



An  
Bord  
Pleanála

## **S. 4(1) of Planning and Development (Housing) and Residential Tenancies Act 2016**

### **Inspector's Report ABP-306826-20**

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#### **Strategic Housing Development**

345 no. residential units (69 no. duplex units, 182 no. houses and 94 no. apartments), crèche and associated site works

#### **Location**

Townlands of Commons West,  
Boycetown and Kilcock (adjacent to the existing Brayton Park estate),  
Kilcock, Co. Kildare  
([www.boycetownshdkilcock.com](http://www.boycetownshdkilcock.com))

#### **Planning Authority**

Kildare County Council

#### **Applicant**

Rycroft Homes Ltd

**Prescribed Bodies**

Health Service Executive  
Inland Fisheries Ireland  
Irish Rail  
Transport Infrastructure Ireland  
Department of Culture Heritage and  
the Gaeltacht  
Irish Water

**Observer(s)**

Glenn & Marty Jacques  
Conor & Norma Fennessy  
Dave & Audrey McCreery  
David Mc Clockey  
Dereck McEway  
Fiona Lavin  
Niall & Rachel Lyons  
Pamela and Niall Lynam  
Shirley Hickey & Anave Fegarthy

**Date of Site Inspection**

30<sup>th</sup> of April 2020.

**Inspector**

Karen Hamilton

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## 1.0 Introduction

This is an assessment of a proposed strategic housing development submitted to the Board under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016.

## 2.0 Site Location and Description

- 2.1. The site (c.11.5ha) is a greenfield site, partially in use for agriculture, and is located to the west of Kilcock, a small growth town in County Kildare. The site is located to the north of Brayton Park an established residential area comprising predominantly of two storey dwellings. The M4 is located along part of the south-western boundary of the site. The Royal Canal and Dublin-Sligo railway are located along the northern boundary.
- 2.2. An access road into the site also provides access to Brayton Park and Kilcock Primary Health Care Centre, to the south of the site separated by open space lands. These open space lands contain a walking track and appear to be in public use. Access was not permitted during site inspection as they were closed due to COVID-19.
- 2.2. The development lands are undeveloped agricultural lands with hedgerows defining the field patterns. The site bounds an existing residential estate, Brayton Park, along the south east and the access road to Brayton Park also provides access to the subject site. The dwellings in Brayton Park are predominantly two bed semi-detached dwellings.

## 3.0 Proposed Strategic Housing Development

- 3.1. The applicant is proposing **a 10 year permission for** residential development comprising of 345 no. residential units and a crèche facility (466.76m<sup>2</sup>).
- 3.2. The proposed development includes future links to undeveloped educational zoned lands adjoining the site. Lands along the north-east of the site have been reserved for pedestrian/ cycle access across the railway line. In addition, vehicular and pedestrian access through the existing Brayton Park site are included.

- 3.3. Public open space has been provided throughout the development and a portion of open space buffer area along the motorway is included in the proposed development.

**Table 1: Unit Mix**

	<b>Apartments</b>	<b>Duplexes</b>	<b>Dwellings</b>	<b>Total Units</b>	<b>%</b>
1 bed	13 (gf duplex)	-	-	<b>13</b>	<b>4</b>
2 bed	56 (gf duplex) & 25 (blocks)	13	42	<b>136</b>	<b>39</b>
3 bed	-	56	102	<b>158</b>	<b>46</b>
4 bed	-	-	38	<b>38</b>	<b>11</b>
<b>Total Units</b>	<b>94</b>	<b>69</b>	<b>182</b>	<b>345</b>	<b>100</b>
<b>Percentage</b>	<b>27</b>	<b>20</b>	<b>53</b>	<b>100</b>	<b>-</b>

## 4.0 Planning History

None of relevance on the site

### **ABP PL09.246663 (Reg Ref. No. 16/233)**

Permission refused for a 190 unit residential development on lands to the north-west of the site for reasons pertaining to inadequate water supply and capacity; prematurity pending completion of a masterplan for a municipal pumping station and associated foul sewer network; and impact on St. Patrick's Church, a protected structure.

### **SHD 306309-19**

Permission refused for an SHD application within the environs of Kilcock (Meath County Council), to the south east, on the opposite site of Kilcock, for 575 no dwellings for reasons relating to flooding and the insufficient information available in the SSFRA to undertake a Justification Test.

## **PL 09.302586 (Reg Ref 18539)**

Permission granted on the Zed Candy Site within the centre of Kilcock for alterations to a parent permission Reg Ref 15.463 for 64 no. dwellings.

### **5.0 Section 5 Pre Application Consultation**

5.1. A pre application consultation took place at the offices of An Bord Pleanála 20<sup>th</sup> November 2018, commencing at 2.30 pm and following consideration of the issues raised during the consultation process, and having regard to the opinion of the planning authority, An Bord Pleanála issued an opinion that the documentation submitted **required further consideration and amendment** to constitute a reasonable basis for an application for strategic housing development to An Bord Pleanála as summarised below:

#### **1. Water and Waste-water capacity constraints**

- The possible prematurity of development having regard to the existing local network capacity constraints,
- The constraints in the Lower Liffey Valley Catchment Area and the time-frames in which these may reasonably be expected to be addressed particularly where development consents may be required,
- Further consideration should have regard to the reason for refusal in respect of File Ref. No. PL.246663 for the adjoining lands and any change in circumstances since the issuing of this decision by An Bord Pleanála and also any proposals by the prospective applicant which may address these concerns.

#### **2. Surface water management and Risk of Flooding**

- The surface and storm water management for the development lands and the risk for displaced or increased discharge of waters downstream to the Rye Water, an SAC,
- The requirements of the Local Authority in respect of surface water treatment and disposal and SUDS measures proposed for the scheme.
- Surface water management proposals should be considered in tandem with any Flood Risk Assessment, which should in turn accord with the requirements of 'The Planning System and Flood Risk Management

Guidelines' (including the associated 'Technical Appendices') and include hydraulic modelling where considered appropriate.

3. Development Strategy and Urban Design Response

- The proposed layout, scale and density of the proposal particularly in the context of the provisions of section 7.4.4.1 of the Kilcock Local Area Plan for the Bawnogues Expansion Area and the indicative layout provided.
- National Policy and Guidelines with particular regard to the 12 criteria set out in the Urban Design Manual
- The proximity to and frequency of public transport services, existing and proposed, and to the strategic location of the site vis-a-vis such services.

4. Movement and Transportation

- Vehicular, cycle and pedestrian connections including legibility and permeability to and through the development site.
- Local policies contained in the Kilcock LAP regarding provision of connections, in particular the specific objectives MTO 11 which seeks to develop a new cycle link from the Bawnogues to the Train Station using 'the Island' as a route along the Railway and MTO 25 which seeks to link Bawnogues to the M4 interchange.
- Proposed street hierarchy and access arrangements consistent with the principles of the Design Manual for Urban Roads and Streets.
- Public transport routes proposed to serve the development lands.

5.2. Furthermore, the prospective applicant was advised that the following **specific information** should be submitted with any application for permission:

1. A layout plan with the zoning objectives overlain on the proposed residential scheme to provide clarity regarding location of residential units vis-à-vis the open space lands.
2. Landscaping masterplan indicating the full extent of tree retention and removal, etc.
3. An Archaeological Impact Assessment.

4. Photomontages and cross sections indicating interface with residential developments to the south.
5. Details of existing and proposed levels across the development site.
6. Existing watercourses and utilities that may traverse the site.
7. A Building Life Cycle Report in respect of the proposed apartments.
8. A report identifying the demand for school places likely to be generated and current capacity to accommodate.
9. A construction and demolition waste management plan.
10. A phasing plan for the proposed development having regard to sub-catchments within the scheme and Part V provision.
11. A site layout plan indicating all areas to be taken in charge.
12. Noise Assessment Report having regard to proximity of site to M4.
13. Relevant consents to carry out works on lands that are not included within the red-line boundary. The prospective applicant is advised that all works should as far as possible be included within the red-line boundary.
14. Appropriate Assessment screening report and if appropriate a Stage 2 Natura Impact Statement.
15. Applicant needs to satisfy himself and the Board in the event of making an application that the proposed development is not mandatory for the purposes of Environmental Impact Assessment. Attention is drawn to section 7 provisions of the Planning and Development Amendment Act 2016 and seek a determination, if desired. In the event that the development is considered sub-threshold, the information referred to in article 299B(1)(b)(ii)(II) and article 299B(1)(c) of the Planning and Development Regulations 2001-2018 should be submitted.

### **5.3. Applicants Response**

#### **5.3.1. Statement of Response**

A Statement of Response to the issues raised can be summarised as follows:



- The proposed development is discharging the waste water via gravity and there are no pumping elements required. Irish Water have issued a Statement of Design Acceptance in respect of the proposed development.
- The surface water outfall has been redirected from the previous location at the Brayton Park Distributor Road. The location now is through Brayton Park and into an existing ditch along the Motorway has been agreed with the Council.
- The design and layout has been altered to reflect a more intense density, provides direct access to the school site reservation and potential for pedestrian/ cycle over the rail line. The design also incorporates hedgerows, complies with the 12 criteria in the urban design manual and links to neighbouring areas. The scheme complies with Section 7.4.4.1 of the Kilcock LAP for the Bawnouges Expansion Area.
- The proposal complies with the Kildare LAP, includes a statement of compliance with DMURS and provides permeability through the site and beyond. Letters of correspondence relating to the railway bridge cross over accompany the application and the applicant has engaged with Irish Rail.

The following has been submitted in relation to the specific information:

1. The submitted Architectural Design Statement demonstrates the site is located on lands zoned residential and open space. Lands zoned F3 open space are integrated into the development as per pre planning discussions.
2. A landscape proposal, master plan and rationale is submitted.
3. An Archaeological Impact Assessment indicates two sites in the vicinity although these are c. 440m to the southwest and c.285m to the north. Site investigations indicate no finds of archaeological significance.
4. Photomontages and cross sections accompany the application.
5. The engineering drawings and documents indicate no rivers or streams traversing the site.
6. A Building Lifecycle report is included.
7. A report on the School Capacity is submitted.
8. A Construction and Demolition Waste Management Plan is submitted.

9. Drwg No. 110 illustrates the proposed phasing plan appropriate to deliver the open space and Part V.
10. Drwg No 108 details the areas to be taken in charge.
11. An Assessment of Inward traffic Noise Impact accompanied the application and includes a number of mitigation measures.
12. Relevant Consents for works within the red line have been submitted.
13. An Appropriate Assessment Screening Assessment accompanied the application.
14. An Environmental Impact Screening accompanied the application.

#### **5.3.2. Statement of Consistency**

The statement of consistency demonstrates that the proposal is consistent with the relevant National and Regional Policies. The apartment and duplex units comply with all aspects of the national guidance.

The Kildare County Development Plan 2017-2023 designates Kilcock as Moderate Sustainable Growth town. The proposal complies with the housing policies relating to mix, design and provision of open space. In relation to height a material contravention statement is prepared. The CDP envisaged a residential density of 30-50 units per ha for outer greenfield/ suburban sites and the proposal includes 43.23 units per ha (net).

In relation to specific details listed in the Kildare LAP 2015-2021 the proposed development complies with the New Residential and F3- Open Space zoning on the site. The proposed development will deliver part of the quantum of units required on in Table 10 for this site (Site ref.1). The requirements of Section 7.4.4 of the LAP “The Bawnogues” expansion area have been incorporated into the proposal and include those specific requirements relating to the roads objective (MT0 11).

#### **5.3.3. Statement of Material Contravention**

The proposed development has been advertised as a material contravention and application is accompanied by a Material Contravention Statement in relation to a material contravention of the County Development Plan and the Kilcock Local Area Plan in relation to building height and density.

In relation to **building height**, section 17.2.1 of the development plan requires:

- General heights to respect the local streetscape and prevailing building heights in the area and buildings that exceed 5 storeys/ and or 15m will only be considered at areas of strategic planning importance in the LAP.
- The proposed heights range from 2-5 storeys and the site forms part of an areas identified as an expansion area. Those 5 storey elements are corner apartment blocks and the proposal is justified.

In relation to density, Table 4.2 of the development plan requires 30-50 for outer suburban greenfield sites and table 10 of the Kilcock LAP sets out a density of 30 units per ha for Site ref 1.

- There appears to be a conflict in the range of densities from the county development plan and the LAP.
- The proposal provides c. 43per ha.
- The proposal is an SHD application on a greenfield site, in close proximity to public transport and the density proposed will support the housing targets in the National Planning Framework.
- The design of the site is guided by the constraints including an indicative roads objective, buffer zone for open space, indicative bridge over the railway and cycle path along the boundary with the railway line

The applicant states the proposed development is warranted under Section 37 (2) (b) of the Planning and Development Act, 2000 as it:

- Provides 345 dwellings for Kilcock and is of strategic importance,
- There is conflicting objectives in the density requirements of the CDP (35-50 units per ha) and the LAP (30 units per ha).

## **6.0 Relevant Policy**

### **6.1. National Planning Framework (NPF) (July 2018)**

#### NPO 1b

- Eastern and midland Regional- 490,000-540,000 additional people.

## NPO 68

A Metropolitan Area Strategic Plan may enable up to 20% of the phased population growth targeted in the principal city and suburban area, to be accommodated in the wider metropolitan area i.e. outside the city and suburbs or contiguous zoned area, in addition to growth identified for the Metropolitan area. This will be subject to:

- any relocated growth being in the form of compact development, such as infill or a sustainable urban extension;
- any relocated growth being served by high capacity public transport and/or related to significant employment provision; and
- National Policy Objective 9, as set out in Chapter 4.

## NPO 71

City/county development plan core strategies will be further developed and standardised methodologies to ensure a co-ordinated and balanced approach to future population and housing requirements across urban and rural area.

## Appendix 2

Population and Employment in Urban Settlements in the Eastern and Midland Regional Assembly area, (Census of Population 2016)

- Kilcock with a population of 6,093 had 2,827 resident workers and with Total jobs at 848 the ratio of resident works was 0.300.

### **6.2. Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Regional Assembly (EMRA). (June 2019)**

The RSES is a strategic plan for the future development of the region up to 2031. Kildare County is within the eastern region with Maynooth and Naas identified as the key towns for the county.

Kildare forms part of the Dublin Metropolitan Area (DMA).

Section 5.7 – Housing Delivery

Table 6.1- Retail Hierarchy- Kilcock is designated as a level 3- Key Service Centre

### 6.3. Section 28 Ministerial Guidelines

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (including the associated 'Urban Design Manual')
- Design Standards for New Apartments – Guidelines for Planning Authorities' (updated 2018)
- Spatial Planning and National Roads Guidelines (DoECLG), 2012
- Design Manual for Urban Roads and Streets'
- The Planning System and Flood Risk Management' (including the associated 'Technical Appendices')
- Childcare Facilities Guidelines for Planning Authorities'
- Urban Development and Building Heights – Guidelines for Planning Authorities', (2018)

### 6.4. Kildare County Development Plan 2017-2023

- Table 2.2- Settlement Hierarchy

Kilcock is designated as a Moderate Sustainable Growth Town

- Table 3.3- New dwellings for Kilcock 2016-2023- Target units **1,300**.
- Kilcock is located within the Metropolitan Area Strategic Plan (MASP) with growth directed to these areas.

#### Variation No 1 of the CDP

- Note: Kildare County Council adopted a Variation to the Kildare County Development Plan 2017-2023 (Variation No.1) in June 2020. On 31<sup>st</sup> July, a Stay on this Variation was granted by the High Court and Kildare County Council (through their legal agents) advised the Board that this variation can not be taken in to consideration in the determination of applications before the Board, while the Stay remains in place.
- However, as KCC are endeavouring to lift the Stay, in the interest of completeness, and as the CE's report was written having regard to the

Variation, it is considered appropriate to outline the relevant content and implications of this Variation. Table 2.2- Settlement Hierarchy (as amended by Variation No.1 is outlined below)

The changes in Variation no 1 reflect the changes in the national and regional policy and the information relevant to Kilcock is summarised below:

- Kilcock a large scale strategic and economic development area of the MASP.
- Kilcock is a self-sustaining town with high levels of population growth and a weak employment base.
- Table 3.3- Settlement Hierarchy – Population and Housing Unit Allocation 2020-2023
  - Seven settlements types are listed for the County of which five include zoned lands.
  - Kilcock is designated as a Self-Sustaining town which is one of 6 towns within the third tier of the settlement hierarchy.
  - The NDF 2026 Pop Growth in housing units for Kilcock is 562.
  - Dwellings target 2020-2023 is **241**.

#### Density

- LUDO 1- ensure densities in line with the national guidance for sustainable residential developments
- LUD 1- Promote residential densities appropriate to its location and surrounding context.
- Table 4.1- Guidance on appropriate locations for new residential developments.
  - Outer Suburban or Greenfield at the edge of large towns should make efficient use of lands.
  - Edge of sites within small towns should be in the range of 20-35.
- Table 4.2- Indicative Density Levels
  - Large towns (>5,000) outer suburban/ greenfield- 30-50 units per ha

## 6.5. Kilcock Local Area Plan 2015-2021

The site is located in lands zoned for both residential and open space as detailed below:

- Objective C – New residential, where it is an objective “*To provide for new residential development in the Braganstown area of the town. This zoning provides for new residential development and other services incidental to residential development*”.
- Objective F3 – Open Space where it is an objective “*To preserve a buffer zone from the Motorway*” with the planting of forestry encouraged.

### Residential & Design

- Map 3 - Urban Design Framework Plan provides an indicative layout for the future development of these lands.
- Section 7.4.4 - Expansion Areas is directly relevant to the site.
- Integration of the school site.
- Figure 28 provides an indicative layout for Bawnogues and Enfield Road Expansion Lands.
- Section 12.4.1- Kilcock - 1,061 units 2015-2021.
- Table 10 – the site is identified as Site Ref. 1 of the LAP where 23ha of land is identified for approximately 690 units within a maximum density of 30 units per hectare.
- Map 3- list of sites for residential development.

### Walking and Cycling (Section 8.1.4.4)

**MTO 11-** To develop new cycle links to a high standard for utility cycling including:

- Develop a pedestrian and cyclist bridges connecting the Ryebribe area to the schools in Bawnogues crossing the Royal Canal and Railway
- Car parking Standards as per Sections 6.4.6 and 19.4.1 of the development plan.

### Site Specific Roads Objective

- Map 7 of the Transport Objectives Map

- **MT0 25-** Site-specific objective: “To facilitate the future construction of and protection of route- ‘From the Bawnogues to the M4 interchange’

### Water

- SI 21- To require site surface water attenuation measures of a development is likely to cause flooding or potentially destructive storm surges in existing water courses.
- SIO 19- To ensure that no surface either temporary or permanently is permitted to discharge to the canal or its feeders without written consent from Waterway Ireland.

### Flooding

#### Map 8- Flood Risk Map

The site is located on lands where it is a requirement for any development to be accompanied by a Site-specific flood risk assessment to indicate the following:

- Indicate and quantify the loss of floodplain storage from any development proposal,
- Provide compensatory storage located within or adjacent to the proposed development,
- Indicate measures to ensure water vulnerable elements will not be flooded,
- Ensure existing flood paths for flood waters will not be compromised.

#### 6.6. **Designated Sites**

The site is located c.6.8km to the north west of the Rye Water Valley/Carton SAC (001398).

The Royal Canal pNHA is located to the north of the site on the opposite side of the Dublin-Sligo Railway Line.

### 7.0 **Third Party Submissions**

- 7.1. A total of 15 no submissions were received in relation to the proposal of which 6 no. of these are prescribed bodies, further detailed below in Section 9.0. The remaining



submissions are from residents in the vicinity of the site and the issues raised are similar in nature. Therefore I have summarised into common themes below:

7.2. Specific concerns relating to the row of terraces backing onto Brayton Park ( N/E corner)

- The 3 /4storey (10.8m height) is taller than adjoining building in Brayton Park (proposed ridge is 2.3m higher).
- These terraces will result in significant overshadowing on existing properties
- The use of a shadow calculator shows overshadowing on back gardens and contact with the rear façade in the evening between April to September
- The BRE guidelines recommend measuring the reduction in sunlight at the centre of the open space and 1.6m from the back facade.
- In the case of 91 Brayton Park there will be a reduction of 17% light at the centre of the back garden and 15% reduction at 1.6 m at the back façade.
- There will be overlooking into the rear of gardens and the submitted drawings do not take account of extensions of existing dwellings and the proposed terrace is only 20m from the rear of 91 Brayton Terrace even without the extension.
- A relocation and lowering of the roof height of Terrace 04 & 10/11 to 9.94m would reduce overshadowing and privacy issues.

7.3. Hedgerow.

- A significant hedgerow has not been included on the submitted plans as they only indicate a narrow drain with one tree although there is numerous trees backing onto Brayton Park.
- The proposal includes the removal of 46% of the hedgerows.
- There is diverse habitat within these hedgerow and the impact would be negative.
- The terraces should be pulled back to allow the retention of hedgerows.

7.4. Ecological Impact Survey

- The survey was undertaken on the 14<sup>th</sup> of February 2019 which is not the during the summer migrant bird breeding period.
- There were signs of fox, but no fox earths recorded. There have been foxes noted locally.
- Only a daylight inspection of the site was undertaken for Bats although a nocturnal inspection would be required.
- The removal of a drainage ditch, detailed in Fig 6 Section 4.2 will have an adverse impact on the drainage of Brayton Park.
- The Arboriculture Impact Assessment does not acknowledge the existence of the hedgerow along the boundary and is therefore insufficient.

#### 7.5. Kilcock expansion

- The rate of residential development is not commensurate with the provision of schools and medical services.
- A list of new housing development includes 358 units brought to the market in the last 2 years which is to include of c. 1,000 people.
- The proposed development would result in a further increase of c. 1,000 people.
- There is no additional capacity in GP's or schools and the LAP has a proposal for a secondary school in Boycetown which should be complete before the estate.
- There is significant deviation from the case outlined in the Kilcock LAP.
- The majority of the development is aimed at starter homes for young couples although the schools system cannot accommodate an increase.

## 8.0 Planning Authority Submission

A submission to the SHD application was received from the Planning Authority on the 25<sup>th</sup> of June 2020 and includes a summary of the points raised in the submissions, the opinion of the Elected Members, the interdepartmental reports and the Chief Executives Views. The PA recommends a refusal of permission having

regard to the non-compliance with DMURS, the removal of vegetation and the policies of the CDP, the absence of final details for compliance with Roads Objective MT025, the location of part of the lands on educational and community zoning and the housing allocation for Kilcock as per Variation No 1 of the CDP. The submission has been summarised below.

### **8.1. View of Elected Members**

The members raised the following concerns:

- Sufficient number of parking spaces,
- Objection to 5 storeys-too high,
- Objection to the vehicular entrance through Brayton Park,
- Density of the entire development,
- Playground facilities,
- Open Spaces,
- Electric charging points,
- Increase in the number of properties sought for permission from 220 to 345,
- Provision of balconies and if they are included in open spaces in terms of size,
- Accuracy of the drawings,
- Open Space on lands zoned for education and community use,
- Link between Brayton Park and proposed development,
- Proposed pedestrian link along the railway track,
- Crèche facilities,
- Preservation of hedgerow,
- Appropriate use of buffer space,
- Crèche and school space,
- General lack of infrastructure.

### **8.2. Opinion of Consistency**

Section 4 of the PA submission details the National Planning Framework (NPF), the information in the RSES, the CDP and Variation No 1 of the CDP which includes a housing allocation in Table 3.3 identifying 241 units. It is considered that 345 no units exceeds the growth target and is therefore contrary to the Core Strategy and Variation No 1 of the Kildare County Development Plan 2017-2023.

The PA further notes that any redistribution of housing allocation will be redirected to self-sustaining towns along the Dublin-Cork and Dublin- Waterford Rail line.

It should be further noted, that the Council has subsequently written to the Board (letter attached) advising the Board that they can not take in to account Variation No.1 while the Stay remains in place. On this basis pending the lifting of the Stay, the issue of non-compliance with the Variation regarding core strategy figures, the development must be assessed on the basis of the core strategy and Development Plan objectives prior to the Variation.

### **8.3. KCC Planning Assessment**

#### Comments relating only to Variation No 1

The following points from the CE report where written at the time Variation No 1 was in place. As noted previously the Council has written to the Board stating that these comments, in particular the non-compliance with the core-figures, are not relevant until the Stay is lifted.

- Variation No 1 incorporates the Regional Spatial and Economic Strategy (RSES) adopted on the 09<sup>th</sup> of June 2020.
- The new dwellings target of 241 dwellings is identified for Kilcock in the County Development Plan from 2020-2023.
- Table 3.3 in the Variation No. 1 of the CDP provides a dwelling target for the period 2020-2023 of 241 units for Kilcock.
- The proposed development of 345 no units is not in line with Variation No 1 of the CDP dated 09<sup>th</sup> of June 2020

#### Settlement Strategy

- Kilcock is identified as a self-sustaining town.

- The preferred development strategy is to direct the critical mass to the key towns of Naas and Maynooth.
- Section 5.7 of the RSES allows for an additional housing allocation of 20% of the target growth although any redistribution of Naas or Maynooth housing allocation will be to those towns on the Dublin- Cork line and the Dublin- Waterford Rail Corridors.

#### Building Heights

- Section 17.2.1 of the development plan notes that tall buildings, which exceed 5 storeys, should only be permitted in areas of strategic importance.
- The LAP does not identify specific heights for the site.
- The prevailing heights around the site range from 2 to 3 storey.
- The proposed development is a material contravention of the plan.

#### Kilcock local Area Plan 2015-2021

- The site is zoned for residential/ open space and community and education.
- The principle of the proposed residential use at this site is acceptable.
- The open space area is designated as a buffer space for the motorway as compensation for a deficit public amenity space provision and the use as the main public open space is not acceptable.
- There is an indicative road objective running through the site.
- There is an indicative bridge (pedestrian/cyclist) over the railway line as identified on the zoning map.
- A cycle path objective is located along the boundary with the railway line.
- The proposed development does not comply with the LAP as there is
  - No provision for a pedestrian bridge over the canal,
  - Lack of school provision,
  - Lack of urban perimeter blocks,
  - Lack of centralised open space,

- Potential negative impact of higher terraced dwellings adjacent to the two storey dwellings at Brayton Park,
  - Lack of vehicular connections towards the west of the lands (Objective MT025).
  - The required setback of 91m from the M4 as per GK 10 includes open space which is not acceptable.
  - There are no connections from the site to “The Island” as per GKO 8.
  - There is a lack of connection from the site to the Royal Canal (Objective MT0 8).
- Adequate phasing has not been proposed for a 10 year permission and it is not linked to wider community infrastructure provision.
  - The overall design of the duplex units is of concern and past experience indicates that are hard to maintain.
  - The proposed development does not include a high level of design of sense of place.
  - 57% of the overall development comprises of 3 and 4 bedroom dwellings.

#### Schools

- The schools capacity assessment should not consider the capacity outside Kilcock and it is therefore flawed.
- KCC Planning Dept. Social Infrastructure Audit undertaken in 2020 indicates a lack of school capacity in Kilcock for both primary and secondary spaces.
- The site slightly encroaches onto the school site.
- It is considered crucial the site is developed in tandem with the residential lands.

#### Density

- Table 10 of LAP sets out a density of 30 for the site (Site Ref 1).
- The CDP prescribes a general density of 30-50 for suburban sites.

- The conflict is acknowledged and the general density of 43.23 unit per ha is acceptable.

#### Qualitative Assessment

- The plot ratio of 0.31 is acceptable.
- The housing mix, 57% 2 and 3 bed, is of concern.
- The apartment mix complies with SPPR1.
- The internal storage space of all units has not been clearly indicated and undereaves is not acceptable
- Bin storage areas should be provided.
- 52% dual aspect is included.
- The open space provided for Unit Type K should be revised to be accessible.

#### Open Space

- A total of 27.45 % of the overall site is included as public open space.
- The off set of open space on the buffer area F3 is of concern.
- The remaining open space designation of 13.9% does not comply with the required 15% and therefore not in compliance with Section 17.4.7 of the CDP.

#### Childcare

- It is noted that the HSE have concerns over the lack of storage, sleeping areas and inadequate sized kitchen area for the crèche.

#### Flood Risk

- The SSFRA did not find any potential for flooding.

### **8.4. Interdepartmental Reports**

#### **8.4.1. Parks Department**

There is no objection to the proposal subject to conditions requiring the following revisions:

- There is insufficient details regard the existing boundary trees and hedgerow in “Conflict Area A” and “Conflict Area B” on the east and should be retained and protected during construction.
- Some of the proposed units are in close proximity to trees which are included for retention. These trees should be protected during construction.
- The developer should liaise with the Parks in relation to the detailed design on the southern side, inter alia,
  - Vehicular, pedestrian & cycle locations,
  - Boundary treatments,
  - Boundary Planting.
- Protective fencing should be placed around all trees to be retained.
- There should be sufficient depth of soil above any attenuation tanks to facilitate planting of shrubs
- The landscape masterplace should contained rights of way or wayleaves.
- Details of play areas to be submitted and an additional junior play area in the southern part of the central site to be included.
- The housing shall be orientated towards the play areas to provide active surveillance.

#### 8.4.2. Transport Department

Recommendation to refuse permission for the reasons summarised below:

- The proposed development does not comply with specific polices MT011 & MT025
- The proposed development does not include a road design to comply with road objective MT025, from the existing road at Bawnogues to the M4 interchange and the applicant has no provided any evidence with engagement with the adjacent landowner regarding this layout.
- There is a lack of pedestrian and cycle permeability as required under MT011 to the rail line or across the Royal Canal. There is no links from the Brayton Estate and the school site.



- The Noise Assessment Report is inadequate and inconclusive, monitoring periods are not carried out over 12 hourly and 7 day week period for all locations, does not consider the noise from the elevated interchange at the M4 and no mitigation measures are included for the rail way line.
- The internal design is not DMURS compliant.

8.4.3. Water Services - No objection to the proposal subject to conditions relating to surface water drainage and Flood Risk Impact. The discharge to the river Rye Water, a tributary of the River Liffey, is highlighted.

8.4.4. Chief Fire Officer- No objection subject to conditions.

8.4.5. Environment Section- No objection subject to conditions, including a restriction of noise levels during construction and submission of a project waste management plan.

8.4.6. Housing Section- No objection subject to conditions relating to storage in apartments and quality of materials for Part V compliance.

## 8.5. **Conditions**

No conditions were recommended by the PA, having regard to the substantive issues relating to refusal.

The interdepartmental reports from Kildare County Council include recommended conditions, as summarised above, in the event that permission was granted.

## 8.6. **Reasons for refusal**

1. Non-compliance with the Urban Design Manual and the 12 criteria having regard to the poor design and absence of hierarchy of open spaces. The proposed layout is roads dominated and contrary to the provisions of DMURS.
2. The removal of the existing vegetation and hedgerows is contrary to provisions NH1, NH2, G19 & G13 of the CDP and would have a negative visual, ecological, biodiversity and climate change impact.
3. The proposal fails to provide permeability or the necessary infrastructure to comply with objective MT011 of the LAP, which requires a pedestrian / cycle connection from Brayton Estate and the future school site. The proposal does

not include a comprehensive footbridge design and lacks positive engagement with Irish Rail.

4. The proposal fails to provide a comprehensive road design of the proposed road objective MT025 from the existing road at Bawnogues to the M4 Interchange.
5. Part of the proposed development includes roads and private open space which encroaches onto the education and community zoning and is therefore contrary to the provisions of the Kilcock LAP.
6. Having regard to the number of units identified in Variation No1 for the growth of Kilcock , the proposed development would be distorting the core and settlement strategy figures as set out for future housing provision within Kilcock and would contravene materially the provisions of the Kildare County Development Plan 2017-2023. Furthermore, the proposed development lacks a sense of place and lacks appropriate services commensurate with a population of c. 1,000 people.

## **9.0 Prescribed Bodies**

### **9.1. Health Service Executive (HSE)**

A report is submitted based on Environmental Health impacts and is summarised as follows:

- The issue of building heights and densities are being addressed as material contraventions.
- The Schools Capacity Assessment indicates capacity or proposals to accommodate primary although the post primary capacity is currently full and additional capacity in Enfield is c. 12km away. Permissions RA16.1443 & RA12.0205 and ABP 306309 will also add to demand on services. There is no indication as to the provision of the education site adjoining the applicant's site.
- A Site Specific Construction Management Plan should be prepared for the site. A liaison officer should communicate with residents during construction.

- The site adjoins the M4. Mitigation measures are proposed to control traffic noise along with a set back and landscaping. Noise monitoring should be carried out to ensure mitigation measures are implemented.
- A biodiversity and pollinator specific landscape plan should be implemented.
- The houses can be adapted for lifetime housing, complying with the requirements of positive ageing.
- The site is 12m walking distance to the train station. Additional measures for “Go car spaces” and cycle parking should be integrated.
- The buildings should be designed to ensure they are constructed to the best environmental standards.
- Communal bin storage should be provided.
- Safe and secure storage facilities should be provided in the playrooms of the crèche.

#### 9.2. Transport Infrastructures Ireland (TII)

- The official policy of the DoECLG Spatial Planning and National Roads Guidelines should be consulted in the assessment of the application.
- The proposed development should be undertaken in line with the recommendations of the Transport (Traffic Impact) Assessment and should be included as conditions.

Any additional works required as a result of the assessment should be funded by the developer.

#### 9.3. Inland Fisheries Ireland (IFI)

- The development is in the catchment of the River Ryewater which has Atlantic Salmon and Sea Trout. The surface waters potentially drain into the Rye water and should not negatively impact on the catchment.
- The Royal Canal also represents an important ecological resource with coarse fish and other freshwater aquatic species.
- IFI should be consulted on any work carried out on the canal.

- All works should be completed in line with a Construction Management Plan to ensure good practices are adopted during construction.
- Comprehensive surface water management measures should ensure no impact on riparian habitats or pollution of local surface waters.
- The receiving foul and storm should have adequate capacity.
- There should be no entry of solids into the pipework to the surface water system.
- All discharges should be in compliance with the European Communities (Surface Water) Regulations 2009 and the European Communities (Groundwater) Regulations 2010.

#### 9.4. Irish Rail

- The exact position of the property boundary, between the applicant's landholdings and CIE/ Iarnrod Eireann lands, will need to be agreed on site before works are undertaken.
- No detailed communication has taken place between the applicant and Irish Rail in relation to the new foot-bridge over the railway from this site to "The Island" and should this be required it should be subject to a legal agreement between the Local Authority and CIE.
- The developer intends to drain some of this site and connect to pipe runs on CIE/ Iarnrod Eireann lands without any agreement in place. A legal agreement should be in place prior to these works.
- Should permission be granted, it is recommended that conditions be imposed relating to the following:
  - Compliance with the Railway Safety Act 2005,
  - Erection of a 2.4m high solid wall by the applicant along their existing boundary line and maintained by the applicant.
  - Security of the railway boundary shall be secured before works,
  - Railway mounds and ditches preserved except where directed,
  - No additional liquid into the railway property,

- Legal agreement with CIE/ Iarnrd Eireann for any works,
- No building within 4m of the boundary treatment on the applicants side,
- Enter into an agreement to use a crane of the railway line,
- Approval from the Senior Track & Structural Engineers for excavations which would infringe of the Track Support Zone (diagram submitted),
- Lights from the development should not cause glare for tracks,
- Houses should be developed to withstand vibrations and noise from the railway line,
- The railway line operates 7 days a week, 24hrs a day
- A quantified noise assessment should ensure the noise levels at the houses do not exceed any undesirable levels as specified in the Local Authority Noise Action Plan , with windows closed/ open and exterior of the buildings,
- The proposed extension of the DART is located along this line ( see 4m boundary reservation)

#### 9.5. Department of Culture Heritage and the Gaeltacht (DAU)

The heritage- related observations/ recommendation are summarised as follows:

- The information in the geophysical survey is noted although it is recommended that test trenches are distributed across the site rather than targeted on possible archaeological features.
- All archaeological mitigation can be carried out prior to the commencement of any works.
- Recommendations relating to archaeological surveying are included relating to the use of experts, licencing, research and recording.

#### 9.6. Irish Water

- A confirmation of feasibility for 345 units has been issued to the applicant.
- Irish water are currently carrying out capital works upgrades to the water and waste water under the Capital Investment Plan and schedule for completed Q4 2021.

- Any additional upgrades necessary to service the development, and consents required will be the responsibility of the applicant.

## 10.0 Environmental Impact Assessment (EIA)

10.1. The applicant has submitted an Environmental Impact Assessment (EIA) Screening Report and a legal opinion on the statutory requirement for an Environmental Impact Assessment Report (EIAR) under EU Directive 2011/92. The EIA Screening concludes that with proposed mitigation measures in place, it is not anticipated that the construction or operational phases of the proposed development whether considered on its own or together with in combination projects or plans, will give rise to likely significant environmental effects. The legal opinion notes the location of the site outside of the town of Kilcock, the designation of Kilcock, not as a town, the absence of any contiguous development which should also be included for assessment and concludes the proposed development does not fall within para 10 (b) (iv), Part 2, Schedule 5 of the 2001 Regulations. The application was accompanied by an Appropriate Assessment Screening, Arboriculture Report and an Ecological Impact Statement, amongst other documentation.

10.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,
- Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

The proposed development is for 345 dwelling units, on a site area of 11.56ha. The proposed development is considered to be sub-threshold in terms of EIA having regard to Schedule 5, Part 2, 10(b) (i) and (iv) of the Planning and Development Regulations 2001 (as amended).

10.3. As per section 172(1) (b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part

1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or an EIA determination is requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

10.4. Schedule 7 of the Planning and Development Regulations 2001 (as amended) sets out the relevant criteria to be applied in the screening process. This information has been provided by the applicant in the EIA Screening Report under the following headings with additional information under other sub criteria.

1. Characteristics of Proposed Development
2. Location of Proposed Development
3. Types and Characteristics of Potential Impacts

10.5. I have assessed the proposed development having regard to the above criteria and associated sub criteria having regard to the Schedule 7 information and information which accompanied the application, inter alia, Arboriculture Report and Ecological Impact Statement.

**10.6. Characteristics of Proposed Development**

The proposal for 345 no dwellings includes associated car and cycle parking and makes provision for future linkages to adjoining lands for both pedestrian, cycle and vehicular movements. Surface water and waste water will connect into the public system and no capacity issues have been identified. The cumulative impact of other development is considered in the EIA screening assessment and there are no permissions in the area which would lead to a significant environmental impact. The proposed layout has been designed to consider the best practice urban design throughout.

**10.7. Location of Proposed Development**

The site is currently in agricultural use and the lands are zoned for residential development in the LAP. The site is designated for a neighbourhood expansion area.

The quantum of development proposed and the location contiguous to a built up area will not have any impact on the natural resources of the area.

The site does not contain any water features and the nearest river, Rye River, is separated by the Dublin/ Sligo railway line. The Appropriate Assessment screening below, notes a lack of hydrological connectivity to any European Designated Site and concludes there will be no significant effects on any European Site.

From this information I can conclude that there is sufficient absorption capacity of the natural environment for the proposed development.

#### **10.8. Types and Characteristics of Potential Impacts**

The proposed use as residential would not give rise to waste, pollution or nuisances that differed from that arising from the other housing in the vicinity and the site will connect to the public foul sewer, water and utilise the existing road network. The size and design of the proposed development would not be unusual in the context of a developing urban area. The site is not zoned for the protection of a landscape or for natural or cultural heritage.

#### **10.9. Having regard to:**

- (a) Characteristics of the proposed development,
- (b) the nature and scale of the proposed development, on zoned lands served by public infrastructure,
- (c) The types and characteristics of potential impacts,

It is concluded that, by reason of the nature, scale and location of the subject site, there are no significant environmental sensitivities in the area, accordingly the proposed development would not be likely to have significant effects on the environment. The need for Environmental Impact Assessment can, therefore, be excluded.

#### **11.0 Appropriate Assessment (AA)**

- 11.1. An Appropriate Assessment Screening Report submitted with the application refers to the location of the site, the distance from any European sites, and the absence of any surface water connection to any European Site. The screening report notes the



Rye Water Valley/ Carton SAC (001398) as the closest European site, c. 6.8km to the east of the site. Any other European Sites identified with potential connectivity are located in the Dublin Bay, over 30km to the east of the site. Having regard to the distance of the site from the Dublin Bay I do not consider there is a potential pathway between the site and any European Sites within the Bay.

11.2. The qualifying interest for the Rye Water Valley/ Carton SAC (001398) are linked to the calcareous marsh and include the following:

- Petrifying springs with tufa formation (Cratoneurion) (priority habitat)
- *Vertigo angustior* (Narrow-mouthed Whorl Snail)
- *Vertigo moulinsiana* (Desmoulin's Whorl Snail)

11.3. The site synopsis for the SAC states that, *inter alia*, the rare Narrow-mouthed Whorl Snail and Desmoulin's Whorl Snail occur in marsh vegetation near Louisa Bridge, at Lexlip, c. 20km from Kilcock. Both are rare in Ireland and in Europe, and are listed on Annex II of the E.U. Habitats Directive. The conservation objectives of the site are generic as follows "*To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.*"

11.4. The screening report submitted does not consider there is potential for any adverse effects on the qualifying criteria of the Rye Water Valley/ Carton SAC or the Dublin Bay having regard to the distance of the site, the lack of hydrological connectivity and the proposed connection to the public sewer networks for the treatment of waste water and surface water.

#### Potential Impact on the Conservation Objectives of the SAC

11.5. The water and waste water are connecting into the existing system which are currently being upgraded by Irish Water with works underway and due for completion in Q4 2021. It is proposed that surface water connects into the public system eventually discharging to the River Rye. The surface water connections are designed to meet normal standards including, *inter alia*, hydrocarbon interceptors and grease trap. These are standard features for residential development not specifically included to mitigate against any impacts on a European Site. Their effect is to reduce the variations in flow and volume of pollutants into the surface water system. There

will be no discharge of untreated waste water or surface water to surface or groundwater and no abstraction from local ground or surface for potable water.

- 11.6. In terms of in-combination effects, I note no permissions have been recently granted in the vicinity of the site, or the town of Kilcock, which are considered appropriate to consider in my assessment for impacts on any European Site.
- 11.7. The favourable status of those conservation objective of the Rye Water Valley/ Carton SAC, namely the Petrifying springs with tufa formation, Narrow-mouthed Whorl Snail and Desmoulin's Whorl Snail are likely to be impacted where their range is decreasing via a negative impact on the calcareous marsh. The distance from the subject site from the Rye Water Valley/ Carton SAC, at c. 6.8km, and absence of any Annex I habitats removes any direct impact to these habitats and species of conservation interest. The connection to the public water and waste water system will remove any likelihood for potential impacts on those qualifying interest. In relation to surface water, whilst I note the public system eventually discharges into the Rye River, which leads to the Rye Water Valley/ Carton SAC, the connection will not result in any negative impact on the water quality of the Rye River, nor is there any potential for a negative impact on the calcareous marsh and associated species listed as qualifying criteria Rye Water Valley/ Carton SAC. Therefore the proposed development has no potential to have a significant negative impact on the conservation objectives of the Rye Water Valley/ Carton SAC (001398).
- 11.8. Having regard to the nature and scale of the proposed development and/or the nature of the receiving environment and/or proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **12.0 Assessment**

- 12.1. At the time of reporting, the statutory plan and policies in place are those in the Kildare County Development Plan 2017-2023, and notwithstanding that a Variation to this Plan was adopted by the elected members in June 2020 (Variation No.1), a Stay has been placed on this Variation. The Board received a letter from Kildare's legal representatives advising the Board that that an immediate Stay on the

operation of Variation No. 1 to the Kildare County Development Plan 2017-2023 has been put in place by the High Court and that while the Stay is in place An Bord Pleanála should avoid assessing any application by reference to Variation No. 1 of the Kildare County Development Plan 2017-2023 (attached as Appendix 1). It is further noted that Kildare County Council are seeking to have this Stay lifted and that this may occur prior to the decision date of this case currently before the board and being assessed at this time.

12.2. Therefore, in the interest of comprehensiveness and to ensure the Board have all the necessary information before them at the time of making their decision, I am assessing and making my recommendation in respect of this case on the basis of:

- (i) The Kildare County Development Plan 2017-2023, excluding the Variation, as this is the statutory plan at the time of writing this report. The CE's report received on 26<sup>th</sup> of June 2020, was written at a time when the Variation was in place and no stay existed, and again this will be dealt with through the report, having regard to the now statutory position, and
- (ii) The potential statutory position at the time of making the decision by the Board, if the council were to be successful in lifting the stay and the Variation was in place. I will consider the implications of this for assessment and consideration of the development. Therefore, I will assess the development against the provisions of the Variation, and make a recommendation in respect of the development where the Variation to be in place, and will further respond to the CE's report and recommendations which were informed by the Variation.

12.3. However, as noted above, the final recommendation and applicable recommendation at the time of discharging the report to the Board will be based on the Development Plan without the Variation. This is in line with the advice of the Council's solicitors, and therefore must be assumed to supersede the CE's report (dated 26<sup>th</sup> of June 2020), in respect of its reference to the Variation.

12.4. Having examined the application details and all other documentation on file, including the C.E. Report from the Planning Authority and all of the submissions received in relation to the application, and having inspected the site, and having

regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this application are as follows:

- Core Strategy of Kildare County Council Development Plan 2017-2023
- Core Strategy with reference to Variation No 1 of Kildare County Council Development Plan 2017-2023
- Community and Education Zoning
- School Assessment Capacity
- Railway Line Pedestrian/cycle Bridge Link
- Vehicular Access, Permeability & DMURS
- Design and Layout
- Open Space
- Residential Amenity
- Flooding
- Noise Impact.
- Other
- Material Contravention of the Kildare County Development Plan 2017-2023 and the Kilcock Local Area Plan 2015-2021

### **Core Strategy of Kildare County Council Development Plan 2017-2023**

- 12.5. Kilcock town is located within the Dublin Metropolitan area and is defined as a Moderate Sustainable Growth Town in the county development plan. Policy CS2 of the development plan requires appropriate levels of growth to be directed into the designated growth centres and moderate sustainable growth towns. 35% of the county's growth allocation is directed to those settlements located within the Metropolitan Area and Table 3.3 of the development plan includes a dwelling target unit of 1,300 for Kilcock from 2016-2023, the lifespan of the development plan.
- 12.6. The core strategy allocation from the development plan is further detailed in Table 8 and Table 9 of the Kilcock Local Area Plan 2015-2021. The LAP includes an analysis of extant permissions and concludes there is a unit target of 1,061 for the town for

the period 2015-2021. The proposed development has not been advertised as a material contravention of the core strategy nor have any third parties or the CE's report referenced any breach of the current housing unit allocation for the town of Kilcock. In this instance, I consider the proposed development of 345 no. residential units can be accommodated within the core strategy allocation for Kilcock.

12.7. The LAP does not include a formal order of priority for the release and development of residential lands within the town, although the subject site is listed as Site ref 1 in Table 10 with a unit potential of 690 units. The site is located within an area which has been designated for a neighbourhood expansion and its location contiguous to the residential estate of Bryton Park accommodates a natural expansion of Kilcock. A large expanse of existing public open space is located to the west of the site, accessible for future residents and the proposal integrates additional public open space provision, enhancing the existing provision. Access is provided for lands zoned for community and education use directly adjacent to the proposed development, also within the applicant's ownership. As further detailed below, the site is currently serviced for Water and Waste Water and the delivery of the link road through the site will ensure connectivity and permeability to future expansion lands north west.

12.8. Having regard to the location of the site and the nature of the proposed development which integrates within the existing settlement, I consider the subject site is an appropriate location for the expansion of Kilcock town. The proposed development will assist in the delivery of a designated school site which can further support the existing and proposed community through enhanced social infrastructure.

### **Core Strategy with reference to Variation No 1 of Kildare County Council Development Plan 2017-2023**

#### **CE Report**

12.9. In the event that Board consider the amendments to the development plan as per Variation No. 1 are applicable in the assessment of the proposed development, I have provided an assessment having regard to the CE initial submission and those alterations. The CE's submission details the information in Variation No.1 of the CDP, in particular the allocation of 241 no. units for Kilcock. It recommends a refusal of permission having regard to the designation of Kilcock as a Self- Sustaining Town

and the new housing target of 241 up to 2023. The PA consider the proposed development of 345 dwellings would materially contravene the provisions of the CDP by breaching the figures contained in the core strategy and settlement hierarchy.

#### Alterations to Core Strategy Allocation for Kilcock

- 12.10. The core strategy and settlement strategy in the Kildare County Development Plan (CDP) 2017-2023 that was in force when the present application was lodged on the 6<sup>th</sup> of March 2020 identified Kilcock as a moderate growth town (the 3<sup>rd</sup> largest category of settlement) and allocated it a target of 1,300 additional dwellings in the period between 2016 and 2023. The proposed development would not have breached that allocation and so would not have contravened the core strategy of the county development plan when the application was made.
- 12.11. The planning authority adopted a variation to the CDP on the 9<sup>th</sup> of June 2020. The variation made several changes to the CDP including the addition of references to the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Regional Assembly (EMRA). It altered the core strategy in Chapter 2 of the CDP to outline the NPF Implementation Roadmap and RSES population projections for the county over the periods 2020-2026 and 2026-2031, with adjustments to those projections to the end of 2023 to coincide with the lifespan of the CDP. The growth in the population of the county for the lifespan of the existing plan is projected at 16,863 and a dwelling target of 6,023 is set out for the period 2020-2023.
- 12.12. The variation changed the settlement strategy for the county set out in Chapter 3 of the CDP and Kilcock was identified as a Self-Sustaining Town (the 3<sup>rd</sup> of 6 categories of settlement). It is allocated a target of 241 additional dwellings in the period from 2020-2023 on Table 3.3 of the plan. That table also refers to a projected allocation of 562 dwellings for Kilcock in the period from 2020-2026 following the NPF.

#### Material Contravention relating to the Core Strategy

- 12.13. The proposed development of 345 dwellings would exceed the housing target allocation for Kilcock by 104 dwellings, c. 43% above the allocation for the life span of the development plan. Section 5.7 of the RSES-EMRA removes the allowance for a 20% increase in population targets as these shall only apply to the three

metropolitan Key Towns in the MASP namely, Bray, Maynooth and Swords. I consider the proposed development would be a material contravention of that provision of the CDP.

12.14. The proposed development was advertised as a material contravention of the development plan having regard to the density and proposed height of the duplex units. The documentation submitted by the applicant, including the statement setting out a justification for the material contravention of other provisions of the county development plan, discussed below, and the local area plan relating to building height and density. The material contraventions statement does not refer to the breach of the housing allocation for Kilcock set out in the core strategy and settlement strategy of the CDP as the variation had not been adopted. Nevertheless, I consider a grant of permission would be a material contravention of the housing allocation for Kilcock were Variation No.1 be deemed to have effect (i.e. the stay were lifted or the challenge to its validity lost).

12.15. The limitations on a grant of permission under section 9(6) (c) of the 2016 act and section 37(2) (b) of the planning act would apply in relation to the material contravention of the current housing allocation for Kilcock, as well as the contraventions of the building height and density provisions referred to in the statements submitted with the application. With regard the contravention of the housing allocation I have provided an assessment under each of the available possibilities set out in section 37 (2)(b) of the Planning and Development Act 2000 (as amended),;

(i) *the proposed development is of strategic or national importance.*

A Strategic Housing Development may be regarded as of strategic importance for the delivery of essential housing in line with national policy for addressing homelessness. This would arise if the proposal was located where the need for such housing has been identified in the applicable populations' projections and settlement hierarchy for the region and the county. The position of Kilcock as a "Self Sustaining Town" on the third tier of the County Settlement Hierarchy gives the town a lower priority for growth and investment during the lifetime of the development plan. In my opinion it is not considered that a housing development within a 3<sup>rd</sup> tier town that substantially exceeded the town's allocation of dwelling units would be automatically

regarded as of strategic or national importance. It may also be noted that Kilcock is located within the MASP, and as such, when considering the NPF and RSES's and the town's location on a public transport corridor (rail line), there may be some importance to this town developing, albeit I do not consider it to be of national importance. Should the Board consider the development of Kilcock is required for the strategic growth of Kildare County then a grant of permission under Section 37 (2) (b) (i) would be warranted in this instance.

*(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned,*

#### Kilcock growth within the settlement hierarchy of Kildare

12.16. Variation No 1 of the CDP highlights the current position of Kilcock as a town that has experienced high population growth but has a weak employment base. This position is in line with the information in Appendix 2 of the NPF which shows Kilcock as having a low rate of resident workers (0.300). Based on the 2016 census Kilcock only had 848 total jobs for a population of 6,093 and 2,827 resident workers. Kilcock is designated as a "Self Sustaining Town" in the settlement hierarchy for the County, which is a third level designation. The growth of these towns will be focused on consolidation and improvements of services and employment provision.

Policy SS 2 of the development plan includes an objective to direct growth into the Key Towns, followed by the Self-Sustaining Growth Towns and then the Self-Sustaining towns. Policies CS1 - CS 4 of Variation No 1 include specific objectives relating to the implementation of the Core Strategy for the County with new housing provided in accordance with Map 3.1 "Settlement Hierarchy". Table 3.3 of the variation includes a growth estimation of Kilcock from 2020-2023 as 4.0% of the County. In terms of the county percentage Kilcock will grow by 675 (annualised from 2026 NDF figures) and therefore the dwelling target for 2020-2023 (in line with the current development plan) is 241. This allocation of growth has been calculated having regard to the population growth of Kilcock and the status of the town within the County settlement hierarchy and the other provisions of the development plan and I do not consider this population growth in conflict with the those policies for the settlement strategy of Kildare.

#### Priority of residential development within Kilcock



- 12.17. The zoning objective of the application site and other lands in the town is set out in the Kilcock Local Area Plan 2015-2021 rather than the CDP. Although the housing allocation for Kilcock has been significantly reduced from 1,300 to 241 since the LAP was made, the zoning of land in the Kilcock LAP has not yet been updated to reflect that reduction in the housing allocation.
- 12.18. Table 10 of the LAP includes the subject site as Site ref 1 with a unit potential of 690 units. The LAP does not include any order of priority for the development of sites zoned for residential development in Kilcock. I consider the removal of any part of these lands to comply with the population allocation could prevent an appropriate and essential connection into the lands zoned for education and community and militate against the future delivery of a school site. Having regard to my assessment elsewhere in the relation to the location of the site contiguous to the existing settlement, currently serviced and integrating essential infrastructure, the expansion and growth of the town at this location is considered appropriate. I consider the development of this subject site could be reasonably justified as high in the order of priority for residential development in the settlement of Kilcock.
- 12.19. Whilst I do not consider there is any conflict between the housing allocation for Kilcock, as presented in Variation No 1, and the policies and objectives of the CDP or LAP, should the Board consider that a grant of permission is warranted in this instance, the absence of any priority of development in the LAP and the inclusion of the entire site, encompassing a school site is highlighted. Policy CS4 of the CDP requires the delivery of sustainable compact urban areas through a plan-led approach. I consider the development of the site in its entirety rather than portion off to comply with the housing allocation would be preferable for the appropriate growth and proper planning and sustainable development of the Kilcock. Therefore, in this instance the Board may consider there is currently conflict between the housing allocation as permitted, the facilitation and residential growth and proper planning and development of Kilcock town.

*(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28 , policy directives under section 29 , the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government,*

12.20. Both the NPF and the EMRA-RSES highlight the need for a strong spatial planning hierarchy as a framework for future investment. At the core of the RSES is the settlement hierarchy for the region, which requires Counties to implement robust tiering of county and local level plans in line with overall guidance. National Policy Objective (NPO) 71 of the NPF requires City/county development plan core strategies to be further developed to ensure a co-ordinated and balanced approach to future population and housing requirements across urban and rural area. Regional Policy Objective (RPO) 4.1 of the EMRA-RSES requires cores strategies for development plans to be in accordance with the hierarchy of settlements in the RSES and within the population projections set out in the NPF to ensure that towns grow at a sustainable and appropriate level. The variation of the development plan provides an update of the population target figures in the CDP Core Strategy and those related housing target figures, for the Settlement Hierarchy, to reflect the overall population allocation for the County to ensure consistency with the NPF and the RSES-EMRA.

12.21. Variation No. 1, and its population and dwelling allocation for Kilcock, aligns the Kildare County Development Plan 2017-2023 with the NPF and the EMRA - RSES, in accordance with section 10 of the Planning and Development Act, 2000 (as amended). Section 10 requires that the written statement of a development plan shall include a core strategy which shows that the development objectives are consistent, as far as practicable, with national and regional development objectives. The dwelling unit allocation of 241, aligns with the designation of Kilcock as a Self – Sustaining town, having a growth allocation of 4.0% of the County and the low rate of resident workers (0.300) within the town.

12.22. Objective NPO 68 of the NPF allows a transfer of 20% targeted growth to other settlements in the area covered by the Metropolitan Area Spatial Plan (MASP), this transition of growth is restricted in the RSES-EMRA to key towns in the MASP namely Bray, Maynooth and Swords. The submission from the PA notes this allowance but states that any redistribution would be directed to Self-sustaining Growth Towns and Self-Sustaining Towns along the Dublin- Cork and Dublin- Waterford Rail Corridors to support, balanced and economic growth of the County. Therefore, NPO 68 of the NPF would not support the current proposal for a breach of the settlement strategy of the County and the housing allocation for Kilcock.

12.23. In this regard, it is not considered that the proposed material contravention of the housing allocation for Kilcock would be justified by reference to national or regional policy or otherwise under section 37(2) (iii) of the planning act.

*(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*

12.24. There have been no significant developments carried out or permissions granted in the area or the town since its housing allocation was altered by the current provisions of the development plan to which this subsection of the act would apply.

#### Conclusion

12.25. I consider the housing allocation for Kilcock, and other settlements in Kildare, up until 2023 as adopted in Variation No 1 of the development plan, is necessary to provide an evidence based quantitative strategy for the spatial development of the area. I note Kilcock is defined as a Self-Sustaining Town of variation No 1 which is a 3<sup>rd</sup> tier development in the County Settlement Strategy as set out in the Kildare County Development Plan 2017-2023 and Table 3.3 provides a housing allocation for the town of 241 units from 2020-2023, the lifespan of the existing development plan. I consider the proposed development of 345 no. dwellings, 100 units above the allocation in Variation No.1, significantly exceeds the current dwelling allocation for the town. In this instance I consider the proposed development a material contravention of Variation No.1 of the CDP.

12.26. I note the settlement hierarchy and housing allocation as stated in variation no. 1 are in keeping with the policies and objectives of the National Planning Framework (NPF), in particular National Policy Objective 71 and the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Regional Assembly (EMRA), in particular Regional Policy Objective 4.1, which require growth and investment to be planned in accordance with a hierarchy of settlements. I consider that by permitting development in excess of that housing allocation in the Core Strategy would militate against the implementation of the objectives of the NPF and the RSES for the EMRA and would, therefore, be contrary to the proper planning and sustainable development of the area.

12.27. This aside, should the Board disagree with my conclusion and consider a grant of permission is warranted under Section 37 (2) (b) of the planning act, they will note the location of the site contiguous to the existing settlement, listed as site ref No 1 for a neighbourhood expansion area in the LAP and the absence of any order of priority in the LAP. In this instance the conflict between policies requiring sustainable growth in the CDP and the absence of any order of priority for residential development in the LAP are highlighted and the development would be justified under Section 37 (2) (ii) in this instance.

### **Community and Education Zoning**

12.28. Kilcock town is located mostly within Kildare County Council, lands along the north of the town, outside the LAP boundaries fall within the administrative boundaries of Meath County Council and a planning area defined as Kilcock Environs. Kildare County Development Plan 2017- 2023 provides the overarching blueprint for development for County Kildare.

12.29. Kilcock Local Area Plan 2015-2021(LAP) provides detail for the appropriate development of Kilcock Town. The site is partially zoned as “C- New Residential” and “F3- Open Space and Amenity”. An expanse of lands zoned for “E1- Community and Educational” adjoin the subject site to the north west. The existing residential area of Brayton Park is contiguous to the site along the east.

12.30. The subject site is located within The Bawnogues Expansion Area, a residential expansion area to the south west of the town centre. Section 7.4.4.1 of the LAP includes design guidance for this expansion area whilst Fig 28 provides an indicative layout for the future development based on this guidance.

12.31. With regards the lands zoned for development and included in the proposed development the PA have raised concern in relation to proposal encroaching onto lands zoned for Community and Education. The PA recommend a refusal having regard to the encroachment of roads and private open space onto the lands designated as E-Education and Community. The PA consider the proposed development would materially contravene the objective of this zoning *“to provide for institutional, community and educational facilities”* and the Kilcock LAP.

12.32. I note the site layout map (DRWG 115) indicates the school site within the applicant’s ownership but not within the proposed development. The requirement to

integrate the school site into the proposed development is further discussed in detail below. With regards the encroachment onto lands designated for education and community use I refer the Board to Section 7.4.4.1 of the LAP which includes design guidance for The Bawnogues area. This design guidance requires that those lands identified for a 12 acre post primary school site will be :

- Integrated and linked to the surrounding neighbourhoods and wider community by an interconnected networks of streets and green linkages,
- The boundaries of the school are to be “wrapped” with residential development.

12.33. The Architectural Design Statement includes an overlay of the proposed development on the zoning map. The rear gardens of c. 20 terraced dwellings and two internal roads overlap along the east and south west of the Community and Education zoned lands. I note the requirement to integrate the road network with the future school site. The overlap of private open space, roads and parking “wrap” the boundaries of the Community and Education zoned lands, as required under Section 7.4.4.1 of the LAP. I do not consider this overlap would jeopardise the future preservation of the lands as a school site and therefore the objective *“to provide for institutional, community and educational facilities”* is retained for those lands. I consider the inclusion of the 2m high block wall proposed along the rear of the private gardens can provide an adequate delineation between the residential development and the school site.

12.34. Having regard to the design guidance in Section 7.4.4.1 of the LAP and the specific requirement for any future residential development to integrate with the school site, I do not consider the proposed development represents a material contravention of the zoning or the LAP.

### **Schools Assessment Capacity**

12.35. The site is located within the Bawnogues area, a designated residential expansion area located to the south east of the town centre. Section 7.4.4.1 of the Kildare Town LAP includes objectives for the appropriate development of this area including the integration of the post primary school site into the surrounding neighbourhoods. As stated above the proposed development adjoins and wraps around lands within the applicant’s ownership which are zoned for Community and Education.

- 12.36. A School Capacity Assessment accompanied the application. It is estimated that the demand for primary school places from the proposed development would equate to c.157 primary school places and c.105 post primary places. The School Capacity Assessment provides an analysis of the capacity of primary and post primary schools in Kilcock and the vicinity of the town. It concludes that there is an estimated capacity of 93 no. pupil spaces in the primary school and currently no capacity in the post primary school in Kilcock. It is noted in this assessment that an existing primary school in Kilcock has plans to expand in the next two years with a new 16 no teacher school and a new 500 pupil secondary school in Enfield is to be open in 2020.
- 12.37. A large number of the third party submissions have raised concern in relation to the estimated growth from the proposed development and the lack of capacity in the schools to accommodate an increase in pupils. A submission from the Health Service Executive (HSE) refers to the permissions granted or proposed within the town of Kilcock area (RA161443 & RA150205 and ABP 306309) , the current lack of capacity in the schools, the new school which is c. 12km away and the absence of any indication of the delivery of the education site adjoining the applicant's site.
- 12.38. The submission from the PA notes the location of the post primary in Enfield and considers any school provision should be within walking distance from the site. The recommendation for refusal relating to Variation No 1 and the Core Strategy, does not make specific reference to the school site although notes a lack of appropriate services commensurate with a population of c.1, 000 people.
- 12.39. I note the school assessment submitted refers to the proposed expansion of existing primary schools in Kilcock and post primary in Enfield to accommodate any increase in demand arising from the proposed development. Whilst the HSE submission refers to other permitted developments in Kilcock I note of those referenced the SHD file was recently refused and no further details of permissions granted in 2015/16 where available on the eplan system for Kildare. This aside, the HSE referred to the lands zoned for education use. I note the applicant has control over these lands and the proposed development has been designed to provide a future access into the education site.
- 12.40. Objective SNO1 of the LAP states that Kildare County Council will actively assist and liaise with the Department of Education and Science in the provision of new and

additional school places in developing area, for example to progress the delivery when required of a new secondary school at the Bawnogues. The matter for the provision of schools in Kilcock is therefore a matter for the County Council and the Department of Education and Science.

12.41. Having regard to Objective SNO1 of the LAP and the overall design and layout of the proposed development, including a future vehicular access into the school site, I consider the delivery of a new secondary school in line with the objective of the LAP has not been jeopardised. I note the applicant has ownership of the school site. A Section 47 agreement, under the Planning and Development Act, 2000 (as amended), allows an agreement between the planning authority and any person interested in land in the area of the purposes of restricting or regulating the use of land. In relation to delivery of or reservation of the site for educational purposes I consider a condition relating to the any future agreement between the applicant and planning authority reasonable.

#### **Railway Line Pedestrian/Cycle bridge Link**

12.42. The Dublin – Sligo railway line runs directly adjacent to the site, along the northern boundary. Fig 28 of the LAP illustrates the indicative layout for the Bawnogues expansion lands and includes a pedestrian / cycle connection from the site across the bridge into lands beside the Royal Canal. The LAP contains a specific Policy MTO 11 for the delivery of this connection, where it is an objective “*To develop new cycle links to a high standard for utility cycling including:*

- *The Bawnogues to the Train Station using “The Island” as a route along the railway linking to the Royal Canal Cycle Track Route.*
- *Develop a pedestrian and cyclist bridge connecting the Ryebribe area to the schools in Bawnogues crossing the Royal Canal and Railway”.*

12.43. The proposed development includes lands are set aside within the subject site and reserved to facilitate any future link to the bridge over the railway line. Dwg No 101 includes an indicative future footbridge over railway track and indicates this will be developed by others. The applicant has submitted detailed documentation with the application summarising all correspondence with Irish Rail and the PA in relation to the provision of a pedestrian/cycle link. The applicant submits that all attempts have been made to engage with Irish Rail and the PA in relation to the provision of this

bridge and compliance with Objective MT011 and state that Irish Rail will not engage with a private developer. The applicant submits that Kildare County Council have previously indicated they may in the future, be open to a Part VIII procedure with the aim on implementing this LAP objective, subject to agreement with Irish Rail. I note S247 preplanning notes from Kildare County Council (27/02/18) refer to the possibility of a contribution in fees or land for the footbridge. A contribution of €275,000 towards the cost of delivering this future bridge is proposed.

12.44. Reference is made by the applicant to a previous permission on the Zed Candy Site (PL 09.302586, Reg Ref 18539) which included an indicative pedestrian bridge. I note this application on the Zed Candy Site, quoted by the applicant, relates to amendments to a residential scheme. The original permission Reg Ref 15.463 for 64 dwellings is located on the northern side of “The Island”. An objective in the LAP to provide a pedestrian and cyclist bridge over the Royal Canal linking the site to the “The Island” is similar to that required for the subject site. The Zed Candy site is located adjacent to a Part VIII proposal (July 2013) for a shared pedestrian and cycle facility along c. 17km of the Royal Canal town path within County Kildare. The report of the planner, on this application, referred to the roads design and possible future access for a bridge. A condition was included requiring any internal roads and footpaths to connect into cycle and pedestrian routes adjoining the site. In this instance, the applicant was not required to provide the pedestrian/ cycle bridge as part of the proposed development.

12.45. A submission from Irish Rail noted that no detailed communication was held between the applicant and Irish Rail. It was further stated that should the new foot-bridge over the railway line be required it should be subject to a legal agreement between the Local Authority and CIE. The submission from the PA recommends a refusal of permission as the proposed development lacks a comprehensive footbridge design or include any positive engagement with Irish Rail.

12.46. The subject site runs parallel to the Dublin – Sligo railway line. The applicant does not have control or ownership of those lands to the north of this railway line referred to as “The Island”. I note an indicative layout of a possible pedestrian/ cycle bridge is illustrated in the proposal with lands at the approximate location of the proposed bridge set aside for future development. The applicant proposes a financial contribution to any future development of the bridge and whilst neither Irish Rail nor



the PA have commented on this amount. The bridge connection required under MTO11 will benefit not only the residents of any development at this location but also the public in the vicinity and wider area. In this regard, I consider the appropriate mechanism for securing this objective would be through the Part VIII procedure. This procedure would ensure both Irish Rail and third party involvement in the design and implementation of the final bridge and allow the appropriate connection to lands on the opposite side of the Dublin- Sligo railway line.

12.47. Having regard to the PA decision and conditions relating to the Zed Candy site where the applicant was not required to provide a pedestrian/cycle bridge, the scale of the works required both on the applicants site but also third party lands and the submission from Irish rail requiring final agreements between themselves and the PA, I do not consider the applicant is required to provide the pedestrian/cyclist bridge connecting the Ryebriar area to the schools in Bawnogues crossing the Royal Canal and Railway. Therefore, I do not consider the application should be refused because of a lack of comprehensive design or positive engagement with Irish Rail as recommended by the PA.

### **Vehicular Access, Permeability & DMURS**

12.48. The proposed development provides for 2 no. vehicular access from Brayton Park. Pedestrian and cycle paths connect the proposed development to Brayton Park Estate. The proposed development makes provision for future linkages to adjoining lands; including, *inter alia*, undeveloped lands to the north-west, the adjoining undeveloped educational zoned lands to the north and access to a potential future pedestrian/cycle bridge over the railway line to the north-east of the site, as discussed above.

### Objective MT025

12.49. The subject site is located within The Bawnogues Expansion Area and Section 7.4.4.1 of the LAP includes design guidance for this expansion area whilst Fig 28 provides an indicative layout for the future development based on this guidance. Objective MT025 of the LAP requires that proposed developments facilitate the future construction of the Bawnogues road to the M4 interchange and in the interim protect these routes from development.

- 12.50. The PA and Transport Section of the Council recommend a refusal of permission as the proposed development fails to provide a comprehensive road design necessary to comply with Objective MT025 and that the applicant provided no evidence of engagement with the adjacent landowner regarding the proposed layout.
- 12.51. The two vehicular access points proposed into the site are broadly in line with the indicative layouts in Fig 28 of the LAP. The internal road network has been designed to allow future vehicular connectivity into the lands north west of the site at 3 no. locations. An indicative future connection for the school is included on Drwg 17-100-101 and any grant of permission should include a condition to reserve this link free from development. The Statement of Compliance with DMURS includes a breakdown of the road hierarchy throughout the site and states the routes have been agreed with the County Council during preplanning discussions. This DMURS statement refers to the delivery of a roads design strategy to comply with MT0 32 although I consider this reference incorrect and should instead state MT0 25 as Objective MT0 32 relates to universal design and pedestrian network. I note a letter has been forwarded to the adjacent land owner with the agreed roads design strategy.
- 12.52. Objective MTO 25 does not require the delivery of the link road between Brayton Park and the M4 interchange, rather it states that the route will be protected and future construction facilitated. The route extends from the Commons West (Brayton Park) north to the M4 interchange (R148). The applicant indicates throughout the submitted documentation, in particular the Statement of Compliance with DMURS, that detailed discussions with Kildare County Council assisted the design of the road. The Transport Section notes the absence of a comprehensive road design for this link road. In addition to a recommendation for refusal a number of conditions relating to the delivery of this link road are also included requiring an agreement for the final design and delivery of the road.
- 12.53. A submission from Transport Infrastructure Ireland (TII) noted no objection subject to compliance with the recommendations of the Transport (Traffic) Impact Assessment and any additional works funded by the developer. The TTA submission also noted that the link road required under Objective MTO 25 would eventually lead onto the M4 interchange, R148, and should therefore be designed to a standard to allow for future connection to this regional route.

12.54. I consider the route provided in the proposed development complies with the indicative layouts for Objective MT025. The design as proposed includes one cycle path on one side of the road and a footpath on the opposite side. Car parking is proposed directly off the road and integrates landscaping and tree planting. Whilst I do not consider the applicant is required to provide a road design for the entire road, from the Bawnougues to the M4 interchange, I consider the road within the proposed development should be of a standard which would allow the eventual connection appropriate to the standard required onto the M4 interchange. I consider the concerns raised by both the TII and the Transport Section in relation to design are reasonable. I consider the final design of the road, and relevant road safety audits, can be reasonably included as a condition on any grant of permission and should be at a standard necessary to comply with the National Road Authority, Design Manual for Roads and Bridges.

Design Manual for Urban Roads and Streets (DMURS)

12.55. A Statement of Compliance with DMURS accompanied the application detailing the hierarchy of roads provided throughout the development. The roads hierarchy includes three road types with varying widths and material treatments.

12.56. The PA submission refers to the dominance of roads throughout the development which they consider is contrary to the principles of DMURS. A refusal of permission is recommended having regard to this reasons in conjunction with poor design and absence of hierarchy of open spaces. I have addressed the issue of design, layout and open space below. The report of the Transport Section considers the following design features do not confirm with DMURS:

- Long straight sections of link road,
- Safety issues with the road alignment and junction for the school crossroad,
- Lack of detail on road, footpath and cycle path widths, tactile paving, parking, turning bays, pedestrian crossings,
- Lack of detail for pedestrian and cyclist connectivity,
- Bus stop not recessed.

12.57. DMURS provides guidance relating to the design of urban roads and streets with a focus on a higher priority for pedestrians and cyclists. In this regard a hierarchy of

streets provided within the layout of new developments can aid the reduction of travel speeds and provide a safe environment for all users. The proposed development incorporates three road types with varying widths. The link road required under Objective MT025 is the strategic route into and through the site. As stated above, an amended design and layout is required to achieve a standard necessary to allow the flow of traffic, cyclists and pedestrians onto a regional route at the M4 interchange. With regards the remaining internal routes the land use zoning on and around the site, in particular the educational and public open space, has dictated, to a certain extent, the layout of the residential scheme and associated road layout. The proposed housing on the peripheral locations, which would not be heavily trafficked, have integrated shared surfaces so as to prioritise pedestrian and cyclists, enhancing mobility in line with DMURS. The proposal includes three cul-de-sacs.

- 12.58. Section 3.3 of the DMURS provides guidance on permeability and connectivity in new residential developments where layouts should lead to other streets, limiting the use of cul-de-sacs that provide no through access. The three cul-de-sacs are provided along the interface with the existing Brayton Park and future connectivity into this estate remains optional.
- 12.59. In relation to the pedestrian/ cycle connectivity the Transport Section recommend a refusal as there are insufficient details on pedestrian/ cyclist links to the Brayton Estate, Bawnogues Park and proposed school.
- 12.60. The proposed development provides pedestrian/ cycle path connection along the link road and between the open space at Bawnogues/ Commons West along the southern boundary of the site. The landscape master plan includes an indicative pedestrian and cycle routes along the railway line (adjoining Brayton Park) while the engineer drawings include a designated cycleway. I note there are no designated cycle connections between Brayton Park.
- 12.61. The National Cycle Manual (NTA) requires cycle infrastructure to be planned in conjunction with other traffic modes to ensure the cycle network is not disjointed. Well planned cycle infrastructure prevents traffic conflict and helps to support a mode shift. The proposed development lacks a coherent strategy for the integrated cycle strategy throughout the site, including priority for cycle at junctions. Section 4.0

of the National Cycle Manual includes the requirements for good design. I consider there are additional opportunities throughout the proposed development which can be used to better formalise a cycle connection with Brayton Park which should be integrated at initial design stage and supported in a traffic management plan. I consider a detailed design cycle network, in line with Section 4.0 of the National Cycle Manual and connections with Brayton Park can be conditioned as part of any grant of permission.

12.62. Having regard to the hierarchy of roads provided, the integration of a range and mix of materials and shared surfaces and the proposed and potential connectivity between the existing residential estate and those zoned lands to the north west, I consider the proposed development complies with the principles as set out in DMURS.

### **Design and Layout**

12.63. The 345 no residential units comprise of 69 no duplex unit, 182 no. houses and 94 no. apartments which range from 2 to 5 storeys. The proposal includes a crèche (466.76 m<sup>2</sup>) located at the entrance of the site. The submission from the PA has raised a number of issues in relation to the overall design and layout of the scheme as summarised below:

- The design and finish of the apartments and duplex units.
- The mix of tenure has 57% 3 & 4 bedrooms.
- There is an overconcentration of apartments.
- There are concerns over the terrace units and increased heights in close proximity to the existing dwellings.
- The public open space buffer includes designated open space.

12.64. I have addressed these issues separately within the sections below.

### Mix

12.65. The housing mix provided includes:

- 1 bed (38%)
- 2 bed (39%)

- 3 bed (46%)
- 4 bed (11%)

12.66. The submission of the PA raised concern in relation to the dominance of 3 and 4 bed units provided (57%). There is no specific unit mix requirements in the development plan. The overall mix provides a variety of dwelling types, integrated into a range of tenures. The breakdown for the apartment units is further detailed below.

12.67. I note Section 3.4 of the Building Height Guidelines requires developments to address the need for 1 and 2 bedroom units in line with wider demographic trends. This requirement is transferred into SPPR 4 (3) which specifies the need to avoid mono-type building typologies.

12.68. The subject site is located beside an existing residential estate, where the dominant housing tenure is 3 and 4 bed semi-detached dwellings. The proposed development includes a significant proportion of 1 and 2 bed units throughout the development. Whilst I note the dominant provision of 3 bed units, these are distributed across a range of different tenure which I consider is in line with national guidance and SPPR 4 of the Building Height Guidelines.

#### Apartments & Duplex Units

12.69. As stated above the apartment and duplex units are located along the link road in the centre and along the public open space along the railway line. A Housing and Apartment Quality Assessment (HQA) accompanied the application. The proposed development complies with Design Standards for New Apartments as summarised below:

- SPPR 1- The proposal only includes one and two bedroom units.
- SPPR 3- The minimum floor areas comply with Appendix 1.
- SPPR 4- 100% of apartments are dual aspect.
- SPPR 5- The minimum floor to ceiling heights of ground floors are over 2.7m.
- SPPR 6- No more than 12 apartments per core.

12.70. The quality of apartment design and external materials is raised by the PA who consider these substandard. Overall I consider the 5 storey elements provide a focal point along the duplex terrace and therefore I have no serious concerns over the

design. The use of nap plaster finish may have some maintenance issues for apartments and having regard to the location and dominant design features I consider a more appropriate treatment should be included. This can be reasonably conditioned as part of any grant of permission.

### Crèche

- 12.71. A 2 storey crèche (c. 466m<sup>2</sup>) is located at the entrance of the site and includes a designated play area (c. 277m<sup>2</sup>) and car parking (34 no spaces) and 30 no bicycle spaces. The Planning Guidelines for Childcare Facilities (2001) requires one childcare facility for every 75 dwellings (minimum of 20 spaces). A residential development of 354 no dwellings requires a 94 space crèche to comply with these guidelines. Appendix 1 of the childcare guidelines requires the provision of a minimum of 2.32 m<sup>2</sup> per child, exclusive of kitchen, bathroom and hall space.
- 12.72. The submitted documentation does not include a breakdown of any compliance with the guidelines, although having regard to Appendix 1 of the guidelines I note a 94 space crèche requires a minimum floorspace of 219m<sup>2</sup>, exclusive of kitchen, bathroom and hall space. Therefore I consider the size of the crèche at 466m<sup>2</sup> is sufficient to cater for the proposed development.
- 12.73. A submission from the HSE refers to the necessity for safe and secure storage facilities in the playrooms of the crèche. I note the location of buggy stores and storage rooms although no detailed information for storage details in the playrooms. The childcare guidelines do not require the specific provision of storage facilities and I note the floor space of the crèche exceeds the minimum floor standards. In this regard I consider the internal configuration of playrooms would not significantly alter the proposed development. Compliance of the necessary HSE standards is undertaken by separate regulations and therefore not a planning matter.

### **Material Contravention of the Kildare County Development Plan 2017-2023 and the Kilcock Local Area Plan 2015-2021**

- 12.74. The proposal has been advertised as a material contravention of the development plan and a material contravention statement has been submitted with the application in accordance with section 8(1)(a)(iv) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 as amended. The applicant considers that the proposal contravenes Table 10 of the Kilcock Local Area Plan 2015-2021 as the

density proposed on the site is 44 units per ha, in excess of the 30 units per ha. In addition, the applicant considers the height of the apartment blocks at 5 storeys exceeds the requirements of Section 17.2.1 of the Kildare County Development Plan 2017-2023 which requires the height of buildings to be determined by the prevailing heights in the area. The applicant considers the proposal can be considered and granted permission under Section 37 (2) (b) of the Act of 2000, where the proposed development materially contravenes the said plan, other than in relation to the zoning of the land.

12.75. Section 37(2)(b) of the Planning and Development Act of 2000 as amended provides that where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that

- i. The proposed development is of strategic or national importance,
- ii. There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned or
- iii. Permission for the proposed development should be granted having regard to the regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government or
- iv. Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

12.76. I have provided the Board with an assessment of density and height of the proposed development, having regard to the relevant criteria in s. 37(2) (b) separately, as follows.

#### Density

12.77. The site is currently a green field site, located on the edge of Kilcock a designated “Self-Sustaining Town” in the county settlement hierarchy. Table 4.2 of the Kildare County Development Plan 2017-2023 includes indicative density levels for outer suburban/ greenfield lands in large towns as 30-50 units per ha. Table 10 of the



Kilcock LAP includes the units potential for the subject site as a neighbourhood expansion area with a required density of 30 units per ha. The proposed density is c. 44 units per hectare.

- 12.78. The applicant's "Statement for Material Contravention Statement" refers to the location of the site well served by public transport, the necessity for sites similar to this to support the housing targets in the National Planning Framework and the conflicting objectives in the density requirements of the CDP (35-50 units per ha) and the LAP (30 units per ha). The applicant considers the density of c.44 units per ha provides compliance with the Section 28 guidance and Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas. The PA submission notes the conflicting policies in the county development plan and LAP although consider this density is generally acceptable subject to satisfactory design and compliance with qualitative and quantities standards.
- 12.79. I note the requirements of Section 5.11 of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas which require a general range of 35-50 units per ha for open lands on the periphery of large towns. This density ensures the greatest efficiency in land usage. The density requirement in Table 4.2 of the CDP (30-50) is in line with this national guidance whilst Table 10 of the LAP (30), at the lowest end of the range, would not provide the most efficient use of land for a strategic housing development.
- 12.80. Having regard to the proposal for a strategic housing development, the location of the site within a neighbourhood expansion area, the necessity to promote efficient land use and the requirements of the sustainable residential guidelines I consider it appropriate to invoke the provisions of s.37(2) (b) of the 2000 Act (as amended). I consider the proposed development meets the requirements of s. 37 (2) (b) (ii) as there are clearly conflicting objectives in both the development plan and the local area plan in relation to the density requirements on the subject site. With regard to s. 37 (2) (b) (iii) the proposed development of 44 units per hectare has regard to the statutory obligations in the national Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas where a range of 35-50 units per hectare are required for sites on the periphery of large towns. I can conclude that the density, which is material in exceedance of the standards in Table 10 of the Kilcock LAP, is justified in this instance.

## Height

- 12.81. The 69 no. duplex units and 94 no. apartments are arranged in terraces and corner blocks ranging from 3-5 storeys and are located along the link road, in the central spine, and to the north of the site facing onto the cycle lane along the Dublin- Sligo railway line. The corner units of the duplex terraces Block A- E (along the proposed link road) are 5 storeys in height (c. 14.7m). The corner element of each of these duplex terraces provides an addition 2 no apartments on the upper floors and the roof design is flat, rather than pitched similar to the terrace.
- 12.82. Section 17.2.1 (general development standards) of the Kildare County Development Plan 2017-2023 requires the height of buildings to be determined by the prevailing heights in the area, proximity to existing housing and the scale of the proposal. The application has been advertised as a material contravention of the development plan for reasons relating to the building height which does not comply with Section 17.2.1 of the development plan. The Statement of Material Contravention refers to the requirements of Section 17.2.1, notes the height range of 2-5 storeys within the Bawnogues expansion area, a designated neighbourhood expansion area, and the use of the 5 storeys as a design feature on the corner apartment blocks and concludes that the proposal is justified.
- 12.83. The PA submission notes the requirements section 17.2.1 of the development plan for new development and the necessity to comply with the prevailing heights of those dwellings around the site. The PA consider only 5 storey elements should be permitted in areas of strategic importance, therefore the proposal is a material contravention of the plan. I note the list of reasons for refusal in section 6 of the CE's report does not recommend permission is refused for the proposed development having regard to the proposed heights of the buildings.
- 12.84. Section 13.4.1 of the LAP includes guidance on appropriate urban design for good neighbourhoods with reference to the national guidance on urban design 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) 2009' and the accompanying design manual. These Guidelines advocate high quality sustainable development that are well designed and built to integrate with the existing or new communities and the design manual provides best practice design criteria such as context, connections, inclusivity,

variety, efficiency, layout etc. A blanket restriction of 2 storeys for all the buildings within the subject site would mitigate against the requirements of the 12 criteria for good urban design Urban Design Manual, in particular the use of a variety of building heights to inform new neighbourhood designs and create a sense of space.

12.85. Those proposed dwellings contiguous to the existing residential estate, Brayton Park, include two storey terraces whilst the higher 5 storeys elements are c.80m from the closest dwelling. Therefore I do not consider the higher elements will have a negative impact on any existing residential amenity.

12.86. I note Section 15.7.8 (Building type and height) of the CDP defines tall building (exceed 5 storeys and/or 15m) as those which are significantly higher than their surroundings. The height of these duplex units at c. 14.7m cannot be considered as tall buildings. In this regard I have not considered an assessment of the 5 storey element of the proposed development under the national Urban Development and Building Height Guidelines.

12.87. Having regard to this assessment, I am of the opinion that the proposed development and inclusion of 5 storey apartment elements complies with Section 13.4.1 of the LAP with regard appropriate urban design and the Sustainable Residential Guidelines and accompanying Urban Design Manual. I am satisfied that a grant of permission in accordance with section 37(2) (b) (iii) of the planning act, that may be considered to material contravene the Section 17.2.1 of the development plan, is justified in this instance.

### Conclusion

12.88. In conclusion I consider, in relation to the density requirements for the site there are conflicting objectives in the Kildare County Development Plan 2017-2023 and the Kilcock Local Area Plan 2015-2021. The proposed density of 44 units per ha complies with the range 35-50 specified in Table 4.2 of the Kildare County Development Plan 2017-2023 although contravenes the restriction of 30 units per ha in Table 10 of the Kilcock Local Area Plan 2015-2021. I consider the density requirements of the Kildare County Development Plan 2017-2023 comply with Section 5.11 of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas and therefore a density of 44 units per hectare on the site is justified.

12.89. In relation to the height requirements for the site, I consider there are conflicting objectives in Section 17.2.1 of the Kildare County Development Plan 2017-2023 and Section 13.4.1 in the Kilcock Local Area Plan 2015-2021. The proposed height of 5 storey feature elements for the apartment blocks provide a variety of building heights informing the neighbourhood design and creating a sense of space as required in the national Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) 2009' and the accompanying Urban Design Manual and Section 13.4.1 of the local area plan. In this regard, I consider it appropriate to contravene Section 17.2.1 of the Kildare County Development Plan 2017-2023 which restricts the maximum heights of new buildings to the prevailing building height in the surrounding area.

12.90. Therefore the proposed development materially contravenes the Development Plan in respect of density and height; however, having regard to the provisions of section 37(2)(b) (ii) and (iii) - i.e., the development is of a strategic nature, there are inconsistencies in the plan in respect of density and height and that section 28 guidelines justify exceeding the development plan standards and limitations in respect of height and density.

### **Open Space**

12.91. The proposed development includes (18,117m<sup>2</sup>) of lands zoned in the Kilcock LAP as Open Space & Amenity (F3) where it is an objective "To preserve a buffer zone from the Motorway". The planting of forestry is encouraged in this zone. Policy GK 10 of the LAP (as denoted on Map 7) requires that the building line of residential development is set back 91m from the Motorway.

12.92. The submission from the PA notes the land designation along the motorway as a buffer area and the proposed use of these lands for the main public open space. The PA does not consider the use of public open space on this site acceptable.

12.93. The Architectural Design Statement which accompanied the application provides a breakdown of the open space provision throughout the site. Three significant landscape buffer areas are denoted, including Buffer Area A, within the F3 open space. Section 17.4.1 of the CDP requires the provision of 15% public open space. The total open space provision, not including the designated F3 lands is 13.97% of the entire site.

12.94. Six areas of open space are located throughout the proposed development. Formal play space is included in both the designated F3 lands along the west and a central open space area. Table 13 of the Kilcock LAP permits parks and playgrounds on F3 designated lands. I note the building line of the residential lands is set back 91m from the Motorway and therefore complies with the LAP requirements. I note the planting of part of the site native woodland species and whilst planting throughout the zoned is supported there is no requirement for the entire area to be planted.

12.95. Therefore, having regard to the proposed planting along the motorway, the residential setback and the significant amount of open space allocation throughout the development I consider the use of the F3 open space lands and subsequent integration into the proposal appropriate. In this regard I also note the integration of pedestrian and cyclist routes with the Bawnogues/ Commons area to the south and I consider the permeability though the site will benefit the wider community. In addition, having regard to the quality of open space provision and the integration of those F3 lands, I do not consider the reduction of c. 1% public open space would have a detrimental impact on the proposed development.

#### Trees & Hedgerows

12.96. An Arboriculture Impact Assessment included with the application provides a survey of the trees and hedgerows on the site. Each tree and hedgerow was given an ecological value rating. The proposal includes the part removal of c. 4 hedgerows and the full removal of c.3 hedgerows. This assessment considers the arboricultural impact of the proposed development will be low. Those trees and hedgerows to be retained or partially retained are integrated into the landscape design. Protective barriers are proposed during construction.

12.97. A third party submission raised the absence of an existing boundary hedgerow in the Arboriculture Impact Assessment. I note the landscape rationale also illustrates the existing hedgerows throughout the site and I consider there is sufficient information to undertake a full assessment of the impact of the proposed development.

12.98. The PA recommend a refusal of permission based on the removal of existing vegetation including mature trees and hedgerows from the site and the impact on the visual, landscape character, ecological, biodiversity and climate change qualities of the site. The PA submission provides reference to policy NH1, NH2, GI9 and GI13 of

the Kildare CDP 2017-2023 requiring the preservation of natural heritage and promotion of green infrastructure in the County. The Parks Department raised no objection to the proposal subject to the submission of a Tree Protection Plan and integration of the recommendations from the Arboriculture Impact Assessment.

12.99. I note the hedgerows and trees within the site are representative of those normally located on agricultural lands. The site is zoned residential and designated as a neighbourhood expansion area in the Kilcock LAP with a site specific objective to provide a link road the site. I consider the land use designation on the site would, to an extent, have predetermined the impact on the natural heritage within the site and some removal of trees and hedgerows on the site would be considered reasonable. The proposed landscaping plan integrates a significant amount of tree retention with minimal impact on trees identified as having a high ecological value. Green links throughout the site and between open spaces areas are proposed.

12.100. Having regard to the amount of tree and hedgerow retention and the proposed landscaping throughout the site, I do not consider the proposed trees and hedgerow removal will have significant negative impact on the visual, landscape character, ecological, biodiversity and climate change qualities of the site, as suggested by the PA.

### **Residential Amenity**

12.101. The subject site is located to the north east of an existing residential estate of Brayton Park. The proposed development includes 9 no. two storey terraces (02/ 03/ 04/ 10 and 11) along the boundary. A number of third party submissions are received from residents of those properties in Brayton Park concerned with the relationship between the Terrace no 04 & 10/11 and existing dwellings.

12.102. Terrace 10 is the only row which faces directly onto the rear of the existing dwelling. The site layout plan (Drwg 17-100-101) indicates a distance in excess of 22m from opposing windows (c.26m). The inclusion of extensions on existing properties was raised by the third parties. I note a number of properties have rear extensions, although having regard to the approximate separation distance of c. 26m, even when considered the rear extensions, there is a sufficient distance to prevent any significant overlooking onto the existing residential properties.

12.103. The third party submissions also consider the height of dwellings at terrace 04 & 10/11 is excessive, (10.8m) is 2.3m higher than existing dwellings in Brayton Park, and will cause overshadowing on existing rear gardens and up to the rear building line of the dwellings. I note Terrace 04 & 10/11 is located to the north west of the existing dwellings. The rear garden of the proposed terraces is c. 10m in length. No shadow projection drawings accompanied the application although having regard to the orientation of the height and orientation of Terrace 04 & 10/11, I consider any overshadowing will occur only in the rear of those gardens in Brayton Park. I do not consider this level of overshadowing will cause a significant negative impact on the residential amenity of these residents.

### **Flooding, Water and Waste Water**

#### Flooding

12.104. Map 8 of the Kilcock LAP includes a Flood Risk Map for the town. A significant amount of the lands within the Kilcock town boundary are included as lands which require the submission of Site Specific Flood risk Assessments (SSFRA) for development proposals. The proposed development is accompanied by a SSFRA which notes the absence of any flood risk areas on the site and concludes that the subject site is not impacted by any fluvial flooding.

12.105. There are no watercourses on the site. The proposal integrates both SuDS and attenuation into the overall development. Surface water discharge will not exceed the discharge expected to occur from an existing greenfield site. The SSFRA refers to the OPW report on groundwater flooding which indicates that groundwater flooding is not considered a risk in this area of County Kildare. Groundwater was not encountered during trial hole testing on the site.

12.106. The Royal Canal is located c. 45m to the north of the site on the opposite side of the Dublin to Sligo railway Line. A Preliminary Flood risk Analysis Report undertaken by Waterways Ireland was included as an appendix to the SSFRA and states there are no significant flooding of the Royal Canal along this stretch.

12.107. The report of the Water Service note the findings of the SSFRA and considers the entire existing drainage ditch network should be addressed in the flood risk mitigation measures. The Water Service Section had no objection subject to inclusion of conditions relating to the design of the storm drainage and flooding to

occur on open space lands. I note the findings in the SSFRA and the conditions on the site and I do not consider there is any potential for flooding on the site displacement of water onto any adjoining sites, nor do I consider any further flood assessment is required by the applicant.

#### Water & Waste Water

- 12.108. Connection to the foul network is via Brayton Park, across the railway line and piped under the Royal Canal to Kilcock pumping station. Kilcock pumping station pumps onwards to Maynooth. Water connection is proposed via a water main located in the existing Brayton Park. Irish Water issued a confirmation of feasibility for the proposed development, noting that capital works upgrades to the water and waste water are currently being carried out and scheduled for completion Q4 2021. Irish Water recommend a condition is included on any grant of permission requiring a connection agreement, which I consider reasonable.

#### Surface Water

- 12.109. The surface water treatment is designed in accordance with the Greater Dublin Strategic Drainage Study (GDSDS) incorporates 6 no. attenuation tanks and soakaways. The system has a capacity for 1: 100 year storm event plus 20% for climate change and discharge rates and connections are proposed into the public system along the distributor road into Brayton Park. Discharge will eventually lead to the River Rye. Best practice mitigation is incorporated into the drainage network, including, inter alia, hydrocarbon interceptors and grease trap.
- 12.110. The Water Services Section has no objection to the proposal subject to conditions. A submission from Inland Fisheries Ireland (IFI) notes the point of discharge, requires to be consulted on any works to the Royal Canal and request that works should be completed in line with an agreed Construction Management Plan. I note connection to the River Rye, via the public system will not require any works to the Royal Canal. I consider conditions relating to the implementation of best practice measures during construction and operation are reasonable and a Construction Environmental Management Plan can be submitted as part of any grant of permission.



## **Noise Impact.**

12.111. The site is situated between a motorway (M4) and the main Dublin- Sligo Railway line. The application is accompanied by an Assessment of Inward Traffic Noise Impact. Mitigation measures to limit the impact of noise on the proposed development include:

- 2.5m high noise barrier along the southern site boundary,
- Enhanced glazing to the most exposed facades facing the M4, and;
- Acoustic vents to the most exposed facades (i.e. at locations where the internal design goals cannot be met with windows in the open position).

12.112. The noise assessment concludes that with the inclusion of these mitigation measures the internal noise environment within the sensitive areas of the development are within the recommended criteria adopted from BS 8233 (2014) *Guidelines for sound insulation and noise reduction for buildings*. The report also states that with the inclusion of mitigation measures, the impact of M4 traffic noise and rail noise is not significant or at a level which would be significant impact on the residential amenity of the proposed development or outdoor spaces.

12.113. The submission from the Transport Section of Kildare County Council recommends a refusal of permission based on an inadequate and inconclusive Noise Assessment Report and includes the following comments:

- The noise assessment uses a previous Kildare County Noise Action Plan (2013).
- The noise assessment does not contain a comprehensive noise survey and the survey dates to 2015.
- The road monitoring periods are very limited.
- The  $L_{aeq}$  reading range from 61 to 70 d B Lden which will exceed and contravene the KCC Noise Action levels of 57 Db. L night range from 57 to 64 d B and contravene KCC Noise Action Plan Levels 57 D b.
- The 2.5m earth bund proposed and clarify if the existing 3.0m earth bund will be removed, or if either bund will mitigate the noise levels.

- The report does not address the traffic noise from the elevated interchange of the M4 which overlooks the site.
- Rail monitoring periods were for 30 mins only and the location is not mapped.
- No mitigation measures are provided for the railway despite IE proposals to expand this line.

12.114. The Environment Section of Kildare County Council notes no objection to the proposal.

#### Kildare Noise Action Plan

12.115. The Kildare County Council Third Noise Action Plan 2019 – 2023 is dated September 2019. I note the Noise assessment submitted was compiled between 05<sup>th</sup> of July 2019 until the final document dated 19<sup>th</sup> of December 2019. The current, 2019 – 2023, Noise Action Plan proposes noise levels thresholds for this assessment of 70 dB (A) Lden, and 57 dB (A) Lnight for both “Major Roads” and “Major Railways” set in accordance with the Environmental Protection Agency (EPA) “Guidance Note for Noise Action Planning, July 2009”. The Action Plan notes these limits are arbitrary at present as there is no existing legislation that limits environmental noise to a particular value. The Action plan further states that these limits are the same as those used in the previous two County Noise Action Plans.

12.116. The discrepancy in use of the previous Noise Action Plan is not significant in the formulation of the Noise Assessment for the proposed development having regard to the use of the levels 70 dB LAeq , and 57 dB Lnight for the assessment of noise mitigation measures, which complies with both plans. Levels recorded close the M4 at locations 1-4 recorded higher than 70 dB LAeq at periods where the winds were elevated. The average levels did exceed the levels set in the action plan (70 dB (A) Lden, and 57 dB (A) Lnight) as the average day range was 57 to 64 dB LAeq and the night-time levels ranged from 57- 62 dB LAeq. The Noise Assessment indicates that with the mitigation measures listed above, these levels will be reduced to comply with BS 8233.

#### Noise Survey Data

12.117. With regard to the use of data from the 2015 noise survey, I note the Noise Assessment confirms that traffic volumes or road realignment have not changed

significantly since this survey was undertaken and I consider this reasonable and therefore the use of the 2015 data is acceptable.

- 12.118. The absence of any recorded results from the elevated interchange of the M4 are noted by the Transport Section. I note this location further from the site than those used in the survey and the location of the sampling points within the site, and I am satisfied that the worst case scenario from the traffic generated by the motorway has been included in the Noise Assessment.

#### Noise Barrier

- 12.119. A 2.5m high noise barrier is proposed along the western boundary of the site directly adjacent to the M4. A number of options for the barrier include a timber acoustic fence/ earth bund or solid boundary wall. The Transport Section question whether the 2.5m includes the 3.0m earth bund already in existence. No concern with the use or location of the barrier is raised by the Transport Section. There is a significant amount of planting along the side of the motorway and additional planting and landscaping is proposed as part of the landscaping plan. A distance of 91m for motorway off set is designated and retained as public open space and provides a noise barrier for future developmetn and integrated into the overall plan. Drwg 17-100-102 includes an indicative location for the bund, c. 71m along the west and c. 23m at the closest point along the south, from residential properties. A significant amount of planting is proposed along both boundaries along with a number of mature trees to be retained I do not consider either a 2.5m high barrier or 5.5m high (including the existing 3.0m earth bund) would have significant visual impact. The noise barrier has the potential to conflict with pedestrian and cycle routes throughout the site and all final details of the barrier can be reasonably conditioned and agreed as part of any grant of permission. The final details should integrate appropriate planting as screening and compliment the pedestrian and cycle permeability proposed.

#### Railway Line

- 12.120. The sample measurements taken along the railway line indicate a level of 92 d B when a train is passing. The Noise Assessment uses updated data from 2019 to assess the impact from the rail line as location No 5, 1.8km to the south east of the site. The location of this is not specified in the Fig 1, which is raised as an issue by

the Transport Section as is the period of 30 min for monitoring. Whilst I note the specific location of the monitoring point is not detailed I note the Noise Assessment uses a location to measure the sound of the train moving and I am satisfied that a reading from a location along the rail line would be representative of most trains passing the site.

- 12.121. No specific mitigation measures are proposed along the northern part of the site, closest to the rail line. The absence of any mitigation measures for the housing along the rail line is raised by the Transport Section. A submission from Irish Rail requested the submission of a quantified noise assessment to ensure the noise levels at the houses do not exceed any undesirable levels as specified in the Local Authority Noise Action Plan. It further stated that these noise levels should be with windows closed/ open and also related to the exterior of the buildings.
- 12.122. Section 4.0 of the Noise Assessment assumes a non-solid boundary (e.g. fencing or vegetation) along the north-east boundary adjacent the railway line and states that no further mitigation measures are required. The Noise Assessment refers to the intermittent rail movements which do not exceed the night time thresholds although with levels recorded at 92 d B I consider these above the levels required in the Noise Action Plan. The Noise Assessment does not provide details for the train timetable and it is unclear if there are services through the night. In this regard I note other mitigation measures included for dwellings fronting onto the M4 to the west of the site, including enhanced glazing and noise barriers, which could be reasonably integrated into design of those dwellings. I consider an amended Noise Assessment could be reasonably included in any grant of permission to integrate mitigation measures along the east of the site and/ or other dwellings. Any condition on a grant of permission should ensure that with mitigation measures the noise levels complied with those specified in the Kildare Noise Action Plan.

#### Monitoring

- 12.123. The submission from the HSE noted the location of the site adjacent to the M4 and those mitigation measures proposed to control traffic noise, including the set back and landscaping. The submission recommended noise monitoring was carried out to ensure the mitigation specified are implemented. I consider the inclusion of monitoring reasonable and in keeping with the protection of future residential

amenity. Any condition relating to the submission of additional information for mitigation measures can reasonably integrate monitoring from the 5 no. locations with annual reporting to the PA.

## **Other**

### Timescale of permission

12.124. The application has been advertised for a 10 year permission. The proposal includes connection to existing public infrastructure for the purposes of water and waste water. The proposal includes part of the link road required under MT025 (Bawnogues to M4 interchange) although as designed, this could reasonably be delivered as part of the necessary infrastructure required for the 345 no dwellings. The Strategic Housing Legislation is a process to fast track the delivery of housing. I do not consider there are any justifiable reasons to permit an extended lifespan for the proposed development, should the Board decide to grant permission. I consider a standard 5 year permission would be sufficient.

### Irish Rail

12.125. The subject site adjoins the Dublin- Sligo Railway line. A submission from Irish Rail noted the drainage connection on lands within the control of CIE/ Iarnrod Eireann which would require permission before works were undertaken. The Irish Rail submission also recommended a number of conditions relating to the construction period and request the erection of a 2.4m high solid wall along the applicant's boundary, to be maintained by the applicant. A 4m reservation along the edge of the rail line is required in the event of any DART extension. Other issues relating to noise and the bridge have been previously dealt with.

12.126. I note the location of the housing c. 20m from the edge of the rail line. A 1.2m high post and rail fence is proposed along the site boundary facing the railway line, supplemented by landscaping. A Construction Environmental Management Plan can be reasonably submitted to the PA in the event of any grant of permission, which can address a number of the issues raised by Irish Rail, including the safety work, use of cranes etc. Any grant of permission does not override the applicant's requirement for consent to undertake works on lands outside their control and this is a matter for the applicant.

## Archaeology

12.127. There are no recorded monuments located on the site, the closest is a bawn (KD 005-019) c. 440m to the south west. An Archaeological Assessment accompanied the application. Field Surveys and a desk top analysis did not identify anything of archaeological significance. A submission from the Department of Culture Heritage and the Gaeltacht (DAU) notes the information in the archaeological assessment and recommends that test trenches are distributed across the site rather than targeted on possible archaeological features. In addition, the report includes recommendations relating to archaeological surveying are included relating to the use of experts, licencing, research and recording. Having regard to the location of the bawn within c. 400m of the site I consider the submission of this information to the DAU reasonable and can be conditioned on any grant of permission.

## 13.0 Recommended Board Order

**Application** for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016, in accordance with plans and particulars, lodged with An Bord Pleanála on the 06<sup>th</sup> of March 2020 by Rycroft Homes Limited.

### **Proposed Development:**

345 no. residential units (69 no. Duplex Type Units, 182 no. Houses and 94 no. Apartments) ranging from 2 to 5 storeys, a standalone crèche facility (approximately 466.76m<sup>2</sup>), an associated external play area (approximately 277.67m<sup>2</sup>), associated ancillary surface car parking spaces and bicycle parking spaces, a link street, internal roads, pedestrian paths, cycle paths, public and private open spaces.

### **Decision**

**Grant permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

### **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

### **Reasons and Considerations**

Having regard to the following:

- (a) the location of the site on lands with a zoning objective for residential development in the Kildare County Development Plan 2017-2023,
- (b) the nature, scale and design of the proposed development and those issues relating to the contravention of Section 17.2.1 of the Kildare County Development Plan 2017-2023 and Table 10 of the Kilcock Local Area Plan 2015-2021,
- (c) the National Planning Framework, Project 2040,
- (d) the Rebuilding Ireland Action Plan for Housing and Homelessness, (Government of Ireland, 2016),
- (e) the Eastern & Midland Regional Assembly RSES 2019-2031;
- (f) the Design Manual for Urban Roads and Streets (DMURS), 2019
- (g) the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009
- (h) the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2018
- (i) the Urban Development and Building Heights, Guidelines for Planning Authorities, 2018,
- (i) Spatial Planning and National Roads Guidelines (DoECLG), 2012
- (j) the nature, scale and design of the proposed development,
- (k) the availability in the area of a wide range of social, community and transport infrastructure,
- (l) the pattern of existing and permitted development in the area,
- (m) the report of the Chief Executive of Kildare County Council;

- (m) the submissions and observations received, and
- (o) the report of the Inspector.

It is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this location, would not seriously injure the residential or visual amenity of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **Appropriate Assessment Screening**

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced urban site, the Information for Screening for Appropriate Assessment submitted with the application, the Inspector's report, and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European site in view of the conservation objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required

### **Environmental Impact Assessment Screening**

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environmental Impact Assessment Screening Report submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to:

- a) the nature and scale of the proposed development on a site served by public infrastructure,
- b) the absence of any significant environmental sensitivities in the area,



- c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

the Board concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment. The Board decided, therefore, that an environmental impact assessment report for the proposed development was not necessary in this case.

### **Conclusions on Proper Planning and Sustainable Development**

The Board considered that, subject to compliance with the conditions set out below that the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, and would not endanger public safety by reason of traffic hazard. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board considered that, a grant of permission for the proposed Strategic Housing Development would materially contravene the Kildare Development Plan 2017-2023 and the Kilcock Local Area Plan 2015-2021. The Board considers that, having regard to the provisions of section 37(2)(b)(ii) and (iii) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of Table 10 of the Kilcock Local Area Plan 2015-2021, which relate to a density restriction on the site and Section 17.2.1 of the Kildare County Development Plan 2017-2023 which relate to a restriction in height of any proposed development to the prevailing height in the vicinity of the site, would be justified for the following reasons and consideration:

In relation to section 37 (2) (b)(ii) of the Planning and Development Act 2000 (as amended):

It is considered that, in relation to the density requirements for the site there are conflicting objectives in the Kildare County Development Plan 2017-2023 and the Kilcock Local Area Plan 2015-2021. The proposed density of 44 units per ha complies with the range 35-50 specified in Table 4.2 of the Kildare County Development Plan 2017-2023 although contravenes the restriction of 30 units per ha in Table 10 of the Kilcock Local Area Plan 2015-2021. The Board considers the density requirements of the Kildare County Development Plan 2017-2023 comply

with Section 5.11 of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas and a density of 44 units per hectare on the site is justified.

It is considered that, in relation to the height requirements for the site there are conflicting objectives in Section 17.2.1 of the Kildare County Development Plan 2017-2023 and Section 13.4.1 in the Kilcock Local Area Plan 2015-2021. The proposed height of 5 storey feature elements for the apartment blocks provide a variety of building heights informing the neighbourhood design and creating a sense of space as required in the national Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) 2009' and the accompanying Urban Design Manual and Section 13.4.1 of the local area plan. In this regard, the Board considers it appropriate to contravene Section 17.2.1 of the Kildare County Development Plan 2017-2023 which restricts the maximum heights of new buildings to the prevailing building height in the surrounding area.

It is considered, in relation to the population allocation and Core Strategy for Kildare, the proposed development is a serviced site identified as Site Ref 1 in Table 10 of the Kilcock Local Area Plan 2015-2021, within a neighbourhood expansion area, the site is an appropriate location for the consolidation of development and the proposed development of 345 no units would ensure consistency with Policy CS4 of the Kildare County Development Plan 2017-2023 , promoting compact urban form through a plan-led approach. In this regard, the Board considers it appropriate to contravene Variation No. 1 of the Kildare County Development Plan 2017-2023 which restricts the growth of Kilcock to 241 units.

In relation to section 37(2)(b)(iii) of the Planning and Development Act 2000 (as amended):

It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the 'Guidelines for Sustainable Residential Developments in Urban Areas' issued 2009 (in particular section 5.11 and the accompanying Urban Design Manual) relating to the appropriate densities on sites on the periphery of large towns and the use of a range of building heights for good urban design and place making for new neighbourhoods.

## 14.0 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 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. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

**Reason:** In the interest of clarity

2. The period during which the development hereby permitted may be carried out shall be 5 years from the date of this order.

**Reason:** Having regard to the nature of the development, the Board considers it appropriate to specify a period of validity of this permission in excess of five years.

3. The proposed development shall be amended as follows:

- a. The proposed link road required to comply with the road objective MT025 in the Kilcock Local Area Plan 2015-2021, between Bawnogues to the M4 interchange, shall be designed and constructed in accordance with the National Road Authority, Design Manual for Roads and Bridges.
- b. A proposed cycle connection point into Brayton Park, adjacent to the crèche parking area and along the railway line, shall be designed and constructed to provide designated cycle access.
- c. Provision of a detailed design cycle network, in line with Section 4.0 of the National Cycle Manual.

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 interests of sustainable transportation

4. Prior to commencement of development, land required by the planning authority for the bridge cross over along the north east boundary of the site (as indicated in the lodged documentation), and the school site, shall be reserved free from development and shall be marked out on site in consultation with the planning authority.

**Reason:** In the interest of traffic safety and to prevent the development of this area prior to its use for future road improvements.

5. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs and access road shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in DMURS. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

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

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

7. A minimum of 10% of all communal car parking spaces should be provided with functioning EV charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the Planning Authority prior to the occupation of the development.

**Reason:** To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles

8. Details of the materials, colours and textures of all the external finishes to the proposed dwellings/buildings shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

9. The site shall be landscaped (and earthworks carried out) in accordance with the detailed comprehensive scheme of landscaping, which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to commencement of development. Agreement of landscape plan/specification details shall include the following:

- a) Tree protection,
- b) Children's Play area specification,
- c) Green Infrastructure,
- d) Boundary treatment around the play areas,

- e) Details of the construction and design of the noise barrier integrate appropriate planting and proposals for pedestrian and cycle permeability into the adjoining site.
- f) Taking in charge of areas designated for public open space.

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

- 10.(a) All screen walls shall be 2 metres in height above ground level, constructed and finished to match external finish of dwellings/building,
- (b) All rear garden walls shall be 1.8 metres in height above ground level, and shall be concrete block or concrete post and panel unless otherwise agreed in writing with, the planning authority prior to commencement of development.

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

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

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

12. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

**Reason:** To protect the residential amenities of property in the vicinity and the visual amenities of the area.

13. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and

(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

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

14. The development shall be carried out on a phased basis, in accordance with a phasing scheme submitted with the planning application.

**Reason:** To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings

15. Public lighting shall be provided in accordance with a scheme, [which shall include lighting along pedestrian routes through open spaces] details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. Such lighting shall

be provided prior to the making available for occupation of any house.

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

16. The applicant or developer shall enter into water and/or waste water connection agreement(s) 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 and all surface water shall be treated within the site.

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

17. Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority, a properly constituted Owners' Management Company. The Management Company shall relate only to the apartment blocks only.

This shall include a layout map of the permitted development showing the areas to be taken in charge and those areas to be maintained by the Owner's Management Company. Membership of this company shall be compulsory for all purchasers of property in the proposed development. Confirmation that this company has been set up shall be submitted to the planning authority prior to the occupation of the first residential unit.

**Reason:** To provide for the satisfactory completion and maintenance of the development in the interest of residential amenity.

18. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.



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

19. 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.

20. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, 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 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 of the development.

21. 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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Karen Hamilton  
Planning Inspector

11<sup>th</sup> of August 2020

## **15.0 Appendix 1- Letter from Kildare County Council legal representative.**



The Assistant Director  
An Bord Pleanála  
64 Marlborough Street, Dublin 1

Please quote our ref. on all  
correspondence:

**Our Ref: KC50386/DMC/ GMO**  
**Your Ref:**

Chief Officer  
An Bord Pleanála  
64 Marlborough Street, Dublin 1

Tom Rabbitte  
An Bord Pleanála  
64 Marlborough Street, Dublin 1

Email: [bord@pleanala.ie](mailto:bord@pleanala.ie)

04 August 2020

**Re: Our Client: Kildare County Council**  
**Ardstone Residential Partners Fund ICAV & Ardstone Homes Limited -v-**  
**Kildare County Council**  
**High Court Rec. No. 2020/538JR – Variation No. 1 to the Kildare County**  
**Development Plan 2017 - 2023**

Dear Sir/Madam,

We act for Kildare County Council.

On foot of the above referred to Judicial Review Proceedings, the High Court last Friday, 31<sup>st</sup> of July 2020 granted an immediate Stay on the operation of Variation No. 1 to Kildare County Development Plan 2017 – 2023. Whilst Kildare County Council is seeking to have the Stay lifted and will be mentioning the matter before the High Court tomorrow the 5<sup>th</sup> of August 2020, the matter is unlikely to be heard in full tomorrow and the Stay is likely to remain in force until at least the 19<sup>th</sup> of August next when it is hoped the Court will list the Councils Application for removal of the Stay for hearing.

While the Stay remains in place, An Bord Pleanála should avoid assessing any Application by reference to Variation No. 1 of Kildare County Development Plan 2017 – 2023.

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As you will appreciate Kildare County Council see this matter as being of significant urgency and is doing its utmost to have the Stay lifted. We will of course notify you have all developments in that regard.

Yours faithfully



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David McEntee

**Regan McEntee and Partners**

Email: [dmcentee@reganmcentee.ie](mailto:dmcentee@reganmcentee.ie)