



An
Bord
Pleanála

Inspector's Report

ABP-311556-21

Development	14 no. dwellings with associated site development works
Location	Kill West, Kill, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	201174
Applicant(s)	Jack and Morgan Graham
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Jerry and Vera O'Connor Patrick and Penelope Byrne Noel and Carmel Skelton, and Laura Sheehan Brigid Byrne
Observer(s)	None
Date of Site Inspection	8 th February 2022
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The subject site is located near the centre of Kill, Co. Kildare, approximately 150m south of Main Street. It is a greenfield site used for agricultural purposes and bound to the north, west and south by existing residential development. There is direct road frontage to the east of site. The M7 Motorway is to the north, on the far side of the town, approximately 300m away.
- 1.2. The land is generally flat with a slight slope downwards towards the west. There is a footpath and dense hedgerow running against the length of the eastern site boundary. There is also a mature hedgerow and some mature tree stands on the southern boundary.
- 1.3. The surrounding area is mainly characterised by a mix of detached, semi-detached, and terraced housing. The houses directly south of the site ('The Gables') are detached and predominantly two-storey, apart from the two houses at the end of the street (furthest east), which are single storey. To the west there are two detached dwellings, and to the northwest, a dormer-style house. The rear gardens of these houses are separated from the appeal site by a low-lying concrete wall.
- 1.4. There is an existing semi-detached dwelling and associated outbuildings near the northeast corner of the site (W91 Y5N2), which is owned by the Applicant.
- 1.5. The site has a stated area of 0.44ha.

2.0 Proposed Development

- 2.1. The proposed development is for the construction of 14 no. dwellings, car parking, public open space, a new vehicular access road, connection to existing services, landscaping, and all associated site development works.
- 2.2. The proposed residential mix comprises 8 no. three-bedroom houses and 6 no. two-bedroom houses. Most units are proposed to be laid out with the rear gardens facing south. The proposed finishes comprise a mixture of brick, light and rough grey render, smooth concrete, and pitched slate or tile roofs.
- 2.3. The stated gross floor area for the overall development is 1,151sqm.

- 2.4. The Planning Authority requested further information (FI) on 30th November 2020, including details regarding: the height of the proposed dwellings in relation to existing residential units in the area (Item 1), overshadowing of adjoining properties, particularly to the west (Item 2), the proposed removal of hedgerows at the east and south boundaries of the site (Item 3), preparation of an Ecological Impact Assessment and Bat Survey (Item 4), provision of public open space and request for a revised Proposed Site Layout Plan (Item 5), alteration of site boundaries (Item 6), revisions to storage provision within the proposed dwellings (Item 7), a drawing showing external finishes of each house proposed (Item 8), refuse storage and collection (Item 9), landscaping and play equipment (Item 10), documentary evidence of legal entitlement to make the application (Item 11), revisions to road and car parking arrangements (Items 12 and 14), revisions to drainage arrangements (Item 13), public lighting (Item 15), and to note / respond to third party submissions (Item 16).
- 2.5. The Applicant responded with further information on 1st June 2021. The main revisions included a reduction in the height of the proposed dwellings, a revised drainage layout, and an amended landscape plan.
- 2.6. The Planning Authority requested clarification of further information (CFI) on 9th July 2021 in relation to previous Items 1, 3, 11 and 16.
- 2.7. The Applicant responded with clarification of further information on 17th August 2021.

3.0 Planning Authority Decision

3.1. Decision

3.2. The Planning Authority issued a Notification of Decision to Grant Permission on the 8th September 2021, subject to 30 no. conditions, most of which were standard in nature.

3.3. Notable conditions included:

Condition 2: Requires implementation of mitigation measures set out in the submitted Ecological Impact Assessment Report.

Condition 4: Hedgerow along eastern boundary to be retained except where required to be removed to accommodate the access road.

Condition 7: A new concrete footpath to be constructed on each side of the proposed entrance and extend along the full extent of the proposed side boundary.

Condition 8: Construction of a 2m high boundary wall along the western site boundary (as shown on drawings submitted as further information).

Condition 11: Submission of a Construction Traffic Management Plan, prior to commencement of development.

Condition 24: All overground oil and chemical storage tanks to be adequately bunded to protect against spillage.

Condition 25: Submission of a Construction and Demolition Waste Management Plan, prior to commencement of development.

Condition 30: Payment of a financial contribution.

3.4. **Planning Authority Reports**

3.5. **Planning Report**

- The proposed overall height of the dwellings – reduced by 950mm to 8.5m as part of further information – and increased separation distances to the west from 8m to 9.9m (also at FI stage) is considered acceptable.
- The construction of a 2m high concrete boundary wall along the western boundary is appropriate. Planting ivy along the proposed western boundary wall is acceptable. However, British ivy (*Hedera helix*) should not be used.
- The proposed removal of the hedgerow along the eastern boundary ‘to provide a more appropriate aspect to the public realm’ is not considered acceptable and should be addressed under condition.
- The proposal to retain the southern hedgerow and reinforce it with a 1.8m high metal post and mesh fence to provide security is in accordance with Policies NH1, GI8 and GI9 of the Kildare County Development Plan 2017-2023.

- The submitted Ecological Impact Assessment has adequately considered the impact of the proposed development on the receiving ecological environment.
- The submitted Archaeological Impact Assessment is acceptable and the Heritage Officer has no objections to the proposal, subject to conditions.
- The previously proposed public open space (POS) to the east has been omitted from the overall open space calculation as part of further information. The red line has also been altered to allow for a larger and better proportioned POS area at the north of the site, which is acceptable.
- The proposed natural play equipment and revised landscape details, submitted as further information, is acceptable.
- The proposed roads / access, drainage and public lighting arrangements, post receipt of further information, are considered appropriate.
- In summary, having regard to the policies and objectives of the Kildare County Development Plan 2017-2023, the location and design of the proposed development, it is considered that the proposed development would not seriously injure the amenities of the area, subject to conditions, and would accord with the proper planning and sustainable development of the area.

3.6. Other Technical Reports

Area Engineer: Further Information initially requested. Applicant requested to carry out a swept path analysis to examine the turning movements of HGVs within the development and to submit a drawing to demonstrate onsite manoeuvrability, and construction of a new concrete footpath on each side of the proposed entrance to extend to the far side of the site.

Water Services: No objection, subject to standard conditions.

Housing Section: No objection, subject to conditions. Requires details of bin storage units and provision of Part V units.

Transportation: Further Information initially requested. Applicant requested to submit details of specifications of road surfaces, provision of EV charging points, car parking dimensions, road markings and signage, and public lighting details.

EHO: No objection, subject to standard conditions.

3.7. Prescribed Bodies

Irish Water: No objection, subject to standard conditions, including that the Applicant must sign a connection agreement for water and sewerage with Irish Water prior to the commencement of the development.

3.8. Third Party Observations

A total of 9 no. third party submissions were received by the Planning Authority. The submissions are from residents in the area and The Gables Residents Association.

The main issues can be summarised as follows:

- Proposal is for too many dwellings, which are excessive in size and scale, and not in keeping with the character of the surrounding area.
- The height of the proposed houses would negatively impact existing nearby single storey dwellings.
- The proposed boundary wall details are not clear.
- Concerns regarding potential removal of trees onsite.
- The proposed 30 no. car parking spaces is excessive given the location of development in the village centre. The development would add to traffic volumes on Hartwell Road. A mixed-use development would be more appropriate.
- Concerns regarding overlooking of properties, including The Gables (south), and reduce privacy and access to daylight.
- Bungalows would be more appropriate in this location. Lower residential density required.
- Insufficient visitor car parking.
- Proposed public open space is constricted and landscaping proposal is lacking.
- No provision made for the turning of large vehicles onsite.
- Site subject to flooding.

- Proposed 2-bedroom units are not in line with the community spirit of Kill.
- Proposed development should make provision for safe walking routes.
- Local primary school is at full capacity and secondary school in Naas has limited spaces only. Lack of community facilities to support the development.
- Concerns over attenuation volumes, and design of surface water and foul drainage systems.
- Noise pollution during construction phase and when houses are occupied.
- Concerns biodiversity will be negatively impacted upon, including bats.
- Light pollution caused by the proposed development is a concern.

4.0 Planning History

Subject Site

None.

Surrounding Area

Reg. Ref. 20/335: The Planning Authority granted permission and retention permission in June 2020 to extend and for associated site works to an existing dwelling situated at the northeast corner of the subject site (W91 Y5N2). This house is owned by the Applicant.

5.0 Policy Context

5.1. Kildare County Development Plan 2017-2023

Section 2 Core Strategy

Section 2 of the Kildare County Development Plan 2017-2022 (the 'Development Plan') recognises Kill as a 'Small Town'.

Section 3 Settlement Strategy

Section 3.4.3 (Settlement Strategy) states that 'Small Towns' within the Hinterland area generally comprise populations of between 1,500 – 5,000. Their role is to develop as key local centres for services with levels of growth to cater for local need

at an appropriate scale and to support local enterprise to cater for local demand. The rate of growth will be controlled to limit pressure on services, the environment, and unsustainable commuting patterns.

- Chapter 4 – Housing
- Chapter 13 – Natural Heritage and Green Infrastructure
- Chapter 14 – Landscape, Recreation and Amenity.
- Chapter 15 – Urban Design Guidelines.
- Chapter 17 – Development Management Standards.

Table 4.1 of the Development provides guidance on appropriate locations for new residential development and states the following in this regard:

“Inner Suburban / Infill: The existing built fabric of large towns often contains residential areas where additional dwellings can be accommodated without compromising the existing residential amenity or residential character of the area. The provision of additional dwellings within inner suburban areas of towns can be provided either by infill or by sub-division. Infill residential development may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships.

Sub-division of sites can be achieved where large houses on relatively extensive sites can accommodate new residential development without a dramatic alteration in the character of the area or a negative impact on existing residential amenities. Sub-division shall be considered subject to safeguards regarding residential amenity, internal space standards, private and public open space, car parking and maintenance of the public character of the area.”

Section 4.8 Design and Layout

Policy DL 1

Promote a high quality of design and layout in new residential developments and to ensure a high quality living environment for residents, in terms of the standard of individual dwelling units and the overall layout and appearance of the development.

Section 4.11 Residential development in established urban areas

Objective SRO 1

To encourage the consolidation of existing settlements through well designed infill developments in existing residential areas, located where there are good connections to public transport and services and which comply with the policies and objectives of this Plan.

Objective SRO 2

Consider backland development generally only where development is carried out in a planned and coordinated manner.

Section 13.4 General Natural Heritage

NH 1

Facilitate, maintain and enhance as far as is practicable the natural heritage and amenity of the county by seeking to encourage the preservation and retention of woodlands, hedgerows, stonewalls, rivers, streams and wetlands. Where the removal of such features is unavoidable, appropriate measures to replace like with like should be considered, subject to safety considerations.

Section 13.10 Green Infrastructure

GI 8

Contribute towards the protection of and manage existing networks of woodlands ,trees and hedgerows which are of amenity or biodiversity value and/or contribute to landscape character, and to strengthen local networks.

GI 9

Ensure that proper provision is made for the consideration, protection and management of existing networks of woodlands, trees and hedgerows when undertaking, approving or authorising development.

GI 11

Ensure that hedgerow removal to facilitate development is kept to an absolute minimum and, where unavoidable, a requirement for mitigation planting will be required comprising a hedge of similar length and species composition to the

original, established as close as is practicable to the original and where possible linking in to existing adjacent hedges. Native plants of a local provenance should be used for any such planting.

Kill Small Town Plan 2017-2023

Kill is identified as a small town in the Kildare County Development Plan 2017-2023 ('Development Plan') and a small town plan for it is included in Volume 2 of the County Development Plan.

The site is zoned Objective B (Existing Residential / Infill) under the provisions of the Plan with a stated objective:

'to protect and improve existing residential amenity, to provide for appropriate infill residential developments and to provide for new and improved ancillary services'.

This zoning principally covers existing residential areas and provides for infill development within these existing residential areas. The primary aims of this zoning objective are to 'preserve and improve residential amenity and to provide for further infill residential development at an appropriate density'.

Section 1.5.7 'Principles Governing Future Development of the Town'

- *Consolidating development within the town centre, followed by the sequential development of land/ sites in a logical progression from the town centre to the edge of the development boundary.*
- *Supporting local employment opportunities, while also supporting social inclusion and the development of community facilities and infrastructure to cater for the residents of the town and surrounding hinterland.*
- *Recognising the role and economic benefit of equestrian and bloodstock development in the area, along with that of the rural countryside in the surrounding area, in supporting the local and wider economy.*
- *Facilitating development in Kill in line with the ability of local services to cater for growth.*
- *Supporting the development of renewable energy within and serving the town.*

- *Protecting and preserving the quality of the natural and built environment of the town, including architectural, archaeological, cultural and natural heritage.*

Policy KL1

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

Policy KL4

Encourage and promote development within the town centre which is of a high standard of design, has an appropriate mix of uses, and enhances the built environment and delivers a high quality public realm.

5.2. National Planning Policy

- *Quality Housing for Sustainable Communities – Best Practice Guidelines, 2007*
- *Sustainable Residential Development In Urban Areas – Guidelines for Planning Authorities, 2009*
- *Urban Design Manual: A Best practice Guide, 2009*
- *Regional Spatial and Economic Strategy for the Eastern and Midland Region, 2019*
- *BRE Guide ‘Site layout Planning for Sunlight and Daylight’, 2011*
- *Design Manual for Urban Roads and Streets, 2019*

5.3. Natural Heritage Designations

The site is not located in or close to any European site.

The closest such site is Red Bog SAC (Site Code: 000397) which is located approximately 6.5 km to the southeast of the site.

5.4. EIA Screening

Having regard to the nature and relative small scale of the proposed development, which comprises the construction of 14 no. dwellings and ancillary site works, the nature of the receiving environment, and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A total of 4 no. third party appeals were received from residents in the area, including from:

- Brigid Byrne (The Bungalow, Kill),
- Jerry and Vera O'Connor (Meadow View, Main Street, Kill),
- Patrick and Penelope Byrne (Kill Village, Kill, W91 RY81),
- Noel and Carmel Skelton (No. 56 The Gables, Kill) and Laura Skelton (No. 57 The Gables, Kill), represented by Whyte Planning Consultants.

6.1.2. The main grounds of appeal reiterate the issues raised in the third party observations lodged with the Planning Authority. The main concerns are as follows:

Jerry and Vera O'Connor

- Potential for overshadowing has not been properly addressed. Application of the 45° rule shows unacceptable impacts on kitchen window. See attached drawing.
- The northwest corner of the is prone to flooding.
- The distance between proposed Dwelling No. 12 and the Appellant's property at Meadow View (W91 X2K8) is misrepresented on the drawings. Proposed Site Plan shows a separation distance of 9.66m between Appellant's house and

proposed House No. 12. However, the Appellant's house is only 5.6m from the boundary and the remaining 4m is not available on the application site.

- Single storey houses would be more appropriate.

Patrick and Penelope Byrne

- Proposed Houses 13 and 14 are on flood prone land.
- Shadow diagrams are not accurate.
- The bungalows to the west will be completely overshadowed. The proposed houses at the western boundary should be single storey only.
- The Planning Authority was too lenient.

Noel and Carmel Skelton and Laura Sheehan (Represented by Whyte Planning Consultants)

- Not opposed to the principle of the development.
- The Planner's Report (Page 12) states that the zoning for the site is zoned 'Objective C – New Residential'. This is incorrect as the site is zoned 'Objective B – Existing Residential / Infill' where the primary aims of the zoning objective is to 'preserve and improve residential amenity and to provide for further infill residential development at an appropriate density'. Therefore, the Planning Authority's Decision is flawed.
- The proposed development is not cognisant of the single storey nature of Nos. 56 and 57 The Gables, which are to the south. The new dwellings, particularly Nos. 1 – 6, which too close and are two storey houses with ridge heights of 8.5m (3.75m higher than Nos. 56 and 57). This is not protecting the residential amenity of existing houses as is required by the zoning.
- The residential amenity and views from Nos. 56 and 57 The Gables will be seriously eroded. There is better design solution available to develop the site by moving the proposed houses to the north part of the site instead.
- Disagree with the Arborist Report in relation to removal of trees. The loss of trees and hedgerow would lead to a serious erosion of residential amenity and character for Nos. 56 and 57.

- The installation of 2m high mesh fence at the rear boundary of each house is not acceptable. It would create an inaccessible 'no man's land' that would eventually become unkempt and unmaintained and allow the developer to ignore his responsibility in relation to appropriate boundary treatments.
- Proposed density is too great.

Brigid Byrne

- Proposed dwellings Nos. 13 and 14 are too close to the shared boundary on the west side of the appeal site and have not been moved further away. The Planning Authority has incorrectly interpreted that the setback distance has been decreased by 1.9m but, in fact, the dwellings have been moved closer to the boundary by 1.5m. This would result in further overshadowing of adjacent third party properties and invalidates the shadow study / diagrams.
- The Planner's Report initially indicated that the scale of the proposed house was excessive and that a single storey house would be more appropriate.
- The 2m boundary wall on the western boundary would negatively impact upon the natural light and maintenance of the garden shed in the rear of Appellant's property, which is The Bungalow, W91 E8K3.

6.2. Applicant Response

The Applicant lodged an Appeal Response on 1st November 2021, which includes the following main points:

- The Planning Authority completed a lengthy assessment to address the various issues raised by third parties, which led to significant design revisions, including further setting back the two westernmost houses from the western boundary and a reduction in the overall height of the proposed houses by roughly 0.9m to 8.5m.
- The Appellants generally make a case to amend the proposal to bungalow type units, which is based on concerns relating to overlooking and overshadowing. Such an approach is not warranted and the proposal is at the lower end of the scale in relation to national policy.

- The Development Plan sets a density range of 30-40 units per ha on lands which are 'centrally located within a small town'. Policy KL1 seeks to facilitate development on sites zoned 'Objective B - Existing Residential / Infill'. It is national policy to achieve higher residential densities on such urban sites.
- The Planner's reference to the incorrect zoning (Objective B - Existing Residential / Infill) is a typo. Page 11 of the Report cites the correct zoning and whether the site is zoned for 'B' or 'C' does not substantiate the Appellants' arguments. In any case, the proposed development is of a type that is equally suited to both zonings.
- The Appellants to the west claim that their residential amenity would be adversely affected by the proposed development due to its proximity and excessive height. In response, it is noted that the proposed House Nos. 12 and 13 are modest two-bedroom units and were reduced in height by 0.9m, respectively, and pushed further away from the western boundary, as part of further information. The revised position of the houses is shown on the amended Site Layout Plan submitted to the Planning Authority on 1st June 2021. The drawing shows they are further from the western boundary, not nearer.
- There is also no conflicting material or contradictory information between the landscape drawings and architectural drawings.
- Having regard to the orientation and virtually blank gable ends of the proposed houses (Nos. 12 and 13), and generous setback distances proposed, it is submitted that no significant amenity impacts would occur offsite. No overlooking from Nos. 12 and 13 would be possible because of the oblique views, that the windows on the bathrooms are glazed, the kitchen windows are at groundfloor level, and that there would be 2m high wall constructed on the boundary. Notwithstanding this, the Applicant is willing to accept by condition limiting the extent of glazing or omitting one or both windows for the houses, if required by the Board.
- The garden shed window should not be afforded the same level of consideration as a window to a habitable room.

- The submitted shadow diagrams show that there will be ample sunlight to each of Appellants' properties and that over 50% of all rear gardens to the west will continue to enjoy sunlight for at least two hours on 21st March. There will be no impact on The Gables to the south. Conversely, the Appellants have not provided a shadow analysis to support claims that the Applicant's shadow diagrams are inaccurate.
- The drawing enclosed with the Appeal, prepared by JFOC Architects, shows that a line drawn at 45° from proposed No. 13 to the O'Connor house indicates there would be no significant overshadowing impacts.
- In relation to the potential overlooking impact on The Gables, an Appellant recommends a significantly revised layout, whereby the houses would be relocated away from the southern boundary of the site. The proposed southern boundary treatment, which is designed to retain the existing hedgerow vegetation, is also criticised. The Applicant selected this design after detailed consultations with the Planning Authority, who are satisfied with the current proposal. There is a reasonable separation between the rear of the proposed houses and Appellants' bungalows, mostly 22m, albeit dropping to 16.5m for the projecting section at the rear of No. 56. The hedgerow will be retained and strengthened and there is a high wall (2.6m) at the rear of No. 56 which also reduces the potential for overlooking.
- In relation to flooding, the Kill Small Town Plan 2017-2023 identifies areas where flooding may be a concern and should be further studied. The appeal site is not one of these areas.
- Furthermore, the Drainage Design Report, prepared by Kavanagh Burke Consulting Engineers, shows that percolation qualities of the soil for the site are poor and this shows that it is surface water ponding in the Appellant's photographs, not flooding. The proposed underground attention system and its connection to the public sewerage network will address this issue. This arrangement was approved by the Planning Authority.

6.3. **Planning Authority Response**

The Planning Authority had no further comments or observations to make and respectfully requests that An Bord Pleanála uphold the decision as set out in the Notification of Decision issued by Kildare County Council on 8th September 2021.

7.0 **Assessment**

The main planning considerations relevant to this appeal case are:

- Principle of Development and Density
- Design, Layout and Residential Amenity
- Other Issues
- Appropriate Assessment

7.1. **Principle of Development and Density**

- 7.1.1. Kill is identified as a 'small town' in the Kildare County Development Plan 2017-2023. The site is zoned 'Objective B - Existing Residential / Infill' under the provisions of this Plan, which has a stated objective 'to protect and improve existing residential amenity, to provide for appropriate infill residential developments and to provide for new and improved ancillary services'. The principle of an infill residential development on the site is therefore considered to be acceptable.
- 7.1.2. The appeal site is greenfield in nature and used for farming purposes. However, it is situated close to Kill town centre and bound to the north, west and south by existing housing development. I consider the site to be within an established residential area, which is located near the transition between the edge of centre and outer town area, as per the description set out in the Sustainable Residential Development Guidelines in Urban Areas for Planning Authorities (2009). The principle of infill residential development and consolidation of the existing zoned and serviced area is consistent with the principles set out in national and local policy regarding urban consolidation and densification. It is also consistent with Policy SRO 1 of the County Development Plan, which seeks to encourage the consolidation of existing settlements through well designed infill development in existing residential areas,

where there are good connections to public transport and services and which comply with the policies and objectives of the Plan.

- 7.1.3. I also consider that the proposed development is consistent with Policy KL1 of the Kill Town Plan, which states that it is Council policy to facilitate the development of residential developments over the lifetime of the plan, largely within the town centre zone on areas designated as existing residential / infill and on lands zoned new residential, in accordance with the principles of proper planning and sustainable development.
- 7.1.4. I acknowledge the third party concerns regarding the proposed density of the development and that it would be excessive for the site and surrounding vicinity considering the character of the area is mainly one storey houses. The proposed density is 32 units per ha. This is at the upper end of the 20 - 35 units per ha range, as per Section 6.11 of the Sustainable Residential Development in Urban Areas Guidelines (2009) (and under Table 4.1 of the Development Plan). The proposed density, however, is appropriate for such sites, which are located at the edge of a smaller town / village, and I consider that a reduction in the number of units proposed onsite is not warranted.

7.2. Design, Layout and Residential Amenity

- 7.2.1. The proposed development adopts a traditional linear design comprising a row of 12 no. houses running in an east – west direction along the southern boundary of the site with 2 no. houses in the northwest corner (nos. 13 and 14). There is an internal access road running between the houses through the centre of the site leading off the public road to the east. The proposal, revised at further information stage, provides public open space (840sqm) within the north part of the section, which exceeds the 15% minimum required, and is, therefore, considered acceptable.
- 7.2.2. The Planning Authority raised several concerns regarding the proposed design and layout of the development during their assessment of the application, including the height of the proposed houses and their setback distance from the site's western boundary. The appeal site adjoins two bungalows to the west and a dormer style house to the northwest, whose rear gardens are separated from the appeal site by a low-lying concrete wall. This is a sensitive interface and requires consideration.

Visual Impact and Overlooking

- 7.2.3. Three of the Appellants reside in these houses and they have raised concerns regarding the proximity and height of the proposed units in the western part of the site. They submit that these dwellings are excessively high and too close, notwithstanding the design and layout changes made to the scheme at further information stage. This is partly the case as the character of the surrounding vicinity is mainly comprised of one-storey houses.
- 7.2.4. The proposed dwellings situated closest the western boundary are Nos. 12 and 13 (House Type B). House Type B is a two-storey, three-bedroom unit with an overall floorspace of c. 114sqm. Their overall height, which was reduced as part of further information, is approximately 8.5m. The houses were also further setback from the boundary from 8m to 9.9m in order to reduce potential residential amenity impacts from arising, such as visual impact, overlooking, overshadowing, etc.
- 7.2.5. The adjoining bungalows are not aligned parallel to the appeal site and lie at an angled juxtaposition next to the shared boundary. This means that the smallest separation distance of 9.9m, which is between proposed House No. 12 and Meadow View, increases markedly to almost 13m further south. Similar applies to the bungalow north of this house, where the separation distance increases from a minimum of 10.8m to more than 14m.
- 7.2.6. The elevations of the proposed Houses Nos. 12 and 13 are effectively blank gable ends, save for a groundfloor kitchen window and a single first floor ensuite window that uses obscured glazing. There is also a 2m high boundary wall proposed along the length of the boundary, which would block any direct views from the kitchen window. At present, there is only a low-lying concrete wall separating the properties from the appeal site.
- 7.2.7. In my view, no significant or unacceptable overlooking would occur from such an arrangement, and this would not constitute a reasonable basis upon which to refuse permission, or to necessitate a change in design. I also do not consider it necessary to apply a condition requiring the extent of glazing to be reduced, or for either window to be omitted, noting that the kitchen is on the groundfloor, and that it would not be unusual for the gable end of a house to have small bathroom window with a frosted treatment in such a setting.

- 7.2.8. In relation to the houses to the south (The Gables), the Appellants submit that their properties would also be adversely affected by way of overlooking and argue that a more suitable development would be of single-storey houses. It is also put forward that a better design would comprise of relocating the houses further away from the southern boundary towards the north part of the site, which would be closer to the Applicant's place of residence.
- 7.2.1. I am satisfied that there would be sufficient separation distances between the new dwellings and the back of the Appellants' houses, which are Nos. 56 and 57 The Gables, respectively. The separation distances here range from 22m, which is for most cases, down to 16.5m for the protruding section at the rear of No. 56. There is also a tall wall running the length of the shared boundary, which I estimate would be approximately 2.4m high, and that landscaping measures are proposed in this location to help soften the interface between the subject site and other third party lands.

Overshadowing

- 7.2.2. Regarding potential overshadowing of third party properties, I note that a series of shadow projection diagrams have been completed by the Applicant. The projections plot the sun path at various times of the day and month to identify the extent of potential overshadowing that would occur on existing, adjacent houses and gardens, including those to the west and south.
- 7.2.3. The diagrams do not provide a review against the criteria as per the relevant British Standard(s), or BRE Guide (as referenced under Section 17.2.5 'Development Management Standards' of the Development). However, they provide illustrations that make a useful comparison between the existing and proposed scenarios for 21st March (3pm), which is the required test date according to the guidance and are considered sufficient for the purposes of this particular form of development, which includes only houses, and no apartments.
- 7.2.4. On 21st March, the Shadow Analysis shows that most shadows would fall within the appeal site itself. There would be minimal overshadowing of properties to the north, no overshadowing for the properties to the south, and that the greatest impact would be caused by House Nos. 12 and 13 on the rear gardens of the properties to the west between 10am and 12pm only.

- 7.2.5. I further note that the proposed development is a traditional low density dual aspect scheme, where the BRE209/BS2806 targets would generally be met in all instances. There is nothing apparent in the documents and drawings submitted that would highlight any issue here. Therefore, while there is no documentary evidence to demonstrate compliance with BRE209 requirements, based on the planning documentation submitted, I am satisfied that there would be no material impact or information deficit.
- 7.2.6. In relation to the 45° rule, which is referenced by one of the Appellants as demonstrating there would be insufficient light entering a kitchen window associated with their house, I note that the Applicant has prepared a detailed scaled drawing in response. The drawing clearly shows, in my opinion, there would be no adverse daylight impact caused by the proposed nearest house in relation to the nearest third party property (see Drwg. No. 20.104.AP.118, dated Oct 2021).¹
- 7.2.7. Regarding concerns for potential impacts on the garden shed sitting on / near the shared boundary to the west, I do not consider that this building should be afforded the same level of protection as a habitable room and that it would not be unusual for a neighbouring property to cast shadows over such a structure.
- 7.2.8. In summary, I do not consider that the proposed development would injure the residential amenities of the area or of property in the vicinity, by way of visual impact, overlooking, loss of daylight or sunlight, or otherwise, and that it would provide an acceptable standard of amenity for future residents.

7.3. Other Issues

Zoning

- 7.3.1. The Appellants residing in The Gables note that the Planner's Report (Page 12) references the zoning for the site as 'Objective C – New Residential'. This is incorrect as the site is zoned 'Objective B – Existing Residential / Infill'. Therefore,

¹ Note: There is discrepancy on Contiguous Elevations 1 and 1a, whereby House No. 13 incorrectly identified as House No. 12. The numbering of houses underneath the elevational drawing appears to have omitted House No. 3. However, I consider this to be a naming / labelling error only and that the technical drawing information is accurate.

according to third parties, the Planning Authority's assessment of the proposal and Decision is flawed.

- 7.3.2. However, whilst I acknowledge this error, I do not consider that it had had any material effect on the Planner's overall assessment of the proposed development. I do not consider that an alternative decision would have issued and that the reference to 'Zone C' was effectively a typographical error that did not follow through in the remainder of the Report. I also note that the Planning Authority referenced the appropriate zoning ('Zone B') under Page 11 of their report, and that a 'dwelling' is listed as 'Permitted in Principle' for both zonings under the Kill Small Town Plan (Table 1.8.3 'Small Towns – Land Use Zoning Matrix').

Flooding

- 7.3.3. In relation to flooding, and potential for flood risk, I have inspected the OPW CFRAMS flood extent maps and note that the development is not within a flood risk area and is not, therefore, at significant risk of fluvial flooding. Furthermore, the proposed access is from a public road at the east of the site, where there is also no significant risk of flooding.
- 7.3.4. I further note that the Kill Small Town Plan identifies areas both within and near Kill town centre where flooding is a potential concern. The appeal site is not one of these. The closest such area is that of around the Kill River, which is approximately 180m to 200m to the northeast and identified for 'Flood Risk Assessment' on the relevant land use zoning map.
- 7.3.5. I also have reviewed the Applicant's Response and the Drainage Design Report, as prepared by Kavanagh Burke Consulting Engineers, and submitted with the original application (dated Sept 2020). I concur that the surface water shown on the site, as per photographs submitted by one of the Appellants, is likely due to the poor percolation qualities associated with the soil and that ponding has likely occurred due to excessive rainfall.
- 7.3.6. The proposal to drain surface water to an underground attenuation tank, which is connected to the Irish Water mains network, would help address the situation, in my view, and reduce the potential of further surface water accumulating onsite after further future rainstorm events.

Revised Design

- 7.3.7. The Appellants residing in The Gables submit that the Applicant should be required to pursue a revised layout whereby the houses would be relocated to the north part of the site, away from the southern boundary. In my view, the Applicant has sought to achieve a design that integrates the proposal well with its receiving environment and I consider that they have done this successfully.
- 7.3.8. The revisions to the proposed scheme during the further information, and clarification of further information, stages have adequately addressed many of the previous concerns raised, in my opinion, and I consider that the scale of the development proposed, its layout, and overall appearance is of sufficient quality. The proposal is generally consistent with the style of residential development in the surrounding vicinity and is in accordance with the standards set out under of Chapter 17 'Development Management Standards' of the Kildare County Development Plan 2017-2023.

Landscaping and Boundary Treatment

- 7.3.9. Some third parties have raised a concern regarding the installation of a proposed post and rigid weld mesh fence along the rear boundary of The Gables, which is the southern boundary of the appeal site. The purpose of the fence is to respond to a concern raised by the Planning Authority at further information stage and which sought to retain the existing hedgerow along this stretch.
- 7.3.10. Page 2 of the letter prepared by Landmark Design & Consultancy Ltd, submitted as part of the Applicant's CFI response, sets out a proposed strategy to mitigate against the partial loss of this hedgerow. It is proposed to remove only trees of low value (Category U); to trim back the existing vegetation in certain sections, remove bits of bramble, and leave original thorn-based hedgerow intact; plant new suitable supplementary / replacement native plant species; and to install a 1.8m high mesh fence to provide security, but not to demarcate boundaries for new homeowners.
- 7.3.11. I have reviewed the file and inspected the site in this regard and consider that the installation of such a fence could potentially lead to security, maintenance, and management issues. It is also not necessary, in my opinion, as there is already an existing wall that runs along the length of the boundary, which separates the subject site from the adjacent properties. The effect of having both a wall and fence running

parallel to each other would likely create an ambiguous strip of land, which could potentially become neglected overtime and pose safety issues.

- 7.3.12. I also note that the Tree Survey submitted by the Applicant indicates that many of the trees and plants situated along this part of the boundary are in poor condition, which is accepted by the Planning Authority, with some of the larger ash trees showing symptoms of Ash Dieback.
- 7.3.13. Whilst I acknowledge the Planning Authority has attached an importance to the retention of the subject hedgerow, which in principle is considered a sound and reasonable position, I do not consider that such an arrangement would be either workable or practical for the above-mentioned reasons. I accept that in the absence of the fence some landowners may cutback or remove sections of the hedgerow, but that this would likely only happen in limited cases and overtime, as and when other planting has had a chance to take hold and establish itself. The vegetation also provides a good visual screening between back-to-back properties, which could mean most residents would likely be in favour of retaining and properly managing the hedgerow, which would more far difficult if a mesh fence were erected.
- 7.3.14. Furthermore, the proposed compensatory planting would go some way to offsetting the potential loss of an original hedgerow species, which would be the typical and better way in which to address such a matter, in my opinion.
- 7.3.15. In summary, I recommend that in the event the Board grants permission that there should not be a condition requiring the installation of a wire mesh fence along the southern boundary of the site.

7.4. Appropriate Assessment

Having regard to the nature and small scale of the proposed development; which is for 14 no. dwellings on an infill site with ancillary site works, located within an urban and serviced area, and the distance from the nearest European site, no Appropriate Assessment issues arise. Therefore, it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

8.0 Recommendation

8.1. I recommend that planning permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the *Kildare County Development Plan 2017-2023*, the *Kill Small Town Plan 2017-2023*, and the nature, density, design and layout of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area, or of property in the vicinity, and would provide an acceptable standard of amenity for future residents. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on 1st June 2021, and by the further plans and particulars received by the Planning Authority on 17th August 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed 2m high block wall on the western boundary of the subject site, indicated on the plans submitted to the Planning Authority on 17th August 2021, shall be suitably capped and rendered and include suitable climbing plants comprising ivy and/or Boston Ivy to reduce visual impact.</p>

	Reason: In the interest of residential and visual amenity.
3.	<p>The proposed 1.8m metal post and rigid mesh panel fence on the southern boundary of the subject site, indicated on the plans submitted to the Planning Authority on 17th August 2021, shall be omitted.</p> <p>Reason: In the interest of amenities, public health and safety.</p>
4.	<p>All permitted dwellings shall comply with the storage requirements as set out under Section 17.4.5 of the Kildare County Development Plan.</p> <p>Reason: In the interest of residential amenity.</p>
5.	<p>Prior to the commencement of any house in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.</p>
6.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:</p> <ul style="list-style-type: none"> a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse; b) Location of areas for construction site offices and staff facilities; c) Details of site security fencing and hoardings;

	<ul style="list-style-type: none"> d) Details of any onsite car parking facilities for site workers during the course of construction; e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site; f) Measures to obviate queuing of construction traffic on the adjoining road network; g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network; h) Provision of parking for existing properties at [specify locations] during the construction period; i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels; j) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil; k) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains. <p>Reason: In the interest of amenities, public health and safety.</p>
7.	<p>Construction and demolition waste shall be managed in accordance with a Construction Waste and Demolition Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The Plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with</p>

	<p>the provision of the Waste Management Plan for the Region in which the site is situated.</p> <p>Reason: In the interest of sustainable waste management.</p>
8.	<p>a) The landscaping scheme (drg no. 00) as submitted as clarification of further information to the Planning Authority on 17th August 2021 shall be overseen by a qualified Landscape Architect and carried out within the first planting season following substantial completion of external construction works and be in accordance with the Landscape Details (drw no. 01) as submitted to the Planning Authority as further information on 1st June 2021 with the exception of the removal of the eastern boundary hedgerow.</p> <p>b) All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the Planning Authority.</p> <p>c) When all landscape works are inspected and completed to the satisfaction of the Landscape Consultant, a Practical Completion Certificate shall be submitted for the written agreement of the Planning Authority, as verification that the approved landscape plans and specifications have been fully implemented.</p> <p>d) All mitigation measure outlined in Sections 6.2 and 6.3 of the Ecological Impact Assessment submitted to the Planning Authority on 1st June 2021 shall be fully adhered to.</p> <p>Reason: In the interest of residential and visual amenity.</p>
10.	<p>All trees and hedgerows on the site boundaries shall be retained and maintained with the exemption of those strictly required to facilitate the development.</p> <p>Reason: In the interests of visual amenity.</p>

11.	<p>Details of the materials, colours and textures of all the external finishes to the proposed development, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Sample panels shall be erected on site for inspection by the planning authority in this regard.</p> <p>Reason: In the interest of visual amenity.</p>
12.	<p>Prior to commencement of development, final finishes, construction makeup and detailing of the proposed footpath and the layout of the proposed car parking, junction kerbing, drainage, roadmarkings, and signage, shall be submitted to and agreed in writing with the Planning Authority.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
13.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
14.	<p>Surface water drainage arrangements for the proposed development shall comply with the requirements of the Planning Authority.</p> <p>Reason: In the interest of public health.</p>
15.	<p>Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
16.	<p>The developer shall pay to the Planning Authority a financial contribution respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of</p>

the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developers or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

Ian Boyle
Planning Inspector

17th April 2022