



An  
Bord  
Pleanála

## Inspector's Report ABP-309496-21

<b>Development</b>	Construction of 8 houses, outfall drains, access roads and footpaths, car parking and upgraded site access onto link road.
<b>Location</b>	Temple Mills, Yellowlough Cross, Shean, Rathangan, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	20/323
<b>Applicant(s)</b>	Thoal Properties Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	3 <sup>rd</sup> Party vs. Grant
<b>Appellant(s)</b>	Michael & Margaret Moore
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	10 <sup>th</sup> September 2021
<b>Inspector</b>	Stephen Ward

## **1.0 Site Location and Description**

- 1.1. The appeal site is located on the western fringe of the town of Rathangan in County Kildare, at the junction between the R419 Portarlington Road to the south and a new Link Road to the west. The link road extends further north to the R401 Edenderry Road. The area in the vicinity of the site comprises a mix of older bungalows and modern two storey dwellings.
- 1.2. To the north of the site is a modern residential development known as 'Temple Mills'. The latest phase of this development is under construction to the immediate north of the appeal site and the proposed development effectively constitutes a separate but related phase. To the east of the site is a detached dormer bungalow known as 'Glenbride', to the south are single storey bungalows along the R419, while the western side of the Link Road comprises undeveloped agricultural land.
- 1.3. There is an agricultural entrance gate backed by security fencing to the west side of the site along the new link road. There is a public footpath and cycle path running along the entire western and southern boundary of the site, which connects back into the town centre.
- 1.4. The subject site is a greenfield site with a stated area of 0.36 ha. It is defined by mature hedgerows and planting along the western and southern boundaries. The eastern boundary is defined by a hedgerow and tall mature trees surrounding the existing dwelling to the east. The site rises approximately 2.5m from south to north.

## **2.0 Proposed Development**

- 2.1. In summary, permission is sought for a development of 8 houses to form part of the overall permitted residential development (P.A. Ref. PL 16/955). The proposed development comprises the following:
  - 6 no. 2-storey 3-bed semi-detached houses
  - 2 no. 2-storey 3-bed detached houses
  - Provision of access roads, footpaths and 16 no. car-parking spaces
  - Upgraded site access onto the existing Link Road.

- 2.2 A Sustainable Urban Drainage System (SUDS) is proposed to manage storm water run-off from the proposed development. Rainwater from roofs will be diverted to the road/parking areas and directed via a petrol interceptor to an underground Stormtech Arched Chamber system attenuation tank. A hydrobrake flow restrictor will limit flows to 2.3 l/sec prior to discharge to the existing public surface water sewer.
- 2.3 The proposed foul sewers will follow the access road to discharge by gravity to the existing foul sewer on the regional road to the south. The water main distribution system will connect to the existing watermain on the Link Road to the west.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

By order dated 25<sup>th</sup> January 2021, Kildare County Council (KCC) issued notification of the decision to grant permission subject to 27 conditions. The conditions are generally standard in nature and scope.

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

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

The initial KCC planner's report is not included on the appeal file. I have viewed the report on the KCC online planning system, and it can be summarised as follows:

- The site is zoned 'C – New Residential' under the CDP 2017-2023.
- The variation to the CDP outlines that Rathangan has a target of 54 additional units and no other developments have since been granted on lands zoned 'C – New Residential'. There is therefore sufficient capacity to accommodate the proposed development.
- The proposed density of 22 units per ha. is consistent with the CDP density recommendations (20-35 units) for 'edge of centre sites'.
- The staggered layout for houses 4 to 8 means that some gable elevations will be prominent in relation to the front of adjoining houses.

- The design and orientation of House no. 3 adversely impacts on House No. 2.
- The scale of the proposed 2-storey dwellings will have a dominant and overbearing impact on the existing property to the east.
- House no. 8 is too close to the adjoining regional road and would be out of character with existing development and the established building line.
- The development complies with all the required floor area and private open space requirements as per the CDP standards.
- Taken together with the previously permitted development, the cumulative open space exceeds the minimum CDP requirements for the overall development.
- Boundary treatment proposals require clarification.
- Car-parking proposals (16 spaces) are adequate.
- Clarification is required on the areas to be 'taken in charge', pedestrian linkages and Part V proposals.
- A further Information request was recommended to address the above and other issues raised in technical reports.

3.2.2. After receiving further information, including a revised layout, the main aspects of the second planner's report (dated 10<sup>th</sup> December 2020) are as follows:

- The houses have been reorientated and moved further away from the property to the east, but no section drawing has been included as requested.
- House No. 8 has not been omitted as requested but is considered acceptable having regard to the applicant's arguments regarding context and precedent.
- It was considered that the applicant had failed to adequately respond to all items of further information and clarification was recommended in relation to the east-west sectional drawing; internal storage; electric car charging points and 'taking in charge' details; boundary treatment; and surface water attenuation proposals.

3.2.3. The final planner's report (dated 21<sup>st</sup> January 2021) stated that the further information items had been adequately clarified and that the development accords

with the provisions of the CDP. It recommends to grant permission subject to conditions and this recommendation forms the basis of the KCC decision.

#### 3.2.4. Other Technical Reports

Water Services: No objections subject to conditions.

District Engineer: No objections subject to conditions.

Environment Section: No objections subject to conditions.

Housing Section: Confirms that a Part V condition should apply to any permission. It also requests that details regarding House Type E2 (i.e. House No. 22 included in an earlier permission) be addressed by condition.

Roads, Transportation and Public Safety: The original report (30/4/2020) requested further information in relation to the road layout, sections, and construction details; road signage; electric car charge points; pedestrian facilities; swept path analysis; surface water drainage; and public lighting.

The subsequent report of 9<sup>th</sup> December 2020 requested clarification on the further information submitted relating to electrical charging areas; 'taking in charge' areas; and the location of attenuation tanks under car parking spaces.

The final report (18/1/21) confirms that there are no objections subject to standard conditions.

#### 3.3. Prescribed Bodies

Irish Water: No objections subject to standard connection agreement conditions. This submission is not included on the appeal file but is available on the KCC online planning system.

#### 3.4. Third Party Observations

Two submissions were received in objection to the development from Michael & Margaret Moore and Miriam McGuinness. The submission from Miriam McGuinness is not included on the appeal file but is available on the KCC online planning system. The issues raised in the submissions can be summarised as follows:

- The height of the proposed houses on an elevated site would be out of character with existing development along the Bracknagh Road.
- Overdevelopment of the site and substandard private/communal open space.
- Proximity and overlooking/overbearing of existing residences.
- Inaccurate, inadequate, and contradictory drawing details.
- Inadequate and dangerous car parking proposals.
- The proposal should be refused in accordance with the previous decision.
- Excessive density and inadequate road setback.
- Boundary treatment proposals.

## 4.0 Planning History

4.1. The following applies to the subject site:

**ABP Ref. PL09.300991:** Permission refused (10<sup>th</sup> December 2018) for the construction of 9 no. 3 bedroom dwellings. The reasons for refusal were as follows:

1. *Having regard to the character of the surrounding area, including the established residential dwelling to the east, it is considered that to permit the proposed development, which provides for dwellings closely overlooking the private curtilage of the existing dwelling, would seriously injure the residential amenity of occupiers of the existing dwelling, by virtue of overlooking, visual impact and incongruous development, would set an undesirable precedent for similar type development and would, therefore, be contrary to the proper planning and sustainable development of the area.*
2. *Having regard to the proposed layout and lack of active frontage to public road network, it is considered that the proposed development, which is described as an extension to a previously permitted residential development, fails to adequately integrate with the permitted scheme and would represent an unacceptable impact on the residential amenity of adjacent occupiers by virtue of visual impact and overlooking, would seriously injure the residential amenity of the area and would, therefore, be contrary to the proper planning and sustainable development of the area*

- 4.2. On a larger site (i.e. 'Temple Mills' to the north of the appeal site) within the same landholding, the applicant was granted permission (dated 9/6/17) under **P.A. Reg. Ref. 16/955** for the construction of 99 no. 2-storey dwellings and all associated works. This permission superseded a partially completed earlier permission (**P.A. Reg. Ref. 05/627**, granted 28/4/06) for the construction of 143 no. units and a creche.

## 5.0 Policy Context

### 5.1. National Policy/Guidance

- 5.1.1 The **National Planning Framework (NPF)** is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards 'compact growth', which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings. It contains several policy objectives that articulate the delivery of compact urban growth as follows:

- NPO 3 (c) aims to 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 4 promotes attractive, well-designed liveable communities;
- NPO 11 outlines a presumption in favour of development in existing settlements, subject to appropriate planning standards;
- NPO 33 prioritises new homes that support sustainable development at an appropriate scale relative to location;
- NPO 35 aims to increase residential density in settlements through a range of measures including infill development and site-based regeneration.

- 5.1.2 **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (DoEHLG, 2009)**, hereafter referred to as 'the Sustainable Residential Development Guidelines' sets out the key planning principles which should guide the assessment of planning applications for development in urban areas. Section 1.9 recites general principles of sustainable development and residential design, including the need to prioritise walking, cycling and public transport over the use of

cars, and to provide residents with quality of life in terms of amenity, safety and convenience. The guidelines promote lower densities in the general range of 15-20 units at the edge of small towns and villages, and also note the need to ensure the definition of a strong urban edge that defines a clear distinction between urban and the open countryside. A design manual accompanies the guidelines which lays out 12 principles for urban residential design relating to context, connections, inclusivity, variety, efficacy, distinctiveness, layout, public realm, adaptability, privacy and amenity, parking and detailed design.

- 5.1.3 The guidance document '**Quality Housing for Sustainable Communities**' (DoEHLG, 2007), identifies principles and criteria that are important in the design of housing and highlights specific design features, requirements and standards.

## 5.2. Development Plan

- 5.2.1. The operative plan for the area is the Kildare County Development Plan 2017-2023. CDP Variation No. 1 was adopted in June 2020 to reflect the changes arising from the NPF and RSES and to revise the Core Strategy, including population and housing unit allocation. Rathangan is identified as a 'Town' in the settlement hierarchy and Table 3.3 identifies a 'dwellings target' of 54 units from 2020 to 2023.
- 5.2.2. Section 3.4.6 outlines that all settlements should be developed in a sequential manner, with suitable undeveloped lands closest to the core and public transport routes being given preference for development in the first instance.
- 5.2.3. Section 4 of the CDP deals with 'Housing' and aims to facilitate the provision of high quality residential developments at appropriate locations in line with the settlement strategy, and to provide appropriate densities, mix of house sizes, types and tenures in order to meet a variety of household needs and to promote balanced and sustainable communities. Table 4.2 sets out indicative density levels and states that those for 'edge of small town/village' sites are '15-20 units per ha with lower density in some cases'.
- 5.2.4. Section 15 'Urban Design' aims to create vibrant settlements where residents can benefit from quality urban living. It sets out guidance in relation to 'greenfield edge' development (15.5.2) and includes guiding principles and detailed considerations for



urban design and layout. Section 17 sets out 'Development Management Standards' relating to a wide variety of issues and development types.

- 5.2.5. Volume 2 (Section 1) of the CDP aims to provide a coherent framework for the development of small towns, including Rathangan. The Rathangan Small Town Plan provides for residential development on 8 key sites (comprising c. 24 ha), while also encouraging appropriate infill development on suitably zoned sites.
- 5.2.6. The site forms part of a larger landholding (including 'Temple Mills') zoned 'C8' on the Zoning Map 'V2-1.7A', the objective for which is *'To provide for new residential development'*. The Plan notes that *'This zoning provides for new residential development and associated ancillary services. Permission may also be granted for home based economic activity within this zone, subject to the preservation of residential amenity and traffic considerations. New residential areas should be developed in accordance with a comprehensive plan detailing the layout of services, roads, pedestrian and cycle routes and the landscaping of open space.'*
- 5.2.7. The Objectives Map 'V2-1.7B' shows provision for a roads/junction objective to the west of the site and footpath/cycle track to the south, both of which have been completed insofar as the extent of the appeal site perimeter.

### 5.3. Natural Heritage Designations

There are no European sites designated under the Habitats Directive located within the vicinity of the site.

### 5.4. Preliminary Examination Screening for Environmental Impact Assessment

- 5.4.1. An Environmental Impact Assessment (EIA) Screening Report was not submitted with the application. With regard to EIA thresholds, 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.)

- 5.4.2. It is proposed to construct a residential development containing just 8 dwelling units. Therefore, the number of dwellings proposed is well below the threshold of 500 dwelling units. The site has an overall area of c. 0.36 ha and is not located within a ‘business district’. The site area is therefore well below the applicable threshold of 10 ha.
- 5.4.3. The site is undeveloped at present and consists of grassland. It is largely surrounded by residential development, some of which is similar to the nature and density of the proposed development. The introduction of a residential development will not have an adverse impact in environmental terms on surrounding land uses.
- 5.4.4. The site does not include any Protected Structures and is not within an Architectural Conservation Area or a Zone of Archaeological Protection. The proposed development is not likely to have a significant effect on any European Site (as outlined in Section 8.0 of this Report). There is no hydrological connection present such as would give rise to significant impact on nearby water courses (whether linked to any European site or other sensitive receptors).
- 5.4.5. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing/mixed-use development in the area. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Kildare County Council, upon which its effects would be minimal.
- 5.4.6. Having regard to:
- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
  - The location of the site on lands that are zoned ‘New Residential’ under the provisions of the Kildare County Development Plan 2017-2023 and the results of the accompanying Strategic Environmental Assessment undertaken in accordance with the SEA Directive (2001/42/EC),
  - The location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of development in the vicinity,

- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended) and the mitigation measures proposed to avoid significant effects by reason of connectivity to any sensitive location,
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that, by reason of the nature and scale of the proposed development and the location of the subject site, that the proposed development would not be likely to have significant effects on the environment and that, on preliminary examination, an Environmental Impact Assessment Report (EIAR) or a determination in relation to the requirement for an EIAR was not necessary in this case (See Preliminary Examination EIAR Screening Form).

## **6.0 The Appeal**

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

The decision of KCC to grant permission has been appealed by Michael & Margaret Moore of “Glenbride”, Rathangan (i.e. the existing dwelling to the east of the site).

The grounds of appeal can be summarised as follows:

- The prevailing height of development in the vicinity of the site is single storey.
- The large 2-storey dwellings on the highest point of the site will result in a serious visual impact, overlooking, overbearing, and interference with the residential amenities of the appellants’ property.
- A review of existing permissions (P.A. Reg. Refs. 16/995, 16/377 and 18/1522) indicates a total of 182 units available in Rathangan, which is more than adequate for the CDP requirement of 54 units.
- The appropriate density for the site is 15-20 units per ha. The proposed density of 22 units per ha. is excessive.

- The proposed layout is poor, with no open space and parking distanced from the proposed units.
- The proposed building setback does not meet CDP requirements (Table 17.8) of 31 metres from the regional road to the south and is not in accordance with the established building line or pattern of development.
- Boundary treatment proposals for the appellants' site was not shown on the site layout plan submitted 22<sup>nd</sup> December 2020.
- The applicant did not comply with the request of the planning authority to omit or change some houses and the site section/level details are inaccurate.
- The application fails to respond to the previous reasons for refusal (ABP Ref. 300991-18).

## **6.2. Planning Authority Response**

The Planning Authority's response confirms that it has no further comments or observations to make on the appeal.

## **6.3. Observations**

None.

## **6.4 Prescribed Bodies**

None.

# **7.0 Assessment**

## **7.1. Introduction**

Having examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, and having inspected the site and had regard to relevant local/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Zoning & Policy
- Design & Layout
- Residential Amenity
- Traffic

## 7.2. Zoning & Policy

- 7.2.1. The site is zoned as 'C – New Residential' in accordance with the Rathangan Small Town Plan in the CDP, the objective for which is '*To provide for new residential development*'. Accordingly, I am satisfied that the proposed residential use is consistent with the CDP zoning objective for the site.
- 7.2.2. The policies and objectives of the CDP generally reflect the aims of the NPF with regard to promoting more compact and sustainable forms of development within the existing built-up footprint of settlements. Having regard to the extent of existing and permitted to the north, south and east of the site, it is considered that the development of this infill site would, in principle, be consistent with that approach.
- 7.2.3. I note that the adoption of CDP Variation No. 1 has resulted in a revised 'dwellings target' for Rathangan of 54 units from 2020 to 2023, and that the appeal argues that the existing permissions (P.A. Reg. Refs. 16/995, 16/377 and 18/1522) for a total of 182 units already meet this target. I have reviewed the quoted permissions and find that the combined total of units permitted under 16/955 and 16/377 is 171 units, and that 18/1522 simply permitted amendments to the boundaries of 16/377. It should also be noted that both 16/955 and 16/377 were permitted on 9<sup>th</sup> June 2017, significantly prior to the adoption of the CDP variation in June 2020, and that the revised 'dwellings target' is based on growth projections over the remainder of the plan period (i.e. 2020 to 2023). While the planning authority reports or the appeal submission do not refer to any permitted residential developments during this period (i.e. 2020 – 2023), I note that P.A. Reg. Ref. 20/717 was granted on 31<sup>st</sup> March 2021 for the construction of 10 houses. Accordingly, taken together with the 10 permitted houses, I do not consider that the proposed 8 units would exceed the CDP target of 54 units for the period of 2020 to 2023. In any case, I consider that the current

proposal for just 8 units would not have a significant impact on housing targets and would not materially contravene the Development Plan.

- 7.2.4. The proposal for 8 residential units on a site area of 0.36 hectares equates to a density of c. 22 units per hectare. I note that Table 4.2 of the CDP outlines 'general density parameters'. These are based on the Sustainable Residential Development Guidelines and recommend '15-20 units per ha with lower density in some cases' for 'Small Towns' like Rathangan. Table 4.1 also refers to the consideration of densities less than 15-20 units per ha, but I consider that this reflects an alternative approach to the generally recommended parameters of 15-20 units. While I acknowledge that the proposed density exceeds the 15-20 units per ha range, I would submit that the CDP recommended range is only a general design parameter and that variations to the range can be accepted. The proposed density of 22 units per ha only marginally exceeds the range and I consider that the increased density is appropriate in the interest of creating a strong urban edge at this prominent junction, which would be consistent with the provisions of the Sustainable Residential Development Guidelines. Accordingly, I consider that the proposed density is acceptable at this location and would not materially contravene the CDP policies.
- 7.2.5. With regard to the housing type/mix, it is proposed to provide 6 no. 3-bed semi-detached houses and 2 no. 3-bed detached houses. In light of the limited number of units and the character and density of surrounding development, I do not consider it feasible to provide a wide range of house types/sizes in this case and I have no objection in this regard.
- 7.2.6. Having regard to the above, I consider that residential development of the scale and density proposed would be consistent with the zoning for the site and the applicable local, regional and national policies aimed at consolidating towns and promoting sustainable development. The suitability of the character, design and layout of the proposed development will be assessed further in the following sections.

### **7.3 Design and Layout**

- 7.3.1. The proposed layout is based on a curvilinear arrangement of houses that generally aligns with the permitted houses to the north and the Link Road to the west. All houses 'front' onto the Link Road, while House No. 8 proposes a 'dual-aspect'

approach onto both the Link Road and the regional road to the south. The proposed approach would provide continuous frontage along both adjoining roads, which addresses some of the concerns raised in the Board's previous refusal.

- 7.3.2. A new access road would be provided off the Link Road and pockets of communal car-parking spaces are to be interspersed within a landscaped green area along the western site boundary to the front of the houses. Private gardens are proposed to the rear of the houses along the eastern site boundary. The gardens range in area from 80 – 200m<sup>2</sup>, and in depth from 9.8 to 20 metres. The substantial hedgerows along the western and southern site boundaries will be largely retained.
- 7.3.3. The proposed houses are 2-storey with pitched roofs and a maximum height of 8.3 metres. External finishes will consist of plaster / dash plaster walls and a slate / concrete tile roof covering. House types A, B, & B1 (units 1-4) are of a similar and somewhat traditional design consisting of a narrow plan form, a high roof pitch, and central gable projections to the front. House types C, D, and D1 (units 5-8) have a deeper plan form, but are consistent with the character of types A, B, and B1. House No. 8 (type D1) includes a dual aspect with a gable-fronted aspect to the west and a central gable projection to the regional road to the south.
- 7.3.4. I acknowledge that the height and scale of the proposed dwellings exceeds that of the older single-storey/dormer housing stock along the regional road, including the appellants' house to the east. However, given the zoned status of the site within the built-up footprint of the town, I consider that the proposal should be viewed in the context of more recent suburban development, and particularly the adjoining development to the north. In that context, I do not consider that the height or scale of the proposed dwellings is excessive. And although the character of the proposed houses is more traditional compared to the permitted development to the north, I consider that the proposed development would satisfactorily integrate with the existing layout to the north and provide an appropriate transition between older and modern development at this location.
- 7.3.5. I note that the appeal raises more pressing concern about the impact on existing development to the east and south of the site, along the adjoining regional road. In this respect I would concur with the applicant's view that there is not a strong established building line at this location. The land immediately west of the Link Road

is undeveloped and the appellants' house to the east is largely screened by mature vegetation that will also screen the proposed development on the eastern approach to the site. And although the appellants' property is significantly setback from the road, I do not consider that this forms part of any identifiable building line. Further east, I note that the Glebe Court development does not establish a strong building, with only isolated houses facing 'side-on' and with a limited setback from the adjoining regional road. I note that Table 17.8 of the CDP requires a 31m setback for regional roads, but this relates to development in 'rural areas' and is not applicable in this case.

- 7.3.6. Having regard to the above, I do not consider that the height, scale or character of the proposed development would detract from the character of the area. The proposed layout satisfactorily addresses the Board's reasons for refusal under the previous appeal and integrates with permitted development to the north and the Link Road to the west. The proposal provides an aspect to the regional road to the south and does not impinge on any established building line at this location. The retention of mature hedgerows along the site boundaries will also help to assimilate the proposed development into its surroundings. Accordingly, I have no objection in relation to the design and layout of the proposal and its impact on the visual amenity and character of the area.

## **7.4 Residential amenity**

### Proposed Houses

- 7.4.1. I have reviewed the target/minimum areas for dwellings as set out in '*Quality Housing for Sustainable Communities*' (Table 5.1) and the CDP (Table 17.4) and I note that gross floor areas for each of the proposed houses exceeds the requirements for a 3-bed house (100m<sup>2</sup>). The proposals also meet the individual and cumulative requirements for living rooms/areas, storage, and bedrooms for a 3-bed/5-person house as per '*Quality Housing for Sustainable Communities*'. There is, therefore, no objection in this regard.
- 7.4.2. Regarding private open space, rear gardens are proposed for all houses and range from 80 – 200m<sup>2</sup>. These proposals significantly exceed the minimum requirements



as per Table 17.7 of the CDP (i.e. 60m<sup>2</sup> for 3-bed units) and will ensure a good standard of amenity for the residents.

#### Communal Open Space

- 7.4.3. I note that no dedicated communal open is proposed in the development. Section 17.4.7 of the CDP sets out the requirements for public open space in residential developments, which is stated to be a minimum of 15% for greenfield sites. I note that the CDP standards and guidance is consistent with the Sustainable Residential Development Guidelines, which also state that a more flexible approach should be taken with emphasis on qualitative rather than quantitative standards.
- 7.4.4. Having regard to the limited size and configuration of the site, as well the need to provide an appropriate density and strong urban edge, I consider that the delivery of a quality open space would be difficult on this site. Therefore, consistent with the approach of the planning authority, and given that the appeal site will effectively constitute another phase of the previous permission, I consider it appropriate to assess the cumulative open space requirements of the current proposal and the previously permitted development (P.A. Ref. Reg. 16/955).
- 7.4.5. My review of the planning history finds that 9,600m<sup>2</sup> of amenity space was permitted as part of a site area of 5.03ha under Ref. 16/955. Therefore, even with the addition of the appeal site (0.36), the already permitted 9,600m<sup>2</sup> would still equate to 17.8% of the cumulative area (5.39 ha). Accordingly, I am satisfied that adequate communal open space will be provided within the overall development and I have no objection in this regard. It should also be noted that the private open space provided for the individual houses significantly exceeds the minimum requirements, thereby ensuring that the absence of dedicated communal space at this location will be suitably mitigated.

#### Impacts on adjoining properties

- 7.4.6. At the outset I wish to address some of the concerns raised in the appeal about the impact of the site levels. The appeal quotes from the applicant's 'Engineering Drainage Report', which states that the site rises 2.5m from east to west (71 – 73.5m). I also note that the KCC Planner's Report relied upon this information. However, it is clear to me that the applicant's report mistakenly refers to 'east to west' when it should have stated 'south to north'. This is confirmed by the applicant's

drawings (e.g. 'Foul & SW Drainage Layout Plan', Drawing No. C02, Revision F, Jul 2017) and was evident upon my site inspection. There is, in fact, no such significant increase in site levels from east to west.

- 7.4.7. On the question of **overlooking and privacy**, I note that Section 17.2.4 of the CDP generally requires a minimum distance of 22m between opposing above-ground floor windows for habitable rooms. The Sustainable Residential Development Guidelines advise that such requirements should be applied flexibly depending on the site context.
- 7.4.8. I note that the separation distance from the eastern site boundary ranges from 9.8m to 20m. The east-facing rear elevations for houses 1-4 do not include above-ground windows for habitable rooms. Those for houses 5-8 do include bedroom windows. The western elevation of the appellants' property includes 3 small windows at ground floor level but does not include any windows above ground floor level. There is substantial mature vegetation along the site boundary to the front and rear of the appellants' property.
- 7.4.9. I am satisfied that the privacy of ground floor windows can be satisfactorily protected by boundary treatment and this issue can be addressed by condition. In the absence of any opposing windows above ground floor level in this case, I have no objection in relation to the impacts on the windows of the appellants property. I would acknowledge that the curtilage of the appellants' property should also be protected as appropriate, but I consider that the absence of first-floor windows in habitable rooms to the rear of houses 1-4 and the proposed separation distance satisfactorily addresses this matter. While there are bedroom windows to the rear of houses 5–8, I note that the distance to the appellants' front garden ranges from 11.5m to 18.5m, which I consider to be an acceptable distance to prevent significant overlooking impacts. I note that the layout of houses 5-8 is similar to that previously refused by the Board and that the Board's decision raised concern about the position and proximity of the houses to the appellants' property. However, the increased separation distance now proposed (increasing from 11.5m to 18.5m) is a significant improvement on that previously proposed (ranging from 8.5m to 10.5m) and that it satisfactorily addresses the previous reasons for refusal. I would also consider that front garden areas are not as sensitive to privacy impacts given that they generally

adjoin the public road, and that the existing front garden benefits from mature tree/hedgerow screening.

- 7.4.10. The proposed houses overlook the public roads to the south and west and I am satisfied that they are adequately separated from any existing properties in these directions. The proposed houses align with the permitted houses to the north and house no. 1 does not include any windows in the side elevation.
- 7.4.11. On the issue of **overshadowing and light**, Section 17.2.5 of the CDP states that development proposals of a significant height in close proximity to existing development may require daylight and shadow projection diagrams, and that the recommendations of Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (BRE 1991) or Lighting for Buildings Part 2 1992: Code of Practice for Day Lighting B.S. 8206 and any updates to these documents should be followed as a minimum in this regard. I note that the applicant has not submitted an analysis of daylight and sunlight impacts but I do not consider the proposed development to be of 'significant height' as referred to in the Development Plan. Accordingly, there is no mandatory Development Plan requirement to submit a daylight/sunlight analysis.
- 7.4.12. I would highlight that the BRE guidelines allow for flexibility in their application, stating in paragraph 1.6 that *'Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design'*. The BRE Guide notes that other factors that influence layout include considerations of privacy, security, access, enclosure, microclimate etc., and states that industry professionals would need to consider various factors in determining an acceptable layout, including orientation, efficient use of land and arrangement of open space, and these factors will vary from urban locations to more suburban ones. I also note that the BS (2008) document has been replaced by the updated British Standard (BS EN 17037:2018 'Daylight in buildings').
- 7.4.13. With regard to *'light from the sky'*, Section 2.2.4 of the BRE guide outlines that loss of light to existing windows need not be analysed if the distance of each part of the new development is three or more times the height above the centre of the existing window. Using the appellants' property as a worst-case scenario given that it is closest to the proposed development, I estimate that the separation distance between the ridge height of House No. 4 and the appellants' property is 27 metres.

Using estimated levels of 72.5m OD for the centre of the appellants' closest existing window and 80.15m OD for the ridge height of House No. 4, I consider that the proposed height above the existing window can be taken as 7.65m. Given that the separation distance (27m) is c. 3.5 times that height, I am satisfied that further assessment in this regard is not required and that daylight to existing windows will not be significantly affected by the proposed development.

7.4.14. On the question of '*sunlight*', Section 3.2.7 of the BRE Guide confirms that a full calculation of sunlight potential for existing rooms/windows is not necessary if the test outlined in paragraph 7.4.13 above is met. On this basis, I am satisfied that further assessment is not required and that existing rooms / windows are not likely to experience significant adverse sunlight impacts as a result of the development.

7.4.15. Regarding sunlight for gardens and open spaces, the BRE guide recommends that at least half of a garden or amenity area should receive at least 2 hours of sunlight on 21<sup>st</sup> March. It also states that, if as a result of the development, the area which can receive 2 hours of sunlight on 21<sup>st</sup> March is less than 0.8 times its former value, then the loss of sunlight is likely to be noticeable. The application does not include a detailed calculation in this regard. However, considering that the proposed houses are located to the west and north of existing houses, sunlight impacts on garden spaces would be limited to the later hours of the day. Accordingly, having regard to the orientation, relationship, and distance from existing gardens/open spaces, I do not consider that the proposed development would reduce sunlight levels for any adjoining gardens to less than 2 hours on the 21<sup>st</sup> March or to less than 0.8 times its former value for any such measurement.

#### Conclusion on Residential Amenity

7.4.16. I consider that the internal design and floorspace provided for the proposed houses is acceptable and I consider that the absence of communal open space is acceptable in light of the communal space provided in the overall development and the generous private open space proposed for each individual unit. I have considered the impacts of the development on existing properties and I do not consider that the proposal would seriously detract from the residential amenities of surrounding properties by reason of overlooking, overshadowing/loss of light,

overbearing, or otherwise, and that the proposed development satisfactorily addresses the issues raised in the Board's previous refusal.

## **7.5 Traffic**

- 7.5.1 It is proposed to access the site via the existing Link Road between the regional roads to the north and south of the site. This road already serves the overall Temple Mills development of c. 150 houses and includes a wide carriageway, traffic calming measures, and cycle/pedestrian facilities on both sides. Having regard to the scale of the development, involving just 8 additional dwellings, I do not consider that it would result in significant intensification of traffic levels for the area.
- 7.5.2 The proposal accommodates 16 car-parking spaces for 8 dwellings, which complies with the Development Plan standards of 2 spaces per house as per Table 17.9. While the appeal has raised concerns about the layout of the proposed parking, I do not consider that spaces need necessarily be located within the curtilage of the proposed houses. I am satisfied that the proposed spaces are conveniently located, and that the communal layout will suitably accommodate the proposed houses and visitor parking.
- 7.5.3 I have examined the sightlines available at the proposed access onto the Link Road and at the junction between the Link Road and the regional road. Having regard to the existing road conditions and alignment, I am satisfied that adequate visibility exists and that the proposed development will not interfere with traffic safety at this location.
- 7.5.4 Having regard to the above, and consistent with the position of the planning authority, I have no objection to the proposed development on grounds of traffic volume or safety, subject to compliance with suitable conditions.

## **8.0 Appropriate Assessment – Screening**

- 8.1. The proposed development involves the construction of 8 houses and associated siteworks on a site of c. 0.36 hectares. It is proposed to connect to the existing surface water and wastewater network serving the area. The surrounding area is

composed of a mixture of farmland and artificial surfaces and is characterised by residential development of varying scale and character.

- 8.2. None of the submissions or observations received in connection with the application or appeal have raised the issue of Appropriate Assessment.
- 8.3. The nearest Natura 2000 sites are the River Barrow and River Nore SAC (c. 9km to the southwest), Pallardstown Fen SAC (c. 10km to the east), Moulds Bog SAC (c. 11km to the east), and The Long Derries, Edenderry SAC (c. 10km to the north). Having regard to the nature and scale of the proposed development and the significant distance of the site from Natura 2000 sites, I am satisfied that any potential for impacts is limited to the effects of surface water and foul water emissions to the surrounding drainage network.
- 8.4. With regard to surface water, the development incorporates appropriate management measures to regulate discharge flows in terms of quantity and quality. There is also limited potential for surface water contamination during construction works but I am satisfied that best-practice construction management will satisfactorily address this matter. I consider that there would be significant dilution capacity in the existing drainage network and I am satisfied that there is no possibility of significant impacts on European sites from surface water associated with the development.
- 8.5. The wastewater emissions from the development will result in an increased loading on the Rathangan WWTP. However, having regard to the limited scale of the development and the associated discharges, I am satisfied that there is no possibility that the additional foul water loading resulting from the development will result in significant effects on European sites in the wider drainage network.
- 8.6. Having regard to the above preliminary examination, it is concluded that no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site. No mitigation measures have been relied upon in reaching this conclusion.

## 9.0 Recommendation

Having regard to the above, and based on the following reasons and considerations, it is recommended that permission be granted subject to conditions.

## 10.0 Reasons and Considerations

Having regard to the location of the application site in an area zoned for residential development under the Kildare County Development Plan 2017-2023, the pattern of development in the area, the planning history for the site and surrounding area, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density at this location, would not seriously injure the residential amenities of surrounding properties or the visual amenity and character of the area, would be acceptable in terms of design and layout, and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 25th day of March, 2020, as amended by the further plans and particulars submitted on the 18<sup>th</sup> day of November, 2020 and on the 22<sup>nd</sup> December, 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

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

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

3. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise and dust management measures, environmental protection measures and traffic management arrangements.

**Reason:** In the interest of public safety, environmental protection, and residential amenity.

4. Hours of work shall be confined to 0700 to 1900 Mondays to Fridays inclusive, excluding bank holidays, and 0800 to 1400 hours on Saturdays. Deviation from these times will only be allowed in exceptional circumstances subject to the prior written agreement of the planning authority.

**Reason:** In the interest of residential amenities of surrounding properties and in the interest of clarity.

5. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and



construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

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

7. Prior to commencement of development, the developer shall enter into water and wastewater connection agreement(s) with Irish Water.

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

8. Public lighting shall be provided in accordance with a scheme, (which shall include lighting along pedestrian routes through open spaces) details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall comply with the mitigation measures for bats and shall be provided prior to the making available for occupation of any apartment.

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

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

marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

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

10. All of the communal parking areas serving the residential units shall be provided with functional electric vehicle charging points, and all of the in-curtilage car parking spaces serving residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** in the interest of sustainable transportation.

11. The access road, junction, turning areas, and parking areas serving the proposed development shall comply with the Design Manual for Urban Roads and Streets, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

12. The management and maintenance of the proposed access road and adjoining areas of open space and parking following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the road being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

13. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

**Reason:** In the interests of visual and residential amenity.

14. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:-

- (a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
- (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings and proposals for the retention of existing hedgerows along the southern and western site boundary;
- (c) details of proposed street furniture, including bollards, lighting fixtures and seating;
- (d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes and the provision of a 2 metre-high wall along the entire length of the eastern site boundary.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

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

15. Prior to the commencement of any house unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority, pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

**Reason:** To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

16. Prior to the lodgement of a Commencement Notice within the meaning of Part II of the Building Control Regulations 1997, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

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

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

connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion of the development.

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

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

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Stephen Ward  
Senior Planning Inspector

29<sup>th</sup> September 2021