



An
Bord
Pleanála

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

Inspector's Report ABP-307013-20

Strategic Housing Development	167 no. residential units (107 no. houses, 60 no. apartments) and associated site works.
Location	Kill Hill and Earl's Court, Kill, Co. Kildare.
Planning Authority	Kildare County Council
Applicant	McCourt Investments Ltd.
Prescribed Bodies	Department of Culture, Heritage and the Gaeltacht; Inland Fisheries Ireland; Irish Water; National Transport Authority; Transport Infrastructure Ireland.

Observer(s)

See Appendix A

Date of Site Inspection

12th July 2020

Inspector

Una O'Neill

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1.0 Introduction

- 1.1. 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 application site (6.3 ha in area) is located on the eastern side of Kill Village in County Kildare, which is just south of the N7 dual carriageway.
- 2.2. The site comprises greenfield agricultural land, and slopes downward generally from east to west. The site is accessed from the northern boundary with Slí na Naomh/Kill Lane, which is a narrow cul-de-sac country lane serving six detached residential dwellings. Slí na Naomh is accessed off the main road serving Kill. The N7 junction is approx. 460m northeast of the site. The eastern boundary of the site comprises primarily a ditch and bank with mature hedgerow, which is partially inside the zone of archaeological potential/buffer zone of the Kill Hill national monument, (KD020-001-), a circular hillfort enclosure rising up from eastern boundary of the site. The hillfort is of archaeological significance dating to the Bronze-Iron age and is clearly visible from aerial photography, measuring approx. 570 east-west. I note the northeastern boundary to the site is north of the circular hillfort and is within an open field with no physical boundary to indicate the edge of the development lands. The southern boundary is a hedgerow with trees bounding zoned open space and amenity lands, within which there are archaeological remains. The site is bounded to the west by the existing Earl's Court residential development which comprises a mixture of semi-detached and detached two storey dwellings which back onto the site, with a mature tree line along part of this boundary. There is an existing site compound within a vacant plot of land at the western boundary, where the site extends into Earls Court between houses which front onto The Grove and The Avenue streets. To the north-west, the site adjoins a relatively new primary school.

3.0 Proposed Strategic Housing Development

- 3.1. The proposal, as per the submitted public notices, provides for the construction of 167 residential units (107 houses and 60 apartments) and associated site works. Vehicular access to the site is proposed from Slí na Naomh/Kill Lane to the north, and also one vehicular access with Earl's Court housing development to the west. There are in addition two pedestrian only accesses proposed with Earl's Court housing development. The applicant proposes to construct a heritage trail with the buffer zone along Kill Hill to the east of the site.
- 3.2. The following tables set out some of the key elements of the proposed scheme as indicated by the applicant:

Key Figures

Site Area Net	4.75 ha (excludes archaeological buffer zone and ESB exclusion zone – gross area is 6.35ha)
No. of Residential Units	167 dwellings
Density	35 units per hectare
Childcare Facility	- none
Public Open Space	0.4ha OS - 9% (based on net site area); 1.7ha OS – 36% (based on gross site area incl. buffer zone)
Height	2 – 2.5 storeys
Part V	17 units (11 apartments and 6 houses)
Plot Ratio	0.26
Site Coverage	0.14

Unit Mix

	1 bed	2 bed	3 bed	4 bed	Total
Houses	1	18	73	15	107 (94%)
Apartments	20	40			60 (6%)

Total	21	58	73	15	167
As % of total	12%	35%	44%	9%	100%

Unit Type

Type	Duplex	Apartment	Detached	Semi Detached	Terrace
Number	26	34	22	82	3

Parking Provision

Car Parking	291 provided [2 spaces per dwelling; 1 space per apartment and duplex; 1 visitor space per 4 apartments/duplex and additional 2 visitor spaces provided]
Bicycle Parking	1 space per bedroom for apartments.

- 3.3. A Material Contravention Statement has been submitted with the application.
- 3.4. In term of site services, a new water connection to the public mains is proposed, together with a new connection to the public sewer.
- 3.5. An Irish Water Pre-Connection Enquiry in relation to water and wastewater connections was submitted with the application. A report received from Irish Water recommends a condition in relation to requirement for a connection agreement. The report notes that in order to accommodate the proposed wastewater connection, upgrade works are required to increase the capacity of the wastewater network. Irish Water currently has a project underway (Upper Liffey Valley Sewerage Scheme Contract 2B) which will provide the necessary upgrade and capacity. This upgrade project is scheduled to be completed by 2021 (subject to change) and the proposed connection could be completed as soon as possibly practicable after this date.
- 3.6. A letter of consent from Kildare County Council (dated 01/11/2017) is attached to the file which states that they have no objection to a planning application being lodged in relation to development at this location, incorporating road improvements/upgrade works on the adjacent public road (Slí na Naomh/Kill Lane).

- 3.7. A letter from Kildare Country County (dated 1st November 2017) to the architects of this application has been submitted stating that Kildare County Council are in the process of taking in charge Earl's Court development, which adjoins the western boundary of the application site.
- 3.8. A letter from Michael McHugh (dated 8/12/2017) is attached to the file stating that he is the owner of No. 16 Earls Court Green and gives his consent for lands hatched green on attached map be included in this application for permission. I note that the map referred to is not attached to the file. However, I am aware of the location of the property referred to.
- 3.9. In addition to the architectural and engineering drawings, the application was accompanied by the following reports and documentation:
- Planning Context Report
 - Material Contravention Statement
 - Architectural Design Statement
 - Statement of Response to ABP
 - Statement of Consistency
 - Social Infrastructure Assessment Report
 - EIA Screening Report
 - AA Screening Report
 - Ecological Impact Assessment
 - Arborist Report
 - Kill Hill Archaeological Assessment Report
 - Kill Hill Heritage Trail and High Level Design
 - Landscape Design Report
 - Housing Quality Assessment
 - Building Lifecycle Report
 - Engineering Report

- Flood Risk Assessment
- Preliminary C&D Waste Management Plan
- Transportation Assessment (incl DMURS Statement of Consistency, Road Safety Audit and Mobility Management Plan)
- Inward Noise Impact Assessment

4.0 Planning History

ABP-303298-18 – Permission REFUSED for 136 dwellings (April 2019).

Reasons for refusal:

1. The Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009, and Policy MD 1 of the Kildare County Development Plan 2017-2023, seek to ensure that a wide variety of adaptable housing types, sizes and tenures are provided. Criterion number 4 of the Urban Design Manual recognises that a successful neighbourhood will be one that houses a wide range of people from differing social and income groups and recognises that a neighbourhood with a good mix of unit types will feature both apartments and houses of varying sizes. The National Planning Framework recognises the increasing demand to cater for one and two person households and that a wide range of different housing needs will be required in the future. The proposed development, which is characterised predominantly by three and four bed, detached and semi-detached housing and provides for a very limited number of one and two bed roomed units, would fail to comply with national and planning authority policy, as outlined above, and would be contrary to these Ministerial Guidelines, and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The “Urban Design Manual – a Best Practice Guide” issued by the Department of the Environment, Heritage and Local Government in 2009, to accompany the Guidelines for Planning Authorities on Sustainable Residential

Development in Urban Areas includes key criteria such as context, connections, inclusivity, variety and distinctiveness. It is considered that the proposed development results in a poor design concept that is substandard in its form and layout; fails to provide high quality usable open spaces; fails to establish a sense of place; would result in a substandard form of development lacking in variety and distinctiveness, all of which would lead to conditions injurious to the residential amenities of future occupants. Furthermore, the layout of the proposed scheme, being dominated by roads, is contrary to the provisions of the Design Manual for Urban Roads and Streets, issued by the Department of the Environment, Community and Local Government and the Department of Transport, Tourism and Sport in 2013, and involves two vehicular accesses into the adjoining Earl's Court housing estate. It is considered that the proposed development would, therefore, seriously injure the residential amenities of future occupants, would endanger public safety by reason of traffic hazard, particularly to pedestrians within the Earl's Court estate, and would be contrary to the proper planning and sustainable development of the area.

ABP-300558-18 – Permission REFUSED for 130 dwellings (March 2018).

Reasons for refusal:

1. Having regard to the existing deficiency in the provision of adequate sewerage infrastructure serving the subject site, it is considered that the proposed development would be premature pending the carrying out and completion of Contract 2B of the Upper Liffey Valley Sewerage Scheme. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the proposed density of development, at a net density of 26 number units per hectare, it is considered that the proposed development would not be developed at a sufficiently high density to provide for an acceptable efficiency in land usage given the proximity of the site to the built-up area of Kill village and in close proximity to educational facilities and to the established social and community services in the immediate vicinity. In

addition, the proposed development does not have an adequate mix of dwelling types, being predominantly semi-detached and detached housing. It is considered that the low density proposed would be contrary to the provisions of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009), issued to planning authorities under section 28 of the Planning and Development Act, which indicate that net densities less than 30 number dwellings per hectare should generally be discouraged in the interests of land efficiency. The proposed development would, therefore, be contrary to these Ministerial Guidelines and contrary to the proper planning and sustainable development of the area.

3. It is considered that, having regard to the correspondence and the accompanying map dated 1st day of February 2018, received by An Bord Pleanála from the Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht, regarding the re-classification of Recorded Monument KD020-001-003 from enclosure / ring-barrow / tumulus to hillfort and the resultant expanded buffer that corresponds with the area of archaeological potential around the hillfort and the archaeological complex to the south comprising sites and monument numbers KD019-010, KD019-056, KD019-057 and KD019-008004 protected by Preservation Order number 3 of 2007 published by the National Monuments Service, the proposed development would be likely to injure or interfere with a historic monument which stands registered in the Register of Historic Monuments under Section 5 of the National Monuments Acts, or which is situated in an archaeological area so registered. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to grant permission for part of the proposed development and to refuse permission for the remainder, the Board considered that to permit houses numbers 1 to 32 (as recommended by the Inspector) would not allow for a comprehensive re-design of the overall lands that would be available for development following from the archaeological constraints outlined in the submission by the Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht, which comprehensive re-design the Board considers is necessary having regard to the need to provide for an increased

residential density (in accordance with national policy), particularly in that part of the site not immediately adjacent to the existing Earl's Court housing development, and the need to provide for pedestrian and cycle, but not vehicular, access from the lands through the adjoining Earl's Court Housing Scheme, in the interests of pedestrian and traffic safety.

06/1091 – Permission Granted in 2007 by way of a material contravention to McCourt Investments for 124 houses, a crèche and reservation for a 1.27ha school. Permission extended under PA ref 12/86, until 19/09/2017. This application was never enacted.

The application documentation includes a document titled 'Appendix K, Important and Pertinent Background' which sets out the planning history of the site, specifically the history of the permission 06/1091. Within Appendix K, the applicant contends that this application is considered a third and final phase of the Earl's Court development, with land having been ceded by the developer to the Department of Education for a school adjoining the site in 2007 (now constructed) subject to development for 124 dwellings being allowed on this site. I note permission was granted under ref 06/1091 in 2007 (this followed the recommendation of the Senior Planner to overturn a recommended refusal in the planners report and seek clarification of further information, which resulted in a grant of permission following a material contravention being approved by the councillors). The permitted housing development was not constructed by the applicant as there were issues with wastewater treatment at Osberstown and requirement for a new rising main. The land was subsequently zoned from agricultural use to residential use in a variation to the 2011-2017 development plan.

Permitted development – South of Kill (southwest of application site)

19/885 (withdrawn appeal, ref 306361) – Permission granted for 66 units on 11th December 2019 to Cavan Developments.

19/886 (withdrawn appeal, ref 306366) – Permission granted for 58 units on 11th December 2019 to Cavan Developments.

Permitted development to southwest of Kill:

ABP-305416-19 – Permission GRANTED on 6th January 2020 for 147 no. residential units (103 no. houses, 44 no. apartments) to Resource Five Limited.

5.0 Section 5 Pre Application Consultation

- 5.1.1. A section 5 pre-application consultation with the applicants and the planning authority took place at the offices of An Bord Pleanála on 14th November 2019 in respect of a proposed development on the application site for 166 dwellings (106 houses, 60 apartments). The main topics discussed at the meeting were –
1. Principle of Development: Having particular regard to the core strategy set out in the Kildare County Development Plan 2017 and 2023 and comments from Kildare Co. Co. that the subject development is premature pending the adoption of a variation of the Kildare Co. Development Plan in compliance with the RSES County Population target's and future population allocation for Kill.
 2. Development Strategy for the site including: Overall site layout, urban design and architectural approach particularly with regard to car parking layout, disposition of open space and landscaping, treatment of urban edges and public realm, housing mix/typology, finishes and materials.
 3. Traffic and Access: Having particular regard to the proposed access from the Avenue and compliance with DMURS.
 4. Archaeology.
 5. Drainage.
 6. Any Other Matters
- 5.1.2. Copies of the record of the meeting, the Inspector's Report, and the Opinion are all available for reference on this file.

5.2. Notification of Opinion

5.2.1. An Bord Pleanála issued a notification that it was of the opinion that the documents submitted with the request to enter into consultations required further consideration and amendment to constitute a reasonable basis for an application for strategic housing development, in respect of the following elements:

1. Principle of Development

Assessment of the development with reference to the Core Strategy set out in the Kildare County Development Plan 2017-2023 and a full rationale for the development of these lands having regard to inter alia, the RSES County Population targets and future population allocation for the settlement of Kill and the suitability of the site for development having regard to its location and zoning history.

2. Development Strategy

Further consideration of documents as they relate to the development strategy for the site, in particular the architectural approach and overall layout of the proposed development in relation to:

- The layout of the proposed development in relation to unit mix and particularly the limited number of 2 bed housing units.
- The need to provide appropriate double fronted corner units particularly along road frontages and adjacent to public open spaces to ensure appropriate passive surveillance.
- The overall design approach to the site to ensure the creation of an appropriate hierarchy of streets and full compliance with the principles of DMURS.
- The layout and design of car parking to ensure that all spaces are functional and do not impinge on public open space or unnecessarily conflict with pedestrian routes.
- The provision of an appropriate landscape strategy to include active play.
- The layout and disposition of open spaces to ensure the reduction in the number of incidental ancillary areas; better passive surveillance, particularly the large open space proposed to the south of the site.

- The documentation at application stage should clearly indicate how the 12 criteria set out in the Urban Design Manual which accompanies the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities and the Design Manual for Urban Roads and Streets have been complied with.

Further consideration of these issues may require an amendment to the documents and/or design proposals submitted.

The opinion notification pursuant to article 285(5)(b) also referred to specific information that should be submitted with any application which can be summarised as follows –

1. A plan of the areas excluded for the calculation of net density in addition to a plan of the open space within the site clearly delineating public and private spaces.
2. A report that specifically addresses the proposed materials and finishes to the scheme... The documents should also have regard to the long-term management and maintenance of the proposed development.
3. A detailed schedule of accommodation which shall indicate compliance with relevant standards in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' 2018.
4. A Traffic and Transport Assessment (to include Road Safety Audit and Quality Audit) for the proposed development including likely impact of development on existing junction 7 on the N7. The report should also include a full assessment setting out a detailed rationale for the proposed vehicular access from The Avenue, Earls Court including detail of any road upgrades and traffic calming measures proposed to facilitate same. It should also be detailed who is going to undertake the works required and the timelines involved relative to the construction and completion of the proposed development.
5. A report prepared by a suitably qualified and competent person demonstrating specific compliance with the requirements set out in the Design Manual for Urban Roads and Streets.
6. Landscaping proposals including an overall landscaping masterplan for the development site. Details pertaining to the quantity, type and location of all proposed hard and soft landscaping including details of play equipment, street furniture

including public lighting and boundary treatments (including external boundaries) should be submitted. Landscaping proposals should include a full method statement for the construction of the heritage trail including detail of construction methodology, proposed finishes and materials and public lighting strategy. Details of tree and hedgerow protection should also be provided.

7. A Building Life Cycle Report in respect of the proposed apartments as per section 6.13 of Sustainable Urban Housing: Design Standards for New Apartments- Guidelines for Planning Authorities (2018).

8. A phasing plan for the proposed development which includes the phasing arrangements for the delivery of the public open spaces, surface water management proposals and Part V provision.

9. Detailed design of proposed surface water management system proposed including attenuation proposals of all SuDS features proposed on site in the context of surface water management on the site.

10. A site layout plan clearly indicating what areas are to be taken in charge by the Local Authority.

11. Ecological assessment to include site survey, assessment of hedgerows and other vegetation proposed for removal.

12. A Construction Management Plan that would address, inter alia, the following: the protection of existing boundary and landscape features during the construction, protection of amenity of the existing school and of adjacent residential properties and measures to protect identified buffer zones to archaeological sites.

13. Childcare demand analysis and the likely demand for childcare places resulting from the proposed development.

5.3. **Applicant's Statement**

5.3.1. A statement of response to the Pre-Application Consultation Opinion, as issued by the Board, was submitted with the application, as provided for under section 8(1)(iv) of the Act of 2016, which is briefly summarised as follows:

1. Principle of Development

- Table 3.1 of the Kildare County Development Plan 2017-2023 sets out the settlement hierarchy for Kildare. Kill is identified as a Small Town within the Hinterland Area.
- At the time of writing, KCDP is pending Variation to address the provisions of the EMRA RSES, particularly population allocation for the period to 2026.
- Section 3.5 and Table 3.3 provides the population and housing growth targets. Kill has a target of 422 dwellings for the period 2016-2023. Volume 2 of the Plan notes that the unit target of 422, incorporating the 50% over zoning, results in a revised target allocation of 633 no. additional units.
- 633 units across 26.5 ha of Zone C New Residential lands across Kill implies a density of c.24 units per hectare. This density range of 16-24 units per ha is broadly consistent with the density range set out for edge of centre sites in Small Towns on Table 4.1 of the Plan. However, this density range is considered to be inconsistent with current national policy.
- According to the Kill Housing Survey 2019, issued to the applicants by Kildare County Council as part of their Opinion documents, a total of 193 no. units have been committed for the period 2016-2023. In addition a SHD Application for 147 no. units (ABP-305416-19) was recently granted permission by An Bord Pleanála. Commenced (152 units), committed (193 units) and recently permitted (147 units) developments in Kill could potentially yield 492 no. units, assuming that all of the extant developments are implemented. A balance of 141 no. additional units would be required to be constructed by 2023 in order to meet the housing allocation target. The proposed development of 167 no. units, in combination with the above developments will provide a total of 659 no. units in Kill, c.4% over the housing allocation (633 units) in the Core Strategy and Settlement Strategy of the current Plan.
- An exceedance of 4% is not material or substantial in the context of the allocated number of units. In this regard, there can be no certainty that all of the applied for and permitted units will be constructed or occupied before 2023 and the timeline to do so should be taken into account. Furthermore, the relatively modest breach of the core strategy allocation is attributable in substantial part to:-

- A misalignment between national and county level policy on density and sustainable development;
- The higher proportion of one and two bed units now required;
- National policy requirements to provide a range of unit types, forms and heights.

Accordingly, it is submitted that the proposed development is compliant with national and regional policy, and consistent with the core strategy of the County Development Plan.

- Draft Variation 1 of KCDP: The draft Variation (in place at time of submission) provides an amendment to the settlement strategy and Table 3.3 of the KCDP. Kill remains designated as a Small Town in the proposed Variation of the KCDP and the dwelling target for Kill to the end of the Development Plan period, 2023, is 78 no. units. It is submitted that the proposed development would not be constructed by 2023 if planning permission is granted in 2020. The subject development will be constructed on a phased basis with 51 no. dwellings constructed in Phase 1, 61 in Phase 2 and 55 in Phase 3. The phasing of the proposed development will result in the proposal not exceeding the dwelling target allocation, as amended under Variation 1 of the KCDP.

2. Development Strategy

- The layout of the development has been amended to provide an additional 18 no. 2-bed houses. The total number of 2-bed units is now 58 (40 no. apartments and 18 no. houses), which equates to 35% of the proposed units being 2-beds.
- The layout has been amended and a total of 25 no. corner type houses have been incorporated into the design.
- The Transportation Assessment enclosed provides details of compliance with DMURS.
- Car parking has been designed to be predominantly provided off street with some parking parallel to the street. Private, off-street parking is primarily provided behind the building line of the houses. Parking perpendicular to the street is limited and is

only provided towards the end of cul de sacs and not on the main vehicular routes through the development. All parking is broken up by tree planting and landscaping to avoid cars dominating the street environment as per DMURS requirements promoting high quality street layouts that prioritise people over vehicles and vehicle movement.

- The landscape design statement and drawings prepared by NMP Landscape Architects includes areas for active play.
- Incidental ancillary open space areas have been removed. The open space to the south acts as a buffer zone to archaeological monuments to the east and south. To improve passive surveillance, the open space has been reduced in size and provided with a stronger street edge on two sides with a greater proportion of active street front. The open space itself has been carefully designed and programmed.
- The enclosed Design Statement prepared by JFOC Architects sets out how the proposed development has been designed in accordance with the 12 criteria of the Urban Design Manual.

The specific information listed in the Opinion as issued by ABP has been submitted by the applicant with the planning application.

5.3.2. **Applicant's Statement of Consistency**

The applicant has submitted a Statement of Consistency as per Section 8(1)(iv) of the Act of 2016, which states how the proposal is consistent with the development plan, national and regional policies, and section 28 guidelines. The following is noted:

- The NPF signals a shift in Government policy towards securing more compact and sustainable urban development, to enable people to live nearer to where jobs and services are located. The subject development is located on lands zoned for residential development and provides a residential development of a sustainable density adjacent to the existing built up area of Kill.
- The EMRA RSES is a strategic plan based on the NPF which identifies regional assets, opportunities and pressures and provides appropriate policy responses.

- The RSES supports and adapts the policy considerations of the NPF and acknowledges that more compact urban living is a consideration for all urban settlements.
- The proposed development is in accordance with the EMRA RSES as it provides a residential development within an existing urban area. The development is located on one of the last remaining residentially zoned sites in Kill that can be developed without resulting in urban sprawl.

5.3.3. Applicant's Statement on Material Contravention

The application documentation includes a report titled Material Contravention Statement, which relates to issues of Settlement Strategy and Density, as set out in the Kildare County Development Plan 2017-2023, and is summarised as follows:

- Settlement Strategy: The proposed development of 167 no. residential units, in combination with permitted developments and developments under construction in Kill, marginally exceeds the Settlement Strategy housing unit allocation for Kill set out in Table 3.3 of the current Development Plan (I note the Variation was a draft at time of application submission).

- Density:

The proposed net density of development of 35 units per hectare is in excess of the indicative density levels and guidance contained in Tables 4.1 and 4.2 of the Kildare County Development Plan 2017-2023 for Edge of Small Town/Village sites (15-20 units per hectare).

Given the location of the site, within 800m of town centre and adjoining a school, the site could be characterised as either an edge of centre (20-35 units/ha), or an edge of settlement site (15-20 units/ha) for the purposes of Tables 4.1 and 4.2 of the County Development Plan. The subject proposal is within density parameters for edge of centre sites given density of 35 units/ha. However, the proposal may be categorised within the density parameters prescribed for edge of settlement sites, which is what the site is categorised as by KCC (as per the previous application on this site; it is noted the ABP inspector did not categorise the site) and therefore would be a material contravention of the density prescribed in the KCDP.

- Section 37(2)(b) of the Planning and Development Act 2000 (as amended) - The document elaborates on why permission should be granted under S37(2)(b)(i), (ii) and (iii):

S37(2)(b)(i) - The proposed development is considered as a Strategic Housing Development under the Planning and Development (Housing) and Residential Tenancies Act 2016 as it is located on zoned residential land and exceeds 100 no. units. The Board's opinion confirmed the proposed development is strategic in nature under the provisions of this Act. The proposal is in accordance with national guidance, such as the NPF and EMRA RSES, Urban Development and Building Height Guidelines, and Sustainable Urban Housing: Design Standards for New Apartments Guidelines, which seek the creation of compact, sustainable residential developments to be located in appropriate urban locations, close to existing/proposed infrastructure and services. The development is located on residentially zoned land in an existing urban settlement and is adjacent to existing infrastructure and services. The development provides linkages to the existing residential development located to the west and provides a Heritage Trail and Archaeological buffer zone along Kill Hill, which is of national archaeological importance.

S37(2)(b)(ii) - There are conflicting objectives in the KCDP. Some of the key objectives of the plan relate to delivery of compact and sustainable growth, support sustainable development in established urban areas, create sustainable and integrated communities, ensure appropriate mix in housing types and sizes, and encourage appropriate densities for new housing development. The density threshold between edge of centre and edge of settlement is not clearly set out in the development plan, to clearly establish whether a low or medium density is appropriate for the site in accordance with the provisions of the plan.

The Settlement Strategy of the KCDP applies to the period 2017-2023 and while the proposed development (168 units), in combination with commenced (152 units), committed (193 units) and recently permitted (147 units) developments in Kill could potentially yield 659 units, it is considered that the marginal exceedance of the Settlement Strategy is warranted by the increased residential density supported and required by recent national and regional guidance.

The proposed development exceeding the settlement strategy is based on an assumption that all commenced and permitted developments will be constructed and completed by 2023. As noted, the settlement strategy extends up until 2023 and while it is intended to construct the proposed development in a timely manner, it will not be possible to have all units complete and occupied by 2023, as per the submitted phasing plan. (I note that the phasing plan refers to 3 phases of development, phase 1 relating to 51 units; phase 2 is for 61 units; and phase 3 is for 55 units. No timeline is indicated with the phasing plan).

Variation 1 of the KCDP, which is on public display at the time of writing this report, provides an allocation to 2026 of 183 no. residential units in Kill. Although this variation has yet to be adopted, the proposed development does not exceed this longer term allocation.

It is therefore submitted that despite the restrictive settlement strategy and density parameters of the KCDP, the subject development achieves the objectives of the KCDP, in terms of providing for a development consistent with the zoning objective, providing a compact residential development in an urban area, and providing a sustainable density capable of sustaining existing infrastructure and services in the locality.

S37(2)(b)(iii) - The development is fully compliant with the policies and objectives of the relevant National and Regional Planning Guidelines. Please refer to the enclosed Statement of Consistency for full details of compliance with the NPF, EMRA RSES, Urban Development and Building Height Guidelines, and the Sustainable Urban Housing: Design Standards for New Apartments and other National and Regional Guidelines.

In terms of 37(2)(b)(iv), the subject site is one of the last remaining residentially zoned sites available for development within Kill. A recent SHD permission was granted by An Bord Pleanála on lands to the west of Kill for 147 no. units and 2 no. residential applications were permitted by Kildare County Council for a total of 124 no. units (currently on appeal) on a site to the south west of the subject site.

The proposed development provides a residential development on residentially zoned lands and knits into the pattern of residential development, which is currently located to the west of the site at The Avenue, Earls Court. The subject site is closest

of all residential development sites in Kill to the new pre-school and primary school facilities in the town.

It is therefore submitted that the proposed development is consistent with the pattern of development and recent permissions granted in the area.

6.0 Relevant Planning Policy

6.1. Section 28 Ministerial Guidelines

The following list of Section 28 Ministerial Guidelines are considered to be of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities (2009) and the accompanying Urban Design Manual: A Best Practice Guide (2009)
- Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities (2018)
- Urban Development and Building Height Guidelines for Planning Authorities (December, 2018)
- Design Manual for Urban Roads and Streets (December 2013) and as amended
- Architectural Heritage Protection – Guidelines for Planning Authorities (2011)
- Childcare Facilities – Guidelines for Planning Authorities 2001 and Circular PL3/2016 – Childcare facilities operating under the Early Childhood Care and Education (ECCE) Scheme
- The Planning System and Flood Risk Management (including the associated Technical Appendices) (2009)

Other relevant national guidelines include:

- Framework and Principles for the Protection of the Archaeological Heritage Department of Arts, Heritage, Gaeltacht and the Islands (1999)

6.2. National Policy

Project Ireland 2040 - National Planning Framework (2018)

- 6.2.1. A key element of the National Planning Framework (NPF) is the distribution of future growth between the regions, with National Policy Objective (NPO) 1a, 1b and 1c targeting the scale of population and employment growth for each of the three regions in Ireland, and NPO 2 a, b and c focussed on accessible centres of scale within the regions.
- 6.2.2. National Policy Objective 3a, b and c relates to Compact, Smart, Sustainable Growth. One of the key national strategic outcomes of the NPF is to deliver more compact growth in the development of settlements of all sizes across the regions, moving away from development sprawl. The NPF states that getting the physical form and location of future development right offers the best prospects for unlocking regional potential.
- 6.2.3. This approach is summarised in Table 2.1 'The NPF at a Glance: Targeted Pattern of Growth to 2040', which sets out the top three NPOs 1, 2 and 3. Under NPO 2, the table indicates that Regional Spatial and Economic Strategies (RSEs) are required to set out a strategic development framework for each region.
- 6.2.4. The following key National Policy Objectives (NPOs) are noted:
- NPO 1b: Eastern and Midland Region - 490,000-540,000 additional people.
 - NPO 3(c): Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints.
 - NPO 11: In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.
 - NPO 13: In urban areas, planning and related standards, including, in particular, height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

- NPO 27: Ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.
- NPO 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- NPO 71: City/county development plan core strategies will be further developed and standardised methodologies introduced to ensure a co-ordinated and balanced approach to future population and housing requirements across urban and rural areas.

6.2.5. Appendix 2 of the Implementation Roadmap for the NPF (July 2018) identified a population for County Kildare to 2031 of 249,000-254,000 persons in 2026 and 259,000-266,500 persons in 2031.

6.3. **Regional Policy**

Eastern and Midland Regional Assembly - Regional Spatial and Economic Strategy 2019-2031

6.3.1. The Eastern and Midland Regional Assembly (EMRA) made the Regional Spatial and Economic Strategy (RSES) 2019-2031 on June 28th 2019.

6.3.2. The principal statutory purpose of the RSES is to support the implementation of Project Ireland 2040 – NPF and NDP 2019-2027 and the economic policies of the Government, by providing a long-term strategic planning and economic framework for the development of the Regions, to ensure the sustainable and appropriate growth of the regions in line with planned investment.

6.3.3. The RSES for the Eastern Midland Region, which includes Kildare, provides a development framework for the region through the provision of a Spatial Strategy, Economic Strategy, Metropolitan Area Strategic Plan (MASP), Investment Framework and Climate Action Strategy. The RSES will be implemented by way of all development plans and Local Economic and Community Plans (LECPs).

Section 3 Growth Strategy

6.3.4. Following on from the NPF identification of an urban structure for the region, there are three functional urban areas within the Eastern and Midland Region (EMR) – Dublin Metropolitan Area; Core Region and Gateway Region (see figure 3.2 of RSES). The RSES has established a settlement hierarchy for the EMR which sets out the key locations for population and employment growth, coupled with investment in infrastructure and services. This sets the framework for the development plan of each local authority, and subsequently the quantum of residential and employment generating zoned land required.

6.3.5. I note Kill is located within the Core Region. The Core Region includes the peri-urban ‘hinterlands’ in the commuter catchment around Dublin. It is noted in the RSES that some areas have emerged mainly as commuting towns, experiencing high rates of population growth but with a weak level of services and functions for resident populations. These town’s will require ‘catch up’ investment in local employment and services in order to become more self-sustaining and to improve sustainable mobility, particularly in those places where there are high levels of car dependency.

6.3.6. The following Regional Policy Objective (RPO) is noted:

RPO 3.1: Key stakeholders including local authorities in the Region shall, through their policies and objectives including development plans, commit to the delivery of the Growth Strategy as detailed in the RSES.

Section 4.2 Settlement Strategy:

6.3.7. The RSES has used a robust evidence based approach to derive a settlement hierarchy that will achieve the Regional Strategic Outcomes for the benefit of the whole Region with the settlement typology listed as follows:

Dublin City and Suburbs; Regional Growth Centres; Key Town; Self-Sustaining Growth Towns; Self-Sustaining Towns; Towns and Villages; Rural.

6.3.8. The RSES designates various settlements in accordance with the typologies up to the level Key Towns, after which the settlements are to be defined by development plans of the relevant counties.

6.3.9. The following Regional Policy Objective (RPO) is noted:

RPO 4.1: In preparing core strategies for development plans, local authorities shall determine the hierarchy of settlements in accordance with the hierarchy, guiding principles and typology of settlements in the RSES, within the population projections set out in the National Planning Framework to ensure that towns grow at a sustainable and appropriate level, by setting out a rationale for land proposed to be zoned for residential, employment and mixed-use development across the Region. Core strategies shall also be developed having regard to the infill/brownfield targets set out in the National Planning Framework, National Policy Objectives 3a-3c.

6.3.10. Appendix B of the RSES reconfirms the NPF population targets for County Kildare of 249,000-254,000 persons in 2026 and 259,000-266,500 persons in 2031.

6.4. **Local Planning Policy**

Kildare County Development Plan 2017-2023, as amended by Variation No. 1

6.4.1. At the time of reporting, the statutory plan and policies in place are those in the Kildare County Development Plan 2017-2023, as amended by Variation No. 1, adopted by the elected members on 9th June 2020).

6.4.2. I note a legal stay has been placed on this Variation by the High Court, dated from 12th August 2020, which states that it is ordered that the coming into force of the “Variation” be stayed insofar as it applies to and affects the towns of Celbridge and Clane as designated in their respective Local Area Plans and the village of Johnstown as designated in Volume 2 of the County Plan until the determination of the application for judicial review or until further Order or until the stay on proceedings shall have lapsed by reason of the Applicants’ failure to serve an originating Notice of Motion herein within the proper time.

6.4.3. As this legal stay does not relate to Kill, I am assessing this application by reference to the Kildare County Development Plan 2017-2023, as amended by Variation No. 1.

Volume 1 Written Statement, as amended by Variation No. 1

6.4.4. Variation No. 1 responds to the recent changes in national and regional policy, namely the NPF and the EMRA-Regional Spatial and Economic Strategy (RSES) 2019-2031 and results in amendments to parts of Volume 1, Chapters 2 and 3,

which relate to the Core Strategy and Settlement Strategy respectively, as well as Chapter 5 Economic Development, Enterprise and Tourism.

- 6.4.5. Table 2.4 Population and Housing Targets – County Kildare: Census 2016 222,504 population/80,746 dwellings; NPF 2026 growth target in units: 14,060; Dwellings Target 2020-2023: 6,023.
- 6.4.6. Table 3.1 County Kildare Settlement Hierarchy 2020-2023: Kill is identified as a Town in the settlement hierarchy.
- 6.4.7. Table 3.3 Settlement Hierarchy – Population and Housing Unit Allocation 2020-2023: NPG 2026 Pop Growth in Housing Units for Kill = 183. Dwelling target 2020-2023 for Kill = 78.
- 6.4.8. The projections have been adjusted to the end of the first quarter of 2023 to coincide with life of development plan.
- 6.4.9. Section 2.16 Delivering the Core Strategy; Section 2.16.1 Policies: Settlement Strategy:

It is the policy of the Council to:

CS 1 Provide new housing in accordance with the County Settlement Hierarchy.

CS 2 Direct appropriate levels of growth into the designated growth towns as designated in the Settlement Strategy.

CS 3 Support rural communities through the identification of lower order centres including towns, villages and settlements to provide more sustainable development centres in the rural areas.

CS 4 Deliver sustainable compact urban areas through the regeneration of towns and villages through a plan-led approach which requires delivery of a least 30% of all new homes that are targeted in these settlements to be within their existing built up footprint.

CS 4(a) Develop in accordance with the National Planning Framework (NPO 18b) a programme for new homes in small towns and villages in association with public infrastructure agencies, local communities, housing bodies and landowners to identify lands for the provision of low density serviced sites with

appropriate infrastructure throughout settlements identified as Rural Towns, Villages and Rural Settlements (as identified in Table 3.3).

6.4.10. Section 3.8 Policies: Settlement Strategy

It is the policy of the Council to:

SS 1 Manage the county's settlement pattern in accordance with the population and housing unit allocations set out in the RSES, the Settlement Strategy and hierarchy of settlements set out in Table 3.1.

SS 3 Ensure that the zoning of lands is in accordance with the Core Strategy and Settlement Strategy.

SS 4 Review the zoning of lands in instances where there is an oversupply of land for housing and to consider alternative land use zoning objectives to reduce the quantum of housing lands in the first instance. The phased development of housing lands will be considered as a secondary solution only.

6.4.11. The following Objectives are noted:

SO 4 Ensure that the scale and form of developments envisaged within towns and villages is appropriate to their position within the overall Settlement Hierarchy set out in Table 3.1. Due regard will be given to the Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities, DEHLG (2009), the accompanying Urban Design Manual – A Best Practice Guide (2009), Urban Development and Building Height Guidelines (2018) and the Urban Design Guidelines contained within Chapter 15 of this Plan.

SO 5 Implement Section 10(8) of the Planning and Development Acts 2000 (as amended) as appropriate which states “there shall be no presumption in law that any land zoned in a particular development plan (including a development plan that has been varied) shall remain so zoned in any subsequent development plan”.

SO 9 Sequentially develop lands within towns and villages in accordance with the Development Plan Guidelines, DEHLG (2007) including any updated

guidelines and deliver at least 30% of all new homes that are targeted in settlements within their existing built-up footprint (defined by the CSO).

6.4.12. Section 2.16.2 Policies: Economic Development

CS 8 Address commuting patterns by building up the local economy to a more sustainable level by promoting self-sustaining employment-based development opportunities in settlements to provide for employment growth for the existing population in order to reverse commuting patterns.

6.4.13. The provisions within the following chapters of the development plan are also noted:

- Chapter 12 Architecture and Archaeological Heritage
- Chapter 16 Urban Design Guidelines
- Chapter 17 Development Management Standards

Volume 2 Small Towns and Village Plans:

6.4.14. A number of Small Towns are identified as part of the Settlement Strategy for the county. The site is within the area of the Kill Small Town Plan. It is stated that growth in Small Towns will be controlled to limit pressure on the environment and unsustainable commuting patterns. It is stated that the Settlement Strategy must be implemented to ensure compliance with the Core Strategy.

6.4.15. It is the policy of the Council to:

STP1 Monitor carefully the scale, rate and location of newly permitted developments and apply appropriate development management measures to ensure compliance with the Core Strategy including population targets for each small town; and to achieve the delivery of strategic plan led and coordinated balanced development throughout the planning areas.

6.4.16. Paragraph 1.1.1 Role of Small Towns: Small towns have been designated to develop as key local centres for services, with levels of growth to cater for local need at an appropriate scale and to support local enterprise.

6.4.17. Paragraph 1.1.2 Residential Unit Targets: 'The settlement strategy for County Kildare, as outlined in Table 3.3 of Volume 1, Chapter 3 – Settlement Strategy, must be implemented to ensure compliance with the Core Strategy'. I note that Table 1.1 and 1.2 in this chapter, which list the population and housing unit allocations for

small towns, have therefore been superseded by Variation No. 1, which states ‘The Settlement Strategy as detailed in Table 3.3 contains the allocated growth for each of these settlements and supersedes that which is produced in Volume 2’.

Section 1.5 of Volume 2: Kill Small Town Plan:

- 6.4.18. Paragraph 1.5.7: The Small Town Plan sets out the principles governing the future development of Kill. These include consolidating development within the town centre followed by the sequential development of land / sites in a logical progression from the town centre to the edge of the development boundary.
- 6.4.19. Paragraph 1.5.8 Objectives; 1.5.8.1 Housing: The settlement strategy for County Kildare allocates a housing unit target of 422 units for Kill between 2011 and 2023 – I note that Variation No. 1 now supercedes this housing unit allocation figure.
- 6.4.20. The Kill Small Town Plan provides for residential development on 4 sites, whilst also promoting the development of appropriate infill development on existing residential sites and town centre sites.

Objective KL 1 Facilitate the development of residential developments for the lifetime of this Plan, largely within the town centre zone on areas designated as existing residential/ infill and on lands zoned new residential, in accordance with the principles of proper planning and sustainable development.

- 6.4.21. Zoning Map: ‘Objective C, New Residential’. The site includes land at two points which adjoin the access road serving the neighbouring residential development of Earl’s Court. A small section of the development includes additional road space/connections into the neighbouring Earl’s Court development, beyond the C zoning and those elements are zoned ‘Objective B, Existing Residential/Infill’.
- 6.4.22. The application site forms the eastern development boundary of the town. To the south the lands are zoned F Open Space and Amenity. To the west is Existing Residential/Infill and to the east are unzoned (agricultural) lands.
- 6.4.23. Paragraph 1.5.8.8: A zone of archaeological heritage in Kill has been identified. The application site lies outside of this area. There are a number of other identified sites in close proximity to the site of the proposed development.
- 6.4.24. The following sites and monuments are located adjacent to the site to the east:
- KD020-001 Hillfort - this is a national monument of a raised circular hill fort.

- KC020-002 Enclosure

There are in addition RMP references to the south of the site, KD019-010, KD19-056 and HD19-057.

6.4.25. The following Archaeological Heritage Objectives are noted:

KL 34 Have regard to the Zone of Archaeological Potential and the Preservation Order area in Kill when dealing with planning applications for development or consents/consultations for public sector developments.

KL 35 Protect the integrity of archaeological sites and monuments in the town listed in the Record of Monuments and Places (RMP), as identified in the County Development Plan and as may be amended during the lifetime of the Plan.

6.4.26. In terms of Natural Heritage, the plan notes that there are no European or nationally designated sites in the vicinity of Kill.

6.5. Designated Sites

6.5.1. The site is not located within or adjoining a European site.

7.0 Third Party Submissions

7.1. In total 42 submissions were received, five of which are from prescribed bodies (summarised in section 10 below). The submissions were primarily made by or on behalf of local residents.

7.2. The submissions received may be broadly summarised as follows, with reference made to more pertinent issues within the main assessment:

Density, Design and Layout

- The proposed development would materially contravene the development plan and Core Strategy.
- Development Plan settlement strategy will be exceeded with the proposed development. Housing allocation for Kill already met, as per County Development Plan.

- Density is contrary to policies of the Kildare County Development Plan, specifically table 3.3, where density of 15-20 units per hectare applies to Edge of Town sites.
- Proposal is out of keeping with the village.
- Premature re NPF, RSES, development plan housing targets reduced to 2023.
- Materially contravenes the development plan. No regard to RSES.
- Not in accordance with the Settlement Strategy.
- Oversupply of housing in Kill, which is not catering for local need but buyers from Dublin.
- Site is too small for the number of housing.
- Proposal will result in overdevelopment of Kill.
- Height of 2.5 storeys is out of keeping with the area.
- Development location, zoning, size and scale is unsustainable.
- Contrary to VR6 in the development plan (vol 2, section 2.4, Village Plans and Settlements, development capacity of individual proposals shall be controlled to 10-15% of the existing housing stock over the lifetime of the Plan).
- Development will result in the loss of character of the village, is substandard and suburban in layout, dominated by roads with no character and no spatial relationship with existing environs.
- Kill is a commuter village, not a sustainable community.
- There have been a number of refusals of permission on this site.

Impact on Residential Amenity

- Previous reasons for refusal have not been taken on board and no effort made to minimise impact on Earl's Court.
- Loss of security and privacy arising from proposed pedestrian connection to the northeast into Earl's Court. Pedestrian connection will change the character of the street, increase noise levels, result in potential antisocial behaviour, and result in devaluation of property.

- Proposed will devalue properties on The Grove. A Valuation Report has been commissioned in relation to 19 The Grove and the proposed development will reduce the value of no. 19 which currently has no properties to the rear of it.
- Units 91-94 inclusive and 97-98, apartment unit type Q/R, would interfere with the privacy and sunlight at 19 The Grove. Numbers 97/98 would looking directly onto the patio of no. 19. The proposed distance between bedrooms is 19m, not the standard 22m. The apartments are too high and would be overbearing. The architects statement there is potential for the extension into the roofs of properties.
- Recent judicial review in Goatstown by Justice Garrett Simons ruled that the proposed development in Goatstown contradicted the Development Plan 2016-2022 in regard to the density of construction and available open space. The plans for this development in Kill would surely have a similar ruling.
- Proposal is visually overbearing.
- Residential amenity issues as a result if pedestrian and vehicular connections with Earl's Court. Pedestrian links will result in anti-social behaviour and negatively impact The Green and The Drive. There was no consultation with existing residents regarding pedestrian links through the estate, as per section 15 of the development plan.
- No consultation with residents in relation to permeability.
- N7 and noise impact.
- An agreement was made between the residents of Earl's Court and the developer when the lands (subject of the application) were zoned via a material contravention that all trees would be retained, including tree 0864 behind 19 The Grove and green space would be located behind The Grove housing and a view of Kill Hill was to be retained.
- Earl's Court estate has not been completed by the same developer.

Community Services

- Concerns raised in relation to capacity of schools.
- Lack of childcare facility unacceptable. There are capacity issues in Kill with waiting lists.

- No Garda station in Kill.
- No second level school in Kill.
- Only one shop in the village.

Open Space

- Impact on existing greens in Earl's Court that are maintained by existing residents.
- Proposed open space is low.

Traffic and Transportation

- Solution to relieving traffic issues should not be to use existing housing estates.
- Health and safety issues for resident's and children in Earl's Court as a result of allowing vehicular access through Earl's Court.
- Vehicular access will interfere with road and footpath at The Avenue with impeded views.
- Significant increase in traffic due to vehicular access which will result in traffic congestion, hazard and noise.
- Negative impact of construction trucks using Earl's Court.
- Previous reasons for refusal were in relation to vehicular access through Earl's Court.
- There is an existing new cycle lane on the main road which runs as far as Naas, there is no need for proposed cycle connection into Earl's Court.
- Proposed parking is insufficient. Width of some streets at 5m is too narrow and will result in health and safety issues from HGVs and bins lorries using such streets.
- Safety risks at Junction with Slí na Naomh, particularly at school drop off times. This road is currently used for school drop/collection.
- Sightlines at junction are an issue.
- Lack of a Road Safety Audit.
- Public transport is inadequate and development will result in more cars on the road.

- Impact of traffic noise on residents.
- Naas-Kill cycle scheme is at an advanced stage which runs from Kill Hill through the village – don't to connect in through the development or connect with Earl's Court.

Archaeology and Heritage

- Buffer zone proposed is not sufficient to protect heritage site.
- Houses numbered 99-108 and 153-167 inclusive are built on or around the archaeology exclusion zone.
- Heritage trail proposed is meaningless. 2m high boundary wall will mean no view of Kill Hill.
- Proposal will negatively impact on national monument.
- Additional markings on Kill Hill not referenced in the report and further investigation required by Department of Culture, Heritage and the Gaeltacht.
- Archaeological report does not reference the connection between Kill Hill and the other two hill sites that form a triangle of important monuments of great significance.
- Proposal conflicts with chapter 12 of the development plan in relation to archaeological heritage, to 'protect, conserve and manage the archaeological and architectural heritage of the county...to ensure its survival and maintenance for future generations'.

Biodiversity

- Loss of biodiversity significant, including buzzards which are protected European wide, rabbits/foxes/deer/badgers/bats/hedgehogs/frogs and birds. Attached is EU Biodiversity Strategy 2030.
- The River Liffey and several of its tributaries such as the Kill River and the Painestown River are exceptional in supporting atlantic salmon (Annex 2 and V of the EU habitats directive), sea trout, brown trout, freshwater crayfish and lamprey, species listed under annex 2 of the EU habitats directive. Risk of pollution from the development likely to enter the Kill River and the Painestown River.
- No consideration given to Habitats Directive/SEA.

- Tree number 0864 is proposed to be removed due to its health, but it was to be maintained in previous applications. The tree appears to be a good and healthy tree. 21 of 43 trees are to be removed. The submitted report from Faith Wilson clearly lays out the effect of this.
- Loss of green corridor between Earl's Court and Kill Hill and loss of wildlife which is a nature area.
- Surveys were not undertaken during bird breeding season.
- EclA is inadequate due to surveys being undertaken in November.

Water Services Infrastructure

- Risk of flooding from surface water drainage.
- Water run-off from Kill Hill is a significant issue for the properties to the west of the site, which back onto Earl's Court. Pictures are submitted from 20th August – 7th November 2019 and video evidence is also submitted showing significant pools of water along the rear of the dwellings, demonstrating the scale of the issue.
- Bad rains in 2008 resulted in so much water running off Kill Hill that back gardens had to take away the fencing between properties to ease the pressure and let the water runoff to other neighbouring properties.
- Earl's Court is built on a hill with the proposed development on higher ground and the hill fort monument of Kill Hill on higher ground again.
- Rain water from Kill Hill flows into garden at 18 The Avenue. There are no storm drains at Kill Hill.
- Natural soakage in greenfield will be compromised.
- Capacity of pumping station is questioned.
- Negative impact on water pressure.
- Sewer pipes not large enough in Earl's Court.
- Development is premature pending upgrade of Contract 2B to be completed by 2023/24.
- Pollutant risk with surface water run off to in Kill River and Painstown River in River Liffey catchment.

Other Matters

- Developer has not finished existing Earl's Court estate. Compound is still in place on the site.
- No public consultation with residents.
- Timing of applications during Christmas and Covid-19.
- Estate name should be separate to Earl's Court.
- Impact on equine in Kill.

8.0 Planning Authority Submission

8.1. Overview

8.1.1 In compliance with section 8(5)(a) of the 2016 Act, Kildare County Council submitted a report of its Chief Executive Officer in relation to the proposal. This was received by An Bord Pleanála on 20th July 2020. The report notes the planning history in the area, policy context, site description, proposal, planning history, summary of third party submissions, and summary of views of the relevant elected members. The submission includes several technical reports from relevant departments of Kildare County Council. The Chief Executive's (C.E.) Report concludes that it is recommended that permission be refused. The C.E. Report from Kildare County Council is summarised hereunder.

8.1.1. Summary of Inter-Departmental Reports

- Parks: Conditions recommended to address lack of detail in relation to landscape design.
- Housing: Issues regarding type of units to meet part V obligations and issues regarding storage in certain dwellings, with attic level storage not considered acceptable.
- Roads: Conditions recommended. Issue with shortfall of parking resulting in traffic hazard within the development and issue with noise level.

- Water Services: No objection subject to conditions. Conditions regarding site investigations, surface water drainage design and residual pluvial flood risk to the site and adjacent lands.

8.1.2. **Summary of View of Elected Members:**

- Issues regarding permeability with Earl's Court.
- The access road into Earl's Court appears to be the main issue, but one of the councillors is stated to support this.
- Support housing, but concern in relation to proposed Link Road with Earl's Court.
- Lack of supporting social infrastructure.
- Site is not well served by public transport and is a significant distance from Naas and Sallins railway station.
- Landscaping involves a lot of mounds and not enough flat space for children kicking a ball or play sports informally. Lacking in space for 9-10 year olds.
- Is there a need for speed bumps?
- There needs to be cycle lanes within the development and on the approach roads to the development.
- A pedestrian crossing is required on Main Street.
- There need to be more car parking at the school.
- Concerned about raised table at the junction.
- Core strategy figures are exceeded in the proposed development.
- How does the development relate to the Core Strategy figures and would the Board approve the development if it exceeds our Core Strategy?
- The development should be aligned to and respect the adjoining Bronze Age site.
- Has stormwater run-off been examined in the context of potential run-off from Kill Hill? A precautionary approach is advised.
- Does the development comply with development plan standards – 3 car parking spaces are required for 4 bed dwellings.
- The number of visitor car parking spaces appear low.

- A substantial crèche is required to support this development.
- Concerns in relation to the social mix and overall density proposed. It is over-densified and poorly laid out.
- Context of the Hill Fort needs to be protected.

8.1.3. **Summary of Planning Analysis**

- The proposed development of 167 units at a net density of 35 units per hectare would contravene materially the Core Strategy of the Kildare County Development Plan 2017-2023 as reviewed in accordance with the RSES and adopted by Council on 09/06/2020 and, having regard to aspects of the proposal including the absence of necessary social infrastructure (particularly the lack of a crèche), would have a negative effect on the character, context and function of Kill and would therefore be contrary to the proper planning and sustainable development of the area.

Variation No. 1

- Dwellings target of 78 units for Kill to 2023. This figure is based on the revised population growth projections for Kildare set out in the NPF Implementation Roadmap 2018. At an average of c.2.8 persons per household, the resultant dwellings target from the start of 2020-2023 is 78 units.
- 124 units have received a final grant in Kill on the 1st April 2020 (ref 19/885 and 19/886). Without counting the 124 units, the proposal would exceed the Core Strategy figure of 78 units.
- Proposal is contrary to core strategy, NPF, and RSES.
- Proposal is in accordance with the Zoning Objective C, New Residential.

Density

- The site, as per table 4.2 of the development plan, is an Edge of Small Town/Village site where indicative densities in the range 15-20 units per hectare are considered appropriate. It is considered that a density at the lower end of the range would be appropriate. The proposed density is 35.2 units per hectare.

Archaeological Heritage

- A buffer zone is proposed between the site and Kill Hill national monument. The buffer zone includes the proposed heritage trail and landscaped open space. There would not appear to be any significant concerns with regard to the proposal and its impact on Kill Hill, having regard to the report of the Heritage Officer and the submission from the Development Applications Unit of the Department of Culture Heritage and the Gaeltacht.

Urban Design

- As per chapter 15 of the development plan, the site is considered a Greenfield Edge site. The character of such areas should have less intensity, providing a transition to the open countryside. A 3 storey apartment blocks is proposed at the most visually prominent location at the entrance to the development in a transitional area and this area would be more suited to dwellings. Should permission be granted to Board is advised to consider omitting the apartment block in this location to be replaced with transitional housing.

Development Management Standards

- The proposed site is an edge of small town site in a transitional area between the rural countryside and the urban development boundary. The impact on visual amenity in this location is considered to be significant.
- A number of apartment/duplex units along the western boundary adjoin the rear gardens of housing in Earl's Court. Type D and E are juxtaposed together in a semi-detached block. Type E units have balconies to the rear on first floor level. Whilst they appear to be designed to minimise impact on adjoining dwellings, they present a negative visual impact locally and a negative impact on the residential amenity of adjacent occupiers by reason of overlooking. These units are also not acceptable for part V purposes and should be revised to address concerns.

Social Infrastructure

- The lack of childcare is contrary to Section 28 Guidelines. The submitted Social Infrastructure Assessment identifies little capacity for children in existing establishments in Kill. In light of recent grants of permission for housing in Kill, including a recent SHD proposal, also without a childcare facility, it is considered that the cumulative impact will result in a greater need for childcare within the town.

Conclusion

- Having regard to Variation No. 1; Core Strategy; Settlement Objectives SO4 and SO9, sequential development of land, and requirement that at least 30% of the new housing target is accommodated within the existing built up footprint as defined by the CSO; excessive density for edge of small town site as per table 4.2 of the development plan; location of the site in a transitional areas on the edge of the settlement; lack of a childcare facility; and aspects of the design, layout and technical aspects of the proposal including insufficient prevention of Flood Risk; it is considered that the proposal would contravene materially the Core Strategy of the KCC Development Plan 2017-2023, would be contrary to Section 28 Guidelines in relation to childcare and prevention of flood risk, and having regard to aspects of the proposed design that are contrary to the provision of the plan, the proposal would be contrary to the proper planning and sustainable development of the area.

8.2. **Statement in accordance with 8 (3) (B) (II)**

Kildare Council Chief Executive's Report recommends a refusal based on the following reasons:

1. Having regard to the Core Strategy of Kildare County Development Plan 2017-2023 as varied, which has identified the housing unit target for Kill as 78 units from the start of 2020 to 2023, to permit the proposed development of 167 units, which is outside the existing built up footprint of Kill (defined by CSO), would be contrary to the Core Strategy of the Kildare County Development Plan 2017-2023, would adversely distort the County's Core Strategy and Settlement Hierarchy. The proposed development would also contravene the provisions of the Regional Spatial and Economic Strategy for the Eastern and Midland Region and National Planning Framework and, set an undesirable precedent for other large scale proposals in towns and villages within the County. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed development would materially contravene the residential density objectives for edge of town sites in small towns in Kildare which suggest a density range of 15-20 units per ha, would set an undesirable precedent for similar proposals of this scale and nature in small towns within

the County and would therefore be contrary to the proper planning and sustainable development of the area.

3. Notwithstanding the documentation submitted with the application, the proposed development would materially contravene the provisions of the Childcare Facilities Guidelines 2001 issued as Ministerial Guidelines under Section 28 of the Planning and Development Act 2000 (as amended) for its failure to provide a childcare facility within the new housing areas, would set an undesirable precedent for similar approaches to large scale strategic housing developments within the county and would therefore be contrary to the proper planning and sustainable development of the area.
4. The proposed development comprises a 3 storey apartment block located at the interface between the site and adjacent agricultural lands to the north which is not considered capable of providing for a low intensity transition to the countryside as suggested in the guiding principles set out at Table 15.1 of the Kildare County Development Plan 2017-2023. The proposed development would therefore be contrary to the Urban Design principles for Greenfield Edge sites set out in Chapter 15 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.
5. Having regard to the location of the site on transitional lands at the edge of the development boundary of Kill, the Planning Authority considers that the provision of apartment/duplex units (Types D, E, G, Q and R) would be more appropriately located on lands closer to or within the town centre as indicated at Section 17.4.6 of the Kildare County Development Plan 2017-2023. Furthermore having regard to the location and design of units D and E within the scheme adjacent to existing dwellings, there is a concern regarding the visual impact to and overlooking of, existing residences, which would seriously injure existing residential amenity. To permit the apartments/duplex units at the location and scale proposed would therefore be contrary to the proper planning and sustainable development of the area.
6. The Planning Authority is not satisfied that the proposed development has adequately addressed the flood risk pertaining to the site and the impact of

pluvial flooding on the lands. To permit the proposed development in the absence of appropriate mitigation of potential flood risk, would conflict with the provisions of Section 28 Guidelines and Kildare County Development Plan policies in relation to flood risk, would be contrary to public health and would therefore be contrary to the proper planning and sustainable development of the area.

9.0 Prescribed Bodies

The applicant was required to notify the following prescribed bodies prior to making the application:

1. Irish Water
2. Transport Infrastructure Ireland
3. Inland Fisheries Ireland
4. Minister for Culture, Heritage, and the Gaeltacht
5. Heritage Council
6. An Taisce – the National trust for Ireland
7. Kildare County Childcare Committee

The following submissions have been received:

9.1. Department of Culture, Heritage, and the Gaeltacht: The recommendation of the Department of Culture, Heritage and the Gaeltacht would be that the following conditions should be attached to any permission:

- The agreed buffer area adjacent to monument number KD020-001---- (Hillfort) and to the Preservation Order area to the south of the proposed development site, should be clearly marked on site and should not be used as a site compound or for storage.
- Heavy machinery should not be allowed to track across the buffer areas.
- It should be clearly provided for as a condition of any grant of planning permission that all archaeological deposits/features, within the area where

groundworks will occur, which were recorded during test excavation at the site in December 2005, will be fully archaeologically planned, photographed and excavated by a suitably qualified archaeologist, all necessary licences or consents under the National Monuments Acts 1930 to 2014 having been obtained.

- It should be clearly provided for as a condition of any grant of planning permission that all removal of topsoil associated with this development, including the construction of the heritage trail, will be monitored by a suitably qualified archaeologist, all necessary licences or consents under the National Monuments Acts 1930 to 2014 having been obtained. Such condition should also ensure that, should archaeological material be found during the course of archaeological monitoring, all work which might affect that material will cease pending agreement with the National Monuments Service of the Department of Culture, Heritage and the Gaeltacht to how it is to be dealt with.
- Conditions of planning permission should also provide clearly that all costs of archaeological work necessitated by, or arising from, the development shall be borne by the developer.

9.2. Irish Water: A Confirmation of Feasibility has been issued by Irish Water. In order to accommodate the proposed wastewater connection at the Premises, upgrade works are required to increase the capacity of the wastewater network. Irish Water currently has a project underway (Upper Liffey Valley Sewerage Scheme Contract 2B) which will provide the necessary upgrade and capacity. This upgrade project is scheduled to be completed by 2021 (subject to change) and the proposed connection could be completed as soon as possibly practicable after this date. Please note Irish Water has issued the applicant a Statement of Design Acceptance for the development as proposed. Therefore, Irish Water respectfully requests the board conditions any grant as follows: The applicant is required to sign a connection agreement with Irish Water prior to any works commencing and connecting to our network. All development is to be carried out in compliance with Irish Water Standards codes and practices.

9.3. Transportation Infrastructure Ireland: No observations.

9.4. National Transport Authority: No objection. Recommendations are proposed in relation to pedestrian and cycle infrastructure.

9.5. Inland Fisheries Ireland: The proposed development is located on the in the catchment of the Kill and Liffey (one of the foremost salmonid fisheries in this region) Rivers. The Kill River supports a significant population of brown trout in the Kill area and downstream of its confluence with the Painestown River also provides significant spawning habitat for River Liffey Atlantic salmon. The River Liffey is exceptional among most rivers in the area in supporting Atlantic salmon and Sea trout in addition to resident Brown trout (both *Salmo trutta*) populations. The presence of these fish populations highlights the sensitivity of local watercourses and the catchment in general. The river is regarded as a very important fishery.

The following observations are listed:

- Any top soil material which is to be stored on site must have mitigations in place to prevent any deleterious material entering the surface water network. Drainage from topsoil storage area may need to be directed to a settlement area for treatment.
- All works should be completed in line with the submitted CMP which ensures that good construction practices are adopted throughout the construction period and contains mitigation measures to deal with potential adverse impacts identified in advance of the scheme. The CMP should provide a mechanism for ensuring compliance with environmental legislation and statutory consents.
- It is essential that the receiving foul and storm water infrastructure has adequate capacity to accept the predicted volumes from this development with no negative repercussions for quality of treatment, final effluent quality and the quality of receiving waters.
- All discharges must be in compliance with the European Communities (Surface Water) Regulations 2009 and the European Communities (Groundwater) Regulations 2010.

10.0 Environmental Impact Assessment Screening

10.1. The applicant has submitted an Environmental Impact Assessment (EIA) Screening Report. The EIA Screening concludes no significant negative effects on any of the environmental factors to be considered under the EIA Directive are anticipated as a result of the proposed development.

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.)

10.3. The proposed development is for 167 dwelling units, on a site area of 6.3ha. 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).

10.4. 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.

10.5. 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

10.6. 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, the Ecological Impact Statement and Archaeological Impact Assessment.

10.7. Characteristics of Proposed Development

The proposal for 167 no dwellings and makes provision the upgrading of Slí na Naomh/Kill Lane and for both pedestrian and vehicular movements linkages to Earl's Court residential development to the west. Surface water and waste water will connect into the public system and no capacity issues have been identified. I note the wastewater network is currently being upgraded by Irish Water and is due for completion by 2021. The site is not located within a flood risk zone. 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.

10.8. Location of Proposed Development

The site is currently in agricultural use and the lands are zoned for residential development. 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 nearest river, Kill River, is 300m from the site. The Appropriate Assessment screening (section 12 hereunder), notes a lack of hydrological connectivity to any European Designated Site and concludes there will be no significant effects on any European Site. The national monument Kill Hill hillfort is located to the east of the site and a buffer zone incorporating a heritage trail is proposed as part of the development. Measures for the protection of archaeology have been included in the application. The Department of Culture, Heritage and the Gaeltacht has raised no issue with the buffer zone and the Heritage Office of Kildare County Council is satisfied that the proposal will have no impact on the national monument. From this information I can conclude that there is sufficient absorption capacity of the natural environment for the proposed development.

10.8.1. 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 and the existing national monuments in the area have been fully considered.

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 sensitives 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 **Assessment**

11.1.1. At the time of reporting, the statutory plan and policies in place are those in the Kildare County Development Plan 2017-2023, as amended by Variation No. 1. I note a legal stay has been placed by the High Court on this Variation, dated from 12th August 2020, which states that it is ordered that the coming into force of the “Variation” be stayed insofar as it applies to and affects the towns of Celbridge and Clane as designated in their respective Local Area Plans and the village of Johnstown as designated in Volume 2 of the County Plan until the determination of the application for judicial review or until further Order or until the stay on proceedings shall have lapsed by reason of the Applicants’ failure to serve an originating Notice of Motion herein within the proper time.

11.2. As this legal stay does not relate to Kill, I am assessing this application by reference to the Kildare County Development Plan 2017-2023, as amended by Variation No. 1.

11.3. 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 appeal are as follows:

- Principle of Development / Core Strategy / Material Contravention
- Density and Unit Mix
- Layout and Design
- Archaeology and Heritage Trail
- Residential Amenity
- Impact on Amenity of Neighbouring Properties
- Traffic, Transportation and Access
- Infrastructural Services, including Flooding Issues
- Appropriate Assessment
- Other matters

These matters are considered separately hereunder.

11.4. Principle of Development / Core Strategy and Settlement Strategy / Material Contravention Statement

Principle of Development - Zoning

- 11.4.1. The lands are substantially zoned 'Objective C, New Residential' which seeks to 'provide for new residential development and other services incidental to residential development'. A small portion of the site that provides pedestrian and private driveway access from The Green is zoned 'Objective B, Existing Residential/Infill'.
- 11.4.2. The proposed development is located in an area zoned for residential development. Volume two, Chapter 1 of the Development Plan comprises the Small Town Plans and Environs Plans (which includes the Kill Small Town Plan and associated zoning map). I note third parties raise issue with the scale of development permitted as per VR6 of the development plan. I note that VR6 relates to village settlements in Chapter 2 of Volume 2 and does not apply to Kill.
- 11.4.3. I am satisfied that the proposed development falls within the definition of Strategic Housing Development, as set out in section 3 of the Planning and Development

(Housing) and Residential Tenancies Act 2016. The principle of development is acceptable within the context of the zoning objective, subject to the detailed considerations below.

Core Strategy and Settlement Strategy

- 11.4.4. Following on from the adoption of the Eastern and Midland Regional Assembly - Regional Spatial and Economic Strategy (RSES), and in accordance with S.11(1)(b)(iii)(I) of the Planning and Development Act 2000 (as amended), Kildare County Council proposed and adopted Variation No. 1 of the Kildare County Development Plan (KCDP) 2017-2023, effective as of 9th June 2020. I note in accordance with the Act, the Variation reviewed the strategic objective and policies and the core strategy of the development plan against the NPF and RSES, and stated the intention to review the zoning which was not to be considered at this stage as per S.11(2)(a)(bc) of the Act. To incorporate the NPF and the RSES into the county development plan, Variation No. 1 results in the adoption of amendments to parts of Volume 1, Chapters 2 and 3, which relate to the Core Strategy and Settlement Strategy respectively, as well as Chapter 5 Economic Development, Enterprise and Tourism. The Core Strategy, and associated Settlement Hierarchy, as adopted in Variation No 1 of the development plan, is an evidence based quantitative strategy for the spatial development of the County.
- 11.4.5. Under Variation No. 1, a new settlement hierarchy is identified for the County with table 3.1 identifying Kill as a 'Town' within this hierarchy. A footnote in the submitted C.E. Report notes that under the recently adopted Variation of the KCDP, Kill is no longer referred to in the written statement as a 'small town', however under table 4.2 and Volume 2 of the KCDP, Kill is still referred to as a small town. As per Variation 1, I acknowledge the statutory status of Kill as a Town in the KCDP, as amended.
- 11.4.6. The Variation provides updates to the population growth figures and the related housing unit allocation figures for each town and village within the settlement hierarchy, as per table 3.3 of the plan, titled 'Settlement Hierarchy – Population and Housing Unit Allocation 2020-2023'. As noted previously, the figures in table 3.3 are allocated on the basis of an assessment of the overarching figure for the county established by the NPF and supported by the RSES, with the translation of this assigned figure from national and regional level down to county level, divided

spatially across the various settlements, on the basis of an evidence based quantitative strategy. Under table 3.3, a dwelling target of 78 units is assigned to the 'Town' Kill for 2020-2023, modified from the stated NPF 2026 dwelling target of 183 units to 2026 (NPF figure being assigned by County with hierarchy distributing that allocation), with the figure of 78 units allocated to coincide with the life of the development plan.

- 11.4.7. The C.E. Report from KCC recommends six reasons for refusal of this proposed development of 167 units, with reason 1 relating to the Core Strategy being exceeded, and states '...to permit the proposed development of 167 units, which is outside the existing built up footprint of Kill (defined by CSO), would be contrary to the Core Strategy of the Kildare County Development Plan 2017-2023, would adversely distort the County's Core Strategy and Settlement Hierarchy. The proposed development would also contravene the provisions of the Regional Spatial and Economic Strategy for the Eastern and Midland Region and National Planning Framework and, set an undesirable precedent for other large scale proposals in towns and villages within the County. The proposed development would therefore be contrary to the proper planning and sustainable development of the area'.
- 11.4.8. I note third party submissions also raise concerns in relation to Kill having already met housing allocation figures and exceeded the Core Strategy, as well as concern in relation to the functioning of Kill as a commuter town, with an oversupply of housing. I have considered fully the documents accompanying the application, including inter alia, the submitted Statement of Response to ABP's Opinion (summarised in section 5.3.1 above), the Material Contravention Statement (summarised in section 5.3.2 above and discussed in detail in Section 11.4.11 hereunder), and submitted Appendix K 'Important and Pertinent Background', which all set out the applicant's position in relation to the core strategy and reasoning as to why the proposed development should be permitted at this location, at the density proposed, having regard to national, regional and local development plan policy.
- 11.4.9. In my opinion, the proposed development at this location of 167 dwellings would not comply with the core strategy and settlement hierarchy of the Kildare County Development Plan (KCDP) 2017-2023, as amended by Variation No. 1, as the development would significantly exceed the housing unit allocation of 78 units for Kill. The housing unit allocation figure of 78 units has already been exceeded with

the granting of permission for a 147 unit development in January 2020, under reference ABP-305416-19. If the development as proposed were granted, this would overall result in 300% greater growth in Kill than allowed for in the Kildare County Development Plan (KCDP) 2017-2023, as amended by Variation No. 1. I note the Variation reviewed the strategic objectives, policies and core strategy of the development plan with specific regard to the EMRA-RSES and Regional Policy Objectives 3.1 and 4.1, which require growth and investment to be planned in accordance with a hierarchy of settlements as defined by the RSES, within an assigned overarching population for the county, to ensure that towns grow at a sustainable and appropriate level. The proposed development would provide for greater growth in Kill than assigned in table 3.3 and would be contrary to development plan policy STP1 of Volume 2 of the development plan 'Monitor carefully the scale, rate and location of newly permitted developments and apply appropriate development management measures to ensure compliance with the Core Strategy including population targets for each small town; and to achieve the delivery of strategic plan led and coordinated balanced development throughout the planning areas', and policy SS 1, 'Manage the county's settlement pattern in accordance with the population and housing unit allocations set out in the RSES, the Settlement Strategy and hierarchy of settlements set out in Table 3.1'. The proposed development would in my opinion be a material contravention of the Kildare County Development Plan 2017-2023, as amended by Variation No. 1, and would thereby undermine the growth strategy for the County and militate against the implementation of the objectives of the RSES for the region, which would be contrary to the proper planning and sustainable development of the area. I therefore disagree with the applicant's submission that the development should be permitted in accordance with Section 37(2)(b) of the Planning and Development Act 2000 (as amended).

- 11.4.10. However, should the Board disagree with my assessment, it is open to the Board to consider the proposed development and the policies and objectives of Kildare County Development Plan 2017-2023, as amended by Variation 1, against Section 37(2)(b) of the Planning and Development Act 2000, as amended, which is discussed in detail hereunder.

Material Contravention – Core Strategy and Density

- 11.4.11. The applicant has submitted a document titled 'Material Contravention Statement', summarised in section 5.3.3 above. I note the Statement was written prior to Variation No. 1 being adopted (ie when the Variation was not statutorily in force) but it does make reference to the draft Variation No. 1, which was on display at the time and which indicated the same core strategy figures for Kill as were subsequently adopted.
- 11.4.12. The applicant considers that the proposed development may be deemed to represent a material contravention of the development plan in relation to the settlement strategy, specifically the dwelling figures, and in relation to density figures. In accordance with Section 37(2)(b), it is contended in the applicant's submitted Material Contravention Statement that the Board can consider granting permission as the application is of strategic importance given it would deliver housing on zoned land in an existing urban settlement adjacent to existing infrastructure and services. It is also contended that there are conflicting objectives in the development plan in that the density thresholds applicable are unclear and increased residential density is supported and required by national and regional guidance. It is stated that the development, as per S37(2)(b)(iii) is fully compliant with the policies and objectives of the relevant National and Regional Planning Guidelines and the proposed site, as one of the last remaining residentially zoned sites available for development within Kill, would be consistent with the pattern of development and recent permissions granted in the area.
- 11.4.13. The site notice and newspaper notices include the following statement with the description of development: 'the application contains a statement indicating why permission should be granted for the proposed development, having regard to a consideration specifies in section 37(2)(b) of the Planning and Development Act 2000, as amended, notwithstanding that the proposed development materially contravenes a relevant development plan or local area plan other than in relation to the zoning of the land'.
- 11.4.14. Section 37(2)(b) of the Act of 2000 (as amended) states that where a proposed development materially contravenes the development plan, the Board may grant permission 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 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.

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:

With regard to S.37(2)(b)(i) the development is strategic in nature, as per the definition of Strategic Housing Development, as set out in section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016. The proposed development will contribute to the achievement of the Government's policy to increase delivery of housing from its current under-supply as set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016.

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

11.4.15. Core Strategy and Settlement Hierarchy:

I have considered Kill's location within the settlement hierarchy and have had regard to the core strategy and settlement strategy of the Kildare County Development Plan 2017-2023 (as amended by Variation No. 1). I note the Material Contravention (MC) Statement submitted considers the scenario of the Variation being in place (which was in draft form, with same figures, when MC Statement was written). The

submitted MC Statement references the 2026 figure in the then draft Variation of 183 target units for Kill (subsequently adopted, with the figure remaining the same). I do not consider it appropriate to use this larger figure as it refers to the year 2026 and is included (as explained in the adopted Variation document) only to demonstrate compliance with the overall NPF figure and to indicate how the figure of 78 units was arrived at for the remaining development plan period, ie to 2023. I am of the view that the relevant housing unit allocation figure for Kill is 78 units and I consider the Variation to be clear in this regard.

I note the Variation was prepared in 2019 and I consider the housing unit allocation figure was determined on the basis of three full years involving the period 2020-2023 and not on a portion of a given year dependant of when the Variation was to be ultimately adopted in that given year. I note that a SHD application was permitted by the Board in January 2020 (ref. ABP-305416-19) for 147 no. residential units on the western side of Kill, therefore, the 78 housing unit allocation for 2020-2023 has already been met and significantly exceeded by the permitted application (which was permitted prior to Variation No. 1 being adopted and was in accordance with the then core strategy figures).

While I consider the longer term figure of 183 units is not applicable (as raised in the MC Statement), I note this figure would also be materially exceeded if this development were permitted (147 permitted + 167 this application = 313 units). Were the development as proposed to be permitted, it would overall result in 300% additional growth in Kill than allowed for in Variation 1 in the period 2020-2023. With regard to the MC reference to phasing of the development, I note the phasing plan indicates phase 1 is equal to 51 no. dwellings, phase 2 is equal to 61 dwellings, and phase 3 is equal to 55 no. dwellings. I note the phasing plan does not include a timeline or reasoning why the development could not be completed by 2023. Nonetheless, in considering an option of phase 1 being delivered between now and 2023, the phasing plan would still significantly exceed the allocated figure of 78 units (147 permitted + 51 as a phase 1 = 198), as well as the longer term figure of 183 units.

As per the settlement hierarchy, Kill is not a designated higher order growth centre in terms of the strategic settlement hierarchy for the county, and the core strategy (as per the variation) is clear in this regard. The growth allowed for in Kill was assigned

by Kildare County Council having regard to the overarching population figure assigned to the county as set by the NPF, and application of the settlement hierarchy as per guidance provided the RSES being applied to the county, with the Variation assigning different levels of growth for different settlements, within the context of the county level figure. Therefore, having regard to the provision of Section 37(2)(b)(i) of the Planning and Development Act 2000 (as amended), I do not consider the development is justified in this instance, as it would, in materially contravening the Kildare County Development Plan 2017-2023 as amended by Variation 1, militate against the achievement of the objectives of the NPF and RSES, in so far as the achievement of the spatial growth strategy for the sustainable development of the county is concerned.

11.4.16. Density:

With regard to the issue of density, I consider that objectives are not clearly stated against the density ranges provided for within table 4.1 and 4.2 of the KCDP, where densities of 15-20 and 20-35 units per hectare are proposed for small town/villages. The tables are stated to be in accordance with the guidelines on Sustainable Residential Development in Urban Areas (SRDUA) which states such lower densities of 15-20 dwellings per hectare for edge of small towns/villages are appropriate in controlled circumstances as an alternative to the provision of single houses in rural areas. It is not clear to me why this category of 15-20 dwellings/ha would be considered applicable to this application site (see section 11.3 below in relation to density) over the 20-35 unit category. I do not consider the proposed development is a material contravention of the development plan in relation to density (as discussed below in section 11.3), however, I note the planning authority does consider it a material contravention in relation to density as it considers the site an Edge of Small Town site with indicative density of 15-20 units per hectare applicable, as per table 4.2 of the KCDP. Should the Board disagree with my assessment that the density proposed is not a material contravention, it is open to consider S37(2)(b)(ii) of the Planning and Development Act 2000 (as amended), as in my view the objectives are not clearly stated with regard to where to apply lower densities in a limited and controlled way as per the SRDUA guidelines and there is a lack of clarity in terms of application of this approach relative to the site's zoning and other objectives as set

out in the KCDP. I consider the density proposed at this location to be justified in this instance.

(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:

11.4.17. I note the proposed development is in accordance with national guidance of the NPF and EMRA-RSES, Urban Development and Building Height Guidelines, Sustainable Urban Housing: Design Standards for New Apartments Guidelines, and Sustainable Residential Development in Urban Areas, in that a key component of these documents is to seek the creation of compact, sustainable residential developments to be located in appropriate urban locations, close to existing/proposed infrastructure and services. The proposed development is located on residentially zoned land within the development boundary of an existing urban settlement, contiguous to the built up area, and is proximate to existing infrastructure and services within the town, including the adjacent primary school. The development provides linkages to the existing residential development located to the west and provides a Heritage Trail and Archaeological buffer zone along Kill Hill, which is of national archaeological importance.

11.4.18. However, a key element of the EMRA-RSES (RPO 3.1) is the application by local authorities in the region of the growth strategy for the region as detailed in the RSES. Notwithstanding the form and layout of the development at this location, I do not consider the proposed development is justified as it does not comply with the Core Strategy and Settlement Hierarchy of the Kildare County Development Plan 2017-2023 as amended by Variation No. 1, which was adopted to align the development plan and assign growth to all settlements, as required by the RSES, to ensure that towns in the region grow at a sustainable and appropriate level in accordance with planned growth and investment, with the hierarchy of settlements in each local authority in essence working together for the region. The proposed development materially contravenes table 3.3 of the development plan in terms of

population and housing unit allocation for Kill, which is identified as a Town within the settlement hierarchy (table 3.1). The proposed development would accordingly contravene the development plan in terms of policy SS 1, 'Manage the county's settlement pattern in accordance with the population and housing unit allocations set out in the RSES, the Settlement Strategy and hierarchy of settlements set out in Table 3.1', and policy STP1, 'Monitor carefully the scale, rate and location of newly permitted developments and apply appropriate development management measures to ensure compliance with the Core Strategy including population targets for each small town; and to achieve the delivery of strategic plan led and coordinated balanced development throughout the planning areas'.

(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:

I note that the other C zoned lands identified for development in Kill have been developed or have extant permissions on them. However, I do not consider that point (iv) is applicable in relation to the pattern of development in the area, as all developments permitted thus far have been permitted prior to the adoption of Variation No. 1 of the KCDP 2017-2023, on 9th June 2020 and have been, to date, in compliance with the Core Strategy housing unit figure and the settlement strategy relevant at the time of permission.

11.5. Density and Dwelling Mix

Density

11.5.1. Chapter 6 of the guidelines on Sustainable Residential Development in Urban Areas (SRDUA) relates to Smaller Towns and Villages, with such towns defined as having populations ranging from 400 to 5000. Chapter 5 relates to Cities and Larger Towns, being defined as towns with a population over 5000. Kill has a population of 3,348 (CSO 2016), therefore Chapter 6 of the guidelines is applicable. In accordance with Chapter 6, the application site can be considered an 'Edge of Centre Site' where net densities of between 20-35 dwellings per hectare are considered appropriate. I note that a category of development for edge of small town/village is identified with this comprising a lower density of 15-20 dwellings per hectare, which is stated is only

appropriate in controlled circumstances and where it does not represent more than 20% of total new planned housing stock of the small town or village in question.

- 11.5.2. The site is located within the development boundary of Kill. The county development plan provides guidance on appropriate locations for new residential developments and associated densities, table 4.1 and 4.2 of Volume 1. Two categories apply to Small Towns/Villages and are termed 'Edge of Centre Sites within Small Towns/Village' (indicative density of 20-35 dwellings per hectare applicable) and 'Edge of Small Town/Village' sites (indicative density of 15-20 units per hectare). I note the Kill Town Plan zoning map identifies four landbanks for new residential development and the plan does not specify whether these are to be considered Edge of Small Town sites or Edge of Centre sites, therefore there is a degree of judgement required in determining the applicable category. I note KCC in the previous and current application on this site has determined the site to be an Edge of Small Town/Village site, where applicable density is 15-20 units per hectare.
- 11.5.3. I note the zoning map includes two concentric rings from the town centre out identifying a 400m radius and an 800m radius. The C.E. Report considers that this is an Edge of Small Town site (indicative density of 15-20 units per hectare), however, I note the planning authority (PA) has recently granted permission on one of the four residential Zoned C land banks in Kill (two sites within this landbank, planning ref.s 19/885 and 19/886), which, like the application site, are primarily within the 800m radius of the town centre, which is a highly walkable and accessible location to access and support town centre facilities. In those instances the PA planner reports 'classify the application sites as Edge of Small Town, however, the reports stated the density range of 20-35 units per hectare was applicable, which I note is the density for Edge of Centre sites. The PA accepted the densities proposed on both sites of 22 units per hectare and 26 units per hectare, ie within the Edge of Centre density range. It is not clear to me from the development objectives and zoning objectives of the development plan, and having regard to other recent planning histories in the area, why the proposed site is considered to fall within the category of an Edge of Small Town site, which in accordance with the SRDUA guidelines should only be applied in controlled circumstances.
- 11.5.4. Given the location of the majority of the application site is within 800m of the town centre, which is highly accessible and walkable with a range of local services in

proximity (including a primary school), I consider it appropriate, and in line with SRDUA guidelines and recent PA decisions (ref.s 19/885 and 19/886) that the application site be considered an Edge of Centre Site, with the applicable density range being 20-35 units per hectare and this classification is supported by national policy as set out in the Section 28 Ministerial Guidelines on Sustainable Residential Development in Urban Areas (2009).

11.5.5. The proposed development has a net density of 35 units per hectare and is therefore considered appropriate in the context of national as well as development plan guidance, where a density range of 20-35 units per hectare is supported. I note the applicant has submitted a material contravention statement in relation to the development being contrary to the density range applicable to an Edge of Small Town site, however, I do not consider the development materially contravenes the density provision of the development plan. However, as discussed above in relation to the Material Contravention Statement, should the planning authority disagree with my assessment, it is open to the Board to consider the provision of S37(2)(b)(ii) of the Planning and Development Act 2000, as amended.

11.5.6. The net density figure excludes the area of the ESB reservation under the 110kv powerline and the buffer zone associated with the archaeological site to the east. I have reviewed the net area and am satisfied with the calculation.

Dwelling Mix

11.5.7. The dwelling mix caters for a range of 1, 2, 3 and 4 bed units, with a mix of typologies including semi-detached, detached, terraced dwellings, duplexes and apartments. 53% of the units are three and four bed units and 47% are one and two bed units. I note that the mix and typology range proposed has changed following a previous refusal reason on this site (ABP-303298-18), which stated:

‘The Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009, and Policy MD 1 of the Kildare County Development Plan 2017-2023, seek to ensure that a wide variety of adaptable housing types, sizes and tenures are provided. Criterion number 4 of the Urban Design Manual recognises that a successful neighbourhood will

be one that houses a wide range of people from differing social and income groups and recognises that a neighbourhood with a good mix of unit types will feature both apartments and houses of varying sizes. The National Planning Framework recognises the increasing demand to cater for one and two person households and that a wide range of different housing needs will be required in the future. The proposed development, which is characterised predominantly by three and four bed, detached and semi-detached housing and provides for a very limited number of one and two bedroomed units, would fail to comply with national and planning authority policy, as outlined above, and would be contrary to these Ministerial Guidelines, and would, therefore, be contrary to the proper planning and sustainable development of the area'

11.5.8. I note the submitted C.E. Report from Kildare County Council recommends refusal on the basis of apartments being provided as part of this development. It is stated in recommended refusal no. 5 that 'Having regard to the location of the site on transitional lands at the edge of the development boundary of Kill, the Planning Authority considers that the provision of apartment/duplex units (Types D, E, G, Q and R) would be more appropriately located on lands closer to or within the town centre as indicated at Section 17.4.6 of the Kildare County Development Plan 2017-2023...'

11.5.9. I note section 17.4.6 in the chapter on Development Management Standards states under the heading Apartment Developments: 'The provision of apartment schemes shall only be considered in appropriate locations, at a suitable scale and extent. Primarily this will be in town centre locations and proximate to public transport'. I note section 4.6 of chapter 6 on Housing states under policy 'MD 1 Ensure that a wide variety of adaptable housing types, sizes and tenures are provided in the county in accordance with the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas and the accompanying Urban Design Manual to support a variety of household types'. As noted in the previous application submitted on this site, Criterion number 4 of the Urban Design Manual recognises that a successful neighbourhood will be one that houses a wide range of people from differing social and income groups and recognises that a neighbourhood with a good mix of unit types will feature both apartments and houses of varying sizes. The

National Planning Framework recognises the increasing demand to cater for one and two person households and that a wide range of different housing needs will be required in the future. The S.28 Apartment Guidelines also support considering apartments as part of a mix of housing types in a given housing development at any urban location, including suburbs, towns, and villages. I do not therefore concur with the recommended refusal reason no. 4 set out in the C.E. Report from KCC. I consider the housing mix and typologies proposed to be reasonable and will enhance the housing provision in the area, as supported by the NPF and The Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, Design Standards for New Apartment 2018, and Policy MD 1 of the KC DP 2017-2023. I am satisfied that the previous reason for refusal on this site relating to housing mix and typology has been overcome, with an increased provision of two bed units and provision of apartment/duplexes, providing for a variation in typology, appropriate for this location.

11.6. **Layout and Design**

Overall Development Strategy

- 11.6.1. The layout of the scheme has been informed by the existing site context, the predominant factors being the proximity/integration of the development with the protected Kill Hill hillfort to the east of the site and permeability/juxtaposition of the proposed development with the existing residential development of Earl's Court to the west.
- 11.6.2. Vehicular access to the site is proposed from Slí na Naomh/Kill Lane, to the north. It is proposed to upgrade this lane to a 6m wide carriageway with a 3m wide shared footpath and cycle lane adjoining the boundary with the school site, with this footpath/cycle lane entering the site at the northwest corner. The vehicular access is to the east of this pedestrian only access. A second vehicular access is proposed from the eastern boundary with Earl's Court Development. There is an existing space between houses within the streetscape in Earl's Court at The Avenue which will facilitate this vehicular access. I note the original layout for Earl's Court (ref. 97/756 and 04/2081) provided for a vehicular connection at this point between the land banks as did a previous permission (06/1091) on this application site. In addition a row of six dwellings to the southwest of the site are to be accessed directly

from Earl's Court from the street called The Avenue, forming a continuation of the street at this point. A pedestrian only access is proposed at this southwestern corner, linking proposed open space in the development with existing open space in Earl's Court. Another pedestrian only access is proposed at the northernwestern boundary with Earl's Court via at cul-de-sac at The Green. A letter has been submitted with the application from Kildare County Council which states that McCourt Investments has requested Earl's Court be taken in charge and that this is in progress. A letter from no. 16 Earl's Court has also been submitted giving consent to the applicant to include a portion of their property in the planning application (northwestern boundary, where pedestrian access proposed). I note traffic calming measures have been implemented on The Avenue in Earl's Court since the previous application on this site was refused.

- 11.6.3. The main street meanders north-south through the centre of the scheme, connecting mid-way along the eastern boundary with Earl's Court. The main street is 6m wide with footpaths on both sides and the secondary streets connecting off the main street are 5-5.5m wide. Parking is mainly in-curtilage to the side of dwellings, minimising the visual dominance of cars, with some on street and communal parking also proposed to serve the various unit types.
- 11.6.4. Two character areas are proposed, one to the north of the site which comprises the apartment scheme to the front of the development, Block G, which is L-shaped, directly addressing Slí na Naomh/Kill Lane, as well as the main entrance street into the scheme. Character area 2 is the balance of the scheme. I note various house types are proposed.
- 11.6.5. Overall, I consider there is a high level of connectivity and permeability within the site and with the site to the west, for both vehicles and pedestrians. I note that one vehicular connection is proposed with Earl's Court development to the west, which is reduced from the two vehicular connections to Earl's Court proposed in the previous refused application. The vast bulk of the submissions received have raised objections and concerns in relation to the vehicular access. Please refer to section 11.9 hereunder, where this issue is discussed in more detail. I note the planning history on this site, whereby a vehicular connection between Earl's Court and this site had been planned for with the original development of Earl's Court (refs 97/756, and 04/2081), and the previous permission on the application site (06/1091). I also

note recent ABP refusals which raised issues with vehicular connectivity. I note traffic calming measures have been put in place on The Avenue in Earl's Court since the previous application was refused. I do not have issue with the proposed vehicular access and additional two pedestrian only accesses and I consider that such connectivity, including pedestrian and cycle connectivity through Earl's Court is good planning practice, would support sustainable options of walking and cycle to the town centre, as well as to the large primary school and pre-school adjoining the site. The Board may wish to consider this issue further in conjunction with Section 11.9 of my assessment hereunder.

11.6.6. With regard to open space, the development plan states that in greenfield sites, the minimum area of open space that is acceptable within the site is 15% of the total site area, which in this instance is 0.95ha. A stated area of 1.7 ha open space is to be provided, which equates to 36% of the site area. The documentation submitted states that if the archaeological buffer zone and ESB exclusion zone is excluded, then 0.4ha of open space is proposed. The primary open space is along the eastern boundary of the site where there is an archaeological buffer zone between the site and the protected hill fort. This buffer zone, which cannot be developed upon, is proposed to be landscaped and developed as a heritage trail, open to the public. I consider the design and use envisaged for this open space within the archaeological buffer zone is appropriate. The layout of the scheme provides for housing to front onto this space and provides for visual pedestrian links east-west across the site to the hill fort as well as north to south along it. The buffer zone links into the linear open space along the southern boundary of the neighbouring Earl's Court development.

11.6.7. Smaller pockets of open space are proposed, including an area underneath the ESB line to the north of the site, a central space extending from the linear heritage trail in the middle of the site, and a proposed area to the south of the site, which extends also from the heritage trail, incorporating a MUGA play area/pitch. An approach to play using 'naturalistic play structures' is proposed, eg use of natural features of logs, mounding, boulders etc. Outdoor fitness equipment is also proposed.

11.6.8. I note concerns raised in relation to the scale of open space proposed, which is considered below standard given the archaeological buffer zone cannot be utilised as active space, and concern is raised in relation to the lack of flat playing surfaces,

with mounding noted across the designs. I note the Parks Report from Kildare County Council raises no objection to the landscape design proposals subject to conditions. Overall, I consider the quantum, design and hierarchy of use within the open space areas proposed to be acceptable, with the proposed heritage trail element a positive asset for future occupants as well as to the wider community. The layout of the scheme supports accessibility to all to the national monument and would open up wider walking trails for the community. I consider it imperative that high quality finishes and materials are followed through in the design of the proposed heritage trail. I note the materials submitted in the design are stated to be 'indicative', therefore I consider the detail of this should be the subject of a specific condition, should the Board be minded to grant permission. This is also requested in the Parks Report from KCC. I consider the provision of formal and informal active open space to be appropriate for the site.

11.6.9. Since the previous refusal on the site (ref ABP-303298-19) layout changes are proposed in this submitted application, which are summarised as follows:

- The site entrance has been relocated to mid-way along the northern boundary, with buildings fronting and accessed from Slí na Naomh/Kill Lane, and addressing both sides of the main street as it meanders through the site. The main street is adequately addressed on both sides, with houses turning the corner and, overall resulting in high levels of passive surveillance and overlooking and reduced dominance of boundary walls.
- One vehicular entrance into Earl's Court is proposed, which is a reduction from the two previously proposed. The main street incorporates raised tables at junctions along its length, addressing concerns raised in relation to DMURS and long straight stretches of street in the previous application.
- The central arrangement of blocks, open space, and parking as well as the arrangement of dwellings at the vehicular and pedestrian entrances from Earl's Court have been amended. I am generally satisfied with the layout of the blocks, open space provision, and positioning of parking.
- The cul-de-sac streets, arrangement of pocket open space and parking, which gave rise to concerns in relation to the previous application, have been amended to minimise the dominance of the car and usability of the open space.

11.6.10. I note the C.E. Report considers the positioning of Block G to be out of character in this transitional area adjoining agricultural land and recommends refusal on this basis. Recommended reason no.5 in the C.E. Report states: 'The proposed development comprises a 3 storey apartment block located at the interface between the site and adjacent agricultural lands to the north which is not considered capable of providing for a low intensity transition to the countryside as suggested in the guiding principles set out at Table 15.1 of the Kildare County Development Plan 2017-2023. The proposed development would therefore be contrary to the Urban Design principles for Greenfield Edge sites set out in Chapter 15 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area'.

11.6.11. Proposed Block G adjoins an existing large primary school, which fronts onto the main road/street into Kill. On the opposite side of Slí na Naomh/Kill Lane are a bungalow at the entrance to the lane way and two part two storey/part dormer detached dwellings. North of these dwellings is the main road into Kill and roundabout to access the N7. I note from site inspection, the urban style boundary treatment to the two dwellings opposite proposed Block G and the existing large primary school to the west, and it's urban boundary. As one exits the N7 travelling south toward Kill, the urban fabric becomes apparent just before the entrance to Slí na Naomh/Kill Lane, where the 50km/h speed limit applies and the first solid boundary wall to an existing bungalow at the junction of Slí na Naomh with the main road is encountered. I do not consider the western end of Slí na Naomh, where the development is proposed, to be at a sensitive transitional interface with agricultural land given the character of the landscape at this point, the urban nature of the main road off which the lane is located, and proximity to N7 access. I further note the design of the proposed apartment block, which comprises duplex units, is 11.35m high, and takes the form of three storey gable fronted units with a pitched roof. While the block is larger in scale to the detached dwellings opposite, I do not consider the units to be overly dominant in terms of their form or design or overly visible from the wider area. While I note the urban design guidance set out in table 5.1 as referenced in the C.E. Report, I also note figure 15.4 in the development plan which is an illustration of an example of a greenfield site strategy, which indicates both low density and medium density at a transitional edge, therefore I am of the view, that

while the guidance is helpful, it is clear that site specific issues are relevant in addressing such boundaries between the urban and rural area and it is important that a strong urban edge is provided at this location. I note the majority of the eastern boundary of the site is influenced by the proximity and scale of the existing national monument of Kill Hill, and not of agricultural lands. The reports from the Department of Culture Heritage and Gaeltacht, and the Heritage Officer of Kildare County Council note no objection to the scale and design of development along this eastern boundary. Overall, in my opinion, the location of Block G adequately addresses Slí na Naomh/Kill Lane along its northern edge, providing a positive, active and overlooked urban edge, and the scale and form of the building is appropriate at this location and will not detract significantly from the agricultural land to the north or the visual amenity of the area. However, I have issue with the design of the duplex block units from the rear and overlooking of the open space, which is addressed later in this report under Section 11.7, Residential Amenity.

- 11.6.12. To conclude I am overall satisfied with the general design and layout of the scheme as proposed and I am satisfied that the development would provide for a positive public realm, and a highly legible and permeable urban environment.

Social Infrastructure Assessment and Childcare Analysis

- 11.6.13. The applicant has submitted a Social Infrastructure Assessment. A Childcare Demand Analysis (CDA) is included in Appendix 1.
- 11.6.14. The development proposes no childcare facility. The Childcare Facilities Guidelines for Planning Authorities recommends a minimum provision of 20 childcare places per 75 no. dwellings. The submitted statement of consistency indicates that the proposed childcare facility will cater for 75 children. I note that Section 4.7 of the 'Sustainable Urban Housing: Design Standards for New Apartments' states that the threshold for the provision of childcare facilities in apartment schemes should be established having regard to the scale and unit mix of the scheme, the existing geographical distribution of childcare facilities and the emerging demographic profile of the area, with 1 bed or studio units generally not be considered to contribute to a requirement for any childcare provision.
- 11.6.15. A number of third party submissions raise concerns in relation to the lack of childcare provision on the site, lack of capacity in existing schools, and lack of social

infrastructure overall. I note the two previous applications on this site did not provide for childcare facilities and this was considered acceptable in the ABP Inspector Reports. I note the Planning Authority also had no issue with the lack of a childcare facility in the last two applications, however concerns are raised in relation to the lack of provision in this application. The PA states 'the submitted Social Infrastructure Assessment identifies little capacity for children in existing establishments in Kill. In light of recent grants of permission for housing in Kill, including a recent SHD proposal, also without a childcare facility, it is considered that the cumulative impact will result in a greater need for childcare within the town'.

11.6.16. The Childcare Demand Analysis (CDA) indicates the location of crèches in the area. I note that there are two full time crèches which are at capacity, and three sessional services, one with capacity and two with limited capacity of a combined total of 11 spaces. I note one of these sessional places with capacity is located adjoining the application site on the primary school campus. This sessional facility is large, catering for 77 children, and has a spare capacity of just 5 spaces. One crèche with a capacity for 45 children is under construction to serve the requirement of the development being constructed at that location and another crèche catering for 45 spaces has been constructed to serve another development. It is noted in the report that a survey by the Kildare County Childcare Committee found an undersupply of approx. 60 early years pre-school places in Kill.

11.6.17. The CDA states that there is a vacant crèche facility in the centre of Kill with capacity for 45 children that is not occupied. No independent information has been submitted clarifying why this is the case, other than an assumption in the report that there is no requirement for a crèche, notwithstanding both full day crèches in Kill are full and submissions from residents state that there are waiting lists for the crèche facilities, in addition to a survey from the Kildare Childcare Committee highlighting an under provision of 60 pre-school places in Kill. The report states a separate crèche analysis accompanying a SHD application in Naas indicates a spare capacity of 148 spaces in Naas. I find the argument that future residents of this scheme should travel to Naas for childcare to be unsustainable and contrary to national guidelines. It is unfortunate that no report from Kildare Childcare Committee has been submitted with this or previous applications on this site.

11.6.18. I note that a crèche was permitted originally as part of the Earl's Court development (approx. 100 houses), however, the crèche was not constructed and permission was subsequently granted for three houses on the reserved site. I note that the crèches under construction at present are required to serve their developments and therefore cannot be relied upon to address needs arising from this development. Having regard to recent developments granted/under construction in the wider area and the analysis submitted by the applicant, which indicates a high demand and limited spare capacity in the town, I consider that in accordance with the guidelines, provision for a childcare facility would be warranted at this location and would be in the interests of the sustainable development of this new community. I calculate the proposed development would generate a requirement for 39 spaces, the provision of which could be addressed by way of condition. The Board may wish to consider this issue further.

11.6.19. I have reviewed the Community and Social Infrastructure Audit Report submitted and I am overall satisfied with the contents therein.

11.7. Archaeology and Heritage Trail

11.7.1. A total of 10 RMP sites are located within the study area. The subject site lies partially inside the zone of archaeological potential/buffer zone of the archaeological complex of Kill Hill (KD020-001-003), recently reclassified as a Hillfort enclosure dating from the Bronze-Iron age. The hillfort described as a low domed hill, comprises upstanding remains defined by two large concentric hedged, earthen bank enclosures, which are visible from aerial photography, and is visible on the ground as the curving hedgerow boundary at the base of Kill Hill along the eastern boundary of the site. The site is outside the zone of archaeological potential of the historic village of Kill (SMR 19:8) and the Motte and Bailey (SMR 19:56).

11.7.2. A significant number of third party submissions have raised issues about the impact of the development on the archaeological monument of Kill Hill. Third party submissions note a 2m wall is proposed along the Heritage Trail.

11.7.3. A document titled 'Archaeological Assessment Report, updated March 2020' has been submitted, which is stated to have been reviewed to incorporate design changes on foot of a previous refusal of permission at this location, which has resulted in the layout of the proposal being amended. I note the refusal in relation to

the previous application did not relate to archaeology or impact on Kill Hill hillfort. The application is also accompanied by a Heritage Trail high level design proposal and NMP Landscape Architects Detailed Design Statement. It is stated that following consultations with the Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht and Kildare County Council, the original buffer zone has been amended as part of the revised site layout. The buffer zone has been straightened and the minimum buffer distance has been widened from 10m to 15m.

11.7.4. The Archaeological Impact Report states that the archaeological complex on Kill Hill (KD020-001) to the east will not be directly impacted and nor will any of the other archaeological monuments identified to the south of the site. In terms of mitigation, it is stated that 'the previous buffer zone has been agreed in principal with the Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht'. I note that it does not state if the current buffer zone, which has been amended in the revised layout with houses proposed within it, has been agreed with the department. The amended buffer includes houses on plots 153, 167, 102, 103, 104 and 105 on what was previously the accepted buffer zone, however, I note the application was circulated to the Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht and a submission has been received from the Department (29th June 2020) stating 'It is noted that the documents forwarded include a report and recommendations arising from archaeological assessment carried out at the proposed development site, including archaeological test excavation. The recommendation of the Department of Culture, Heritage and the Gaeltacht would be that the following conditions should be attached to any permission...', thereafter five bullet points are set out. The first bullet points states 'the agreed buffer area adjacent to monument number KD020-001---- (Hillfort) and to the Preservation Order area to the south of the proposed development site, should be clearly marked on site and should not be used as a site compound or for storage' with the remainder of the bullet points relating to construction and archaeological monitoring. I further note the report of the Heritage Officer of Kildare County Council raises no concerns. I note the Department submission does not include a map of the agreed buffer zone. In the interests of clarity, should the Board be minded to grant permission, I recommend that a condition should be attached to any grant of permission requiring prior to the commencement of development that the area of the

buffer zone is marked out on the ground in consultation with the Department (as per the recommended condition of the Department), and a final buffer zone map incorporating the heritage trail should be submitted, for clarity, to the Planning Authority following consultation with the Department, to ensure the protection of KD020-001. Furthermore a condition is recommended in relation to the design and finishes to the heritage trail and the CMP should be required by condition to address inter alia, protection measures in relation to the archaeological buffer zone.

11.7.5. In conclusion, I am mindful of the rich archaeological heritage in this area and immediately adjoining this site. Having regard to all of the information before me, I am satisfied that the issue of archaeology has been adequately addressed in this application.

11.8. Ecology and Landscaping

11.8.1. An Ecological Impact Assessment was submitted with the application, dated 24th March 2020. Field surveys were undertaken in November 2017 and August 2018 (as part of previous applications on the site) in relation to bats, badgers and trees and the site was revisited in February 2020, whereby it is stated no significant changes to the lands were noted. It is stated the tree survey was reviewed from the perspective of roosting bats. It is stated that there were no survey constraints and site surveys were conducted during the optimum time for survey work for the various elements, with the exception of the bird breeding season, however a list of wintering birds were recorded in 2017 and noted to be still present on site in 2018 although the breeding season was complete. The lands are used by a variety of fauna and provide a locally important habitat for rabbits, foxes, and a variety of birds. The lands generally comprise of improved grassland with trees and hedgerows bounding the site and also along two internal field boundaries, with some semi mature and mature trees present. There are some drainage ditches on the land which ultimately drain to the Painestown River. There is some recolonising bareground to the east, where an inactive construction compound is located and unmanaged dry meadows and grassy verges exist to the southeastern boundary. The school boundary to the northeast is formed by a wall and railing. The habitats were assessed as being of moderate local value for biodiversity within the context of Kill village and environs.

- 11.8.2. Three species of bats were recorded utilising the site for foraging purposes with no bat roosts confirmed, although there are trees on site with roosting potential. The report states that it is likely that badgers occur in the vicinity with evidence of their activity noted under the eastern site boundary hedgerow and a disused badger sett was present here.
- 11.8.3. A number of third party submissions raise concerns in relation to loss of wildlife and biodiversity and timing of survey work, in addition to the number of trees to be removed.
- 11.8.4. The EclA outlines a range of protection measures, including sediment control practices through good site management during construction, maintenance of the eastern boundary of the site free from development and to form a buffer, retention of a number of trees and hedgerows, clearance of vegetation suitable for nesting birds within the appropriate period, resurvey of potential roosting trees before works take places as some time will have passed between the survey work and commencement of construction and compliance with requirements of NPWS where required, in addition to a further pre-construction survey of badgers should a significant time period lapse before the scheme comments. I am generally satisfied with the mitigation measures proposed, none of which I note are related to the protection or management of European sites. No special nature conservation objectives relate to the subject site. The issue of appropriate assessment is dealt with in Section 12 below.
- 11.8.5. I note that it is stated that there are two main changes from the previous application – an additional section of hedgerow 3 along the western boundary and 7 associated trees are to be retained; and a single additional tree is recommended for removal. With regard to the additional hedgerow along the western boundary, it is stated that the red line boundary for this site area is located to the rear of the treeline/hedge and the trees within and the existing boundaries of the rear gardens of the houses within ‘Earl Court’ form the official site boundary. This hedgerow and the trees within it will be incorporated into the completed development in the following way:
- It is proposed to leave the existing drainage ditch open with some minor regrading on the site side to incorporate it into the completed landscaped development.

- The hedgerow and trees within are to be managed within an ecological corridor which will see the existing hedge tidied up with trimming and reinforcement with planting so that it does not become a strip of No-Man's land. Its management is to be held within the overall management of the communal areas of this completed development with the purchasers of these properties entering into a covenant agreement that takes this ecological corridor and the vegetation within out of their individual control and so it can be managed collectively for the benefit of the surrounding area.
- As part of the works of incorporating these trees into the completed development and to address physiological and structural issues within these trees and to achieve a satisfactory juxtaposition going forward, the trees will receive pruning which will see the crown overhang on some trees being reduced back by up to 2m which will mainly involve pruning to the lower branches to achieve this. It is evident on site that most of these adjoining gardens, have already lightly pruned back the trees on their side in order to reduce crown overhang.
- For the duration of the works, the trees and hedge vegetation will be cordoned off with fencing to cordon off their expected root zones and to keep development/construction works away that could cause damage to this vegetation.

11.8.6. I consider that it would have been preferable to retain such a space within a public open space area, however, the submitted NMP landscape plan (drawing L1-503) shows that the drainage ditch will be retained, screened with planting and the trees/hedgerow will be in the rear gardens of the dwellings in question, with a covenant entered into by the owners to retain them as is and management of the trees will be by a management company established for this development to ensure they are managed appropriately and collectively to the benefit of the area. I note the Parks Department report submitted with the C.E. Report raises no issue with this arrangement. Should the Board be minded to grant permission, I recommend that this issue and the responsibility for this ecological corridor as part of a future management company should be considered further and consideration be given to a condition de-exempting exempt development in the rear gardens in question, given their proximity to the trees and associated root zones in question. I further note the

water services layout indicates a underground surface water pipe proposed at this location which would have to be carefully constructed to ensure protection of the trees.

11.8.7. The report concludes that there will be losses for biodiversity at a local level as the lands are developed for housing and change from previous agricultural uses. While I note the level of tree loss, conflicts such as these are inevitable as land is developed. I consider the landscaping measures will mitigate the impact of this loss. Overall, I consider the timing of survey work and approach to the ecological impact assessment reasonable and I note the landscaping proposals contained within the proposal. I am generally satisfied in this regard.

11.9. Residential Amenity

11.9.1. The proposed development provides for a range of house types, primarily semi-detached dwellings, in addition to apartments (duplexes) within two and a half/three storey blocks.

Design Standards for New Apartments

11.9.2. The apartments proposed take the form of duplex units. The apartments have been designed to comply with the floor areas as per SPPR3 and appendix 1.

11.9.3. SPPR4 relates to dual aspect ratios and states that in suburban or intermediate locations it is an objective that there shall generally be a minimum of 50% dual aspect apartments in a single scheme. The development achieves this.

11.9.4. SPPR 5 requires a minimum of 2.7m ground level apartment floor to ceiling heights. This requirement is complied with. SPPR 6 specifies a maximum of 12 apartments per floor per core. This requirement is not applicable given the design of the apartments in duplex form.

11.9.5. A Building Lifecycle Report has been submitted.

11.9.6. Car parking provision is considered acceptable is acceptable and in accordance with guidelines.

11.9.7. The proposed development overall would provide an acceptable standard of amenity for the occupants of the proposed apartments.

11.9.8. Notwithstanding that the apartments meet the SPPR standards set out in the guidelines, I have issue with the design of the duplex units in Block G, along the northern boundary of the site and their interaction with the public realm/public open space to the rear. I am satisfied that the block adequately addresses the street to the north and east, however, as the access to all units is from the north and east, there is extremely poor overlooking, activity and access to the public open space to the rear of the units, which also comprises a through pedestrian/cycle route toward the school. I consider the public realm at this location would be extremely poor. To overcome this issue I consider the units should be designed as dual entrance units, with the ground level apartments accessed from the rear, and the main entrance to the upper level apartments remaining from Slí na Naomh/eastern main street via an internal stairwell as proposed. This would remove the need for closed off and blank boundaries onto the public open space to the rear and significantly improve on activity, passive surveillance and accessibility to the public open space. I further note the blank elevations at either end of the building which could be further improved with windows, particularly given supervision of this as a route through to the school would be important. This issue could be addressed by way of condition should the Board be minded to grant permission.

House Designs

11.9.9. In relation to housing, best practice guidelines have been produced by the Department of the Environment, entitled 'Quality Housing for Sustainable Communities'. Table 5.1 of these guidelines sets out the target space provision for family dwellings.

11.9.10. I am satisfied that the internal accommodation meets or exceeds the specifications of Table 5.1. The rear gardens associated with dwellings vary in shape and area, providing a satisfactory amount of private amenity space (as per chapter 17 of the development plan) and achieve adequate separation distances to adjacent dwellings. Generally back to back distances of 22m are achieved where windows are directly opposing. Two parking spaces are proposed per dwelling.

11.9.11. I note an Assessment of Inward Traffic Noise Impacts has been submitted with the application and I am satisfied with the details contained therein.

11.9.12. Overall, subject to conditions, I consider the proposed dwellings are adequately designed and would provide an acceptable level of amenity for future occupants.

11.10. Impact on Residential Amenity of Neighbouring Properties

11.10.1. Concerns are raised by neighbouring residents in relation to overlooking, loss of light, privacy and amenity, health and safety concerns, and noise pollution as a result of the proposed development.

11.10.2. I have examined the layout proposed and where potential impacts may arise with neighbouring properties. With regard to the properties to the west in Earl's Court, I consider that there is adequate separation distance between the site and the residential dwellings to the west, with minimum back to back distances of 22m between directly opposing first floor windows generally achieved. I consider the level differences between the development site and existing dwellings to the west have been appropriately managed in terms of design and I do not consider the proposal will seriously injure the residential amenities of the existing neighbouring properties in terms of overlooking, overshadowing or loss of privacy. I note while some of the units are three storey in design fronting into the site, these heights are dropped to two storeys/single storey where they back onto existing dwellings, which mitigates potential impacts in terms of overbearance or increased levels of overlooking.

11.10.3. I consider there to be sufficient distance between the proposed development and dwellings to the north of Slí na Naomh as to ensure the proposed development will not be seriously injurious to the residential amenities of the area. While the north-eastern boundary with the adjoining field is weak due to the proximity of proposed houses to the boundary (bungalows proposed due to a covenant agreement, as stated on submitted site plan, no details submitted), which is to comprise a wall with no boundary landscaping proposed, I consider overall this to be acceptable, although the Board may wish to consider this further.

11.10.4. I note the C.E. report recommends refusal in relation to the location and impact of duplex units D and E. Recommended refusal reason 5 states: 'Having regard to the location of the site on transitional lands at the edge of the development boundary of Kill, the Planning Authority considers that the provision of apartment/duplex units (Types D, E, G, Q and R) would be more appropriately

located on lands closer to or within the town centre as indicated at Section 17.4.6 of the Kildare County Development Plan 2017-2023. Furthermore having regard to the location and design of units D and E within the scheme adjacent to existing dwellings, there is a concern regarding the visual impact to and overlooking of, existing residences, which would seriously injure existing residential amenity. To permit the apartments/duplex units at the location and scale proposed would therefore be contrary to the proper planning and sustainable development of the area'.

11.10.5. I have addressed the first part of refusal reason number 5 (in relation to the location of apartment units within the development) under section 11.3.7 on Dwelling Mix above. I consider here the concerns raised in relation to the design of units D and E and impact on adjoining properties. I note these units are designed as three storey units from the front and are two storey to the rear, with a large single storey element. While a first floor balcony is proposed to the upper level unit to the rear, I note that the design of the single storey return to the rear with angled mono-pitched roof (as per the submitted cross section) means that this balcony is not fully visible from the rear. Having reviewed the cross sections and drawings submitted and having regard to the back-to-back distances between the two storey elements, in addition to the level changes involved, I do not consider the proposed duplex units D and E will significantly overlook or seriously detract from the visual or residential amenity of existing dwellings to the rear in Earl's Court.

11.10.6. I consider the design of duplex units Q and R acceptable, however, I note the upper floor window to unit 93, which is an additional window to a combined kitchen/living space, would significantly overlook the private amenity space of the neighbouring dwelling on plot 95, therefore I would recommend that this window should be replaced with a high level window, should the Board be minded to grant permission.

11.10.7. I note specific issues raised by the residents of 19 The Grove, with the submission stating back to back distance between bedroom windows is 19m and the proposal will give rise to significant overlooking of their patio, which I note is at the back of their garden. I have measured the plans submitted and the distance between the rear elevation of 19 The Grove and rear elevation of units Q/R to the rear is 28m (with unit Q/R having a rear garden depth of approx. 14m), which I consider

reasonable and will not result in significant overlooking, notwithstanding the level differences. I note duplex unit type Q/R are two storeys with a ground floor apartment and a first floor apartment. These units are served by private amenity space at ground floor to the rear, as per a garden to a standard dwelling, and at the upper level there is a balcony to the street from the living/kitchen/dining room, with the bedroom to the rear. I consider the overall two storey height of unit Q/R (9.3m) to be acceptable and will not be overbearing in terms of its scale or form, having regard to its design and to the distances between the properties. I do not consider the proposal will result in significant overlooking of no. 19 to the west. I note it is proposed to remove an existing tree to the rear of no. 19, however, overall I consider the landscape measures across the site are satisfactory. With regard to house type H on site 97 and H2 on 98, I note that the first floor rear elevation due to the internal layout does not comprise windows to habitable rooms at the rear, but windows from WC, landing and an ensuite, therefore I consider there will not be significant overlooking of the rear garden of 19 The Grove from this perspective. I note the dwelling on site 97 has a rear garden depth of approx. 7m from the side/rear garden boundary of 19 The Grove and given the dwelling is positioned south of the garden, I consider this dwelling would be visually dominant when viewed from the rear of 19 The Grove given the limited separation distance and would result in significant overshadowing of that garden, given its location directly south of it. I consider the dwelling on plot 97 should be omitted. With regard to the dwelling on plot 110 on the opposite side of the street, I do not consider this dwelling will have the same impact on no 2 in Earl's Court given its off-set position relative to the rear garden of that dwelling. In terms of streetscape impact, I consider the omission of the dwelling from plot 97 will not have an overly negative impact on public realm.

11.10.8. I note the proposed units to the southwest, which will front onto The Avenue in Earl's Court maintain the building line at this location and are acceptable in terms of their design, form and parking provision.

11.10.9. I note concerns raised by residents of The Green in relation to the proposed pedestrian connection onto their street. While I note the concerns raised, I do not consider the additional footfall will be so significant as to cause significant noise disturbance. There will be adequate overlooking and passive surveillance from within the proposed development up to the point where the connection is proposed, with

this passive surveillance continuing naturally along The Green. National guidance supports the principles of connectivity and permeability for pedestrians and I consider this connection will be a positive addition for both developments.

11.10.10. I note concerns raised in relation to the naming of the development. Should permission be granted, this is a matter for the planning authority to address, in accordance with Development Plan policies.

11.10.11. I discuss the issue of traffic in section 11.9 hereunder and water services infrastructure and flooding in section 11.10.

11.10.12. I note a valuation report has been submitted indicating the property value of 19 The Grove will be reduced if development is permitted behind it, where there are no dwellings at present, and given the level differences between the properties. It is estimated the value of the property will be reduced from €480,000 to €432,000. I note the land to the rear of 19 The Grove is zoned for residential development and the proposed development is in accordance with the zoning objective on the land. I note the concerns raised in the submission in respect of the devaluation of their property, however, having regard to the assessment and conclusion set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would significantly adversely affect the value of property in the vicinity.

11.10.13. Having regard to all of the information before me, including the layout, design and separation distances involved, I consider that impacts on the residential amenity of the wider area would not be so great as to warrant a refusal of permission.

11.11. Traffic, Transportation and Access

11.11.1. The application has been accompanied by a Transportation Assessment Report, which includes a Preliminary Travel Plan, DMURS Statement of Consistency, and Stage 1 Road Safety Audit.

11.11.2. A large number of third parties have raised concerns in relation to the proposed internal street connection with Earl's Court development, which was highlighted as an issue in the two ABP refusals on this site. It is considered that such a link will give rise to a traffic hazard and conflict with vehicles and pedestrians in Earl's Court. It is also contended that the increase in traffic combined with conflict

with the school traffic will result in a traffic hazard. The level of traffic is considered unsustainable given the poor public transport connections. Third parties also raise concerns in relation to construction traffic using Earl's Court.

11.11.3. I note the report from the Roads, Transportation & Public Safety Department of KCC, submitted with the C.E. Report, comments on the underprovision of car parking for the two bed apartments and underprovision of visitor parking, which they recommend at a rate of 10%. The report recommends a condition to increase spaces for the two bed apartments to a total of 91 spaces (which equates to two spaces per two bed apartment). The second condition recommended specifically addresses issue of noise surveying and noise impact, with a note stating the condition in relation to noise is imperative. No comment or issue is made in relation to the vehicular connection with Earl's Court.

11.11.4. The Transportation Assessment (TA) Report provides details of traffic interval movement surveys of the road network (for Kill Road and N7 Junction 7) and addresses the adequacy of the existing road network to safely and appropriately accommodate the worst case peak hour vehicular demands with the development and in particular the safety and capacity of the proposed vehicular access junction and an assessment of impact on the N7. The assessment concludes that there is an absolutely negligible traffic impact on the N7 and the Access Junctions will operate without any issues arising whatsoever during the selected year of opening and the Design Year 15 years after opening. Consideration was given to school traffic proximate to the site on Kill Road. The analysis concludes that the construction of 107 residential homes and 60 apartments will have a negligible impact upon the capacity and safety of the road network in the area and can easily be accommodated. I accept the findings of the Transportation Assessment Report in this regard.

11.11.5. The TA Report states that one vehicular link is proposed with Earl's Court to avoid traffic and safety issues. It is stated that KCC are supportive of vehicular connectivity here, as indicated in the submitted pre-application minutes, and provision for vehicular connectivity is in accordance with DMURS principles of connectivity and permeability, with the following section of DMURS quoted: 'Designers may be concerned that more permeable street layouts will result in a higher rate of collisions. However, research has shown that there is no significant

difference in the collision risk attributable to more permeable street layouts in urban areas and that more frequent and less busy junctions need not lead to higher numbers of accidents.' It is stated that to alleviate concerns raised with respect to a traffic hazard (as raised in previous refusals), traffic calming measures on The Avenue in Earl's Court were discussed with KCC and have been implemented by the applicant.

11.11.6. I note the previous reason for refusal of development on this site included the following statement within reason 2:

'...the layout of the proposed scheme, being dominated by roads, is contrary to the provisions of the Design Manual for Urban Roads and Streets, issued by the Department of the Environment, Community and Local Government and the Department of Transport, Tourism and Sport in 2013, and involves two vehicular accesses into the adjoining Earl's Court housing estate. It is considered that the proposed development would, therefore, seriously injure the residential amenities of future occupants, would endanger public safety by reason of traffic hazard, particularly to pedestrians within the Earl's Court estate, and would be contrary to the proper planning and sustainable development of the area'.

11.11.7. I have reviewed the proposed vehicular connection and pedestrian connections into Earl's Court and the previous refusal reason. I have considered the issue in the context of the speed of traffic, volume of traffic, and connections into the existing footpath network. I note that since the previous refusal on this site, the applicant has input additional traffic calming measures of raised tables/speed bumps along The Avenue in Earl's Court, which will assist in maintaining a low level of speed through the estate, to the benefit of existing as well as future users. The number of cars anticipated will not all be utilising the Earl's Court entrance. The assignment of traffic will be split between the two proposed entrances and I consider the ability of traffic to disperse in different directions at different times of the day (for example during school opening and closing) will assist in the wider ease of movement of traffic in the area, to the benefit of both developments. The volume of traffic anticipated in any event is not so great as to exceed the capacity of the existing street network in the area, as set out in the Traffic Assessment. I do not consider the increased volume of traffic will be so great as to make it more

hazardous or significantly impede pedestrians/children crossing the street, indeed the increased traffic calming measures on The Avenue will assist in reducing speed overall and assist pedestrians/children crossing. The pedestrian footpaths from the proposed development will connect into existing pedestrian paths in Earl's Court both at the vehicular entrance and at the other two proposed pedestrian only connections. In terms of issues raised relating to road traffic noise, I consider the increase in volume of road traffic through Earl's Court would not be so significant as to result in a significant noise increase such as to warrant a refusal.

11.11.8. I have considered the proposed access arrangements in terms of national guidelines as set out in DMURS, Guidelines on Sustainable Residential Development in Urban Areas and associated Urban Design Manual, which support connectivity and permeability between developments. I note Kildare County Council is supportive of the vehicular entrance through Earl's Court for reasons of permeability and emergency access, as stated within in the C.E. Report and I note section 15 of the development plan on Urban Design recognises past issues with layouts based on a non-permeable system of hierarchical roads, which with other factors can result in making private transport necessary to access employment, shopping and other facilities, resulting in more unsustainable development patterns. Overall I do not consider the proposed vehicular access arrangement will result in such significant volumes of traffic as to give rise to a significant negative impact on residential amenity or result in a traffic hazard for pedestrians. However, the Board may wish to consider this issue further.

11.11.9. In relation to parking standards, the Design Standards for New Apartment 2018, indicates parking standards for peripheral and/or less accessible urban locations should generally require one space per unit with an element of visitor parking, such as one space for every 3-4 apartments. Car parking provision for the apartments should therefore be in the range of 75-80 spaces. The proposed development is in accordance with these standards. Parking for the dwellings is provided for at a rate of two spaces per dwellings, which is acceptable. I note the application site is within walking distance of the town centre and adjoins a primary school site. I consider the level and form of parking proposed to be acceptable for this site. Any issue arising in relation to illegal parking in adjoining estates or on the

public road adjoining the school is a matter for the planning authority or An Garda Síochána.

11.11.10. I note the documentation includes reference to a permitted part 8 scheme from 2017 for Naas-Kill cycle route with the route terminating at the primary school adjoining the site. To support uptake of cycling for commuting as well as amenity purposes, it is important to ensure bicycle parking is incorporated into the design of the scheme.

11.11.11. The guidelines require 1 cycle parking space per bedroom, with visitor parking to be provided at a rate of 1 space per 2 residential units. This results in a requirement for 150 bicycle spaces, albeit I note a number of the duplex units have large garden spaces which could accommodate bicycle storage. This issue can be addressed by way of condition, should the Board be minded to grant permission.

Noise

11.11.12. Having regard to issues raised in relation to noise impact from the N7, I note an Inward Noise Impact Assessment has been submitted. A noise survey was undertaken from 21st November to 23rd November 2017. A noise model was developed using site layout drawings, OS mapping provided by the design team and using traffic flow data obtained from TII automated traffic counters along the M7. For future traffic year flows, reference was made to projected traffic flows taken from the M7 Naas to Newbridge Upgrade Works EIS (2013). Referring to the high growth projected traffic flows along the adjacent section of road for the year 2030, an AADT value of 96,650 and 8% HGV was used. The model was calibrated against the noise monitoring location at the northwest corner of the site.

11.11.13. The assessment states that the noise levels across the development site are below the undesirably high threshold noise levels set within the Kildare Noise Action plan and based on the predicted day and night-time noise levels calculated across the site, the appropriate sound insulation performance of the building envelope can be specified in order to achieve the appropriate internal noise levels. The assessment concludes that the insulation capabilities of the development are deemed to be acceptable in order to achieve the target noise levels as outlined in Section 7.7 Planning For Noise Management, set out in Kildare Local Authorities

Noise Action Plan and achieve the recommended internal noise levels for residential dwellings set out in BS 8233:2014. I am satisfied with the findings of the report.

11.11.14. I note that the survey was undertaken in 2017, therefore issues around reduced traffic levels caused by Covid 19 do not arise. I note the report from the Transportation section of KCC requires additional noise monitoring prior to the occupation of duplex Block G and housing units number 25-33. Should the Board be minded to grant permission, it is recommended that issues raised could be addressed by way of condition.

Construction Traffic

11.11.15. I note the concerns raised by third parties regarding construction stage impacts in terms of noise, dust, route of construction traffic, and hours of operation during construction, including the potential duration of construction impacts due to Covid 19 delays. While there will be impacts on the adjoining residential area, I am satisfied that they can be appropriately mitigated through good construction management. I agree with the concerns of residents that construction traffic through the estate would be quite disruptive on existing residents. While some construction traffic will need access via Earl's Court, I note phase 1 of the development includes for the upgrade of Slí na Naomh and I consider this route should primarily be used for construction traffic, subject to arrangements to ensure construction traffic does not conflict with school opening/closing times. If the Board is disposed towards a grant of permission, I recommend that the detail of such issues should be required to be addressed within a Construction Management, to be agreed with the planning authority. I do not have undue concerns in relation to health and safety matters. With regard to Covid 19, the potential impact of the pandemic cannot be factored into policy given the nature of the pandemic which is likely to have short term impacts. The life of any planning permission is five years and that will remain the same.

Conclusion – Traffic

11.11.16. Having examined all the information before me, I acknowledge that there will be some increase in traffic movements as a result of the proposed development if permitted, however, I am overall satisfied that having regard to the existing context of the site within walking distance of the town centre, proximity to the primary school, and overall road network including connectivity with Earl's Court for pedestrians and

vehicles, the proposed development would not lead to the creation of excess traffic or obstruction of road users and I consider the proposal to be generally acceptable in this regard.

11.12. Water Infrastructure and Flooding Issues

Water and Wastewater

- 11.12.1. It is proposed to connect the development to the public water and foul sewer network at Earl's Court.
- 11.12.2. Irish Water in the submitted report on this application notes that in order to accommodate the proposed wastewater connection, upgrade works are required to increase the capacity of the Irish Water network. Irish Water currently has the project (Upper Liffey Valley Contract 2B) on their current investment plan which will provide the necessary upgrade and capacity. This upgrade project is scheduled to be completed by 2021 (this may be subject to change) and the proposed connection could be completed as soon as practicably possible after this date. The Irish Water report states that based upon the details provided by the developer, they confirm that subject to a valid connection agreement being put in place, the proposed connection to the IW network can be facilitated. I consider this reasonable.
- 11.12.3. I note a number of submissions raise concerns in relation to the prematurity of the development ahead of the completion of the wastewater upgrades to the network, which while on site at present, has been delayed, with this delay extended further due to Covid 19, and may not be complete until 2023 or 2024. Given the relevant upgrade works under the Upper Liffey Valley Contract 2B scheme are currently on site, there is therefore certainty they will be completed, notwithstanding there may be delays, and consequently the development, in my opinion, cannot be considered premature on that basis. The development will be subject to a connection agreement with Irish Water and the developer is aware of this.

Surface Water Management and Flood Risk Assessment

- 11.12.4. Surface water is proposed to connect into the existing surface water network to the west in Earl's Court. Two large underground surface water attenuation tanks are proposed within the development. It is proposed to drain the attenuated surface water network by gravity into the existing surface water sewer network in the Earl's

Court estate. The proposed drainage system ultimately discharges to the Kill River, which is a tributary of the River Liffey.

11.12.5. In terms of surface water management, a SUDS strategy is proposed, with four source control measures of permeable paving, swales, filter drains, and rainwater butts. Approximately 6% of the site is covered in parking areas, and it is proposed to use permeable paving to reduce runoff. Two source control measures are proposed of underground attenuation tanks and rainwater distribution systems.

11.12.6. A Site-Specific Flood Risk Assessment (FRA) was submitted as part of the application. The SFRA references source documents including the SFRA for Naas Local Area Plan 2019-02023; SFRA of Kildare County Development Plan 2017-2023; floodmaps.ie; PFRA from the CFRAM programme; floodinfo.ie; EPA website; and GSI website and website searches. I note the zoning map for Kill indicates a flood risk assessment area, which is not in close proximity to the application site.

11.12.7. The SRFA notes a topographical survey of the site was undertaken which reveals that the site slopes steeply in a westerly direction away from Kill Hill towards the existing Earl's Court residential development; with levels dropping approximately 9m from 116m AOD to 107m AOD. This represents a fall of approximately 1:13. The subsoils are classified as part of Carrighill Formation, Calcareous greywacke siltstone and shale. The underlying bedrock displayed in Figure 2 is classified as Silurian deep marine mudstone, greywacke and conglomerate. The associated groundwater vulnerability is classified as High. There is an existing open dry ditch which runs along the Western and Southern boundaries of the site. The dry ditch naturally drains the surface water runoff from Kill Hill and outfalls to the Kill River located approximately 300m to the South West of the site.

11.12.8. The OPW National Flood Hazard Mapping shows fluvial flooding events occurred in Kill village on June 1993 and November 2000. The potential source of flooding to the southeast of the site is stated to be fluvial flooding from the adjacent Painestown and Kill Rivers which pass close to the site to the East and West respectively. The Kill River passes approximately 300m from the site but the elevation of the site which rises towards Kill Hill, is far greater, therefore it is stated that the 100-year flood waters do not approach the site as shown on the mapping. The Painestown River is further away, approximately 1km. Once again, the 100-year

flooding contour is stated to be a considerable distance from the site. The report states the residual risk of flooding on the subject site therefore is considered very low. The site is categorised as being within Flood Zone C. It is noted in the submitted SFRA that The Strategic Flood Risk Assessment of the Kildare County Development Plan (SFRA 2017-2023) states that there is a limited flood risk within the town of Kill.

11.12.9. The submitted SFRA has in addition considered pluvial and groundwater flooding. Pluvial or overland flow occurs when the amount of rainfall exceeds the infiltration capacity of the ground to absorb it. This excess water flows overland ponding in natural hollows. The submitted SFRA states in relation to the potential for pluvial flooding, that a number of mitigation measures are proposed, given the increased level of impermeable surfaces proposed with the development of the land. It is stated that in accordance with the policies and guidelines of the Greater Dublin Strategic Drainage Study (GSDSDS), River Quality Protection and River Regime Protection, the development is providing for the required interception and treatment volumes within the swales, infiltration trenches, permeable paving, and rainwater butts. The remaining storm run-off volume will be attenuated in 2 no. underground storage tanks which limit the discharge to greenfield run-off rates. The documents include a drawing of the storm water strategy and associated calculations. The post development residual risk from pluvial flooding therefore, is deemed in the SFRA to be very low.

11.12.10. I note the submitted SFRA in addressing the potential for groundwater flooding, states that GSI information indicates that the groundwater recharge is high due to moderate permeability of the subsoil overlain with well-drained soil. A site-specific Soil Infiltration Test Report was completed, whereby two trial pits were dug. During the test excavations mottling was encountered at 1.4m below ground. It is stated that there is no history of groundwater flooding in the area according to the OPW National Flood. The risk of groundwater flooding is considered to be low.

11.12.11. I note third party concerns have been raised in relation to potential flood risk, with one submission including video evidence showing significant pooling of water to the rear of dwellings in Earl's Court, which back onto the site. It is stated that run-off from Kill Hill is clearly a large problem for these properties with gardens frequently soggy and wet on a constant basis, arising as the builder did not incorporate a proper stormwater network in the estate. This surface water issue I acknowledge is a

significant issue as per the photos and videos submitted. Neither the Council's Water Services Section nor the documentation accompanying the application address specifically existing issues of surface water impacts to the rear of dwellings in Earl's Court. However, I note the submitted Engineering Report includes details of discussions with KCC engineers and the applicant's engineers, as listed in section 4, figure 4.1 of the submitted Engineering Report. It is stated in the column on comments from KCC Water Services Department that KCC requested that the pluvial flood risk emanating from the proposed drainage system and the higher adjacent ground on Kill Hill should be addressed in the FRA. The Engineering Report in response notes there are existing ditches located on the eastern and southern boundary of the site which naturally drain the western side of Kill Hill. It states the drainage ditch outfalls to the Kill River approximately 300m to the south west of the site and the proposed infiltration trench and \varnothing 150mm perforated land drain on the eastern side of the site is for contingency purposes to drain the area of land in the buffer zone to the east of the site. The land drain will tap into the proposed surface water networks with the run-off flow attenuated in the underground attenuation tanks. The two proposed attenuation tanks have been designed to include the surface water flows for the eastern section of site. I note that a subsurface perforated land drain is also proposed along the western boundary of the site to the rear of dwellings 14-19 The Grove, which will also connect into the surface water network. I note the Water Services Report states that the existing dry ditch along the eastern boundary is crucial in preventing pluvial flooding in the proposed development from run-off from Kill Hill and shall be given special attenuation in the final flood risk mitigation measures.

11.12.12. I note the C.E. Report from KCC recommends refusing permission on a point relating to flood risk, and states 'The Planning Authority is not satisfied that the proposed development has adequately addressed the flood risk pertaining to the site and the impact of pluvial flooding on the lands. To permit the proposed development in the absence of appropriate mitigation of potential flood risk would conflict with the provisions of Section 28 Guidelines and Kildare County Development Plan policies in relation to flood risk, would be contrary to public health, and would therefore be contrary to the proper planning and sustainable development of the area'. However, I note the submitted Water Services Report from KCC, accompanying the C.E.

Report, states no objection to the proposed development in terms of flood risk, subject to conditions. I note that it is stated under recommended condition 2 that 'the applicant should submit the following information to the planning authority...for record not for compliance purposes'. Thereafter under condition 2, three points (covering two and a bit pages) are set out relating to surface water management. Recommended condition 3 relates to calculation of surface water management provisions and requirement to comply with the GDSDS. Recommended condition 3 does not state the proposal is not compliant, just that it needs to be compliant. Condition 6 addresses the site specific flood risk assessment submitted. Again I note the condition is not stating non-compliance with the flood risk guidelines but that all flood risk mitigation measures are to be aligned with the final design of the surface water management regime, as raised in recommended conditions 2 and 3 and to ensure final sign off on flood risk mitigation measures proposed. I note a number of other issues raised in the Water Services Report have been responded to within the submitted Engineering Report within table 4.1. While it is for this application to ensure the surface water arising from this site is managed to the green field run off rate and does not impact negatively on adjoining sites, it would appear that the control of the surface water arising from Kill Hill as part of this development (which does not appear to have been properly considered/maintained in the surface water management strategy for Earl's Court), may benefit Earl's Court when managed as part of the surface water strategy for this development. I would further comment that the issue of the deficiencies of the existing surface water network in Earl's Court is a taking-in-charge matter for the planning authority to resolve with the developer and is outside the remit of this planning application.

11.12.13. Overall, having considered all of the information before me, I am satisfied the applicant has adequately addressed the issue of flood risk in the submitted Site Specific Flood Risk Assessment, including the potential for pluvial flood risk, and proposes a surface water management strategy which indicates the proposed development will manage surface water from the site to the greenfield run off rate as per the GDSDS and will not impact on neighbouring sites. Should the Board be minded to grant permission, I recommend a condition apply requiring a Stage 2 Detailed Design Stage Stormwater Audit, the findings of which shall be incorporated into the development, where required, at the developer's expense and a Stage 3

Completion Stage Stormwater Audit within six months of substantial completion of the development, the findings of which shall be incorporated into the development, where required, at the developer's expense.

11.13. Other Matters

110kv ESB Line

11.13.1. I note that a 110kV overhead powerline crosses the northern portion of the site. The County Development Plan recommends a clearance distance of 20 metres either side of the centre line or 23 metres around a pylon. The applicant has submitted a correspondence from ESB International (dated 8 December 2017), which was submitted as part of a previous application, that indicates that a 20 metre separation distance from the 110kV centreline is acceptable. I have examined the layout against this separation distance, which is also indicated on drawing no. 00.129.PD561, and I am satisfied that the clearance distances have been adhered to and are therefore adequate.

Taking in Charge of Earl's Court

11.13.2. A number of submissions received raise concerns in relation to alleged non-completion of the Earl's Court development. I note Appendix G, 'Taking in Charge Correspondence' of the submitted documentation comprises a letter from Kildare County Council (dated 16th March 2020) to JFOC Architects which states that KCC confirm that the developer McCourt Investments Ltd. has requested KCC to take in charge (TIC) Earl's Court Housing Estate and that this is in progress. It is stated that the council is satisfied to confirm: 1. All roads are complete and the developer has provided traffic calming measures on the spine road which will improve safety for all road users; 2. The Council has snagged the Estate for defects and most have been addressed. The remaining outstanding defects are progressing smoothly; 3. When all TIC documents are received, the council will contact IW to seek approval in that regard; 4. The IW and KCC services infrastructure in generally to public utility standard and it is recommended that upon completion of the few remaining outstanding items, the development control section will be in a position to recommend the estate for TIC; 5. The Council will keep the remaining security until the TIC process is complete.

11.13.3. Notwithstanding the submitted letter addresses raised issues in relation to taking in charge of the existing adjoining development, this issue is a matter of enforcement for the planning authority and outside the remit of this application.

Public Consultation

11.13.4. I note the submissions received in relation of a lack of pre-application consultation with local residents. While I acknowledge that this may have been beneficial to both sides, there is no requirement in the legislation for such consultation to take place. Consultation has been undertaken in compliance with the Planning and Development Act 2000, as amended, and the Planning and Development (Housing) and Residential Tenancies Act 2016.

Procedural Issues

11.13.5. The application was made and advertised in accordance with requirements of Section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016 and the accompanying regulations.

11.13.6. With regard to the positioning of the site notices, I consider that the notices adequately informed the public as to the nature and extent of the development proposed and I am satisfied that their location did not prevent the concerned parties from making representations.

11.13.7. Two submissions received were not summarised in the C.E. Report from Kildare County Council. I note the issues raised were also raised in other submissions. I am satisfied that I have reviewed all submissions received.

Equine Industry

11.13.8. I have no information before me to believe that the proposed housing development of 167 units, located on the eastern side of Kill, would have significant negative impacts on the equine industry, which is located on the southwestern side of Kill (as per the zoning on the zoning map).

Littering/Anti-Social Behaviour/Parking

11.13.9. Issues raised in relation to possible anti-social behaviour/littering/illegal parking are a matter for An Garda Siochana, outside the remit of this planning appeal.

11.14. Planning Assessment Conclusion

11.14.1. To conclude, I consider the principle of residential development and density proposed to be acceptable on this site. This is a zoned and serviceable site within the development boundary of Kill, sequentially located from the town centre and contiguous to existing development proximate to existing infrastructure and services within the town, including the adjacent primary school. The development provides linkages to the existing residential development located to the west and provides a Heritage Trail and Archaeological buffer zone along Kill Hill, which is of national archaeological importance. The development strategy proposed overall achieves a satisfactory standard of design and layout, complying with the criteria set out in the Urban Design Manual – A Best Practice Guide 2009. However, the scale of development proposed would materially contravene the core strategy and settlement hierarchy for Kildare as per table 3.1 and table 3.3 of the Kildare County Development Plan 2017-2023, as amended by Variation 1 and would contravene policies SS1 and STP1 of that plan. I note Regional Policy Objectives (RPOs) 3.1 and 4.1 of the EMRA-RSES require core strategies for development plans to be in accordance with the growth strategy for the region and support a hierarchy of settlements, in accordance with the RSES, to ensure that towns grow at a sustainable and appropriate level and growth and investment is planned in accordance with a hierarchy of settlements. The proposed development in conjunction with a permitted development of 147 units for Kill in January 2020 would result in 300% greater growth in housing units than allowed for in Kill under table 3.3 of the development plan, which would militate against the implementation of the objectives of the RSES for the EMRA in relation to planned growth and would, therefore, be contrary to the proper planning and sustainable development of the area. I do not consider the development as proposed is justified at this location and I therefore recommend that the Board refuse permission in this instance.

12.0 Screening for Appropriate Assessment

Introduction

12.1.1. The application is accompanied by a Screening Statement for Appropriate Assessment (March 2020) prepared by Simon Clear Planning Associates and also

an Ecological Impact Assessment has been submitted. The Screening Statement concludes that there is no likelihood of any significant effects on Natura 2000 sites arising from the proposed development, either alone or in combination with other plans or projects and it is considered that Stage 2 Appropriate Assessment is not required.

12.1.2. Having reviewed the documentation available to me, I am overall satisfied that there is adequate information available in respect of baseline conditions to clearly identify the potential impacts on any European site and I am satisfied that the information before me is sufficient to allow for screening for appropriate assessment of the proposed development.

Stage 1 Screening

12.1.3. The proposed development is for 167 residential units on a 4.75ha site, located at the eastern edge of Kill, Co. Kildare. The site is a greenfield site which falls from west to east. Boundaries consist of hedgerows, trees, shrubs and some security fencing. Immediately east is an archaeological monument, Kill Hill hillfort.

12.1.4. The habitats on the site comprise primarily improved agricultural grassland, hedgerow and treelines, which were assessed as being of moderate local value for biodiversity within the context of Kill village and environs. No species growing on the lands are listed as alien invasive species under Schedule 3 of S.I. 477 of 2011. There are no habitats which are examples of those listed in Annex I of the Habitats Directive and no evidence that species listed in Annex II of that Directive are present.

12.1.5. Nearest streams are Painestown River (1 km from the site) and Kill River (approx. 300m to the southeast of the site). I note from the engineering report submitted that there are existing ditches located on the eastern and southern boundary of the site which naturally drain the western side of Kill Hill to Kill River.

12.1.6. Surface water is proposed to discharge to a connection in Earl's Court and the system ultimately discharges to the Kill River, which is a tributary of the River Liffey, which connects ultimately to Dublin Bay, where there are a number of European Sites.

12.1.7. SUDS systems are proposed including four source control measures of permeable paving, swales, filter drains, and rainwater butts. The remaining storm run-off volume

will be attenuated in 2 no. underground storage tanks which limit the discharge to greenfield run-off rates. The surface water management system has been designed to ensure that the quality and quantity of run-off are maintained at a 'green field' standard. I note that these SUDS systems are standard in all new developments and are not included here to avoid or reduce an impact to a European site.

12.1.8. Wastewater from the development will pass via the public sewer to the Osberstown wastewater treatment plant (also known as the Upper Liffey Valley Regional Sewerage Scheme), which is being upgraded at present under the project Upper Liffey Valley Contract 2B, with works on site and due for completion by 2021 (as stated in Irish Water submission). Osberstown plant discharges treated wastewater to the River Liffey under licence from the Environmental Protection Agency (EPA). The development will be subject to a connection agreement with Irish Water and will be connected once the proposed upgrade works are complete.

12.1.9. The site itself is not within or adjoining any European site. I note the following European sites are examined in the submitted Screening Statement:

Table 1:

Name of Site	Conservation Objectives	Qualifying Interests/Special Conservation Interests	Distance
Poulaphouca Reservoir SPA 004063	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA	Greylag Goose (<i>Anser anser</i>) [A043] Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183]	9.54km South-East
Glenasmole Valley SAC 001209	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II	Semi-natural dry grasslands and scrubland facies on calcareous substrates (<i>Festuco-Brometalia</i>) (*)	13.6km East

	species for which the SAC has been selected	<p>important orchid sites) [6210]</p> <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]</p> <p>Petrifying springs with tufa formation (<i>Cratoneurion</i>)</p>	
Wicklow Mountains SAC 002122	To maintain or restore the favourable conservation condition of habitats and species of community interest – see NPWS Conservation Objectives Series for detail.	<p>Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110]</p> <p>Natural dystrophic lakes and ponds [3160]</p> <p>Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010]</p> <p>European dry heaths [4030]</p> <p>Alpine and Boreal heaths [4060]</p> <p>Calaminarian grasslands of the <i>Violetalia calaminariae</i> [6130]</p>	12 and 13km South-East

		<p>Species-rich Nardus grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe) [6230]</p> <p>Blanket bogs (* if active bog) [7130]</p> <p>Siliceous scree of the montane to snow levels (Androsacetalia alpinae and Galeopsietalia ladani) [8110]</p> <p>Calcareous rocky slopes with chasmophytic vegetation [8210]</p> <p>Siliceous rocky slopes with chasmophytic vegetation [8220]</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Lutra lutra (Otter) [1355]</p>	
<p>Mouds Bog SAC 002331</p>	<p>To maintain or restore the favourable conservation status of habitats and species of community interest</p>	<p>Active raised bogs [7110]</p> <p>Degraded raised bogs still capable of natural regeneration [7120]</p>	<p>14.53km South-West</p>

		Depressions on peat substrates of the Rhynchosporion [7150]	
Ballynafagh Bog SAC 000391	To restore the favourable conservation condition of Active raised bogs in Ballynafagh Bog SAC – see NPWS conservation series for more detail.	Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7129] Depressions on peat substrates of the Rhynchosporion [7150]	13.37km North-West
Ballynafagh Lake SAC 001387	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.	Alkaline fens [7230] Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016] Euphydryas aurinia (Marsh Fritillary) [1065]	14.8km North-West
Red Bog, Kildare SAC 000397	To maintain the favourable conservation condition of Transition mires and quaking bogs in Red Bog, Kildare SAC - see NPWS conservation series for more detail.	Transition mires and quaking bogs [7140]	13.9km North
Rye Water Valley/Cartron SAC 001398	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.	Petrifying springs with tufa formation (Cratoneurion) [7220] Vertigo angustior (Narrow-mouthed Whorl Snail) [1014]	13.85km North

		Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016]	
Wicklow Mountains SPA 004040	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.	Merlin (Falco columbarius) [A098] Peregrine (Falco peregrinus) [A103]	15km South-East

12.1.10. With regard to direct impacts, the application site is not located adjacent or within a European site, therefore there is no risk of habitat loss, fragmentation or any other direct impacts. I am satisfied having regard to the nature and scale of the proposed residential development of 167 units on zoned and serviced land, the separation distance from European sites, the intervening uses, and the absence of direct source – pathway – receptor linkages, that no Appropriate Assessment issues arise in relation to the European sites listed above.

12.1.11. Any potential indirect impacts on European sites from the development would be restricted to the discharge of surface and foul water from the site. I note the proposed drainage system ultimately discharges to the Kill River, which is a tributary of the River Liffey, which I note ultimately drains to Dublin Bay, where there are a number of European Designations:

Table 2:

North Dublin Bay SAC	South Dublin Bay SAC	S. Dublin Bay & River Tolka Est. SPA	North Bull Island SPA	Poulaphoca Reservoir SPA
Mudflats and sandflats not covered by seawater at low tide;	Mudflats and sandflats not covered by seawater at low tide (1140);	Light-bellied Brent Goose; Oystercatcher; Ringed Plover;	Light-bellied Brent Goose; Oystercatcher; Teal; Pintail;	Greylag Goose; Lesser Black-Headed Gull.

<p>Annual vegetation of drift lines;</p> <p>Atlantic salt meadows;</p> <p>Mediterranean salt meadows;</p> <p>Salicornia and other annuals colonising mud and sand;</p> <p>Embryonic shifting dunes;</p> <p>Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes);</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes);</p> <p>Humid dune slacks;</p> <p><i>Petalophyllum ralfsii</i> Petalwort.</p>	<p>Annual vegetation of drift lines (1210);</p> <p>Salicornia and other annuals colonising mud and sand (1310);</p> <p>Embryonic shifting dunes (2110).</p>	<p>Grey Plover;</p> <p>Knot;</p> <p>Sanderling;</p> <p>Dunlin.</p> <p>Bar-tailed Godwit</p> <p>Redshank</p> <p>Black-headed Gull</p> <p>Roseate Tern</p> <p>Common Tern</p> <p>Arctic Tern</p> <p>Wetlands & Waterbirds.</p>	<p>Shoveler;</p> <p>Shelduck;</p> <p>Golden Plover;</p> <p>Grey Plover;</p> <p>Knot;</p> <p>Sanderling;</p> <p>Dunlin;</p> <p>Blacktailed Godwit;</p> <p>Bar Tailed Godwit;</p> <p>Curlew;</p> <p>Redshank;</p> <p>Turnstone;</p> <p>Black-Headed Gull;</p> <p>Wetlands and Waterbirds.</p>	
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12.1.12. However, given the significant distance of 25km between the application site and the European Sites identified within Dublin Bay, there is no pathway for loss or

disturbance of species listed associated with these European sites or habitat loss, fragmentation or any other direct impacts. With regard to hydrological pathways, via surface and wastewater water flows to Dublin Bay via the Osberstown wastewater treatment plant and the River Liffey, the plant at Osberstown is licenced to discharge treated effluent to the River Liffey by the EPA (licence no.: D0002-01). The installation of surface water attenuation and SUDS systems will ensure that there will be no negative impact to water quality or quantity locally arising from the change in land use from agricultural to residential. I note that the proposed SUDS system is standard in all new developments and are not included here to avoid or reduce an impact to a European site.

- 12.1.13. Cumulative impacts have been considered. Future developments in the area are likely to be residential in nature and are unlikely to give rise to cumulative impacts on any European site.

Conclusion

- 12.1.14. Having regard to the nature and scale of the proposed development on fully serviced lands, to the intervening land uses and distance from European Sites, and lack of direct connections with regard to the source-pathway-receptor model, it is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the above listed European Sites or any other European site, in view of the said sites' Conservation Objectives, and a Stage 2 Appropriate Assessment is not, therefore, required.

13.0 Recommendation

It is recommended that permission be refused for the reasons and considerations set out below.

14.0 Reasons and Considerations

1. It is considered that the proposed development would not comply with the Settlement Strategy for Kildare and would be a material contravention of the Kildare County Development Plan 2017-2023, as amended by Variation No. 1. The proposed development would, by providing greater growth in the Town than assigned in the Core Strategy, contravene policies SS1 and STP1 of the development plan and overall militate against the implementation of the objectives of the Regional Spatial and Economic Strategy 2019-2031 for the Eastern Midland Region and would, therefore, be contrary to the proper planning and sustainable development of the area.

15.0 Recommended Draft 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 30th March 2020 by JFOC Architects on behalf of McCourt Investments Ltd.

Proposed Development:

The application is for a residential development of 167 no. dwellings, 1 no. vehicular link at Kill Hill Lane, 1 no. vehicular connection to The Avenue, Earl's Court, two further pedestrian/cycle links at No. 16 The Green and 52 The Drive, Earl's Court, the provision of a new Heritage Trail and all associated and ancillary site development works.

Decision

Refuse permission for the above proposed development 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

1. It is considered that the proposed development would not comply with the Settlement Strategy for Kildare and would be a material contravention of the Kildare County Development Plan 2017-2023, as amended by Variation No. 1. The proposed development would, by providing greater growth in the Town than assigned in the Core Strategy, contravene policies SS1 and STP1 of the development plan and overall militate against the implementation of the objectives of the Regional Spatial and Economic Strategy 2019-2031 for the Eastern Midland Region and would, therefore, be contrary to the proper planning and sustainable development of the area.

Una O'Neill
Senior Planning Inspector

26th August 2020

Appendix A

1. Development Applications Unit.
2. Joseph and Yvonne Kessie.
3. Michael Loughnane.
4. Aaron and Angela Kinnear.
5. Allison O'Reilly.
6. Amanda Cranny.
7. Andrea and Darren Murphy.
8. Andrew and Aisling Long.
9. Attila Marton and Ildiko Veres.
10. Bridget Byrne.
11. Claire Kavanagh.
12. Deborah and Brian Casciani.
13. Donal and Rosin O'Brien.
14. Earls Court Residents.
15. Elizabeth Keane and Graham Jay
16. Fergus Brennan.
17. Gary Mason.
18. Ger and Stephanie O'Neill.
19. Gillian Fox.
20. Inland Fisheries Ireland.
21. Irish Water.
22. John and Mary Miley.
23. Jonathan and Sharon McCourt.
24. Kevin and Margret Gough.
25. Leesa Mulvaney.
26. Lorraine Moriarty.
27. Marina Jones.
28. Mary Cocoman.
29. Mr and Mrs Anthony O'Rourke.

30. National Transport Authority
31. Noel Flood.
32. Patrick and Kathleen Doherty.
33. Patrick Mulcahy.
34. Rebecca Croke.
35. Rory and Julie Huxham.
36. Rosemary McNulty.
37. Sean Anderson.
38. Siobhan and Wayne McGarry.
39. Sonia Kenny.
40. Stephen O'Byrne.
41. Thomas and Geraldine Martin.
42. Transport Infrastructure Ireland.