



An
Bord
Pleanála

Inspector's Report ABP-310990-21

Development	48 houses
Location	Moate Road, Ballyragget, County Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	20/395
Applicant(s)	John Staunton
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Riverside Estate Residents Group
Date of Site Inspection	1 st November, 2021
Inspector	Kevin Moore

1.0 Site Location and Description

1.1. The 3.445 hectare site is located to the north of the town centre of Ballyragget in County Kilkenny. It is located behind the existing Riverside housing estate, a linear housing scheme of 10 detached houses, which access Bridge Street at the western end of the town. The site has frontage to the east onto Moate Road close to the town centre. The proposed access to the site comprises the cul-de-sac end of the Riverside estate road. The existing estate's main open space forms part of the south-western section of the site. The site is relatively level and is in use as tillage. Overhead powerlines traverse the site. The land adjoining the western side of the site falls towards the River Nore which lies a short distance to the west. The site is bounded to the north and east by detached houses that have frontage onto Moate Road, to the west by agricultural lands, and to the south by the Riverside estate, a Glanbia agri-business premises, and other properties fronting onto Bridge Street.

2.0 Proposed Development

2.1. The proposed development would comprise:

1. The construction of 48 houses consisting of 3 no. two bedroom bungalows, 1 no. two bedroom mid-terrace unit, 2 no. three bedroom end-terrace units, 28 no. three bedroom semi-detached units, 12 no. four bedroom semi-detached units, and 2 no. four bedroom detached units;
2. Vehicular access in the form of an extension to the existing Riverside estate road;
3. Pedestrian access from the Moate Road; and
4. All associated site development and landscaping works.

2.2. Details submitted with the application included a Design Report, a Housing Quality Assessment, a Landscape Report, a Stage 1 & 2 Road Safety Audit, an Engineering Services Report, and a Public Lighting Report.

3.0 Planning Authority Decision

3.1. Decision

On 7th July, 2021, Kilkenny County Council decided to grant permission for the proposed development subject to 28 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted third party submissions, policy provisions, the site's planning history and reports received. It was noted that Part V provisions do not apply as the land is unzoned and that the northern end of the site is at risk of flooding. A request for further information was recommended based on the reports received and also clarity on bin storage provision, on ESB overhead lines, and on phasing.

3.2.2. Other Technical Reports

The Architectural Conservation Officer noted the eastern part of the site is within Ballyragget Architectural Conservation Area. The proposal to provide pedestrian access onto Moate Road was considered acceptable. There was no objection to the proposal subject to the wall to be removed being recorded and methodologies for repair and conservation being provided.

The Environment Engineer requested further information relating to flood risk assessment, appropriate assessment, a response to third party submissions, surface water drainage details, an Irish Water connection agreement, and a construction stage waste management plan.

The Roads Engineer requested the submission of a traffic impact assessment, sightline details, a revised parking layout, details on pedestrian provisions, and the design layout of the internal road network.

The Parks Section was satisfied with the landscaping provisions.

The Housing Engineer was of the view that a Part V should be applied in this case and submitted that she was confident that a Part V agreement can be reached with the developer.

3.3. Prescribed Bodies

Irish Water requested that the applicant engage with the agency to determine the feasibility of the connection to the public water/wastewater infrastructure.

3.4. Third Party Observations

Objections to the proposal were received from D. O'Regan, Riverside Estate Residents Group, Ray Stone, Oliver and Anne Holohan, and Tomás and Anne Healy. The concerns raised related to the provision of boundary treatment and a buffer, shortfalls in application details, access, parking, traffic impact, appropriate assessment, impact on fish in the River Nore, flooding, the threat to the water supply, planned population growth, the low density proposed, the layout and design, impact on the architectural conservation area, overlooking, and deficiency in services.

3.5. A request for further information was issued on 10th August 2021. A response to the request was received on 12th November 2021. This included a traffic impact assessment, a flood risk assessment, an AA screening report, and an outline construction waste management plan.

3.6. The reports received after this submission were as follows:

Transport Infrastructure Ireland considered the proposal was at variance with national roads guidelines, having regard to insufficient data being provided and the need for a traffic impact assessment.

In a report dated 3rd December 2020, the Roads Engineers set out a schedule of conditions required to be met by the applicant. In a second report dated 17th December 2020, the Roads Engineers requested further information relating to an updated traffic impact assessment, a swept path analysis for the bend on the established estate road, a revised lighting proposal, provision of some on-driveway parking, additional pedestrian provisions, homezone details, and a preliminary construction and traffic management plan.

The Environment Engineer requested further information relating to surface water drainage.

The Planner repeated the original report prior to the request for further information and repeated the further information request. The further information responses and the planning authority's reports were noted. Noting the applicant's AA screening, it was considered that a Stage 2 Appropriate Assessment should be carried out and mitigation measures relating to the construction phase be set out. Clarification seeking these details and the requests raised in the other reports was recommended.

Further third party submissions were received from D. O'Regan relating to the proposal being outside the development boundary for Ballyragget and thus premature and by Riverside Estate Residents Group relating to public notice, access to documentation, access, appropriate assessment, flood risk, boundary treatment, groundwater vulnerability, breaching of the village's settlement boundary, and construction traffic. A further submission was received as an addendum from the Riverside Estate Residents, with concerns raised relating to the scale of the development, impact on the River Nore, the availability of alternative zoned locations, flooding, alternative access onto Moate Road, traffic hazard associated with the existing internal access road, and the timing and adequacy of the applicant's traffic survey. Oliver and Anne Holohan reiterated their concerns.

3.7. A clarification request was issued on 18th December 2020 and a response to this request was received on 5th December 2021. This included a swept path analysis, an appropriate assessment, a revised traffic impact assessment, a traffic management plan, and drainage details.

3.8. After the receipt of the clarification the following reports were received:

Irish Water had no objection to the proposal.

The Roads Engineers had no objection to the proposal and referred to conditions required to be met.

In a report dated 01/04/2021, the Environment Engineer had no objection to the proposal subject to the attachment of a schedule of conditions. In a further report

dated 08/04/2021, the Environment Engineer requested further information relating to the submitted NIS, the provision of a construction environmental management plan, and further details on the proposed outfall of stormwater.

The Planner referred to further third party submissions and referred to the response to the clarification request. A further clarification was recommended seeking a full NIS, a construction environmental management plan, further surface water details, and details on replacement trees.

3.9. A request for a further clarification of information was issued on 8th April, 2021 and a response to this request was received on 14th May, 2021. This included a Natura Impact Statement, a Construction Environmental Management Plan, and further surface water drainage details.

3.10. The reports to the planning authority were then as follows:

The Water Services Section requested that a headwall be constructed at the surface water outfall and referred to the possibility of the need for third party consent and for a wayleave to ensure an open drain could be adequately maintained. Reference was also made to a source protection zone surrounding an infiltration gallery prohibiting slurry spreading, soiled water, effluents etc.

The Environment Engineer had no objection to the proposal subject to a schedule of conditions.

The Planner noted the further clarification submission received, a third party submission, and the reports received. A grant of permission, subject to a schedule of conditions, was recommended.

4.0 Planning History

P.A. Ref. 00/1144

Permission was granted for site infrastructural works and outline permission was granted for 10 two-storey houses.

P.A. Ref. 05/1910

Permission was granted for site infrastructural works to facilitate future residential development.

5.0 Policy Context

5.1. Kilkenny City and County Development Plan 2021-2027

Core Strategy

Smaller Towns and Villages

Ballyragget is one of 22 small settlements that has been designated a 'Small Town/Village'. The site of the proposed development and the applicant's additional landholding outlined in blue in the planning application drawings each fall within the settlement boundary of Ballyragget.

The Plan states that the smaller towns and villages within the County need to be developed in a way that strengthens their role as local service centres whilst respecting their existing character and that achieving the right balance between encouraging development in smaller towns and villages and the scale and nature of such development is critical. It is further stated that it is important to ensure that new residential development in smaller towns and villages is of a design, layout, character and scale which fits well with the town or village involved and presents a high-quality living environment.

The Plan states that, for smaller towns and villages with settlement boundaries, individual serviced sites for individual houses and appropriately designed small housing schemes are promoted where social and engineering infrastructure are available. Housing is encouraged at 15-20 units to the hectare and the design is required to be sympathetic to the character of the existing settlement. Designs for the development of backlands are required to seek, where feasible, to maximise permeability for pedestrians and connectivity to existing streets and roads, rather than creating cul-de-sacs and dead-ends. The Planning Authority may limit the extent of development on any one site within the designated smaller towns and villages in accordance with the overall water services capacity and the availability of land for development within the village.

Plan objectives include:

4L It is an objective of the Council to prepare design and best practice guidelines for the provision of cluster housing in the rural settlements and rural nodes of the County.

4La To develop a set of criteria and a programme to carry out an analysis of the Smaller Towns and Villages (Tier 4) to consider:

(a) The provision of zoning maps where appropriate (particularly for Ballyragget, Mooncoin, Paulstown, Piltown, Kilmacow and Urlingford)

(b) Developing specific objectives for core areas, focal spaces, amenities and opportunity sites etc.,

(c) Identify land with development constraints.

This programme to be commenced within 12 months of the coming into effect of the Plan.

5.2. EIA Screening

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

5.2.2. 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.)

5.2.3. It is proposed to construct 48 houses. The number of houses proposed is well below the threshold of 500 dwelling units noted above. The site has an overall area of 3.445 hectares and is located within the small town of Ballyragget. The site is well below the applicable threshold of 10 hectares. The site is serviceable and is located within the development boundary of an urban settlement adjoining an established residential estate. The introduction of a residential development will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the

site is not designated for the protection of the landscape or of natural or cultural heritage. 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 Kilkenny County Council, upon which its effects would be marginal.

5.2.4. 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 settlement boundary of Ballyragget and the proposed use being a use which would be facilitated under the provisions of the Kilkenny County Development Plan, and the results of the strategic environmental assessment of the Kilkenny County Development Plan, undertaken in accordance with the SEA Directive (2001/42/EC),
- The location of the site adjoining 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),
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

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

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal may be synthesised as follows:

Environmental and Ecological Impact

- The NIS does not meet the standard of legal certainty required under the EU Habitats Directive in terms of the effectiveness of mitigation measures and the certainty that the CEMP will be implemented in full.
- The planning authority has not followed the correct procedure in relation to screening for appropriate assessment.
- Condition 4 of its decision, which calls for substantial drainage infrastructure and a new wayleave, should not be dealt with by conditions and should have formed part of the planning application to allow third parties to comment.
- It is surprising that the planning authority instructed the applicant to carry out infrastructural works within the boundary of the SAC.

The appeal includes a report appended addressing appropriate assessment issues.

Traffic and Access

- The poor sightlines and traffic speeds at the entrance will be exacerbated by the additional 48 households.
- The poor visibility and camber of the existing road will be exacerbated by the additional 48 households.
- Access should be relocated to the Moate Road, a lower tiered road where sightlines are achievable.
- The applicant has avoided the assessment of the safety issue with the N77 access by not including it within the red line boundary of the site, thus omitting the issue from the Road Safety Audit.

Attenuation and Impact on Public Open Space

- The encroachment of the attenuation tank onto an open space serving the existing estate will render the space unusable until it is installed, leaving children with no off-road space to play. The developer should use another location on the site.
- The tank's excavation could cause structural damage to surrounding houses. There is potential for structural impacts from bedrock excavation on existing asbestos buildings within 10m of the attenuation tank and No. 4 Riverside.

Inadequate Social Infrastructure

- The applicant should be required to prepare a social infrastructure audit to demonstrate that there is capacity within the town to cater for the proposed population increase. Existing childcare, medical services and shopping facilities do not have the capacity to cater for the consequent population increase.

Water Supply

- The combined risks associated with flood risk and groundwater vulnerability have the potential to negatively impact on the water supply for the town. The risk was not adequately assessed by the planning authority.
- Due to the proximity of the proposed development to the public water supply, the development poses a potential threat to the source of supply at the construction stage and from stormwater runoff.

Flood Risk

- The increased surface water runoff from the proposed development, combined with later phases and the increasing occurrence of flash floods, have the potential to increase the floodplain of the River Nore and potentially threaten the existing houses in the Riverside estate and proposed houses

adjacent to the river. This risk was not adequately assessed by the planning authority.

Compliance with Development Management Standards

- An area of public open space (referred to as 'Public Open Space Retained') is included in the proposed development that is outside the development boundary in the calculation of total public open space. This should be corrected.
- The proposed site layout is poor, containing a number of long, straight roads which are not in accordance with modern residential design guidelines and which would facilitate higher traffic speeds.

Third Party Experience

- The engagement with the planning authority in relation to the planning application was frustrating and unsatisfactory. Planning notices have been poor and misleading. Procedures were not followed and the application should have been invalidated.

6.2. Applicant Response

The applicant's response may be summarised as follows:

- The third party appeal represents the same issues as were raised during the application process and which were duly addressed by the applicant and assessed by the planning authority. There is nothing further to add to the submissions previously made.

6.3. Planning Authority Response

I have no record of any response to the appeal from the planning authority.

7.0 Assessment

7.1. Introduction

7.1.1. I consider that the principal planning issues relate to the form, character, layout and density of the proposed development, flooding and drainage, traffic impact, impact on public open space, impact on water supply, adequacy of social infrastructure, the planning authority's handling of the application, and appropriate assessment.

7.2. The Form, Character, Layout and Density of the Proposed Development

7.2.1. Ballyragget is a small town in north County Kilkenny. The county settlement hierarchy is set out in Table 4.3 of the recently adopted Kilkenny County Development Plan 2021-2027. This cites Kilkenny as a 'Significant Key Town, then Waterford Metropolitan Area, Towns with a population greater than 1500, Rural Towns and Villages, and then Rural Nodes and the wider rural area. Ballyragget is one of 22 Rural Towns and Villages designated in the Development Plan. The town has been provided with a settlement boundary in the new Plan. There are no zoning provisions for the town. The applicant's landholding, including the site, lies within the settlement boundary for the town.

7.2.2. Ballyragget, being a small settlement, has relatively limited social infrastructure. Kilkenny is less than 17km south of the town. There is provision for primary level schooling, there is a church and there is a restricted range of retail and commercial outlets in the town. Significant modern residential development has developed off Patrick Street to the north-east of the town centre and east and west of Castle Street to the south of the town centre. The site of the proposed development is close to the town centre at its north-western end and lands at this location could reasonably be seen to form part of the future expansion of the town.

7.2.3. The recently adopted Plan states that planning applications for new housing development shall have regard to the provisions of the following Guidelines:

- Design Manual for Urban Roads and Streets

- Sustainable Residential Development in Urban Areas and its companion document, Urban Design Manual: A best practice guide
- Design Standards for New Apartments 2018
- Government Policy on Architecture-Towards a Sustainable Future: Delivering Quality within the Built Environment
- Guidelines on Urban Development and Building Heights 2018
- Building for Everyone: A Universal Design Approach, and
- Quality Housing for Sustainable Communities

7.2.4. Section 13.4.1 of the Plan refers to 'Density'. Therein it is stated that it is not intended to prescribe maximum residential density standards, with the emphasis being on providing quality housing environments based on innovation and a design led approach. The appropriate residential density in any particular location is required to be determined by the following:

- i. The extent to which the design and layout follows a coherent design brief resulting in a high-quality residential environment
- ii. Compliance with qualitative and quantitative criteria set out
- iii. Proximity to points of access to the public transport network
- iv. The extent to which the proposal adheres to any masterplan or Local Area Plan for the area.
- v. The extent to which the site may, due to its size, scale, and location, propose its own density and character, having regard to the need to protect the established character and amenities of existing adjoining residential areas
- vi. Existing topographical, landscape or other features on the site, and
- vii. The capacity of the infrastructure, including social and community facilities (such as childcare), to absorb the demands created by the development.

7.2.5. A key concern with the proposed development is the issue of density. This is a landholding which is close to the town centre. The applicant seeks to provide 48 houses on 3.445 hectares. This is a density of less than 14 houses to the hectare. In my opinion, this would result in wastage of serviceable lands close to a town centre.

This is the type of location which demands a sustainable density of development, significantly higher than that which is proposed, to ensure that there is an efficient use of the finite land resource and the use of public services intended to support and sustain the new development.

- 7.2.6. The new County Development Plan states that new residential development is required to have regard to the *Guidelines for Planning Authorities – Sustainable Residential Development in Urban Areas* and accompanying Urban Design Manual when considering the appropriate density for residential schemes. I submit that the proposed development would form a density of development that would be misplaced in the context of the guidance set out in *Sustainable Residential Development in Urban Areas* and should be discouraged. There is no necessity for this scheme close the town centre to follow a standard suburban housing estate format, of very limited character, which can be found on the edge of every town in the county and beyond. This location demands some form of considered architectural response to its location and context instead of pursuing the common suburban estate approach tacked onto the town centre. The provision of houses developed around large pockets of open space, with excessive private garden space, uses serviceable and developable lands in an inefficient manner.
- 7.2.7. The Sustainable Residential Development Guidelines express concerns about the impact of rapid development and expansion on the character of smaller towns through poor design, particularly the impact of large housing estates with a standardised design approach on the character of towns that have developed slowly and organically over time. In my opinion, this is what would result from the proposed development. This concern is compounded by the ‘Master Plan’ submitted which provides for more of the same into the future. The Guidelines go on to state that, in order for small towns to thrive and succeed, their development must strike a balance in meeting the needs and demands of modern life but in a way that is sensitive and responsive to the past. Section 6.3 of the Guidelines set out the key overall messages as follows:
- Development in smaller towns must be plan led,
 - New development should contribute to compact towns,

- Higher densities are appropriate in certain locations,
- Offering alternatives to urban generated housing,
- The scale of new residential schemes for development should be in proportion to the pattern and grain of existing development, and
- Local authorities have a vital role to play.

7.2.8. With regard to the above, my considerations are as follows:

- The Board will note that the site lies within the recently designated settlement boundary for Ballyragget. This small town is not targeted in any purposeful manner for significant expansion of its resident population according to its positioning within the Core Strategy. The planned and orderly expansion of the town, through coherent zoning, has not been provided for to date. I note that the Guidelines advocate the provision of a local area plan as an essential prerequisite for the proper consideration of development proposals in smaller towns and the guidance states that planning authorities should not consider extensive proposals for new development in smaller towns in the absence of an adopted local area plan. Clearly, there is very little 'plan-led' provisions for Ballyragget to date. Furthermore, the scale of this site and the scale of the proposed development in the context of the small town, together with the applicant's intent for further development at this location, presents as an 'extensive' proposal for this small town. Development of this nature and scale could not reasonably be seen to have been 'plan-led' and it would have repercussions for the orderly, balanced development of the town in the immediate term.
- The proposal does not provide compact development. It is a standardised suburban format tacked onto the edge of the town centre. The site demands a more compact form which reflects its context.
- The site forms a location in which increased densities should be pursued. The same number of residential units could reasonably be provided on a substantially less land area, with a scheme designed in a manner which contributes to the enhancement of this edge of town centre location.

- I am satisfied that residential development at this location could well prove attractive in a manner which could provide reasonable alternatives to urban generated housing in the rural environs of this town. This is dependent on the character and quality of design response to this site and its connectivity with and accessibility to the town centre.
- The scale of the proposed scheme is not in proportion with the established pattern and grain of existing development in this edge of town centre location. The Guidelines state that it is generally preferable that overall expansion of small towns proceeds on the basis of a number of well-integrated sites within and around the town centre rather than focusing on rapid growth driven by one very large site. I am concerned that the proposed suburban housing estate and its future expansion would generate such a pattern of development. With the scale of this site and the applicant's landholding and with the range of frontages onto streets that are available, the development of 'well integrated sites' around the town centre is the type of development which should be pursued and which should be reliant on a plan-led approach. The latter should be providing for the appropriate scale and grain to match that of the existing development of the town.
- With regard to the above considerations, it is evident that the local authority has an essential role to play in ensuring development at sensitive locations such as that proposed is plan-led.

7.2.9. Finally on the Guidelines and density standards, I note it is advocated that, within centrally located sites, densities of 30-40+ dwellings per hectare for residential schemes may be appropriate. Reference is again made to achieving good quality development that reinforces the existing urban form, the effective use of premium centrally located land, and the contribution to a sense of place. For edge of centre sites, densities to a range of 20-35 dwellings per hectare are considered appropriate. The site of the proposed development is close to the town centre, within a very short walking distance via Bridge Street or Moate Road. It is evident that the proposed density of development, at a rate of less than 14 houses to the hectare, is substantially below the rates advocated in the Guidelines for sites close to the town centre. This proposal could not be seen to be compatible with the Guidelines, which

the recently adopted County Development Plan requires new residential development to have regard to.

Note: The Board may consider this a new issue and raise the matter with parties to the appeal.

7.3. Flooding, Drainage and Water Supply

- 7.3.1. I first acknowledge the applicant's flood risk assessment which was submitted by way of further information. I note the elevated nature of the proposed site relative to the location of the River Nore which lies to the west. This site does not lie within the flood plain of this river and it would not be subject to flooding derived from fluvial sources. Furthermore, having regard to the nature of the terrain, together with the elevation, location and layout of existing residential development in the immediate vicinity, I do not consider that there would be any concerns about the displacement of flood waters arising from this development which could pose any increased risk of flooding to neighbouring residential property.
- 7.3.2. I submit to the Board, however, that there is a serious lack of assurance of the delivery of surface water drainage and management for the proposed development at this stage of the planning process. I draw the attention of the Board to the array of Environment Section reports and to the Water Services Section report. The latter came after a further information request, after a clarification request, and after a further clarification request. This report requested that a headwall be constructed at the surface water outfall and it referred to the possibility of the need for third party consent and for a wayleave to ensure an open drain could be adequately maintained. I submit that such essential provisions should have come to light at the initial stages of the deliberations of the planning authority's consideration of this proposed development. Condition 4 attached to the planning authority's decision then followed on from this report. Attaching a condition which requires a wayleave to be established through another property owner's land, to construct a headwall at an existing stormwater outfall adjoining / within a Special Area of Conservation, and to obligate the developer to acquire all relevant third party consents is clearly not a

sustainable development management approach to ensure the deliverance of essential infrastructure, notably without due regard being given to any understanding that such a wayleave and/or consents may or may not be forthcoming and without an assessment of the potential significant effects of such development within / abutting an SAC. At this stage of the process, there can be no assurance that the necessary drainage infrastructure can be provided nor is there any understanding that the provision and functioning of such infrastructure will not have significant adverse effects on the European site.

7.3.3. Finally, I note the Ballyragget public water supply source comes from the River Nore to the west of this site. A substantial part of the site of the proposed development and the outfall of the surface water sewer are located within the 200m buffer zone of this water source. Within this zone there is a prohibition on spreading of slurry, soiled water, effluents, farmyard manure and other organic fertiliser. The sensitivity of this location should not be underplayed and an assurance is essential that what is proposed to be developed within this buffer zone will not adversely impact on water quality. In light of what the applicant is required to do to provide essential drainage measures and to maintain and manage this drainage system, there can be no assurance that this development can proceed in a manner that would not adversely impact on the water supply source.

7.3.4. Overall, there are significant shortfalls in how this issue has been addressed by the planning authority and this results in serious concerns relating to the delivery of an adequate surface water drainage system, while at the same time protecting the town's water supply source and the River Barrow and River Nore Special Area of Conservation.

7.4. Traffic Impact

7.4.1. There are a number of traffic-related issues which require consideration.

7.4.2. I first acknowledge the appellants' concerns relating to high traffic speeds on the N77 at the location of the Riverside estate entrance. This entrance accesses the public road within the 50kph speed limit zone for the town. There is good visibility in both

directions along the main road at this entrance. The access onto the main road is discernible on the approaches and there are no restrictions in the width or form of this entrance. I submit to the Board that the third party concerns relating to non-compliance with speed limits within the town of Ballyragget is an issue for An Garda Síochána. The siting of this entrance is considered acceptable to serve residential development of the nature proposed.

7.4.3. I then note the third party concerns relating to the horizontal alignment of the internal estate road which is intended to be used as the vehicular access road into and out of the proposed development at the operational phase. It is my submission to the Board that, if this road is to be the principal access into the new development, then the alignment would be beneficial to enticing slower traffic speeds. This road is adequate in width, alignment and structure to accommodate two-way vehicular traffic serving residential development. Further to this, given the relatively straight sections of road within the proposed scheme beyond the existing road, additional traffic management and traffic calming measures would be required to address undesirable increases in traffic speeds, particularly when it is proposed to accommodate extensive numbers of parking spaces parallel to road carriageways and the potential for conflict that may arise.

7.4.4. I note the third party submission requesting consideration of the use of Moate Road instead of the existing Riverside estate road as the entrance into the new development. In response to this, I first submit that there are no particular constraints associated with the use of the established entrance and estate road at the operational phase of the development. I then note that the site frontage onto Moate Road is at a location where the horizontal alignment of the street is relatively poor and is sited immediately opposite a road junction. I submit that these pose notable constraints on the provision of a safer access over that which is proposed at present. The needs of the proposed development can be adequately met by the current proposal, in my opinion. In the event of the consideration of more 'well-integrated' schemes being developed on this landholding (as is advocated in the Sustainable Residential Development Guidelines), the use of Moate Road as a location for vehicular access could be revisited.

7.4.5. I acknowledge the initial concerns of residents relating to the use of the estate road at the construction stage of the proposed development. The Board will note that the applicant now proposes to provide a construction access onto Moate Road. While the entrance and a section of the access road would lie outside of the site area, I observe that this land forms part of the applicant's landholding and there are no concerns about the ability to comply with this construction-stage provision. This clearly would address the residents' concerns at that stage of the development of the land at this location. I note, however, that it is proposed to develop two houses on this land fronting onto Moate Road. I further note the plan to develop the lands west of the site, as shown in the applicant's 'Site Masterplan Drawing'. I would be concerned if the proposed development of the two houses fronting onto Moate Road was to proceed and the further develop of lands to the west of the site was to be considered in the future. The remaining land to the west would be land-locked and this would likely result in construction-related traffic for such future development being restricted to using the existing estate road. This is an issue that needs careful review in considering any additional future development and the estate road should be avoided at any phase of the construction of housing on the site and the adjoining lands in the interest of public safety and to protect the amenity of established residents. In addition to these concerns, I submit that the use of the existing estate road at any construction phase would likely be a lengthy period, greatly impacting on those already residing at this location.

7.5. Impact on Public Open Space

7.5.1. The appellants have raised concerns about the loss of public open space arising from the proposed siting of an attenuation tank and the inclusion of this area within the development proposal. I submit to the Board that this is a reasonable submission that would cause adverse impact for established residents. This well-maintained open space is the only functional recreational space within the existing Riverside estate. The applicant proposes to take this space away from the residents during the construction phase of the development. In my opinion, this is a poor and unnecessary selection of a location for attenuation provisions. There is ample scope within the landholding to make provisions to attenuate surface water elsewhere. The

scheme should accordingly be revised to avoid the loss of this public open space during the construction of the development, in the event of permission being granted. The Board will note that it is intended to develop the scheme over two phases and it is also noted that there are proposals for the other lands into the future. I would be concerned that one of the most important public amenities for the established residents is intended to be taken out of use during the construction phase of the proposed development. I repeat that this selection of a location for attenuation measures is unnecessary and provisions can readily be made elsewhere within the landholding.

- 7.5.2. Regarding the issue raised relating to the excavation of the attenuation tank causing structural damage to surrounding houses, I note the scale, dimensions, and distance of the proposed attenuation tank from the Glanbia building to the south and from the house on the east side of the cul-de-sac end of Riverside estate. Given that such a provision would be sited in excess of 10 metres from the existing structures and given the proven developability of the existing structures in the immediate vicinity of this location, I do not see why there would be any particular concern about the developability of this attenuation tank and any potential adverse structural impacts at this location.

7.6. Adequacy of Social Infrastructure

- 7.6.1. The appellants have submitted that the applicant should be required to prepare a social infrastructure audit to demonstrate that there is capacity within the town to cater for the proposed population increase. It is submitted that the existing childcare, medical services and shopping facilities do not have the capacity to cater for the consequent population increase.
- 7.6.2. I note that the applicant is not required to submit a social infrastructure audit. I acknowledge that Ballyragget is a small town with limited social infrastructure and other facilities. There are no second level schools and there are very limited retail and other commercial provisions within the town. While I have no knowledge about the capacity of pre-schools, national schools or medical services provisions, I

understand the concerns of existing residents as the town seeks to expand its resident population. The consequences of developing a scheme of the scale proposed within such a small town, in isolation of an understanding of the capacity of the town's infrastructure to accommodate such growth, would be a reasonable concern for existing residents. This small town is well down the order of settlements being promoted for any substantial growth in the Kilkenny County Development Plan. Not alone should further residential development be suitably developed in a balanced and incremental manner to ensure facilities and infrastructure go hand in hand with it, but it is disconcerting to note that there are additional intentions to further develop this estate under the proposed master plan. This development appears to be sought in isolation of any understanding of the capacity of the small town to meet the basic needs of new residents. As I have indicated earlier in this assessment, this proposed development is over-scaled for this small town. The issue of planned, balanced, orderly development must be pursued in the interests of sustainability, particularly for a small town that is not flagged for any substantial development in the very recently adopted Kilkenny County Development Plan.

7.7. The Planning Authority's Handling of the Application

- 7.7.1. I note the appellants' concerns relating to the engagement with the planning authority, referring to it as unsatisfactory and referencing procedures that were seen to be unacceptable. I submit to the Board that this is a matter for Kilkenny County Council to address. I do, however, note that the planning authority failed to assess very many of the planning issues raised by the third parties in their submissions to it, which were supported by the payment of a fee. I consider that this is unacceptable as issues should be assessed and reports should clearly indicate how concerns were addressed by the applicant or how they are proposed to be addressed if permission is to be granted.

7.8. Appropriate Assessment

7.8.1. I note the site of the proposed development is located east of, and uphill of, the River Nore. The river, its banks and a buffer area either side of the river form part of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162). The River Nore is also a Special Protection Area (Site Code: 4233). The SAC is approximately 90 metres from the silt containment boundary immediately adjoining the west side of the site and the SPA is approximately 100 metres from the site at its nearest point.

7.8.2. The qualifying interests of the SAC are as follows:

Estuaries

Mudflats and sandflats not covered by seawater at low tide

Reefs

Salicornia and other annuals colonising mud and sand

Atlantic salt meadows (Glauco-Puccinellietalia maritimae)

Mediterranean salt meadows (Juncetalia maritimi)

Water courses of plain to montane levels with the Ranunculion fluitantis and

Callitriche-Batrachion vegetation

European dry heaths

Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels

Petrifying springs with tufa formation (Cratoneurion)

Old sessile oak woods with Ilex and Blechnum in the British Isles

Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)

Vertigo moulinsiana (Desmoulin's Whorl Snail)

Margaritifera margaritifera (Freshwater Pearl Mussel)

Austropotamobius pallipes (White-clawed Crayfish)

Petromyzon marinus (Sea Lamprey)

Lampetra planeri (Brook Lamprey)

Lampetra fluviatilis (River Lamprey)

Alosa fallax fallax (Twaite Shad)

Salmo salar (Salmon)

Lutra lutra (Otter)

Trichomanes speciosum (Killarney Fern)

Margaritifera durrovensis (Nore Pearl Mussel)

7.8.3. The qualifying interest of the SPA is *Kingfisher* (*Alcedo atthis*).

7.8.4. I note from the applicant's Natura Impact Statement that it was submitted that the key qualifying interests, habitats and species likely to be affected by the deterioration in water quality as a result of the proposed development are *Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation*, White-clawed Crayfish, Sea Lamprey, Brook Lamprey, River Lamprey, Salmon, Freshwater Pearl Mussel, and Nore Pearl Mussel. Reference was also made to the potential negative effects on Otter and Kingfisher. The other qualifying interests are considered by the applicant to be sufficiently distant and/or unconnected to the proposed development. Surface water drainage effects and consequent deterioration in water quality are seen as the likely effects arising from the proposed development. The applicant has set out a schedule of mitigation measures in the NIS and I also note that a Construction and Environmental Management Plan was also submitted.

7.8.5. In considering appropriate assessment, I first note that the planning authority did not undertake any appropriate assessment, notwithstanding the request made by it to the applicant for, and the receipt of, a Natura Impact Statement. The appellants' concerns relating to the unsatisfactory nature of the handling of this application by the planning authority, i.e. the competent authority at that time for appropriate assessment, is understood.

7.8.6. Further to the above, I note how essential infrastructure provisions were required to be met by way of condition attached to the planning authority's decision which would have direct impact on the consideration of the issue of appropriate assessment and which were not assessed for potential significant effects. I particularly draw the attention of the Board again to Condition 4 attached with the planning authority's decision. This condition required the construction of a headwall at the existing stormwater outfall. This would have impacts on the River Barrow and River Nore SAC and there is no understanding of the effects that would result and no assessment of such a provision. I note this was not a consideration in the applicant's NIS. This concern is compounded by the requirement of the developer to provide a wayleave through Irish Water owned lands to ensure maintenance of the surface water pipeline. There is no understanding if such a wayleave may or may not be forthcoming. The developer is also required to obtain all relevant third party consents according to this condition and there is no understanding what these consist of or if they can be obtained. Therefore, there can be no understanding that adequate surface water provisions can be made. In light of these very significant drainage provisions being required (or potentially the lack of such provisions) and the failure to assess the implications of these provisions (or lack of such provisions), which appear to be necessary for the development to provide for adequate surface water drainage, there is very little opportunity to undertake a meaningful appropriate assessment in this instance. There is clearly a significant shortfall in the information necessary to undertake an appropriate assessment.

7.8.7. On the basis of the information provided with the application and the appeal, particularly in relation to the lack of details on the provision of a headwall and the feasibility of the developer to provide essential surface water drainage measures, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not result in adverse effects on the integrity of the River Barrow and River Nore SAC (Site Code: 002162) and the River Nore SPA (Site Code: 4233) in view of the sites' conservation objectives.

8.0 Recommendation

- 8.1. I recommend that permission is refused in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

1. The site of the proposed development is on serviceable lands, within the development boundary of Ballyragget, and in close proximity to the town centre. It is a requirement of Kilkenny County Development Plan 2021-2027 that new residential development has regard to the *Guidelines for Planning Authorities – Sustainable Residential Development in Urban Areas* when considering the appropriate density for residential schemes. In addition, the provisions of the County Development Plan relating to smaller towns include that they need to be developed in a way that strengthens their role as local service centres whilst respecting their existing character, that the right balance needs to be achieved between encouraging development in such towns and the scale and nature of such development, and that it is important to ensure that new residential development in these towns is of a design, layout, character and scale which fits well with the town involved.

The Guidelines:

- express concerns about the impact of rapid development and expansion on the character of smaller towns through poor design, particularly the impact of large housing estates with a standardised design approach on the character of towns (Section 6.1),
- advocate the provision of a local area plan as an essential prerequisite for the proper consideration of development proposals in smaller towns and that planning authorities should not consider extensive proposals for new

development in smaller towns in the absence of an adopted local area plan (Section 6.3), and

- recommend densities of 30-40+ dwellings per hectare within centrally located sites in small towns and densities to a range of 20-35 dwellings per hectare for edge of centre sites (Sections 6.9 and 6.11).

Having regard to the proximity of the site to the town centre of Ballyragget and to established social, community and retail services in the immediate vicinity, it is considered that the proposed development, at a density of less than 14 residential units per hectare, would not be developed at a sufficiently high density to provide for an acceptable efficiency in serviceable land usage and that the standardised suburban housing scheme design approach would not provide for an attractive urban form at this edge of town centre location. It is, therefore, considered that the proposed development would not comply with *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas* and would thus conflict with the provisions of Kilkenny County Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

2. The site of the proposed development is located upslope and to the east of Ballyragget public water supply source and within the 200 metre buffer zone for this supply. Having regard to the deficiencies in details provided in relation to surface water drainage, including the necessity to provide a headwall at the existing stormwater outfall, the need to acquire a wayleave over lands outside of the applicant's control, and the need to obtain other third party consents, it is considered that the proposed development would be premature in isolation of these surface water drainage arrangements necessary to serve the proposed development, would be prejudicial to public health due to the risk of pollution of a source of public water supply, and would, therefore, be contrary to the proper planning and sustainable development of the area,.

3. On the basis of the information provided with the application and the appeal, particularly in relation to the lack of details on the provision of a headwall and the assurance of the developer to be able to provide essential surface water drainage measures, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not result in adverse effects on the integrity of the River Barrow and River Nore SAC (Site Code: 002162) in view of the site's conservation objectives. In such circumstances, the Board is precluded from granting permission for the proposed development.

Kevin Moore
Senior Planning Inspector

18th November 2021