



An  
Bord  
Pleanála

## Inspector's Report ABP-302659-18

---

<b>Development</b>	Construction of 20 houses & provision of 8 serviced sites, and all associated site works.
<b>Location</b>	Killeen Td and Grange Td, Killeen village, Maganey, Co. Laois.
<b>Planning Authority</b>	Laois County Council
<b>Planning Authority Reg. Ref.</b>	17/499
<b>Applicant(s)</b>	Jim McDonald
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	James G. & Emer Moore
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	4 <sup>th</sup> January 2019
<b>Inspector</b>	Michael Dillon

## 1.0 Site Location and Description

- 1.1. The site, with a stated area of 2.1ha, is located in the small village of Killeen – some 2.0km due west of the hamlet of Maganey in Co. Kildare (but the site itself is within Co. Laois). One access to the site is through the Bruach na hAbhann housing estate, which itself is accessed off the R429 Regional Road linking Maganey on the R417 with the hamlet of Ballickmoyler on the N80: a second access is off the L3992 county road. The 50kph speed restriction applies in this hamlet; whilst the 80kph speed restriction applies on part of the L3992. Only with care, is it possible to pass two cars on the L3992. There is public lighting in place, and there are public footpaths within the Bruach na hAbhann estate, but not on the L3992 at the site boundary.
- 1.2. The site is relatively flat: OS Discovery maps indicate a spot height on the site of 57m OD – with two slight dips at the northern and southwestern corners. The site comprises a roughly rectangular arable field, with good-quality hedgerow boundaries – but with no mature trees of note. The hedgerow on the southeastern boundary has been severely cut back. The site was dry under foot on the date of site inspection by this Inspector. There is a 40ft metal container located in the eastern corner. The recently-completed Bruach na hAbhann housing estate is located on the southwestern and northwestern boundaries of the field. There is a county road (L3992) located on the eastern boundary of the site – on the opposite side of which is a one-off house and agricultural land. There is agricultural access to the site from this road. There is no public lighting and there are no public footpaths on this road. To the southeast, the site abuts agricultural land.
- 1.3. There is one semi-completed (abandoned) house within the Bruach na hAbhann estate. In addition, there are a number of vacant and boarded-up units within the estate: there are two undeveloped house sites. The WWTP for the estate is surrounded by a 2.4m high palisade fence: the discharge is to the Crompaun River, which flows along the western boundary of the estate. There was a strong flow of water in the river. There was no odour from this plant on the date of site inspection.
- 1.4. The village of Killeen contains a church & graveyard, community hall/sports area, factory, public house, national school, creche, two small housing estates and a number of one-off houses.

## 2.0 Proposed Development

2.1. Permission sought on 14<sup>th</sup> September 2017, for housing development comprising 20 single- and two-storey units – with access through the Bruach na hAbhann housing estate. and also from the L3992 county road. A further 8 no. serviced sites will be accessed via a second access off the L3992. Water supply is from the public mains. Foul waste is to be discharged to a WWTP within the Bruach na hAbhann estate. Surface water is to be discharged, following attenuation, to the Guillie River, by means of a wayleave through a farmyard and adjoining field on the opposite side of the L3992 road.

2.1.1. The application is accompanied by the following documentation of note-

- Engineering Report for roads and drainage – dated 6<sup>th</sup> July 2017.
- Stage 1 Appropriate Assessment Screening Report – dated 25<sup>th</sup> June 2017.

2.2. Following a substantial request for additional information, revised proposals were received on 6<sup>th</sup> June 2018, as follows-

- Relocation of some houses within plots, and associated revised car-parking.
- House-type pertaining to each of the 20 house sites.
- Finished floor levels of all houses within the site, and within the adjoining Bruach na hAbhann estate.
- Revised discharge of surface water to the Crompaun River, rather than the Guillie River – through the Bruach na hAbhann estate pipe network.
- Details of sightlines for egress from the housing development and from the 8 no. serviced sites onto the L3992 (the latter egress within an 80kph speed restriction zone).
- Division of the 20 houses into two distinct culs de sac of 10 houses each.
- Details of proposed pedestrian crossing points.
- Details of public lighting layout.
- Details of areas of the site subject to flooding – limited to the public open space areas – Zones A & B indicated on drawings.

- Original sewage scheme for phase 1 (Bruach na hAbhann) was designed to cater for phase 2 development. The system has been taken-in-charge by LCC.
- Revised surface water attenuation proposals are submitted – including relocation of attenuation tank.
- Where possible, existing boundary hedgerows will be retained.
- Water supply network is taken-in-charge by LCC.

2.2.1. The response submission is accompanied by the following documentation of note-

- Letter from John Moran MCC, in relation to capacity of creche operating at Killeen – dated 23<sup>rd</sup> April 2018.
- Letter from St. Abban's NS, Killeen, indicating that there is capacity – dated 21<sup>st</sup> March 2018.
- Outdoor Lighting Report – dated 1<sup>st</sup> June 2018.

2.3. Following a request for clarification of additional information, revised proposals were received on 13<sup>th</sup> August 2018, as follows-

- Irish Water now controls the water supply and WWTP within the Bruach na hAbhann estate.
- Proposals for a bicycle connection between the two culs de sac are now indicated.
- Access to the serviced sites from the L3992 is acceptable, subject to footpath and public lighting along this road being extended out as far as the entrance; prior to opening of the junction.
- Relocation of house A1 (SH1) away from the flood plain.

### 3.0 Planning Authority Decision

By Order dated 6<sup>th</sup> September 2018, Laois County Council issued a Notification of decision to grant planning permission; subject to 18 no. conditions – the principal ones of which may be summarised as follows-

1. Development to be carried out in accordance with plans and particulars received by the LA on 14<sup>th</sup> September 2017, 6<sup>th</sup> June 2018 and 13<sup>th</sup> August 2018.
2. No construction shall be undertaken until Irish Water can supply water and sewerage to each of the 28 sites.
3. Relates to surface water – and requires a surface water attenuation tank for road areas within the site.
4. Relates to road matters; and requires, *inter alia*, provision of a public footpath along the entire site frontage of the L3992 county road.
5. Relates to external finishes of houses.
9. Requires two on-site car-parking spaces for each house.
12. Requires, *inter alia*, boundary treatments and mature trees to be retained.
14. Requires bond of €7,620 per house.
16. Requires compliance with Part V.
18. Requires payment of a development contribution of €112,000.

#### 4.0 Planning History

**Ref. 04/1378:** Permission granted to Jim McDonald to construct the Bruach na hAbhann housing estate. This development is largely completed.

**Ref. 06/844:** Permission granted to Jim McDonald to construct 18 no. houses and 9 no. serviced sites. The permission was never taken up, due to the economic downturn of 2008, and has now lapsed.

**Ref. 11/332:** Refers to an application to extend the duration of permission ref. 06/844, which was refused on 30<sup>th</sup> September 2011.

**Ref. 10/627:** Permission refused for construction of 27 no. houses on this site on 22<sup>nd</sup> February 2010.

**Ref. 12/243:** Permission refused for construction of 18 no. houses and 8 no. serviced sites, on 1<sup>st</sup> August 2012. The reasons for refusal related to flooding (Flood Risk Zone A), proximity to an SAC (and lack of any assessment of the potential

impact of the development on the SAC), and nature and scale of development within a village, which would detract from the visual and residential amenities of the village.

## 5.0 Policy Context

### 5.1. Development Plan

The relevant document is the Laois County Development Plan 2017-2023. Volume 2, dealing with Settlement Plans, indicates that Killeen falls within the category of 'Small Villages (less than 400 population)'. The site is within the development boundary of the small village. The lands are zoned "Residential 2".

The Core Strategy of the Plan indicates Killeen within Zone C (the middle of five such zones for the entire county. Section 2.1.6 states- "Zone C is made up of lowland mixed farmland and settlements with links to Strategic Transportation Corridors and key development areas. It is envisaged that there will be continued growth in the rural economy through specialist agriculture, diversification into complementary food production, rural tourism development opportunities. These stronger rural areas will prosper with intensifications in areas of specialist tillage – especially near major settlements and transportation corridors". Section 2.5.2 states in relation to Designated Settlements (and, in particular, villages <400 population) – "These areas have a limited service base and are to a large extent founded on the local primary school catchment area. These villages provide opportunities for future expansion/provision of services such as community centres, local shop, pub, petrol outlet and have the potential to attract a population seeking to live in a rural environment. Development growth should be low density, relative to the scale of the settlement, located as near as is practicable to the core area.

It is the policy of the Council to

**CS37** Conserve and enhance and strengthen villages <400 population;

**CS38** Direct population growth in line with settlement strategy;

**CS39** Encourage social and community uses within villages <400 population that sustain the population;

**CS40** Promote densities, relative to the scale of the settlement, located as near as is practicable to the village centre area having regard to Sustainable Residential Developments in Urban Areas (DEHLG, 2009) and ensure that any plan or project associated with the provision of new housing is subject to Appropriate Assessment Screening in compliance with the Habitats Directive, and subsequent assessment as required”.

## 5.2. Natural Heritage Designations

The site is located neither within nor immediately abutting any natural heritage designation. The Crompaun River, to which it is proposed to discharge surface water and foul waste (via the WWTP within the Bruach na hAbhann housing estate), is connected with the River Barrow and River Nore SAC – located some 2.75km downstream from the WWTP discharge point.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The 3<sup>rd</sup> Party appeal from James G. & Emer Moore of 30 Bruach na hAbhann, received by An Bord Pleanála on 28<sup>th</sup> September 2018, can be summarised in bullet point format as follows-

- The existing water supply scheme and sewerage scheme serving Phase 1 (Bruach na hAbhann) are seriously inadequate. Surface water is being discharged into the foul network within Phase 1. No details of the capacity of the receiving waters in the Crompaun River have been submitted. High water levels in the Crompaun River almost block the outlet pipe for the WWTP. Malodours emanate from sewers and drains.
- Planning permission has been refused on two occasions by LCC for a housing development on this site, on grounds of deficiencies in sewerage treatment.
- No screening trees have been planted around the WWTP.

- Flood relief works could have an impact on Phase 1. Finished floor levels of houses in Phase 2 are higher than those for houses in Phase 1. The majority of Phase 1 is a flood risk area. Residents were not aware of this when they purchased their houses. Phase 1 should never have been built on a flood plain. Phase 2 increases the risk of flooding within Phase 1. An attenuation tank is proposed to be constructed within an open space area, which in itself is within a flood risk zone: this is located adjacent to the appellants' house. The Crompaun River regularly floods. Some residents of Phase 1 have experienced difficulties with house insurance – arising from flooding issues.
- The narrow roads are not suitable for additional traffic. Roads within Phase 1 are too narrow, and this will be compounded by similar roads within Phase 2.
- There are no pedestrian crossings to facilitate schoolchildren.
- The access from Phase 1 to Phase 2 is located too close to a creche, and could be a traffic hazard – particularly at drop-off and collection times.
- The creche is currently operating at full capacity. This is contrary to what is stated in a letter from a local county councillor, which accompanied the additional information submission to LCC (claiming that there was capacity at the creche).
- There will be overlooking of neighbouring properties, as finished floor levels are higher within Phase 2.
- Water pressure in the area is already inadequate. There is no evidence that the existing borehole could provide water for this development.
- An Environmental Impact Assessment Report should have accompanied the application.
- A Natura Impact Statement should have accompanied the application, arising from potential impact on the River Barrow and River Nore SAC.
- There is one derelict house and five vacant houses within Phase 1. Planning permission for a further two houses has not been taken up.

6.1.2. The appeal is accompanied by the following documentation of note-

- 14 no. annotated colour photographs of Phase 1.



- Colour photographs of flooding issues at no. 44 Bruach na hAbhann
- Letters from residents submitted to LCC (and now to ABP) in relation to flooding and sewerage issues.
- Letter from creche owner – stating that creche is full for 2018/2019 – dated 22<sup>nd</sup> September 2018.
- Copy of original submission to LCC (made by the appellants).
- Details of refusal of planning permission ref. 12/291.

## 6.2. Applicant Response

The response of Jason Redmond, agent on behalf of the applicant Jim McDonald, received by An Bord Pleanála on 31<sup>st</sup> October 2018, can be summarised in bullet point format as follows-

- Phase 1 (Bruach na hAbhann) has been taken-in-charge by LCC. The applicant fulfilled all planning requirements, at a time when many estates were being abandoned by developers.
- Significant further information was submitted during consideration of this application by LCC.
- A separate agreement will be entered into with Irish Water.
- There is no surface water entering the foul drainage network within Phase 1.
- There is no record of the WWTP being flooded – to the applicant’s knowledge.
- Irish Water will be taking control of water supply and the WWTP in the short-to medium-term.
- There is no proposal to build in a flood zone.
- Proposals for surface water attenuation have been submitted.
- Roads within the scheme are in compliance with DMURS.
- There are no overlooking issues: separation distances are appropriate – with some units being single-storey.

- The creche appears to be full at present: however, phasing of development would result in places being sought over the next two or three years.
- This housing scheme is badly needed, and permission should be granted by the Board.

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

There was no response received from Laois County Council.

### 6.4. **Observations**

6.4.1. An Bord Pleanála referred the appeal to the following Prescribed Bodies, by letters dated 7<sup>th</sup> November 2018: requesting comment on or before 4<sup>th</sup> December 2018-

- The Heritage Council.
- Inland Fisheries Ireland.
- Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht.

6.4.2. There were no responses received.

## 7.0 **Assessment**

### 7.1. **Development Plan & Other Guidance**

7.1.1. The site is zoned for residential use in the current Development Plan. There is little other residentially-zoned land within the village. It has a limited service base – and does not contain a shop of any sort. Notwithstanding this, it has been identified for residential development within the settlement hierarchy of the Development Plan.

7.1.2. The “Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages), issued by the Department of Environment, Heritage and Local Government in May 2009, are of relevance. Chapter 6 deals with small towns and villages – identified as having a population between 400 and 5,000. I note that Killen is identified by LCC as being a small village with a population of less than 400. The Guidelines state that development within such villages can offer

an alternative to those seeking to build in rural areas. In this context, I would note that provision is made for 8 no. serviced sites. The scale of development should be in proportion to the pattern and grain of existing development. Phase 2 is in accordance with the pattern and grain of already developed Phase 1 (Bruach na hAbhann). The development will contribute to a compact village – eschewing the possibility of ribbon development out along the L3992, in favour of in-depth development. The development provides for effective connectivity with Phase 1, and allows for permeation by pedestrians and cyclists throughout – linking Phase 1 within the L3992 county road, and providing for access through Phase 1 to the creche, national school and community centre/sports facilities within the village. The Guidelines note that it is difficult to be prescriptive about residential densities in small villages – there being so many factors to be taken into consideration. Section 6.12 states- “In order to offer an effective alternative to the provision of single houses in surrounding un-serviced rural areas, it is appropriate in controlled circumstances to consider proposals for developments with densities of less than 15-20 dwellings per ha along or inside the edge of smaller towns and villages, as long as such lower density development does not represent more than 20% of the total new planned housing stock of the small town or village in question”. Again, I would note that population of this village is well below the 400-threshold referred to in this section of the Guidelines. I also note that the density of development is similar to that which was granted permission in Phase 1 (Bruach na hAbhann). Finally, it should be noted that the public open space area provided, is necessarily larger, because of liability of lands to flooding. For these reasons, I would consider that 13.3 houses per ha, as proposed by the developer, is appropriate for this site.

## **7.2. Layout & Design**

7.2.1. The appellants point out that permission has previously been refused for a housing development on this site – as recently as 2012. The applicant has met with the PA and worked to overcome the reasons for refusal; amongst other things relating to flooding, proximity to an SAC, and nature and scale of development.

7.2.2. The nature and scale of development is appropriate to this location. The design and layout of the scheme is similar to that of Phase 1 (Bruach na hAbhann). There is a good variety of house design (two- and three-bedroom units), within what is a small

development. External finishes have not been indicated on drawings submitted. Condition 5 of the Notification of decision to grant planning permission required nap plaster external walls and blue/black roof slates/tiles. This would appear reasonable, and would reflect external finishes of houses within Phase 1. The provision of 8 no. serviced sites will offer an alternative to those wishing to build their own house within a rural area of the county. Public open space is more than generous, although its location has been largely determined by issues relating to flooding rather than usability or location within the scheme. There is one bungalow proposed on the northwestern boundary of the site. Whilst this house is located close to the site boundary (2m), there are no windows to habitable rooms on this side of the house, and it will not result in any loss amenity for residents of houses to the northwest. All houses have been provided with good rear gardens for private amenity use – this being particularly the case with the 8 no. serviced sites which are of a generous size: 573m<sup>2</sup> – 980m<sup>2</sup>.

- 7.2.3. A landscaping plan has been submitted with the application. Condition 12 of the Notification of decision to grant planning permission required, *inter alia*, that all hedgerow boundaries be retained. Obviously, gaps will have to be created to allow for the three new road access points. It is not clear if it will be possible to retain the roadside boundary hedgerow on the L3992, as it will be necessary to provide sightlines at the two new access points, and also to provide a footpath, public lighting and roadside drainage along this boundary of the site. The hedgerow contains no trees of note. In the event that it is necessary to remove this hedgerow, a condition should be attached to any grant of planning permission, requiring a new hedgerow of native species to be planted along the set-back line.

### 7.3. Access & Traffic

#### 7.3.1. Access

There are two access points proposed to the development of 20 houses. There is an existing gap between two houses within Phase 1 (Bruach na hAbhann) which will provide one access. The second access is located off the L3992 county road, within the 50kph speed restriction area associated with the village. Sight distance is adequate on this quiet county road. There are already a number of detached houses within the village with access to the L3992. By way of additional information, revised

proposals provided for a break in the connection for vehicular traffic between the two access points: in other words, Phase 2 is broken up into two distinct culs de sac of 10 houses each – one cul de sac accessed from Phase 1, and one cul de sac accessed from the L3992. Provision is made for pedestrian and cycle connectivity between the two culs de sac. In addition, it is proposed to provide a second access off the L3992; to serve the 8 no. serviced sites. This access is located within the 80kph speed restriction area. The L3992 is a quiet county road. Adequate sight distance is available at the proposed access. It is proposed to extend the footpath and public lighting network of the village out as far as the proposed access to the 8 no. serviced sites (confirmed by way of condition 4 of the Notification of decision to grant planning permission). In time, it would be necessary to extend the 50kph speed restriction zone of the village out as far as this access. Condition 4.f of the Notification of decision to grant permission stated that the entrance to the 8 no. serviced sites could not be opened until the 50kph speed restriction associated with the village was extended out as far as the entrance. Pedestrian and cycle access is provided from the head of the this cul de sac to the remainder of the development, through an area of public open space. The Applicant submitted an Engineering Report with the application (dated 6<sup>th</sup> July 2017). The application was referred to the Roads Design Section of LCC for comment. The Planner's Report (dated 6<sup>th</sup> November 2017), refers to a report from the Roads Design Section of LCC – requesting further information. However, there is no copy of this Roads Design Section report on the file.

Road widths (5.5m) proposed are perfectly adequate for the level of traffic which will be using this development. Tactile paving and drop kerbs will be provided at crossing points. Parking provision has been made for each house. The proposed development will not result in such a level of increased traffic which could have any impact on road safety in relation to the location of the creche within Phase 1.

Pedestrian crossings within a small housing estate such as this, are not necessary to facilitate schoolchildren.

### 7.3.2. Parking

The applicant proposes to provide two parking spaces for each of the 20 houses. On-site parking provision for some of the houses was revised by way of additional

information submission. Condition 9 of the Notification of decision to grant planning permission restated this requirement. The parking layout proposed is acceptable.

#### 7.3.3. Cycling

The applicant was requested, by way of additional information, to indicate a cycle network through the scheme. Having regard to the size of the development and the absence of any cycling network elsewhere in the village, this would seem to be unnecessary. A cycle connection between the two culs de sac within the scheme was indicated by way of clarification of additional information submission.

### 7.4. **Water**

#### 7.4.1. Water Supply

The proposed development is to be served from the public mains; in turn fed from a borehole. The water supply network is in charge of Irish Water. The appellants have claimed that there is poor water pressure in the area, and question whether the existing borehole serving Killeen has the capacity to serve Phase 2 of this development. The application was referred to Irish Water on 26<sup>th</sup> September 2017: I note that there is no response from Irish Water on the file. The Planner's Report (dated 6<sup>th</sup> November 2017), refers to a report from Water Services Section of LCC – requesting further information. However, there is no copy of this Water Services Section report on the file. Condition 2 of the Notification of decision to grant planning permission required that no development take place until such time as Irish Water can supply water and sewerage to each of the 28 houses/sites. This would appear to be reasonable. The PA was clearly satisfied that water could be supplied to the development. The 1<sup>st</sup> Party response to the grounds of appeal acknowledges that consent will have to be obtained from Irish Water for a connection to the network.

#### 7.4.2. Foul Waste

The proposed development is to be connected to an existing WWTP within the Bruach na hAbhann Phase 1 development. The applicant states that this plant was constructed, with Phase 2 capacity in mind. The plant is stated to be taken-in-charge by LCC. The appellants have claimed that there are bad odours emanating from this plant. There was no bad odour from this plant, or the discharge from it to the Crompaun River, on the date of site inspection by this Inspector. The application

was referred to Irish Water on 26<sup>th</sup> September 2017: I note that there is no response from Irish Water on the file. The Planner's Report (dated 6<sup>th</sup> November 2017), refers to a report from the Water Services Section of LCC – requesting further information. However, there is no copy of this Water Services Section report on the file.

Condition 2 of the Notification of decision to grant planning permission required that no development take place until such time as Irish Water can supply water and sewerage to each of the 28 houses/sites. The PA was satisfied that the WWTP had the capacity to cater for Phase 2. The 1<sup>st</sup> Party response to the grounds of appeal acknowledges that consent will have to be obtained from Irish Water for a connection to the network.

The appellants claim that surface water is being discharged into the foul network within Phase 1. This, if true, is a matter for enforcement and for consideration by Irish Water. The proposed development will not have any impact on this situation, if it does indeed obtain. Planting of trees around the WWTP is not a relevant consideration in the current appeal. I did note that trees have been planted in the open space area in the vicinity of the WWTP, but not around the palisade fencing of the compound.

#### 7.4.3. Surface Water

Provision is made for attenuation of surface water within the public open space area at the northern end of the site. It was originally intended to discharge surface water to the Guilie River, but this was changed to a discharge to the Crompaun River; by way of additional information submission. The discharge to the Crompaun River will be via the existing surface water piped network within Phase 1 (Bruach na hAbhann). The exact discharge point was not visible on the date of site inspection by this Inspector (perhaps due to vegetation on the river banks). The location of the surface water attenuation tank was altered by way of additional information submission. The revised tank location has a capacity of 194m<sup>3</sup>. It captures road drainage from a new roadside drain to be installed on the L3992, as required by LCC. The outflow from the tank will be fitted with an hydrocarbon interceptor. Outflow will be throttled to 14 litres/second, which is stated to be considerably below greenfield run-off rates of more than 20 litres/second. The appellants point out that the attenuation tank is located within an area liable to flooding. The purpose of the attenuation tank is to limit run-off from hard surface areas within the development to

greenfield run-off rates. It is already indicated that the throttling will limit the run-off to below greenfield rates. In the event of a serious flood, which inundated Phase 1 of the development, the operation of this attenuation tank would be of little use, given its discharge via the surface water network within Phase 1 to the Crompaun River, which itself would be the likely cause of inundation in the first instance. The proposed development will not have any impact on surface water within Phase 1, where if there is no capacity within the system, surface water will be backing-up and likely flooding both Phase 1 and Phase 2 areas.

#### 7.4.4. Flooding

The two public open space areas within the scheme, have been chosen for the very fact that they are liable to flooding; on the date of site inspection, they represented two slight dips within a relatively flat arable field. A Strategic Flood Risk Assessment map, submitted as Appendix 1 of the Engineering Report which accompanied the original application to LCC, indicates that only the northern and southwestern corners of the site are liable to flooding. Drawings submitted indicate the areas of Phase 2 which are liable to flooding. In addition, areas of Phase 1 which are liable to flooding have been indicated. It would appear from the drawings, that most of Phase 1 has been constructed within an area liable to flooding from the Crompaun River. The appellants have submitted photographs of recent flooding within one property in Phase 1. Appellants are concerned that the finished floor levels of houses within Phase 2 are higher than finished floor levels of houses within Phase 1, and will somehow result in displacement of flood waters into Phase 1. If drawings submitted are accurate, there is no reason why this should occur, as houses within Phase 2 are outside of lands which are identified as being liable to flooding. There is no proposal to build in a flood-plain – something which could result in displacement of floodwaters to adjoining lands. The clarification of additional information submission of 13<sup>th</sup> August, moved the position of house SH1 to place it outside of the area liable to flooding. There are no watercourses within or immediately abutting the Phase 2 site. The Crompaun River forms the western boundary of Phase 1. OPW Draft Flood Mapping indicates that the Crompaun River causes fluvial flooding on the western edge of the appeal site.

The Draft Strategic Flood Risk Assessment for the Laois County Development Plan 2017-2023, indicates three flood zones-



Zone A – High probability of flooding. Most types of development are considered inappropriate within this zone.

Zone B – Moderate probability of flooding. Highly vulnerable development (which includes housing) would generally be considered inappropriate within this zone.

Zone C – Low probability of flooding. Development in this zone is considered appropriate from a flooding perspective.

Flood risk for each settlement within the county has been undertaken. Killeen has zoned land within flood zones A & B. Zoning has been subject to the Justification Test, to arrive at a solution to any conflict between zoning and flood risk. Table C.11 deals with Killeen. It states that the majority of the 'Residential 2' zoned land is within Flood Zone C. The accompanying Map 2.45, shows the northern and southwestern corners of the site within Flood Zone A & B. These areas are to be given over to public open space. I would be satisfied that the proposed development would not be subject to flooding (apart from public open space areas) and that the development would not result in exacerbation of flooding on adjoining lands.

## 7.5. **Appropriate Assessment**

### 7.5.1. General Comment

The site is neither within nor immediately abutting any European site. The application was accompanied by a Stage 1 Appropriate Assessment Screening Report (dated 25<sup>th</sup> June 2017, wherein it was concluded that submission of a Natura Impact Statement would not be required. The application was screened for Appropriate Assessment by Laois County Council. To carry out screening for appropriate assessment, six steps will be followed in this section.

### 7.5.2. **Step 1 – Identify European Sites which could potentially be affected by the housing scheme (source-pathway-receptor model)**

The closest such is the River Barrow and River Nore SAC (Site code 002162), which is located 1.9km to the east, as the crow flies. From the point of WWTP outfall on the Crompaun River to the SAC, the separation distance is 2.75km.

### 7.5.3. **Step 2 – Identify the Conservation Objectives of the relevant site(s)**

The qualifying interests of the River Barrow and River Nore SAC are as follows-

- Estuaries.
- Mudflats and sandflats not covered by seawater at low tide.
- Reefs.
- Salicornia and other annuals colonising mud and sand.
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*).
- Mediterranean salt meadows (*Juncetalia maritimi*).
- Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation.
- European dry heaths.
- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels.
- Petrifying springs with tufa formation (Cratoneurion). [Annex I]
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles.
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*). [Annex I]
- *Vertigo moulinsiana* (Desmoulin's whorl snail).
- *Margaritifera margaritifera* (Freshwater pearl mussel).
- *Austropotamobius pallipes* (White-clawed crayfish).
- *Petromyzon marinus* (Sea lamprey).
- *Lampetra planeri* (Brook lamprey).
- *Lampetra fluviatilis* (River lamprey).
- *Alosa fallax fallax* (Twaiite shad).
- *Salmo salar* (Atlantic salmon) – but only in fresh water.
- *Lutra lutra* (Otter).
- *Trichomanes speciosum* (Killarney fern).
- *Margaritifera durrovensis* (Nore freshwater pearl mussel).

The Conservation objectives for the 12,373ha site, are to maintain the favourable conservation condition of Desmoulin's whorl snail, White-clawed crayfish, Estuaries, Mudflats and sandflats, Salicornia, Killarney fern, Water courses of plain to montane levels, European dry heaths, Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels, Petrifying springs: and to restore the favourable conservation condition of Sea lamprey, Brook lamprey, River lamprey, Twaité shad, Atlantic salmon, Atlantic salt meadows, Otter, Mediterranean salt meadows, Nore freshwater pearl mussel, Old sessile oak woods, Alluvial forests. The status of the Freshwater pearl mussel is currently under review, to establish whether a site-specific conservation objective is set for this species.

**7.5.4. Step 3 – Identify the potential- a) likely, and b) significant, effects of the project with reference to the site's Conservation Objectives, in light of best scientific knowledge**

The principal impacts which may occur (both negative and positive), largely relate to water quality during the construction phase and the potential for discharge of contaminated surface water or inadequately-treated foul waste to the Crompaun River via the Bruach na hAbhann housing estate drainage/WWTP network.

**7.5.5. Step 4 – As above, but considering in-combination effects with other plans or projects**

There are no other plans or projects within the vicinity which could be considered to have in-combination effects. There is an established waste-water treatment plant for Phase 1 of this housing development.

**7.5.6. Step 5 – Identify any measures which may be put in place to reduce/lessen likely significant impacts on European sites**

Measures outlined include the following-

- Choice of site, on lands zoned for residential development within a small village setting.
- Standard measures put in place to attenuate and throttle the surface water outfall – which includes an hydrocarbon interceptor – to preserve the quality of water in the Crompaun River.

- Connection to an existing WWTP which was taken-in-charge by LCC, and is now under the control of Irish Water.

**7.5.7. Step 6 – Determine whether likely significant effects, either individually or in combination with other plans or projects, on European sites, can reasonably be discounted, on the basis of objective scientific information**

The applicant deemed that it was possible to discount any likely significant effects (particularly on aquatic species of conservation interest), and so determined that the submission of an NIS to Laois County Council; was not required. This was reasonable, given the location of the application site within a small village setting – served by a WWTP; and where surface water is to be attenuated on site and provided with an hydrocarbon interceptor. It is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to carry out a Stage 1 Screening for Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European site no. 002162, or any other European site, in view of the site's Conservation Objectives.

**7.6. Other Issues**

**7.6.1. Development Contribution & Bond**

Condition 18 of the Notification of decision to grant planning permission required the developer to pay €112,000, in accordance with the requirements of the Laois County Council Development Contribution Scheme 2017-2023. This amount related to €4,000 per house and per house site – 28 x. €4,000 = €112,000. This would appear to be reasonable. The condition was not subject to a 1<sup>st</sup> Party appeal to the Board. A similarly-worded condition should be attached to any grant of permission to issue from the Board.

Condition 14 of the Notification of decision to grant planning permission required payment of a bond of €7,620 per house for completion of the development. This would appear to be reasonable – particularly in light of the number of unoccupied units and one, unfinished unit within Phase 1. It is stated that Phase 1 of the development has been taken-in-charge by the PA. A similarly-worded bond condition should be attached to any grant of permission to issue from the Board.

#### 7.6.2. Part V

A letter which accompanied the application indicates that the applicant proposes to build and transfer three housing units to the LA – at a cost of €609,606. This was acceptable to the planning authority. Condition 16 of the Notification of decision to grant planning permission reflected the requirement to comply with Part V of the Planning and Development Act, 2000, as amended. A similarly-worded condition should be attached to any grant of permission to issue from the Board.

#### 7.6.3. Archaeology

There are no National Monuments within the site or in the immediate vicinity. Having regard to the extent of the site, it would be prudent to attach an archaeological monitoring condition, notwithstanding that one was not imposed by the PA, in granting planning permission.

#### 7.6.4. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development (20 houses and 8 sites – where the EIA threshold for housing development is 500 units), and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required.

#### 7.6.5. Naming & Numbering

Condition 15 of the Notification of decision to grant planning permission required the submission of a scheme for the written agreement of the planning authority. This is a reasonable requirement. A similarly-worded condition should be attached to any grant of permission to issue from the Board.

#### 7.6.6. Creche/School

There is a creche within Phase 1 of this development. A letter, submitted from the operator, indicates that the creche is full for 2018/2019. A letter, submitted by the applicant, indicates that there is capacity at the creche. The applicant points out that the houses will not be constructed immediately, but will be constructed over time, by which stage there may be availability at the creche. In the context of a small village and the limited development proposed, the availability of creche spaces is not a

significant issue. Of more importance, is the availability of spaces within the national school in the village. A letter, from the school, indicates that there is capacity within the school.

#### 7.6.7. Waste

A condition should be attached to any grant of planning permission to issue from the Board – relating to the handling, storage and disposal of construction & demolition waste during the construction phase of the development.

### 8.0 **Recommendation**

I recommend that permission be granted for the Reasons and Considerations set out below, and subject to the attached conditions.

### 9.0 **Reasons and Considerations**

Having regard to, the location of the site within the small village of Killeen, identified within the Settlement Plan of the Laois County Development Plan 2017-2023 (and zoned for 'Residential' use); the pattern of development in the vicinity; the proposed layout and unit mix; the location of housing within the portion of the site which is indicated as not being liable to flooding; and connection to an existing watermain and foul & surface water sewerage network: it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously impact on the amenities of property in the vicinity, would not be prejudicial to public health, would be acceptable in terms of traffic safety and convenience and 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 in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 6<sup>th</sup> day of June and the 13<sup>th</sup> day of August 2018, 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. Prior to commencement of development, details of the materials, colours and textures of all the external finishes to the proposed 20 no. houses shall be submitted to the planning authority for written agreement.

**Reason:** In the interests of orderly development and the visual amenities of the area.

3. Water supply and drainage arrangements, including the 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 and to ensure a proper standard of development.

4. No house or any part of a house, shall be constructed within an area liable to flooding.

**Reason:** In the interest of public health and orderly development.

5. All hedgerow boundaries of the site (with the exception of the L3992 hedgerow boundary) shall be retained in full, except at proposed entrances to the site. If it proves necessary to remove the L3992 hedgerow boundary, in order to improve sight distances at the proposed two entrances, and/or to facilitate the construction of a footpath/road drainage/public lighting along the length of this road; then a new hedgerow of native species shall be planted along the necessary set-back line, prior to occupation any house within the scheme accessed from the L3992.

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

6. The vehicular entrances from the public road and the internal road network serving the development, including turning bays, parking areas, footpaths,

verges and kerbs, shall be in accordance with the detailed requirements of the planning authority for such works.

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

7. The entrance to serve the 8 no. serviced sites shall not be opened for use until such time as a public footpath and public lighting has been extended out from the village as far as this entrance; and until such time as the 50kph speed restriction associated with the village has been extended out as far as the entrance. All necessary works shall be carried out at the expense of the developer.

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

8. Prior to commencement of development, proposals for a bilingual name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority. The name shall reflect the history or topography of the area.

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

9. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interest of orderly development and the visual amenities of the area.

10. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

11. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of any archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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 area and to secure the preservation (*in-situ* or by record) and protection of any archaeological remains that may exist within the site.

12. Prior to commencement of development, the developer shall submit, and obtain the written agreement of the planning authority to, 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, and for the ongoing operation of these facilities.

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

13. 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 eight 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 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.

14. 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 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 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 the Board for determination.

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

15. 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, 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 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, 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

---

**Michael Dillon,  
Planning Inspectorate.**

**10<sup>th</sup> January 2019.**