



An  
Bord  
Pleanála

## Inspector's Report ABP-309929-21

<b>Development</b>	Construction of 2 buildings comprising of 49 apartments and a creche. This application is accompanied by a Natura Impact Statement (NIS).
<b>Location</b>	North of Louisa Park, Station Road, Leixlip, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	20108
<b>Applicant(s)</b>	Avoca Homes Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Avoca Homes Ltd.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	26 <sup>th</sup> October 2021.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. This appeal relates to a site of 0.398 hectares<sup>1</sup> located immediately north of Louisa Park on Station Road circa 1.3km to the northwest of Leixlip Town Centre in Co Kildare. The site which formerly accommodated a house (cleared following dereliction) historically formed part of the parent permission for the Louisa Park housing scheme (Kildare Co Co Ref 03839 04/369 ABP.PL09.203905) however development on the appeal site was not commenced and the site has remained undeveloped and fenced off from Louisa Park for over a decade. Louisa Park comprises a complex of houses and apartments ranging from two to four storeys. There have evidently been ongoing issues with regard to completion and compliance within the Louisa Park Development. The existing access road and footpath infrastructure is incomplete. Surface cover has not been provided to drainage manholes and gullies, footpaths and bin stores and surface water infrastructure has not been provided in accordance with the required standard. Bin stores originally permitted at basement level were not provided and instead have been provided in car parking area immediately adjacent to the appeal site.
- 1.2. The appeal site is largely overgrown with grass, mixed trees, and scrub vegetation. It occurs within a dip in the landscape with a level difference of 7.5m between the highest and lowest point of the site. Steeply sloping areas characterise the east, south and west boundaries with a roughly level area at the centre of the site where the ground level here sits approximately 3.5m below the ground level of the adjoining residential developments in Louisa Park and Rockingham Avenue. The Rye River flows within 160m to the north. The Royal Canal pNHA and Dublin – Mullingar train line run adjacent to the western boundary of the site. The designated Rye Water Valley / Carton SAC is immediately adjacent to the north and west of the site. The western boundary of the appeal site is defined by a steep embankment and fence up to the railway line. The eastern boundary is defined by a line of planting separating the site from Rockingham Avenue a mature estate of two storey detached dwellings.

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<sup>1</sup> Note the site extent was reduced in response to the Council's request for additional information. I have estimated that the alteration of the western redline boundary reduced the overall site area to circa 0.361hectares.

The southern boundary is defined by weathered and unsightly temporary fencing. The bin store for the Louisa Park development is located adjacent to the southern boundary. Immediately to the south of the site Louisa Manor comprises an L shaped 4 storey apartment block over a basement level car park. The building is reached via a central access spine road extending southward onto station road. There are a number of trees on the appeal site with twin lines of mature poplar trees close to the southern boundary and a row of cypress trees planted along the western side of the poplars. To the north is a wooded area associated with the Rye Water River.

- 1.3. Leixlip Louisa Bridge station is situated a short distance to the southwest of the site and there is a bus stop in close proximity on station Road. The Intel Campus is located within 500m to the northwest of the site.

## **2.0 Proposed Development**

- 2.1. The proposed development involves the construction of two 5 storeys over basement buildings which initially comprised of 50 no apartments and was subsequently revised during the course of the application to the local authority to 49 apartments and a creche. The apartment buildings Block A and Block B are aligned in perpendicular format creating a central courtyard open space area. The creche (92.2sq.m) is intended to cater for approximately 20 children with 90m<sup>2</sup> of secure outdoor play area.
- 2.2. I note that in response to the request for additional information revisions were made to the red line site boundary with regard to its western extent along the rail line and royal canal resulting in a reduction in overall site area. Other revisions to the proposal in response to the Council's request for additional information relate to the relocation of bin store location to the eastern part of the site to ensure greater accessibility and provision for a retaining wall at the bottom of the railway embankment and modifications to basement to address stability issues. In terms of unit mix the proposal involves the provision of 12 no 1-bedroom units. 33 no 2 bedroom units and 4 no 3 bedroom units.

- 2.3. All car parking and bicycle parking is accommodated at basement level, 1 parking space per unit is proposed and 116 bicycle stands. As regards open space an area of 1256sq.m is proposed.

### 3.0 Planning Authority Decision

#### 3.1. Decision

- 3.1.1 By order dated 15<sup>th</sup> March 2021 Kildare County Council issued notification of the decision to refuse permission for the following reasons.

*“It is considered that the existing access road and footpath infrastructure to the proposed development is substandard as the access road is laid to base course only and showing signs of rutting, there is no surface cover to drainage manholes and gullies, footpaths are undersized and in need of repair and the external bins have not been constructed as per previously permitted plans in the existing apartment building and are blocking access and car parking for the existing development which is also unmarked and surface water infrastructure is not built in accordance with standards affecting surface drainage. Having regard to this substandard arrangement it is considered that to permit the proposed development would exacerbate an existing undesirable situation and endanger public safety by reason of traffic hazard and obstruction or road users and therefore would not be in accordance with the proper planning and sustainable development of the area.*

*It is considered that a comprehensive Traffic Management Plan is required which addresses specifically how HGVs will operate on the narrow access road through the existing development and how pedestrians will safely pass through the existing estate during construction works. In the absence of this. it is considered that the proposed development would endanger public safety by reason of a traffic hazard and obstruction of road users and therefore would not be in accordance with the proper planning and sustainable development of the area.*

*Having regard to the lack of clarification of where construction car parking will be located and on the loading / unloading areas for HGVs, it is considered that the proposed development would endanger public safety by reason of a traffic hazard*

*and obstruction of road users and therefore would not be in accordance with the proper planning and sustainable development of the area.*

*Having regard to the absence of the existing apartment development within the submitted Road Safety Audit and to the recommendations of the submitted road safety audit not being incorporated into the proposed apartment block design, it is considered that the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users and therefore would not be in accordance with the proper planning and sustainable development of the area.”*

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

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

##### **3.2.1.1 The initial planning report sought additional information to include**

- Full set of floor plans.
- Detail of wayleaves, relevant landowner consent in respect of access.
- Contiguous elevation depicting neighbouring Rockingham Avenue.
- Additional photomontages from north.
- Demonstration of compliance with objective HC2.1 of the Leixlip Local Area Plan 2020-2023 regarding goof mix of housing types and sizes.
- Shadow Impact Assessment.
- Provision for childcare facility within the development.
- Noise management in light of proximity to Rail Station.
- Bin store considered excessively distant from Block B and problematic for occupants with mobility issues.
- Electric car charging point location to be clarified.
- Section east west through the site showing Royal Canal and Royal Canal towpath. Cross section north south through the underground car park access point.
- Response to issues raised in submission of Iarnród Éireann.

- Irish Water 450mm sewer traversing the site. Wayleave and possible diversion may be required. Pre- connection enquiry to be submitted.
- Firefighting supply requirements. Clarification with regard to drainage and attenuation proposals and additional SUDS measures.
- Additional detail with regard to flood risk.
- Consideration with regard to alternative construction access. Mitigation proposals Road Safety Audit.
- Construction management plan.
- One bedroom apartment considered inadequate in respect of storage.
- Autotrack details to show compliance with requirements of Technical Guidance Document B with regard to turning facilities for Fire Service. High reach vehicle access.
- Tree protection details having regard to location of trees outside the site boundary.
- Response to third party submissions.

3.2.1.2 Final Planners report considers that the proposal is acceptable in principle. The nature, scale and design is considered acceptable in terms of visual amenity, scale and height and represents an efficient use of the site in securing compact urban growth. However fundamental issues remain with regard to traffic safety. Refusal was recommended as per subsequent decision.

### 3.2.2. Other Technical Reports

3.2.2.1 Fire Officer's Initial report sought further information regarding compliance with technical Guidance Document B in respect of turning facilities for fire services and autotrack analysis. Demonstration of suitability of the podium structure to support the imposed loading of firefighting appliance also required. Following further information, report notes no objection subject to conditions. Applicant to obtain a fire safety certificate. Firefighting water supply of at least 1100 litres per minute for 60 minutes

at 2 bar or greater to be available for hydrants on a watermain or from an equivalent storage facility for more than 40metres from the development.

3.2.2.2 Senior Executive Engineer Water Services - no objection subject to conditions.

3.2.2.3 Housing Section report in relation to Parv V notes Housing Authority's preference for ground floor apartments whereas 3 no first-floor apartments are offered. Issue of adequate aggregate storage space for living area to be addressed and revisions to kitchen layout recommended.

3.2.2.4 Transportation Department notes concerns regarding substandard access road and footpath infrastructure. Traffic management plan required which should address specifically how HGVs will operate on the narrow access road through existing housing development. Existing apartment development is not included in Road Safety Audit and the shortfall in car parking is noted.

3.2.2.5 Area Engineer's report indicates no objection subject to conditions.

3.2.2.6 Water Services report Further information required. Liaison required with Irish Water regarding sewer traversing the site. Wayleave and possible diversion may be required. Clarification is required regarding taking in charge or ongoing management proposals. SUDS measures and surface water drainage proposals to be clarified and relevant consents demonstrated. Flood Risk Assessment details to be amplified with regard to pluvial flood risk and residual flood risk to be addressed in particular with regard to basement construction. Emergency access during flood events to be addressed. Following submission of additional information water services report indicates no objection subject to conditions including provision for robust drainage system, maintenance regime and flood risk management plan. Consideration is to be given to the ground floor apartment and basement flood warning and evaluation procedures. Records to be kept of flood risk mitigation and flood warning evacuation procedures which shall be communicated to all apartment owners occupiers.

3.2.2.7 Heritage Officer's Report. NIS has examined and analysed in light of best scientific knowledge with respect to the European Sites within the zone of influence on the proposed development the potential impact sources and pathways, how these could impact on the site's species of conservation interest and whether the predicted impacts would adversely affect the integrity of any Natura 2000 site. It has been concluded that the proposed development following an examination analysis and

evaluation of all relevant information including in particular the nature of the predicted impacts from the proposed development that the proposed development will not adversely affect (directly or indirectly) the integrity of the European site either alone or in combination with other plans and project. All mitigation measures outlined in the NIS shall be attached to any grant of permission.

#### 3.2.2.8 Environment Report – No objection subject to conditions.

### 3.3. Prescribed Bodies

3.3.1 Iarnród Eireann submission expresses concern with regard to the size and nature of the proposed development. Railway Safety Act 2005 places an obligation on all persons carrying out any works on or near the railway to ensure that there is no risk to the railway as a consequence of these works. The development proposes to construct a deep basement at the foot of a high embankment where the embankment has in the past required stabilisation (soil nailing). Concern that the construction may interfere with the ability of the embankment supporting the railway to drain freely as it has done up to this point. It is possible that some of the planning application is located on CIE / Irish Rail lands. If permission is to be granted a 2.4m high suitable designed solid wall to be erected by the applicant on their side of the existing boundary line. Maintenance of this wall to rest with the applicant and their successor in title. Provision to be made for security of the railway during works. Railway mounds and ditches to be preserved except where consent has been received. No additional liquid to discharge onto railway property. No building within 34m of the boundary treatment. Lights should not cause glare. Applicant to be aware of normal noise and vibrations emanating from railway operations. Railway has capacity and often operates 24 hours per day 7 days per week and noise mitigation should be addressed. The proposal to electrify the rail line should be noted.

3.3.2 Irish Water – Further information required. Feasibility of connection to be submitted.

### 3.4. Third Party Observations

3.4.1 Submissions received from the following third parties.

- John Kelly, 50 Louisa Park.



- Declan Williams, 27 Rockingham Avenue, Leixlip;
- John & Anne Lambert, 25 Rockingham Avenue.
- Rockingham Residents Association.
- Patrick Mc Devitt, 31 Rockingham Avenue.
- Graham Donlon and Caitríona Lee 100 Louisa Park,
- Shane Lawless, 7 Louisa Park.
- Louisa Park Owners Management Company. C/O Brendan Kearney, 85 Louisa Park
- Karen & Ronin Bergin, 165 Louisa Park.
- Althea and Luke McGuinness, 168 Louisa Park.
- Jeremy and Amanda Kelly, 18 The Walk, Louisa Valley.

3.4.2 The submissions raise common grounds of objection which I have summarised as follows:

- Site Notice illegible and poorly sited. Validity questioned.
- Inadequate open space.
- Construction impact on residential amenity and safety. Failure to submit construction management plan.
- Car parking inadequate.
- Excessive density.
- Capacity of foul treatment plant questioned.
- Ground investigation notes made ground. Potential site contamination issues.
- Surface water attenuation calculations questioned.
- Block B is excessively high and unduly proximate to two storey houses on Rockingham Avenue (within 4m of boundary) resulting in negative impact.
- Development is out of character due to height.

- Ventilation opening from underground car park of Block B facing onto Rockingham Avenue potential for noise and fumes.
- Visual impact. Previous permission was for a single 3 storey building comprising creche childcare facility at ground and first floor with commercial/office over and a total floor area 995 sq.m. New proposal 4,479sq.m/ 5 storey over basement is excessive and out of character.
- Contiguous elevations fail to include existing houses on Rockingham Avenue.
- Burlap fence between Rockingham and the site maintained by the residents. Concerns regarding security. A permanent boundary should be ensured.
- Overlooking / loss of privacy.
- No townscape visual impact assessment provided.
- Impact on one way system to basement car park.
- Impact on Rye Water Valley Carton Special Area of Conservation.
- Flooding. Issues with regard to existing storm water tank.
- Failure to complete Louisa Park to satisfactory standard. Boundary wall, footpaths, roadways and common areas incomplete. Communal bins area problematic. Existing issues should be resolved in advance of any permission.
- Geotechnical survey information required.
- Noise and vibration monitoring
- Future arrangements for maintenance of roadways.
- Negative Visual Impact. Question the accuracy of computer-generated images.

## 4.0 Planning History

**06/727** In 2007 Kildare County Council granted permission to Michael Fitzgerald properties Ltd for demolition of existing derelict house and the erection of 1 no 3 storey building with creche /childcare facility on ground and first floor and commercial office on the second floor.

## **Site to the south. Louisa Park.**

**19570** Application by Louisa Park Owners Management Company for (i) installation of steel vehicular access gates with stone piers at existing vehicular entrance (ii) construction of 1.2m high wall along extent from southwest4rn boundary (iii) provision of two pedestrian entrance gates with stone piers and (iv) all associated works necessary to facilitate the development.

Kildare County Council issued a split decision granting permission for the construction of a 0.6m high wall with .4m bow top painted railing above along the front southwestern boundary with 2m high railing in one section, with stone piers at existing vehicular entrance (no gate) provision of 1 pedestrian entrances with stone piers (no gate) and associated works.

Permission was refused for the installation of steel vehicular gate and 2 pedestrian access gates on the grounds that the proposal would give rise to a gated community reduce social and community integration and inclusion contrary to the policies of the Development Plan.

**04/369 (2004)** Permission granted Triman Developments Ltd for construction of 48 apartments which consists of 36 no 12 bed ground first and second floor apartment and 12 no 1 bedroom third floor apartments in 1 no 4-storey block over underground /underbuilding car parking. This permission was for a single block to replace the two apartment blocks omitted under condition 1 of 03/829 ABP PL09.203905.

**PI.09.203905 03/829** (2003) The Board overturned the decision of Kildare County Council and granted permission to Truman Developments for construction of 176 no residential units in blocks (A to J) comprising 136 apartments which consist of 102 no 2 bed ground 1<sup>st</sup> and 2<sup>nd</sup> floor apartments and 34 no 1 bed 3<sup>rd</sup> floor apartment in 7 no 4 storey blocks (A to G).

Conditions 1 removed blocks E and F in the northern portion of site to be omitted and any development of this portion of the site to be subject of a new application.

The reason for the condition was that the proposed layout of these blocks and relationship to each other and blocks to the northern end of the site was deemed unsatisfactory and the proposed surface car parking was unsatisfactory.

Condition 2 Duplex block H shall be shortened by the omission of two bays comprising 4 units and remaining structure shall be centrally located on this portion of the site with a landscape strip at each end of the block to achieve setback from the adjoining dwelling to the east and footpath to the west.

## **5.0 Policy Context**

### **5.1 National Policy**

- **National Planning Framework 2040**

National Strategic Outcome 1, Compact Growth, recognises the need to deliver a greater proportion of residential development within existing built-up areas. The activation of these strategic areas and achieving effective density and consolidation, rather than sprawl of urban development, is a top priority. Objective 2A identifies a target of half of future population growth occurring in the cities or their suburbs. Objective 3A directs delivery of at least 40% of all new housing to existing built-up will be based on performance criteria that seek to achieve well-designed high-quality outcomes to achieve targeted growth. Objective 35 promotes increased densities through measures including infill development, area or site-based regeneration and increased building height. Objective 13 states that in urban area, planning and related standards including in particular building height and car parking, will be

based on performance criteria that seek to achieve well-designed high-quality outcomes to achieve targeted growth.

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009) (the 'Sustainable Residential Development Guidelines').
- Design Manual for Urban Roads and Streets (DMURS) (2019).
- The Planning System and Flood Risk Management (including the associated Technical Appendices) (2009).
- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020) (the 'Apartment Guidelines').
- Urban Development and Building Height, Guidelines for Planning Authorities (2018) (the 'Building Height Guidelines').
- Architectural Heritage Protection- Guidelines for Planning Authorities (2011).
- Childcare Facilities – Guidelines for Planning Authorities (2001).

## **5.2 Local Policy**

- 5.2.1. The Kildare County Development Plan 2017-2023 and The Leixlip Local Area Plan 2020-2023 refer.

As set out in the County Development Plan Leixlip is identified as a Large Growth Town II in the Core Strategy, to which a target of 3,315 additional dwellings by 2023 is set.

Table 4.2 indicates that residential development on public transport corridors should be at densities between 50 per hectare.

Policy MD 1 is to ensure that a wide variety of housing types, sizes and tenures.

Development Management Standards are set out in Chapter 17.

Within the Local Area Plan the site is zoned B “Existing residential” The objective is “To protect and enhance the amenity of established residential communities and promote sustainable intensification”. Lands to the north are zoned F open space while lands to the west are zoned G3 Strategic Open Space.

### **5.3 Natural Heritage Designations**

The appeal site is party incorporated within the Rye Valley Carton pNHA.

The designated Rye Water Valley Carton SAC Site Code 001398 is located within 1m to the north of the site.

### **5.4 EIA Screening**

5.4.1 An Environmental Impact Assessment Screening report was not submitted with the application.

5.4.2 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.)

5.4.3 It is proposed to construct a 49-unit apartment development also incorporating a creche in two five storey over basement block with car and bicycle parking at basement level and landscaping and all associated works. The number of dwellings proposed is well below the threshold of 500 dwelling units noted above. The site has an overall area of .398 ha and is located within an existing built-up area but not in a business district. The site area is therefore well below the applicable threshold of 10 ha. The site is a brownfield infill site adjoining established residential development and transport infrastructure. The introduction of a residential development will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site (as discussed below) The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. 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 marginal.

5.4.4 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 for ‘Residential’ uses under the provisions of the Kildare County Development Plan and Leixlip Local Area Plan 2020-2023 and the results of the strategic environmental assessment of the Kildare County Development Plan, 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 residential 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 ensure no 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, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case.

## **6 The Appeal**

### **6.1.1 Grounds of Appeal**

6.1.1 The appeal is submitted by Declan Brassil and Company Ltd on behalf of the first party Avoca Homes Ltd. and it includes the following enclosures:

- Correspondence from Avoca Homes Ltd to Louisa Park Owners Management Company dated 16<sup>th</sup> October 2020
- A letter issued by Senior Executive Engineer Kildare County Council Building and Development Control Section to Mr Frank O Rourke, Consultancy and Project Management dated 31<sup>st</sup> March 2021
- An updated outline construction traffic and environmental management plan dated April 2021.
- Letter from Brendan Kearney, Director Louisa Park Owner's Management Company dated 6<sup>th</sup> April 2021

The grounds of appeal are summarised as follows:



- Appeal notes that the applicant acquired the appeal site post completion of Louisa Park and neither the applicant nor related companies or individuals had any connection or association with the developer of Louisa Park.
- Issues of incomplete and substandard works are acknowledged, and the first party has engaged with the management company and Kildare County Council to remedy these matters.
- Correspondence from Avoca Homes to Louisa Park Management Company details a commitment to the provision of upgrades and remediation measures for the benefits of the existing estate subject to grant of permission. Letter outlines a commitment, subject to obtaining planning permission, to part contribution (50% or capped at €40,000) towards fire safety works in 17 stairwells of apartment blocks A-E, full payment for a plaque at the entrance to the estate, full payment towards soft wash of all buildings, provision of temporary fencing at bin store<sup>2</sup> and provision of new bin store including any necessary planning application and replacement of existing attenuation tank.

6.1.2 Correspondence from Kildare County Council refers to application of the bond to finance the remedying of infrastructure deficiencies and the upgrade of Louisa Park Estate and acknowledging the commitment to undertaking a road safety audit of the existing estate in consultation with the applicant and Louisa Park Management Company and to implementing recommendations insofar as possible within the site constraints.

- Correspondence from Kildare County Council dated 31 March 2021 confirms that a bond of €331,170.95 secured as a condition of the permission 03/829 is available to be used towards the upgrade of the estate. This bond is to be used to remediate access road, manholes and gullies, footpaths and surface water infrastructure.
- Letter from Brendan Kearney, Director Louisa Park Owners Management Company notes previous submission to Kildare County Council and outlines subsequent positive engagement with Avoca homes and commitments with regard to remedial measures

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<sup>2</sup> I note that the temporary fencing around temporary bin stores has been provided.

within the existing Louisa Park Complex. On this basis support for the proposed development is indicated.

- Outline Construction Traffic and Environmental Management Plan was revised to provide additional information on traffic management proposals for construction activities. The update provides information and arrangements to the site and measures to ensure public safety during construction works and enhanced proposals for pedestrian safety during the construction phase including dedicated crossing points along pedestrian desire lines.
- Applicant has committed to working with Kildare County Council and Louisa Park Management Company to provide interim road surfacing works necessary.
- Section 4.6 of the updated CEMP provides additional information in respect of proposed construction car parking.
- Regarding the Road Safety Audit, the applicant has agreed with Kildare County Council that it will commission a Stage 3 Road Safety Audit (RSA) for Louisa Park outside the application boundary and will work with the stakeholders to implement recommendations to upgrade the footpath infrastructure where it is physically possible to do so.

## **6.2 Planning Authority Response**

6.2.1 The response of the Planning Authority is compiled by the Transportation and Public Safety Department asserts that from analysis of the appeal submission and the relevant correspondence Kildare County Council Roads Transportation and Public Safety Department is satisfied that the applicant has addressed the issues raised in the four reasons for refusal. There is therefore no objection to the development subject to:

- Delivery on the commitments outlined in correspondence from Avoca Homes to Louisa Park Management Company dated 16<sup>th</sup> October 2020.
- Louisa Park Estate bond €331,170.95 to be used to remedy infrastructure deficiencies and upgrade of Louisa Park Estate.

- Road Safety Audit Stage 2 and Stage 3 to be carried out by the applicant in respect of the proposed development, the existing Louisa Park Estate, the main access road and construction phase with full consultation with Kildare County Council and Louisa Park Management Company.
- Updated outline construction traffic and environmental management plan prepared by Pinnacle Consulting Engineers to be implemented to include a wheel wash facility with clean water and not power wash proposal.
- Mobility management plan to be implemented for the construction phase.

### **6.3 Observations**

#### **6.3.1 No submissions**

### **6.4 Further Responses**

- 6.4.1 Submission on behalf of the first party in response to Planning Authority response to the appeal by Declan Brassil and Company. Welcomes the submission of Kildare County Council. The conditions suggested by Kildare County Council are considered reasonable and appropriate. Note that the final sentence in the submission states that the Council requested the Board to uphold the decision to refuse permission which was included in error as confirmed in email from Kildare County Council appended.

## **7 Assessment**

7.1 The main issues arising in this appeal can be dealt with under the following broad headings:

- Principle of Development. Policy Context.
- Design, layout and Impact on Residential Amenities.
- Traffic, Access & Servicing
- Appropriate Assessment.

### **7.2 Principle of Development**

7.2.1 In considering the principle of development the proposal brings a disused formerly partially derelict site into productive use through the provision of high-density residential development on fully serviced, centrally located and accessible lands. In addition, the proposal provides for a completion of the existing Louisa Park Complex. The site is zoned existing residential within the current governing local area plan.

7.2.2 The National Planning Framework – Project Ireland 2040 published in February 2018 seek to guide strategic planning and development for the country over the next 20+ years, to ensure the population grows in a sustainable manner in economic, social and environmental terms. National Policy Objective 32 is to deliver 550,000 additional housing units throughout Ireland in a sustainable manner. The subject site is located centrally in Leixlip, close to high frequency transport, employment uses and community facilities. I consider that the site which is brownfield and infill is an underutilised urban site located within at strategic location with proximate accessibility to public transport and town centre facilities. The proposed apartments will provide increased diversity of housing to meet with future community needs. National Policy Objective 35 requires increased densities using increased building heights which in accordance with Objective 33 should be an appropriate in scale

relative to the location. I consider that the proposal represents an appropriate densification of an infill urban site.

7.2.3 In terms of Urban Development and Building Height Guidelines for Planning Authorities 2018, it is stated government policy that building heights must be generally increased in appropriate urban locations. The site is surrounded by a mix of two storey dwellings and four storey apartment buildings in Louisa Park. The provision of two five storey buildings represents an increase over prevailing building height however as the site sits below the level of the adjoining lands to the south and east the proposed buildings will sit below the level of the established Louisa Park apartment complex. (Parapet height is equivalent to the eaves height and 4.5m below ridge height of Louisa Park). Having regard to the context of the site in terms of established development character and location adjacent to the rail line and open space area I consider the location to be appropriate for increased building height. The site is located within an established residential area supported by a network of community and social facilities positioned within walking distance of the site and public transport and is eminently suitable for higher density development. Given the proximity and connectivity of Leixlip to Dublin and being a key employment centre in the Dublin Metropolitan Area (DMA) the policy context recognises a string demand for varied and mixed housing within Leixlip. Having regard to the foregoing I consider the principle of the proposed development to be welcome subject to detailed matters.

## **7.3 Design, Layout and Impact on Residential Amenities.**

7.3.1 As regards site layout the proposal provides two perpendicular blocks overlooking a landscaped courtyard. In terms of the Architectural quality, I note the design evolution and overview as set out within the Design Statement November 2019 by Ndba Architects. The report sets out the specifics of the proposed development and an analysis with regard to the 12 criteria applicable within the Urban Design Manual 2009. I note a number of commendable aspects of the proposed layout in terms of terminating views from the existing Louisa Park Development, undergrounding of car parking and provision of considered central landscaped open space area of 1255m<sup>2</sup>

(32% of the site area ensuring the prioritisation of pedestrian movement and provision of good quality public realm. As regards distinctiveness the proposal involves a distinctive contemporary architectural design to ensure its own character and sense of place. External finish provides for a buff-coloured brick with subtle variations in tone, dark grey powder coated aluminium cills as and *aluclad* window frames. Walls of the balconies are proposed in a light grey render to create a visual contrast to the brick on the facades and balustrades are proposed in glass. Wall to void design approach in the composition of the facades seeks to break up the massing and create dynamic sense of movement and variety. I consider that the design and architectural character integrates well with the scale, design and architectural character of the Louisa Park Development. The location and set back of the site from the public road to the south and open space to the west ensures that the site is not highly dominant from these vantage points as shown in the submitted photomontage viewpoints.

7.3.2 A concern arises with regard to the visual impact from Rockingham Avenue with particular having regard to the proximity of Block B within 3m of the eastern site boundary. Building block B is sited within 14m of the front elevation of the nearest two storey dwelling 31 Rockingham Avenue and will in my view give rise to an overbearing impact. I consider that further mitigation in terms of increased setback, landscape buffer is required in terms of this interface.

7.3.3 As regards site coverage, the proposal involves 27% site coverage well below the recommended maximum site coverage 50% for residential development as set out within the Kildare County Development Plan. The plot ratio of 1.13 is within the recommended range 1.0-2.0 for brownfield / town centre sites. The stated density equates to 123 units per hectare (I note that the reduction in size of the site would increase this to 136 units per hectare.) The development plan encourages higher residential densities at appropriate locations. Such development should ensure a balance between reasonable protection of existing residential amenity and the established character of the area. Having regard to the clear policy presumption at a national, regional and local level to promote a greater intensity of development on urban lands and the nature of the site as an underutilised serviced site within an urban area it is clearly an appropriate location for a higher intensity of development.

While the site in my view has the capacity to absorb higher density development provision needs to be made for design mitigation to ensure the suitable transition between the site and established residential development. In my view further mitigation is required with respect to the interface with Rockingham Avenue.

7.3.4 As regards housing mix, I note within the Leixlip Local Area Plan, the Policy HC2 - It is the policy of the Council to ensure that all new residential development provides for a sustainable mix of housing types, sizes and tenures and that new development complements the existing residential mix. It shall be an objective of the Council: HC2.1 to ensure that a good mix of housing types and sizes is provided in all new residential areas including each Key Development Area (KDA) and appropriate infill/brownfield locations to meet the needs of the population of Leixlip, including housing designed for older people and people with disabilities. I also note Specific Planning Policy Requirement 1 as set out in Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued under Section 28 of the Planning and Development Act, 2000 (as amended) December 2020 which provides that housing developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms. Statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence-based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s). The proposal involves a mix 12 no 1-bedroom (24.5%) units, 33 no two-bedroom units (67.3%) and 4 no 3-bed units (8.2%). The first party refers to the identified overprovision of 3 bed semi-detached dwellings in Leixlip and asserts that the proposal provides for a suitable range of alternative dwelling types to suit a range of potential residents. I note the argument raised within third party submissions with regard to the mix noting that the existing Louisa Park complex comprises predominantly 1 and 2 bed apartments and, on this basis, argues that the proposal would not give rise to a balance of accommodation types. The local authority however determined that on the basis of location in close proximity to major employment centre and Louisa Bridge Train Station the proposed mix is appropriate.

I consider that this argument is reasonable, and the proposed mix is considered to be acceptable in this context.

7.3.5 As regards the qualitative standards I note that all proposed units exceed the overall minimum apartment areas as set out in Sustainable Urban Housing: Design Standards for New Apartments 2018. On the question of orientation and aspect 80% of the apartments are dual aspect while all single aspect units are orientated either south or east overlooking the shared courtyard. This complies with SPPR4. Generous windows size ensure good daylight penetration to habitable rooms. Ground floor apartment units have ceiling heights of 2.9m in compliance with SPPR5. As regards SPPR 6 which requires a maximum of 12 apartments per floor core each apartment block has one lift where each the maximum number of apartments per floor is 5. As regards internal storage space standards and the housing quality assessment I note that the proposal meets the standards as set out in the Guidelines and would in my view provide for a good standard of residential amenity.

7.3.6 I note that the Leixlip local area plan policy HC2.2 requires that residential schemes in close proximity to heavily trafficked roads within/adjoining Leixlip are designed and constructed to minimise noise disturbance, follow a good acoustic design process and clearly demonstrate that significant adverse noise impacts will be avoided. In light of proximity to the rail line the Council sought further assessment of this matter in the request for additional information. TMS Environment Limited conducted an assessment as detailed in the report entitled “Inward Noise Impact Assessment Report” submitted in response to the request for additional information. The assessment concluded that the site is at negligible to low risk in terms of exposure to adverse noise impacts. All habitable rooms will achieve a good internal noise environment that will allow for natural ventilation via an open window. Balconies will be exposed to noise levels below 55dB  $L_{aeq\ 16hr}$  ensuring a good external noise environment. Communal areas also benefit from a good external noise environment.

7.3.7 As regards daylight and sunlight I note the Daylight and Sunlight Assessment Report by Digital Dimensions which was submitted in response to the request for additional information. The report assesses the impact of the proposed development for



daylight and sunlight on neighbouring buildings and the quality of daylight and sunlight within the proposed development. The report concludes that the proposal would result in minimal and imperceivable impact on adjacent residential structures. The availability of daylight to internal rooms of the adjacent dwellings at Louisa Park and Rockingham Avenue would not be impacted by the proposed development and the proposal would meet the BRE Guidelines. As regards daylight to the proposed development the assessment concluded that living spaces have an average daylight factor of 5% for well daylighted space. As regards amenity spaces the proposal does not give rise to an impact on neighbouring private amenity space and impact on public open space on Rockingham Avenue is not significant. As regards the proposed amenity areas it has been demonstrated that 98% of the amenity area would have sun on the ground for in excess of 2 hours on March 21<sup>st</sup> in excess of BRE criteria 50%.

7.3.8 As regards impact on established residential amenity I note that the distance of Block A to the existing Louisa Park apartments of 30.7m and the topography of the site provides for sufficient separation to mitigate any negative visual or amenity impacts in terms of overlooking or overbearing impact. The most sensitive receptors in this regard are the two storey dwellings on Rockingham Avenue. Block B presents within 14m diagonally from the closest dwelling No 32 Rockingham Avenue. I consider that this relationship is inappropriate in terms of both overbearing impact and overlooking. The application relies on trees and hedgerows outside the site boundary in terms of visual mitigation which I consider that a more robust landscaped buffer within the appeal site boundary is required on this interface. As regards overlooking, I consider that the extent of overlooking from proximate units will have a detrimental impact on established residential amenity. I note that Kildare County Council's planner suggested that additional design mitigation measures would be required in terms of overlooking from corner apartment units at third and fourth floor levels. In my view increased setback and further design mitigation is required to address these matters.

7.3.9 Having regard to the foregoing I have concluded that the siting, scale and design of Block B would result in an unacceptable degree of overlooking and overbearing impact of the established adjacent dwellings on Rockingham Avenue contrary to the

land use zoning objective for the site which seeks “To protect and enhance the amenity of established residential communities and promote sustainable intensification”. The proposal would in my view be seriously injurious to the established amenities of the area, depreciate the value of property in the vicinity and would therefore be contrary to the proper planning and sustainable development of the area.

## **7.4 Traffic, Access and Servicing**

7.4.1 I note that the four reasons for refusal as outlined in the decision of the Council related to traffic and transportation matters and were as follows:

*“It is considered that the existing access road and footpath infrastructure to the proposed development is substandard as the access road is laid to base course only and showing signs of rutting, there is no surface cover to drainage manholes and gullies, footpaths are undersized and in need of repair and the external bins have not been constructed as per previously permitted plans in the existing apartment building and are blocking access and car parking for the existing development which is also unmarked and surface water infrastructure is not built in accordance with standards affecting surface drainage. Having regard to this substandard arrangement it is considered that to permit the proposed development would exacerbate an existing undesirable situation and endanger public safety by reason of traffic hazard and obstruction of road users and therefore would not be in accordance with the proper planning and sustainable development of the area.*

*It is considered that a comprehensive Traffic Management Plan is required which addresses specifically how HGVs will operate on the narrow access road through the existing development and how pedestrians will safely pass through the existing estate during construction works. In the absence of this it is considered that the proposed development would endanger public safety by reason of a traffic hazard and obstruction of road users and therefore would not be in accordance with the proper planning and sustainable development of the area.*

*Having regard to the lack of clarification of where construction car parking will be located and on the loading / unloading areas for HGVs, it is considered that the proposed development would endanger public safety by reason of a traffic hazard and obstruction of road users and therefore would not be in accordance with the proper planning and sustainable development of the area.*

*Having regard to the absence of the existing apartment development within the submitted Road Safety Audit and to the recommendations of the submitted road safety audit not being incorporated into the proposed apartment block design, it is considered that the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users and therefore would not be in accordance with the proper planning and sustainable development of the area.”*

7.4.2 I note the response to the appeal by Kildare County Council compiled by the Transportation and Public Safety Department. It is noted that following review and analysis of the original application it was concluded that the proposed development would endanger public safety by reason of traffic hazard during the construction phase and operational phase by reason of incomplete and substandard works at the existing apartment development through which the site is accessed and refusal was therefore recommended. Following review of appeal submission Kildare County Council Roads Transportation and Public Safety Department is satisfied that the applicant has addressed the issues raised in the four reasons for refusal, that the applicant will appropriately manage traffic and pedestrian safety in the delivery of the proposed development and that the proposed development will enable a significant improvement in the standard of infrastructure amenities provided in the existing Louisa Park Estate.

7.4.3 I note that the Board has no role in terms of enforcement or compliance issues with respect to the historical permission and I am not aware of the full extent of outstanding compliance or enforcement matters with regard to the Louisa Park Development. I also acknowledge that as outlined within the appeal the current applicant was not involved in the original application or development of Louisa Park. However, the fact that the appeal site formed part of the original permission must also be acknowledged in terms of ensuring a holistic approach taking account of residents who have made their home within the development and ensuring proper planning and sustainable development.

7.4.4 I have a number of concerns with regard to the degree of certainty in terms of securing the satisfactory completion of the roadway infrastructure through the existing Louisa Park development to enable safe access to the proposed

development. As the existing Louisa Park Development including the access road serving the proposed site is outside the redline boundary it cannot be governed by any grant of permission in terms of the current appeal. I note the bond referenced within the grounds of appeal, a sum of €331,170.95. No detailed analysis is provided as to the adequacy of this sum to address the outstanding issues and no certainty is provided in terms of timelines for delivery of the necessary infrastructure. I note the Condition Report by Pinnacle Consulting Engineers Dated January 2021 submitted in response to the request for additional information which outlines a number of outstanding issues to be addressed including front boundary, footpaths, bin store, foul and drainage network survey and repair, spine road completion final wearing course, parking bays, public lighting, drainage and footpaths, surface water gulleys, public lighting. Other matters landscaping and open space are noted but not addressed in any detail. In light of the scale of outstanding issues and in the absence of certainty as to the satisfactory completion of necessary roadway infrastructure I consider that it has not been demonstrated that the proposed development would be acceptable from a traffic safety perspective. In considering basic residential amenities, I consider that the delay in terms of provision of basic roadway infrastructure and the resolution to the bin store location and layout is a most unsatisfactory situation. I consider that the matters raised in the Council's first and final reasons for refusal has not been overcome and it has not been demonstrated that the proposal would be acceptable from a traffic safety perspective.

7.4.5 I note that the redline site boundary was altered during the course of the application specifically in response to the request for additional information where the western boundary was revised, and the site area reduced from .398 hectares to an estimated .361 hectares. This apparently arose in response to the submission of Iarnród Eireann expressing concerns at the proposal to provide a deep basement excavation at the foot of a high embankment which had previously been subject to necessary stabilisation and suggesting that the site incorporated part of CIA / Irish Rail lands. I note anomalies in certain drawings in particular phasing layout drawings by Pinnacle Consulting Engineers PIN ZZ-ZZ-DR-F-101\_S2-P01 Revision P04 which shows variously the original and revised western boundary line. The submission by Pinnacle Consulting Engineers in response to further information request dated 27<sup>th</sup> January 2021 outlines that following on site meeting with Iarnród Eireann and

discussion on embankment it was agreed that a retaining wall would be placed at the bottom of the embankment. The retaining wall is subject to detailed design and the annotation on phasing drawings indicates that the retaining wall and associated drainage to be installed (subject to detailed design by others). As this retaining wall is outside the reline boundary and it is not clear as to who it is intended will be responsible for the design and construction of this retaining wall and it cannot be governed by condition in the event of a permission. Any future application on the site should provide clarity and certainty of delivery in relation to these matters.

7.4.6 I have concluded that whilst the principle of development is acceptable on the site the proposed layout would give rise to an overbearing impact with regard to Rockingham Avenue. Furthermore, in light of the constricted nature of the current redline boundary and in the absence of certainty with regard to the necessary and satisfactory completion of roadway and other infrastructure to serve the development the application has not demonstrated that the proposed development would be acceptable from a traffic safety perspective.

## **7.5 Appropriate Assessment**

### **Compliance with Article 6(3) of Habitats Directive**

**7.5.1** The requirements of Article 6(3) of the Habitats Directive, as related to screening the need for appropriate assessment of a project under Part XAB, Section 177U of the Planning and Development Act, 2000 (as amended) are considered fully in this section.

### **Background to the Application**

**7.5.2** The applicant has submitted a screening report for Appropriate Assessment as part of the planning application. This report is titled 'Screening Report & Natura Impact

Statement Information for Stage 1 Screening and Stage 2 Appropriate Assessment for a proposed development at Louisa Park Leixlip Co Kildare' prepared by Scott Cawley Ltd. (25<sup>th</sup> November 2019). The Stage 1 Appropriate Assessment Screening Report contains information required for the competent authority to undertake a screening for Appropriate Assessment. It provides information on, and assesses the potential for, the proposed development to impact on the Natura 2000 network within a possible Zone of Influence. The Screening Report has been prepared with regard to relevant guidance documents. The application was accompanied by, inter alia, a preliminary construction waste management plan and construction traffic and environmental management plan.

7.5.3 The applicant's Appropriate Assessment Screening Report concluded that 'Following an examination, analysis and evaluation of the relevant information including, in particular, the nature of the proposed development and the likelihood of significant effects on any European site, and applying the precautionary principle, it is the professional opinion of the authors that, on the basis of objective information, the possibility may be excluded that the proposed development will have a significant effect on any European sites other than the Rye Water Valley / Carton SAC, North Dublin Bay SAC, South Dublin Bay SAC, North Bull Island SPA and South Dublin Bay and River Tolka Estuary SPA. All other sites are located beyond the Zone of Influence and therefore any possibility of there being any significant effects on any other European sites may be excluded beyond all reasonable scientific doubt on the basis of objective information set out.....In the case of the Rye Water Valley / Carton SAC, North Dublin Bay SAC, South Dublin Bay Sac, North Bull Island SPA and South Dublin Bay and River Tolka Estuary SPA, for which the possibility of significant impacts cannot be excluded, the only likely significant risks to the European sites (in the absence of mitigation) arise from potential construction and operation related surface water discharges from the proposed development site and the potential for these effects to reach the downstream European sites. It was concluded therefore that likely significant effects on this European Sites required

mitigation. Therefore, the application for consent for the proposed development requires an Appropriate Assessment the preparation of a Natura Impact Statement.”

7.5.4 Having reviewed the documents and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

### **Screening for Appropriate Assessment – Test of likely significant effects.**

7.5.5 The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development would have any possible interaction that would be likely to have significant effects on a European Site. The proposed development is examined in relation to any possible interaction with European sites designated Special Areas of Conservation (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

### **Brief Description of the Development**

7.5.6 The applicant provides a description of the project on Pages 9-10 of the Screening Report. The development will consist of the construction of a 49-unit apartment development with a creche, underground car park in two blocks:

- Block A being 5 storeys above basement with recessed balconies containing 19 no 2 bed units and 6 no one bed units

- Block B being 5 storey above basement with recessed balconies, containing 4 no 3 bed units, 15 no 2 bed units and 5 no 1 bed units and creche at ground floor level<sup>3</sup>
- Provision of car parking spaces and bicycle parking spaces at basement level below Block A and Block B with landscaped podium above
- Provision of new vehicular access to site from Louisa Park; and
- Associated landscaping and site works.

7.5.7 Taking account of the characteristics of the proposed development in terms of its location and scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European Sites:

Construction related uncontrolled surface water / silt / construction related pollution

Habitat loss and fragmentation

Habitat disturbance / species disturbance (construction and operational)

## **Submissions and Observations**

7.5.8 A number of the third-party submissions raise concerns with regard to the potential impact on Rye Water Valley Carton SAC with particular concerns having regard to

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<sup>3</sup> Layout of Block B was modified in response to the request for additional information from the Council where one single bed unit was replaced with a proposed creche facility.



the proximity to the European site (within 1m) and potential impact arising from excavation and surface water pollution potential.

## **European Sites**

7.5.9 The development site is located immediately adjacent to the Rye Water Valley/Carton SAC. The redline boundary is circa 1m from the SAC boundary at its closest. The next closest Natura 2000 site is Glenasmole Valley SAC approximately 17km to the southeast. The Rye Water is a tributary of the River Liffey which discharges to Dublin Bay and the North Dublin Bay SAC, South Dublin Bay SAC. North Bull Island SPA and South Dublin Bay and River Tolka Estuary SPA lie circa 20km downstream. The European Sites that occur within the possible zone of influence of the development are presented in the table below. Having regard to the scale of the proposed development; the separation distances involved; and the absence of identified

pathways, I do not consider that any other European Sites fall within the possible zone of influence..

## Summary Table of European Sites within a possible zone of influence of the proposed development

European Site	List of Qualifying Interest / Special Conservation Interest	Distance from proposed development	Connections (Source, Pathway, Receptor)	Considered further in screening
<b>Rye Water Valley / Carton SAC 001398</b>	Petrifying springs with tufa formation [7220]  Narrow-mouthed whorl snail [1014]  Desmoulin's Whorl snail [1016]	1m	Indirect hydrological connection	Yes
<b>North Dublin Bay SAC 000206</b>	Mudflats and sandflats not covered by seawater at low tide [1140]  Annual vegetation of drift lines [1210]  Salicornia and other annuals colonising mud and sand [1310]  Atlantic salt meadows [1330]  Mediterranean salt meadows [1410]  Embryonic shifting dunes [2110]  Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120]  Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]  Humid dune slacks [2190]  Petalophyllum ralfsii (Petalworth) [1395]	24km east	Indirect Hydrological Connection	Yes
<b>South Dublin Bay SAC 000210</b>	Mudflats and sandflats not covered by seawater at low tide [1140]  Annual vegetation of drift lines [1210]  Salicornia and other annuals colonising mud and sand [1310]  Embryonic shifting dunes [2110]	21.8km east	Indirect Hydrological Connection	Yes

<b>North Bull Island SPA 004006</b>	Light-bellied Brent Goose [A046]	22.5km east	Indirect Hydrological Connection	Yes
	Shelduck [A048]			
	Teal [A052]			
	Pintail [A054]			
	Shoveler [A056]			
	Oystercatcher [A130]			
	Golden Plover [A140]			
	Grey Plover [A141]			
	Knot [A143]			
	Sanderling [A144]			
	Dunlin [A149]			
	Black-tailed Godwit [A156]			
	Bar-tailed Godwit [A157]			
	Curlew [A160]			
	Redshank [A162]			
	Turnstone [A169]			
	Black-headed Gull [A179]			
	Wetlands and Waterbirds [A999]			

<b>South Dublin Bay and River Tolka Estuary SPA 004024</b>	Light-bellied Brent Goose [A046]	18.4km east	Indirect hydrological connection	Yes
	Oystercatcher [A130]			
	Ringed Plover [A137]			
	Grey Plover [A141]			
	Knot [A143]			
	Sanderling [A144]			
	Dunlin [A149]			
	Bar-tailed Godwit [A157]			
	Redshank [A162]			
	Black-headed Gull [A179]			
	Roseate Tern [A192]			
	Common Tern [A193]			
	Arctic Tern [A194]			
	Wetland and Waterbirds [A999]			

### Identification of Likely Significant Effects

7.5.10 Surface waters generated during construction and/or operation could potentially carry silt, oils and/or further chemicals from the proposed development site into the Rye Water Valley Carton SAC. An accidental pollution event during construction or operation has the potential to affect water quality in the Rye Water as the outfall from the proposed surface water drainage network discharges to the river.

7.5.11 There is hydrological connectivity between the proposed development site and the Rye Water. The Rye Water joins the River Liffey approximately 1.9km downstream in Leixlip and the Liffey in turn drains to Dublin Bay in excess of 20km further downstream. Potential construction and operation-based surface water discharges

from the proposed development site gives rise to potential effects to reach the downstream European Sites.

- 7.5.12 There is no potential hydrogeological impact pathway between the proposed development and any European site. No invasive plant species were identified within the site. There is no risk that non-native invasive species could be spread or introduced to the Rye Water Valley/Carlton SAC.

### **Mitigation Measures**

- 7.5.13 No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

### **Screening Determination Significant effects cannot be excluded, and Appropriate Assessment required.**

- 7.5.14 The proposed development was considered in light of the requirements of Section 177U of the Planning & Development Act, 2000 (as amended). Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) could have a significant effect on European Site Nos. 001398, 000206, 000210, 0040006 and 004024, in view of the sites' Conservation Objectives, an AA (and submission of a NIS) is therefore required.

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

#### **Appropriate Assessment Screening**

- 7.5.15 The requirements of Article 6(3) as related to appropriate assessment of a project under Part XAB, sections 177U and 177V of the Planning & Development Act, 2000

(as amended) are considered fully in this section. The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive
- Screening the need for AA
- The Natura Impact Statement and associated documents
- AA of implications of the proposed development on the integrity of each European site.

### **Compliance with Article 6(3) of the EU Habitats Directive**

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

7.5.17 The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

### **Screening Determination**

7.5.18 Following the screening process, it has been determined that AA is required as it cannot be excluded on the basis of objective information that the proposed development of the provision of a 49 unit apartment development with creche facility,

individually or in combination with other plans or projects, will have a significant effect on the following European sites i.e. there is the possibility of significant effect:

- Rye Water Valley / Carton SAC 001398
- South Dublin Bay SAC 000210
- North Dublin Bay SAC 000206
- South Dublin Bay and River Tolka Estuary SPA 004024
- North Bull Island SPA 004006

### **The Natura Impact Statement (NIS)**

7.5.19 The application included a 'Natura Impact Statement' Screening Report and Natura Impact Statement Information for Stage 1 Screening and Stage 2 Appropriate Assessment for a Proposed Development at Louisa Park, Leixlip, Co Kildare 25/11/2019 prepared by Scott Cawley Ltd. (December 2019) which examines and assesses potential adverse effects of the proposed development on the five following European sites.

- Rye Water Valley / Carton SAC 001398
- South Dublin Bay SAC 000210
- North Dublin Bay SAC 000206
- South Dublin Bay and River Tolka Estuary SPA 004024
- North Bull Island SPA 004006

7.5.20 A desktop study was undertaken, and a habitat survey of the lands and environs was carried out in April 2019, to inform the NIS. The NIS was prepared in accordance with the provisions of Part XAB of the Planning & Development Act, 2000 (as amended)



and in accordance with the requirements of Council Directive 92/43/EEC. It considers the implications of the proposed development, on its own and in combination with other plans or projects, for European sites in view of the conservation objectives of those sites. It includes a scientific examination of evidence and data to identify and assess the implications of the proposed development for any European sites in view of the conservation objectives for those sites. Mitigation measures are considered in reaching a conclusion. The purpose of the NIS is to provide an examination, analysis and evaluation of the potential impacts and to present findings and conclusions in light of the best scientific knowledge in the field.

7.5.21 The conclusion of the NIS states ‘It has been objectively concluded by Scott Cawley Ltd., following an examination, analysis and evaluation of the relevant information, including in particular the nature of the predicted impacts from the proposed development, that the proposed development will not adversely affect (either directly or indirectly) the integrity of any European site, either alone or in combination with other plans or projects.’

7.5.22 I note that a number of third-party submissions raised concerns with regard to proximity to the Rye Water Valley Carton SAC and potential for excavation and construction processes and activities to adversely affect proximate SCIs.

7.5.23 I note that the Planning Authority was satisfied that subject to the mitigation measures as proposed during the construction and operational phases the proposed

development on its own and in combination with other plans and projects will not adversely affect the integrity of any Natura site.

7.5.24 Having reviewed the documents and submissions I am satisfied that the information allows for a complete assessment of the following European sites alone, or in combination with other plans and projects:

- Rye Water Valley / Carton SAC 001398
- South Dublin Bay SAC 000210
- North Dublin Bay SAC 000206
- South Dublin Bay and River Tolka Estuary SPA 004024
- North Bull Island SPA 004006

#### **Appropriate Assessment of Implications of the Proposed Development**

7.5.25 The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed. Guidance adhered to in the assessment includes: Assessment of Plans and Projects Significantly Affecting Natura 2000 sites: Methodological Guidance on the Provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (European Commission, 2001), Managing Natura 2000 Sites: The Provisions of Article 6 of the Habitat's Directive 92/43/EEC (European Commission, 2019), Communication from the Commission on the Precautionary Principle (European Commission, 2000) and Appropriate Assessment

of Plans and Projects in Ireland – Guidance for Planning Authorities (Department of Environment, Heritage and Local Government 2010 revision).

## **European Sites**

7.5.26 There are five sites subject to AA. A description of these sites and their Conservation and Qualifying Interests/Special Conservation Interests, including any relevant attributes and targets for these sites, are set out in the NIS, and summarised in Section 7.6.9 of this report as part of my assessment. The main aspects of the proposed development that could adversely affect the conservation objectives of the European sites:

- An accidental pollution event during construction or operation has the potential to affect water quality in the Rye Water and downstream in Dublin Bay as a result of contaminated surface water if of sufficient magnitude.

An accidental pollution event during construction or operation has the potential to affect groundwater quality locally and any groundwater dependant habitat downgradient in the Rye Water Valley/Carton SAC.

## **Rye Water Valley/Carton SAC**

7.5.27 The development has the potential to affect this SAC by way of polluting events by way of surface water resulting in habitat degradation as a result of hydrological impacts during construction and or operational stages of the proposed development. The Conservation Objective is to restore the favourable conservation condition of the petrifying springs with tufa formation habitat and the two snail species for which the site is designated. The risk of an accidental pollution event during construction or operation has the potential to affect water quality in the Rye Water as the outfall for the surface water drainage network discharges to the river. An accidental pollution event has the potential to undermine the conservation objectives of the Rye Water Valley Carton SAC by affecting composition and habitat distribution of Petrifying

Spring habitat. A surface water pollution event could undermine the conservation objectives by affecting the quality and extent of suitable wetland habitat that support the narrow-mouthed whorl snail and Desmoulin's whorl snail populations potentially affecting the species presence abundance and distribution. Mitigation measures are set out in Section 6.1.4 of the NIS. They include measures to protect surface water quality during construction and operation (e.g. control of run-off, provision of exclusion zones and barriers, sediment control measures, emergency response to accidental spillages, monitoring of surface water drainage, SUDS measures, rainwater harvesting, petrol interceptors).

- 7.5.28 The mitigation measures will ensure that surface water quality in the receiving environment is protected during construction and operation of the proposed development.
- 7.5.29 Section 7.1 of the NIS identifies other potential pollution sources that could cumulatively affect water quality in the receiving environment. The NIS considers that, as the proposed development itself will not have any effects on the conservation objectives of any European sites, and considering the protective environmental policies and objectives in the Kildare County Development Plan 2017-2023 and the Leixlip Local Area Plan 2017-2023<sup>4</sup> and more widely across all of the other land use plans that seek to protect surface water quality in the catchments that drain to Dublin Bay, there is no potential for any other plan or project to adversely affect the integrity of any European sites in combination with the proposed development.

### **Integrity test.**

- 7.5.31 Following the AA and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of Rye Water Valley/Cartron SAC in view of the Conservation Objectives of this site.

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<sup>4</sup> The Local Area Plan currently in force is the Leixlip Local Area Plan 2020-2023 which was adopted on 16<sup>th</sup> December 2019 after the publication of the NIS 25/11/2019.

This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

### **North Dublin Bay SAC**

- 7.5.32 The development has the potential to affect coastal estuarine and intertidal environments and natural conditions that support the conservation objectives of the qualifying interests of the North Dublin Bay SAC by way of an accidental surface water pollution event of sufficient magnitude to potentially affect the quality and distribution of the intertidal/coastal habitats and the fauna communities they support. The three different types of dunes and the petalworth flora species will not be affected as they are above/found above the high tide line.
- 7.5.33 Mitigation measures are set out in Section 6.2.4 of the NIS. They include measures to protect surface water quality during construction and operation (e.g. control of run-off, provision of exclusion zones and barriers, sediment control measures, emergency response to accidental spillages, monitoring of surface water drainage, SUDS measures, rainwater harvesting, petrol interceptors).
- 7.5.34 The mitigation measures will ensure that the surface water quality in the Rye Water, River Liffey and Dublin Bay is protected during construction and operation of the proposed development. Regarding 'in combination' effects the NIS considers there is no potential for any other plan or project to adversely affect the integrity of any European sites in combination with the proposed development. Following the AA and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of North Dublin Bay SAC in view of the Conservation Objectives of this site. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

### **South Dublin Bay SAC**

- 7.5.35 The development has the potential to affect the mudflats and sandflats, annual vegetation of drift lines and Salicornia and other annuals and embryonic shifting

dunes associated with this SAC by way of an accidental surface water pollution event of sufficient magnitude that could potentially affect the quality and distribution of the intertidal/coastal habitats and the fauna communities they support.

7.5.36 Mitigation measures are set out in Section 6.2.4 of the NIS. They include measures to protect surface water quality during construction and operation (e.g. control of run-off, provision of exclusion zones and barriers, sediment control measures, emergency response to accidental spillages, monitoring of surface water drainage, SUDS measures, rainwater harvesting, petrol interceptors). The mitigation measures will ensure that the surface water quality in the Rye Water, River Liffey and Dublin Bay is protected during construction and operation of the proposed development. The 'in combination' effects are as set out under Section 7.6.29 above. The NIS considers there is no potential for any other plan or project to adversely affect the integrity of any European sites in combination with the proposed development. Following the AA and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of South Dublin Bay SAC in view of the Conservation Objectives of this site. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects. obstacle

#### **South Dublin Bay and River Tolka Estuary SPA –**

7.5.37 The development has the potential to affect all Qualifying Interests of this SPA by way of an accidental surface water pollution event of sufficient magnitude that could potentially affect the quality of the intertidal/coastal habitats that support the special conservation interest bird species. It could potentially affect the abundance of prey fish species and quality of roosting sites for terns. It could potentially affect the use of the habitat areas by birds and have long-term effects on the SPA populations. The NIS states the grey plover is proposed for removal from the list of Special Conservation Interests.

7.5.38 Mitigation measures are set out in Section 6.2.4 of the NIS. They include measures to protect surface water quality during construction and operation (e.g. control of run-off, provision of exclusion zones and barriers, sediment control measures,

emergency response to accidental spillages, monitoring of surface water drainage, SUDS measures, rainwater harvesting, petrol interceptors). The mitigation measures will ensure that the surface water quality in the Rye Water, River Liffey and Dublin Bay is protected during construction and operation of the proposed development. The 'in combination' effects are as set out under Section 7.6.29, above. The NIS considers there is no potential for any other plan or project to adversely affect the integrity of any European sites in combination with the proposed development. Following the AA and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of South Dublin Bay and River Tolka Estuary SPA in view of the Conservation Objectives of this site. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

#### **North Bull Island SPA –**

- 7.5.39 The development has the potential to affect all Qualifying Interests of this SPA by way of an accidental surface water pollution event of sufficient magnitude that could potentially affect the quality of the intertidal/coastal habitats that support the special conservation interest bird species. It could potentially affect the use of habitat areas by the birds and have long-term effects on the SPA populations.
- 7.5.40 Mitigation measures are set out in Section 6.2.4 of the NIS. They include measures to protect surface water quality during construction and operation (e.g., control of run-off, provision of exclusion zones and barriers, sediment control measures, emergency response to accidental spillages, monitoring of surface water drainage, SUDS measures, rainwater harvesting, petrol interceptors). The mitigation measures will ensure that the surface water quality in the Rye Water, River Liffey and Dublin Bay is protected during construction and operation of the proposed development. The 'in combination' effects are as set out under Section 7.6.29 above. The NIS considers there is no potential for any other plan or project to adversely affect the integrity of any European sites in combination with the proposed development. Following the AA and the consideration of mitigation measures, I am able to

ascertain with confidence that the project would not adversely affect the integrity of North Bull Island SPA in view of the Conservation Objectives of this site. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

### **Appropriate Assessment Conclusion**

7.5.41 The planning application for a construction of 2 buildings comprising of 49 apartments and a creche has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning & Development Act, 2000 (as amended). Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Rye Water Valley/Cartron SAC, South Dublin Bay SAC, North Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA and North Bull Island SPA. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect



the integrity of the European site numbers 001398, 000210, 000206, 004024 and 004006. This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including mitigation measures.
- Detailed assessment of the in-combination effects with other plans and projects.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of Rye Water Valley/Carton SAC, South Dublin Bay SAC, North Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA and North Bull Island SPA.

## **8 Recommendation**

- 8.1 I have read the submissions on the file, visited the site, had due regard to the development plan and all matters arising. I recommend that permission be refused for the following reasons.

## **9 Reasons and Considerations**

Having regard to the scale of deficiencies in terms of the existing Louisa Park access road and footpath infrastructure, which is intended to serve as access to the proposed development, and to the lack of clarity in terms of timely resolution of these issues and to the restricted nature of the appeal site boundary, it is considered that to permit the proposed development would exacerbate an existing undesirable substandard arrangement and situation which would endanger public safety by reason of traffic hazard and obstruction or road users and would therefore not be in accordance with the proper planning and sustainable development of the area.

The proposed development specifically the siting scale and design of Block B would result in an unacceptable degree of overlooking and overbearing impact of the established adjacent dwellings on Rockingham Avenue contrary to the Land Use Zoning Objective which seeks “To protect and enhance the amenity of established residential communities and promote sustainable intensification”. The proposed development would, as a result, be seriously injurious to the established amenities of the area, depreciate the value of property in the vicinity and would therefore be contrary to the proper planning and sustainable development of the area.

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Bríd Maxwell  
Planning Inspector

21<sup>st</sup> January 2022