



An  
Bord  
Pleanála

## Inspector's Report ABP-305914-19.

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<b>Development</b>	Permission to construct 40 houses and connection to public foul sewer.
<b>Location</b>	Ogenty, Kilkenny Road, Gowran, Co. Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority Reg. Ref.</b>	19/56.
<b>Applicant(s)</b>	Bellerin 2 Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Brendan & Michael Dowling.
<b>Observer(s)</b>	Dr. Brian Deegan.
<b>Date of Site Inspection</b>	20/02/2020.
<b>Inspector</b>	A. Considine.

## 1.0 Site Location and Description

- 1.1. The subject site is located within the development boundary of the town of Gowran, located in the eastern area of Co. Kilkenny. The site is located to the north of the R448 road which runs between Paulstown approximately 6km to the north east – and provides access to the M9 at Junction 7, and Thomastown to the south west, and to Waterford City approximately 41km to the south.
- 1.2. The site has a stated area of 1.833ha and comprises a small part of a larger field, which has been developed as a residential estate, Ogenty, towards the south. The shape of the site is irregular, and the existing boundaries comprise a roadside hedgerow to the west, and trees and hedgerows comprising the eastern boundary. To the south lies Ogenty Residential estate, which will comprise part of the larger residential estate and the Steeples residential estate lies to the south east of the site. To the north, there is a soccer pitch. The Board will note that the site of the soccer pitch and entrance was previously used as a municipal landfill by Kilkenny County Council.
- 1.3. In addition, the site includes a length of the medieval town ditch which runs in an east to west direction through the site. The site lies approximately 100m from the Fair Green in the town centre, and approximately 400m in terms of walking to the town centre.

## 2.0 Proposed Development

- 2.1. Permission is sought, for permission for the construction of 40 no. two storey residential dwellings consisting of 10 no. 4 bed dwellings, 17 no. 3 bed dwellings and 13 no. 2 bed dwellings on a site at Ogenty, Kilkenny Road, Gowran, County Kilkenny.
- 2.2. The application included supporting documents including as follows;
  - Plans and particulars
  - Completed planning application form
  - Planning Statement
  - Home Zone Design Report

- Preliminary Construction and Demolition Waste Management Plan
- Appropriate Assessment Screening Report & Natura Impact Statement
- Ecological Impact Statement
- Sustainability Statement
- Provisional BER Certificates and Part L Compliance Report
- Surface Water Drainage Plans & Report
- Transport Assessment Report & Road Safety Audit
- Archaeological Assessment Report
- Landscape Master Plan
- Letter from Irish Water advising that connection to the system can be facilitated.
- Letter from Warren McCreery Auctioneers advising that there is a demand locally for a mix of residential units in Gowran.

2.2.1. Following the submission of a response to the further information request, the following documents were submitted:

- Revised Design Report
- Landfill Risk Assessment & Groundwater Protection Measures
- Conceptual Model drawings and Master Dataset of Ogenty Water Quality Analysis (Treated & Raw Water Quality)
- Certificates of Laboratory Analysis
- Submission from NRB Consulting Engineers in relation to Roads and Traffic issues including a Structural Evaluation of the L6697 and Pavement Investigation.
- Outdoor Lighting Report
- Screening Report for AA and NIS

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to grant planning permission for the proposed development subject to 22 conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, planning history and the County Development Plan policies and objectives. The report also includes comments on Appropriate Assessment concluding that as the likelihood of significant effects on the River Barrow and River Nore SAC cannot be ruled out given the pathways from the site via surface water and wastewater flows to the Gowran River and onto the River Barrow. It is therefore considered that a Natura Impact Assessment is required and that the NIS should take into account the adjoining historic land-use of the landfill.

The report concludes that further information is required in relation to the following:

1. Landfill risk assessment including groundwater protection measures.
2. NIS required.
3. Concerns regarding layout.
4. The internal layout of the existing development does not reflect the as-constructed layout.
5. No open space provided to serve existing development.
6. Section through the open space to detail levels and functionality required.
7. Concerns regarding the use of timber as boundary treatments.
8. Question in relation to permission to access the storm and foul pipes on Kilkenny Road as they are in private ownership.
9. PA not in favour of management companies for general estate management.

Following the submission of the response to the FI request, the PA report considered that the content of the FI response. The response made a number of amendments to the development and sought to address the issues raised in the FI request. The Planning Officer concluded overall, that proposed development is acceptable and recommends that permission be granted for the proposed development subject to conditions. This Planning Report formed the basis of the Planning Authority's decision to grant planning permission.

### 3.2.2. Other Technical Reports

**Road Design Office:** The proposed development comprises two clusters of housing, one which will be accessed through the existing Ogenty residential development and the second, via the L6697. Further information is required in relation to a number of issues as follows:

- Up to date survey of the existing development addressing discrepancies.
- Car parking arrangements
- Footpath and turning heads.
- Issues with regard to the proposed back lane access for units.
- Sight lines on the L6697 are inadequate as it has a speed limit of 80kph and not 60kph.
- Carriageway structural issues
- Detailed drawings showing horizontal and vertical alignment of the realigned road.
- FWD analysis required.
- Public lighting.

Following the submission of the response to the FI request, the Road Design Office submitted a further report setting out specific conditions to be included in a grant of planning permission relating to parking and footpaths, a Stage 3 Road Safety Audit, details of the two pedestrian crossings adjacent to houses 28 and 27, road markings, lighting design

and maintenance finishes within the existing estate which are to be addressed in order to ensure uniformity of finishes and layout of the overall development. All above issues are required to be addressed and agreed with the PA prior to construction and it is noted that any outstanding defects will require attention in the event the estate is to be taken in charge by the Local Authority.

**Planning & Building Control:** An email notes that a taking-in-charge application was lodged for the Ogenty development. Issues raised in relation to the need to provide appropriate open space which was not identified. The open space area needs to be completed and made available for use prior to the commencement of any other aspect of the proposed development with the exception of preliminary works.

It is also noted that the use of shared rear access laneways can be problematic, and alternatives should be examined. Public realm areas should be bound by solid wall construction with little or no future maintenance requirements.

With respect to the historic landfill, a detailed risk assessment has been completed by or on behalf of the Environment Section as part of the licensing process. It may be that the applicant will have to review and update the risk assessment work and it is unknown if the EPA has issued a final cert, or if KCC has carried out any remedial works yet.

There is a private well serving the Steeples development within the site and the applicant may have to identify additional groundwater protection measures to ensure the well is safe.

In terms of AA, surface water will go straight to the river via the existing system, so the impact has to be assessed at screening stage.

**Environment Section:** Further information required in relation to

1. Historic landfill
2. Groundwater protection measures during construction stage to ensure well is safe.
3. Details of the existing attenuation tank.

Following the submission of the response to the FI request, the Environment Section advises no objections to the proposed development subject to compliance with conditions.

### 3.2.3. **Prescribed Bodies**

**Irish Water:** Report submitted after the FI request issued from the PA. The report requires the submission of further information in relation to a revised watermain layout, a detailed plan and section of the existing private foul sewer from the proposed connection point and a CCTV survey of the private sewer to demonstrate it is capable of accommodating the proposed development.

**Department of Culture, Heritage and the Gaeltacht:** The Department has submitted a report noting the content of the un-licenced Archaeological Impact Assessment submitted in support of the proposed development. The report notes that the previously permitted development was large in scale and appeared to directly impact upon extensive subsurface archaeological features including the town defences, associated with the historic town of Gowran. As a result, a detailed archaeological condition (no. 28) was attached to the previous grant of permission, PA ref 05/1279.

The current proposal recommends that the previous conditions be retained in full in order to ensure that the appropriate mitigation is employed during the course of the development.

Following the submission of the response to the FI request, the Department advised no further comments.

**CAAS:** The Board will note that the PA referred the NIS to CAAS for comment. The email submission notes that there was a document prepared by CAAS.

### 3.2.4. **Third Party Submissions**

There are 7 no. third-party submission on the PA file from the following:

1. The Residents of Ogenty Estate, which has a number of signatories. The issues raised are summarised as follows:

- There are a number of conditions of the previous planning permission not complied with, PA ref 05/1279 refers
- Street lighting is not working or maintained
- No road markings
- No road signs
- Road gullies and cobbles loose and not maintained
- Hoarding was put up around the green area and therefore no area for the children to play in safely.
- Objects to Agent Management Ltd taking over maintenance of the Estate.
- Objects to the connection of the adjoining Council dump site / soccer pitch by way of footpath / walkway.
- Objects to the reduction of the green area and seeking the reinstatement and maintenance of the green area before anymore planning is granted in the interests of the health and safety of the residents.

## 2. Dr. Brian Deegan.

- The site is bound on the north east by a closed landfill (Certificate of Authorisation Number: H0235-01), which has been recently licenced by the EPA. The EPA Inspectors report noted that there is a Moderate Risk for Leachate migration to underlying regionally important aquifer, which is also classed as extremely vulnerable, and off-site human receptors from landfill gas migration.
- Given the location of the well to serve the proposed development, sufficient water quality testing over a two-year period should be undertaken to demonstrate that it is appropriate as a potable water supply.
- Landfill gas can present an explosive and asphyxiation hazard at neighbouring properties. The development is premature given the list of remediation measures required for the landfill site in accordance with its Certificate of Authorisation.
- Any residential development needs to consider appropriate buffer distances from the landfill site.



- It has not been clarified whether the existing attenuation tank is appropriately sized to accommodate the proposed development.

Following the submission of a response to the FI request, Dr. Deegan submitted the following observation:

- The revised AA Screening Report and Natura Impact Statement do not meet the current standards or guidance, do not provide sufficient or 'best scientific knowledge' or evidence to support the conclusion that 'with the implementation of these measures significant effects to the integrity of the SAC can be avoided'.
- The AA does not address the in-combination assessment with the historic landfill sufficiently and significant scientific doubt remains as to the potential cumulative impacts on the receiving waters of the SAC and SPA.
- Mitigation measures are very general, are not site specific and provide no quantitative scientific measures or evidence to conclude that no scientific doubt remains.
- Quality of groundwater as a potable source questioned.
- Issues in relation to the recognised explosive and asphyxiation hazards attributed to landfill gas has not been addressed.
- Recorded concentrations of methane at two on-site locations in 2017 were above the upper explosive limit of 5%. The site is not suitable for housing.
- Notes that the Council has agreed to purchase units on the site.

### 3. Mr. Peter Sweetman

- The Planning Authority has failed to place the relevant documentation on the web, in contravention of the Aarhus Convention.
- The site has direct hydrological connection with the River Barrow SAC. The site could be underlain by the old dump.
- The development needs a full Natura Impact Statement to establish whether or not it will have a negative effect on Natura Sites.

#### 4. Ms. Clare McDonough

- The application includes a number of errors in relation to the services available in Gowran as follows:
  - There are not 2 food stores as stated, only one small convenience store in the petrol station. The second food store closed 2 years ago.
  - There are only 2 public houses open, 1 having closed several years ago.
  - There is only 1 takeaway, the other having closed.
  - The tyre sales and repairs has been closed for at least 8 years.
- There is no capacity in the national school.
- Traffic in the village is very busy and the opening of the motorway did not alleviate the traffic through the village. Questions if there are plans to introduce calming measures.

#### 5. Mr. Paddy O'Ceallaigh

- The submission refers to the Landfill and CJEU Case C-1/03 *Van de Walle* is also cited.
- Groundwater quality
- Inadequate buffer area from the boundary of the landfill.
- It is requested that KCC release all information in relation to the make-up of waste dumped at the landfill.
- An historic gravel pit, quarry or sandpit appears present on the site on old maps submitted in the archaeological assessment. The applicant submits that no quarry was present which is erroneous.
- Surface water appears destined to the storm drains and ultimately the River Gowran which is a tributary of the River Barrow SAC. A number of legal cases are cited.
- Use of the Gowran LAP 2016 which provides for consent to build 12.5% of existing number of local housing stock is ultra vires as the plan is expired and the number of units is above the maximum allowed under the current CDP.

Following the submission of a response to the FI request, Mr. Dowling submitted the following observation by email:

- The applicant failed to identify the existing historic landfill on the site and no reference was made to it in the site characterisation document and therefore it needs to be properly assessed. This was not addressed by the IE Consulting Report.
- All other issues raised in the previous submission are reiterated and the applicants responses are flawed on all points.

#### 6. Mr. Brendan Dowling

- The applicant proposes to connect to the foul and storm pipes along the Kilkenny Road which are private and has not sought the consent to do so.
- The ring ditch indicated by the applicant in the site is in the incorrect location.
- The landfill on the site needs to be investigated and no reference is made to the historical landfill on the site.
- The applicant proposes that a management company will maintain the site which should not be permitted. The applicant is seeking to reduce their obligations under the previous permission 05/1279. The applicant has neglected to maintain the site, street lighting and open area.
- House no 34 is proposed to be constructed in close proximity to existing calor gas storage tanks which may pose a health and safety risk.

Following the submission of a response to the FI request, Mr. Dowling submitted the following observation:

- Questions if testing has been carried out for the migration of gasses or leachate of the historic landfill.
- Questions raised in relation to the presence of landfill on the applicants site which will require remediation prior to planning being considered.
- Questions in relation to the site layout and open spaces. Notes that the existing public open space was blocked up in 2017, having been available to existing residents since 2010 until it was included in the current development site.

- Issues raised in terms of non-compliance with conditions of previous grant of planning permission.
- Issues raised in relation to the Ogenty Management Company.
- Clarification required in relation to access to the private storm and foul sewage pipes. The Council has not taken these pipes in charge.
- The completion of the existing estate is the responsibility of the current legal owner and should be addressed under enforcement by the Council. The Bond provided should not be used to complete the estate as it was provided by the previous owners and to do so would enrich the current applicant unjustly.
- The Council acquired 8 units in the existing estate. It is claimed that the Council purchased an additional 12 units and if so, there are compliance issues which need to be addressed.
- Issues with the existing street lighting.

#### 7. Mr. Michael Dowling

- Mr. Dowlings submission restates the concerns as raised above in relation to the historic landfill, impacts of leachate on the quality of water and lack of an adequate buffer between the landfill and the proposed development.
- It is submitted that the application may need to be submitted to the EPA for review.
- It is noted that the applicant did not address the issues above or even notice the existence of the historic landfill.

Mr. Dowling has included a number of enclosures with his submission.

Following the submission of a response to the FI request, Mr. Dowling submitted the following observation:

- Questions raised in relation to the presence of landfill on the applicants site – in the vicinity of proposed units 43 & 44, which will require remediation prior to planning being considered.
- The opinion of the applicant that there is no need for any on site testing in relation to possible contamination migration from the adjacent landfill is not

consistent with the opinion of the Council. The applicant confirms that there is a risk and the original zoning of the land should be reviewed.

- The completion of the existing estate is the responsibility of the current legal owner and should be addressed under enforcement by the Council. The Bond provided should not be used to complete the estate as it was provided by the previous owners and to do so would enrich the current applicant unjustly.
- Clarification required in relation to access to the private storm and foul sewage pipes. The Council has not taken these pipes in charge.
- The Council acquired 8 units in the existing estate. It is claimed that the Council purchased an additional 12 units and if so, there are compliance issues which need to be addressed.
- Issues raised in relation to the use of the Ogenty Management Company.
- Issues with the existing public lighting.

#### 4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

**PA ref: 05/1279:** Permission sought by Michael, Brendan and Etian Dowling, for the construction of a housing development of 46 no. housing units, 2 no. shops and 1 no. creche, all at Kilkenny Road, Gowran, Co Kilkenny.

Permission granted on the 24<sup>th</sup> of January 2006 for 30 residential units, 2 commercial buildings and a creche. No permission was granted for the proposed residential units on the current appeal site.

**PA ref 06/1386:** Permission granted for the construction of 8 no. terraced two-storey houses in place of 4 no. terraced two-storey and 1 no. detached two-storey houses that were granted under planning permission reference number 05/1279 on the 6<sup>th</sup> of October 2016.

**PA ref 06/1387:** Permission granted for the construction of 15 no. two-storey dwellings, 12 with detached garages, new site entrance onto the minor road at the north west side of the site and road improvements with the junction at the R702 Kilkenny Road, connection to services through the existing development granted

under planning ref. no. 05/1279, and all associated site works all at Kilkenny Road, Gowran, Co. Kilkenny.

This permission excluded proposed house no. 4 in order to preserve in situ the line of the town ditch and associated buffer. The current proposed development retains this area free from development.

**PA ref 10/591 & PA ref 10/592:** Permission was granted to extend the duration of the decisions to grant permission under 05/1279 and 06/1387.

The development as constructed on foot of the above permissions equates to 23 residential units and 2 commercial buildings. The development did not provide the creche.

Adjacent Site to the north:

**PA ref: 98/764):** Permission granted, to develop soccer pitch and entrance roadway and parking area for same on the site of the previous municipal landfill. This pitch has been constructed.

## 5.0 Policy and Context

### 5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

5.1.1. The NPF includes Chapter 6 which relates to ‘People, Homes and Communities’. It sets out that place is intrinsic to achieving good quality of life. A number of key policy objectives are noted as follows:

- National Policy Objective 33 seeks to “prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location”.
- National Policy Objective 35 seeks “to increase residential density in settlements, through a range of measures including restrictions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights”.

5.1.2. National Policy Objective 16 seeks to “target the reversal of rural decline in the core of small towns and villages through sustainable targeted measures that address vacant premises and deliver sustainable reuse and regeneration outcomes.”

5.1.3. National Policy Objective 18a and 18b state as follows:

- To support the proportionate growth of and appropriately designed development in rural towns that will contribute to their regeneration and renewal, including interventions in the public realm, the provision of amenities, the acquisition of sites and the provision of services.
- Develop a programme for 'new homes in small towns and villages' with local authorities, public infrastructure agencies such as Irish Water and local communities to provide serviced sites with appropriate infrastructure to attract people to build their own homes and live in small towns and villages.

**5.2. Sustainable Residential Development in Urban areas, Guidelines (DoEHLG, 2009):**

5.2.1. These statutory guidelines update and revise the 1999 Guidelines for Planning Authorities on Residential. The objective is to produce high quality – and crucially – sustainable developments:

- quality homes and neighbourhoods,
- places where people actually want to live, to work and to raise families, and
- places that work – and will continue to work - and not just for us, but for our children and for our children's children.

5.2.2. The guidelines promote the principle of higher densities in urban areas as indicated in the preceding guidelines and it remains Government policy to promote sustainable patterns of urban settlement, particularly higher residential densities in locations which are, or will be, served by public transport under the *Transport 21* programme.

5.2.3. Chapter 6 of the guidelines deals with Small Towns and Villages and notes that in some cases, concerns have been raised about the impact of rapid development and expansion on the character of smaller towns and villages. The Guidelines specifically advise that development in smaller towns and villages must be plan led, and while higher densities are appropriate in certain locations, proposals for lower densities of development may be considered acceptable at locations on serviced land within the environs of the town or village in order to offer people, who

would otherwise seek to develop a house in an unserved rural area, the option to develop in a small town or village where services are available and within walking and cycling distance.

### **5.3. Design Manual for Urban Roads and Streets (DEMURS), DoTTS, March 2013**

In terms of the design of the proposed development, including the entrance and access to the site, it is a requirement that they be considered against the Design Manual for Urban Roads and Streets (DEMURS), DoTTS, March 2013. This Manual replaces DMRB in respect of all urban roads and streets and it does not differentiate between public and private urban streets, where a 60kph speed limit or less applies. The implementation of DMURS is obligatory and divergence from same requires written consent from relevant sanctioning authority (NRA, NTA or DTT&S). The Manual seeks to address street design within urban areas (i.e. cities, towns and villages) and it sets out an integrated design approach.

### **5.4. Kilkenny County Development Plan 2014 – 2020**

5.4.1. Chapter 3 of Plan deals with Core Strategy and identifies Gowran as a Smaller Town and Village and lies within an area of Co. Kilkenny under strong urban influence. The Plan notes that the LAP prepared for a number of small towns and villages are no longer the statutory plans but that they do contain a significant amount of information on natural and built heritage and other planning issues. The Plan provides that the 'expired plans will be used as supplementary guidance documents for planning purposes' and that 'housing development within the settlement boundary of these towns will not be subject to the rural housing policy.

5.4.2. Section 3.3.5.2 deals with existing LAPs noting that extant LAPs are in place for a number of towns and villages, including Gowran, but Table 3.3 notes that the LAP expired on the 20<sup>th</sup> of December, 2016<sup>1</sup>. It is the stated Objective of the Plan, Objective 3G refers, 'to facilitate development of housing, economic development, services and infrastructure in the smaller towns and villages of the county at a scale and character which is appropriate in order to sustain and renew population and services in these areas'.

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<sup>1</sup> The Board will note that this expired LAP was not available for viewing on-line.



5.4.3. In terms of Development Management, the following is relevant:

- For smaller towns and villages, no one proposal for residential development should increase the existing housing stock<sup>2</sup> by more than 12.5% within the lifetime of the plan.
- For villages of under 400 in population, any individual scheme for new housing should not be larger than about 10-12 units.
- The Planning Authority may limit the extent of development on any one site within the smaller towns and villages having regard to the overall water services capacity and the availability of land for development within the village.
- Have regard to existing framework plans/community action plans including existing Village Design Statements that have been prepared in consultation with the local community, and with relevant agencies, as supplementary planning guidance documents.

5.4.4. Chapter 5 of the Plan deals with Housing and it is the stated strategic aim 'to integrate the planning and sustainable development of the county with regard to the housing, social, community and cultural requirements of the county and its population'.

5.4.5. Chapter 8 of the Plan deals with Heritage, and it is noted that the subject site lies outside the identified ACA of Gowran.

5.4.6. Chapter 9 deals with infrastructure and it is noted that the Gowran, Goresbridge Paulstown Regional Water Supply Scheme is identified as one of 5 schemes to be prioritised for investment.

5.4.7. Chapter 12 of the CDP deals with Requirements for Developments with the stated strategic aim 'to encourage the creation of living and working environments of the highest quality by ensuring a high quality of design, layout and function for all development under the Planning Acts and Regulations, to conserve and build upon positive elements in the built and natural environment, and to protect amenities'.

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<sup>2</sup> Including permitted and committed development

## **5.5. Gowran LAP – now expired**

5.5.1. This LAP is referred to but is expired and not available on the Kilkenny County Council website to view. The Board will note however, that the Planning Authority Planning Report provides details of the content of the LAP.

## **5.6. Natural Heritage Designations**

The site is not located within any designated site. The closest Natura 2000 site is the River Barrow and River Nore SAC (Site Code 002162) which is located approximately 4.5km east of the site while the River Nore SPA (Site Code 004233), is approximately 7.7km to the west.

The Gowran River flows approximately 300m to the south of the subject site. This river flows into the River Barrow to the east.

The Board will note that a Natura Impact Statement and Ecological Impact Assessment were submitted in support of the proposed development.

## **5.7. EIA Screening**

Having regard to nature and scale of the development, together with the nature of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

This is a third-party appeal against the decision of the Planning Authority to grant planning permission for the proposed development. The issues raised are similar to those raised during the PAs assessment of the proposed development and are summarised as follows:

- The land directly adjoining the site is a historic landfill site and is subject to licence H0235-01, which includes a condition, no. 3.5, requiring the LA to carry out quarterly monitoring of the land fill site and in particular, the location

of 2 monitors on premises currently adjoining the landfill site. there is a landfill gas risk to any potential occupiers and the planned development should reflect this.

- The EPA Inspectors Report, Section 3 – Site Investigations, confirms that once the adjoining landfill is capped, there will be an increased risk of lateral gas migrating, therefore increasing the potential landfill gas risk to the occupants of the proposed development.
- The EPA recommends buffers of 50m between landfill and a dwelling and 10m between landfill and boundary wall.
- In the absence of a site investigation to determine if leachate is migrating through the applicants' site, therefore it is not possible for the applicant to declare with certainty that there is no leachate migrating through the site.
- The applicant should have been requested to complete the relevant site testing prior to palling being granted.
- During previous archaeological investigations, the presence of an onsite unlicensed landfill was detected, which included tyres, plastic and general waste. This has not been addressed and could result in a risk to the existing water supply.
- The foul and surface water drains located on the Kilkenny Road are owned by a third party not party to the current application. No consent to avail of the services has been obtained.
- The grant of planning permission has infringed on third party property rights and by the Councils own admissions, will result in civil litigation. The current planning condition is insufficient to protect third party rights and the applicant has not demonstrated any right to use the private services on the Kilkenny Road.

There are a number of enclosures with the appeal and it is requested that permission be refused.

## 6.2. First Party Response to Third Party Appeal

6.2.1. The first party submitted a response to the third-party appeal and submits that any concerns on the impact of the landfill should be dismissed as any issues raised by the EPA were dealt with previously in the previous Tier II and Tier III Assessments, supplemented with a range of mitigation measures proposed by the applicant through IE Consulting. In terms of connection to the public sewer network, it is submitted that the applicant has sufficient rights to proceed with development if planning permission is granted and references S34(13) of the P&D Act, 2000 as amended.

6.2.2. The appellants in this case have failed to identify themselves as former owners of the appeal site and were the beneficiaries of several planning permissions for residential development on the same site. The landfill existed and the current application is similar to the previously permitted residential development on the site. While units were omitted under PP05/1279, units within the appeal site were permitted under PP06/1387. The appellants position on the impact of landfill is therefore entirely inconsistent. It is noted that there are no grounds of appeal presented in terms of zoning, compliance with policies and objectives, development management standards, access and parking, provision of open space, density and quality of development. There was no objection to the development from the internal departments of the Council including from the Environment and Roads sections.

6.2.3. The submission responds to the grounds of appeal as follows:

1. Proximity of historic landfill:

- This issue is dealt with in the applicants response to the FI request. It is noted that the appellants did not request that permission be refused and it is submitted that sufficient information has been provided to clearly indicate that there will be no impact on public health from the proposed development subject to the mitigation clearly set out in the IE Consulting Report.
- The historic landfill lies outside the boundary of the subject site and it is the local authority who is required by the EPA Licence to carry out quarterly monitoring and not the first party. The applicant has no responsibility for any monitoring required under the licence.

- The well is sufficiently grouted to protect it from the ingress of the shallow, slow moving, contaminated shallow flow zone and offers adequate protection from the ingress of leachate plume originating from the landfill. Monitoring of the well indicates a consistently good quality potable water over 10 years of monitoring.
- In terms of the risk of lateral gas migrating, remedial measures proposed by KCC in addition to capping will result in passive interception and venting of any landfill gas. Once the gas ventilation wells are installed they will mitigate the lateral migration of gas into adjacent houses and the sewer pipe to the north.

2. Unlicensed landfill on site.

- The appellants refer to the presence of an unlicensed landfill on the site which was detected during the archaeological assessment for the previous planning applications on the site.
- The landfill is more accurately described as builders rubble and is of low risk.
- The matter can be dealt with by way of condition.

3. Connection to public sewers.

- The appellant notes that there is dispute over the issue of services and that no consent has been provided from the owners – the appellants.
- The applicant submits that it is their understanding that the services have been taken in charge by the local authority.
- The Board are referred to Section 34(13) of the P&D Act, 2000 as amended.

6.2.4. In addition to the above, the first-party sought to address the objections noted on the planning authority file. The response concludes that the issues raised in the grounds of appeal are not valid for overturning the local authority's firm grant of planning permission and that the issue of the on-site landfill can adequately be dealt with by way of condition. Water quality is of excellent quality as identified through several assessments from 2005, and this will be maintained.

The response includes a number of enclosures.

### 6.3. Planning Authority Response

The Planning Authority responded to the third-party appeal advising no further comments and referring the Board to the Planners Report.

### 6.4. Observations

Dr. Brian Deegan submitted an observation to the third-party appeal. The observation is summarised as follows:

- In accordance with CJEU rulings, AA cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned. The AA completed on the proposed development has such lacunae.
- The AA concludes that there would be no impacts on the River Barrow and River Nore SAC during the operational phases of the development, but the NIS states that environmental water quality can be impacted by the effects of surface water run-off from areas of hard standing.
- Proposed mitigation measures identified in the AA, and conditioned as part of the grant of permission, are very general, are not site specific and provide no quantitative scientific measures or evidence to demonstrate that with their implementation significant effects to the integrity of the River Barrow and River Nore SAC can be avoided.
- The AA does not address the in-combination assessment with the historic landfill sufficiently and significant scientific doubt remains as to the potential cumulative impacts on the SAC.
- Kilkenny County Council cannot base their AA on 'expert opinion' and must provide complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the development on the SAC, which they have not done.

## 7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of development
2. Compliance with National Guidelines & Standards, the Development Plan & General Development Standards
3. Water Services
4. Historic Landfill Issues
5. Other Issues
6. Appropriate Assessment

### 7.1. Principle of development

7.1.1. The proposed development site is located within the settlement boundary of the small town of Gowran in County Kilkenny. Part of the site was previously zoned 'General' in the now expired Gowran Local Area Plan 2010 where it was the stated objective 'to provide for a mix of uses and to support, strengthen and expand the service base, allowing for development appropriate to the scale and character of Gowran whilst protecting its natural and built heritage. Any development proposal in this area will be assessed against this objective'.

7.1.2. The remaining area of the site was zoned Phase 1 development and it was the stated objective 'to protect, provide and improve residential amenities to the scale and character of Gowran'. The County Development Plan acknowledges however that while the LAP is no longer a statutory plan, it does 'contain a significant amount of information on natural and built heritage and other planning issues' and that the 'expired plans will be used as supplementary guidance documents for planning purposes'

7.1.3. The current Kilkenny County Development Plan, at section 3.3.5.3 deals with development objectives for smaller towns and villages and advises that these towns and villages 'need to be developed in a way that strengthens their role as local service centres whilst respecting their existing character'. The Plan seeks at Objective 3G, 'to facilitate development of housing, economic development, services and infrastructure in the smaller towns and villages of the county at a scale and character which is appropriate in order to sustain and renew population and services in these areas'. This section of the Plan provides that 'for smaller towns and villages, no one proposal for residential development should increase the existing housing stock<sup>35</sup> by more than 12.5% within the lifetime of the plan.'

7.1.4. The proposed development seeks planning permission for the construction of 40 No. houses on the site and to connect to the available public services in the vicinity of the site. The Board will note that essentially, the development comprises an extension to a previously permitted residential development. Permission was also granted in the past, under PA ref 06/1387, to construct 15 large houses on the site. This permission was extended under PA ref 10/592 but was not constructed. This permission has now expired. The development proposes to connect to an existing private well for its water supply until such time as the public water system has been upgraded, and proposes to connect to the public sewer. The development site covers an area of 1.833ha and in this regard, the proposed density for the site amounts to approximately 22 units per hectare. The overall site density when taking into account the Ogenty development, the density amounts to 26.3 units per hectare.

7.1.5. Having regard to the planning history associated with subject site, together with the zoning and specific policy objectives afforded to the site and the context of the site, I am generally satisfied that in principle, there is no objection to a residential development at this site.

## **7.2. Compliance with National Guidelines & Standards, the Development Plan & General Development Standards:**

7.2.1. Given the context of the subject site within the town of Gowran and the potential to connect to public services, I am generally satisfied that the principle of development at this location can be considered acceptable and in compliance with the general thrust of national guidelines and strategies. The 2009 guidelines



continue to support the principles of higher densities on appropriate sites in towns and cities while Chapter 6 of the Guidelines deals with Small Towns and Villages. The Guidelines specifically advise that development in smaller towns and villages must be plan led, and while higher densities are appropriate in certain locations, proposals for lower densities of development may be considered acceptable at locations on serviced land within the environs of the town or village in order to offer people, who would otherwise seek to develop a house in an unserviced rural area, the option to develop in a small town or village where services are available and within walking and cycling distance.

7.2.2. The subject site is located on the edge of the small town of Gowran and the Guidelines and essentially comprises an extension to the already constructed Ogenty residential estate. While I acknowledge that the national guidelines recommend that developments at net densities of less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5ha, having regard to the context of the site, overall, I am satisfied that the proposed density is acceptable and in accordance with the National Guidelines.

7.2.1. The Board will note the amendments to the proposed site layout following the submission of the response to the further information request. I propose to consider the amended layout in this assessment. The development comprises a development two storey houses providing for a mix of detached, semi-detached and terraced houses. No single storey houses area proposed, and the unit types proposed are as follows:

<b>Unit type</b>	<b>Number</b>	<b>%</b>
2 bed	13	32.5%
3 bed	17	42.5%
4 bed	10	25.0%

I am satisfied that the proposed mix of house types is acceptable.

7.2.2. The objective of the Sustainable Residential Development in Urban Areas guidelines is to produce high quality, and crucially, sustainable developments. Section 5.6 of the guidelines provides certain safeguards with regard to such urban

developments to deal with both existing and future residents the area of the proposed development. Said safeguards are detailed above in Section 5.2 of this report and I consider it reasonable to address the proposed development against same.

a) *Compliance with the policies and standards of public and private open space adopted by development plans;*

- In terms of private open space, the Board will note that proposed development layout, as permitted, provides for rear gardens ranging in depth of between approximately 8m and 18m with each of the houses have private open space in the form of rear gardens. I would consider that the private open space provision is adequate. All proposed houses which back onto existing houses have +22m separation between opposing windows.
- With regard to public open space, the proposal as permitted, provides for a central area of open space to be located centrally through the development site. The area has been designed to accommodate the archaeology of the site and the two archaeological features which include a town ditch defence and a small ring ditch. Additional areas of public open space include hard play areas and incidental areas throughout the proposed development. The total area of public open space proposed amounts to 5,024m<sup>2</sup>, equating to approximately 27% of the total site area. The Development Plan, Table 12.6 refers, requires that public open space be provided at a rate of 2.4ha per 1,000 people and with a minimum of 0.25 hectares must be provided, for developments of 25 dwellings or over. The proposed public open space will serve both the existing Ogenty development and the proposed development, if permitted.
- Having regard to the shape of the subject site, I am generally satisfied that the proposed open space layout is an acceptable and the development has the potential to provide for a play area and kickabout area which would be overlooked by a number of the proposed houses.

Overall, I am satisfied that the proposed open space provision is acceptable in principle.

*b) Avoidance of undue adverse impact on the amenities of existing or future adjoining neighbours;*

- Having regard to the location and nature of the proposed development, the principle of the development is considered acceptable. I have discussed the open space provisions above, and overall, I would be satisfied that the residential amenities of future residents of the development have been considered.
- I note that the site has been included within the development boundaries of the town of Gowran, that residential uses is permissible and therefore, the proposed residential use is considered acceptable at this location. Having regard to the nature of the site I am generally satisfied that the development is acceptable and will not have any significant adverse impacts on the amenities of future residents or adjoining neighbours and uses.

*c) Good internal space standards of development;*

The proposed development does not propose apartments.

*d) Conformity with any vision of the urban form of the town or city as expressed in development plans, particularly in relation to height or massing;*

- Given the nature of the proposed development, together with the zoning afforded to the subject site, I am satisfied that the development is considered as being acceptable in principle.
- I acknowledge the location of the site on the edge of the towns development boundaries and I am satisfied that, together with the density, layout and character of existing residential development in the area, the proposed density is acceptable.
- I am generally satisfied that the height and massing of the houses proposed adequately reflect those of the existing residential developments in the vicinity and can be considered acceptable.

- e) *Recognition of the desirability of preserving protected buildings and their settings and of preserving or enhancing the character or appearance of an Architectural Conservation Area;*

Not relevant in this instance as there is no protected structure or Architectural Conservation Area within the subject site. In terms of the archaeology of the site, I am satisfied that the proposed development has sought to address its protection through the proposed layout of the development.

- f) *Compliance with plot ratio and site coverage standards adopted in development plans.*

The Kilkenny County Development Plan provides that a maximum site coverage for uses in all areas is 65% while in urban areas, the site coverage may increase to 85%. The proposed site coverage is indicated at 15.3%. In terms of plot ratio, the Plan recommends a maximum of 2.0 be set for urban areas and 1.0 for all other areas. The proposed development proposes a plot ratio of 0.222. I am satisfied that the proposed development is acceptable in terms of site coverage and plot ratio.

7.2.3. It is acknowledged that national guidelines encourage the provision of higher density development within urban areas in order to use serviced lands in a sustainable manner, but regard has to be given to the existing nature of development in the vicinity of the subject site as well as the nature and scale of the surrounding area and existing residential estates and other land uses. In addition, the CDP provides that for smaller towns in the County, no one proposal for residential development should increase the existing housing stock by more than 12.5% within the lifetime of the plan. The figures of the existing housing stock in Gowran indicate that there are 334 units, and 12.5% of this figure is just over 41 units.

7.2.4. The development proposes 40 residential units on zoned lands, and as such, complies with the policy objectives of the Kilkenny County Development Plan. In addition, the site is considered to be edge of town and in the vicinity of existing residential estates in accordance with the sustainable housing guidelines. While the density might be considered low in this context, overall however, I am satisfied that the development as proposed generally accords with the stated safeguards and overall, I consider that the principle of the development as proposed is acceptable.

### **7.3. Water Services**

- 7.3.1. The Board will note that the proposed development is to connect to the existing well which was constructed to service the existing houses, and which is maintained privately. Connection to this well is proposed until such time as the existing public water supply network in Gowran is upgraded by Irish Water. The applicant has submitted details of the water quality of the well and the Board will note that the Environment Section of Kilkenny County Council raises no objections to the proposed water supply to service the residential development.
- 7.3.2. In terms of wastewater services, the applicant proposes to connect to the existing public sewer. There has been much discussion in this regard, and it is noted that there is conflicting information on the file relating to who owns the pipe network. The applicant is satisfied that the relevant consent has been received from Kilkenny County Council to connect to the services, as they have been taken in charge. However, the Planning Report and indeed, the third-party appellant suggests otherwise. The third party advises that they are the owners of the services and have not given any consent to connect to the services. In addition, I am not clear if the estate, and therefore the services, have actually been taken in charge.
- 7.3.3. In the context of the above, I refer the Board to Section 34(13) of the Planning and Development Act, 2000 as amended which states that 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'. Overall, I am generally satisfied that the principle of the development in terms of water services, is acceptable and the matters raised in the third-party appeal are civil issues, outside the remit of the Board.

### **7.4. Roads & Traffic:**

- 7.4.1. Access to the subject site is proposed over the existing road network in the vicinity, and ultimately, off the L6697, a local road which has a speed limit of 80kph. This entrance will serve 23 of the proposed houses while the remaining 17 houses will be accessed via the existing Ogenty estate road. The development proposes improvements to the local road, including realignment and strengthening and the inclusion of a footpath. The Board will note that the Council has requested that a Stage 3 Road Safety Audit be submitted, as included in condition 4 of the grant of

permission. In the event of a grant of planning permission, I recommend that this be included as a condition.

7.4.2. The Kilkenny County Development Plan, Table 11.2, details the car parking standards required for various developments. The plan requires 2 car parking spaces per residential unit, plus 0.25 spaces per unit for visitors parking. In this regard, the proposed development requires that 90 parking spaces be provided. The submitted layout, following the submission of the response to the further information request, seeks to provide 95 parking spaces provided in groups throughout the development. In terms of electric vehicles, I note that the CDP supports the Government target of 10% EVs by 2020 and the roll out of charging infrastructure for EVs. I recommend that a condition requiring 10% of car parking spaces provide charging facilities be included in any grant of planning permission.

7.4.3. In terms of the design of the proposed development, including the entrance and access to the site, it is a requirement that they be considered against the Design Manual for Urban Roads and Streets (DMURS), DoTTS, March 2013. DMURS sets out a road user priority hierarchy and identifies a number of key design principles for roads. DMURS also provides detailed standards for appropriate road widths depending on the nature of the road and requires that roads are not up designed above their speed limit. The Board will note that the majority of the estate roads have been designed with a width of 5m, with the road serving houses nos 26 – 42 proposed at 6m. This road should be reduced to a maximum of 5.5m. In terms of the above requirements of DMURS, I would accept that the applicant has sought to design the internal roads of the proposed estate to ensure compliance

7.4.4. I note that the Roads and Transportation Section of Kildare County Council raised no objections subject to compliance with conditions. I am satisfied that the proposed development is acceptable in terms of roads and traffic issues.

## 7.5. **Historic Landfill**

7.5.1. The Board will note that the subject site lies immediately adjacent to an historic, closed landfill site, for which the EPA, on the 16<sup>th</sup> of October 2018, issued a Certificate of Authorisation to the former Gowran Landfill subject to conditions, ref H0235-01. The EPA Inspectors Report notes that the landfill comprises an area of

approximately 0.4ha and it is estimated that there are approximately 6,000 tonnes of municipal waste present including domestic, commercial and industrial waste. Trial pit excavations carried out in January 2014 found primarily domestic waste with no evidence of any significant amounts of potentially hazardous wastes, eg. oils or solvents, stains or odours. It is further noted that the depth of the waste deposits range between 0.5m to >5m below ground level, including the clay capping material, which is indicated as being between 0.4m and 2.4m.

7.5.2. In support of the proposed development, and following a request for further information, the applicant submitted a Landfill Risk Assessment & Groundwater Protection Measures report. This assessment considered the previous three risk assessments carried out in relation to the historic landfill site, Tier 1 Environmental Assessment for Gowran Landfill 2013, Tier II Risk Assessment Gowran Historic Landfill 2014 and Tier III Risk Assessment Former Landfill, Gowran 2017. A summary of the previous assessments is provided in Section 1.4, page 3, of the Landfill Risk Assessment & Groundwater Protection Measures report.

7.5.3. The submitted Risk Assessment notes that Kilkenny County Council propose to develop the site of the former Gowran Landfill as a community Sports Plan Area and remedial works have been designed as part of the Tier III assessment prepared by OCM in 2017. These measures are detailed in Section 3.2 of the submitted IE Tier III Risk Assessment. The assessment concludes that the proposed mitigation measures are sufficient, resilient and appropriate for the purposes of mitigating contamination of the Ogenty Water Supply and the surrounding environment. It is further considered that a buffer / set back distance between the Gowran Landfill and the proposed housing development is not required, as the proposed remedial works recommended by OCM will mitigate the impacts of the landfill along the boundary of the site. A set back will not achieve any additional safety measures or mitigation measures, once the proposed remedial actions by OCM are implemented.

7.5.4. In terms of impacts on the water supply well, the Board will note the proposed mitigation measures outlined in Section 4.2 of the Risk Assessment. I am generally satisfied that subject to the implementation of these measures, the proposed development can be considered acceptable.

7.5.5. With regard to landfill gas which continues to be generated in the former landfill, the Risk Assessment notes the mitigation measures required to be carried out. I would generally accept that the measures identified in the 2017 OCM assessment, included in Section 3.2 of the current IE Risk Assessment Report, are sufficient to mitigate risk to adjacent properties. The measures include the installation of landfill gas interception trenches, gas ventilation wells, additional clay capping, a surface water drain and a low permeability barrier. The IE Assessment notes that it is imperative that the recommended mitigation measures are implemented in parallel with the proposed development.

7.5.6. In this regard, I have a concern. It appears that the mitigation of any potential risk to the proposed houses, particularly those in the northern area of the site and adjacent to the former landfill site, is dependent upon a third party carrying out said works to the landfill. Clearly, it is the responsibility of the local authority to carry out the specified mitigation measures to the landfill site. No details of a timeline for the carrying out of such measures, which would facilitate the safe development of the proposed housing scheme, have been submitted.

7.5.7. Should the Board be minded to grant planning permission in this instance, I recommend that a condition in relation to phasing be included. Phase 1 of the development should include proposed units 26 to 42 and the open space area, including the childrens play area adjacent to proposed unit no. 65 and the access road onto Clover. Phase 2 of the development, which will include units 43 to 65, and shall not commence until the mitigation measures have been implemented at the former Gowran Landfill.

## 7.6. Other Issues

### 7.6.1. Archaeology

The Board will note that the subject site is located within the Zone of Archaeological Potential with a medieval town ditch traversing the site in an east west direction. Following previous applications on the site, and the submission of a previous Archaeological Impact Assessment, the design and layout of the proposed residential development seeks to preserve the line of the town defence, associated with the historic town of Gowran, in situ, with the siting of the public open space in



the vicinity of the feature. The previous archaeological assessment and excavation identified a pre-historic ring fort and it is proposed that this feature will be preserved in situ as part of the current proposal.

The application was submitted to the Department of Culture, Heritage and the Gaeltacht for comments. The report notes that a detailed archaeological condition (no. 28) was attached to the previous grant of permission, PA ref 05/1279. The Board will note the inclusion of condition 22 by Kilkenny County Council in terms of the current proposed development in order to ensure that the appropriate mitigation is employed during the course of the development.

Should the Board be minded to grant planning permission, I recommend that this condition be included.

#### **7.6.2. Part V**

In terms of compliance with Part V, the applicant proposes to transfer four 2-bed houses in order to satisfy their obligations with regard to Part V under Section 96(3)(b)(iv) of the Planning & Development Act, 2000 as amended. I have no objections in this regard, and an appropriate condition should be attached to any grant of planning permission.

#### **7.6.3. Development Contribution**

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

### **7.7. Appropriate Assessment**

#### **Introduction:**

7.7.1. The subject site is located outside any Natura 2000 site. The closest Natura 2000 site is the River Barrow and River Nore SAC (Site Code 002162) which is located approximately 4.5km east of the site while the River Nore SPA (Site Code 004233), is approximately 7.7km to the west. The Gowran River flows approximately 300m to the south of the subject site. This river flows into the River Barrow to the east.

7.7.2. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.

7.7.3. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of a European site. A Natura Impact Statement (NIS) was submitted in support of the proposed development to address the likely or possible significant effects, if any, arising from the proposed development on any European site.

**Screening for Appropriate Assessment:**

7.7.4. The purpose of AA screening, is to determine whether appropriate assessment is necessary by examining:

- a) whether a plan or project can be excluded from AA requirements because it is directly connected with or necessary to the management of the site, and
- b) the potential effects of a project or plan, either alone or in combination with other projects or plans, on a Natura 2000 site in view of its conservation objectives and considering whether these effects will be significant.

7.7.5. The NIS notes that while there are no Natura 2000 sites within 2km of the subject site, impacts can occur at distances greater than this and notes the proximity of the River Gowran to the site and its connectivity to the River Barrow approximately 5.2km to the east. The subject site lies within the catchment of the River Barrow and the River Nore SAC and is considered to be the only Natura area which lies within the zone of influence for the development. The NIS identified one European site, River Barrow and River Nore SAC (Site Code: 002162), on which there is the possibility of a significant effect arising from the proposed development. In terms of the River Nore SPA (Site Code 004233), the Board will note that the site is so designated for the Kingfisher (*Alcedo atthis*), Code A229.

### **Conclusion on Stage 1 Screening:**

7.7.6. It is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effect on the River Nore SPA (Site Code 004233), in view of the sites' conservation Objectives and that a Stage 2 Appropriate Assessment is not required in respect of this site.

7.7.7. Notwithstanding the separation distance from the subject site to the River Barrow and River Nore SAC (Site Code 002162), given the proximity of the Gowran River, which is not located within the SAC but flows into the River Barrow to the east, the potential for impacts relate to changes to surface water runoff diverting to the public surface water system which ultimately enters the River Gowran during construction and operation, in the absence of mitigation. As such, it is considered that a stage 2 AA should be carried out. The potential impacts (direct /indirect and in-combination effects) of the development on the site are examined in light of the site's conservation objectives.

### **Stage 2 Appropriate Assessment**

#### **Potential Impacts on River Barrow and River Nore Special Area of Conservation (Site Code 002162) and Mitigation proposed**

7.7.8. The River Barrow and River Nore SAC is located approximately 4.5km to the east of the subject site and extends through a number of counties including Carlow, Kildare, Kilkenny, Laois, Offaly, Tipperary, Waterford and Wexford. The SAC supports a large number of species and habitats, including priority habitats. The submitted NIS notes that none of the qualifying interests occur within the proposed development site, or within the Gowran River.

7.7.9. Specific Conservation Objectives for the River Barrow and River Nore SAC (Site Code 002162) have been prepared and seek to maintain or restore the favourable conservation condition for each of the Annex I habitat(s) and the Annex II species for which the SAC has been selected.

7.7.10. No part of the proposed development encroaches into the SAC site and as such, the development will not result in the loss, fragmentation or interference with any habitats for which the SAC is designated. The development will not result in the

disturbance of any species for which the SAC is designated and as no instream works are proposed, there will be no impacts through disturbance of sensitive aquatic species.

7.7.11. In accordance with the precautionary principle, however, it is concluded that there is potential that the proposed development, either on its own or in combination with other developments, may have a significant effect on the SAC, and in particular, on water quality. The works would have the potential, in the absence of mitigation, to increase pollution events of surface waters through the release of sediment during groundworks, storm water discharge to the Gowran River and an increased loading to the Gowran Wastewater Treatment Plan, which could result in temporary effects on the species/habitats for which the Natura 2000 sites are designated.

7.7.12. In addition, the NIS considers the historic landfill to the north of the site, an increase in water abstraction from the well due to increased demands and light and noise arising from the residential development.

7.7.13. In terms of the above, the NIS notes the Kilkenny County Council plans to engineer and impermeable cover for the landfill which will limit contamination of groundwater. The NIS concludes that there are no negative effects occurring to water quality in the River Gowran arising from the historic landfill. In addition, no water bodies in the catchment are at risk from abstraction and that the project will result in negligible additional noise and lighting at the river.

7.7.14. The NIS concludes that the likelihood of significant effects to the River Barrow and River Nore SACAs cannot be ruled out given the potential effects to water quality, particularly sediment pollution, during the construction phase.

### **Mitigation Measures**

7.7.15. Mitigation measures are proposed to address the potential adverse effects of the development, and to ensure that the loss of construction pollutants, especially sediment will not adversely affect the identified SAC or the conservation status of protected habitats and species it supports. Measures include as follows:

- Any water leaving the site will pass through an appropriately sized silt trap or settlement pond so that only clean, silt-free run-off will leave the site.
- Dangerous substances, oils, fuels etc, will be stored in a bunded zone.

- Emergency contact numbers will be displayed in a prominent position within the site compound.
- Appropriate agencies will be notified immediately in the event of a pollution incident.
- Site personnel will be trained in the importance of preventing pollution.
- Site manager will be responsible for the implementation of measures and will be inspected on at least a daily basis for the duration of the works. A record of inspections will be maintained.

Subject to the implementation of these measures, it is accepted that there is little potential for significant impacts on the qualifying interests for which the sites are selected, and hence, on the integrity of the sites, and residual impacts are unlikely.

### **In Combination Effects**

7.7.16. Cumulative impacts from plans and projects in the area which may result in potential in-combination effects are not specifically considered in the submitted NIS. However, the Board will also note that an Ecological Impact Assessment was also submitted in support of the proposed development. Section 5.2 of the EclA deals with cumulative impacts and notes that cumulative impacts may arise through the additional loading to the Gowran Wastewater Treatment Plan and increasing urbanisation resulting in the loss of habitats.

7.7.17. It is concluded that subject to mitigation measures on the proposed development, no cumulative impacts on the local surface water environment will occur. It is further noted that the Gowran WWTP has available capacity to accommodate the proposed development. In terms of on-site habitats, it is submitted that higher value habitats are to be largely retained while post-construction landscaping will provide additional resources for wildlife.

### **Conclusion**

7.7.18. I have read the submitted Natura Impact Statement in its entirety, together with all other environmental reports submitted with the planning application in support of the proposed development, and I am satisfied that it assesses the likely significant impacts arising from the proposed development on the integrity of the River Barrow and River Nore SAC (Site Code: 002162).

7.7.19. I have had full regard to the Stage 2 Appropriate Assessment as set out in the NIS. I am satisfied that it has adequately identified and assessed the key characteristics of the potential impacts arising as a result of the proposed development, both alone and, having regard to the EclA, the in combination with other projects, which could undermine the stated conservation objectives of the Natura 2000 site.

7.7.20. In the interests of protecting the conservation objectives of the European Site, mitigation measures are proposed in the submitted NIS as part of the proposed development. Mitigation measures are proposed for both the construction and operational phases of the development. On implementation, it is submitted that there are no likely residual negative impacts on the designated site. It is concluded that the proposed development will not have a significant adverse effect on the integrity of the Natura 2000 Network.

7.7.21. Having regard to the nature of the subject development site, the nature of the proposed development and its location at a remove from existing Natura 2000 sites, together with the details presented in the Ecological Impact Statement and Natura Impact Statement, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, I consider it reasonable to conclude on the basis of the information on the file, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the River Barrow and River Nore SAC (Site Code: 002162), or any other European site, in view of the site's Conservation Objectives.

## **8.0 Recommendation**

I recommend that planning permission be granted for the proposed development for the following stated reason and subject to the stated conditions.

## **9.0 Reasons and Considerations**

Having regard to the pattern of permitted development in the area, to the provisions of the Kilkenny County Development Plan 2014-2020, and to the layout and design as submitted, the Board considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or

visual amenities of adjoining properties, would not seriously injure the residential amenities of future occupants and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 27<sup>th</sup> day of September 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. Prior to the commencement of any development on site, the applicant shall submit the following, for the written agreement of the Planning Authority:
  - (a) A revised site layout plan shall be submitted to improve pedestrian connectivity through the site in accordance with the requirements of the Planning Authority
  - (b) A Stage 3 Road Safety Audit in respect of the proposed and existing development, to be carried out at the developers' expense
  - (c) Full details of the road re-alignment and up-grading proposals, including a timeframe for the implementation and details of finishes and specifications.
  - (d) The road widths within the estate shall be no wider than 5.5m
  - (e) A minimum of 10% of the car parking spaces shall provide facilities for charging electric vehicles. All parking spaces shall be provided with the necessary ducting to enable provision for charging facilities for EVs.

- (f) Full details of proposed lighting scheme for the site
- (g) A full set of 'as constructed' surface and foul sewers in the development, including results of sewer surveys demonstrating no mis-connections between the systems, shall be submitted.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of clarity, traffic and public safety and visual amenity.

3. The development shall be carried out on a phased basis as follows:
  1. The area of open space identified on the submitted plans, hatched in red, shall be completed in the first instance and shall be made available to existing residents of the Ogenty Estate before the commencement of the residential estate.
  2. Units 26 to 42 and the remaining area of the central public open space, including the children's play area adjacent to proposed unit no. 65 and the access road onto Clover, shall be completed as part of the first phase of the development and no house shall be occupied until the public open space has been completed.
  3. The final phase of the development, which will include units 43 to 65, shall not commence until the mitigation measures as detailed in the Landfill Risk Assessment have been implemented at the former Gowran Landfill.

**Reason:** In the interests of residential amenities, to ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings and in the interests of proper planning and sustainable development.



4. The developer shall facilitate the preservation, recording and protection of archaeological materials or features which exist within the site. In this regard, the developer shall notify the planning authority in writing at least four weeks in advance of the commencement of development works on the site.

The developer shall also comply with the following requirements:-

- (a) An archaeological excavation shall be carried out on the site in those areas which are identified as having been unavailable in the Stafford McLoughlin Archaeology Report submitted in support of the planning application. The test excavation shall be carried out by the archaeologist who shall be licenced under the National Monuments Acts 1930-1994, and in consultation with the National Monuments Section of the Department of Culture, Heritage and the Gaeltacht (DCHG).

The archaeological excavation shall be carried out prior to commencement of development or at such later date as may be agreed in writing with the planning authority;

- (b) satisfactory arrangements for the execution (or supervision) by a suitably qualified archaeologist of all archaeological excavations, investigations and site development works, shall be agreed with the planning authority.

This archaeologist shall advise on such measures as may be necessary to ensure that any damage to the remaining archaeological material, including the extensive subsurface archaeological features, including the town defences, associated with the historic town of Gowran, is avoided or minimised. In this regard, the proposed locations of foundations, etc. shall be the subject of continuing review and full details of any revisions to the proposed location or levels of pipe caps, ground beams, service trenches or other subsurface works shall be submitted to and agreed in writing with the planning authority in advance of their incorporation within the development. No services / road / pathways shall cross the line of the town ditch except those agreed in advance with the DCHG;

- (c) All deposits which have been identified as of archaeological, or possible archaeological significance referred to in the assessment reports submitted under licence save for those portions of the possible town ditch being preserved in situ, shall be excavated under licence and prior to any development commencing on site.
- (d) Satisfactory arrangements for post-excavation research and the recording, removal and storage, of any archaeological remains which may be considered appropriate to remove, shall be agreed with the planning authority and the DCHG. In this regard, a comprehensive report on the completed archaeological excavation shall be prepared and submitted to the planning authority and the DCHG within a period of six months or within such extended period as may be agreed with the planning authority.

In default of agreement between the parties regarding compliance with any of the requirements of this condition, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site, it is considered reasonable that the developer should facilitate the preservation by record of any archaeological features or materials which may exist within it. In this regard, it is considered reasonable that the developer should be responsible for carrying out properly supervised archaeological excavations in circumstances where the permitted development works would be likely to result in the unavoidable disturbance or destruction of such features or materials.

- 5. The proposed residential units shall be used and occupied as single dwellings and solely for residential purposes. The houses shall not be sub-divided or used for any commercial purposes, including short term lettings, without the benefit of a specific planning permission for such use.

**Reason:** In the interests of clarity and the protection residential amenity.

6. External finishes including all materials, colours and textures shall be in accordance with the details submitted to, the planning authority, unless otherwise agreed prior to commencement of development.

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

7. The applicant or developer shall enter into wastewater connection agreements with Irish Water, prior to commencement of development. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

On the completion of the upgrade of the public water supply in Gowran, the development shall fully connect to same in accordance with the connection agreement with Irish Water and the existing well shall be fully decommissioned.

**Reason:** In the interest of public health.

8. 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.

9. Proposals for a development/estate 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 signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name 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 of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

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

10. Site development and building works shall be carried only out between 0800 hours and 1800 hours Mondays to Fridays excluding bank holidays and between 0800 hours and 1300 hours on Saturdays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In the interest of protecting the residential amenities

11. The development hereby permitted, including all roads, footpaths, and public lighting, shall be carried out in accordance with the standards and requirements of the planning authority for taking in charge. The development shall be maintained by the developer until taken in charge by the authority and shall not be operated or maintained by a private management company.

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

12. 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. The play area shall be developed in accordance with details to be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All of this work, including the play areas, 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 and play area shall be vested in the planning authority, at no cost to the authority,

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

13. All trees and hedgerows shown shall be retained on the site and shall be adequately protected during the period of construction in accordance with BS: 5837. Such measures shall include a protection fence which shall be erected beyond the branch spread, and no construction work or storage shall be carried out within the protective barrier.

**Reason:** In the interest of visual amenity and of protecting the residential amenities of adjoining properties.

14. 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 noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of clarity, orderly development and amenity.

15. A construction traffic management plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and for storage of deliveries to the site.

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

16. Having regard to the prior use of the site as a dumping ground for construction waste, and the potential for contamination, the developer shall, prior to the commencement of any development on site, engage the services of an appropriately qualified environmental consultant with experience in the

field of land contamination, to carry out site investigations, risk assessment, prepare a report and recommend remedial measures where appropriate. This report shall be submitted to the planning authority prior to the commencement of any development on site.

**Reason:** In the interests of environmental protection and sustainable development.

17. 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.

18. 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 until taken in charge, of the development.

19. 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.

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A. Considine

Planning Inspector

17<sup>th</sup> April 2020