



An
Bord
Pleanála

Addendum Inspector's Report ABP-303081-18

Development

Retention Permission and Permission for the completion of the development at Mount Usher View, Main Street, Ashford, Co. Wicklow, as commenced under Planning Reg. Ref. No. 08/1704; retention is sought for: 9 no. 2 storey terraced residential units over 9 no. retail units in 3 storey blocks A & B as constructed and permission to complete same; retention for 11 no. 3 storey residential terraced units as constructed (Blocks C & D) and permission to complete same; retention of 4 no. semi-detached 3 storey 4 bedroom residential units in Blocks E as constructed and permission to complete same; together with retention and permission to complete all ancillary site works and services including landscaping and boundary treatments, all in line with the submitted documents and drawings as part of this retention and completion proposal.

Location	Mount Usher View, Main Street, Ashford, Co. Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	18603
Applicant(s)	Myles Kirby (Receiver of a specific asset of Copia Capital Partners Ltd.)
Type of Application	Permission & Permission for Retention
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party v. Decision
Appellant(s)	The Ashford Development Association Ltd. (ADAL) Mr. Brian Walsh
Observer(s)	None.
Date of Site Inspection	18 th April, 2019
Inspector	Robert Speer

1.0 Introduction

- 1.1. This addendum report has been prepared in response to the Board Direction issued on 28th May, 2019 which sought the submission of additional information from the applicant with respect to the retention and completion of the proposed development. It should be read in conjunction with the information which accompanied the initial planning application, the grounds of appeal, the submissions received, and my earlier inspector's report.
- 1.2. By way of background, and in the interests of clarity, it should be noted that whilst a report was previously discharged in respect of the subject application (as originally lodged with the Board) which recommended that permission be granted for the retention and completion of the proposed development subject to 20 No. conditions, the Board opted to defer consideration of the application and issued Section 132 Notices on 31st May, 2019 & 3rd July, 2019 which advised the applicant that the submission of certain additional information was necessary to enable the Board to determine the appeal.
- 1.3. The Section 132 Notice issued by the Board (with the notice dated 3rd July, 2019 superseding that issued on 31st May, 2019) invited the applicant to submit (on or before 15th August, 2019) the following information:
 1. It is noted that, as part of the response to the planning authority's request of further information dated 24th July 2018 (item 6 (c)), it is proposed to provide a 300mm separate pipe for surface water running along the site frontage and Main Street, discharging into the Vartry river. However, the only drawing submitted in relation to this was a marked-up copy of layout drawing number 064-177-102 PO. No further details and specifications of the proposed works in this regard would appear to have been provided as part of this further information response.

In order that the Board can be in a position to consider this proposal, please submit full details of the proposed surface water drain, including detailed drawings, sections, specifications etc.
 2. It is not clear, from the submitted drawings, what are your proposals for surface water attenuation from the development prior to discharge to the

proposed 300mm surface water drain, and whether or not any surface water from the development is to be discharged into the 375mm combined sewer in front of the site, rather than into the proposed 300mm surface water drain.

In order that the Board can be in a position to consider this matter, please clarify this matter and also provide full details of all proposed attenuation measures (either in situ or proposed), including details of any attenuation tank, hydrobrake or similar, and details of permeable surfaces, if proposed. These details should be accompanied by a specific flood risk assessment for the subject site, in the light of, and to support the calculations for, the sizing of any such attenuation measures.

3. It is noted that the surface water discharge would appear to cater for run-off from paved surfaces, car parking areas etc., within the development. If this is the case, please provide details of how it is proposed to prevent pollution arising from contaminants in these surfaces (such as petrol spillages from cars etc) from entering the surface water drain and being carried onwards to the Vartry river. Any treatment proposal for surface water, prior to discharge to the 300mm surface water drain, should be detailed.

In relation to 1 – 3 above, please note that it is not considered acceptable by the Board that such matters can be left to further agreement between the planning authority and the developer prior to commencement/re-commencement of development, as suggested by the planning authority's condition number 9.

4. As the Vartry river discharges into European sites (The Murrough Wetlands Special Area of Conservation and the Murrough Special Protection Area), and there is therefore an evident source-pathway-receptor between the subject development and those European sites, please provide an Appropriate Assessment Screening Report, prepared by an appropriately qualified ecologist or similarly professionally qualified consultant, dealing with the potential for any significant effects from the development, by itself and in combination with any other development(s) on these European sites. In this regard, please note the implication of the judgement of the European Court of Justice in the case of "People over Wind" (C-323/17- CJEU).

2.0 First Party Response to Section 132 Notification

- 2.1. On 24th July, 2019, CDP Architecture, on behalf of the applicant, submitted additional information to the Board in response to the Section 132 Notice which included the following documents:
- Site drainage drawings (Drg. Nos. 903-244 C01 & 903-244 C11, C12 & C13)
 - A Flood Risk Assessment (Molony Millar Consulting Engineers)
 - Screening for Appropriate Assessment (JBA Consulting)
 - A Natura Impact Statement (JBA Consulting)
- 2.2. The principle purpose of this documentation is to provide the Board with sufficient information to enable it to assess the proposed surface water drainage arrangements and to screen the proposal for the purposes of 'Appropriate Assessment' (and to undertake a Stage 2: Appropriate Assessment as required).
- 2.3. The details provided serve to clarify that surface water runoff from the proposed development is to be directed to an on-site stormwater attenuation tank before being drained to a new 300mm surface water sewer extending northwards from the site along Main Street with final discharge to the River Vartry via a small headwall (Drg. No. 930-244-C11). No surface water is to be discharged to the 375mm combined sewer (Drg. No. 930-244-C01). This new surface water sewer will be constructed of uPVC pipework with a Stiffness Class 8 kN/M² and will include precast concrete manholes with a 150mm concrete surround and heavy-duty manhole covers (Class D400) (as per Drg. No. 930-244-C13).
- 2.4. The proposed stormwater attenuation tank will be the same size as that previously approved under PA Ref. No. 081704 (please refer to the details shown on Drg. No. 930-244-C12). It has also been submitted that the accompanying design calculations demonstrate that the proposed tank will have capacity for a 100-year storm event +20% allowance for climate change on the basis of a 12 l/sec discharge rate.
- 2.5. Prior to entering the attenuation tank, the stormwater will pass through a silt trap before then passing through a petrol interceptor which will trap any spillages that may arise from cars. The attenuation tank itself will be formed using Wavin Aquacell

Units which will contribute aerobic purification thereby further improving runoff quality (please refer to Drg. No. 930-244-C12).

- 2.6. The foregoing proposals have been accompanied by a site-specific flood risk assessment with a view to identifying and quantifying the potential flood risk arising to and from the site in question. This report states that the application site is located within Flood Zone 'C' as defined by the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*' (where the probability of flooding from rivers is considered to be low i.e. less than 0.1% or 1 in 1000). It subsequently refers to Table 3.1 of the Guidelines (which sets out the classifications of various land uses / development types that are either highly vulnerable, less vulnerable or water-compatible) and states that whilst the proposed housing can be classified as a '*Highly Vulnerable Development*', it will not require a 'Justification Test' by reference to Table 3.2 of the Guidelines as it comprises an 'appropriate' class of development from a flood risk perspective. The predicted 1% AEP is noted on the accompanying CFRAM mapping as 16.08mOD and the lowest ground floor level on site will be 19.93mOD with the result that there will be 3.85m of freeboard above the 1 in 100 year flood level plus 0.5m to account for climate change. Similarly, it has been confirmed that the finished floor levels on site will be at least 3.45m above the 0.1% AEP flood level at 16.48mOD.
- 2.7. The FRA further notes that the site is not subject to fluvial or tidal flooding and that there is no mapping or records available of any pluvial flood events in the area. With regard to the potential for groundwater flooding, it is stated that in light of the site topography and its elevation relative to the River Vartry, the lack of recorded springs in proximity to the site, and the absence of any basement levels within the development itself, the risk of any such flooding is considered to be low. Surface water runoff is to be attenuated on site with the flow from same regulated by means of a hydrobrake before final discharge to the River Vartry thereby reducing the risk of flooding upstream and downstream.
- 2.8. In response to Item No. 4 of the Section 132 Notice, the applicant has submitted a document entitled '*Screening for Appropriate Assessment (July, 2019)*' prepared by JBA Consulting. By way of summation, this screening exercise has identified the Murrough Wetlands Special Area of Conservation (Site Code: 002249) and the Murrough Special Protection Area (Site Code: 004186) as the relevant Natura 2000

sites within a 5km radius of the application site. It states that potential impacts which could give rise to a significant effect on the qualifying interests of the aforementioned Natura 2000 sites may arise via surface water, groundwater, and land & air pathways. These are considered as follows:

- *Surface Water Pathways:*

The potential for adverse impacts arises as both the Natura 2000 sites are within the same surface water sub-catchment as the development site, however, the proposed surface water attenuation and drainage arrangements (including the installation of a silt trap and a petrol interceptor) will prevent sediment and hydrocarbon-based pollution events from impacting on those protected sites downstream of the River Vartry. Furthermore, foul water from the development will be drained to the existing combined sewer serving Ashford and onwards to the wastewater treatment plant in Wicklow town which has adequate capacity to accept the additional loadings. Therefore, it is stated that the proposal will not impact on the qualifying interests of the Natura 2000 sites.

- *Groundwater Pathways:*

The aquifer vulnerability in the area is ranked as '*Rock at or near surface*', is classified as '*extreme*' to '*high*' on travelling eastwards across the site, and could result in groundwater-based impacts on the Natura 2000 sites which share the same groundwater body. It is envisaged that the strike (south-easterly) and dip (79°) angle of the underlying slate, phyllite & schist bedrock of the development site could transport pollutant seepages towards the Natura 2000 sites and, therefore, the works are anticipated to negatively impact on the Natura 2000 sites via groundwater pathways.

- *Land & Air Pathways:*

Given the scale of the proposed development and the separation distances from those Natura 2000 sites within the Zone of Influence, adverse impacts (such as noise and visual) are not anticipated via the land pathway.

It is acknowledged that dust and vehicle emissions can travel up to 5km and could potentially affect certain Annex I habitats (e.g. Floating River Vegetation, Dry Heath, Old Oak Woodlands and Alluvial Forests). However,

given that 70.4% of the annual wind direction (Ashford Windfinder, 2019) would transport air pollutants away from the Natura 2000 sites at the location of the proposed site, adverse impacts via air pathways from the proposed works are not anticipated.

- 2.9. It is stated that no cumulative impacts will occur consequent on the proposed works.
- 2.10. The screening exercise thus concludes by stating that significant impacts can be anticipated via the surface water and groundwater pathways on the Murrough Wetlands Special Area of Conservation and the Murrough Special Protection Area and that a Stage 2: Appropriate Assessment (Natura Impact Statement) is required.
- 2.11. Given the findings of the screening exercise, the response to the Section 132 notice is accompanied by a Natura Impact Statement, however, in its summation of the initial screening, Section 1.2 of the NIS states that the qualifying interests of the Murrough Wetlands Special Area of Conservation and the Murrough Special Protection Area are only likely to be significantly affected by the potential release of construction pollutants to the water table via groundwater with no reference to any impacts via surface water pathways (as was referenced in the screening report).
- 2.12. On the basis that the application site is located within the same groundwater body as the identified Natura 2000 sites, the NIS has reaffirmed the potential connection via groundwater pathways. This is considered to be supported by the aquifer vulnerability and the bedrock characteristics which could allow potential pollutants to permeate into the groundwater table and navigate towards the Natura 2000 sites. Reference is also made to the extent of the excavations carried out on site, including the exposure of bedrock and the presence of several groundwater seepage ponds within the deeper excavations, and the fact that further excavations will be required to install the attenuation system etc. and to accommodate the car parking areas.
- 2.13. Section 6 of the NIS proceeds to analyse the direct and indirect impacts on the qualifying interests of the Murrough Wetlands Special Area of Conservation and the Murrough Special Protection Area consequent on the potential pollution and degradation of groundwater quality arising from spillages and leakages etc. during the construction phase of the development. No impacts are envisaged during the operational phase of the development. It is subsequently recommended that the following mitigation measures be put in place during the construction phase:

- A Construction and Environmental Management Plan (CEMP) to be submitted to Wicklow County Council for agreement prior to site works commencing.
- A construction method statement to be submitted to Wicklow County Council for agreement prior to site works commencing.

2.14. Further details of these measures (i.e. the site compound, water quality, and pollution control & spill prevention) are set out in Sections 6.3.1-6.3.3 of the NIS whilst Table Nos. 6.4 & 6.5 refer to the need for strict adherence to the following mitigation measures:

- Site compound layout instructions, ensuring that potential sources of pollution and groundwater seepage areas are not within close proximity of each other.
- Water quality controls, including the surface water to groundwater prevention plan which outlines the timing of excavations and the necessary materials (geotextiles / geosynthetic) needed to exclude surface water pollutants from the groundwater table.
- Pollution control and spill prevention methods, detailing suitable spill kit equipment and management on site.

2.15. The NIS thus concludes by stating that the retention and completion of the proposed development is not likely to result in any adverse effects, either on its own or in combination with other projects and plans, on the Murrough Wetlands Special Area of Conservation or the Murrough Special Protection Area provided the mitigation measures outlined are strictly adhered to.

3.0 Responses to the Circulation of the Applicant's Submission

3.1. *Response of the Planning Authority:*

None.

3.2. *Response of the Third Party Appellant (Ashford Development Association Ltd.):*

- The development is out of character with the village and efforts must be made to ensure that it integrates successfully with the area should it not be demolished.

- The foremost concern is the need to protect the River Vartry & the Natura 2000 sites and to restore some element of the visual integrity of the village.
- There are serious concerns that issues of environmental importance with respect to a Natura 2000 site are being considered as part of an appeal concerning an application for permission for retention. This is not considered to provide for an adequate degree of transparency given that the issues raised will only be apparent to parties of the appeal itself. Therefore, the Board should return the application to Wicklow County Council rather than take the unusual step of assessing the matter itself.
- If the information sought by the Section 132 notice had been submitted with the initial planning application, the appellant (as a representative of the public) would have had 5 No. weeks to examine the relevant documentation, however, in the subject instance, it has only been given 15 No. days to review same. There is a need for the appellant to discuss the additional information provided with its stakeholders (which include Inland Fisheries Ireland, the Wicklow River Trust, the River Vartry Protection Society, Friends of The Murrough, Mount Usher Gardens, the GAA and other local businesses) whom are completely unaware of the threat posed to the river, the Mount Usher Gardens, Ashford village, and Natura 2000 sites. If sufficient time had been afforded to the appellant as regards the making of its submission, the services of a hydrologist could have been engaged to analyse the figures presented by the applicant, which is of particular relevance given that Mount Usher Gardens is one of the most important tourist attractions in the county and is dependent on the River Vartry remaining unpolluted.
- Contrary to the applicant's assertion that *'The size of the tank is the same as that on which the original planning permission was granted'*, that grant of permission did not include for the construction of a new surface water sewer discharging directly into the River Vartry (which is a European Salmonid Protected River that feeds into a Natura 2000 site) and instead proposed directing surface water to a combined foul sewer which would have had an impact elsewhere. The waters at the weir in Ashford are of a 'high' status / water quality and are subject to the European Communities (Quality of Salmonid Waters) Regulations, 1988. Any deterioration of water quality at the

weir would be contrary to the Water Framework Directive and all other EU water legislation. Should there be any doubt as to current water quality at the weir or the risks involved in discharging surface water at the location proposed, the Board should consult with Inland Fisheries Ireland.

- From a review of the applicant's submission, it would appear that the site is poorly represented as regards its 'soak-ability'. The application site was excavated from solid rock and the escarpment to the rear will funnel water towards street level. Any representation of such conditions as 'normal' is considered to be careless. The appended photographs provide for a more accurate depiction of the site and its ground conditions.
- Concerns arise as regards the design and size of the attenuation tanks and the proposals for the removal of silt, oil and other pollutants. It is not considered that the proposed arrangements provide for a sufficiently robust solution given the sensitivity of the environmental considerations involved. An EIS or an EIA should be completed to ensure that no damage arises.
- Having regard to the manufacturer's description of the proposed oil and petrol interceptor, it is not accepted that there is any situation with respect to the River Vartry that the criterion of 'acceptable risk' can be used on the basis that it is an EU protected watercourse that feeds into a Natura 2000 site. The screening undertaken by the applicant (in place of an EIS) is flawed. Specifying the use of crucial equipment of limited cost is evidence that inadequate cognisance has been taken of the need to protect the environment and the River Vartry.
- The single page attenuation calculation provided in response to the Section 132 notice is inadequate and is neither robust nor accurate for the situation. In this regard, the Board is referred to Appendix 'C' of the appellants' submission which illustrates the following flaws in the applicant's calculations:
 - The calculations have neglected to account for the increased runoff area attributable to the pitch of the proposed roof types.
 - The full expanse of the impermeable access roads and parking bays has been significantly underestimated by a figure of at least 3,625m².

- The extent of the footpaths and house surrounds has not been correctly calculated and is unlikely to be higher than that attributable to the roads and parking areas.
 - The calculation of the extent of the permeable landscaped areas is flawed in that the prevailing ground conditions (with an underlying bedrock) and site topography will result in sloped green areas with a higher rate of runoff. Consideration must also be given to the exposed vertical surfaces and runoff from neighbouring land which flows into the development site.
- The applicant's assimilation figures are flawed by reference to the permissible outflow having been calculated as 12 l/s. For most of the year, the flow in the River Vartry is controlled by the volume of water released from the Vartry Treatment Works located at the head of the river. This is guaranteed to be 5Ml/day or 58 l/s and, without rain, is the maximum available flow in the river. An outflow of 12 l/s equates to 20% of the river flow and is not appropriate given the size of the River Vartry with the result that it will cause significant damage to salmon and small fry downstream of the river weir. The permissible outflow should be no more than 10% of the total nominal flow (i.e. 6 l/s) and should be clean water only.
 - The proposed oil / petrol interceptor is totally inadequate with a short lifespan and is unsuited to an installation of this nature.
 - On the basis of the appellant's own calculations, it is suggested that the attenuation requirements of the proposed development would need to be increased fourfold with a completely different solution for oil and petrol interception.
 - Should the application be referred back to Wicklow County Council, the implementation of a suitably designed Sustainable Urban Drainage System should be investigated which takes cognisance of the runoff from neighbouring lands. In the absence of a proper examination of alternatives for the disposal of surface water, an environmental crisis could arise downstream.

- No provision has been made for silt traps to prevent damage to the River Vartry and Mount Usher Gardens during construction of the proposed sewer. Comprehensive details of any mitigation measures to be employed during the construction works should be provided in advance of any discussion of a grant of permission.
- There are concerns that it may be the intention of Wicklow County Council to use the new surface water sewer to serve other businesses, roads and parking areas etc. in the village. In such circumstances, it would not be possible to provide for on-site attenuation and filtration due to a lack of space within the individual properties concerned. Moreover, there are two petrol service stations located alongside the route of the proposed surface water sewer and thus concerns arise as regards the pollution risk should the new sewer be open to road drainage or a fuel spill.
- The circumstances under which a retention permission is available are tightly circumscribed and a planning authority cannot accept an application for retention for any development which would have required:
 - Environmental impact assessment;
 - A determination as to whether EIA was required (i.e. screening for EIA); or
 - An appropriate assessment under the Habitats Directive (since such an assessment is also required prior to permission for a proposed development).

3.3. *Response of the Third Party Appellant (Mr. Brian Walsh):*

None.

3.4. *Response of Inland Fisheries Ireland:*

- The revised proposals detailing the attenuation arrangements, hydrobrake, and the petrol / oil interceptor are in line with the principles adopted in the framework for the Greater Dublin Strategic Drainage Study.
- Any grant of permission should include a condition requiring the regular inspection and maintenance of all surface water infrastructure.

- The capacity of the proposed attenuation arrangements is a matter for the Planning Authority.
- A condition should be attached to any grant of permission requiring all construction works to be carried out in accordance with a Construction and Environmental Management Plan (CEMP). The CEMP should ensure adherence to best construction practices, including measures to prevent and control the introduction of pollutants and deleterious matter, and measures to minimise the generation of sediment and silt. It should also include the mitigation measures detailed in Section 6.3 of the Natura Impact Statement.

3.5. *Response of Irish Water:*

None.

4.0 **Third Party Observations**

4.1. Given that the response to the Section 132 notice included a Natura Impact Statement, the applicant was required to publish a revised newspaper notice and to erect a new site notice to advise interested parties that a Natura Impact Statement had been received by the Board and that submissions or observations in relation to the appeal could be made no later than 4 weeks beginning on the day of the publication of the notice.

4.2. A total of 2 No. submissions were subsequently received and the contents of same can be summarised as follows:

4.3. *The Ashford Development Association Ltd.:*

- The development was constructed on foot of an extension to the original grant of permission in breach of Section 42 of the Aarhus Convention and without public consultation.
- This unauthorised development was constructed in breach its grant of permission with no regard to building standards. It is representative of an abuse of planning laws and should have necessitated an application for full planning permission in advance of any works.

- Notwithstanding the commencement of enforcement action by the Planning Authority, the developer continued to construct this unauthorised development for over a year up until the night before a court appearance.
- Following the lodgement of an application to retain significant changes to the original grant of permission, the developer went into receivership, however, the Planning Authority subsequently issued a grant of permission for retention that included a condition which required the design, specification and location etc. of a proposed surface water sewer to be agreed prior to the commencement of development. The imposition of such a condition is highly irregular and contrary to planning law as environmental issues cannot be 'discovered' in the consideration of an application for retention.
- The Natura Impact Assessment fails to detail the construction of the surface water sewer intended to discharge to the River Vartry.
- The proposals for the attenuation and filtration of surface water are inadequate.
- The Section 132 issued by the Board required a revised notice to be '*securely erected or fixed in a conspicuous position on or near the main entrance to the land or structure concerned from a public road, or where there is more than one entrance from the public road, on or near all such entrances*'. Whilst a new site notice was erected at the rear entrance to the site, no such notice was located at the main site entrance and, therefore, the applicant has failed to comply with the Board's instruction.
- It is unprecedented for the Board to require the erection of new site notices during the appeal process in an effort to address a problem that was not previously subjected to public scrutiny. Whilst these actions may have been taken in good faith in an attempt to resolve a 'bad' planning process, if the River Vartry were to suffer damage in later years, it is unclear how the government would be able to defend its position to the European Union. The subject application will always represent poor planning in breach of Irish & EU law and the Aarhus Convention.
- The Board is referred to previous commentary with respect to the proposed surface water attenuation and filtration arrangements and the appellant's own

calculations in relation to same. There is a lack of confidence that the proposed development will not have an adverse impact on the River Vartry by way of miscalculation or accident. There are further concerns as regards the future maintenance requirements etc. of the interceptors and the need to avoid unattenuated sources being added to the new sewer.

- By way of resolving the present situation, the following suggestions are offered:
 - The application should be returned to Wicklow County Council.
 - A new planning application should be lodged in order to afford the public and interested parties the opportunity to engage with same.
 - The surface water sewer should be the subject of a separate application and permission for the wider development should be contingent on the provision of that sewer in advance of any further works.
 - The proposed surface water sewer should be declared a major infrastructural project requiring full public consultation given the level of disruption likely to be caused by its construction.
 - The proposed development is out of character with the village and detracts from the area. The Board should order the liquidation of the estate and the levelling of the development whilst the Council could landscape the site to provide a community park.
 - A new process should be identified whereby all the environmental experts can find an entirely safe solution as regards the disposal of surface water prior to any decision to grant permission.
 - The preferred solution to protecting the river would involve building a constructed wetland reed bed at the location of the former cattle mart in the village with all existing and proposed surface water runoff diverted to such a facility. This would ensure that if the attenuation tanks or the interceptors were to fail, the new system would absorb most of the effluents that appear to deposit in the river.

- It is reiterated that the circumstances under which a retention permission is available are tightly circumscribed and a planning authority cannot accept an application for retention for any development which would have required:
 - Environmental impact assessment;
 - A determination as to whether EIA was required (i.e. screening for EIA); or
 - An appropriate assessment under the Habitats Directive (since such an assessment is also required prior to permission for a proposed development).

4.4. *Konrad & Katherine Jay:*

- There are serious concerns as regards the progression of the development known as Mount Usher View which has remained incomplete since 2013 and in contravention of the grant of permission issued by Wicklow County Council. In this respect, it is submitted that no progress would appear to have been made in resolving any of the outstanding issues.
- The existing dwelling houses are falling ever more visibly into a state of dereliction and amount to an unacceptable visual blight in the centre of the village. Moreover, the site poses an ever increasing health and safety hazard which attracts vermin and is prone to incidences of vandalism and littering.
- Multiple visitors to Mount Usher Gardens in the village have commented on the unacceptable impact of the development on the amenity of the surrounding area.
- The development poses a significant environmental threat to the River Vartry and downstream lands, including Mount Usher Gardens and the Murrough Special Area of Conservation.
- The applicant's response to the Section 132 Notice fails to satisfactorily address the concerns raised as regards the proposed surface water drainage arrangements.
- Whilst the discharging of surface water from the site into the Vartry River is apparently not unusual, inadequate provision has been made for the

necessary filtration and attenuation and thus the proposal as submitted is not fit for purpose and poses a serious risk of pollution to the river and the important ecosystems it supports.

- Although the circumstances surrounding the site have become unduly complicated, the Board is urged to carefully consider the potentially calamitous effects of works being allowed to continue without due care and attention being paid to the consequences for the River Vartry.
- The development is beyond redemption and should be refused permission and demolished forthwith.

5.0 Further Assessment

5.1. This addendum report has been prepared in response to the Board Direction dated 28th May, 2019 and the Section 132 Notices issued to the applicant on 31st May, 2019 & 3rd July, 2019. Accordingly, the following assessment has been confined to consideration of those issues raised by the additional information provided by the first party and the submissions received from other interested bodies / persons. It should be read in conjunction with the information that accompanied the initial planning application, the grounds of appeal, all other submissions received, and my earlier inspector's report.

5.2. The Proposed Surface Water Drainage Arrangements:

5.2.1. From a review of the additional information submitted in response to Item Nos. 1 - 3 of the Section 132 Notice, it can be ascertained that surface water runoff from the proposed development is to be directed to an on-site stormwater attenuation tank which will subsequently drain into a new dedicated 300mm diameter surface water sewer that will extend northwards from the site along Main Street with final discharge to the River Vartry via a small headwall. In this regard, I am satisfied that the submitted plans and particulars, with particular reference to the site drainage drawings (Drg. Nos. 903-244 C01, C11, C12 & C13) and the accompanying correspondence prepared by Molony Millar, Consulting Engineers, adequately detail the location, specifications, gradient, levels, and longitudinal sections of the new surface water sewer. It has also been clarified that no surface water runoff from the

development will be permitted to discharge into the existing 375mm diameter combined sewer alongside the site.

- 5.2.2. With respect to the attenuation of stormwater prior to discharge to the new 300mm surface water sewer, it is proposed to install a Wavin Aquacell Geocellular attenuation tank within the parking area located forward of Block 'A'. This will have a storage capacity of 277m³ and has been designed to accommodate a 1 in 100-year storm event with an allowance of 20% for climate change on the basis of the runoff volumes attributable to the total roofed areas and paved surfaces etc. on site and a permissible outflow of 12.00 l/s to be regulated by a hydrobrake installed on the outlet from Manhole No. S5. Plans and sectional details of the proposed attenuation tank, including invert and ground cover levels, are shown on the accompanying drawings.
- 5.2.3. Whilst it has been submitted that the proposed attenuation tank is the same size as that previously approved under PA Ref. No. 08/1704, I would advise the Board that this would not appear to be the case given that the attenuation system shown on Drg. No. 064-177-102 P0 (Michael Punch & Partners) and received by the Planning Authority on 9th October, 2008 as part of that application was detailed as seemingly having a storage capacity of 300m³ with a hydrobrake restricting the outflow to only 5 l/s. However, at this point, I would draw the Board's attention to Condition No. 21 of the grant of permission issued in respect of PA Ref. No. 08/1704 wherein it was stated that details for the attenuation of all surface water generated by the development prior to discharge to the public sewer were to be agreed in writing with the Planning Authority prior to the commencement of development. Accordingly, there were multiple compliance submissions received by the Planning Authority from the applicant / developer with considerable correspondence exchanged between the parties concerning and clarifying the specific design parameters.
- 5.2.4. Given the somewhat disorganised nature of the planning file and notable instances of documentation having not been date-stamped, it is difficult to ascertain the precise nature of the final attenuation proposals agreed with the Council in accordance with Condition No. 21, however, in correspondence from the Planning Authority to A-Therm Construction Ltd. dated 4th April, 2016 reference is made to submissions received on 15th March, 2016 in response to an Enforcement Notice wherein the receipt of attenuation calculations as regards compliance with Condition No. 21 was

acknowledged (regrettably, I have been unable to identify the compliance submission of 15th March, 2016 from the documentation on file, although I note the considerable volume of correspondence previously exchanged between the parties as regards the attenuation calculations etc.). Furthermore, in correspondence from the Planning Authority to CDP Architecture dated 4th April, 2018 further reference is made to proposals previously submitted in 2016 with regard to compliance with Condition No. 21 that were '*determined to be acceptable*' (subject to an installation schedule for the attenuation tank being provided to allow for a site inspection during construction).

- 5.2.5. Whilst I would acknowledge that it is not possible on the basis of the documentation forwarded to the Board by the Planning Authority to verify the exact attenuation design previously agreed as regards compliance with Condition No. 21 of PA Ref. No. 08/1704, in my opinion, the determination of the subject appeal is not reliant on same. Having reviewed the available information, it would appear that the details submitted in response to the Section 132 Notice satisfy the requirements of the Board and are broadly comparable with those originally approved under PA Ref. No. 08/1704. Moreover, although the absence of any commentary by the Planning Authority with regard to the circulation of the plans and particulars received in response to the Section 132 notice should not be construed as an acceptance of those proposals, I am also cognisant that no objection has been lodged in respect of same (whilst Inland Fisheries Ireland is amenable to the broader attenuation arrangements etc. which are deemed to accord with the principles adopted in the framework for the Greater Dublin Strategic Drainage Study).
- 5.2.6. In my opinion, it has been satisfactorily established that the proposed surface water drainage arrangements are both feasible and acceptable in principle. Accordingly, I am inclined to conclude that the final detailed specifications of the arrangements can be agreed with the Planning Authority by way of condition in the event of a grant of permission.
- 5.2.7. In further support of the proposed surface water attenuation and drainage arrangements, the applicant has submitted a site-specific flood risk assessment of the proposal which has confirmed that the application site is located within Flood Zone 'C' as defined by the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*' (where the probability of flooding from rivers is

considered to be low i.e. less than 0.1% or 1 in 1000) and that the proposed housing constitutes an 'appropriate' class of development from a flood risk perspective by reference to Table 3.2 of the Guidelines and thus will not require a 'Justification Test'. In addition, the finished floor levels will be set above the 1% AEP & 0.1% AEP flood levels and take account of climate change thereby providing for adequate freeboard. The FRA further notes that the site is not subject to fluvial or tidal flooding, that there is no mapping or records available of any pluvial flood events in the area, and that the risk of flooding from groundwater sources is likely to be low. In this regard, it is notable that Section 1.1 of the Ashford Development Plan, 2016-2022 states that the flow in the river is constrained further upstream by the Vartry Dam and rarely experiences serious flood events. With respect to the surface water drainage arrangements, it is envisaged that the attenuation proposals and the restriction of the flow from same by means of a hydrobrake before final discharge to the River Vartry will reduce any risk of flooding upstream and downstream. Accordingly, I am satisfied that the proposed development is acceptable from a flood risk management perspective.

- 5.2.8. In relation to Item No. 3 of the Section 132 notice, it has been confirmed that prior to entering the attenuation tank, stormwater runoff will be directed through a silt trap at Manhole No. S6 before then passing through a petrol interceptor which will trap any spillages that may arise from parking areas etc. It has also been submitted that the Wavin Aquacell Units will contribute to aerobic purification thereby further improving runoff quality (please refer to Drg. No. 930-244-C12).
- 5.2.9. Whilst the subject application as initially lodged with the Planning Authority sought to dispose of stormwater runoff to the existing combined sewer, in response to a request for further information it was subsequently proposed to construct a new dedicated surface water sewer in order to discharge surface waters from the development directly to the River Vartry. In this regard, the additional information submitted in response to the Section 132 notice issued by the Board has elaborated on the details of the proposed surface water attenuation and drainage arrangements.
- 5.2.10. On balance, it is my opinion that the submitted details provide a sufficient basis on which to consider a grant of permission with respect to the proposed development and that any outstanding matters could reasonably be agreed with the Planning Authority by way of condition.

5.3. **Appropriate Assessment:**

5.3.1. From a review of the available mapping, including the data maps from the website of the National Parks and Wildlife Service, it is apparent that whilst the proposed development site is not located within any Natura 2000 designation, there are a number of Natura 2000 sites within the wider area such as the Murrrough Wetlands Special Area of Conservation (Site Code: 002249), approximately 2.8km east of the site. In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Chapter 10 of the Wicklow County Development Plan, 2016, to avoid negative impacts upon the natural environment and to promote the appropriate enhancement of the natural environment as an integral part of any development. Furthermore, Objective NH2 of the Plan states that no projects which would give rise to any significant cumulative, direct, indirect or secondary impacts on Natura 2000 sites arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning, or from any other effects, will be permitted on the basis of the plan (either individually or in combination with other plans or projects). By way of further clarity, Objective NH4 also states that all projects and plans arising from the Development Plan (including any associated improvement works or infrastructure) will be screened for the need to undertake Appropriate Assessment pursuant to Article 6 of the Habitats Directive whilst any such plan or project will only be authorised after the competent authority has ascertained, based on scientific evidence, Screening for Appropriate Assessment, and a Stage 2 Appropriate Assessment, where necessary, that:

- 1) The Plan or project will not give rise to significant adverse direct, indirect or secondary effects on the integrity of any European site (either individually or in combination with other plans or projects); or
- 2) The Plan or project will have significant adverse effects on the integrity of any European site (that does not host a priority natural habitat type and / or a priority species) but there are no alternative solutions and the plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature. In this case, it will be a requirement to follow procedures set out in legislation and agree and

undertake all compensatory measures necessary to ensure the protection of the overall coherence of Natura 2000; or

- 3) The Plan or project will have a significant adverse effect on the integrity of any European site (that hosts a natural habitat type and/or a priority species) but there are no alternative solutions and the plan or project must nevertheless be carried out for imperative reasons for overriding public interest, restricted to reasons of human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest. In this case, it will be a requirement to follow procedures set out in legislation and agree and undertake all compensatory measures necessary to ensure the protection of the overall coherence of Natura 2000.

5.3.2. In effect, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.

5.3.3. **Appropriate Assessment: Screening:**

5.3.4. In light of the proposal to discharge surface water runoff from the proposed development to the River Vartry via a new surface water sewer, and following consideration of the 'source-pathway-receptor' model given the presence of downstream Natura 2000 sites (i.e. the Murrough Wetlands Special Area of Conservation and the Murrough Special Protection Area), the Section 132 notice issued by the Board sought the submission of an '*Appropriate Assessment Screening Report*' detailing the potential for any significant effects from the development, both by itself and in combination with any other developments(s), on those European Sites.

5.3.5. The '*Screening for Appropriate Assessment*' subsequently submitted in response to the Section 132 notice states that in light of the nature and scale of the development under consideration, its likely zone of impact can be limited to a 5km radius of the application site with the result that the only Natura 2000 sites which could potentially be significantly affected are the Murrough Wetlands Special Area of Conservation

(Site Code: 002249) and the Murrough Special Protection Area (Site Code: 004186). In this regard, having considered the available information, I would concur with the findings of screening exercise that consideration for the purposes of appropriate assessment should be focused on the following European Sites:

- 5.3.6. European Site: The Murrough Wetlands SAC (Site Code: 002249)
- Distance & Direction:* c. 2.8km east
- Qualifying Interests:* Annual Vegetation of Drift Lines [1210]
Perennial Vegetation of Stony Banks [1220]
Atlantic Salt Meadows (*Glauco-Puccinellietalia maritimae*) [1330]
Mediterranean Salt Meadows (*Juncetalia maritimi*) [1410]
Calcareous fens with *Cladium mariscus* and species of the *Caricion davallianae* * [7210]
Alkaline Fens [7230]
- Conservation Objectives:* To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.

- 5.3.7. European Site: The Murrough Special Protection Area (Site Code: 004186)
- Distance & Direction:* c. 2.9km east
- Qualifying Interests:* Red-throated Diver (*Gavia stellata*) [A001]
Greylag Goose (*Anser anser*) [A043]
Light-bellied Brent Goose (*Branta bernicla hrota*) [A046]
Wigeon (*Anas penelope*) [A050]
Teal (*Anas crecca*) [A052]
Black-headed Gull (*Chroicocephalus ridibundus*) [A179]
Herring Gull (*Larus argentatus*) [A184]
Little Tern (*Sterna albifrons*) [A195]
Wetland and Waterbirds [A999]

Conservation Objectives: To maintain or restore the favourable conservation condition of the bird species listed as Conservation Interests for this SPA.

To maintain or restore the favourable conservation condition of the wetland habitat at The Murrrough SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

5.3.8. The screening report then examines the potential pathways for significant effects on the identified Natura 2000 sites as follows:

5.3.9. *Surface Water Pathways:*

- Whilst the potential for adverse impacts arises as the Natura 2000 sites are within the same surface water sub-catchment as the development site, it is considered that the proposed surface water attenuation and drainage arrangements (including the installation of a silt trap and a petrol interceptor) will prevent sediment and hydrocarbon-based pollution events from impacting on those protected sites downstream of the River Vartry. Furthermore, foul water from the development will be drained to the wastewater treatment plant in Wicklow town which has adequate capacity to accept the additional loadings. Therefore, it is not envisaged that the proposal will impact on the qualifying interests of the Natura 2000 sites.

5.3.10. *Groundwater Pathways:*

- Given the vulnerability ranking of the underlying aquifer as '*Rock at or near surface*' and its classification from '*extreme*' to '*high*' on travelling eastwards across the site, it is considered that the works could lead to groundwater-based impacts on the Natura 2000 sites which share the same groundwater body. It is envisaged that the strike (south-easterly) and dip (79°) angle of the underlying slate, phyllite & schist bedrock of the application site could transport pollutant seepages towards the Natura 2000 sites thereby negatively impacting on same via groundwater pathways.

5.3.11. *Land & Air Pathways:*

- In this respect, it is submitted that in light of the scale of the proposed development and the separation distances from the Natura 2000 sites, adverse impacts (such as noise and visual) are not anticipated via the land pathway.

With regard to the possible effects attributable to dust and vehicle emissions, it is stated that the prevailing winds would typically transport air pollutants away from the Natura 2000 sites and thus adverse impacts via air pathways from the proposed works are not anticipated.

5.3.12. It is also stated that no cumulative impacts will occur should the proposed works proceed.

5.3.13. The screening exercise thus concludes that significant impacts can be anticipated via the surface water and groundwater pathways on the Murrough Wetlands Special Area of Conservation and the Murrough Special Protection Area and that a Stage 2: Appropriate Assessment (Natura Impact Statement) is required.

5.3.14. In terms of assessing the potential direct, indirect or secondary impacts of the proposed development on the conservation objectives of the identified Natura 2000 sites, it should be noted at the outset that due to the location of the proposed works outside of any Natura 2000 designation, in addition to the separation distances involved, it is clear that the subject proposal will not directly impact on any European Site (such as by way of habitat loss or reduction), however, I would accept that consideration should be given, in particular, to the potential for the proposal to indirectly impact on the qualifying interests of some of the identified sites as a result of a deterioration in ground and surface water quality which could be attributable to the proposed works due to the hydrological / hydrogeological connectivity between the application site and those European sites.

5.3.15. Whilst I would acknowledge the conclusions drawn by the applicant's screening exercise, I am not entirely in agreement with its findings. Accordingly, I propose to consider the potential pathways for significant effects on the identified Natura 2000 sites in the following paragraphs.

5.3.16. *Surface Water Pathways:*

With respect to the proposal to construct a new surface water drainage arrangement with final discharge to the River Vartry and the reference in the Section 132 notice to the consequent creation of a source-pathway-receptor between the development and the downstream European sites by way of a hydrological connection, I would draw the Board's attention to Section 6.2.2 of the applicant's screening exercise which states that as the application site and the European sites are located within the same surface water sub-catchment '*it is anticipated that these sites will potentially experience adverse impacts*'. It is subsequently stated that '*the proposed surface water drainage design will include an attenuation tank, silt trap and a Klargester Type NSBE010 petrol interceptor, thus preventing sediment and hydrocarbon-based pollution events from impacting on the Natura 2000 sites downstream of the River Vartry*'.

5.3.17. At the outset, the aforementioned phrasing would seem to imply that the proposed installation of the attenuation tank, silt trap and the petrol interceptor has been purposively included solely to prevent or avoid significant effects on downstream Natura 2000 sites. Therefore, to take account of any such measure at the screening stage would be contrary to the judgement of the European Court of Justice in the case of "*People over Wind*" (C-323/17- CJEU) in that it would be liable to undermine the protection afforded by the Habitats (and Birds) Directive and would run the risk of circumventing the requirements for Stage 2 Appropriate Assessment when a comprehensive analysis of such measures would be carried out and a determination reached as to their effectiveness. This legal position has been reiterated in more recent case law, including in the judgment of *Sweetman (IGP) -v- An Bord Pleanala & Ors [2020] IEHC 39*.

5.3.18. However, it has also been held in *Sweetman (IGP) -v- An Bord Pleanala & Ors* that the question of the intention underlying the measure in question should be assessed objectively. For example, in some cases it may be clear that the measure in issue has been designed to avoid and reduce an impact on a relevant site whereas in other instances it may be apparent that the measure was adopted not for the purpose of avoiding or reducing the potential impact on a protected site but solely and exclusively for some other purposes. In addition, a scenario may arise where the fact that one of the purposes of the measure may have no connection with a Natura

2000 site does not exclude the possibility that there may be more than one purpose for the inclusion of the measure. In his judgement in *Sweetman (IGP) -v- An Bord Pleanala & Ors*, Mr. Justice McDonald set out a series of principles deriving from the decision of the CJEU in the case of “*People over Wind*” together with the judgements in *Kelly, Heather Hill* and *Uí Mhuirín* which includes the following:

‘In each case, it is essential to analyse the measures in question in the context of the screening exercise carried out by the competent authority (and any documents relevant to that exercise) and to determine, on an entirely objective basis, whether the measures can be said to have been intended to avoid or reduce harmful effects on a Natura site or whether the measures were designed solely for some other purpose’.

5.3.19. In taking cognisance of the foregoing, and with regard to the proposed surface water attenuation and drainage arrangements, I would refer the Board to Chapter 9: ‘*Infrastructure*’ of the Wicklow County Development Plan, 2016-2022 and, more specifically, Section 9.2: ‘*Water Infrastructure and Flooding*’. The Plan states that surface waters such as the River Vartry are managed under the provisions of the Water Framework Directive which establishes an integrated approach to the protection, improvement and sustainable use of rivers, lakes, estuaries, coastal waters and groundwater / aquifers within Europe. The WFD also influences decision-making with respect to issues such as flood defence, planning and development and requires the control of all impacts on the water resource with its primary focus being the achievement of at least ‘good’ ecological status and the prevention of deterioration for all waters.

5.3.20. With specific reference to storm and surface water infrastructure, the Development Plan acknowledges the increasing importance for the management of storm and surface water infiltration given the likely increased frequency and severity of flooding in the future attributable to climate change etc. and, therefore, it is expressly stated that over the lifetime of the Plan the effective management of surface water through Sustainable Urban Drainage Systems will be required. Section 9.2.4 of the Plan also requires all new development to minimise surface water discharges through the use of Sustainable Urban Drainage Systems in order to separate foul and surface waters and to avoid the disposal of surface water to the foul drainage system (in this regard it should be noted that the subject application initially sought to dispose of surface

water runoff from the development site to the existing combined sewer). These provisions are given effect by Objective WI12 of the Plan which requires the implementation of Sustainable Urban Drainage Systems (SUDS) and, in particular, that all surface water generated in a new development be disposed of on-site or attenuated and treated prior to discharge to an approved surface water system. In my opinion, the foregoing requirement is of particular note in that it clearly requires both the attenuation and treatment of surface waters prior to discharge. Further support is lent to the employment of sustainable drainage techniques & SUDS measures in terms of flood management by reference to Objective Nos. FL7 & FL8 of the Plan as follows:

FL7: Excessive hard surfacing shall not be permitted for new, or extensions to, residential or commercial developments and all applications will be required to show that sustainable drainage techniques have been employed in the design of the development.

FL8: To require all new developments to include proposals to deal with rain and surface water collected on site and where deemed necessary, to integrate attenuation and SUDS measures.

5.3.21. At this point, I would advise the Board that the proposed construction of a new surface water attenuation and drainage arrangement with final discharge to the River Vartry was lodged in response to a request for further information issued by the Planning Authority which stated that the original proposal to discharge runoff to the existing combined sewer was unacceptable (with the submission received from Irish Water raising similar concerns).

5.3.22. Having considered the foregoing, in my opinion, the inclusion of the proposed surface water attenuation and drainage arrangements derives directly from the requirements of Development Plan for the separation of foul and surface waters and the implementation of Sustainable Urban Drainage Systems in light of the wider obligations arising from the Water Framework Directive in terms of pollution control and the need for flood risk management.

5.3.23. In light of the rationale for the construction of the new surface drainage system, it is also necessary to consider whether or not the inclusion of the silt trap and petrol interceptor are an inherent part of the system proposed. In this respect, I would

revert to Objective WI12 of the Plan which expressly requires the implementation of Sustainable Urban Drainage Systems and that all surface water generated in a new development be attenuated and treated prior to discharge (unless otherwise disposed of on site). In my opinion, the provision of the silt trap and petrol interceptor can reasonably be held to be in response to the requirements of the Development Plan. By way of further detail, it is of relevance to note that the aforementioned 'treatment' mechanisms are located prior to the inflow to the attenuation system itself with the likely rationale being the prevention of any siltation or other contaminants interfering with the functioning of same i.e. the Wavin Aquacell Geocellular attenuation tank. The inclusion of such apparatus as part of a regular functioning SUDS arrangement is not only commonplace but an inherent aspect of the design. Therefore, it would be reasonable to accept that the provision of the silt trap and petrol interceptor have not been purposively included as a measure to avoid impacting on downstream Natura 2000 sites but that said items can be objectively considered to form an integral aspect of the proposed drainage arrangement which in itself has been designed in response to other obligations arising from the Development Plan i.e. flood risk management and the avoidance of pollution to watercourses under the WFD.

5.3.24. In summation of my analysis of the proposed surface water attenuation and drainage arrangement, I am inclined to suggest that parallels may be drawn to some extent between the subject proposal and the development considered in the case of *Kelly v. An Bord Pleanála [2019] IEHC 84* wherein Barniville J. held that the SUDS measures then proposed could not be considered to be mitigation measures as understood in 'People Over Wind' as follows:

“ . . . SUDS measures are not ‘measures that are intended to avoid or reduce the harmful effects’ of a particular development of a European site. They are not ‘intended’ to have that effect as they are required to be incorporated in developments for the reason set out in the GDSDS . . . They are not required to be incorporated by reason of the potential effect of a development on a European site. SUDS measures cannot, therefore, . . . be regarded as measures that are ‘intended’ to ‘avoid or reduce’ the harmful effects of a development on a European site”.

5.3.25. Further clarity in this regard can be derived from more recent case law (e.g. *Heather Hill Management Company v. An Bord Pleanála* [2019] IEHC 450), and whilst I would acknowledge that a function of the surface water drainage arrangements proposed is to prevent water pollution and that this action in turn would avoid significant effects to those downstream European sites, it is my view that an objective analysis of the development can reasonably conclude that the drainage measures proposed have been included in order to comply with the requirements of the Development Plan as regards the minimisation of surface water discharges through the use of Sustainable Urban Drainage Systems in order to separate foul and surface waters and in response to the need for improved flood risk management and the prevention of a deterioration in water quality sought by the Water Framework Directive (and associated regulations). In effect, the surface water attenuation and treatment measures included in the subject application are not intended to avoid or reduce harmful effects on any Natura 2000 site and comprise an inherent part of the design which may be considered in screening the proposal for the purposes of appropriate assessment.

5.3.26. Therefore, although there will be a hydrological connection between the development site and downstream Natura 2000 sites, in screening the proposed development for the purposes of appropriate assessment, I am satisfied that the design of the surface water drainage system, including the attenuation and treatment arrangements, is such that the final discharge to the River Vartry will not impact on downstream water quality. By way of further comment, I note that foul water from the development will be drained to the existing wastewater treatment plant in Wicklow town which has adequate capacity to accept the additional loadings.

5.3.27. Accordingly, this aspect of the proposed development would not be likely to have a significant effect on the European Sites in view of their Conservation Objectives.

5.3.28. *Groundwater Pathways:*

It has been suggested that, in the absence of mitigation, the seepage of pollutants / contaminants arising from accidental spillages or leakages during the construction of the development could potentially result in groundwater-based impacts on the Natura 2000 sites given the site location within the same groundwater body and the underlying ground conditions.

5.3.29. Whilst I would acknowledge that the accidental release of hydrocarbons or other contaminants could feasibly result in the pollution of groundwater sources, given the limited nature and scale of the works in question, the physical separation from Natura 2000 sites, and the likelihood of the dilution and dispersion of any spillage / leakage within the groundwater body, I am not satisfied that the construction works associated with the completion of the proposed development would in themselves pose an overt likelihood of significant groundwater pollution. In this regard, it is my reasoned opinion that any such spillages are unlikely to be such magnitude as to have any significant effect on the Conservation Objectives of the features for which the identified Natura 2000 sites have been designated.

5.3.30. *Land & Air Pathways:*

In light of the nature and scale of the proposed development, the separation distances from the Natura 2000 sites, and the applicant's reference to the prevailing wind direction, I would concur with the findings of the screening exercise that the proposed development would not be likely to have a significant effect on the European Sites in view of their Conservation Objectives by way of any land or air pathways.

Cumulative & In-combination Impacts:

5.3.31. Having reviewed the submitted screening exercise, I remain satisfied that there are no other developments in the vicinity of the subject site that would give rise to any likely significant cumulative or in-combination impacts.

Screening Conclusion:

5.3.32. Following a review of the additional information submitted in response to the Section 132 notice, including the screening exercise undertaken by the applicant, I would reiterate the conclusion of my earlier report wherein I considered it to be reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

Stage 2: Appropriate Assessment:

5.3.33. In the event that the Board does not agree with the foregoing screening conclusion, it should consider the Natura Impact Statement which has accompanied the response to the Section 132 notice.

5.3.34. With regard to the Stage 2: 'Appropriate Assessment' set out in the NIS, this focuses on the likelihood for the qualifying interests of the Murrough Wetlands Special Area of Conservation and the Murrough Special Protection Area to be significantly effected as a result of a deterioration in water quality arising from the potential release of pollutants / contaminants to groundwater during the construction stage of the development (no impacts are envisaged during the operational phase of the development). It reiterates that the application site is located within the same groundwater body as the Natura 2000 sites and that there is a potential connection via groundwater pathways as supported by the aquifer vulnerability and the bedrock characteristics which could potentially allow pollutants to permeate into the groundwater table and navigate towards the Natura 2000 sites. Reference is also made to the extent of the excavations carried out on site, including the exposure of bedrock and the presence of several groundwater seepage ponds within the deeper excavations, and the fact that further excavations will be required to install the attenuation system etc. and to accommodate the car parking areas.

(By way of clarity, Section 6.2.3 of the NIS asserts that the proposed development will not give rise to any operational impacts, most notably, by reference to the proposed installation of a silt trap and an oil / petrol interceptor as part of the surface water drainage arrangement. Foul water will be disposed of via connection to the public mains sewer).

5.3.35. Section 6 of the NIS proceeds to identify the direct and indirect impacts arising from spillages and leakages etc. during the construction phase of the development on the downstream water-dependent habitats / qualifying interests of both the SAC and the SPA arising from the hydrogeological pathway for water pollution (please refer to Table Nos. 6-1, 6-2 & 6-3 of the NIS). It subsequently recommends that the following mitigation measures be put in place during the project construction phase:

- A Construction and Environmental Management Plan (CEMP) to be submitted to Wicklow County Council for agreement prior to site works commencing.

- A construction method statement to be submitted to Wicklow County Council for agreement prior to site works commencing.

5.3.36. Further details of these measures (i.e. the site compound, water quality, and pollution control & spill prevention) are set out in Sections 6.3.1 - 6.3.3 of the NIS whilst Table Nos. 6.4 & 6.5 refer to the need for strict adherence to the following mitigation measures:

- Site compound layout instructions, ensuring that potential sources of pollution and groundwater seepage areas are not within close proximity of each other.
- Water quality controls, including the surface water to groundwater prevention plan, which outlines the timing of excavations and the necessary materials (geotextiles / geosynthetic) needed to exclude surface water pollutants from the groundwater table.
- Pollution control and spill prevention methods, detailing suitable spill kit equipment and management on site.

5.3.37. The NIS has thus concluded that, subject to adherence to the foregoing mitigation measures, the proposed development is not likely to result in any adverse effects, either on its own or in combination with other projects and plans, on the Murrough Wetlands Special Area of Conservation or the Murrough Special Protection Area.

5.3.38. On balance, I would generally concur with the findings of the NIS and would accept that the implementation of best practice and adherence to the mitigation measures set out in the NIS will serve to avoid any impacts on groundwater quality thereby ensuring no significant adverse effects on the conservation objectives of the Murrough Wetlands Special Area of Conservation and the Murrough Special Protection Area as a result of the proposed development.

5.3.39. With regard to the potential for in-combination / cumulative impacts with other plans or projects, I am also satisfied that the proposed development, subject to suitable mitigation, would not be likely to give rise to any in-combination / cumulative impacts with other plans or projects which would adversely affect the integrity of any Natura 2000 site and would not undermine or conflict with the Conservation Objectives applicable to same.

5.3.40. Therefore, I consider it reasonable to conclude, on the basis of the information available, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, when taken individually and in combination with other plans or projects, will not adversely affect the integrity of the Murrough Wetlands Special Area of Conservation (Site Code: 002249) and the Murrough Special Protection Area (Site Code: 004186) or any other European site, in view of the sites' conservation objectives.

5.4. Other Issues:

5.4.1. With respect to the submissions received following the circulation of the applicant's response to the Section 132 notice and the further third-party observations lodged, I would advise the Board that several of the issues raised therein have already been addressed in my earlier report. Accordingly, in the interest of completeness, I propose to limit the remainder of my assessment to the following matters:

5.4.2. The Requirement for Environmental Impact Assessment:

Having regard to the nature and scale of the development proposed (including the proposal to construct a new surface water sewer discharging to the River Vartry), the site location outside of any protected site, the nature of the receiving environment within the built-up area of Ashford village, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, 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 and a screening determination is not required.

5.4.3. Overall Design / Visual Impact:

Whilst I would acknowledge the concerns raised with regard to the overall design of the proposed development and its impact on the wider character of Ashford village, I would reiterate that cognisance must be taken of the planning history of the site and the development as constructed pursuant to PA Ref. No. 081704. In this respect, I remain of the opinion that the alterations to the development proposed for retention and completion, when compared to the scheme previously approved on site pursuant to PA Ref. No. 081704, are relatively minor and, when taken in the context

of the development as a whole, will not give rise to any significant loss of visual amenity to the area.

5.4.4. Water Pollution Considerations:

With respect to the proposal to discharge stormwater runoff to the River Vartry by way of a new 300mm diameter surface water sewer, I am satisfied that the proposed drainage arrangements, with particular reference to the installation of a silt trap and a petrol interceptor, will suitably mitigate against any risk of water pollution.

5.4.5. Procedural Issues:

With regard to the unfinished state of the existing development and the unauthorised works carried out on site, in the first instance, it should be noted that the subject application would seem to have been purposely lodged in order to regularise same. Secondly, the Board has no function in respect of issues pertaining to enforcement (including compliance with any conditions that may be attached to a grant of permission) and the pursuit of such matters is the responsibility of the Planning Authority. Thirdly, the Board is obliged to consider the appeal as lodged and is not empowered to revert the application back to the Planning Authority for consideration.

In reference to the Section 132 notice, it should be noted that where the Board is of opinion that any document, particulars or other information may be necessary for the purpose of enabling it to determine an appeal, it may, in its absolute discretion, serve on any party, or on any person who has made submissions or observations to the Board in relation to the appeal, as appropriate, a notice under that section requiring that person, within a period specified in the notice (being a period of not less than 2 weeks beginning on the date of service of the notice) to submit to the Board such documents, particulars or other information as is specified in the notice, and stating that, in default of compliance with the requirements of the notice, the Board will, after the expiration of the period so specified and without further notice to the person, dismiss or otherwise determine the appeal or referral.

Upon receipt of the applicant's response to the Section 132 notice, and in accordance with the provisions of Section 131 of the Planning and Development Act, 2000, as amended, the Board was of the opinion that in the particular circumstances of the appeal, it was appropriate in the interests of justice to invite the parties to the appeal to make a submission or observation on the applicant's submission dated

19th July, 2019. In this particular instance, the parties concerned were afforded three weeks (ending on 30th September, 2019) to lodge any submissions or observations in relation to the matter in question. This timeframe accords with the provisions set out in Section 131(c)(i) of the Act and, therefore, I am satisfied that the rights of the parties to the appeal have not been prejudiced.

6.0 Recommendation

6.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission & permission for retention be granted for the reasons and considerations, and subject to the conditions, set out below:

7.0 Reasons and Considerations

7.1. Having regard to the location of the site in the village of Ashford, the provisions of the current Ashford Town Plan, 2016-2022 and the Wicklow County Development Plan, 2016-2022, the nature and scale of the development proposed to be retained and carried out, the pattern of development in the area, and the planning history of the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, would not have unacceptable impacts on ecology or water quality, would not be likely to lead to a risk of flooding, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

8.0 Conditions

1. The development shall be carried out, retained and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 19th day of October, 2018 and by the further plans and particulars received by An Bord Pleanála on the 24th day of July, 2019, 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. All of the environmental, construction and ecological mitigation measures set out in the Natura Impact Statement, and other particulars submitted with the application, shall be implemented by the developer in conjunction with the timelines set out therein, except as may otherwise be required in order to comply with the conditions of this order.

Reason: In the interests of clarity and the protection of the environment during the construction and operational phases of the development.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water in accordance with the plans and particulars received by An Bord Pleanála on the 24th day of July, 2019, shall comply with the requirements of the planning authority for such works and services. Detailed specifications in this regard shall be submitted to and agreed in writing with the planning authority prior to commencement of development, and the works on the new 300mm diameter surface water pipe shall be carried out and completed, to the written satisfaction of the planning authority and Irish Water, prior to the making available by the developer for occupation of any of the residential or retail units.

Reason: In the interest of public health.

4. The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

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

Reason: In the interests of visual and residential amenity.

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

Reason: In the interest of visual amenity.

7. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

8. Prior to the commencement of development, final design details for the ramp at the junction of the southernmost site entrance with the public road, and for the completion of the upgrading works at the junction of Local Road No. L1096 with the R772 Regional Road, shall be submitted to, and agreed in writing with, the Planning Authority.

Reason: In the interest of amenity and of traffic and pedestrian safety.

9. 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. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

10. The areas of open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority. When the estate is taken in charge, the open spaces shall be vested in the local authority, at no cost to the authority, as public open space.

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

11. Full details of the proposed playground and play equipment shall be submitted to, and agreed in writing with, the planning authority prior to commencement

of any work on site. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer.

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

12. Prior to commencement of development, the developer shall submit to the planning authority, for written agreement, complete details of all boundary treatment within and bounding the proposed development site.

Reason: In the interests of visual and residential amenity.

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

Reason: In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

14. Details of all external shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the amenities of the area/visual amenity

15. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

16. 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 within each house plot shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

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

17. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

18. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1300 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

19. The development, including all roads, footpaths, cycle paths, verges, public lighting, open spaces, surface water drains, attenuation infrastructure and all other services, as permitted under this order, and as amended by the conditions of this permission, shall be carried out and completed in accordance with the "taking-in-charge" standards of the planning authority. The entire development, including all open spaces, with the exception of the communal areas directly associated with the retail units, shall be maintained by the developer until such time as it is taken in charge by the planning authority and shall not be operated or maintained by a private management

company. The communal areas directly associated with the retail units shall be maintained by a private management company, details of which shall be submitted to, and agreed in writing with, the planning authority prior to the making available by the developer of these parts of the development for occupation.

Reason: In order to comply with national policy in relation to the maintenance and management of residential estates, and to ensure that the housing part of the overall development, when completed, and all of the open spaces, can be taken in charge by the planning authority.

20. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

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

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

or, in default of agreement, shall be referred to An Bord Pleanála for determination.

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

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

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

Robert Speer
Planning Inspector

25th March, 2020