



Development

Construction of 86 no. housing units in six blocks, community facility and all associated site works and service connections.

Location

Croker's Hill, Kennyswell Road,
Kilkenny

Local Authority

Kilkenny County Council

Type of Application

Application for approval made under Section 177(AE) of the Planning and Development Act, 2000 (local authority development requiring appropriate assessment)

Prescribed Bodies

1. Transport Infrastructure Ireland
2. Department of Culture, Heritage and the Gaeltacht

Observer(s)

1. Christine & Neil Kavanagh
2. Enya Kennedy
3. Conor Foley & Patrick Woodcock
4. Brian & Ann Dunne
5. Susan Fahy

6. Bill Fahy
7. Christine Byrne

Date of Site Inspection

15th November 2019

Inspector

Donal Donnelly

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1.0 Introduction

- 1.1. Kilkenny County Council is seeking approval from An Bord Pleanála to undertake a housing scheme of 86 no. units in six blocks, a community facility and associated works adjacent to a hydrological pathway to the River Barrow and River Nore SAC and the River Nore SPA which are designated European sites. There are no other designated European sites (SPAs and SACs) in proximity to the proposed works. A Natura Impact Statement (NIS) and application under Section 177AE was lodged by the Local Authority on the basis of the proposed development's likely significant effect on European sites.
- 1.2. Section 177AE of the Planning and Development Act, 2000 (as amended) requires that where an appropriate assessment is required in respect of development by a local authority, the authority shall prepare a NIS and the development shall not be carried out unless the Board has approved the development with or without modifications. Furthermore, Section 177V of the Planning and Development Act 2000 (as amended) requires that the appropriate assessment shall include a determination by the Board as to whether or not the proposed development would adversely affect the integrity of a European Site, and the appropriate assessment shall be carried out by the Board before consent is given for the proposed development.

2.0 Proposed Development

- 2.1. Kilkenny County Council is seeking permission for a residential housing scheme of 86 no. housing units in six blocks comprising:
 - 1 x 5-bedroomed terraced house;
 - 4 x 4-bedroomed terraced houses;
 - 19 x 3-bedroomed terraced houses;
 - 9 x 3-bedroomed duplex apartments;
 - 2 x 4-bedroomed duplex apartments;
 - 14 x 1-bedroomed apartments;
 - 28 x 2-bedroomed apartments;

- 8 x 3-bedroomed apartments;
- 1 v 5-bedroomed group home.

2.2. The proposal also includes a 406 sq.m. community facility and all associated site works and service connections.

2.3. **Accompanying documents:**

- NIS
- Appropriate Assessment Screening Report
- Ecological Impact Statement
- Architectural Design Statement
- Archaeological Impact Assessment
- Archaeological Testing Report
- Site Specific Flood Risk Assessment
- Road Safety Audit Stage 1/2
- Traffic Impact Assessment
- Building Regulations Part L Compliance Report
- Site Lighting Report
- Outline Construction and Demolition Waste Management Plan
- Applications drawings (52 no.)

2.3.1. The application also provides a project justification and planning detail; a map outlining Kilkenny County Council plans for roads and amenity; confirmation of feasibility letter from Irish Water; foul and storm drainage design calculations; computer generated imagery; housing units area schedule; list of prescribed bodies notified; copy of newspaper advertisement; Habitats Directive project screening assessment; and EIA screening assessment.

3.0 Site and Location

- 3.1. The subject site is located in the townland of Croker's Hill on the western edge of Kilkenny approximately 700m from the city centre. The site is in agricultural use and forms the road-fronting part of a larger field that extends further to the north to the Breagagh River. The Breagagh River is a tributary of the River Nore and these two watercourses meet approximately 1km downstream from the site. The River Nore is designated a SAC and SPA.
- 3.2. The site has a stated area of 2.2221 hectares and has frontage of approximately 168m onto Kennyswell Road (R695). The speed limit along this road is 50kph (temporarily 30kph). In general, the western part of the site rises from the road and the eastern part falls towards the river to the rear. There is a wayleave to the north-east towards the river. Overhead electricity wires continue through the side from west to east and there is a small disused pumping station located to the front of the site and a shed to the extreme east of the frontage. There is a row of single storey cottages opposite the site on Kennyswell Road and the Breagagh Court housing development is situated to the east of the site. There are also approximately four detached dwellings to the south-west.

4.0 Planning History

Kilkenny City Council Reg. Ref: 06/74 (PL62.221535)

- 4.1. The Board upheld the Council's decision to grant permission for a residential development, 2 no. vehicular accesses from Kennyswell Road, surface car parking, landscaping and all associated site works. The application was for 57 no. units and a number of these were omitted by condition for open space. The site is a similar location to the current appeal site but of a smaller size at 1.77 hectare.
- 4.2. Permission was granted in January 2008. The permission was extended to April 2018 and has now lapsed.

5.0 Legislative and Policy Context

- 5.1. **The EU Habitats Directive (92/43/EEC):** This Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.

Article 6(3) and 6(4) requires an appropriate assessment of the likely significant effects of a proposed development on its own and in combination with other plans and projects which may have an effect on a European Site (SAC or SPA).

- 5.2. **European Communities (Birds and Natural Habitats) Regulations 2011:** These Regulations consolidate the European Communities (Natural Habitats) Regulations 1997 to 2005 and the European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010, as well as addressing transposition failures identified in CJEU judgements. The Regulations in particular require in Reg. 42(21) that where an appropriate assessment has already been carried out by a 'first' public authority for the same project (under a separate code of legislation) then a 'second' public authority considering that project for appropriate assessment under its own code of legislation is required to take account of the appropriate assessment of the first authority.
- 5.3. **National nature conservation designations:** The Department of Culture, Heritage and the Gaeltacht and the National Parks and Wildlife Service are responsible for the designation of conservation sites throughout the country. The three main types of designation are Natural Heritage Areas (NHA), Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) and the latter two form part of the European Natura 2000 Network.
- 5.4. European sites located in proximity to the subject site include:
- River Barrow and River Nore SAC
 - River Nore SPA
- 5.5. **Planning and Development Acts 2000 (as amended):** Part XAB of the Planning and Development Acts 2000-2017 sets out the requirements for the appropriate assessment of developments which could have an effect on a European site or its conservation objectives.
- 177(AE) sets out the requirements for the appropriate assessment of developments carried out by or on behalf of local authorities.
 - Section 177(AE) (1) requires a local authority to prepare, or cause to be prepared, a Natura impact statement in respect of the proposed development.

- Section 177(AE) (2) states that a proposed development in respect of which an appropriate assessment is required shall not be carried out unless the Board has approved it with or without modifications.
- Section 177(AE) (3) states that where a Natura impact assessment has been prepared pursuant to subsection (1), the local authority shall apply to the Board for approval and the provisions of Part XAB shall apply to the carrying out of the appropriate assessment.
- Section 177(V) (3) states that a competent authority shall give consent for a proposed development only after having determined that the proposed development shall not adversely affect the integrity of a European site.
- Section 177AE (6) (a) states that before making a decision in respect of a proposed development the Board shall consider the NIS, any submissions or observations received and any other information relating to:
 - The likely effects on the environment.
 - The likely consequences for the proper planning and sustainable development of the area.
 - The likely significant effects on a European site.

5.6. National Planning Framework

- 5.6.1. The NPF recognises that increases in the proportion of more compact forms of growth in the development of settlements of all sizes, from the largest city to the smallest village, has the potential to bring new life and footfall, contribute to the viability of services, shops and public transport, increase housing supply and enable more people to be closer to employment and recreational opportunities, as well as to walk or cycle more and use the car less.

5.7. Kilkenny County Development Plan, 2014-2020

- 5.7.1. The subject site is zoned “Phase 1 Residential” where the objective is “to protect, provide and improve residential amenities.” Lands directly to the north of the site are zoned “amenity/ green links/ biodiversity”. The indicative line of the Central Access Scheme passes through these lands. Road objective 10k seeks to “reserve the line

of Phase 2 and Phase 3 of proposed Central Access Scheme free from development and to complete Phase 1 of the Central Access Scheme within the plan period.”

- 5.7.2. Under Section 3.2 – Compact City, it is stated that a balanced, compact form combined with efficient transport links between employment and residential locations will facilitate easier circulation and mobility within the City and Environs. Furthermore, the resulting density and scale of population will support a wider range of retail, commercial, social and civic services than would be the case in a more dispersed city. The concept of the 10 minute city is promoted whereby residents can access local services such as shops, schools, or local parks within a 10 minute cycle or walk from their homes.
- 5.7.3. The Housing Strategy, which forms an appendix of the Development Plan, shall take into account the need to ensure that housing is available for persons who have different levels of income and in particular those in need of social and affordable housing in the area. It is also stated that the Housing Strategy will seek to counteract undue segregation in housing between persons of different social backgrounds.
- 5.7.4. The Council will seek to establish public parks along the Pockocke and Breagagh Rivers subject to resources and finances. It is noted that the Breagagh River corridor has the potential to be developed as a regional open space providing links from the Western Environs to the City.
- 5.7.5. Requirements for developments are set out in Section 11 including matters relating to urban design, apartments, open space and scale of development.

5.8. Sustainable Residential Development in Urban Areas

- 5.8.1. It is stated in Section 5.11 of these Guidelines with respect to outer suburban/ greenfield sites that *“the greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally.”*

6.0 The Natura Impact Statement

- 6.1. Kilkenny County Council's application for the proposed development was accompanied by a Natural Impact Statement (NIS) which scientifically examined the proposed development and the European sites. The NIS identified and characterised the possible implications of the proposed development on the European Site, in view of the sites' conservation objectives, and provided information to enable the Board to carry out an appropriate assessment of the proposed works.
- 6.2. The NIS describes the elements of the project (alone or in combination with other projects or plans) that are likely to give rise to significant effects on the European Site. Predicted impacts are set out, as well as the mitigation measures that are to be introduced to avoid, reduce or remedy the adverse effects on the integrity of the European Site.
- 6.3. The conclusion reached in the NIS is that pathways exist between the development site and that the integrity of the River Barrow and River Nore SAC may be affected. Specifically, this may arise from impact to Atlantic Salmon habitat from pollution during the construction phase. However, with implementation of mitigation measures, significant effects to the integrity of the SAC are not expected to occur.

7.0 Consultations

- 7.1. The application was circulated to the following bodies:
 - Department of Culture, Heritage and the Gaeltacht
 - Inland Fisheries Ireland
 - The Heritage Council
 - An Chomhairle Ealaíon
 - Fáilte Ireland
 - An Taisce
 - Transport Infrastructure Ireland

- Health and Safety Authority
- Health Services Executive
- Irish Water

7.2. The following responses were received by the Board:

7.3. **Transport Infrastructure Ireland:**

7.3.1. Having regard to the nature of the application and its location, TII has no specific observations to make in relation to potential impacts to the existing and/ or proposed national road network in the area.

7.4. **Department of Culture, Heritage and the Gaeltacht:**

7.4.1. The following heritage related observations/ recommendations were submitted by the Department:

- Underwater Archaeology Unit note that archaeological testing was focused on the footprint of the proposed development at Croker's Hill but the plans for the development seem to include a wayleave down to the River Breagagh.
- Archaeological Impact Assessment shows that previous archaeological excavation along the course of the River Breagagh identified significant archaeology, including timber fish weirs, etc.
- There is potential for cultural heritage, including riverine heritage, to be impacted during the course of any works for the wayleave.
- Clarification sought as to whether there are any planned works within the footprint of the specified wayleave or if this is an existing right-of-way that is to be maintained.
- Further archaeological mitigation that may include riverine assessment and/ or archaeological testing may be required if there is to be ground impacts near or into the River Breagagh.

7.5. **Public Submissions**

7.6. The following submissions on the application were received from members of the public:

Christine & Neil Kavanagh, 1 Breagagh Court

- Welcomes row of houses to rear of their property; however, wishes to appeal the proposed laneway between observer's rear garden and the gardens of the proposed development.
- Laneway could lead to illegal dumping, vermin and anti-social behaviour.
- Further information required on the purpose of the proposed group home.
- Wall of shed to rear of observer's property is made of stone and adds to the property.
- Plans and drawings of area to rear of observer's site shows conflicting information.
- No objection to principle of development and look forward to the benefit of better roads and paths in the area.

Enya Kennedy, Green Street, Kilkenny

Traffic

- Traffic survey is flawed – appears to be completed during Easter holidays and there are four schools in the area.
- Survey does not consider traffic at top of Kennyswell Road serviced by a small bridge.
- Condition attached by Board to the Kilkenny Central Access Scheme (KCAS) prevents next part of the project until Kilkenny Ring Road is complete – condition should be upheld as Kilkenny County Council has failed to implement a traffic management plan.
- There are further developments ongoing further out Kennyswell Road and Old Callan Road in preparation for 3,000 homes and two schools without the Ring Road which was put back to initial stages.
- One-way system now proposed for CAS bridge, Dean Street and Granges Road will impact on Kennyswell Road.
- EIS should be prepared as it would address many of the above issues.

Ecological Impact Statement

- NPWS has not been consulted for the Ecological Impact Statement and have not been consulted about the proposed development.
- November lies outside the optimal survey period for general habitat, breeding birds and amphibians.
- Breaghagh River is assessed as 'poor' under the 2010-2015 WFD reporting period – river has moderate pollution and there appears to be no attempt to measure the level of PCBs in fish or eels.
- NPWS assessment of many of the qualifying interests of the River Barrow and River Nore are bad.

Appropriate Assessment

- EIA Directive obliges a developer to supply information that expressly addresses the significant effects of their project.
- EIA process ensures that projects which are likely to have a significant effect on the environment are assessed in advance so that people are aware of what those effects are likely to be.
- NIS does not fully examine the effects on species other than those for which the River Barrow and River Nore site was listed or address the effects on protected species or habitats to be found outside the boundaries of the sites.
- Cumulative effects of further developments out the Kennyswell and Old Callen Roads has not been assessed.

PCBs

- PCBs found in the Breaghagh River in 2014 and have not been referenced in any documents.
- New discharge pipe to Breaghagh could lead to scouring of the river bed and potential carry over of material to the River Nore.
- Area beside the Mayfair development was not excavated to remove PCBs and a membrane instead was used to hold them in place – lifespan or guarantee is

about 2020/2021, which is about the time of completion of the proposed development.

Land

- Proposed development will require the movement of large amounts of material – local residents claim site was previously used as a dump.

Construction

- Any Construction Environmental Management Plan, Construction Methodology Statement and related environmental reports should be made available for public comment and inspection.
- After the tender process, a variant tender may have the option to submit an alternative design for any element of the works on the basis that there is a saving.

Conor Foley & Patrick Woodcock, Rothe Terrace Construction Concern Group

Traffic issues

- Percentage of HGV traffic is much higher than the 3% AM peak and 1% PM peak figures in the TIA.
- Board's inspector noted in report of 2/5/2007 that "Kennyswell Road at this particular location carries an unprecedented number of HGVs...".
- Council acknowledged in management plan for HGVs (24/04/13), that there was "significant disquiet expressed by local residents at the excessive use of the Kennyswell Road and circular road area by HCVs".
- Previous counts acknowledged by Council to be 20% HGVs on Kennyswell Road.
- Level of HGV traffic on Kennyswell Road is creating dangers and must be taken into account in any development proposal.
- AADT calculated in the TIA is not reliable and the methodology used is not appropriate.
- Imminent and significant proposed developments in lands adjacent to Croker's Hill amounting to 3,500 houses are planned and could give rise to 2,000 trips in

AM peak and 2,500 trips in PM peak – 50% of this traffic could use Kennyswell Road. Within a few years, the proposed development at Croker's Hill could emerge into a traffic jam.

- TIA suggests that the northern extension of the ring road and link roads between it and the proposed development will accommodate any extra traffic – northern extension could take 12 to 15 years to complete.
- Without Phases 2 & 3 of the Central Access Scheme, traffic arising from development in the area will traverse the city centre via existing linkages, including Kennyswell Road.
- Area based transport assessment needed for the entire western side of the city.

Management of Social Housing Tenants and Buildings

- City Development Plan states that there should be an avoidance of over-concentration and undue segregation of housing for persons of a specific social background – understood that the proposed development will be 100% social housing.
- Observers welcome new houses and neighbours on condition that new neighbours comply with a tenancy agreement and will behave responsibly towards incumbent residents.
- Other planning applications for social housing in Kilkenny include detail of tenancy management programmes designed for a specific social housing client profile.
- Questions what resources the Council will have to meet additional needs and challenges of managing tenancies in this concentrated and segregated housing estate.
- Those availing of the proposed housing may not have the resources or skills to complete any repairs, leaving the housing in a state of disrepair. Planning application does not contain details of housing maintenance services and upkeep programmes.
- Essential that enough support for disadvantaged persons is fully in place on completion of social housing developments.

Design, Materials, Landscaping, Maintenance and Construction

- In reality, some houses will be 7m in height difference between existing houses on Rothe Terrace – context drawing required showing height difference.
- Questions if roof design of Block C could be changed to mirror that of Block E.
- Design details should not be value engineered out after planning and during construction.
- Front garden walls on Block E indicated at height of 1675mm.
- Planting Schedule is vague – tree location plan should be provided, particularly along Kennyswell Road. Block E should be set back to allow for same.
- Maintenance plan required for development's buildings, roads and landscapes.
- Concern regarding potential noise impact from air and water heat pumps and construction times.

Brian & Ann Dunne, Croker's Hill

- Volume of traffic on Kennyswell Road is already too great – proposed development will restrict the road further.
- 93 parking spaces are proposed and Development Plan indicates that 157 spaces are required.
- There is no additional parking for the community facility.
- Current volume of traffic, lack of cycle paths, and poor quality of existing footpaths means that the road is not safe, especially for children.
- Traffic counts for two hours in the day is not sufficiently representative.
- TIA should be carried out again when Circular Road reopens.
- Flood risk assessment does not discuss the impact of secondary flooding on other existing houses in the area.
- No evidence to substantiate that “the development of the site is not expected to result in an adverse impact to the hydrological regime of the area or to increase flood risk elsewhere.”

- Cross sections show development to be completely out of proportion to existing houses on Kennyswell Road.
- Not clear how 1.5m drop from Kennyswell Road will be made safe.

Susan Fahy, Croker's Hill

- Proposed number of units is excessive for the size of the site.
- Proposed development will bear no relation or resemblance to the vernacular style of Rothe Terrace opposite.
- Amount of available green space seems small for the volume of housing units proposed.
- TIA fails to describe the current conditions on Kennyswell Road between the junction with Dominic Street and Circular Road.
- There are forward visibility issues on Kennyswell Road and the road is not safe for pedestrians and cyclists.
- Volume of traffic on Kennyswell Road will increase when roadworks to west are completed.
- Permission refused in 2011 for central access scheme on the grounds that it was premature pending completion of the ring road. Board's decision to grant permission for the northern section of the ring road was challenged and this was upheld, meaning that process is set back potentially 20 years.
- Lands bordering the site to the north on which the Breaghagh Valley Park Scheme and Kilkenny Central Access Scheme extension are proposed are still in private ownership.
- Area to the north in private ownership may become unofficial green area for potential new residents.

Bill Fahy, 21 Greenfields, Freshford Road

- Observer has occupied the shed on Kennyswell Road beside Breaghagh Court since 2007 and has not been contacted or consulted.
- Shed has been upgraded and kept in good condition and is in daily use.

Christine Byrne, c/o Dalton & O'Donnell, The Butterslip, Kilkenny

- Byrne family have lived at the adjoining Kilcreen Lodge for the last 20 years – house dates back to Charles II and is of great importance to Kilkenny given its history and association to the Smithwick name.
- Kilcreen Lodge shares a boundary of more than 800m within which the proposed development is located – there is no actual physical boundary as there is little or no water in the River Breagh for most of the year. There is no boundary whatsoever proposed between the development and the rest of the existing field.
- Absence of boundary ignores observer's security concerns, residential amenity and conservation protection of the protected structure.
- Dog-leg down to river appears to give residents of the proposed scheme access to observer's lands.
- There is no reference in the application to the Kilmanagh Road - Callen Road (LIHAF) project currently under construction.
- Impact of CAS road scheme on the subject site and on Kilcreen Lodge should be assessed prior to any grant of permission.
- It is clear from the road traffic information within file Ref: PL10.HA0014 that the Board already recognises that there is a significant problem of long-distance trucks using Kennyswell Road – further development along this road is premature until the objectives of the Board as set out under Ref: PL10.HA0014 are satisfied.
- Existing Kennyswell Road will not be able to deal with the traffic generated by in excess of 100 additional cars generated by this scheme. Traffic will also increase hugely when the Kilmanagh Road roundabout to the Callan Road/ Ring Road section is complete and Kennyswell Road will effectively be the CAS/ Ring Road until proper completion of the LIHAF and CAS schemes. Furthermore, hundreds of houses have been granted permission in the Western Environs.
- Grant of permission would be premature unless the section of road from Dean Street roundabout to Kilmanagh Road roundabout is constructed.

- Housing Authority has not given any clarity as to the mix of housing – proposal pays no regard to Council’s own policy of ‘pepper potting’ social housing across private housing schemes to allow social integration.
- Proposal stands high risk of creating social imbalance and a lack of integration. Part V of the Planning and Development Act, 2000 recognises that no more than 20% of a development scheme shall be reserved for social and affordable housing.
- There is no history of red brick in the locale – this would have a serious negative impact on Kilcreen Lodge and its curtilage. Massing, density, scale and height of the proposal will also have a negative impact on Kilcreen Lodge and all existing mature dwellings around Kennyswell Road.
- Board is asked to condition clarification of boundary treatment, a maximum of 20 units until adequate infrastructure is provided and a social mix within the scheme.

8.0 Assessment

8.1. The likely consequences for the proper planning and sustainable development of the area

- 8.1.1. It is recognised in the National Planning Framework that compact forms of growth can increase housing supply, enable people to be closer to employment and recreational opportunities, and encourage walking and cycling. The NPF also acknowledges that shorter travel distances and high-density multi-storey and terraced dwellings require less energy but that very often the fastest growing areas are at the edges of and outside cities and towns.
- 8.1.2. The subject site is a ‘greenfield’ location on the western edge of Kilkenny; however, the site is within the former borough boundary immediately adjoining the built-up area and is therefore suitable for development from a sequential viewpoint. The site is also within walking distance of the city centre and nearby amenities and is proposed for higher density development. I would therefore be satisfied that the development of the subject site is appropriate within the context of National Planning Framework and in particular National Policy Objective 3a which seeks to *“deliver at least 40% of all new homes nationally, within the built-up footprint of existing*

settlements". It should be noted that the site lies within the CSO defined urban settlement boundary.

- 8.1.3. The Core Strategy within the Kilkenny City and Environs Development Plan 2014-2020 also aims to target the growth of Kilkenny City in a compact urban form to advance sustainable development. It is stated that the provision of a wide range of dwelling types and densities within the City and Environs will be critical in providing for the housing needs of the growing population. The concept of the ten minute city is promoted whereby residents can access the local services they require such as shops, schools, or local parks within a 10 minute cycle or walk from their homes.
- 8.1.4. The Core Strategy also provides a rationale for population allocation and the location of phasing of zoned land. The subject site is zoned "*Phase 1 Residential*" where the objective is "*to protect, provide and improve residential amenities.*" Dwellings and community facilities are permissible uses under this zoning category. Development will be permitted in principle on all Phase 1 lands during the Development Plan period.
- 8.1.5. The overall aim of the Kilkenny Housing Strategy is to "*enable every household to have available an affordable dwelling of good quality, suited to its needs, in a good environment and as far as possible at the tenure of its choice*". The proposed local authority development will provide housing for persons of different income levels with particular provision for those in need of social and affordable housing. The proposal will also ensure a mix of dwelling types and sizes that will meet the needs of different categories of household, the elderly and disabled persons.
- 8.1.6. The Housing Strategy also seeks to counteract undue segregation of people of different social backgrounds. It is a concern of observers that there will be an over-concentration of social housing within the proposed development. The local authority submit that the scheme will contain people at all stages of life with a variety of needs so that an intergenerational community will be formed. It is the intention of the local authority to facilitate the purchase of units by residents where possible under any suitable affordable housing scheme. In this regard, the Council has adopted an incremental purchase scheme to allow for the sale of houses at affordable rates.

8.1.7. In general, I consider that there is a strategic and local justification for developing this site as proposed. The site is sequentially the next in line for development owing to its location adjoining the built up area of the city. The location is in walking distance of the city centre and the proposed density allows for compact growth and convenience for a maximum number of residents. There is a good mix of dwelling types and sizes and provision will be put in place to encourage a mix of tenure and the creation of a sustainable community. Subject to an assessment of the proposal on the environment and nearby European Sites, I consider that the form and location of development is acceptable.

8.2. The likely effects on the environment

8.2.1. From the outset, it should be noted that the Board has been requested to issue a concurrent EIA Screening Determination on this case under Article 120(3)(c) of the Planning and Development Regulations, 2001 (as amended). It has been determined in the accompanying Inspector's Report that there is no real likelihood of significant effects on the environment arising from the proposed development and therefore it is recommended that no Environmental Impact Assessment Report is required for the proposal.

8.2.2. Notwithstanding this, there are a number of concerns regarding the impact of proposal on the on the surrounding environment with respect to issues of residential amenity, traffic, biodiversity, archaeology, and land (ground conditions). These issues are assessed hereunder.

Residential and Visual Amenity

8.2.3. A number of issues were raised by local residents regarding the scale of the proposed development in terms of density and height, the proposed design and materials, open space, security, boundary treatments and impact on a nearby protected structure.

8.2.4. With respect to the scale of the proposed residential scheme, I would be satisfied that there is an appropriate density of development for the location of the site in proximity to the city centre. A total of 86 no. units are proposed on a 2.1364 hectare site (excluding wayleave), which equates to a density of 40 units per hectare. This is within the general range of 35-50 dwellings per hectare set out in the Sustainable Residential Development Guidelines for outer suburban/ greenfield sites on the

periphery of cities or larger towns. It should also be noted that the site is generously provided for in terms of public open space with approximately 20% to the north of the site forming a linear park. There is also a south-facing civic community space proposed to the front of the indoor community space with the potential to improve this space by redesigning the cul de sac to its east as a shared space or “home zone”. This may require a reduction/ reconfiguration in car parking in these areas.

- 8.2.5. In terms of building height, the proposed development takes cognisance of both the topography of the site and the surrounding context. Building forms increase in height from the front (two storeys) to the back of the site (three and four storeys) and from the side (single) to the middle (three and four storeys). The site is essentially developed at two principal levels with the higher level to the west. In my opinion this approach, together with the proposed roofscape design to capture sunshine, will add to the distinctiveness of the proposed development. It has also been illustrated within the shadow study accompanying the planning application that surface areas and facades will have good access to sunlight without undue overshadowing.
- 8.2.6. There are concerns that the proposed red brick finishes are incongruous within the surrounding context and will adversely impact on the curtilage of the nearby protected structure (Kilcreen Lodge). I would have no objection to the proposed materials and consider that they will also add to the variety and distinctiveness of the area. I agree that the brick detail shown on drawings should be incorporated into the final design. Should the Board be minded to grant permission for the proposed development, materials and detailing can be placed on the public record by way of condition.
- 8.2.7. I would be satisfied that the proposed development will be sufficiently separate and distant from Kilcreen Lodge so as not to affect the setting of the protected structure. Any boundary treatment can be placed on the public record in advance of commencement of development in the event of a grant of planning permission.
- 8.2.8. A resident of a dwelling located to the east of the site is concerned with proposals for rear laneway access to dwellings within Block D. I note that the laneway will not be continuous around the rear of the dwellings and may therefore be easier to manage among the residents who will utilise it.

8.2.9. Overall, I would be satisfied that the proposed development will have a positive impact on the surrounding environment in terms of improved residential amenity, activity and provision of good quality housing. The proposal will also be visually pleasing and is laid out around a focal point and with good orientation throughout. All dwellings are designed with sufficient natural lighting, private open space and adequate internal space for the capacity of the units.

Traffic, access and parking

8.2.10. Residents of the area have expressed concern regarding the traffic impact of the proposed development in view of the ongoing/ proposed road developments affecting the western side of Kilkenny. The Local Authority has included a map with the planning application illustrating plans for road infrastructure in the area. The Western Environs Scheme Phase One Infrastructure provides an upgrade of Kilmanagh Road and Circular Road, and the Breagagh Valley Park Phase Two Infrastructure includes the provision of a roadway from Circular Road roundabout around the northern boundary of the subject site and onto Waterbarrack Roundabout to the east of the site. This road will continue alongside the proposed Breagagh River Linear Walk and Breagagh Valley Park. The site lies to the southern end of the proposed Loughmacask neighbourhood and it is noted in the Development Plan that a significant proportion of zoned lands in this area are dependent on infrastructure investment in roads and water services.

8.2.11. It is submitted by observers that development is ongoing further out Kennyswell Road and Old Callan Road in preparation for 3,000 homes and two schools. Observers contend that this could give rise to significant adverse traffic impact on Kennyswell Road at the location of the subject site in the absence of the Breagagh Valley Park Phase Two Infrastructure. It is also considered that the percentage of HGV traffic on Kennyswell Road has been underestimated in the Traffic Impact Assessment accompanying the planning application.

8.2.12. In my opinion, any issues of prematurity pending completion of road infrastructure for future development proposals in the western environs of the city will be assessed at the time of any planning application concerning same. The traffic and transport impact of the current proposal should be assessed having regard to existing road conditions and in particular the potential to encourage access to/ from the site by

sustainable transport modes. In this regard, I note that the TIA predominantly relates to motorised traffic. Notwithstanding this, and as noted above, the site is located in such proximity to the city centre that walking/ cycling may become the preferred modal choice.

- 8.2.13. The TIA seeks to determine and quantify the extent of additional trips generated by the proposed development and to assess the impact of such trips on the operational performance of the local road network. AM and PM traffic counts were undertaken on Tuesday 10th April 2018. The PICADY model was used to assess the nearby Dominic Street/ De Loughry/ Kennyswell Road crossroads junction and the proposed Kennywell Road/ development access priority junction. Finally, a future year assessment of the junctions was undertaken at the year of opening, and five and 15 years after opening.
- 8.2.14. It is concluded that the existing nearby crossroads to the east will operate within capacity, with some queues and delays at opening year (2020), 2025 and in 2035. The proposed site access will also operate within capacity at these times with no queues and minimal delay. The R695 will operate within capacity when the development is fully operational. However, this road will operate above capacity in 2025 and 2035 until the Kilkenny City Access Scheme is completed.
- 8.2.15. It is recognised in the Design Manual for Urban Road and Streets that various computer programs used to analyse junction design have the calculation and minimisation of vehicular queuing and delay as their primary outputs. It is also recognised in DMURS that compact junctions in areas of high pedestrian activity may have to operate at saturation levels for short periods. This represents a shift with regards to junction operation in favour of the pedestrian. In my opinion, it is no longer appropriate to refuse permission for a residential development that could contribute marginally towards local traffic congestion when there are reasonable alternatives to private car usage available. In this case, the proximity of the site to the city centre is a reasonable factor that will contribute towards reduced car usage.
- 8.2.16. Another factor in this regard is the provision of car parking. The Kilkenny City and Environs Development Plan car parking standards for residential development states that there should be a provision of two car parking spaces per dwelling house, 1.25 spaces per apartment and 0.25 spaces per unit for visitor parking. The total car

parking requirement for proposed dwellings as per development plan standards is 148 no. spaces. The proposal to provide 93 no. spaces is clearly below this standard. Notwithstanding, I consider that a reduced car parking provision is appropriate in this case having regard to the location of the site. Moreover, the provision of a maximum amount of car parking increases the potential for car usage.

8.2.17. In general, I consider that the proposal is acceptable from a traffic and transport perspective. As noted above, I consider that the scheme would benefit from the provision of shared surfacing within the two cul de sacs. Car parking may also have to be relocated or reconfigured to parallel parking and broken up by landscaping or tree planting. In my opinion, this can be resolved by way of condition. I note observer's point regarding the volume of HGVs on Kennyswell Road. It is likely that this relates mainly to construction works further to the west and would therefore be temporary in nature.

Biodiversity

8.2.18. A number of issues were raised by observers relating to biodiversity other than issues addressed in the appropriate assessment. These relate mainly to the Ecological Impact Statement accompanying the planning application and associated habitat surveys. It is also submitted that the Breaghagh River is assessed as 'poor' under the 2010-2015 WFD reporting period; the river has moderate pollution and there appears to be no attempt to measure the level of PCBs in fish or eels.

8.2.19. From the outset, it should be noted that the planning application was circulated to Inland Fisheries Ireland and Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht. A response was received from the Department on heritage related issues; however, no response from received from IFI or the NPWS.

8.2.20. The Ecological Impact Statement accepts that the site survey carried out in November is outside the optimal survey period for general habitat surveys but it was nevertheless possible to classify all habitats. Lands are described as an open area of improved agricultural grasslands with stonewalls and hedgerows. There are no alien invasive plant species or Annex I habitats on site. Fauna activity was detected on site from and suitable habitat is present within the known range for Leisler bat, common pipistrelle, soprano pipistrelle, Daubenton's bat, Irish hare, hedgehog,

pygmy shrew, red squirrel and badger. Evidence of badger activity was found on site with the discovery of a likely subsidiary or outlier sett. The Breagagh River is suitable for Otter but there was no other recorded evidence of mammal activity. It is noted that November also lies outside the season for surveying birds but there is limited suitable nesting habitat. There are no streams or wetland habitat outside the main body of the site; however, the nearby Breagagh River is a tributary of the Nore River which is of high fisheries value.

- 8.2.21. The Ecological Impact Assessment concludes that there will be a moderate negative impact on badgers during the construction phase of the proposed development. However, the badger sett to the north of the site is located within a proposed area of open space and is not therefore likely to be directly affected. There is also the potential for construction pollution to enter the River Breagagh and this could negatively impact on fish habitat and other aquatic life.
- 8.2.22. During the operational phase of the proposed development, there is potential for pollution of water from surface water run-off. A new surface water outfall pipe and headwall at the Bregagh River to the north-east of the site is proposed and there will be on-site attenuation and controlled release via an oil/ grit interceptor. This is considered to have the potential for major negative impacts by affecting aquatic life downstream. With respect to artificial lighting, it is submitted that bat species on site will already be tolerant to a certain degree of lighting.
- 8.2.23. Cumulative impacts may arise from additional loading to the municipal wastewater treatment plant and increasing urbanisation. However, there is adequate capacity at the plant and post construction landscaping will provided additional resources for wildlife.
- 8.2.24. The following mitigation measures are set out in the Ecological Impact Statement:
- If possible, site clearance works to take place outside the nesting season – derogation licence required to allow for any destruction of nest.
 - Bat survey to be carried out during appropriate season to ascertain if shed is used as a roost – this will recommend any mitigation measures and if derogation licence is required.

- Protection of badger sett during construction works with exclusion zone of 20m if possible. Application for derogation licence being made concurrent to planning application.
- Best practice site management employed during construction works conforming with IFI guidance and present in a Pollution Prevention Plan. Storage of fuels, oils, etc. in bunded area, no discharge of sediment laden water to watercourses or surface drains and direction of any surface water run-off to silt traps or attenuation ponds.
- Lighting proposals should minimise impacts on bats and no lighting directed at the badger sett or towards the river.

8.2.25. After mitigation, with the exception of badgers, it is considered that there will be no significant residual effects on biodiversity arising from the proposed development. It is possible that the sett will be vacated permanently; however, it is concluded that this is not likely to be a major or breeding sett.

8.2.26. I would be satisfied that the applicant has appropriately assessed the biodiversity of the site and would be in agreement that the residual impact on badger will be of moderate negative impact. However, I consider that this adverse impact does not warrant refusal of the planning application.

Cultural heritage – Archaeology

8.2.27. A submission on the application relating to heritage issues was received from the Department of Culture, Heritage and the Gaeltacht. It is considered that there is potential for cultural heritage, including riverine heritage, to be impacted upon during the course of works to the wayleave. The Department points out that further archaeological mitigation, including riverine assessment and/ or archaeological testing, may be required if there is to be ground impacts near or into the River Breaghagh. The Archaeological Impact Assessment accompanying the planning application recommends that the site be subject to further assessment consisting of test trenching prior to development. This should be expanded to include the area of the wayleave as recommended and forming part of a condition should the Board be minded to grant permission.

Ground conditions

8.2.28. It is submitted within an observation that the proposed development will require the movement of large amounts of ground material and local residents have claimed that site was previously used as a dump.

8.2.29. A Ground Investigations Report accompanying the concurrent EIA determination confirms that there is made ground on site. Dumping was primarily made up of builders' waste and any such waste will be removed as required. A Waste Characterisation Report also accompanying the EIA determination shows that asbestos was detected in two samples at a non-hazardous level. It is stated that any appointed contractor would be required to adhere to conclusions of this report.

8.3. **The likely significant effects on a European site:** The areas addressed in this section are as follows:

- Compliance with Articles 6(3) of the EU Habitats Directive
- The Natura Impact Statement
- Appropriate Assessment

8.4. **Compliance with Articles 6(3) of the EU Habitats Directive:** The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.

8.5. **The Natura Impact Statement:** The application was accompanied by a NIS which describes the proposed development, the project site and the surrounding area. A Stage 1 Screening Assessment concluded that a Stage 2 Appropriate Assessment was required. The NIS outlined the methodology used for assessing potential impacts on the habitats and species within the European Sites that have the potential to be affected by the proposed development. It predicted the potential impacts for these sites and their conservation objectives, suggested mitigation

measures, assessed in-combination effects with other plans and projects and identified any residual effects on the European sites and their conservation objectives.

8.6. The NIS was informed by the following studies, surveys and consultations:

- A desk top study;
- Site visit carried out on 13th November 2018;
- An examination of aerial photography and maps;
- Standard habitats classifications (Fossitt, 2000);
- A survey of the proposal site and surroundings;
- Identification of conservation aspects of the site through literature survey and consultation with relevant stakeholders;
- Water quality data from EPA mapping tool;
- River Basin Management Plan.

8.7. The report concluded that, subject to the implementation of best practice and the recommended mitigation measures, the proposed development would not give rise to significant effects on the integrity of the River Barrow and River Nore SAC.

8.8. Having reviewed the NIS and the supporting documentation, I am satisfied that it provides adequate information in respect of the baseline conditions, and clearly identifies the potential impacts using best scientific information and knowledge. Details of mitigation measures are provided and they are summarised under Step 4 of the NIS. I am satisfied that the information is sufficient to allow for appropriate assessment of the proposed development (see further analysis below).

8.9. **Appropriate Assessment**

8.9.1. I consider that the proposed development of 86 dwelling units in six blocks, a community facility and all associated site works and service connections is not directly connected with or necessary to the management of any European site.

8.9.2. Having regard to the information and submissions available, the nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source pathway receptor principle and sensitivities of the ecological

receptors, the following European Sites are considered relevant to include for the purposes of initial screening for the requirement for Stage 2 appropriate assessment on the basis of likely significant effects.

8.9.3. European sites considered for Stage 1 screening:

Table 1

European site (SAC/SPA)	Site Code	Distance	Qualifying Interests
River Barrow and River Nore SAC	002162	990m	See below
River Nore SPA	004233	1km	Kingfisher (<i>Alcedo atthis</i>) [A229]

8.9.4. Based on my examination of the NIS report and supporting information including the NPWS website, aerial and satellite imagery, the scale of the proposed development and likely effects, separation distance and functional relationship between the proposed works and the European sites, their conservation objectives and taken in conjunction with my assessment of the subject site and the surrounding area, I would conclude that a Stage 2 Appropriate Assessment is required for the River Barrow and River Nore SAC (site code: 002162).

8.9.5. The remaining site (River Nore SPA – Site Code: 004233) can be screened out from further assessment because of the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Conservation Interests, the separation distances and the lack of a substantive linkage between the proposed works and the European site. The River Nore SPA has a single feature of interest, namely the Kingfisher. The proposed development will not have any significant effects or interfere with the range of this species, its long-term maintenance or its habitat. It is therefore reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No: 004233 in view of the site’s conservation objectives and a Stage 2 Appropriate Assessment is not therefore required for this site.

8.10. Relevant European site: River Barrow and River Nore SAC (Site Code: 002162)

8.10.1. Qualifying Interests, including any relevant attributes and targets for these sites, for the River Barrow and River Nore SAC are set out below.

Table 2

Conservation objectives	Qualifying Interests	Relevant attribute and target	Potential pathway
To maintain the favourable conservation condition	Desmoulin's whorl snail		No
The status of the freshwater pearl mussel as a qualifying Annex II species for the River Barrow and River Nore SAC is currently under review. Please note that the Nore freshwater pearl mussel remains a qualifying species for this SAC.	Freshwater pearl mussel		No
To maintain the favourable conservation condition	White clawed crayfish	No reduction in distribution; healthy population structure; absence of alien crayfish; no increase of disease; water quality at least Q3-4; no decline in heterogeneity of habitat.	Yes
To restore the favourable conservation condition	Sea/ Brook/ River lamprey	Maintain river accessibility; healthy population structure; healthy density of juveniles; no decline in extent or distribution of spawning beds; >50% or sampling sites positive.	Yes
To restore the favourable conservation condition	Twaite shad		No
To restore the favourable conservation condition	Atlantic salmon	Maintain river accessibility; conservation limit for each system consistently exceeded; maintain abundance of salmon fry; no significant decline in out-migrating smolt abundance; no decline in number and distribution of spawning redds; water quality at least Q4 at all sites sampled by EPA.	Yes

Conservation objectives	Qualifying Interests	Relevant attribute and target	Potential pathway
To maintain the favourable conservation condition	Estuaries		No
To maintain the favourable conservation condition	Mudflats and sandflats not covered by seawater at low tide		No
To maintain the favourable conservation condition	Salicornia and other annuals colonizing mud and sand		No
To restore the favourable conservation condition	Atlantic salt meadows		No
To restore the favourable conservation condition	Otter	No significant decline in distribution; terrestrial/ estuarine/ freshwater/ lake habitat; couching sites or hold; and available fish biomass.	Yes
To restore the favourable conservation condition	Mediterranean salt meadows		No
To maintain the favourable conservation condition	Killarney fern		No
To restore the favourable conservation condition	Nore freshwater pearl mussel		No
To maintain the favourable conservation condition	Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation	No decline in habitat distribution; habitat area stable; maintain hydrological regime measured as river flow and tidal influence; maintain substrate composition in tidal sub-type; 'good status' water quality in terms of nutrient standards, macroinvertebrates and phytoplankton element; vegetation typical of the habitat sub-type at favourable status; areas of floodplain must be maintained.	Yes
To maintain the favourable conservation condition	European dry heaths		No
To maintain the favourable conservation condition	Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels		No
To maintain the favourable conservation condition	* Petrifying springs with tufa formation		No
To restore the favourable conservation condition	Old sessile oak woods with Ilex and Blechnum in the British Isles		No

Conservation objectives	Qualifying Interests	Relevant attribute and target	Potential pathway
To restore the favourable conservation condition	* Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae)		No

8.11. Geographical Scope and Main Characteristics

8.11.1. The proposed development is located on an existing greenfield site on the western edge of Kilkenny City. The stated area of the site is 2.2221 hectares. The site is in agricultural use and forms the road-fronting part of a larger field that extends to the Breagagh River. The Breagagh River is a tributary of the River Nore and levels slope down from the site to the river. Downstream of the subject site, the Breagagh River flows through Kilkenny City for a distance of approximately 990m before it meets the River Nore. No part of the proposed development is within or immediately adjacent to a European site designated SAC or SPA.

8.11.2. The proposed development will involve the clearance of top soil and the loss of low value habitat. There are no watercourses or drainage ditches on site. The construction phase is expected to take 18-24 months. A new surface water drainage system separate to the foul system and conforming to SUDS principles and the Greater Dublin Strategic Drainage Study, will include on-site attenuation storage with controlled release via an oil/ grit interceptor and a new surface water outfall pipe with headwall to discharging to the Breagagh River.

8.12. Potential direct effects:

- Habitat loss during the construction phase.
- Surface topography means that surface run-off will be channelled in the direction of the Breagagh River – where this river meets the River Nore in Kilkenny City, it enters the River Barrow and River Nore SAC and the River Nore SPA.
- Nutrient and sediment input can reduce available dissolved oxygen levels in water and reduce quality of spawning habitat for Atlantic salmon.

- Pollutants arising from surface water run-off typically comprise of sediment and small quantities of hydrocarbon residues, and cement and other toxic substances during construction – can impact on White-clawed crayfish, Sea/ River/ Brook Lamprey, Atlantic salmon, otter and floating river vegetation.
- Pollution from sediment can cause long term damage to fish habitat in freshwater systems – moderate risk as site clearance works and installation of new surface water drainage system will take place close to Breagagh River.
- Surface water run-off from areas of hardstanding during the operational phase can include pollution from particulate matter and hydrocarbon residues and downstream erosion from accelerated flows during flood events.

8.13. **Potential indirect effects:**

- Human disturbance during the operational phase, as well as noise and artificial light.
- Overloading of wastewater treatment plant.
- Abstraction of water from River Nore to supply proposed development.
- Fluvial flooding from River Breagagh or potential of proposed development to increase flooding risk elsewhere.

8.14. **Potential in-combination effects:**

- Eventual implementation of the WFD will result in overall improvements to water quality throughout the Nore catchment – Breagagh River a priority area for action.
- Cumulative impacts of disturbance and water pollution from land use change in the vicinity from agricultural to built development
- Cumulative loading to the Kilkenny wastewater treatment plant.
- Full appropriate assessment carried out for Kilkenny City & Environs Development Plan – concluded that the plan will not have a significant adverse effect on Natura 2000 sites.

8.15. **Mitigation measures:**

- Preparation of surface water management plan as part of development application.
- Construction to follow IFI guidance for protection of fish habitat including erection of robust silt curtain (or similar barrier) along the northern boundary to prevent ingress of silt.
- Water leaving site to pass through appropriately sized silt trap or settlement pond so that only silt free run-off will leave the site.
- Attenuation storage with outfall via a flow control device and oil/grit interceptor to ensure that run-off rates remain at a greenfield rate.
- Storage of oils, fuels, etc. in bunded zone and notification of relevant agencies in the event of a pollution incident.
- Installation of proposed surface water headwall behind a bunded barrier, usage of fast curing concrete and no pouring of concrete in wet weather.
- Training of site personnel in the importance of preventing pollution and implementation of mitigation measures.

8.15.1. I am satisfied that with full and proper implementation of the above mitigation measures, it can be determined, beyond all reasonable scientific doubt, that the proposed development will not have significant effects on the European Site. The mitigation measures will address the source of any potential impacts and are adequate, in particular, to protect against sedimentation, nutrient input and pollutants arising from surface water run-off to the Breagagh River.

8.16. **Conclusion:** Having regard to the above, I am satisfied that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of this European site in light of its conservation objectives subject to the implementation of mitigation measures outlined above.

8.17. **Appropriate Assessment Conclusions:** Having regard to nature of the proposed development, including proposals for surface water drainage and outfall to the Breagagh River, together with proximity of the nearby tributary of the River Nore, which is designated a SAC and SPA, and with the proposed mitigation measures to

prevent the ingress of silt and to control run-off rates, I consider that it is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans and projects would not adversely affect the integrity of the European site no. 002162 or any other European site, in view of the sites' Conservation Objectives.

9.0 Recommendation

On the basis of the above assessment, I recommend that the Board approve the proposed development subject to the reasons and considerations below and subject to conditions including requiring compliance with the submitted details and with the mitigation measures as set out in the NIS.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) the EU Habitats Directive (92/43/EEC),
- (b) the European Union (Birds and Natural Habitats) Regulations 2011-2015,
- (c) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on a European Site,
- (d) the conservation objectives, qualifying interests and special conservation interests for the River Barrow and River Nore SAC (site code: 002162),
- (e) the policies and objectives of the Kilkenny City and Environs Development Plan, 2014-2020,
- (f) the nature and extent of the proposed works as set out in the application for approval,
- (g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,

- (h) the submissions and observations received in relation to the proposed development,
- (i) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter

Appropriate Assessment:

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the River Barrow and River Nore SAC is the only European Site in respect of which the proposed development has the potential to have a significant effect.

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development for the affected European Site, namely the River Barrow and River Nore SAC (site code: 002162), in view of the site's conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:

- i. the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- ii. the mitigation measures which are included as part of the current proposal, and
- iii. the conservation objectives for the European Site.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the integrity of the aforementioned European Site, having regard to the site's conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Site, in view of the site's conservation objectives.

Proper Planning and Sustainable Development/Likely effects on the environment:

It is considered that, subject to compliance with the conditions set out below, the proposed development would not have significant negative effects on the environment or the community in the vicinity, would not give rise to a risk of pollution, would not be detrimental to the visual or landscape amenities of the area, would not seriously injure the amenities of property in the vicinity, would not adversely impact on the cultural, archaeological and built heritage of the area and would not interfere with the existing land uses in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where any mitigation measures set out in the Natura Impact Statement or Ecological Impact Statement, or any conditions of approval require further details to be prepared by or on behalf of the local authority, these details shall be placed on the file and retained as part of the public record.
Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.
2. The mitigation and monitoring measures outlined in the plans and particulars relating to the proposed development, including those set out in Step 4 of the Natura Impact Statement and in the Ecological Impact Statement, shall be implemented in full or as may be required in order to comply with the following conditions. Prior to the commencement of development, details of a time schedule for implementation of mitigation measures and associated monitoring shall be prepared by the local authority and placed on file and retained as part of the public record.
Reason: In the interest of protecting the environment, the protection of European Sites and in the interest of public health.

3. Prior to the commencement of development, the local authority, or any agent acting on its behalf, shall prepare in consultation with the relevant statutory agencies, a Construction Environmental Management Plan, incorporating all mitigation measures indicated in the Natura Impact Statement and Ecological Impact Statement, and demonstration of proposals to adhere to best practice and protocols.

Reason: In the interest of protecting the environment, European Sites, and in the interest of public health.

4. Prior to the commencement of development, details of measures to protect fisheries and water quality of the river systems shall be outlined and placed on file. Full regard shall be had to Inland Fisheries Ireland's published guidelines for construction works near waterways (Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters, 2016). A programme of water quality monitoring shall be prepared in consultation with the contractor, the local authority and relevant statutory agencies and the programme shall be implemented thereafter.

Reason: In the interest of the protecting of receiving water quality, fisheries and aquatic habitats.

5. The County Council and any agent acting on its behalf shall ensure that all plant and machinery used during the works shall be thoroughly cleaned and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens.

Reason: In the interest of the proper planning and sustainable development of the area and to ensure the protection of the European sites.

6. A suitably qualified ecologist shall be retained by the local authority to oversee the site set up and construction of the proposed development and implementation of mitigation measures relating to ecology set out in the Natura Impact Statement and Ecological Impact Statement. The ecologist shall be present during site construction works. Upon completion of works, an ecological report of the site works shall be prepared by the appointed

ecologist to be kept on file as part of the public record.

Reason: In the interest of nature conservation and the protection of terrestrial and aquatic biodiversity.

7. The County Council and any agent acting on its behalf shall facilitate the preservation, recording, protection or removal of archaeological materials or features that may exist within the site, including the wayleave to the Breagagh River. A suitably qualified archaeologist shall be appointed by the County Council to oversee the site set-up and construction of the proposed development and the archaeologist shall be present on site during construction works.

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

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

Reason: In the interest of public health.

9. Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be placed on the file and retained as part of the public record prior to commencement of development.

Reason: In the interests of visual amenity.

10. The two cul de sacs to the west and centre of the proposed development shall be treated as shared surfaces. Revised drawings showing the redesign of these spaces, including any relocated/ reconfigured car parking, soft and hard landscaping, shall be placed on file and retained as part of the public record prior to commencement of development..

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

11. Provision shall be made for pedestrian and cyclist access from the cul de sacs onto Kennyswell Road. Revised drawings showing compliance with these requirements shall be placed on file and retained as part of the public

record prior to commencement of development.

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

12. 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. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

13. Details of the layout, height, materials, and external finishes of the front and rear screen/ boundary walls to dwellings, and any site boundaries shall be placed on the file and retained as part of the public record prior to commencement of development.

Reason: In the interest of residential and visual amenity.

14. The areas of public 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.

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

15. (a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, communal refuse/bin storage and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company/ approved housing body.

(b) Details of the management company contract/ approved housing body, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be placed on the file and retained as part of the public record before any of the residential units are

made available for occupation.

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

16. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be placed on the file and retained as part of the public record. This plan shall provide details of intended construction practice for the development, including:
 - (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
 - (b) Location of areas for construction site offices and staff facilities;
 - (c) Details of site security fencing and hoardings;
 - (d) Details of any on-site car parking facilities for site workers during the course of construction;
 - (e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
 - (f) Measures to obviate queuing of construction traffic on the adjoining road network;
 - (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
 - (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
 - (i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
 - (j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
 - (k) Off-site disposal of construction/demolition waste and details of how it

is proposed to manage excavated soil;

- (l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of amenities, public health and safety.

Donal Donnelly

Planning Inspector
4th December 2019