Welcome the fact that the appellant is not against the development per-se.
- Issues raised in Submissions - The subject application represents a 50% reduction in the number of units from that previously granted under P.A. Reg. Ref. 00/994. The planning authority were satisfied that the response to the further information request addressed the issues raised by the appellant.

- Time Limit - Dispute the assertion that the planning authority granted permission without compelling the applicant to complete the existing estate and refer to condition no. 2 of planning authority grant of permission under subject appeal which sets a time limit for completion works.
- Taking in Charge – The planning authority will not take the development in charge until the development is completed. The applicant is in negotiation with the planning authority to complete Phase 2. There is an internal site resolution program in place and the first step is to secure planning on the subject site to allow it to be completed, after which the planning authority will be in a position to take the estate in charge.
- Compliance with conditions - Failure to comply with the 4-month time limit as set out in condition no. 2 may result in an enforcement notice.
- Completion of works – A nominated contractor to carry out the repair works has been nominated and will commence works in the coming weeks.
- Potential hazard – Proposed to export spoils from the subject site, and would be given priority when construction commences. Unfortunately, the appeal is delaying this action.
- Repair of street lights – The subject light has been repaired.
- Road cleaning and traffic speed – Condition no. 7 of the planning permission requires that a Construction Management Plan be submitted and agreed which will address the issue of road cleaning and traffic speed control.
- Bin Storage – The proposed development for 26 town houses are each provided with bin storage in the rear gardens. The subject application does not include an apartment block.
- Flood risk and Sewerage – Disputes the claim that the site is at risk of flooding and has submitted a site-specific Flood Risk Assessment which concludes that the site is at low risk of flooding. There are no sewerage problems on the site, and notes that the current proposal is for a smaller development than that originally proposed.

- Conclude – The construction of the development will complete the estate and allow the planning authority to take the development in charge as they did with Phase 1.

### 6.3. **Planning Authority Response**

No response received.

### 6.4. **Observations**

None.

## 7.0 **Assessment**

7.1. The proposed development is acceptable in principle, is fully supported by development plan policies and objectives and complies with development plan standards. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings;

- Planning History
- Compliance with Planning Policy
- Flood Risk and Drainage
- Phasing / Taking in Charge
- Appropriate Assessment

### 7.2. **Planning History**

7.2.1. There is a protracted planning history attached to Kilnacourt housing development as set out in Section 4 above. In 2004, the planning authority granted permission for a development of 261 no. dwellings (P.A. Reg. Ref. 00/994) on lands including the



appeal site. In 2009 and 2011 the planning authority granted permission for an extension of duration of permission (P.A. Reg. Ref. 09/524 and 11/287) for a period of 2 and 3 years respectively, on lands including the appeal site. In 2014 a third application for an extension of duration of permission was refused by the planning authority (P. A. Reg. Ref. 14/231) based on changes to the Planning and Development Act as amended which now limits the number of times an application for extension of duration can be applied for.

- 7.2.2. Phase 1 of the development is complete and occupied. Phase 2 of the development is incomplete and permission is now sought to complete this phase of development. The incomplete area of Phase 2 comprises two separate sites each with separate access arrangements and subject of two concurrent applications. The first site includes an already constructed apartment block and recently permitted residential development under P.A. Reg. Ref. 17/202. This decision was appealed to the Board under ABP -300742-18 and was withdrawn in February 2018. The second and larger site is the subject of the current appeal.

### 7.3. **Compliance with Planning Policy**

- 7.3.1. The Portarlington Local Area Plan 2012-2018 is the relevant statutory plan. The site is zoned 'Residential 1: *To protect and enhance the amenity of developed residential communities*'.
- 7.3.2. Residential development is acceptable in principle in the 'Residential 1' land use zoning. Furthermore, the development relates to the completion of an unfinished housing development. The development is, therefore, acceptable in principle subject to the assessment of the relevant planning issues identified below.

### 7.4. **Flood Risk and Drainage**

- 7.4.1. The grounds of appeal state that the appeal site is at risk of flooding given its proximity to the River Barrow.
- 7.4.2. Objective FRP 2 of the Portarlington Local Area Plan 2012-2018 states that it is the policy of the Councils to '*avoid inappropriate development in areas at risk of flooding*

*and ensure new development does not increase flood risk elsewhere, including that which may arise from surface water run off.*

- 7.4.3. In accordance with the '*Planning System and Flood Risk Management Guidelines*' 2009, a site-specific flood risk assessment has been undertaken by the applicant.
- 7.4.4. I note the Flood Risk Assessment (FRA) Report dated October 2016 prepared by RPS is based on the OPW National Flood hazard mapping website, and the OPW South Eastern Catchment Flood Risk Assessment and Management Study (South Eastern CFRAM), which commenced in 2011.
- 7.4.5. The report determined that the site is outside the 10%, 1% and 0.1% AEP flood extents and therefore within Flood Zone C. The report refers to the sequential approach as set out in the *Planning System and Flood Risk Management Guidelines*, and that the application of a justification test is not required.
- 7.4.6. It is understood that the source of flooding is fluvial from the River Barrow, and, as the site is on the periphery of the 1% AEP floodplain, that consideration still needs to be given to ensuring that there is suitable freeboard above the predicted flood levels and that adequate surface water management measures are in place. This is particularly important as the proposed residential use is classified under the Guidelines as a highly vulnerable use.
- 7.4.7. Mitigation measures proposed include raising finished floor levels for the proposed residential units to 66.3mOD, with roads and pavements being located above 64.93m OD. The finished floor levels proposed are above the minimum floor level of 65.13m OD recommended in Section 4, Mitigation Measures of the FRA Report.
- 7.4.8. The report notes that these levels can be readily achieved, and I am satisfied that these levels, which are above the flood level 64.63m OD adjacent to the application site, are acceptable.
- 7.4.9. The FRA report notes that storm water from the development will be discharged to the River Barrow via the existing storm water drainage network within the Kilnacourt estate. The report concludes that there will be no increase in flood risk to the existing area as a consequence of this development.
- 7.4.10. I note that the report on file submitted by the applicant in response to the appeal dated 12/02/2018 refers to the Kilnacourt Waste Water Treatment Pumping Station

WWTPS. The report notes that the WWTPS has sufficient capacity to cater for the proposed development and that the proposed development for 26 units represents 50% of that originally permitted. Specifically, there is also confirmation that repair works to the Kilnacourt WWTPS were carried out in the first quarter of 2017. I also note from the Portarlinton LAP that the existing Portarlinton Waste Water Treatment Works discharges to the River Barrow

- 7.4.11. The report from Irish Water in response to the applicant's pre-connection enquiry indicates that there is sufficient capacity in the Irish Water network to accommodate the proposed development. The proposed schedule of works include works to the existing foul sewer and surface water network within the estate.
- 7.4.12. I am satisfied that the proposed development will not exacerbate flooding to adjacent lands, that adequate attenuation measures can address surface water run off including that which occurs in an extreme event. I am satisfied that the flood assessment is robust and, therefore, that the development will not result in any adverse or material flooding impacts.
- 7.5. In conclusion, I am satisfied that the appeal should not be upheld on the issue of flood risk.

## **7.6. Phasing / Taking in Charge**

- 7.6.1. The crux of this appeal relates to the unfinished nature of Phase 2 of the estate and understandable frustrations among the residents in mobilising works on site, such that Phase 2 can be taken in charge by the planning authority. It is noted that the planning authority did correspond with the applicant by letter dated 23<sup>rd</sup> February 2017 setting out all outstanding works to be addressed prior to taking in charge by the planning authority. While it is acknowledged in the planners report that taking in charge issues can only be resolved between the parties concerned, the appellants contend that permission should not have been granted for development until the outstanding works have been carried out.
- 7.6.2. Taking in charge issues are a matter for the planning authority and beyond the remit of the Board. Notwithstanding, I am of the opinion that to permit development for the completion of the estate is the appropriate mechanism to ensure that Phase 2 of the development is completed in full and taken in charge, which will result in a planning

gain to the community. I did note on the day of my inspection that the estate appeared well maintained and evidence of recent tree planting.

7.6.3. I see no merit therefore, in applying conditions in relation to phasing, or time restrictions within which works are to be carried out. The issue of taking in charge can be dealt with by way of a standard condition.

7.6.4. I am satisfied that the appeal should not be upheld on these grounds.

## **7.7. Appropriate Assessment**

7.7.1. The appeal site is located approx. 100m from the River Barrow which is prone to flooding, and is discussed in section 7.4 above. The River Barrow forms part of the River Barrow and River Nore SAC, (Site Code 002162) which extends to within approx. 20m of the northern boundary of the northern part of the appeal site.

7.7.2. There is a stream which runs through the northern part of the site and forms a hydrological link to the River Barrow, and surface water in the area drains to the River Barrow.

7.7.3. I consider it reasonable in light of the flood mitigation works proposed in the FRA report, the capacity of the existing Kilnacourt Waste Water Treatment Pumping Station and Portarlinton Waste Water Treatment Works, and the construction works already carried out on site, that subject to the requirements of Irish Water that the proposed development would not give rise to appropriate assessment issues.

7.7.4. In conclusion, having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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 project on a European site.

## **8.0 Recommendation**

8.1. I recommend that planning permission be granted for the following reasons and considerations.

## 9.0 Reasons and Considerations

Having regard to the location of the site on residential zoned lands in the Portarlington Local Area Plan 2012-2018, and the planning history of the site, it is considered that subject to compliance with the conditions set out below, that the proposed development would not increase the risk of flooding on lands in the vicinity, or give rise to significant impacts on the environment. 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 on 24<sup>th</sup> April 2017, as amended by the further plans and particulars submitted on 30<sup>th</sup> November 2017 and by the further plans and particulars received by An Bord Pleanála on the 22<sup>nd</sup> January 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed in writing with the planning authority prior to commencement of development the development shall be carried out completed in accordance with the agreed particulars.

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

2. Details including samples of the materials, colours and textures of all external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenities of the area.

3. Footpath reinstatement and public lighting shall comply with the detailed standards of the planning authority for such works.

**Reason:** In the interest of orderly development.

4. Prior to commencement of development, details of the following shall be submitted to, and agreed in writing with, the planning authority:

(i) A hard landscaping plan with delineation and specification of site boundary details including the external finishes.

(ii) A soft landscaping plan incorporating native/indigenous species.

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

5. Rear garden boundaries to the proposed houses shall consist of block walls 1.8m in height, rendered on both sides and capped.

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

6. 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

7. The construction of the development shall be managed in accordance with a 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

8. 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 materials 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:** In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

9. All service cables associated with the proposed development shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing cables existing cables shall be located underground as part of the site development works.

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

10. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

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 and to ensure the use of locally appropriate placenames for new residential areas.

12. 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 housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) 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 eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála 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 current Development Plan for the area.

13. 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 by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local 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 referred to An Bord Pleanála for determination.



**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

14. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting 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, as amended. 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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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Susan McHugh  
Planning Inspectorate

23<sup>rd</sup> April 2018