



An
Bord
Pleanála

Inspector's Report

ABP-310384-21

Development	Construction of a residential development comprising 72 residential units.
Location	Coneyburrow, Carlow Road, Athy, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	21/345
Applicant(s)	Orchard County Residential Estates Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v Refusal
Appellant(s)	Orchard County Residential Estates Ltd
Observer(s)	1. Christopher & Kathleen Dunne 2. John & Esma O'Neill

Date of Site Inspection

31st day of August 2021.

Inspector

Fergal Ó Bric.

1.0 Site Location and Description

- 1.1. The site is located to the south- east of Athy town centre. Athy is a town located in south-west County Kildare.
- 1.2. The appeal site comprises a linear piece of land (approximately 550 metres in length) that is located between the Carlow Road, the R417, to its east and the River Barrow to its west, within the 50//60 kilometre per hour speed control zone of the town. Levels on the site fall by up to 9 metres from the eastern (roadside) boundary to the western boundary along the River Barrow navigation system. The lands are elevated and undulating with hillocks within the northern portion of the site and low-lying marsh to the south and south-west of the site. The site comprises three agricultural fields, the northern one being the largest and most elevated, the middle field which has moderate elevation and undulations and the southern field which is low lying and particularly marshy along its western boundary with the River Barrow and canal towpath. The fields are separated from each other by hedgerow boundary. There is a footpath and street lighting on both sides of the R417, along the frontage of the northerly field after which the footpath discontinues. There is an agricultural access gate to the middle field. The pedestrian access to the Barrow amenity walkway is located immediately north of the appeal site boundaries.
- 1.3. There are no structures (agricultural or other) on site. The site is in agricultural use. There is a 1.5 metre wall along the roadside boundary of the northern field and hedgerow boundary alongside the other site boundaries of the appeal site. There is no housing located immediately north or south of the appeal site. There are a number of housing developments located on the opposite side of the R417 namely Coneyboro, Graysland and Kingsgrove. Those residential developments are located on lands which are elevated above the levels of the Carlow Road.
- 1.4. The appeal site has a stated area of 4.6 hectares.

2.0 Proposed Development

- 2.1. Permission is sought for:

Construction of 72 residential units comprising:

- 12 no. semi-detached three- and four-bedroom houses,
 - 60 no. apartments and duplexes in 6 no. two – three storey blocks.
- Other works include a new vehicular access from the Carlow Road and provision of a dedicated right turning lane into site,
 - Provision of cycle path/footpath along road frontage and extension of public footpath to Ardreich Cross, south of Athy,
 - Internal access roads, footpaths, open spaces and public lighting,
 - Planting and boundary treatments and play areas,
 - Car parking including electric vehicle charge points,
 - Bicycle and bin storage,
 - Riparian buffer Park along the western section of appeal site.
 - All associated site and servicing infrastructural works.

In addition to the standard planning application plans and particulars, the application was accompanied by the following documentation:

- Planning Report,
- Design Statement,
- Acoustic Design Statement,
- Arboricultural Assessment,
- Solar Analysis Report,
- Lighting Design Report,
- Engineering Services Report,
- A Landscape Masterplan Report,
- A 'Condition Assessment of the Tree and Hedge Vegetation'

3.0 Planning Authority Decision

3.1. Decision

Permission was refused by Kildare County Council for the following reasons:

1. Having regard to the significant changes in national and regional policy since the adoption of the Athy Town Development Plan in 2012, namely Project Ireland 2040-National Planning Framework and the Regional Spatial and Economic Strategy 2019-2031 (RSES) for the Eastern and Midlands Regional Area, with an emphasis on evidence based planning, the increasing need for environmental protection, and the requirement to integrate climate action considerations into land use policy, the location of the subject site in the River Barrow Landscape Character Area as detailed in the Kildare County Development Plan 2017-2023, which is of significance in terms of landscape and amenity value and as such is sensitive to development and where urban expansion has been deemed least compatible. It is considered the proposed development would adversely affect the River Barrow Landscape Character Area and would be contrary to national and regional policy and to the proper planning and sustainable development of the area.
2. The Planning Authority is not satisfied with the information submitted in respect of surface water management on the site and potential flood risk. In reviewing the available flood information, it is considered that the level of uncertainty regarding the potential for flooding on the site is too high to accommodate a vulnerable residential use. The Planning Authority cannot be satisfied, therefore, that the proposed development would not lead to a risk of flooding and cannot be satisfied that the development would not be prejudicial to public health. In the absence of certainty in relation to these matters, the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Section 3.4.6 of the Kildare County Development Plan 2017-2023 states that all towns, village settlements, rural nodes (as appropriate) 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. Objective SO9 of the Kildare County Development Plan 2017-2023 states that it is an objective of the Council to sequentially develop lands within towns and villages in accordance with the Development Plan Guidelines DEHLG 2007, and this objective complements more recent policy on consolidated and sequential growth as set out in the Government's National Planning Framework and the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Region. In the absence of any clear justification for the development of the subject site in advance of other lands zoned for new residential development, which are closer to the town centre and are as yet undeveloped, it is considered that the proposed development would be contrary to a stated development objective of the Kildare County Development Plan 2017-2023 relating to the order of priority of development and therefore, would be contrary to the proper planning and sustainable development of the area.

4. The site is located in a visually sensitive location, with steep gradients and forms part of the existing green infrastructure network along the River Barrow (SAC) and Barrow navigation. The proposed development, by reason the scale, bulk, massing and siting of three storey dwelling units and duplex units, and substantial engineering works required to accommodate the proposed residential development, would constitute an obtrusive development would be seriously injurious to the visual and recreational amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

- 3.2.1. The Planning Report forms the basis of the Planning Authority's decision. The report concludes that, having regard to the changes that have occurred in National and regional planning policy with increased emphasis on evidence based planning, the uncertainty in relation to the potential for flooding on the site, the scale, bulk and massing of the three storey elements of the development, the peripheral nature of the lands in relation to the town centre, that the development would be injurious to

the visual and recreational amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area and therefore, a refusal of planning permission was recommended, as set out within Section 3.1 above. The planner noted the comments of the Heritage Officer who concluded that the Natura Impact Statement (NIS) submitted was satisfactory subject to the mitigation measures as set out within the NIS being implemented in full.

3.2.2. Other Technical Reports

Municipal District Engineer: Recommended refusal of permission in relation to the adverse impact of the proposed access onto the R417 and impact upon the local road network.

Roads Transportation and Public Safety Department: Further information sought in relation to a number of matters including the submission of a Stage 2 Road Safety Audit (RSA), cross sectional drawings of the internal road network from along the side road frontage, the submission of a geo-technical report regarding slope stability and bearing capacities within the site, permeability and legibility within the scheme and to the adjoining River Barrow towpath, details of electric vehicle charging, to demonstrate that the development complies with the Design Manual for Roads and Bridges (DMURS) and to submit standards of public lighting.

Water Services Section: Further information was recommended in relation to a number of matters as follows: Full review of the surface water management proposals having regard to the attenuation storage areas being located in fill areas; Rainwater harvesting proposals for the apartment units are lacking; Compliance with the Greater Dublin Area Strategic Drainage Study (GDSDS) Vol 2, Chapter 6 has not been demonstrated. The applicants have not demonstrated that the development would not increase flood risk potential or create a new pluvial flood risk on neighbouring properties or roads.

Environment Section: No objection subject to conditions

Environmental Health Officer: No objection, subject to conditions.

Heritage Officer: No objection, subject to conditions.

Housing Section: Further information requested seeking a revised layout to eliminate small unusable open spaces, blank gable ends within dwelling designs, providing garden spaces for the Part V units, to indicate the internal storage spaces within each of the units and the provision of cycle parking within the development.

Chief Fire Officer: Further information requested seeking the provision of turning areas for fire appliances.

3.3. Prescribed Bodies

Irish Water: No objections, subject to conditions.

Waterways Ireland: No objections, subject to condition regarding possible pedestrian connectivity between the appeal site and the River Barrow towpath.

3.4. Third Party Observations

Five observations were received from local residents and a local councillor. The issues raised are largely covered by the observations received on foot of the grounds of appeal except for the following:

- Residential amenity.
 - Over-development and density of development out of character with the area.
 - Inappropriate building typologies and heights.
 - Traffic impacts.
 - Previous refusal of planning permission on the site.
 - Adverse impact upon local biodiversity.
 - Adverse impact upon physical and social infrastructure.
 - Flooding and water services.
-
- A representation was received from Councillor Vera Louise Behan in support of the development, citing that there is a shortage of housing in Athy and she

believes the development is appropriately designed and laid out, noting the site is in proximity to public transport and to the town centre.

4.0 **Planning History**

- 4.1. Planning Authority reference number 20/570. In 2020, Kildare County Council refused planning permission for a residential development of 98 residential units and a creche facility on the site. The reasons for refusal can be summarised as follows: (1) Contrary to SO9 specific objective of the Kildare Development Plan in relation to sequentially developing lands (2) Proposal would constitute an obtrusive development and be seriously injurious to the visual and recreational amenities of the area, (3) Flood risk potential. (4) Traffic congestion and road safety risk.
- 4.2. Planning Authority reference number 08.300040. In 2008, Kildare County Council granted planning permission for a residential development of 88 residential units on the site. This permission was never enacted.

5.0 **Policy Context**

5.1. **Kildare County Development Plan 2017-2023 (as varied)**

- 5.1.1. Chapter 2 (Core Strategy), Chapter 3 (Settlement Strategy), Chapter 4 (Housing), Chapter 15 (Urban Design Guidelines) and Chapter 17 (Development Management Standards) of the Plan are relevant to the application. Athy is designated as a 'Self-Sustaining Growth Town' in the Plan. These are towns with a moderate level of jobs and services, which adequately cater for the people of its service catchment with good transport links and capacity for continued commensurate growth.

Section 3.4.6 of the Plan sets out that urban settlements should be developed in a sequential manner and this is supported by specific objective SO9 where the objective is to "Sequentially develop lands within towns and villages in accordance with the Development Plan Guidelines, DEHLG (2007)".

Variation No. 1 – To include the National Planning Framework

Figure 2.1 Settlement Strategy for the Eastern & Midland Region

This Development Plan seeks to encourage the focus of new development on:

- (i) Consolidation within the existing urban footprint, by ensuring 30% of all new homes are targeted within the existing built-up areas to achieve compact growth of urban settlements.
- (ii) Supporting the achievement of more sustainable climate resilient communities in towns and villages through residential and employment opportunities with a focus on sustainable urban regeneration and compact growth together with supporting social and community facilities.
- (iii) Supporting national investment in public transport services by focusing new development areas in key locations to achieve the integration of land uses and high-quality public transport provision.
- (iv) Achieving economies of scale for services and infrastructure in identified growth towns.
- (v) Promoting economic development and employment opportunities within defined Strategic Employment Development Areas in the North-West corridor of the Metropolitan Area, in line with the overall Growth Strategy.
- (vi) Facilitating development in the smaller towns and villages in line with the ability of local services to cater for growth that responds to local demand.
- (vii) Recognising the role of the rural countryside in supporting the rural economy and its role as a key resource for agriculture, equine, bloodstock, forestry, energy production, tourism, recreation, mineral extraction, and rural based enterprises.
- (viii) Supporting, facilitating, and promoting the sustainable development of renewable energy sources in the county.
- (ix) Protecting local assets by preserving the quality of the landscape, open space, recreational resources, natural, architectural, archaeological, and cultural heritage and material assets of the county.
- (x) Promoting social inclusion and facilitating the delivery of objectives contained in the Kildare Local Economic and Community Plan (LECP) 2016-2021.

5.1.2. Variation No. 1 of the Plan states that Kildare County Council will prepare a Local Area Plan (LAP) for Athy to provide more detailed planning policies for the area.

5.2. Athy Local Area Plan 2021-2027

- 5.2.1. The planning decision was made during the lifetime of the Athy Local Area Plan (LAP) 2011-2017. A residential zoning objective pertained to the site at that time. However, the Athy LAP 2011-2017 has since been superseded by the Athy LAP 2021-2027, which came into effect on the 13th day of September 2021 where the zoning objective of the site has changed to F-Open space and amenity. The zoning objective is “To protect and provide for open space, amenity and recreation provision”. Residential development is not permitted under this zoning objective. The Land Use Zoning Map includes the ‘Athy Distributor Road’ further north of the appeal site
- 5.2.2. Section 9.3 of the LAP pertains to Green Infrastructure. There are a number of relevant policies and objectives contained within this section of the Plan relevant to the current proposals as follows:
- Policy G11 It is the policy of the Council to protect, enhance and further develop the Green Infrastructure network in Athy to provide a shared space for amenity, recreation and biodiversity to thrive, and to strengthen links to the wider regional network.
- Objective G11.2 Integrate new and existing green infrastructure as an essential component of all new developments and to restrict development that would fragment, damage or prejudice the integrity of the green infrastructure network.
- 5.2.3. Chapter 3 (Core Strategy), Chapter 4 (Homes and Communities), Chapter 7 (Movement and Transport), Chapter 10 (Infrastructure and Environmental Services), of the LAP are relevant to this appeal.

5.3. National Planning Context

5.3.1. National Planning Framework 2040

The National Planning Framework sets out a national population projection of 5.7million people by 2040, which provides for one million extra people, 660,000 new jobs and 550,000 new houses by 2040. This represents a significant growth for Dublin and the metropolitan region, including Kildare.

National Policy Objective 11:

In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns, and villages subject to development meeting appropriate planning standards and achieving targeted growth.

National Policy Objective 13:

In urban areas, planning, and related standards, including in particular height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

National Policy Objective 27:

To prioritise walking and cycling accessibility to existing and proposed development.

National Policy Objective 32:

To target the delivery of 550,000 additional households to 2040.

National Policy Objective 33:

Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location”.

National Policy Objective 35:

Increase residential density in settlements through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes or site-based regeneration and increased buildings.

5.4. Regional Planning Context

5.4.1. Regional Spatial and Economic Strategy for the Midlands and Eastern Region 2019-2031

Regional Policy Objectives (RPO,s) 3.2 and 3.3 pertain to Compact Growth and encouraging Planning Authorities to promote the development of brownfield and urban infill sites and RPO 3.7 pertains to Sustainable Growth.

RPO 3.2: Local authorities, in their core strategies shall set out measures to achieve compact urban development targets of at least 50% of all new homes within or contiguous to the built-up area of Dublin city and suburbs and a target of at least 30% for other urban areas.

RPO 3.3: Local authorities shall, in their core strategies, identify regeneration areas within existing urban settlements and set out specific objectives relating to the delivery of development on urban infill and brownfield regeneration sites in line with the Guiding Principles set out in the RSES and to provide for increased densities as set out in the ‘Sustainable Residential Development in Urban Areas’, ‘Sustainable Urban Housing; Design Standards for new Apartments Guidelines’ and the ‘Urban Development and Building Heights Guidelines for Planning Authorities’.

5.4.2. **Section 28 Ministerial Guidelines**

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

- ‘Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas’ (including the associated ‘Urban Design Manual’) (DoH&LG 2009)
- ‘Design Manual for Urban Roads and Streets’ (DMURS 2013)
- ‘The Planning System and Flood Risk Management’ (including the associated ‘Technical Appendices’) (DoEH&LG 2009)
- ‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’ (DoEHLG Dec 2020)
- ‘Quality Housing for Sustainable Communities’ Best Practice Guidelines (DoEHLG 2007)

- 'Urban Development and Building Heights' Guidelines for Planning Authorities (DHPLG 2020)
- Appropriate Assessment of Plans and Projects in Ireland, Guidelines for Planning Authorities (DoEH&LG 2009)
- Planning Guidelines on the Regulation of Commercial Institutional Investment in Housing (DoEHLG 2021).

5.5. Natural Heritage Designations

- 5.5.1. The closest European site is River Barrow and River Nore SAC (site code 002162) is located immediately contiguous to and west of the appeal site. The Grand Canal Natural Heritage Area (site code 002104), is located approximately 0.5 kilometres northwest of the appeal site.

5.6. Environmental Impact Assessment- Screening

- 5.6.1. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.6.2. 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).
- 5.6.3. It is proposed to construct 72 residential units. The number of dwellings proposed is well below the threshold of 500 dwelling units noted above. The site has an overall area of 4.6 hectares and is located contiguous to the built-up area of Athy. The site is

not located in a business district and currently constitutes a greenfield site. The site area is, therefore, well below the applicable threshold of 10 hectares for a built-up area, and 20 hectares in the case of a site elsewhere. The introduction of a residential development will not have an adverse impact in environmental terms on surrounding land uses. The proposed development is not likely to have a significant effect on any European Site (as discussed below in Section 8.0 of my report) and 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). 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.

5.6.4. 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 within the development boundary of the Athy Local Area Plan 2021-27 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).

5.6.5. 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 (EIAR) for the proposed development was not necessary in this case.

6.0 The Appeal

6.1. Grounds of Appeal

This proposal is the subject of a first party appeal against the decision of the Planning Authority to refuse planning permission for a residential development. The appeal was accompanied by a number of supporting documents as follows:

- Planning Appeal Statement,
- Housing Quality Assessment:
- Design Statement & images,
- Engineering Report,
- Site specific Flood Risk Assessment,
- Traffic Impact Assessment,
- Natura Impact Statement,
- Ecological Impact Assessment,
- Waste Management Plan,
- Landscape and Visual Statement,
- Housing Mix Statement,

- Landscape Masterplan
- Construction Management Plan,
- Building Lifecycle Report.

The main points within the first party appeal submission can be summarised as follows:

Background and Context:

- The Planning Authority fail to recognise in their assessment that the lands are zoned new residential under the Athy Town Development Plan 2011-2017. The proposal is, therefore, plan-led and consistent with the zoning pertaining to the appeal site.
- National, regional and local planning policy set out a presumption in favour of residential development on such zoned lands.
- The Planning Authority is incorrect in stating that there have been changes in national and regional planning policy that would mean that the current proposals are unacceptable.
- The Appropriate Assessment (AA) and the Strategic Environmental Assessment (SEA) conducted as part of the preparation of the Athy Town Development Plan 2011-2017 set out how environmental matters were fully considered in its preparation which included the residential zoning of the current appeal site.
- Other lands further removed from the town centre have been developed, and the appeal site is the next available parcel for development south of the town along the Carlow Road.
- The lands are appropriate for development in terms of the land use, the infill nature of the site, which is fully serviced and, therefore, should be prioritised for the delivery of residential development.
- The development of the land is appropriate, and plan led and would conform with the established pattern of development in the area.

Design and Layout:

- The design and layout as proposed is resilient to climate change and finished floor levels exceed future mid-range scenario flood levels.
- The visual impact of the scheme is addressed within the landscape and visual impact statement, Computer Generated Images and within the landscape masterplan submitted as part of the planning documentation.
- The lowest finished floor level of any residential unit at 56.9 metres Ordnance Datum (mOD) would be 1.84 metres above the maximum 1:1,000 (0.1%) flood level which is predicted at 54.06 mOD as per the site-specific Flood Risk Assessment submitted by the applicants.
- The lowest finished road level is stated to be approximately 2.16 metres OD above the maximum predicted 1:1,000 (0.1%) flood level.
- Allowance for climate change has been incorporated into the considerations of levels as the freeboard incorporated into the road and dwelling levels is greater than the 0.5 metre requirement as set out within the best practice guidance.
- The scheme has been carefully designed taking into consideration the previous refusal of planning permission by the Planning Authority. The design responds to the site context whereby a riparian zone is proposed along the site boundary with the River Barrow.
- The landscaping and Visual Impact Statement and computer-generated imagery (CGI) illustrate the proposed development within the local context.
- The minimum density of 30 residential units per hectare on suburban lands is achieved through the inclusion of a variety of residential typologies and building heights.

Environmental Considerations:

- The site is not located within an area designated as being of natural heritage value nor within any of the designated views or prospects for the town.
- A Site-specific Flood Risk Assessment (SSFRA) for the site has been submitted as part of the planning documentation. The applicants have cross

referenced the Strategic Flood Risk assessment (SFRA) and the Catchment Flood Risk and Management Studies (CFRAMS) studies prepared by the Office of Public Works (OPW) within their SSFRA.

- The residential elements of the development are located entirely outside of the Flood zones A and B and, therefore, the proposal is fully compliant with national and local policy requirements in relation to flood risk.
- A Natura Impact Statement has been prepared and establishes that no adverse impact on the conservation objectives of the River Barrow SAC would arise.

6.2. Planning Authority Response

The Planning Authority made no response to the appeal submission.

6.3. Observations

Two observations were received on foot of the grounds of appeal from:

- John and Emma O'Neill, 28, Graysland, Athy, (on the opposite side of Carlow Road/R417 to the appeal site).
- Christopher & Kathleen Dunne, 1101, Coneyboro, Athy (on the opposite side of Carlow Road) to the appeal site.

I consider that the main points can be collectively grouped and summarised as follows:

Roads and Traffic:

- The vehicular access is at a point where there is a continuous white line and there are a series of vehicular entrances serving a number of residential developments along this stretch of road. The access point would be hazardous from a road safety perspective.

Location:

- There are a number of residential developments along this part of the Carlow Road and the area is already overdeveloped.

Impact on Residential Amenity:

- The proposed development would have a negative impact upon neighbouring properties and appropriate boundary treatment would be necessary to protect the privacy and light into neighbouring properties.

Services and flooding:

- The appeal site is part of the River Barrow flood plain and in winter up to 50% of the site is under water and the proposed development would increase the risk of flooding.
- The current water and sewerage services in the area would be compromised by the proposed development.
- There are ongoing issues in the area in relation to low water pressure.

Heritage:

- No proper consideration has been given to the impact upon the River Barrow SAC.
- The development would contravene the natural heritage and biodiversity plans for the area.
- The proposals would adversely impact upon the flora and fauna that exist along the Barrow towpath which is used as a local amenity walkway.

Miscellaneous:

- Is there sufficient public transport and social infrastructure in place locally to support a development of this scale?
- There are already a number of unfinished residential developments within the Athy Municipal District and therefore, the necessity for the proposed development is questionable.

6.4. Further Responses

None sought.

7.0 **Assessment**

Having examined the planning documentation on file, including the observations received in relation to the appeal, and inspected the site, and having regard to relevant local, regional, and national policies and guidance, I consider that the main issues in this appeal are as follows:

- Zoning & Planning Policy
- Site Location/Sequential Development
- Core Strategy/Order of Priority
- Site Layout, Landscape, Design and Density
- Services
- Residential Amenity
- Roads and Traffic
- Appropriate Assessment

7.1. **Zoning & Planning Policy**

- 7.1.1. At the time the Planning Authority made its planning decision on the 12th day of May 2021, a residential zoning objective pertained to the site. However, the Athy Local Area Plan (LAP) 2011-2017 has since been superseded by the Athy LAP 2021-2027, operational since the 13th day of September 2021, where the zoning objective of the site has changed to F-Open space and amenity.
- 7.1.2. Residential development is not permitted on lands zoned for amenity and open space purposes. The residential development would, therefore, contravene materially the current zoning objective and be contrary to the proper planning and sustainable development of the area.
- 7.1.3. The change in the zoning objective pertaining to the site represents a new issue and neither the applicants, the Planning Authority nor the observers have had an opportunity to comment on this matter. I am advising that, as this represents a new issue, not raised by any of the parties to this appeal, the Board may wish to address

this matter under the provisions set out under Section 137 (2) of the Planning and Development Act 2000 (as amended).

- 7.1.4. The development is located within the development boundary of Athy, albeit on lands zoned for the provision of open space and amenity. The pattern of development in the area has seen the construction of residential development on the opposite side of the Carlow Road in the form of the Coneyboro, Graysland and Kingsgrove residential developments. The site is located within the 50/60 km/h speed control zone of the town.
- 7.1.5. It is noted that the Planning Authority's third reason for refusal refers to National and Regional planning policy. Athy is designated as a self-sustaining growth town within the second highest tier of settlements within the Settlement Strategy of the current Kildare Development Plan. In terms of National planning policy, specifically NPF OBJ 33 seeks to "Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location". In terms of regional policy, the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands region promotes both Sustainable Growth and compact growth. The site is a greenfield one located on the southern periphery of the town and development boundary. Therefore, it could not be described as being either brownfield or an infill site. In this regard, the current proposals would not accord with a number of the Regional Policy Objectives set out within the regional plan, specifically, RPO's 3.2 and 3.3 which pertain to Compact Growth and encouraging Planning Authorities to promote the development of brownfield and infill sites. Therefore, on balance I consider that the proposals would not assist in the realisation of specific objectives 3.2 and 3.3 of the RSES in relation to encouraging the development of brownfield and/or infill sites. I consider that the third reason for refusal as set out by the Planning Authority in relation to consolidated development and sequential growth is reasonable and should be upheld.

Site Location/Sequential Development:

- 7.1.6. The observations and the third reason for refusal specifically reference that permission should not be granted on this site because of its location on the periphery

of the town, and that land closer to the town centre should be developed before this site is developed in order for the town to develop in a sequential manner.

- 7.1.7. The appropriate development of urban areas in a sequential manner from the town centre is a standard planning principle. National and regional planning guidelines encourage the development of urban brownfield sites and areas adjacent to public transport corridors, this is also set out within the Athy LAP 2021-2027, within Section 4.3 of the Plan. One of the key objectives within the Housing Chapter in the LAP is to ensure that there is adequate land in appropriately zoned locations for residential development. It states that the strategy for housing incorporates, inter alia, the guiding principles of the Sustainable Residential Development in Urban Areas Guidelines. Policy HC1 refers to sufficient and suitably zoned land. Section 4.4 of the Plan refers to 'Existing Greenfield Sites'. Section 3.4.6 of the Development Plan that settlements should be developed in a sequential manner, and this is supported by specific objective SO9.
- 7.1.8. The principle of sequential residential development was to the fore in terms of considerations in the preparation of the Athy LAP 2021-2027, and hence the land use zoning on the site was changed to open space and amenity.
- 7.1.9. Having regard to the foregoing, and noting the wording of refusal reason number three, which specifically references the issue of sequential development, I consider that this reason for refusal should be upheld as the current proposals would not assist in realising the SO9 objective of the Development Plan.

Core Strategy/Order of Priority:

- 7.1.10. Chapter 2 (Core Strategy) and Chapter 3 (Settlement Strategy) of the Kildare County Development Plan 2017-2023 are relevant. Table 3.3 (Settlement Hierarchy – Population and Housing Unit Allocation 2016-2023) states that the 2016 population estimate for Athy was 10,482. A 'new dwellings target' for Athy of 1,560 units was set for the period between 2016-2023 with a population forecast of 13,152 in 2023. The 'Core Strategy Allocation 2016-2023' of 1,560 is reiterated in Table 3.4 (Development Capacity in Kildare).

- 7.1.11. A critical element of Variation No. 1 of the Kildare County Development Plan 2017-2023 (which was made in June 2020) is the Core Strategy and Settlement Strategy. Amendment No. 13 includes Table 3.3 (Settlement Hierarchy – Population and Housing Unit Allocation 2020-2023) which replaces Table 3.3 of the 2017-2023 Plan. This Table states that the 2016 census population for Athy was 9,677. The ‘Dwellings Target 2020-2023’ is cited as 289 no. to accommodate a population growth of 810 people.
- 7.1.12. A total of seven residential developments have been permitted in Athy (Planning Authority reference numbers 17/751 (ABP. Reg. Ref. ABP-301242-18), 18/921, 19/54, 19/233/234, 20/1101, 20/1274 and 20/1397. The combined number of units permitted under these permissions is 386 no. Of these, 88 were permitted in 2022, 43 units were permitted in 2021, 120 units were permitted in the year 2020 and the other 135 units were permitted in the years 2018 and 2019. Therefore, for the purpose of Table 3.3, the 2018 and 2019 numbers are discounted.
- 7.1.13. The County Development Plan 2017-2023, as varied, sets a target of 289 residential units for Athy between the years 2020 and 2023. It appears that approximately 251 units have been permitted to date since the beginning of 2020. Should the current application be permitted, that would increase the number of granted residential units to approximately 323 units which would exceed the housing allocation target for the town set out within the Development Plan for the period up to the year 2023

7.2. Site Layout, Landscape, Design and Density

- 7.2.1. The Planning Authority raised the issue of adversely impacting upon the River Barrow Landscape Character Area (LCA) within reason number 1, and reason number 4 references the scale, mass and bulk of the development would be seriously injurious to the visual and recreational amenities of the area. The observations received refer to, inter alia, the extent of development within this part of Athy. Issues in relation to density, building heights and housing typologies will also be considered.

Site Layout

- 7.2.2. The observations did not raise any specific issues in relation to the layout, notwithstanding issues regarding overdevelopment of the area and impact on residential amenity being raised.
- 7.2.3. I consider the layout to be acceptable. Cul-de-sacs are generally avoided, there are a number of smaller open space and play areas proposed throughout the site. A dual cycle and footpath is proposed along the public road frontage linking back to the town and the footpath would be extended to Ardreich Cross to the south of the town. In addition, active edges are provided to the streets by way of dual frontages to houses and front and rear accesses to the duplex units and there is good permeability through the site.

Landscape:

- 7.2.4. The issue of visual impact and amenity is raised by the Planning Authority partly in reason 1 and specifically in reason 4 of its refusal reasons. There is a significant variation in levels within the appeal site and the fact that the western part of the land holding is located within Flood Zones A and B, it only leaves the lands to the east of the site as developable, albeit being the most elevated part of the appeal site. These lands, located to the east of the site are particularly elevated, prominent and undulating. The development of these lands would require significant engineering interventions. This part of the land holding would remain visually prominent from the western part of the site and from the towpath/amenity walkway along the Barrow watercourse.
- 7.2.5. The appeal site is located within the River Barrow Valley as set out within the Development Plan. Section 14.5.3 of the Plan sets out the following “The topography is such that it allows vistas over long distances without disruption along the river corridor. As a result, development along the banks of the rivers can have a disproportionate visual impact, due to an inherent inability to be visually absorbed”. Section 14.6.1 sets out the following in terms of protecting river and canal corridors “It is important that development does not further interrupt the integrity of river and canal corridors”. I consider that that the development as proposed, by virtue of the site characteristics, with varying site levels cannot be absorbed appropriately within the landscape in this instance and would have an adverse impact upon the River

Barrow Valley and amenity walkway. The proposals would conflict with the achievement of GI1.2 of the LAP where the objective is “to restrict development that would fragment, damage, or prejudice the integrity of the green infrastructure network”. The first reason for refusal regarding adversely impacting upon the River Barrow LCA should be upheld due to the landscape and amenity value associated with this area.

Design:

- 7.2.6. The design of the proposed semi-detached and apartment/duplex units is contemporary in style and would at two and three storeys in height be typical of what has been developed within urban settlements within the Greater Dublin Area. These building heights are necessary to achieve increased densities. However, design must be site specific. I consider the design approach adopted in this instance to be appropriate when viewed from the public road. Site levels drop from the public road and, therefore, the development reads as a conventional two-storey from this perspective and assimilates in a satisfactory manner into the local townscape. However, when viewed from the western part of the site, from along the local Barrow navigation towpath immediately west of the appeal site, the visual impact of the bulky three storey Block C and D apartment/duplex units is considerable. This impact is accentuated by the fact that there are 6 blocks of these units clustered together, and due to the site levels rising by up to 9 metres from the western site boundary to the roadside (eastern) site boundary.
- 7.2.7. The principle of two and three storey apartment/duplex units of this height would generally be acceptable. However, in this particular instance, given the considerable variation in site levels, I do not consider that the applicants have fully appreciated the visual impact of the proposed development from the proposed Riparian Park area and the areas of open space along the western fringes of the appeal site. The applicants have submitted a landscape and visual impact assessment and landscape masterplan proposals as part of their planning documentation
- 7.2.8. The applicant’s ‘Design Statement and Computer-Generated Images (CGI) portray the development in the context of the twelve criteria in the Urban Design Manual (2009) and this is also addressed in the Landscape and Visual Assessment.

Although the visual impact from the canal towpath is assessed, it is only considered from a single viewpoint along the towpath to the south-west of the appeal site, where the impact was described by the applicants as moderate. I consider this assessment to represent an understatement of the potential visual impact. Specifically, the Type C and D duplex/apartment units would be visually prominent from the proposed Riparian Park and the open space areas, including from the proposed dedicated children's play area along the west boundary of the residential elements. No visual impact assessment from this perspective has been included within the applicants' proposals. View 4 of the CGI images submitted by the applicants illustrates this point.

- 7.2.9. The visual impact is accentuated by the rise in site levels from west to east on site and from south-west to north-east. The six number Block C units, which are each, in essence, 4 buildings joined together in a single block, in close proximity to each other within the southern section of the scheme and present a significant bulk and mass. The visual impact from the local canal towpath would also be adverse. Montage 5 of the CGI images illustrates this point. I consider that the design as presented, in particular the scale, bulk and mass, would adversely impact upon the amenities enjoyed by local residents who use the River Barrow and canal towpath amenity walkway immediately west of the appeal site. This amenity walkway is identified as part of the town Green Infrastructure network, which is afforded protection under the GI1 policy of the Athy LAP. Therefore, I consider that the fourth reason for refusal as set out by the Planning Authority, in relation to scale, bulk and massing on a site requiring substantial engineering works being seriously injurious to the visual and recreational amenities of the area, should be upheld.
- 7.2.10. I consider that the design of the semi-detached dwellings to be satisfactory. They would provide for quality accommodation in terms of exceeding the residential accommodation standards as required under Section 17.4.5 of the Development Plan in terms of unit floor areas and private open space provision. I note that storage space is not provided within a number of the bedroom spaces, which would need to be addressed.
- 7.2.11. Connectivity and linkages to/with the River Barrow amenity towpath to the west of the site are not evident. There is an amenity walkway immediately west of the appeal

site and the applicants have failed to outline how their proposals would connect with the walkway. I consider this to be a missed opportunity, one that would benefit future residents of the residential scheme. I note that Waterways Ireland made an observation to the Planning Authority expressing concern regarding lack of details of connectivity between the appeal site and the canal/river towpath. The landscape masterplan seems to indicate the provision of a two-metre fenced boundary between the residential element of the site and the Riparian strip along the Barrow navigation boundary. This highlights the lack of proposals for connectivity and integration between the appeal site and the existing amenity walkway. Green Infrastructure objective 2 of the Athy LAP seeks to “Integrate new and existing green infrastructure as an essential component of all new developments and to restrict development that would fragment, damage or prejudice the integrity of the green infrastructure network”. It is not apparent how the realisation of this objective has been taken into consideration within the layout as presented.

Open Space

- 7.2.12. The applicants set out that 21% of the total site area is designated as public open space. However, this figure includes a Riparian Park/buffer area measuring 1.76 hectares along the western perimeter of the site. Much of the Riparian area is located within flood zones A and B. Residential uses are not compatible nor appropriate uses within Flood Zones A or B as per the guidance set out within the Flood Management Guidelines 2009. I do not consider that this Riparian space could be described as being functional, given the likelihood that it would be submerged in floodwaters for a period of each year.
- 7.2.13. However, the applicants have provided ten pockets of public open space throughout the residential sections of the development as functional, usable public open space in addition to the Riparian Park area.
- 7.2.14. These pocket areas of open space comprise a total of 0.5034 hectares, or approximately 10.9% of the total site area. While many of these spaces are centrally located within the development and convenient to many of the proposed residential units, a number of the spaces, specifically spaces A, B, C and D, as set out within the layout plan, are modest in scale, would be ancillary in nature and not particularly

functional nor usable by virtue of their configuration within the overall site layout. The landscape masterplan shows these areas being heavily landscaped and while this would assist in assimilating the residential development into the local townscape, these landscaped pockets could not be described as functional or useable public open spaces for future residents of the development to enjoy. When these ancillary landscaped strips are discounted from the functional open space provision, the area of usable public open space is reduced to approximately 0.42 hectares, or approximately 9.1% of the total developable site area. This is below the recommended standards as set out within the Kildare Development Plan, Development Management Standards, within Section 17.4.7, where a minimum of 15% of public open space is required for greenfield developments.

7.2.15. I consider it reasonable that the applicants be afforded an offset of open space within the developable part of the site, given that they are providing a Riparian Park area to the west of their site. In conclusion, I consider there is a deficit of quality functional and usable public open space within the northern part of the residential elements of the scheme. and would be contrary to the provisions of Section 17.4.7 of the Development Plan regarding the provision of high quality public open space.

7.3. **Density:**

7.3.1. The development provides for 72 no. residential units on a 4.6-hectare site, providing a gross density of approximately 16 residential units per hectare. However, the 'net site area (minus the Riparian Park/flood zone A & B flood areas) is 2.84 hectares. A residential density of 25.35 units per hectare is proposed, although the applicant references a density of 30 units per hectare within their appeal submission.

7.3.2. Table 4.2 (Indicative Residential Densities) of the Athy Local Area Plan (LAP) 2021-2027 sets out a general density parameter of 30-50 units in 'Outer suburban/Greenfield. Another category is 'Outer edge of urban-rural transition' where the general density parameters are 20-35 units. This relates to residentially zoned sites which transition from central areas to areas at the edge of the town. The LAP states these densities are indicative only.

7.3.3. The 30-50 density parameter is also set out for 'Outer Suburban/Greenfield' locations in large towns in Table 4.2 (Indicative Density Levels) of the County

Development Plan 2017-2023. Section 5.11 of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009) refers to 'Outer Suburban/'Greenfield' sites' on the periphery of larger towns. The Guidelines encourage a general range of 35-50 units per hectare and 'development at net densities less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency'.

- 7.3.4. Having regard to the foregoing density parameters and the location of the site on the southern periphery of the town and having regard to the pattern of development on the opposite side of the Carlow Road, the proposed density would be acceptable at this location, although it would be at the lower end of what would be considered an acceptable density at this location.

7.4. Residential Amenity

- 7.4.1. Impact on the amenity of adjacent residential properties is an issue raised in the appeal observations.

Overlooking:

- 7.4.2. The proposed dwellings comprise of traditional two storey dwellings. The proposed dwellings located within the western section of the appeal site, are separated from the front building lines of the properties on the opposite side of the Carlow Road by a minimum distance of 29 metres and by a separation distance of up to 53 metres.
- 7.4.3. I consider that the setbacks as proposed are sufficient to ensure that no material overlooking will result from the development. Landscaping is proposed along the eastern site boundary, as per the landscaping plan submitted as part of the planning documentation.
- 7.4.4. I am satisfied that overlooking of all properties contiguous to the subject site has been minimised and/or mitigated through design, siting, boundary treatment and screen planting and having regard to siting of the existing houses above the level of the R417.

7.4.5. The development is a traditional low density dual aspect scheme. There is nothing apparent in the documents and drawings submitted that would highlight any issue here.

7.4.6. By virtue of the orientation of existing and proposed dwellings, I am satisfied that overlooking from the proposed residential units to the existing houses would not arise in this instance. Therefore, I do not consider the development would result in any undue adverse impact on adjacent properties by reason of overlooking

Loss of Daylight/Sunlight/Overshadowing:

7.4.7. The issue of impact upon light in the neighbouring residential properties, on the opposite side of the R417 is raised within the observations submitted to the Bord. The proposed dwellings located within the western section of the appeal site, are separated from the front building lines of the properties on the opposite side of the Carlow Road by a minimum distance of 29 metres and up to 53 metres. By virtue of these separation distances and the fact that the R417 separates the appeal site from these residential properties, there is nothing apparent in the documents and drawings submitted that would highlight any issue here. I am satisfied that no loss of daylight or overshadowing would arise as a result of the proposed development in this instance.

Nuisance:

7.4.8. Some nuisance to surrounding properties may arise during the construction phase. However, in the event of a grant of permission these nuisances would be controlled in so far as possible by way of a Construction Management Plan outlining permitted working hours, mitigation for vibration, dust and noise etc.

7.4.9. In conclusion, having regard to the foregoing, I do not consider that the proposed development would result in significant undue adverse overlooking, shadowing or overbearing impact. Nuisance during the construction period can be reasonably controlled by means of the inclusion of appropriate planning conditions.

7.5. Services

- 7.5.1. It is noted that the Planning Authority's second reason for refusal refers to the issue of surface water management and the risk of flooding. Capacity of water supply and within the foul sewer have been cited as issues in the observations received.
- 7.5.2. The main issue referenced within reason number two pertains to the potential risk of flooding on site as being too high. The applicants state that no part of the residential development is located within Flood Zones A or B. The Flood Risk Management-Guidelines for Planning Authorities 2009 (FMG's), Section 3.5 sets out what type of development is compatible within the various flood zone. Within Flood Zone C there is a low probability of flooding. Residential development is classified as being a highly vulnerable use. Table 3.2 of the FMG's sets out that highly vulnerable development is appropriate in Flood Zone C (subject to assessment of flood hazard from sources other than rivers and the coast) but would need to meet the normal range of other proper planning and sustainable development considerations.
- 7.5.3. A Site-specific Flood Risk Assessment was submitted as part of the planning documentation which states that the residential element of the site is outside of the both the 1% fluvial AEP event and the 0/1% fluvial AEP event areas. The applicants state that the residential element of the appeal site is located within flood zone C. As per Section 3.5 of the FMG's, residential development is appropriate within Flood C zones
- 7.5.4. I have cross referenced the flood risk information provided by the applicants with the latest Catchment Flood Risk and Management Plan (CFRAMS) data, which was prepared in July 2016, by the Office of Public Works (OPW). This flood mapping data corroborates the flood information submitted by the applicants and confirms that the residential elements of the proposals are located outside of both Flood zones A and B. The information on Floodinfo.ie also corroborates the flood data submitted by the applicants that the residential elements of the appeal site are located outside flood zones A and B.
- 7.5.5. I note that under the preparation of the recent LAP for Athy that the land use zoning for the site was changed from residential to open space and amenity. The sequential approach first principle in flood management is to avoid areas at risk of flooding. A Flood Risk Assessment (FRA) appraisal was prepared as part of the LAP review.

Section 7.3.4 of the FRA sets out the records of historical flooding on the lands in 2008 and 2009. There is strong evidence of fluvial flooding within Flood zones A and B adjacent to the riverbank. It concludes “that the existing zoning (residential) would not pass a justification test and the sequential approach was followed to appropriately rezone the site”. The precautionary approach adopted by the Planning Authority is the one recommended with the FMG’s. Within the LAP review, the appeal site lands were rezoned from residential to amenity and open space given their proximity to the River Barrow watercourse and given the risk of flooding on the lands.

- 7.5.6. The Water Services Section within the Local Authority raised a number of matters including the placing of surface water attenuation tanks within an area of fill, that the proposals would increase flood risk potential on neighbouring lands/roads and have not demonstrated compliance with the GSDSDS.
- 7.5.7. I would have concerns regarding the appropriateness of placing surface water attenuation tanks within an area that is identified as being within Flood Zone areas A or B. This could result in issues arising within a flood event, where the surface water attenuation tanks could be at capacity arising from the Barrow watercourse overflowing onto the Riparian Park area, as happened in 2008 and 2009. This scenario would potentially impact upon the capacity of the attenuation tanks to manage the surface water run-off from the residential development. This could potentially exacerbate the impacts of surface water management during a flood event and result in flooding of neighbouring lands. However, the use of this area for the attenuation storage tanks is a design matter that could be remedied, by means of an alternative site-specific engineering solution. Therefore, I do not consider that this would warrant a refusal of planning permission.
- 7.5.8. I accept the Planning Authority zoned the land for amenity and open space use based on the best technical advice made available to them by their Consultant Flood Engineers. I acknowledge that the riparian buffer area within the western portion of the appeal site is low lying and located within Flood Zones A and B as per the OPW data. However, I also acknowledge that based on the OPW CFRAMS final flood mapping, the OPW being the competent authority on flooding matters within Ireland, that the residential portion of the lands, to the east of the land holding, and removed

from the Barrow watercourse are located outside of Flood Zones A and B. Therefore, the risk of flooding is considered to be low and the residential development on the eastern part of the land holding would in this instance be acceptable at this location and would not increase the risk of flooding in this vicinity. Therefore, I am satisfied that reason number two for refusal as set out by the Planning Authority could be set aside having regard to the best available flood information.

- 7.5.9. Irish Water (IW) is the body responsible for water and wastewater infrastructure. From the IW report it is apparent that there are shortcomings in the applicants' proposals relating to servicing issues and details to be addressed in terms of demonstrating compliance with Irish Water requirements and standards. Notwithstanding this, in so far as it relates to this planning application, given the content of the report from Irish Water, I consider that the proposed development would be acceptable in terms of water and wastewater

7.6. Roads and Traffic

- 7.6.1. The proposed vehicular access is onto the R417, Carlow Road. The vehicular entrance would be located within the 50 kilometre per hour speed control zone. A dedicated south facing right turning lane, including a ghost island for access into the site, is proposed, similar to the three existing north facing right turning lanes serving the Graysland, Coneyboro and Kingsgrove residential developments.
- 7.6.2. Presently, there is a 1.5 metre footpath along the roadside frontage of the northern section of the site, that nearest the town centre. The applicants are proposing to construct a dual footpath and cycle path along the entire roadside frontage of the appeal site. A Traffic and Transport Assessment was submitted as part of the planning documentation and included an independent Stage 1 Road Safety Audit. This states the width of the R417 adjacent to the site is approximately 9 metres. The development would be expected to generate an additional 68 two-way vehicle trips during the weekday AM peak hour (8-9am) and 39 no. additional two-way vehicle trips during the weekday PM peak hour (5-6pm). Overall, these traffic levels are anticipated to increase by approximately 7% by the year 2023 (expected completion year of the development) and by approximately 16% in the year 2028". The

Assessment concluded that there will be “a limited impact on the performance of the priority junction and the wider road network which will continue to operate within capacity and in a satisfactory manner up to the year 2038”.

7.6.3. The Municipal District Engineer recommended a refusal of planning permission due to concerns raised over the capacity of the local road network to cater for the traffic that would be generated by the proposed development. The Roads, Transportation and Public Safety Section of Kildare County Council requested that further information be submitted in relation to several matters as set out within Section 3.2 in the report above. There are a number of key short comings within the planning documentation submitted in terms of details of volumes of materials to be imported/exported to/from the site to cater for the adjustment in ground levels required for the development, details of permeability within the site amongst other issues.

7.6.4. In conclusion, I consider that it has been demonstrated that the proposed development would not have an adverse impact on the capacity of the R417. I consider that the adjoining regional route has adequate capacity to cater for the increased traffic that would result from the proposed development. I do not consider that it would be reasonable to refuse permission for the proposed development on road capacity grounds, given the road width and alignment and location. I concur with the findings and recommendations of the Traffic and Transport Assessment which has been prepared in accordance with best practice road safety standards and which render the road network suitable and safe to carry the increased road traffic generated by the proposed development.

8.0 **Appropriate Assessment**

8.1. The requirements of Article 6(3) 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. The areas addressed are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive
- Screening the need for appropriate assessment

- The Natura Impact Statement and associated documents
- Appropriate assessment of implications of the proposed development on the integrity of each European site

8.2. 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.

8.3. The proposed development at Carlow Road, Athy would comprise 72 residential units. It is located south of Athy on the western side of the Carlow Road and 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).

8.4. **Context**

8.4.1. The first test of Article 6(3) is to establish if the proposed development could result in likely significant effects to a European site. This is considered Stage 1 of the appropriate assessment process i.e., screening. The screening stage is intended to be a preliminary examination. If the possibility of significant effects cannot be excluded on the basis of objective information, without extensive investigation or the application of mitigation, a plan or project should be considered to have a likely significant effect and Appropriate Assessment carried out.

8.4.2. An Appropriate Assessment Screening Report and Natura Impact Statement were submitted with the application. I am satisfied that adequate information is provided in respect of the baseline conditions, potential impacts are clearly identified, and sound scientific information and knowledge was used. The information contained within the submitted reports is considered sufficient to allow me to undertake an Appropriate Assessment of the proposed development. The screening is supported by

associated reports, including ecological field surveys involving habitat and fauna survey and mapping, a Site-Specific Flood Risk Assessment, Project Construction Management Plan and an Ecological Impact Assessment,

- 8.4.3. The AA Screening Report notes that this assessment was reached without considering or taking into account mitigation measures or protective measures included in the construction management plan prepared for the proposed development. Section 5.4 of the applicants AA Screening Report sets out the following “Having assessed the locations, distributions and vulnerability to potential significant impacts arising from the development per each qualifying interest, the following qualifying interests (Table 6) are being screened in/assessed further, as they are considered the most likely to potentially be significantly affected due to activities associated with the construction and operation of the site”.
- 8.4.4. Section 6.2 of applicants’ assessment sets out that ‘the most significant potential impact that could affect five aquatic species ((Atlantic Salmon, Brook, Rivera and Sea Lamprey and Crayfish) would be due to a deterioration in water quality resulting from a pollution incident originating on the site”. Potential impacts from the spread of invasive plant species were also identified as a result of construction activities on site. In addition, the potential effects arising from lighting illumination along the towpath and within the Riparian area of the site have the potential to arise
- 8.4.5. Having reviewed the documents and submissions from neighbouring residents, 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.
- 8.4.6. On the basis of objective information, it cannot be concluded at screening stage that the proposed development either alone or in combination with other plans and projects will not result in a significant effect on the River Barrow and Nore SAC (002162). Therefore, this European site was screened in for appropriate assessment’.

8.5. **Appropriate Assessment Screening**

8.5.1. 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 is likely to have significant effects on a European site(s).

8.5.2. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

8.6. Brief Description of Proposed Development Site

8.6.1. The proposal comprises a residential development of 72 residential units (see Section 2 above for a detailed description of the proposed development). The site is greenfield in nature, located on the southern perimeter of the development boundary of Athy. The land is currently being grazed by cattle. The site is located immediately east of the River Barrow and Nore SAC and its associated towpath which is used as a local amenity walkway.

8.6.2. The site is bordered by mature treelines along the western and boundaries with Ash, Willow, Elder, Alder and Sycamore occurring on these boundaries. Hawthorn is the species dominant across the hedgerows dividing the three fields in an east to west direction. There are many gaps within these hedgerows due to incursions made by livestock and bramble and ivy have hindered the growth within the hawthorn. A hawthorn hedge exists along much of the eastern site boundary. To the south-west of the site, there is a marshy area alongside the drainage ditch and two path along the Barrow navigation area. This area comprises mixed woodland of Ash, Willow and Alder.

8.6.3. A drainage ditch exists along the western site boundary. It is up to 1.5 metres wide and comprises stagnant water. This ditch provides potential for amphibian breeding habitat although the habitat surveys conducted by the applicants Ecologist found no presence of frog or newt in this area. while the internal area of the site predominantly comprises low-quality sward. The surrounding landscape is predominantly built land made up of residential development with mature gardens.

8.6.4. Bedrock geology is limestone while groundwater vulnerability for the site is classified as high.

- 8.6.5. In terms of water supply, the proposed development will be served with a 100mm diameter watermain connected to the public water supply. In terms of foul drainage, Irish Water has advised that the proposed development should discharge to existing services via a pumped system, located to the north of the appeal site. Storm drainage for the proposed and the development would discharge to an existing surface water sewer. The proposed surface water drainage system has been designed in accordance with the Greater Dublin Regional Code of Practice for Drainage Works. SuDS measures are proposed.
- 8.6.6. No watercourse flows directly through the appeal site; however, a drainage ditch runs parallel to the western boundary of the appeal site. The Barrow navigation, which is part of the River Barrow and Nore SAC is located within five metres of the western site boundary. On the 5th day of May 2020, the water quality of the Barrow navigation was classified as poor (Source PA Water Framework Directive monitoring 2013-2018).
- 8.6.7. The 'source-pathway-receptor' model was used to determine potential links between sensitive features of the natura sites and the source of the effects.

8.7. Submissions/Observations

- 8.7.1. The attention of the Board is drawn to the fact that concerns regarding impacts on the integrity of designated sites have been raised in a number of the submissions received.
- 8.7.2. I have reviewed all submissions made and issues where relevant are addressed within my assessment hereunder.

8.8. Designated Sites and Zone of Influence

- 8.8.1. A potential zone of influence has been established having regard to the location of a European site, the Qualifying Interests (QIs) of the sites, the source-pathway-receptor model and potential environment effects of the proposed project.
- 8.8.2. The subject site is not located within any designated European site; however, the following Natura 2000 sites are located within the potential zone of influence:

Table 1:

Site Name and Code	Distance from Development Site	Screening comment in AA Screening Report
<p>River Barrow and Nore SAC (Site Code 002162)</p> <p>Qualifying Interests:</p> <p>Estuaries [1130]; Mudflats and sandflats not covered by seawater at low tide [1140];</p> <p>Reefs [1170]; Salicornia and other annuals colonising mud and sand [1310]; Atlantic salt meadows [1330]; Mediterranean salt meadows [1410]; Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260]; European dry heaths [4030]; Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]; Petrifying springs with tufa formation [7220]; Old sessile oak woods</p>	<p>5 meters</p>	<p>Requires assessment due to being adjacent to the subject site. Potential for significant effect on habitats, either alone or in combination, due to pollution or sedimentation arising from the construction/operational phase of the development. There is also a risk of potential spread of invasive plant species to the SAC arising from construction activities on site. There is also a potential risk from light overspill from the development into the European site.</p>

<p>with Ilex and Blechnum in the British Isles [91A0]; Alluvial forests with Alnus glutinosa and Fraxinus excelsior [91E0]; Desmoulin's Whorl Snail [1016]; Freshwater Pearl Mussel [1029]; White-clawed Crayfish [1092]; Sea Lamprey [1095]; Brook Lamprey [1096]; River Lamprey [1099]; Twaite Shad [1103]; Salmon [1106]; Otter [1355]; Killarney Fern [1421]; Nore Pearl Mussel [1990].</p> <p>Conservation Objective:</p> <p>To maintain and restore the favourable conservation conditions of the species and habitats along and within the watercourse.</p>		
<p>Ballyprior Grass land SAC</p>	<p>9.7 kilometres west of appeal site</p>	<p>Screened out. The site is considered to be beyond the zone of influence of the appeal site due to the separation distance and lack of a source-pathway-</p>

		receptor to connect the sites to each other.
--	--	--

I do not consider that any other European Sites fall within the zone of influence of the project, based on a combination of factors including the intervening distances, the lack of suitable habitat for qualifying interests, and the lack of hydrological or other connections. No reliance on avoidance measures or any form of mitigation is required in reaching this conclusion.

8.9. Identification of Likely Significant Effects

8.9.1. Further to the assessment in the submitted Screening Report and given the location, nature and scale of the proposed project, a number of the qualifying interests have the potential to be impacted upon within the adjoining SAC:

- River Barrow and Nore SAC (Site Code: 002162)

8.9.2. I concur with the opinion of the applicants in this regard. I am of the opinion that the designated site, namely the River Barrow and Nore SAC, requires further consideration,

8.9.3. I am of the opinion that the following site can be screened out:

- Ballyprior Grassland SAC (Site Code: 002256).

8.9.4. I have examined all the information before me. The River Barrow and Nore SAC has been screened in by the applicants due to concerns that there is a risk of habitat degradation due to a risk of potential pollution impacts associated with the surface water drainage discharging to the watercourse, concerns regarding invasive species and light pollution arising, alone or in combination, with other pressures on transitional water quality.

8.9.5. I note the nature and scale of development proposed on a greenfield site, connected to mains drainage. I note the distance involved to the Ballyprior Grassland SAC and the fact that there is no direct hydrological connection. With regards to this designated site screened out above, I am of the opinion that the risk of contamination of any watercourse or groundwater is extremely low, and even in the

event of an unlikely pollution incident significant enough to impact upon surface water quality on the proposed project site, this would not be perceptible in the European site screened out above, given the distance involved, the occurrence of significant levels of dilution and the fact that the construction phase would occur over a relatively short phase, with no possibility of long-term impacts. I note the construction practices proposed. In my mind they are not mitigation measures but constitute a standard established approach to construction works on such lands. Their implementation would be necessary for a housing development on any similar site regardless of the proximity or connections to any Natura 2000 site or any intention to protect a Natura 2000 site. It would be expected that any competent developer would deploy them for works on such similar sites whether or not they were explicitly required by the terms or conditions of a planning permission. In any event, if these practices were not applied or were applied and failed, I am satisfied that there would unlikely be significant effects on Ballyprior Grassland SAC due to the nature and scale of the development proposed, dilution effects, separation distances and the extent of intervening urban environment, together with the conservation objectives of the designated sites.

8.9.6. The subject lands are located immediately east of and contiguous to the River Barrow and Nore SAC. None of the habitats within the appeal site are qualifying interests for any European sites within the vicinity. I am conscious of the possibility of indirect effects on aquatic species of the European site. However, during field survey visits, no evidence of the otter species for which European site within the vicinity has been designated, were recorded within the subject lands. The Ecologist stated that neither the development site nor surrounding terrestrial habitats provide suitable foraging or breeding habitat for the otter species. In addition, there is no suitable habitat in the vicinity of the proposed development site that could be subject to disturbance impacts, given the proposals to maintain the buffer area free of development. I note that Biodiversity Ireland datasets recorded two sighting of otter within this 2-kilometre stretch of the Barrow watercourse, one live sighting in 2014 and one dead otter in 2018.

8.9.7. There are no surface water features within the subject lands.

8.10. **Invasive Species**

8.10.1. A potential indirect impact would include the threat from invasive species. Invasive species can arise from the importation of soils to the site or from the undercarriages/wheels of construction machinery. The invasive species could impact upon a number of the qualifying interests that exist along the Banks of the SAC, namely Hydrophilous tall herb swamp (side code (6430) and alluvial Woodland (site code 91EO). The only reason I am screening in the Barrow and Nore SAC is due to the proximity between the appeal site and the SAC, in terms of the designated site being screened out (Ballyprior SAC), I am of the opinion that there are unlikely to be significant effects in this regard, given the separation distances involved.

8.11. **Noise Disturbance**

8.11.1. The potential for construction noise disturbance to the Qualifying Interests (QIs) of Barrow and Nore SAC to arise as a result of construction activities have the potential to adversely impact upon the adjoining European site. I note the nature and scale of the development proposed, 72 residential units on a greenfield site. The site is located within an urban environment. The nature of the intervening urban space including busy roads and established development is noted. It is my opinion that the QIs associated with the designated site would be accustomed to a certain level of noise, given the urban environment.

8.11.2. I note the construction practices proposed, which include for noise control monitoring and mitigation. These measures are included within the Project Construction Management Plan. In my mind they are not mitigation measures but constitute a standard established approach to construction works on such lands. They are best-practice measures, and their implementation would be necessary for a housing development on any similar site regardless of the proximity or connections to any Natura 2000 site or any intention to protect a Natura 2000 site. It would be expected that any competent developer would deploy them for works on such similar sites whether or not they were explicitly required by the terms or conditions of a planning permission. I am satisfied that the intention of the measures in question, are such, that they were adopted not for the purpose of avoiding or reducing the potential impact on the QI, s of any designated sites but were adopted solely and exclusively for some other purpose, namely the protection of amenity at a local level. Even if these practices were not implemented or were implemented and failed, I am satisfied

that given the nature and scale of the development proposed on a greenfield site; the nature of the urban environment, the distances involved and conservation objectives of designated sites, there are unlikely to be significant effects on any QI species associated with designated sites as a result of noise disturbance.

8.11.3. A potential impact upon the Otter is identified within the screening document is identified as inappropriate illumination of the towpath area and Riparian buffer zone proposed along the western boundary of the appeal site. I am satisfied that given the nature and scale of the development proposed on a greenfield site; the nature of the urban environment, the separation distances involved, the proposals for the Riparian buffer zone and conservation objectives of designated sites, there are unlikely to be significant effects on any QI species associated with designated sites as a result of light illumination disturbance.

8.12. Screening Determination

8.12.1. The proposed development was considered in light of the requirements of Section 177U of the Planning and 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) that significant effect on one European Site, namely the River Barrow and Nore SAC (002162) in view of the Conservation Objectives of the site could not be ruled out, and Appropriate Assessment and the submission of a Natura Impact Statement is therefore required

8.12.2. In a precautionary measure, I have screened in the Barrow and Nore SAC due primarily to its proximity to the development site. Potential impacts are primarily related to the potential transfer of pollution and/or sediments to the watercourse via existing surface water drainage infrastructure and via potential groundwater pathways. Due to the proximity of the development site to the European site, there is also a low risk of alteration of habitat due to the potential for spread of invasive plant species because of the relatively short distances to the European site.

8.12.3. The possibility of significant effects on all other European sites has been excluded on the basis of objective information. I have screened out all other European sites for the need for appropriate assessment, based on a combination of factors including

the intervening minimum distances and the lack of hydrological connections. I am satisfied that there is no potential for likely significant effects on these screened out sites.

8.12.4. Measures intended to reduce or avoid significant effects on European sites have not been considered in the screening process.

8.12.5. I confirm that the site screened in for appropriate assessment is included in the Natura Impact Statement prepared by the project proponent.

8.13. Stage 2- Appropriate Assessment

Introduction

8.13.1. The application included a NIS for the proposed development at Coneyburrow, Carlow Road, Athy, Co. Kildare. The NIS provides a description of the project and the existing environment. It also provides a background on the screening process and examines and assesses potential adverse effects of the proposed development on a European Site (identified above). Section 5.4 outlines the characteristics of the relevant designated site. Section 6 sets out the potential impacts arising from the construction and operational phases of the development on the River Barrow and Nore SAC and includes details of mitigation measures that would be incorporated as part of the Construction Management Plan. In combination effects are examined within section 6.5 and it is concluded that significant in combination effects of the proposed project with other projects and plans are not likely.

8.13.2. The NIS concludes that with the implementation of the mitigation measures included in the design of the development and the implementation of preventative measures during the construction phase included within Section 6 of the Natura Impact Statement report and the Project Construction Management Plan, significant negative effects on the conservation objectives or site integrity of the European sites alone, or in combination with other plans and projects are not likely.

8.13.3. By applying a precautionary principle and on the basis of objective information, it is my opinion, that the River Barrow and Nore SAC, which is in close proximity to the development site, require further consideration only. Based on the above and taking a precautionary approach, I consider that it is not possible to exclude that the

proposed development, individually or in combination with other plans or projects, will have a likely significant effect on the following sites:

Table 2:

Site Name	Site Code	Separation distance
River Barrow and Nore SAC	002162	c. 5 metres

8.13.4. Having reviewed the documentation available to me, the content of the third-party observations received, I am satisfied that the information allows for a complete assessment of any adverse effects of the development on the conservation objectives of the European site listed above, alone, or in combination with other plans and projects.

8.14. Appropriate Assessment of implications of the proposed development on the European Site

8.14.1. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the River Barrow and Nore SAC 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.

8.14.2. I have relied on the following guidance as part of this assessment:

- Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities, DoEHLG (2009).
- Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC, EC (2002).
- Guidelines on the implementation of the Birds and Habitats Directives in Estuaries and coastal zones, EC (2011); •
- Managing Natura 2000 sites, The provisions of Article 6 of the Habitats Directive 92/43/EEC, EC (2018).

8.14.3. A description of the designated site and its Conservation Objectives and Qualifying Interests, including any relevant attributes and targets, are set out in the NIS and outlined above as part of my assessment. I have also examined the Natura 2000 data forms as relevant and the Conservation Objectives supporting documents for these sites available through the NPWS website (www.npws.ie).

8.15. Potential Impacts on identified European Sites

8.15.1. There are no direct pathways to designated sites. The following potential impacts have been identified:

Impacts during construction

8.15.2. There is hydrological connectivity to the European site via the Barrow navigation channel, which is an existing surface water drainage channel immediately contiguous to, and west of the appeal site. There is a potential surface water pathway from the site of the proposed development via the local surface water drainage network.

8.15.3. There is a potential groundwater pathway between the proposed development site and the European sites should indirect discharges (i.e., spillages to ground) occur, or should any contamination on the site enter the ground water.

8.15.4. Due to the absence of invasive species within the bounds of the appeal site, there is a low risk of alteration of habitat due to the potential for spread of invasive plant species.

Impacts during operational phase

8.15.5. Potential impacts arising from the operational phase are related to surface water drainage from the built development. Uncontrolled or unattenuated surface water drainage alone or in combination with other developments from the built development could lead to decreased water quality arising from sediment discharging to the watercourse and result in a deterioration of water quality for the five aquatic species and the Otter, identified as being QI's within the adjoining SAC.

8.16. Appropriate Assessment of implications of the proposed development on each European Site

8.16.1. Special Areas of Conservation- River Barrow and Nore SAC

8.16.2. There will be no direct impacts on any SAC site as a result of the proposed development as the development is located wholly outside of any European Site. There is a drainage channel located immediately adjacent to, and west of the development site. The development site is located approximately 5 metres east of the Barrow navigation channel, which is part of the River Barrow SAC. The habitats within the zone of influence of potential pollution and/or sedimentation impacts are those influenced by water quality and these habitats are listed below.

Table 3:

Designated Site	Qualifying Interests (those in bold are those which may be susceptible to water quality impacts)	Conservation Objective (favourable status)
River Barrow and Nore SAC	White-clawed Crayfish [1092]: Sea Lamprey [1095]: Brook Lamprey [1096]: River Lamprey [1099]: Salmon [1106]: Otter [1355]: Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> [91E0]: Hydrophilous tall herb swamp [6430]:	

8.16.3. Qualifying Interests identified in the NIS could be at risk from potential construction related surface water discharges should the discharges be of sufficient quantity

and/or duration to affect water quality within the site. The habitats that could be affected by decreased water quality are highlighted above. The potential for significant effects would be dependent on the magnitude of the pollution and/or sedimentation event, the resilience of the habitat and the in-combination effect of that event with other water quality pressures due to other plans and projects. The risk of a pollution/sedimentation event is predicted to be low given that the only hydrological link is via storm/surface water drains and the event would be accidental and short lived. Furthermore, the capacity of the surface water drainage network to transfer sediments would limit the amount of sediment that could be transferred in any one event. Any pollution effect would be localised to the area around the discharge outlet and would be diluted by the SAC waters. It is clear that there will be no direct impacts on habitat area, distribution, physical structure, vegetation zonation or structure. The application of mitigation measures aimed at preventing any potential harmful construction related emissions to the aquatic environment will ensure that the invertebrate community structure of these habitats will be unaffected.

8.16.4. Notwithstanding the proximity of the SAC to the appeal site, there is a low risk of habitat being impacted due to the potential for spread of invasive plant species. Given the location of the proposed Riparian buffer zone alongside the SAC boundary and the proposals to employ an Ecologist on site during the development works in order to monitor the importation of soils and fill to the site, I consider this to be a highly unlikely scenario to arise and it is in an abundance of caution that I have screened in this matter. Notwithstanding this, I note the applicant's mitigation measures as set out within Section 6 of the NIS and within the Project CMP which are assessed in the paragraph below.

Mitigation Measures:

8.16.5. Mitigation measures have been outlined in Section 6 of the applicants NIS and include reducing the risk of sediment transfer and preventing blockage of the surface water drainage network, namely, to avoid or reduce any risk of pollution from the construction phase. Potential hydrological impacts alone or in combination with other plans or projects will be mitigated by the surface water design of the proposed development. Mitigation measures for potential groundwater effects are similar in nature. A Project Construction Management Plan (CMP) has been compiled which

will facilitate the effective application of all mitigation measures for the proposed development. The main mitigation measures are detailed in the CMP. The CMP, which is submitted as a separate document with this application, covers all potentially polluting activities and includes mitigation measures for critical elements such as storage and handling of harmful materials including hydrocarbons. Having regard to the measures outlined as well as the application of best practice construction methods, I am satisfied that there will be no adverse effects on the River Barrow and Nore SAC in view of the site's conservation objectives as a result of the proposed development.

8.16.6. The applicants have included a number of mitigation measures in that no topsoil would be stored within the riparian buffer zone, that the surface water attenuation system be constructed early within the construction works and therefore surface waters would be managed by this system which would include silt traps within its construction. A silt berm would be developed around the perimeter of the excavation area until the subfloors and surface water drainage systems are put in place. Any soils that remain exposed for long periods of time will be re-seeded in order to minimise run-off. The applicants have presented a number of mitigation measures including the fitting of petrol and oil interceptors within the surface water attenuation system to ensure that there is no discharge of hydrocarbons to the SAC or adjoining drainage ditch along the western site boundary. Fuels stored on site will be kept within a bunded compound are sized to hold 150% of the maximum tank capacity. Vehicles will only be refuelled within a designated concreted area, which will drain to a bypass retention petrol/oil interceptor. The mitigation measures proposed to counteract these potential impacts include verification and inspection by the on-site Ecologist of all soils and fill being imported to the site and to ensure that all machinery and plant entering the site are cleaned of fragments and seeds. This would be in accordance with best practice as set out within the EC (Birds and Natural Habitats Regulation's) 2011.

8.16.7. In terms of in-combination effects, I note that this matter was raised in some of the third-party submissions received, namely the in-combination effects of this proposed development with other permitted/proposed developments in the vicinity. Section 6.5 of the NIS considers the potential for cumulative effects on nearby designated sites

arising in combination with other plans or projects and lists a number of developments in the area that have been permitted. Another residential scheme for the development of 88 dwellings, further north in the settlement of Athy was permitted in January 2022. It is not anticipated that other projects will act in combination with the proposed development to give rise to cumulative effects on any European sites.

8.16.8. Following the Appropriate Assessment and the consideration of mitigation measures, I can ascertain with confidence that the project would not adversely affect the integrity of the River Barrow and Nore 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.

8.17. Appropriate Assessment Conclusion

8.17.1. The residential development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended.

8.17.2. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on one European Site.

8.17.3. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of the European site in light of its conservation objectives.

8.17.4. 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 River Barrow and Nore SAC, or any other European site, in view of the site's Conservation Objectives.

This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures and ecological monitoring in relation to the Conservation Objectives of the aforementioned designated site.
- Detailed assessment of in combination effects with other plans and projects including historical projects, current proposals and future plans.

- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the designated site.

9.0 Recommendation

I recommend that the planning application be refused for the following reasons and considerations.

10.0 Reasons and Considerations

- 1 The appeal site is subject to land use zoning F-Open space and amenity within the Athy Local Area Plan 2021-2027 which has the objective “To protect and provide for open space, amenity and recreation provision”. This objective is considered reasonable. Residential development/dwellings are not listed as uses which are either permissible or open for consideration in F zones and are thus deemed in the Local Area Plan not permissible. The proposed development would, therefore, contravene materially an objective indicated in the Local Area Plan in relation to the zoning of land and would be contrary to the proper planning and sustainable development of the area.
- 2 The proposed development, by reason of its bulk and massing and heights on a site with steep gradients with site levels varying by up to 9 metres and requiring substantial engineering intervention works, would be out of character with the pattern of development in this vicinity and would constitute a visually discordant feature when viewed from the River Barrow Special Area of Conservation and amenity walkway. These form an integral part of the Green Infrastructure network of the town, which is to be protected under Policy GI1 of the current Athy Local Area Plan and which it is appropriate to preserve. The proposed development would, therefore, be detrimental to the character of this area and to the visual and recreational amenities of the area and, therefore, would be contrary to the proper planning and sustainable development of the area.
- 3 Section 3.4.6 of the Kildare County Development Plan 2017-2023 states that all towns, village settlements, rural nodes (as appropriate) 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. Objective SO9 of the Kildare County Development Plan 2017-2023 states that it is an objective of the Council to sequentially develop lands within towns and villages in accordance with the Development Plan Guidelines DEHLG 2007 and this objective complements more recent policy on consolidated and sequential growth as set out in the Government's National Planning Framework and the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Region. In the absence of any clear justification for the development of the subject site in advance of other lands zoned for new residential development which are closer to the town centre and are as yet undeveloped, it is considered that the proposed development would be contrary to a stated development objective of the Kildare County Development Pan 2017-2023 relating to the order of priority of development and therefore, would be contrary to the proper planning and sustainable development of the area.

Note: The land use zoning of the appeal site represents a new issue in the appeal not raised by any of the parties to this appeal. Under Section 137 (2) of the Planning and Development Act 2000 (as amended), the Board shall give notice in writing to each of the parties and to each of the persons who have made submissions or observations in relation to the appeal or referral of this new issue.

Fergal Ó Bric

Planning Inspectorate

14th February 2022