



An
Bord
Pleanála

Inspector's Report ABP-301551-18

Development	Construction of 12 no. residential dwellings in 3 blocks.
Location	Mount Juliet Estate, Thomastown, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	17/660
Applicant(s)	MJBE Investments 3 Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	(1) Brian Coleman & Others (2) Mount Juliet Estate Group
Observer(s)	
Date of Site Inspection	19 th July 2018
Inspector	Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated site area of 0.46 hectares, is located within Mount Juliet Estate approximately 14km south of Kilkenny City, 3km west of Thomastown and 3.5km east of the M9. The appeal site is located to the south west of Mount Juliet House and north of Rose Garden Lodges (two-storey residential block). The appeal site is on a grassed area with a number of trees surrounding it and is part of an area that was formerly used as a putting course.
- 1.2. Amendments to application detail and public notices resulted in an increased site area coinciding with the former extent of the par three putting course and amendments to the car parking layout.

2.0 Proposed Development

- 2.1. Permission is sought to construct 12 no. residential units in 3 no. blocks (c 1,638.9sqm gross floor area), provision of car parking, vehicular access road, pedestrian pathways, all associated site works, and landscaping and boundary treatment. The proposed blocks are two-storey and each has four units, which are two bed units, two at ground floor and two at first floor level. The blocks are in circular pattern around a central area with car parking and landscaping. The units have a terrace area at ground floor level for each unit and a balcony at first floor level for each unit. The blocks feature a pitched roof with external finishes. A new access laneway is provided, which joins with an existing internal road to the east of the site.
- 2.2. In response to further information the site area of the site was amended and proposal was altered with an amended car parking layout.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 13 conditions. Of note are the following conditions.

Condition no. 8: All tree works to be carried out to be in accordance with the recommendations contained in the arboricultural impact assessment and an arboricultural consultant is to supervise and monitor such works.

Condition no. 9: A pre-commencement meeting to be held between the Council and the arboricultural consultant to ensure all tree protection measures are clear and protective fencing to be erected prior to the commencement of development.

Condition no. 10: All landscaping to be carried out in accordance with Landscape Masterplan.

Condition no. 11: A three year maintenance period to be applied to ensure maintenance of all trees.

Condition no. 12: External finishes to be agreed with the Planning Authority prior to the commencement of development.

3.2. Planning Authority Reports

3.2.1. Planning and Technical Reports

Irish Water (07/11/17): Further information including submission of alternative water supply proposals.

Conservation Officer (27/11/17): No objection subject to provision of a landscaping plan.

Environment Section (27/11/17): Further information including additional surface water drainage details.

Planning report (29/11/17): Further information including detail of extent and nature of works proposed relative to the par 3 course, submission of a rationale for the number of units proposed, additional surface water details, details of an alternative water supply, submission of a road safety audit, submission of landscaping plan.

Clarification of extent of land under applicants control and details of how the development complies with Objective 8 of the County Development Plan.

Conservation Officer (23/03/18): No objection.

Environment Section (28/03/18): No objection subject to conditions.

Planning report (No date): The further information response was noted, the proposal was considered satisfactory in regards to visual amenity, adjoining amenities, landscaping and tree protection and in compliance with Development Plan policy. A grant of permission was recommended subject to the conditions outlined above.

3.3. **Prescribed Bodies**

Department of Culture, Heritage, and the Gaeltacht (09/11/17): Recommended that all mature trees to be felled are checked by a suitably qualified expert beforehand for roosting/hibernating birds.

3.4. **Third Party Observations**

3.4.1 10 submissions were received from

James & Patricia Coffey, 53 Rose Garden Lodges, Mount Juliet.

Anthony Collins, 55 Rose Garden Lodges, Mount Juliet.

Bryan & Jane Evans, 57 Rose Garden Lodges, Mount Juliet.

Mary & Willie Cotter, 4 North Paddocks, Mount Juliet.

Brian Coleman, 52 Rose Garden Lodges, Mount Juliet.

Steve Callan, 7 South Paddocks, Mount Juliet.

Mount Juliet Estates Residents Group, Mount Juliet.

Peter Thomson, 4 Priory Grove, Kells, Co. Kilkenny.

Chris & Joan McHugh, 53 Rose Garden Lodges, Mount Juliet.

Maureen Heffernan, 56 Rose Garden Lodges, Mount Juliet.

- Issues raised include being contrary Development plan policy/Mount Juliet Action Area Plan, unsuitable location for additional development, adverse impact on existing residential amenity, adverse impact on visual amenity,

landscape character, architectural heritage, unauthorised removal of par 3 course, loss of trees, inadequate appropriate assessment.

3.4.2 There was a further submission in response to further information by...

Brian Coleman, 52 Rose Garden Lodges, Mount Juliet.

- The issues raised reiterate the contents of the previous submission with particular reference to the removal of the unauthorised removal of the par 3 course.

4.0 Planning History

ABP-300933-18: Referral, "whether the works involved in the removal of the putting course at Mount Juliet Estate, Thomastown, Co. Kilkenny and the creation of a relatively level green open space is or is not development or is or is not exempted development". Determined that works in question are development and are not exempted development.

16/486: Permission granted for modifications and omissions to previously approved Hotel development.

15/6: Permission granted for demolition of a single-storey cabin and provision of a new golf clubhouse, demolition of two-storey portion of hotel accommodation and construction of a two-storey extension providing 68 no. bedrooms.

02/1632: Permission granted for a two-storey apartment block and associated site works (not constructed).

97/687: Permission granted for retention of putting course and associated landscape features.

5.0 Policy Context

5.1. Development Plan

5.1.1 The relevant Development Plan is the Kilkenny County Development Plan 2014-2020

Section 7.9.5 of the County Development Plan incorporates the Mount Juliet Area Action Plan.

The action plan identifies 4 protected views under table 7.1 (attached).

Table 7.2 identifies 12 objectives/site specific development plan standards for the estate (attached). These include...

1. To protect and enhance Mount Juliet House (protected structure), its curtilage and attendant grounds and allow for its extension as appropriate.

8. To provide for the development of additional lodges adjacent to the existing Rose Garden lodges associated with the estate's tourism, leisure and recreational functions without detracting from the estate's landscape character and built natural heritage.

Figure 7.3 of the Action Area Plan (attached) illustrates the extent of the plan area, identifies protected views, the 12 objectives and Natura 2000 sites.

5.1.2 For the purposes of rural housing policy the site is located in an area under urban influence.

Section 3.5.2.1 Areas under Urban Influence

Areas classified as under pressure are located close to the immediate environs or commuting catchment of cities and towns or to major transport corridors with ready access to urban areas. They are characterised by rapidly rising populations and/or considered pressure for housing development. It is the Council's objective for areas of urban influence to facilitate the rural generated housing requirements of the local

rural community (as identified in this section) while on the other hand directing urban generated rural housing to areas zoned for new housing development in the city, town and villages.

Areas under urban influence display the greatest pressures for developments due to:

- Close commuting catchments of larger cities and towns,
- Population increases well above the average for the aggregate rural areas of the county.
- Ready access to a good road network with ready access to the larger urban areas.

Section 3.5.2.3 Rural Generated Housing Need

In areas under urban influence and in stronger rural areas the Council will permit (subject to other planning criteria) single houses for persons where the following stipulations are met:

1. Persons who are employed full-time in rural-based activity such as farming, horticulture, forestry, bloodstock or other rural related activity in the area in which they wish to build or whose employment is intrinsically linked to the rural area in which they wish to build such teachers in rural schools or other persons by the nature of their work have a functional need to reside permanent in the rural area close to their place of work.
2. A fulltime farm owner or an immediate family member (son, daughter, mother, father, sister brother, heir) wishing to build a permanent home for their own use on family lands.
3. Persons who have no family lands but who wish to build their first home, on a site within 10km radius of their original family home, (the local rural area) in which they have spent a substantial and continuous part of their lives (minimum 5 years).
4. Persons who were born and lived for substantial parts of their lives (minimum 3 years) in the local area and wish to return to live in the local area (returning migrants).
5. A landowner who owned property prior to 14th June 2013 wish to build a permanent home for his/her own use or a son or daughter.

5.1.3 Section 12.11.17 Tree and Hedgerow Preservation

“Development will not generally be permitted where there is likely damage or destruction either to trees protected by a Tree Preservation Order or those which have a particular local amenity or nature conservation value, or are listed in the Survey of Mature Trees in the City and Environs. Development that requires the felling of mature trees of amenity value, conservation value or special interest, even though they may not be listed in the Development Plan, will be discouraged”.

5.2 National Guidelines

5.2.1 Sustainable Rural Housing Guidelines

Rural areas under strong urban influence. These areas will exhibit characteristics such as proximity to the immediate environs or close commuting catchment of large cities and towns, rapidly rising population, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network.

5.3 Natural Heritage Designations

River Barrow and River Nore SAC (Site Code 002162), 70m from development boundary.

River Nore SPA (Site Code 004233) 190m from proposed development.

Thomastown Quarry SAC (Site Code 2252) 2.9km from proposed development.

Hugginstown Fen SAC (Site Code 000404) 10.8km from the proposed development.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A third party appeal has been lodged by Peter Thomson Solutions on behalf of The Mount Juliet Estates Residents Group. The grounds of appeal are as follows.

- The appellant note that the request for further information that led to revision of the application to seek retention of the removal of the par 3 course would be contrary the Planning and Development Regulations. It is noted there is an obligation to deal with unauthorised development prior to considering new development with reference to a court case (Clearly Composting v An Bord Pleanala).
- It is considered that the proposal is a material contravention of the County Development Plan and that the Council would have had to enact the proper procedures to grant permission. The proposal is contrary Objectives 8 of the Mount Juliet Area Action Plan as the area subject to development is identified as open space and not an area identified for further development of residential accommodation. It is also noted that the intention for the units is to sell and not as part of the tourist accommodation of the overall estate, which is also contrary to Objective 8 and not accordance with settlement strategy under the County Development Plan.
- The appellants note there was a failure to undertake an Appropriate Assessment with no evidence of screening for appropriate assessment. It is noted that the screening assessment submit relates to the original proposal with the site extended in size to take in the entire par 3 course. It is noted that no Appropriate Assessment was carried out regarding the revised proposal relating to the apartment units and the par 3 course and the site is close proximity to the river Nore. It is considered that a stage 2 appropriate assessment is required.
- The proposal would be detrimental to character and setting of existing protected structures and their curtilage due to design, scale and location. The proposal would be highly visible from protected view V2. The proposal would also entail the removal of a number of mature trees and is inconsistent with conservation objective of the County Development Plan.
- The proposal would constitute overdevelopment with the existing estate and is at a location not identified as being suitable for such accommodation under Objective 8 of the County Development Plan.

- The loss of the par 3 putting course without permission would represent loss of a valuable tourism and leisure asset.
- The proposal involves the loss of 9 mature trees, 8 of which are in good health and condition. The site is part of sensitive woodland area and the level of tree loss would be unacceptable.
- It is noted there was no study provided in relation to traffic and car parking. Concern is expressed regarding the potential for further traffic on the existing internal road network taken in conjunction with recent developments within the estate.
- It is considered the proposed residential units do not meet the Development Standards in relation to open space.
- The appellant's properties would be devalued due to the removal of common space, the par three course and due to the proximity of additional accommodation to existing units.

6.1.2 A third party appeal has been lodged by Brian Coleman, 52 Rose Garden Lodge, Mount Juliet, Thomastown, Co. Kilkenny.

- The proposal materially contravenes Objective 8 of the County Development Plan with the location not identified as facilitating further residential development. The proposal would be detrimental to the character and setting of a protected structure and its curtilage. It is also noted that the applicant has carried out unauthorised development (par 3 course).
- The proposal would have inadequate separation from existing residential accommodation with the appellant noting that he bought his property based on assumptions that no development would be proposed in this manner that would impact on residential amenity and outlook. The appellant notes a number covenants in the legal documents exchanged at the time the appellant purchased their property.

- The appellant notes the significance of the putting course in terms of its design and standing and notes that its removal is unacceptable and unjustified.
- The location of the proposed lodged is not consistent with the current Development Plan. It is noted that the proposed accommodation is to be marketed and sold, which is not in accordance with Development Plan policy.
- There is inadequate separation distances between the proposed development and existing residential development to the south west.

6.2. Applicant Response

6.2.1 Response by Tom Phillips and Associates on behalf of the applicants, Mount Juliet Estates Residents Group (MJREG).

- The applicants note that the revised proposals in response to further information are consistent with the Planning and Development Regulations disagree with the appellants' interpretation. It is noted that further Section 5 declaration has been sought in relation to the works at the putting green and that the Council have already considered such to be exempted development. It is noted that such works (putting course) are not integral to the proposal and that the proposal is only partially located on the previous footprint of the putting green.
- It is noted the location of the proposed development is consistent with objectives of the County Development Plan and the Mount Juliet Action Area Plan.
- The applicants clarified the status of the units in response to further information noted they are to support the overall development of the estate, are to be purchased by private individuals and such will be required to become members of the golf club. It is noted that this model has been used previously in regards to accommodation in the estate.
- It is noted that a screening assessment was submitted with the application and a revised screening assessment with the response to further information

with it concluded that there are no significant effects arising. There is no evidence provided to assert the claim that a Stage 2 Appropriate Assessment is required.

- It is noted that the proposal would have no significant or adverse impact on the setting or character of a protected structure and its curtilage with it noted that a conservation report was provided which noted this conclusion.
- The proposal has no impact on any of the protected views in the vicinity due to the modest scale of the development and its existing woodland setting.
- The proposal would not constitute overdevelopment with it noted the recent development at Hunters Yard is more significant in scale than the proposal.
- It is noted that the putting green had fallen into a state of disrepair and was used sparingly in later years. Such does not represent a significant amenity within the estate.
- It is noted on relation to tree loss that a Landscaping Masterplan was submitted to address replenishment of tree stock in the vicinity and provide for pathways linking the development with the Main House and other locations in the estate. It is noted that the loss of trees would not impact on existing screening of the Main House and have no significant effect on the protected structure.
- It is noted the proposal provides for 12 no. units with 18 no. car parking spaces provided. It is considered that the proposal would have no significant traffic impact at this location.
- The proposal is consistent with the relevant standards in relation to apartment developments and is sufficiently separated from existing residential development in the vicinity. It is considered the proposal would have no impact on property values in the vicinity.
- It is noted that the appellant's (Brian Coleman) issues in regards to contracts property rights relating to his purchase of his unit are not planning considerations.

6.3. **Planning Authority Response**

Response by Kilkenny County Council

- The Local Authority have no further response to make.

7.0 **Assessment**

7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Development Plan policy

Visual impact, architectural heritage

Adjoining amenity

Trees and vegetation

Traffic Impact

Appropriate Assessment

Par 3 course and other issues

7.2 Development Plan policy:

7.2.1 One of the main issue raised in the appeal submissions relates to the appropriateness of the location of the additional lodges. The appeal submission notes that the proposal is contrary objective 8 and that the proposed lodges are in an area identified as open space. As outlined above objective 8 of the Action Area Plan states 'to provide for the development of additional lodges adjacent to the existing Rose Garden lodges associated with the estate's tourism, leisure and recreational functions without detracting from the estate's landscape character and built natural heritage'. The location of the proposed additional lodges is adjacent or in close proximity to the existing Rose Garden Lodges. Whether the proposal detracts from estates landscape character and built natural heritage is to be explored in more detail in further sections of this report. I would consider the location of the proposed lodges is acceptable in principle and is contingent on being satisfactory in the context of landscape character, architectural heritage as well as adjoining amenities.

7.2.2 The indication on the file that the proposed lodges are to be sold on the open market to private individuals. Objective 8 allows for the provision for the development of additional lodges adjacent to the existing Rose Garden lodges associated with the estate's tourism, leisure and recreational functions without detracting from the estate's landscape character and built natural heritage'. I would question whether such development whereby the residential units are sold for permanent residents is consistent with this objective, which note the estate's tourism, leisure and recreational functions. Having regard to this fact and the location of the site within an 'area under urban pressure' as defined by the County Development Plan and a 'rural areas under strong urban influence' as defined by the Sustainable Rural Housing Guidelines, the applicants have failed to demonstrate compliance with Section 3.5.2.3 in relation to Rural Generated Housing Need. There is also a failure to demonstrate that the proposed development is consistent with Objective 8 of the Mount Juliet Action Area Plan 'to provide for the development of additional lodges adjacent to the existing Rose Garden Lodges associated with the estate's tourism, leisure and recreational functions without detracting from the estate's landscape character and built natural heritage". The proposed development would be contrary to development plan policy, rural housing policy under the Sustainable Rural Guidelines and would, therefore, be contrary to the proper planning and sustainable development of the area.

7.3 Visual impact, architectural heritage:

7.3.1 Mount Juliet Estate contain a number of protected structures (five structures) with the appeal site being within curtilage of such as well as the wider curtilage of the main house being a landscape of significant heritage value in itself. Firstly I would note that the proposal entails no alterations to any protected structures. The proposal is to construct a 3 no. two-storey blocks to the north east of the Rose Garden Lodges. The overall design and scale of the proposed development is similar in architectural style and character to the existing development in the vicinity (Rose Garden Lodges) and is located in an open space area that is well screened by

existing mature trees. I am satisfied that the design and scale of structures proposed are in keeping with the architectural character of existing structures at this location and would not be detrimental to the overall visual amenities of the area. I am satisfied that existing landscaping taken in conjunction with the proposed landscape masterplan, would ensure that the proposed development would be integrated satisfactorily at this location.

7.3.2 I am satisfied that the location, scale and nature of existing and proposed landscaping is such that the proposed development would have no significant or adverse impact on the character, setting or integrity of any of existing protected structures within the estate or a significant impact on the surrounding curtilage. In relation to protected viewpoints in the vicinity of which there are 4 (V1, V2, V3 and V4), the relatively modest scale of the proposed development, taken in conjunction with its location in a sheltered woodland location, would mean that it would have no significant or prominent visual impact from the protected viewpoints or other locations in the vicinity of the site and Mount Juliet Estate.

7.3.3 The original extent of the appeal site was on part of the former par 3 course on site, with the development description and site boundary altered to take coincide with the full extent of the par 3 course. At present the area of the site and the former par 3 course is an open area surrounded by trees and is an attractive area in character. The former par 3 course appears have been removed/not maintained and despite such the area is still an attractive area from point of view of landscape character. I am satisfied that the overall design and scale of development taken in conjunction with existing landscaping and vegetation and proposed landscaping, would have no significant or adverse impact on landscape character, structures or features of architectural heritage value or built natural heritage. Having regard to such I would consider that the proposal is consistent with the objectives set down under the action area plan and would specifically refer to objectives 1 and 8 in this regard.

7.4 Adjoining Amenity:

7.4.1 The overall impact of the proposal relative to the existing amenities of the residents of Rose Garden Lodges is noted. The appellants note that there is insufficient separation between the proposed and existing residences at this location as well as a significant change in outlook from the existing units. The design and layout of proposed units and the existing Rose Garden Lodges is such that a one of the shorter elevations of Block A faces towards the rear elevation of one of the blocks that makes up Rose Garden Lodges. There is a separation distance of just over 20m between their nearest points. One of the appellants makes the point that separation distances do not meet the 22m standard commonly applied in the case of back to back dwelling units. I would disagree with this assessment and note that the separation distances at ground floor level is just over 20m, while separation distance between opposing first floor windows is 22m (not balconies). I would be satisfied that there is adequate separation between the proposed units and existing units in Rose Garden Lodges and taken in conjunction with proposed and existing landscaping, the overall design, scale and layout of the proposed units have adequate regard to the amenities of existing residents in Rose Garden Lodges as other structure in the vicinity.

7.5 Trees:

7.5.1 An Arboricultural Impact Assessment (AIA) was submitted as part of the application. The AIA includes a tree survey of 67 trees and an assessment of their condition and value. The proposal provides for the retention of 57 of the trees surveyed with 10 to be removed to facilitate the proposed development. Of the 9 trees to be removed, 1 is deemed to be lowest category in terms of condition and value, while two trees are in category A (high quality and longest life expectancy of at least 40 years), four are in category B (moderate quality and a life expectancy of at least 20 years) and three trees are in category C (low quality and an estimated life expectancy of at least 10 years).

7.5.2 I would have concerns that the proposal is leading to removal of a significant number of a good quality mature trees with sufficient justification. Mount Juliet is a sizeable

estate and I would note that if further development is permitted, there must be other locations that could facilitate similar development levels without the necessity to remove the level of mature trees proposed in this case. Under Section 12.11.17, Tree and Hedgerow Preservation it is noted that “development will not generally be permitted where there is likely damage or destruction either to trees protected by a Tree Preservation Order or those which have a particular local amenity or nature conservation value, or are listed in the Survey of Mature Trees in the City and Environs. Development that requires the felling of mature trees of amenity value, conservation value or special interest, even though they may not be listed in the Development Plan, will be discouraged”. The proposed development would result in the loss of mature trees of good quality without sufficient justification and would detrimental to the landscape character of the area and contrary to Development Plan policy under section 12.11.17.

7.6 Traffic Impact:

7.6.1 The appeal submission note concerns in regards to overall traffic impact and parking with concerns about the overall impact of additional traffic within the estate. There is an established network of internal roads within the estate and the proposed development will link into such. The proposal is for 12 additional residential units. In the context of the scale of the existing development in operation at this location, this development is modest in scale and unlikely to generate a significant level of traffic that would merit a traffic study (road safety audit submitted). Having inspected the site there is a traffic control regime in place (speed limits). The proposal provides for 18 car parking spaces in the courtyard area of the proposed development, which is well in excess of the minimum standards that would be required under the Kilkenny County Development Plan (1 space per unit). I am satisfied that the level of traffic likely to be generated would not be significant in the context of the established operation, the level of car parking provided is more than adequate and that the proposed development would be satisfactory in the context of traffic safety and the convenience of other road users.

7.7 Appropriate Assessment:

7.7.1 The EU Habitats Directive (92/43/EEC) Article 6 (3) requires that “any plan or project not directly connected with or necessary to the management of the (European) Site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in light of its conservation objectives. In light of the conclusion of the assessment of the implications for the site, and subject to the provisions of paragraph 4, the competent national authorities shall agree to a plan or project only after they have ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

7.7.2 A screening assessment was submitted with proposed development. It identified 4 Natura 2000 sites within 15km of the appeal site. These are...

River Barrow and River Nore SAC (Site Code 002162), 70m from development boundary.

River Nore SPA (Site Code 004233) 190m from proposed development.

Thomastown Quarry SAC (Site Code 2252) 2.9km from proposed development.

Hugginstown Fen SAC (Site Code 000404) 10.8km from the proposed development.

The qualifying interest of each is outlined. It is noted in the case of the two nearest designated the Rvier Barrow and Nore SAC and River Nore SPA that most of the conservation objectives do not occur in the vicinity of the development with the nearest population of freshwater pearl mussel 30km upstream. It is noted that white clawed crayfish are widespread through the SAC and a patch of alluvial forest is located a few kilometres upstream of the site. It is noted that only qualifying interest of the Nore SPA is the Kingfisher, which is known to breed locally. It is noted that the Thomastown Quarry SPA is upstream of the site and lacks a direct hydrological link to the proposed development site. The Hugginstown Fen SAC is noted as being further away and also lacking direct hydrological link to the proposed development

site. It is noted that there will be no direct habitat loss of any of the designated site with no loss of the riparian corridor or works adjacent the River Nore.

7.7.3 It is noted there is potential for habitat loss or deterioration of such through the effects of run-off or contaminated discharge during the construction phase. It is noted that such is unlikely due to proper construction management as well as the fact the site is not prone to flooding. The screening report outlines the details of construction period and construction management proposal to ensure no direct or indirect effects on the designated sites in the vicinity. In addition it is noted there are no significant plans or projects in the locality that may give rise to in-combination effects. It is concluded that no significant effects are likely to occur.

7.7.4 As result of further information the site boundary was altered and a revised screening assessment was submitted. The appeal site was enlarged in size and included the lands formerly used as a putting green. The revised site boundary and development description does not alter the details outlined in the original screening report including the designated sites within 15km of the site, their qualifying interests, the fact the proposal entails no direct habitat loss and the nature possible effects as a result of the proposed development and mitigation measure proposed to prevent such. The conclusion is the same in that is considered that no significant effects are likely to occur. It is notable that the description of the proposal development does not include the works carried out to remove the par 3 course and the alterations are an increase in the site area. These works are not for consideration under this application.

7.7.5 The project has no direct effects in that it is not located within the boundaries of the Natura 2000 sites and does not entail direct habitat loss. Both the Thomastown Quarry SAC and Hugginstown Fen SAC are too remote from the site with no potential path source way receptors between the site and the designated sites. In the case of the River Barrow and River Nore SAC the main potential impact is deterioration of water quality due to discharges of discharge of polluting materials such as suspended solids and hydrocarbons. These potential effects are likely to be

confined to the construction stage concerning excavation works and construction machinery with no proposal for any discharges during the operational phase and no significant change to the surface water drainage characteristics of the site. I am satisfied that the adequate construction management proposal would prevent the accidental discharge of suspended solids and hydrocarbons to the River Barrow and River Nore SAC and that the project would have no significant effects, direct or indirect on the conservation objectives of such I am satisfied that the proposal would no significant effects on The Nore SPA.

7.7.6 It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the River Barrow and River Nore SAC and the River Nore SPA, or any other European Site in view of their Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required.

7.8 Par three course and other issues:

7.8.1 The appellants note that the proposal is on the site of what was a par three putting course that had permission under ref no. 97/687. The appellants note that it was removed without permission and such was unauthorised development. It is noted that the proposal to build on part of this course would be contrary to the proper planning and sustainable development of the area.

7.8.2 The applicants note that the par three course had fallen into disrepair and the decision was taken to remove it and that ground works were undertaken to remove it and use the area as a grassed open space area. The applicants claim that the works to remove the par three course constitutes exempted development and obtained a Section 5 declaration from Kilkenny County Council determining that such is the case. This declaration has subsequently been referred to the Board for consideration (ABP-300933-18). The referral was determined with it considered that works to remove the par 3 course constitute development and is not exempted development.

7.8.3 At the time of inspection the area in question is grassed area surrounded by trees and is an open space area with no clearly defined use. There are some indications in the topography of the area in question that it was formerly laid out in as a putting course. The question of whether the removal of the par three course constitutes works and whether such works is or is not exempted development is not being assessed under this appeal. This is subject to assessment under the ref no. ABP-300933-18 and it was determined that works to remove the par three course constitutes development and was not exempted development on the basis that it contravened condition no. 4 of permission ref no. P97/687. It appears based on such that unauthorised development has been carried out on the site and the rectification of regularisation of such a situation is not provided for under the development description in this case.

7.8.4 The appeal submissions raise a number of issues that relate to the expectations of the residents of Rose Garden Lodges in regards to the management of Mount Juliet Estate and agreements between it and existing residents (covenants). The appellants raise concerns regarding their expectations that future development would not occur and that they would have access to certain facilities such as the par three course. I note that issues concerns the terms and conditions of purchase of properties and the entitlement of residents to certain facilities or standards by the management of Mount Juliet Estate is not a planning matter and will not be assessed under this appeal.

8.0 Recommendation

8.1. I recommend refusal based on the following reasons...

9.0 Reasons and Considerations

1. The proposal entails the provision of new residential development within the grounds of Mount Juliet Estate in the rural area of Co. Kilkenny. The indication on file is that the units are to be made available for sale on the open market. Having regard

to this fact and the location of the site within an 'area under urban pressure' as defined by the Kilkenny County Development Plan 2014-2020 and a 'rural areas under strong urban influence' as defined by the Sustainable Rural Housing Guidelines, the applicant have failed to demonstrate compliance with Section 3.5.2.3 in relation to Rural Generated Housing Need. There is also a failure to demonstrate that the proposed development is consistent with Objective 8 of the Mount Juliet Action Area Plan 'to provide for the development of additional lodges adjacent to the existing Rose Garden Lodges associated with the estate's tourism, leisure and recreational functions without detracting from the estate's landscape character and built natural heritage". The proposed development would be contrary to development plan policy, rural housing policy under the Sustainable Rural Guidelines and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Section 12.11.17 (Tree and Hedgerow Preservation) of the Kilkenny County Development Plan 2014-2020 notes that "development will not generally be permitted where there is likely damage or destruction either to trees protected by a Tree Preservation Order or those which have a particular local amenity or nature conservation value, or are listed in the Survey of Mature Trees in the City and Environs. Development that requires the felling of mature trees of amenity value, conservation value or special interest, even though they may not be listed in the Development Plan, will be discouraged". The proposal entails the removal of a number of mature trees of good quality and life expectancy to facilitate the proposed development without sufficient justification. The loss of such trees would be detrimental to landscape character and be contrary to Development Plan policy regarding tree preservation. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Colin McBride
Planning Inspector

06th September 2018

