



An
Bord
Pleanála

Inspector's Report

ABP-311835-21

Development	78 Apartments with surface car and bicycle parking spaces, ESB Substation and associated site development works. Application is accompanied by a Natura Impact Statement (N.I.S.).
Location	Former Greenvale Site, Montgomery Street, Carlow.
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	20294
Applicant(s)	Derek Devoy Ltd
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Derek Devoy Ltd
Observer(s)	None
Date of Site Inspection	27 th of April 2022
Inspector	Angela Brereton

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1.0 Site Location and Description

- 1.1. The application site (stated area 0.4749ha) is located within the former Greenvale site at the western end of Montgomery Street, approx. 570m north of Carlow town centre. The site has been partially cleared and occupies a vacant/cleared brownfield corner site between Montgomery Street to the south and the Barrow Way (Track) and River Barrow to the west.
- 1.2. The brownfield site is bound by locked gates and a 2m high concrete capped and plastered wall to the south facing onto Montgomery Street. A 3m high plastered wall around the side and rear of the adjoining Milverton and Auburn House apartment buildings to the east defines part of the application site. There is also a high wall along the northern site boundary with the historic cemetery and green space next to Hazel Court. Its western boundary with the Barrow Walk/Barrow Way is defined by a heavily overgrown embankment/earth berm and scrub vegetation. There is a centrally located area of concrete hard standing within the site. The interior is also heavily overgrown, with various self-seeding scrub and immature tree species. There is a berm along the western boundary and the site appears on a higher level than the Burrow Track.
- 1.3. The vacant building and grounds of the former Celtic Linen Laundry Factory is located to the south on the opposite side of the public road. To the immediate southeast of the site there is a three-storey apartment block development. To the north of the site there is a grouping of mature trees and historic cemetery grounds.
- 1.4. Montgomery Street ACA to the north of Carlow town centre, comprises primarily of terrace single and two storey Georgian era dwellings. It generally presents a narrow but well-maintained historic streetscape. There is some more modern residential including 2/3 storey apartment infill at the eastern end adjoining the subject site.
- 1.5. The site is in close proximity to the River Barrow to the west and is within the OPW flood risk area associated with same. The site also adjoins the River Barrow and River Nore SAC to the west. The site (proposed new development) would be visible from the town centre as seen from the Barrow track and the pedestrian bridge over the River Barrow to the south.

2.0 Proposed Development

2.1. Planning permission was initially sought for the construction of 78 apartments and associated landscaping, drainage, bin enclosure, boundary treatments, roads, lighting and site works, including an ESB sub-station, at the Former Greenvale site on Montgomery Street, Carlow Town. The site is bordered by Montgomery Street to the South, the Barrow Track to the West with a rear boundary wall adjacent to Hazel Court to the North and West.

2.2. In summary the proposal as originally submitted was to consist of the following:

- The apartments are to be accommodated in 3 blocks (A, B & C) ranging in height from 4 to 6 stories. Details are given of the floor area of each of these blocks and residential accommodation to be provided and this is included in the Design and Layout of the Assessment below.
- The intermediate public spaces between each block and associated landscaping link the communal amenity spaces of the site to the Barrow Track.
- 38no. surface car parking spaces are to be provided to the rear (north-east) of the site and are screened from Hazel Court to the north with a boundary wall and tree screening. There is also provision for 40 bicycle parking spaces distributed around the site.

2.3. Documentation submitted with the application includes the following:

- A Natura Impact Statement (N.I.S) - Faith Wilson Ecological Consultant
- Planning Statement – EHP Services
- Engineering Planning Report – MB - Magahy Broderick Associates
- Ecological Impact Assessment – Final Report – Faith Wilson Ecological Consultant
- Design Statement – GoKu Architecture
- Architectural and Engineering Drawings

2.4. It is noted that revised public notices and plans were submitted at Further Information Stage and significant F.I was submitted including a revised layout. In

summary the scheme was revised to include 2no.4/5 storey blocks and the number of units reduced to 60, to include the provision of a flood defence wall.

Planning Authority Decision

2.5. Decision

On the 5th of October 2021 Carlow County Council refused permission for the proposed development for 3no. reasons. These are as follows:

1. The proposed development consists of a high density residential apartment scheme that is considered excessive in terms of bulk, height and scale at a visually sensitive location fronting onto the River Barrow and Barrow Track in Carlow Town. It is considered that the proposal fails to satisfactorily integrate with the established form of development of the area and is also located in close proximity to the Montgomery Architectural Conservation Area (ACA) where it is considered that the proposal will adversely impact on the overall setting of the ACA and would contravene policy HER 008 in the *'Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018'* which seeks to *preserve and enhance the special character of the ACA within the Greater Carlow Graiguecullen Urban Area*. Consequently, the proposed development would be out of character with the pattern of development in the area and seriously injure the visual amenity of the area and set an undesirable precedent for similar development of a kind and thus be contrary to the proper planning and sustainable development of the area.
2. The proposed development site is located in close proximity to the River Barrow which forms part of the 'River Barrow and River Nore SAC (Site Code: 002162) and where it is an objective of the Council under Heritage Objective 5 of the Carlow County Development Plan 2015-2021 "*to support the protection of habitats and species covered by the EU Habitats Directive...*" Furthermore it is the policy of the Council "*to only authorise development after the competent authority has ascertained, based on scientific evidence that the plan or project will not give rise to significant adverse direct, indirect or secondary effects on the integrity of any European site..*" (Ref. Heritage –

Policy 2). Based on the information submitted the Planning Authority is not satisfied that the applicant has fully demonstrated that the proposed development, would not give rise to ecological impacts and would not significantly affect the River Barrow and River Nore SAC and the sites conservation objectives. Accordingly, the proposed development would be contrary to and would materially contravene Heritage Objective 5 and Heritage Policy - 2 of the Carlow CDP 2015-2021 and would therefore be contrary to the proper planning and sustainable development of the area.

3. The application site is located within an identified flood risk area in the OPW CFRAM study of Carlow Town, with the proposed development introducing new development into an area that is not included in the defended area of the completed works forming part of Carlow Flood Relief Scheme. The proposal therefore seeks to introduce a 'highly vulnerable' land use into a defined flood risk area, contrary to the requirement for Opportunity Site 17 as contained in the Strategic Flood Risk Assessment of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 (as extended), with a lack of a sequential test to consider alternative Sites for residential development that are not at risk of flooding. The Planning Authority is also not fully satisfied that the proposed extension of existing flood defence walls bounding the site and the provision of compensatory storage onsite will suitably mitigate against adverse flood risk impacts. Accordingly, it is considered that the proposed development would be contrary to Ministerial Guidance on flood risk management, would likely exacerbate the risk of flooding within the site and/or increase the risk and consequences for flooding elsewhere, would be prejudicial to public health and be contrary to the proper planning and sustainable development of the area.

2.6. Planning Authority Reports

2.6.1. Planning Reports

- 2.6.2. The Planner's Report (dated 13th of October 2020) has regard to the locational context, to the planning history and policy, to the interdepartmental reports and to the submissions made. Their Assessment includes the following:

- The overall principle of the subject development is acceptable subject to satisfying other development management criteria in the Joint Spatial Plan applicable to the proposed scheme.
- They have concerns about the overall design and layout of the 3 blocks to accommodate 78no. apartment units and note a parking shortfall and the higher density which reflects an overdevelopment of the site.
- While they have concerns regarding the overall design and layout, the floor areas of the proposed apartments generally comply with the Apartment Guidelines.
- They note the proximity to the River Barrow and potential for Flood Risk.
- Appendix 1 includes an AA Screening Report. This notes that a Stage 2 AA has been submitted.

Further Information request

They recommended that F.I be submitted in a detailed request which in summary includes the following issues:

- Revised proposals to reduce the overall size, scale and height of the proposed development. New drawings and photomontages to be submitted.
- To address the issue of parking shortfall having regard to the standards in the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 (as extended).
- A Traffic Impact Assessment and a Road Safety Audit (1+2) in respect of Montgomery Street, the entrance and the link to Andy Murphy Road.
- To submit a Site Specific Flood Risk Assessment report for the proposed development in accordance with the requirements of *The Planning System and Flood Risk Management Guidelines for Planning Authorities 2009*.
- They have regard to the need for a Justification Test and to the inclusion of flood protection measures.
- To demonstrate how the proposal complies with the brief for 'Opportunity site no.17' as per the Joint Spatial Plan. Also, as to whether less vulnerable uses were considered particularly on the ground floor.

- Greater details as to how the proposed surface water arrangement is to comply with the Carlow Co.Co. SuDS Policy Document, SuDS Manual and the GDSDS.
- The surface water outfall at Montgomery Street is not suitable for discharge from the site.
- Further information relative to Part V provision.
- An updated Ecological Impact Assessment to be submitted.
- A revised NIS to be submitted.
- To address the issues raised in the Third Party submissions.
- Revised Public Notices

Further Information response

The significant information submitted includes the following:

- Revisions to the overall Design and Layout of the Scheme to include a reduction in height to 4/5 storey in 2no. blocks and a reduction to 60no. apartment units, 60no. parking spaces and provision of a flood defence wall.
- F.I Submission, Planning Report – ERMS Planning & Development Consultants.
- An updated NIS by James O’Neill Associates Environmental Affairs.
- Ecological Impact Assessment Final Report – Faith Wilson, Ecological Consultant.
- Engineering Planning Report – Magahy Broderick Associates.
- Traffic and Transportation Assessment – Road Safety Matters.
- Site Specific Flood Risk Assessment IE Consulting Water-Environmental – Civil.
- Architectural Design Statement – RFI Response – Kruger/Lyons Architects and Project Managers.
- Photomontages and Positional imagery - ditto

- Lighting Design Report and Specifications for Montgomery Apartments – Redmond Analytical Management Services.
- Revised architectural and engineering drawings.

Council's Response

The Planner's Report (dated 5th of October 2021) had regard to the F.I submitted and their response included the following:

- They consider that the revised proposals have not satisfactorily addressed the visual impact concerns previously expressed.
- The proposed development is of excessive scale and density having regard to its locational context proximate to the River Barrow and the River Nore SAC and the Barrow Track and Montgomery Street ACA.
- Lack of the provision of quality open space within the scheme, would constitute an overdevelopment of the site.
- They note the TTA and RSA submitted and note the comments of the Council's Road's Engineer. They recommend that the improvement works in the RSA be included as a standard condition.
- They have regard to the Site Specific Flood Risk Assessment submitted and to the proposed extension of the existing flood defence wall and flood storage compensatory measures. Also, to Council Engineer recommendations. They are concerned that the design of the overall scheme as proposed still exhibits an unacceptable flood risk to the area. Also, that the proposed residential on the ground floor of the apartments is a highly vulnerable use.
- They are not satisfied that the FRA adequately addresses this issue as there is no sequential test to consider alternative sites for residential development that are not at risk of flooding and that the proposal fails to comply with the provisions noted in the SFRA for this site.
- They note that details on surface water have been submitted in the Engineering Planning Report. The Council's Engineer does not object and considers the revised proposal to be satisfactory subject to conditions.

- They note the details submitted relevant to the issue of Part V and this can be addressed by condition.
- They refer to the updated Ecological Impact Assessment submitted and to the Council's Environment Department response. They consider the applicant's response to be acceptable.
- They concur with the Environmental Section that the submitted NIS Report with the F.I response is not adequate and has not been updated to reflect the significant revisions to the apartment block scheme, including the provision of the flood defence wall in the F.I response. They are not satisfied that the submitted NIS demonstrates that the proposed development will not adversely impact on the River Barrow and River Nore SAC.
- They provide that all matters raised in the third party submissions were considered in the assessment of this application.
- They note the revisions made but conclude in summary that the scale, bulk, height and massing of the proposal would have an adverse impact on the character and amenities of the area, including visual impact on views from the Barrow Track and Montgomery Street ACA. That it has not been satisfactorily demonstrated that an adverse impact on the qualifying interests of River Barrow and River Nore SAC can be avoided. Also, that it has not been demonstrated taking into account the proximity to the River Barrow and the highly vulnerable residential use proposed that Flood Risk can be avoided.

2.7. Other Technical Reports

Transportation

They have regard to the locational context of the site and to the local road network, which in part is substandard. They request a TIA and an RSA 1+2 in respect of Montgomery Street, the entrance and the link to Andy Murphy Road.

They are concerned about a parking deficit and note that on street parking cannot be accommodated. They also note that the town does not have a local bus service and that there is no bus stop in the vicinity of the site. They recommend refusal if the parking deficit cannot be addressed.

They are concerned that the site is outside of the 'Defended area' of the Carlow Flood Relief Scheme. They recommend that details of flood protection works be submitted and that a compensatory area is required in the catchment if this site is to be developed. That further details of the boundary treatment to the Barrow Track and confirmation that there will be a flood wall above the 1% flood level and a parapet included.

They note concerns about surface water discharge and note this maybe direct to the River Barrow via their own outfall.

In response to the F.I submission they confirm no objection to the additional parking provision. They note the outcome of the TTA that roads and junctions in the immediate vicinity will not be adversely affected. That the recommendations of the RSA are included as a standard condition.

They have regard to the flood defence wall proposed and note that the SSFRA carried out is comprehensive. They recommend a condition be included that the developer undertake revised boundary treatment to the southern and eastern boundary and provide details of such.

One area of concern is the proposal for the area of the site to be used for compensatory storage, i.e the carpark. They recommend that the compensatory area not be provided and that levels on site be revised to reflect this. They confirm that the revised surface water proposals are acceptable subject to condition.

Water Services

They note that there is a 300mm sewer serving this road which falls towards the Athy road and there is a 225 HDPE water main running in the road. There is an overflow pipework which overflows to the river, they include a drawing.

They have no objection and provide there is no impact on Irish water assets. They note that the Applicant may have to have multiple meters on water connections to serve individual apartments.

Environment Department

They recommended that F.I be sought to include the following:

- To set out in detail how the proposed surface water drainage system can comply with current Surface Water drainage requirements.

- Revisions to the Flood Risk Assessment and regard to flood protection measures.
- The NIS to be amended to have regard to F.I and other amendments and greater detail on the proposed surface water management.

In response to the F.I submission they noted concerns about the following:

- Inadequate information submitted in the NIS – they provide details.
- They refer to the SSFRA and note that detailed design proposals will need to be submitted to the PA for approval in advance of any construction works.
- They noted the points made in the revised Ecological Impact Assessment.
- A more detailed report is required to demonstrate compliance with the Carlow County Council SuDS policy.
- That the Environment Section concluded that it is not possible to grant permission on the basis of the F.I submitted.

Housing Department

They note that the Part V requirement will be for 8 units and advise on information to be submitted.

Carlow Fire Authority

They have no objection in principle and recommend conditions.

2.8. **Prescribed Bodies**

Inland Fisheries Ireland

They note the importance of the River Barrow for fisheries and are concerned about potential for impact at construction phases on species and habitats. That the River Barrow main channel is an SAC under the European Habitats Directive. They note their concerns and make recommendations to maintain the status of the river.

The Development Applications Unit of the Department of Tourism, Culture, Arts etc.

They note that the proposed development requires extensive groundworks in an area of possible archaeological potential in proximity to Recorded Monument CW007-001-*Burial Ground*. They note the possibility for disturbance including of

insitu human remains during the course of the works and recommend conditions relative to archaeological monitoring and mitigation measures to be carried out in accordance with best practice.

2.9. **Third Party Observations**

Submissions have been received from local residents including Hazel Court Residents Association and the Carlow Rowing Club. Their concerns have been noted in the Planner's Report and are considered further in the context of the Assessment below.

3.0 **Planning History**

The Planner's Report and the Planning Statement submitted with the application, list a number of previous decisions (mid - 2000's) both on and within the vicinity of the subject site. These sites have not been developed and permissions have subsequently expired.

Subject site

- Reg.Ref. 07/5868 – Permission granted subject to conditions by the Council for alterations and revisions to a previously granted Planning Authority permission (Reg.Ref. 5334 – dated 3rd of May 2005). The alterations included an increase in the number of previously granted 96 apartments to 108 apartments, 2no. community areas, alterations to approved facades together with the incorporation of energy efficiency measures and associated works. (Approved 12/06/08).
- Reg.Ref. 04/5334 – Permission granted subject to conditions by the Council for the Demolition of all existing structures to provide 96no. apartments and childcare facility in one to five storey blocks and underground parking. (Approved 03/05/05).

These permissions were not enacted, nor the subject of an appeal to the Board and have since expired and the subject site remains vacant.

Other sites in vicinity – Recent decisions

- PL42.236312 (09/6247) – Permission granted subject to conditions by the Board for the Construction of 38no. apartments with a 2,030 m² medical centre, 698m² convenience retailing and 131 basement car spaces. The building to vary in height from 3 to 5 storeys over basement with landscaped plazas and associated works. The 38 apartments are situated over the first to fourth floor levels. All at the former Celtic Linen Laundry, Montgomery Street/Barrow Track.

This site is on the opposite side of the road, to the south of the subject site. To date it has not been developed and remains vacant. This permission has since expired.

Also, of note relevant to the former Celtic Linen site:

- VV01.302872 (VS18-21) – The Board decided that a site on the opposite side of Montgomery Street to the south of the subject site was in accordance with section 9(3) of the Urban Regeneration and Housing Act 2015 and based on the reasons and considerations set out was not a vacant site within the meaning of that Act for the period concerned. The Board considered that it was appropriate that a notice be issued to the planning authority to cancel the entry on the Vacant Sites Register.
- PL01.301245 (17/18) - Permission refused by the Board for Multi-use shared leisure route (Blueway), approximately 115 Kilometres (KM) in length, on the existing navigation towpath, which is a National Waymarked Way. This to include tailored surface finishes, signage and ancillary works. The proposal included an EIA and an NIS.

While the proposed route is extensive, this included the area of the track to the west of the site by the River Barrow.

The Board's 4no. reasons for refusal included in summary:

- The potential for negative impact on the River Barrow and River Nore SAC (Site Code: 002162) in view of the site's conservation area objectives.

- The proposal would materially contravene Heritage Objective 5 and Heritage Policy 2 of the Carlow CDP 2015-2022 ‘to support the protection of habitats and species covered by the Habitats Directive..’ and that it has not been adequately demonstrated that the proposal would not give rise to significant adverse ecological impacts or impact on the integrity of the SAC.
- Concern about the restricted width of the of the route and user volumes and that the proposal would endanger public safety by reason of likely user conflicts and would be potentially hazardous.
- The proposed development would interfere with the character of the existing landscape, would be contrary to the policies of the Carlow CDP 2015-2021 relating to the protection of sensitive landscapes and scenic assets.
- In view of these reasons that it would be contrary to the proper planning and sustainable development of the area.

Copies of these Board decisions are included in the History Appendix to this Report.

4.0 Policy Context

4.1. National Planning Framework

The National Planning Framework addresses the issue of ‘making stronger urban places’ and sets out a range of objectives which it considers would support the creation of high quality urban places and increased residential densities in appropriate locations while improving quality of life and place. Relevant Policy Objectives include:

National Policy Objective 3c: Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints.

National Policy Objective 4: Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.

National Policy Objective 13: In urban areas, planning and related standards, including in particular building height and car parking, will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

National Policy Objective 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

National Policy Objective 35: Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

National Policy Objective 57: Enhance water quality and resource management by ... ensuring flood risk management informs place making by avoiding inappropriate development in areas at risk of flooding in accordance with 'The Planning System and Flood Risk Management Guidelines for Planning Authorities'.

4.2. **Section 28 Ministerial Guidelines**

The following includes a list of relevant Section 28 Ministerial Guidelines:

- 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' including the associated Urban Design Manual, 2009
- 'Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities' (DECLG, updated 2020)
- 'Urban Development and Building Heights Guidelines for Planning Authorities' (2018)
- 'Design Manual for Urban Roads and Streets' (DMURS) 2019
- 'The Planning System and Flood Risk Management' 2009 (including the associated 'Technical Appendices')

- ‘Architectural Heritage Protection Guidelines’ (Dept. of Arts, Heritage, Gaeltacht and the Islands, 2011)
- ‘Framework and Principles for the Protection of Archaeological Heritage’ (Dept. of Arts, Heritage, Gaeltacht and the Islands, 1999)
- ‘Childcare Facilities – Guidelines for Planning Authorities’ (2001)

4.3. **Regional Spatial and Economic Strategy for the Southern Region**

The RSES 2020-2032 is a strategic document, which primarily aims to support the delivery of the programme for change set out in Project Ireland 2040, the National Planning Framework (NPF) and the National Development Plan 2018-27 (NDP). As the regional tier of the national planning process, it will ensure coordination between the City and County Development Plans (CCDP) and Local Enterprise and Community Plans (LECP) of the ten local authorities in the Region.

County Carlow is included in this Plan. Table 3.2 provides the Settlement Typology and Carlow is included as a Key Town in the South-East Region. Carlow Town is strategically located in the South-East and has a pivotal inter-regional role with strong links to Midlands and Greater Dublin Area, supported by good access to transport infrastructure. With a 2016 population of 24,272 and total jobs of 7,868 in 2016, Carlow is a regional centre for education, healthcare, public services, shopping and arts, culture, leisure and recreation for a wide area extending into Laois, Kildare and Wicklow.

4.4. **Development Plan**

Carlow County Development Plan 2015-2021

Strategic Goals include:

- Provide for the sustainable growth of County Carlow in accordance with the settlement structure and Core Strategy Table.
- To encourage residential development to locate on suitably zoned land in areas where the appropriate social, community and physical infrastructure either exists or is planned.

- To protect, conserve and enhance the built and natural heritage and the landscape of County Carlow for future generations; and reinforce the distinctive character of County Carlow through ensuring that sites and species of biodiversity importance are identified, conserved and managed appropriately and by promoting awareness and enjoyment of the heritage of the County.
- To promote high quality architectural design in all new buildings in urban and rural areas of County Carlow - commercial, residential and public buildings with energy efficiency designed into all new buildings.

Section 2.4.1 – Positioning of Carlow Town and the wider Carlow Graiguecullen Urban Area: *Within the national and regional policy context, the Greater Carlow Graiguecullen Urban Area will continue to maintain a strong competitive economic position within the South East Region. The Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 is framed by national and regional guidelines and also by the specific urban structure, functions and characteristics of the Greater Carlow Graiguecullen Urban Area and the South-East Region generally.*

Chapter 4 - Housing

Section 4.4 refers to Residential Development. *The emphasis will be on providing quality housing environments based on innovation and a design-led approach but appropriate to each specific site and location.* HSG – Policy 3 refers to the design approach.

Section 4.6 refers to Part V Housing Strategy HSG – Policy 6 refers.

Chapter 9 – Natural and Built Heritage

Heritage Protection Principles

The policies and objectives for the natural and built heritage have been developed and are listed in Heritage Policy 1.

Heritage – Policy 2 includes compliance with Article 6 of the EU Habitats Directive and regard to conservation and protection of Natura 2000 sites – SACs and SPAs. This has regard to AA Screening and NIS.

Section 9.1.7 refers to the protection of Inland Waters- lakes, rivers, streams, wetlands and ground water. Noting that the Barrow and the Slaney Rivers are the main water bodies in the County.

Heritage – Objective 3 includes the protection and maintenance of biodiversity of rivers, streams and other water courses.

Heritage – Objective 5 refers to protection of flora, fauna and habitats as covered by the EU Habitats Directive, Birds Directive and as listed in the relevant environmental legislation.

Chapter 11 – Design and Development Standards.

This includes: *The use, scale, siting and design of new developments should be sympathetic to their surroundings. Integration of proposals into the landscape is most desirable and the removal of hedgerows and other natural features should only be proposed, if otherwise unavoidable.*

Section 11.1.4 refers to Environmental Impact Assessment.

Section 11.1.5 to Habitat Directive Assessment/ Natura Impact Statement.

Section 11.1.7 to Flood Risk Management.

Section 11.1.8 to Sustainable Urban Drainage (SuDS).

Section 11.2 – to Quality in Urban Design and the built environment.

Section 11.3 – This refers to Residential Development Standards in Urban Areas. This includes regard to density, building height, scale and unit mix.

Section 11.3.1.2 – Daylighting and Solar Gain.

Section 11.3.6 to Open Space in New Residential Development. This includes regard to public and private open space and play space.

Section 11.3.14 – Development Contributions

Section 11.3.16 – Taking in Charge of Residential Developments.

Section 11.5 refers specifically to standards to ensure quality in Apartment developments and includes regard to design, layout and unit mix, open space provision, daylight and sunlight (Section 11.5.4.), bin storage, car parking etc.

Section 11.17 – Archaeology

Section 11.17.1 – Development in Architectural Areas (ACA's). This includes regard to the impact of the development on the immediate streetscape and on the surrounding environment.

4.5. **Carlow County Development Plan 2022-2028**

It is noted that this Plan which was at Draft Stage and was adopted by the Councillors on the 23rd of May and comes into effect on the 11th of July 2022.

Proposed Material Amendments to the Draft Plan are on the website. These include:

Chapter 2: Core Strategy and Settlement Strategy

Amendment no. 5 insert additional after policy CS P4, section 2.8.1 'key town – Carlow' - new text as follows:

protect, strengthen and enhance the biodiversity and ecological function of the green infrastructure network in Carlow town, including the river barrow, which is a designated special area of conservation.

Section 2.16 provides the Core Strategy Table. This includes the following footnote:

Allocation includes Carlow Environs which will be subject to a Joint Urban Area Plan with Laois County Council. This plan provides an allocation of 900 units to the former Town Council Area with the balance of units to be provided in the Carlow Environs Area.

Chapter 3 Housing. Section 3.8 – Densities/Increased Heights.

(Amendment No. 13) Insert additional text in green to Table 3.3 and Policy DN P4, Section 3.8 'Densities / Increased Heights – Policies' as follows:

DN P4: Apply graded densities in towns and villages having regard to the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009) and the accompanying Urban Design Manual (2009), Circular Letter NRUP 02/21, the indicative residential density standards contained in Table 3.3, the role of the town / village within the Settlement hierarchy, ensuring that developments are commensurate to the character of the existing built environment.

This Table gives the density in Carlow Town as >35ha and at the Edge of Centre as 25-30ha.

Chapter 6: Infrastructure and Environmental Services

Section 6.5 – Surface Water Drainage/SuDS – this includes amendments to Policies SW P2 (Amendment No. 41) and SW P5 (Amendment No.42).

Amendment 41 includes:

Ensure, as an alternative to underground tanks and piped outfalls to watercourses, that all development proposals incorporate Sustainable Drainage Systems and promote the use of green infrastructure e.g. green roofs, green walls, planting and green spaces for surface water retention purposes, as an integrated part of SuDS and maximise the multi-functional potential of these systems including benefits for biodiversity and amenity value wherever possible.

Chapter 7: Climate Action and Energy. Section 7.13.6 refers to Sustainable Urban Drainage Systems.

Amendment No. 56 includes

In recognition of the importance of SuDS, and to reduce the potential impact of existing and predicted flood risks and to improve biodiversity and amenity value, the Council is preparing a new SuDS policy/guidance document which will be adopted during the lifetime of this Plan. It is an objective of the Council to require all development (including extensions to existing development) proposals to incorporate SuDS measures. (Refer also to Chapter 6).

Amendment No. 45 refers to Section 6.9.1 Water Quality

Section 6.10.3 refers to The Planning System and Flood Risk Management Guidelines. Amendment No.46 refers to Flood zones A, B and C.

Amendment No. 47 - Section 6.10.5 seeks to inset additional text to Objective FR O2

FR O2: Facilitate the provision of new, or the augmentation of existing flood defences and protective measures, where necessary including natural flood management measures where deemed appropriate and to support the implementation of proposed flood schemes while also seeking to ensure

zoning or development proposals support and do not impede or prevent the progression of these schemes subject to compliance with the requirements of the EU Habitats Directive, the protection of natural and built heritage and visual amenities.

Chapter 10: Natural and Built Environment

Section 10.2 Natural Heritage - This section contains a number of amendments to the Natural Heritage Policies and Objectives.

Amendment No.68 (Policy NS.P2 Section 'Natura 2000 Sites') includes:

The Council shall only agree to the plan or project after having ascertained that it will not adversely affect the integrity of the site concerned, unless the plan or project is subject to the provisions of Article 6(4) of the Habitats Directive.'

Section 10.10 includes Amendment No. 80 to Policy IS.P1 relative to Invasive Alien Species.

Section 10.11 refers to Built Heritage. Amendment No. 81:

Promote awareness and the appropriate adaptation of the County's architectural and archaeological heritage to deal with the effects of climate change.

Section 10.12 includes Amendment No.86 relative to Archaeological Heritage.

Chapter 15: Town and Village Plans/Settlement Boundaries. The site is within the 'Town Centre' zoning as shown Draft Land Use Zoning Map.

Section 15.1.1 refers to Flood Risk Management – Carlow Town

Policy CW.P1 requires that flood risk mitigation measures be implemented in Carlow Town: This includes the following (Amendment No.107):

- Defended Town Centre lands: Flood risk to be mitigated by raising ground levels to achieve appropriate finished floor levels.
- Undefended Town Centre lands: Development is to be restricted to existing vulnerability use and extensions/refits/changes of use.

Amendment No.113 is also of note, this seeks to:

Amend Carlow Town Objectives Map to highlight areas that will contribute to meeting compact growth target of 30%, to identify settlement consolidation sites, regeneration sites, and to outline core retail areas and retail opportunity sites detailed in the Draft County Retail Strategy.

4.6. **Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area**

This is the operative plan for the area which incorporates the Carlow Development Plan 2012-2018 (as extended). It is noted that Carlow is the County Town.

Land Use Zoning – the subject site is within the ‘Town Centre’ zoning – Section 11 refers. Regard is has to the Land Use Zoning Map and to adjacent uses.

Part 3 – Housing

This includes that good design ensures the development and management of attractive usable, durable and adaptable places to achieve sustainable development. Regard is had to:

Section 3 – Physical Infrastructure

Section 4 - Environmental Management

Section 6 – Recreation, Amenity and Open Space

Section 7 – Sustainable Communities and Social Inclusion

Section 8 – Housing

Section 9 – Built and Natural Heritage

Core Aim 9: Protect the natural, architectural and archaeological heritage of the Greater Carlow Graiguecullen Urban Area and the special character of its landscape in light of its contribution to the distinct character and identity of the Area.

There are currently 7 ACA’s within the Greater Carlow Graiguecullen Urban Area, all located within the functional area of Carlow Town. This includes Montgomery Street.

Objective HER 008 seeks to: *Preserve and enhance the special character of Architectural Conservation Areas within the Greater Carlow Graiguecullen Urban Area*

Landscape Type 2 – The River Corridors

In and around the Greater Carlow Graiguecullen Urban Area, the River Barrow is at a mature stage with flat flood plains to either side excepting where strong geology predominates; mature bankside vegetation fringes the river, unless cleared for agricultural or urban development; the Barrow track walking alongside the River is also a feature of the landscape.

General Recommendations include relate to: *Recognise the importance of river corridors for the functioning of the river including flooding and ensure associated flood risk informs land management as well as development.*

Section 10 – Urban Design and Built Form

CORE AIM 10: *Ensure the Delivery of a Safe, Sustainable and Liveable Built Environment Suitable for Everyone Through Good, Well-Considered Design*

Part 4 – Sub-Area Spatial Strategy

Core Aim: *Focus development on Carlow Town to drive growth within the Greater Carlow Graiguecullen Urban Area and the wider hinterland and ensure Carlow Town Centre remains at the heart of high-order retail, commercial, transport and tourism services provision.*

This includes: *Given the largely developed nature of Carlow Town, the re-development of brownfield sites, site assembly, urban renewal, building refurbishments and changes of use are of particular importance to the future of the functional area of Carlow Town. New development must be carefully integrated with the existing town centre both in terms of design and to allow for easy access and increase permeability within the town.*

Carlow Town Objectives include:

CTO1 Consolidate the built form of Carlow Town.

CTO4 Promote the development of the River Quarter and Riverside Regeneration.

The identified River Quarter extends from Montgomery Street south to Cox's Lane (indicated on Carlow Town Objectives Map). The Quarter is also served by Bagenal Court. Both Cox's Lane and Bagenal Court have been recently upgraded to facilitate the development of this area. In addition, the upgrading of the Barrow Track in this area should facilitate development along this river frontage.

The dominance of the River Barrow on this Quarter will define its past, present and future development. There is a focus on opportunities for regeneration and Renewal and on walkways and linkages to the town centre. Policies CTP25 – CTP29 refer.

Policy CT P3: Actively promote appropriate backland and infill development as well as re-development of brownfield sites and under-used lands particularly within Carlow Town Centre and subject to environmental considerations and wider planning considerations.

CO2: Opportunity Sites

Present a schedule of landbanks within the Greater Urban Area which offer particular opportunities and are of strategic importance for the future development of the Greater Carlow Graiguecullen Urban Area, offering site briefs for each site.

The Plan seeks to Encourage Specific Urban Renewal and Advance Opportunity Sites. The proposal is located on the site of the 'Former Slaughter House' – Opportunity Site 17: Former Greenvale site, off Athy Road. This includes regard to the need for a Justification Test as the site is located in Flood Zone A.

CTP 33 Encourage the redevelopment or intensification of uses within employment opportunity sites including set out in appendix 5.

Policies CTP22 -CTP24 refer to the Riverside Quarter and include support for the development of opportunity sites, promoting a sense of place, urban design opportunities presented by the riverside and town centre location. All of these are dependant on flood risk considerations, clear demonstration that will be no impact on the integrity of a Natura 2000 site in accordance with Article 6 of the Habitats Directive or significant adverse effects on other environmental receptors.

Reference is also had to support for riverside renewal/tourism and to the Barrow Track walkway. Policies CTP 25 – 29 refer.

4.7. Natural Heritage Designations

Adjacent to Natura 2000 Site: River Barrow and River Nore SAC (Site Code: 002162).

5.0 EIA Screening

An Environmental Impact Assessment (EIA) Screening report was not submitted with the application.

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.

It was originally proposed to construct 78no. apartments, the F.I submission has revised this down to 60no.apartment units The number of dwellings proposed is well below the threshold of 500 dwelling units noted above. The site has an overall area of 0.4749ha and is located within the development boundary of Carlow town, but not in a business district. The site area is therefore well below the applicable threshold of 10 ha. The site is currently brownfield and is at the edge of the 'Town Centre' land use zoning area as per the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 (as extended). 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 is adjacent to and has a hydrological connection to the River Barrow and River Nore SAC. Impacts on the European Site are discussed below/i.e as per AA screening para's and the NIS submitted. 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 Carlow County Council, upon which its effects would be marginal.

Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site on lands that are zoned for 'Town Centre' uses under the provisions of the Carlow County Development Plan 2015-2021, and the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 (as extended) and the results of the strategic environmental assessment for both of these plans, undertaken in accordance with the SEA Directive (2001/42/EC),
- The location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of residential development in the vicinity,
- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended) and the mitigation measures proposed to ensure no connectivity to any sensitive location,
- The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

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

6.0 The Appeal

6.1. Grounds of Appeal

ERMS Planning & Development Consultants have submitted a First Party Appeal on behalf of Derek Devoy Ltd. They have regard to the background and contextual location. Their Grounds of Appeal against the Council's decision/reasons to refuse permission include the following as summarised below:

Reason no.1 – Density, Design and Layout

- The proposed development is subject to very significant planning precedents, including previous permissions granted on the subject site created for high density residential development, which under current planning law and in accordance with legal precedents in the high court has a legally binding effect on the statutory planning decision of the local authority in the area.
- In this context it is a legally legitimate and reasonable expectation from a planning applicant and developer to expect the council to be consistent, hold to planning legal principle and in principle to assumptions. This includes principle judgments made in the planning decision making process for similar developments on the subject site and for comparable developments in the wider town area subject to the same development zoning, densities and statutory local and national development policies.
- They submit that the Council's reason for refusal relative to high density residential is factually unfounded and in direct contradiction to previous planner's and council conclusions for similar high-density developments on the subject site. That this decision is a direct breach of the legally binding planning precedents that have been set by the granted permissions.
- The need for a strategic redevelopment of the area has been noted in the Joint Carlow Graiguecullen Spatial Plan which identifies the area as within the River Quarter and Riverside Regeneration Area, with direct support through Policy CT04.
- It is also included in this Spatial Plan as Opportunity Site 17 suitable for wholesale redevelopment. They quote the Professional Opinion Statement –

Bulk, Height & Scale, Krugar Lyons Ltd. Architects & Project Managers. This has regard to regeneration on a designated opportunity site.

- They note density relative to public transport corridors and refer to the 'Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009)'.
- Under national development policy and density guidance the proposed development of a suitably medium-density level proximity within 1km of a public transport corridor through the existing Carlow railway station, which is a significant commuter station.
- They refer to the Architectural Heritage Impact Assessment – SM Architects Ltd. and note that this has been carried out by an accredited Grade III Conservation Architect. This report confirms that the subject site is not located within the heritage area and is both historically and physically removed from the residential character of Montgomery Street.
- The Architectural Heritage Impact Assessment concludes that the proposed development will integrate well and contribute positively to the development and heritage context and will not have any significant negative impact on the character of the area.
- The issue of visual impact assessment has been carefully considered and any potential impact has been substantially mitigated from the previously permitted developments.
- They note the key changes proposed in the RFI submission to the original submission which has been amended and has resulted in a redesign incorporating 2 blocks rather than 3 as originally shown. They note the quality of the design as it relates to density and development standards. The blocks are removed from each other and the visual impact on the River Barrow has been lessened. The impact on Montgomery St. has also been lessened.
- A Visual Impact Assessment by SM Architects Ltd. has been included. This indicates the design progression of the proposed development and notes the differences between that originally submitted and the RFI.

- They consider that the revised proposal now provides a positive visual impact on the character of the area, including the ACA.
- The Visual Impact Assessment (VIA) further provides an assessment of each verified 3D rendered Photomontages submitted with the planning application. They provide a summary such views.

Reason no.2 – Appropriate Assessment

- The proposed development is under the threshold for EIA and as such and in the interest of a comprehensive and robust application, a detailed Ecological Impact Assessment (EciA) along with a detailed AA Stage I & II, both of which found the likelihood of significant environmental effects to be unlikely.
- While an AA was submitted as part of the original planning application, a further AA assessment was carried out at RFI stage. Each AA makes a standalone finding based on the moment in time when the study was undertaken.
- The AA assessment took full account of all the revised architectural and engineering service design, as part of its assessment.
- They submit that given that the Council is a competent authority for AA under the regulatory planning application process, that the applicant has fulfilled his statutory obligation in full to provide adequate environmental information for the Council and have provided a detailed Stage I and Stage II assessment.
- That the Council failed to undertake its statutory duty as the competent authority for AA assessment, based on the adequate environmental information submitted by the applicant. They have provided no scientific basis for a finding that the proposed development would negatively impact the SAC or that there will be a negative ecological impact, based on the environmental information submitted as part of the Ecological Impact Assessment (EciA).
- In this context, they call on ABP, as the competent authority for AA, under the planning appeals process, to fully undertake the AA assessment, as of *de novo* under the submitted planning appeal.

Reason no.3 – Flood Risk

- They have regard to the objectives for the 'Town Centre' zoning and for Opportunity Site No.17. They submit that the need for the application of a sequential test was never raised. The application of this test does not apply as an action that the landowner and applicant can undertake.
- The site locality and ownership of the site are a given in this case, as the applicant has owned the site for many years, and it's the only site he owns in Carlow Town.
- They refer to current planning policy and guidelines relative to flood risk and provide that notwithstanding the statutory position, the sequential test has already been applied to the subject site, and that it passed the test for the, in principle, inclusion of residential under its statutory land use zoning designation.
- The project team, has unequivocally proven the Flood Risk, Exception Test/Justification Test that in internal best-practice methodology follows after a site has passed the Flood Test, Sequential Test.
- They refer to the attached 'Justification Test for Development Management' report by Niamh O'Malley, a Senior Engineer & Company Associate at IE Consulting.
- They submit that the Council's concerns regarding the extension of the existing flood defence walls and the provision of compensatory storage on the site will not suitably mitigate against adverse flood risk are unsubstantiated and in contradiction to the advice of their senior engineer.
- This position is further substantiated by the project flood risk assessment specialist Niamh O'Malley, who has confirmed to the applicant the proposed compensatory storage has been designed to mitigate any displacement of flood waters.
- This level of agreement with the Council's Engineering Department is further confirmed by the project engineer, Kieron Broderick, Magahy Broderick Associates engineering, Professional Opinion Statement.

Conclusion

- The First Party provide that the Board will note their submitted appeal, is detailed and comprehensive and that their submission clearly indicates that the proposed development is in accordance with the proper planning and sustainable development principles, and that it provides for significant benefit and improvement of the subject site and its surrounding area.
- They request the Board to review the decision of the Council to refuse permission and to issue a grant of permission in accordance with the Board's powers.
- Appendix 1 refers to a list of documents attached to the Appeal.

6.2. Planning Authority Response

Their response includes regard to the reasons for refusal and notes that the proposal was assessed against the provisions of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012 -2018 (as extended).

Reason no.1

- They have significant concerns notwithstanding the revisions made to the design with the F.I response, that the overall bulk, height and scale of the proposed development is not appropriate to the context of this site which is visually sensitive fronting onto the River Barrow and Barrow Track to the immediate west of the site.
- The proposed scale and height of the development at the end of Montgomery Street is likely to have an adverse effect on the overall setting of the Montgomery St. ACA. The scheme as proposed is representative of an overdevelopment of the site and the grounds for refusal no.1 have not been overcome.

Reason no.2

- They consider that the revised NIS submitted with the F.I response, does not adequately include the updates to the revised development scheme, and

there is a lack of analysis of the potential impact of the revised flood defence walls on the adjoining River Barrow and River Nore SAC.

Reason no.3

- They are not satisfied that the proposed development complies with the requirements for Opportunity Site 17 as contained in the Strategic FRA of the Joint Spatial Plan for the Greater Carlow-Graiguecullen Urban Area 2012-2018 (as extended) as the proposal seeks to introduce a 'highly vulnerable' land use into an identified flood risk area which is not included in the defended area of the Carlow Flood Relief Scheme. They do not consider that the First Party Appeal documentation overcomes this issue.

Conclusion

- Notwithstanding the content of the appeal, the position of the PA remains as per the Planning Report recommendation. They also refer the Board to the planner's reports, the internal department reports, and prescribed body reports submitted.

7.0 Assessment

7.1.1. I have reviewed the proposal in the light of the National Planning Framework: Project Ireland 2040, National Planning Guidelines, Regional Spatial & Economic Strategy for the Southern Region (RSES) 2020 – 2032, the relevant Section 28 Ministerial Guidelines, the Carlow County Development Plan 2015 – 2021, Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 (as extended) relevant planning history, the submissions of the parties and the observers, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Principle and Planning Policy,
- (ii) Background and Rationale,
- (iii) Density/Height,
- (iv) Design and Layout,
- (v) Development Standards and Impact on Residential Amenity,

- (vi) Landscaping and Open Space,
- (vii) Impact on the ACA and the character and amenities of the area,
- (viii) Traffic, access, and parking,
- (ix) Water/Drainage, and Flood Risk,
- (x) Appropriate Assessment,
- (xi) Material Contravention.

7.2. Principle and Planning Policy

- 7.2.1. Project Ireland 2040: National Planning Framework (NPF) is concerned with securing compact and sustainable growth. Objective 4 seeks to: *Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.* Of relevance, objectives 33 and 35 of the NPF seek to prioritise the provision of new homes at locations that can support sustainable development and seeks to increase densities in settlements, through a range of measures.
- 7.2.2. The Regional Spatial and Economic Strategy for the Southern Region 2020-2032 (RSES) notes the importance of Carlow as the County Town and one of the Key Towns in the Waterford Metropolitan Area. Such towns are described as strategically located urban centres with accessibility and significant influence in a sub-regional context. Waterford MASP Policy Objective 2 also refers to Carlow as one of the key towns driving regional growth for the South-East, noting its connectivity including rail and strategic road network.
- 7.2.3. Reference is had to the Section 28 Guidelines, including the: *Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities (2009)*, *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' (2020)* and *The Urban Development and Building Heights Guidelines 2018*. All support increases in density, in a qualitative design and layout at appropriate locations that integrates with the proper planning and sustainable development, in order to ensure the efficient use of zoned and serviced land. Therefore, it can be concluded that the principle of a higher density residential development in Carlow

Town would be in accordance with the NPF, the RSES and the Section 28 Guidelines provided it would be in accordance with the proper planning and sustainable development of the area.

- 7.2.4. The proposed development is assessed in the context of the policies and objectives of the Carlow County Development Plan 2015-2021 and more specifically the Joint Carlow Graiguecullen Spatial Plan (as extended). These provide a detailed framework for the management and regulation of spatial development and use of land. They support regeneration and renewal and include policies and objectives for the sustainable planning and development of the area.
- 7.2.5. As shown on the Land Use Zoning Map in the Joint Spatial Plan the site is located on lands zoned 'Town Centre'. The Objective is: *To protect the vitality and vibrancy of the town centre and provide for town centre activities*. The purpose of this zoning is: *To protect and enhance the vitality and vibrancy of the town centre and to provide for and improve retailing, residential, commercial, office, cultural, tourism, public facilities, amenity and other uses appropriate to the centre of a developing urban core*. Therefore, mixed use is supported in this zoning.
- 7.2.6. It must be noted, that the site is on the periphery in the northernmost part of this zoning further away (in excess of 500m) from the Town Centre and not proximate to the central retail area. This proposal is solely for the provision of residential, and while this use is acceptable in principle, the land use zoning relative to the 'Town Centre' is not purely 'Residential' and includes reference to a mix of uses suited to the commercial services within the town centre. However, the Zoning Matrix allows apartments in principle within the 'Town Centre' zoning. The land to the north which includes the historic graveyard is zoned 'Amenity & Open Space'. The adjoining land to the east is zoned 'Residential 1 – Established'.
- 7.2.7. The site is outside but proximate to Montgomery Street Architectural Conservation Area (ACA). Therefore, this is a sensitive site in view of its proximity to the River Barrow and the ACA. Having regard to the locational context as shown on the Land Use Zoning Map, it can be said that the site is transitional. Section 11 of the Joint Spatial Plan has regard to Land Use Zonings. This includes that it is important to avoid abrupt transitions in scale and use at the boundary of adjoining land use zones that would be detrimental to the amenities of the more environmentally sensitive

zone. Note is had to its proximity to the River Barrow and the Barrow Track. That particular attention must be paid to the use, scale, height and density and appearance of development proposals and to landscaping and screening proposals in order to protect the character and amenities of the area.

- 7.2.8. The Joint Spatial Plan identifies the area of the subject site as within the River Quarter and Riverside Regeneration Area, and which is defined as extending from Montgomery Street in the North to Coxes Lane in the south. Policy CT P24 seeks to: *Ensure proposals make the most of the urban design opportunities presented by the riverside and town centre location of the River Quarter. Dependent upon clear demonstration that there will be no impact on the integrity of a Natura 2000 site in accordance with Article 6 of the Habitats Directive or significant adverse effects on other environmental receptors.*
- 7.2.9. Also of note, is that the proposal is located within Opportunity Site 17 - on the site of the 'Former Pig Slaughter House' – Former Greenvale site, off Athy Road. Objective CTO5 of the Joint Spatial Plan seeks to *Encourage specific urban renewal projects and advance opportunity sites* . Comments include details of the site and note the 'Opportunity for a well-designed scheme that addresses the River Barrow and takes advantage of the open aspect'. That the site is located in Flood Zone A and as being suitable for less vulnerable types of development. As shown on the Land Use Map the majority of the site is within Flood Zone A – 1% (1 in 100) or greater chance of flooding each year. Therefore, the issue of Flood Risk is of importance in the consideration of this application and regard is had to 'The Planning System and Flood Risk Management Guidelines' and to the need for a 'Justification Test'.
- 7.2.10. It is concluded that while this site is within the Carlow 'Town Centre' zoning, that it is on the periphery of this zoning, some distance from the core/main retail area of the town and is in a transitional location. The site is visually sensitive in view of its proximity to the Montgomery Street ACA and to the River Barrow and Barrow Track. It is environmentally sensitive in view of its location and proximity to the River Barrow and River Nore SAC, the Barrow Track and its location within Flood Zone A.
- 7.2.11. Note is had of the documentation submitted, relevant to the original plans and to the amendments made in the revised scheme, including the Flood Risk Assessments and NIS in this Assessment below. While this proposal is being considered *de novo*,

regard is had to the Council's reasons for refusal and as to whether the issues raised can be overcome and to the First Party Grounds of Appeal in this Assessment below.

7.3. Background and Rationale

- 7.3.1. The Planning Statement submitted with the application provides details of the Planning history and Rationale for the proposed development. This includes that the application site has been in use for a variety of activities ranging from a textile mill and malthouse between 1829 and 1842 to its conversion to a gas works in 1845. It was last used as an abattoir and meat processing factory in the mid-1990's until its closure. All of the structures on site were subsequently demolished and the site levelled.
- 7.3.2. As noted in the Planning History Section above, subsequent applications for a high density apartment development were granted permission by the Council in the mid 2000's. Details are given of the previous developments that were granted permission on this site (Reg.Refs. 04/5334 and 07/5868 refer). The First Party contends that developing the application site is consistent with the extent of planning permissions previously approved on site. It is submitted that these have established a legally binding precedent for high density development on the subject site, and there are other such precedents in the wider town area subject to the same development zoning, densities and statutory local and national development policies.
- 7.3.3. However, these former permissions on the subject site, were never enacted, the developments were never constructed and these permissions have since expired. It must be noted that a permission is only legally binding for the duration of the permission. This brownfield site, adjacent to the River Barrow remains vacant and undeveloped.
- 7.3.4. Regard is had to Section 7.4 '*Time Limits*' of the Development Management Guidelines 2007. This refers to statutory provisions regarding the life of a planning permission. This includes: *Planning authorities may grant permission for a duration longer than 5 years if they see fit, e.g. for major developments (for example for wind energy developments) but it is the responsibility of applicants in the first instance to request such longer durations in appropriate circumstances.*

7.3.5. Since those permissions were granted there have been changes to the planning system, legislation, guidance and in the policies and objectives of the relevant development plans. Relative to the subject site, this includes regard to Natura 2000 sites and Appropriate Assessment, to Section 28 Ministerial Guidance including 'The Planning System and Flood Risk Management Guidelines'. Note is also had to urban design and density in the Guidelines relative to Sustainable Residential Development in Urban Areas, Urban Development and Building Height Guidelines and the Apartment Guidelines (a list of the relevant Guidelines is provided in the Policy Section above). The Carlow CDP has since been updated and regard is also had to the policies and objectives of the 'Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018. Therefore, the proposal as currently submitted is being considered having regard to the current planning framework, including legislation, guidelines and development plans.

7.4. **Density/Height**

7.4.1. The Council's first reason for refusal in summary considers the proposal excessive in terms of density, height, bulk and scale, in this visually sensitive location proximate to the River Barrow and Montgomery Street ACA.

7.4.2. The First Party Appeal submits that the proposed development is representative of the compact, high density high quality sustainable type of urban growth envisaged in the National Planning Framework and the Regional Spatial & Economic Strategy for County Towns and population centres such as Carlow. They consider that the proposal on a site which is considered brownfield, promotes a consolidated and sustainable pattern of development that will provide a valuable counter balance to urban sprawl and the proliferation of out of town centre/greenfield housing estates.

Density

7.4.3. Regard is had to site suitability issues and to current national and local policies and objectives which generally support the promotion of higher densities in a qualitative design and layout that integrates with the proper planning and sustainable development of the area. National Policy Objective 35 of the National Planning Framework 2040 seeks to increase densities through a range of measures including '*increased building heights*'. Also, to the Section 28 - *Sustainable Urban Housing*

Design Standards for New Apartments Guidelines 2020, and to *The Urban Development and Building Heights Guidelines 2018* relative to the provision of increased heights and densities in urban areas.

- 7.4.4. As Carlow is the County Town, it is appropriate to consider it under Chapter 5 'Cities and larger Towns' of the *Sustainable Residential Developments in Urban Areas Guidelines 2009*. This includes regard to appropriate locations for increased densities. It is noted that the subject site is within a brownfield site that forms part of a larger landbank, zoned 'Town Centre' and is close to the periphery of this zoning.
- 7.4.5. Section 5.5 of the Guidelines refers to the creation of sustainable patterns of development in City and town centres. Section 5.6 provides that, in order to maximise inner city and town centre population growth, there should, in principle, be no upper limit on the number of dwellings that may be provided within any town or city centre provided a number of safeguards are met. These criteria include conformity with any vision of the urban form of the town or city as expressed in development plan, particularly in relation to height or massing and recognition of the desirability of preserving protected buildings and their settings and of preserving or enhancing the character or appearance of an ACA; and compliance with plot ratio and site coverage standards adopted in the development plans.
- 7.4.6. Section 5.7 refers to 'Brownfield Sites (within city or town centres),' and the opportunity for their re-development at higher densities, subject to the safeguards expressed in Section 5.6 or in accordance with local area plans. Section 5.8 to 'Public Transport Corridors'. This allows for increased densities within 500m walking distance of a bus stop or within 1km of a light rail stop or a rail station. In general, this specifies minimum net densities of 50 dwellings per hectare subject to appropriate design and amenity standards, should be applied within public transport corridors with the highest densities being located at rail stations/bus stops and decreasing with distance away from such nodes. That, minimum densities should be specified in local area plans and maximum (rather than minimum) parking standards should reflect proximity to public transport facilities.
- 7.4.7. The *Sustainable Urban Housing: Design Standards for New Apartments Guidelines 2020*, includes in Section 2.4 regard to higher density locations suited to wholly apartment development in Central and/or Accessible Urban Locations or in

Intermediate Urban Locations, for sites close to public transport options. While the provision of apartments may not be required below the 45 dwellings per hectare net density threshold, they can allow for greater diversity and flexibility in a housing scheme, whilst also increasing overall density.

- 7.4.8. In this case, it is noted that Carlow town is in general not a high-density location, the site is not within a high-density area. Rather, it is at the periphery/edge of the Town Centre zoning and the location appears more transitional and the pattern of development is generally low density rather than a densely built-up urban area, close to public transport links. As noted in the documentation submitted, there is no local bus service or bus stops proximate to the site. The train station is not light rail and is located c.1km to the east of the site. Therefore, the density originally proposed at 164.2units per/ha (78 units on a site of 0.4749ha) would be significantly higher than surrounding development.
- 7.4.9. The revised plans have reduced the no. of units to 60, therefore the density is reduced to 126 units per hectare which is still considered excessive having regard to the locational context and the considerably lower density of proximate residential development, the proximity to the ACA and the existing pattern of development and character of this sensitive site, in proximity to the River Barrow.

Height

- 7.4.10. The *Urban Development and Building Heights Guidelines for Planning Authorities* (the Building Height Guidelines) describe the need to move away from blanket height restrictions and that within appropriate locations, increased height will be acceptable even where established heights in the area are lower in comparison. I note Section 3.2 provides: *Development proposals incorporating increased building height, including proposals within architecturally sensitive areas, should successfully integrate into/ enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, protection of key views. Such development proposals shall undertake a landscape and visual assessment, by a suitably qualified practitioner such as a chartered landscape architect.*
- 7.4.11. It is noted that there is some concern about the proposed 4/5 (originally 4/6) storey height of the blocks not being consistent with the existing 2/3 storey nature of the residential development in Montgomery Street. The heights of the adjoining apartment

blocks to the east are 3 and 2 storeys. The latter is further to the east and adjoins the Montgomery Street ACA which contains older more traditional predominantly 2 storey properties. The Joint Spatial Plan includes Policies and Objectives related to Scale/Height and to Specific ACAs such as: *New buildings must maintain existing building height lines*. However, the site while not within, is proximate to the ACA and is separated by the existing apartment lower profile blocks.

7.4.12. In view of the locational context and setting of the site proximate to the River Barrow and Montgomery Street ACA, I would concur with the Planning Authority that the 4/6 storey height as originally proposed is excessive for this location. The revised plans show the blocks reduced to 4/5 storeys. Block no.02 is the one set further forward on the site with elevations to Montgomery Street and is primarily shown as 4 storeys. Block no.1 is set further back towards the northern site boundary and is shown as predominantly 5 storeys. This is adjacent to the public open space outside of the site to the rear and the adjoining cemetery. While I note there are some 4/5 storey apartment blocks closer to the town centre, some distance to the south of the subject site, I would consider that the scale, height and massing of both blocks will serve to form a hard edge in views from Montgomery Street ACA, the River Barrow and the Barrow Track and from the open space to the north of the site.

7.5. Design and Layout

Design Approach – Original Submission

- 7.5.1. The Site Layout Plan as originally submitted, showed 78no apartments in 3no. blocks arranged one behind the other, with Block A facing Montgomery Street, Block B behind that, in a central position and Block C to the rear i.e the northern end of the site. All 3 blocks have western side elevations that face the river. The eastern elevations of blocks A and B face the internal access road and the side elevation of the adjoining 3 storey block. The blocks are shown ranging from 4 to 6 stories in height. The blocks are in summary consist of the following:
- Block A to the south as a gross internal floor area of 2,040m² and is comprised of 3no. one bedroom units, 16no. two bedroom units and 2no. three bedroom units and ancillary circulation and plant room spaces and ranges in height from 4 to 5 storeys.

- Block B in the middle of the site has a gross internal floor area of 2,589m² and is to be comprised of 3no. one bedroom units, 22no. two bedroom units and 2no. three bedroom units and ancillary circulation & plant room spaces. It is to be 6 storeys in height.
- Block C is to the north of the site has a gross internal floor area of 2,842m² and is comprised of 8no. one bedroom units and 22no. two bedroom units and ancillary circulation & plant room spaces and ranges in height from 4 to 6 storeys.

7.5.2. The access to the site is proposed from Montgomery Street in a similar location to that existing. Onsite surface parking is shown provided to the east of this to the rear of the existing apartment block.

7.5.3. It is noted that the original plans showed the provision of incidental open space between the blocks rather than a larger more usable space. The main area for 'waste management' is shown as a centrally located building as a bin storage area to the rear of the existing apartment block. It is proposed to provide the ESB substation in the north-eastern corner of the site.

7.5.4. A Planning Statement and a Design Statement were submitted. Note is also had to the Contiguous Elevations and Photomontages showing before and after images submitted with the Design Statement. However, I would consider that the proposal as originally submitted would appear excessive in the landscape, would constitute an overdevelopment of the site and would not enhance the character of this sensitive site proximate to the River Barrow and Montgomery Street ACA.

Further Information - Revised Plans

7.5.5. In response to the Planning Authority's concerns regarding the scale and massing of the proposal, a revised proposal has been submitted. Revisions to the design of the scheme include the following:

- An amendment of the original 3no. 5/6 storey apartment block development which has been revised by maintaining the Northern Block at the same location, omitting the Central Block and by rotating the Southern Block by 90 degrees;

- The amended design consists of an overall 4/5 storey Apartment Development (totalling 4327m² floor area), made up of two Blocks, the Southern and the Northern Blocks;
- The Southern Block 'Block 2' consisting of a 4-storey, 20 unit Apartment Block (1828m²) set back c. 6-7m from the Barrow Track, and
- The Northern Block 'Block 1' – 5 storey, 40 units, Apartment Block (3447m²) set back c. 6 – 6.7m from the Barrow Track;
- Amended open space layout and design with increased spatial functionality and a central focal point and increased hard and soft high – quality landscaping and design;
- A new c. 140m (in length) flood defence wall;
- 1 no. central pedestrian access point onto the Barrow Track;
- Increased parking totalling 60no. parking spaces (1 per apartment unit);
- A new surface water outfall to the River Barrow, services and all associated works.
- A revised Natura Impact Statement has also been submitted.

7.5.6. An F.I Submission Planning Report has been submitted, prepared by ERMS Planning Consultations. This notes that the overall design approach has been re-evaluated in terms of the overall height and scale of the proposed development, two apartment blocks in lieu of three blocks are shown on the revised Site Layout Plan. In summary, the development as revised will involve the construction of 60 residential units in 2no. blocks and associated access road, car parking, landscaping, drainage, bin enclosure, boundary treatments, roads, lighting, flood defence wall and all associated site works at the former Greenvale site on Montgomery Road, Carlow.

7.5.7. Figures 3 to 7 of the Planning Report show the contrast between the original and the development proposed at F.I stage. Figure 10 shows a '3D Verified Photomontage view of the Proposed West Elevation Barrow Walk View as seen from the River Barrow'. Figure 11 shows a '3D Verified Photomontage View of the Proposed West and Southern Elevation, as seen from the hard surfaced Barrow Track Walkway looking northwards along the Barrow River and Track'.

- 7.5.8. An 'Architectural Design Statement – RFI Response' has also been submitted. This notes that proposal will provide 60 apartment dwellings in two blocks, shared and private amenity space, car and bicycle parking. They provide that the design focus is on the location of the site on the banks of the River Barrow in Carlow Town and the aim is to provide a creative and robust architectural solution to enhance the local context. Regard is had to the difference in elevations between that originally and currently proposed. This Report includes photographs showing the surrounding landscape dominated by the River Barrow and to be relatively flat and semi-urban in appearance. The two blocks are shown moved further away from the Barrow Walk. The original average dimension from the Barrow Walk was 2.2m and this been increased to an average of 6.0m which is considered preferable. Block no.1 is shown set back c.17m and to the north of the reorientated Block no.2. The area between the apartments and the Barrow Walk is to be landscaped to soften the connection between the two functions.
- 7.5.9. Section 3 of this Statement has regard to the Design of the Development. This notes that the buildings must relate not only to the road to complete the streetscape and create an urban edge with the adjoining apartment building (Figure 18 provides a 3D Schematic View) but also relate to the River Barrow. They submit that the buildings are designed to optimise the views towards the river and to enhance the permeability of the site to allow pedestrians and cyclists to penetrate the site at various nodes. That, the landscaping will improve the site layout and offer places for children to play. That this proposal will create a high-quality residential development that respects the surrounding residential and environmental setting and will enhance the character of the area. Figure 19 provides a coded approach to the Proposed Site Plan. Figure 20 – 'Contiguous Elevation along the River Barrow' and Figure 21 'Contiguous elevation along Montgomery Street'.
- 7.5.10. External finishes to the blocks are to include walls of selected brick and timber cladding, all top of walls to be covered with dark grey aluminium capping, sedum roof, aluminium windows and doors. External balcony balustrade is to be safety glass and top rail to be 50mm aluminium extrusion. If the Board decides to permit it is recommended that a condition regarding external finishes be included.

Conclusion

7.5.11. While the changes made in the design and layout in the revised scheme, including the reduction in the number and height of blocks and in the number of units are an improvement to that originally submitted, I would consider that the density of the proposed development would represent an over development of the site and that the height would appear excessive in this peripheral 'Town Centre' location, having regard to the locational context and pattern of development in the area. That the design and layout of the proposed development would not integrate well, taking into account its proximity to Montgomery Street ACA and impact on the visual amenity and character of the area adjacent to the River Barrow. There are also issues having regard to the distribution of open space and the amount of the site to be taken over by surface carparking, which are discussed further below.

7.6. Development Standards and Impact on Residential Amenity

7.6.1. The Architectural Design Statement submitted sets out the unit mix as per the revised scheme in the F.I submission and this is noted on the following Table:

1 Bed Apartment	28	46%
2 Bed Apartment	31	52%
3 Bed Apartment	1	2%
<i>Total units:</i>	60	100%

7.6.2. It is noted that Section 11.5 of the Carlow County Development Plan 2015 -2021 provides the standards for apartments and this includes that all apartment schemes should provide for a mix of units; comprising of one-bedroom, two-bedroom and family units, to encourage diversity rather than uniformity and as far as possible to relate the housing types to the different needs of the population.

7.6.3. Colour coded drawings have been included showing the location of the one, two and three-bedroom apartments. It is noted the three-bedroom apartment is to be dual aspect and is to be located on the fourth floor of Block no.1. The Apartment Guidelines (in section 2.20) have regard to the need to facilitate unit mix, that better reflects household formation and housing demand. Section 11.5.1 of the Carlow

CDP 2015-2021 seeks to encourage a mix of units in apartment schemes. I would consider that the unit mix is relatively uniform and that there is a dearth of provision of three-bedroom apartments within the scheme.

- 7.6.4. The proposed development provides a total of 43% dual aspect as required by the Guidelines. I note that the Apartment Guidelines (Section 3.16) provide that it is a policy requirement that apartment schemes deliver at least 33% of units as dual aspect in more central and accessible and intermediate locations i.e sites near to city or town centres, and close to high quality public transport or where it is necessary to ensure good street frontage and subject to high quality design. On greenfield or standalone brownfield regeneration sites where requirements like street frontage are less onerous, it is an objective that there shall be a minimum of 50% dual aspect apartments. Also, that ideally that any 3 bedroom apartments should be dual aspect. While the 3 bedroom apartment within the scheme is dual aspect, some of the apartments, particularly in Block no.1, which are not dual aspect will be north facing.
- 7.6.5. It is submitted that private open space is provided for each apartment unit on the grounds floor by way of gardens, patios/terraces and by way of balconies at upper levels. It is noted that the drawings indicate these private open space areas (including on ground floor levels) as balconies. Size wise, these appear to be in accordance with the standards in the Apartment Guidelines.
- 7.6.6. It is provided that all apartments and duplexes have been designed in accordance with the Carlow CDP and *Sustainable Urban Housing: Design Standards for New Apartments 2020* complying with or exceeding the minimum standards. A Schedule of Floor Areas is given in the Design Statement for the apartments on each floor of Block nos. 01 and 02. The Floor Plans for the Apartment Blocks, also provide details of floor areas for the apartment units set against the minimum standards. It is noted that the majority of apartments in the proposed scheme exceed the minimum standards by a minimum of 10% as per the Sustainable Urban Housing Guidelines.
- 7.6.7. Apartment Developments should be of high-quality design and layout having due regard to the character and amenities of the area. Accordance should be had to the relevant Guidelines. In terms of quantitative standards, I consider that the proposed development, as amended in the F.I submitted, generally complies with all relevant requirements for unit size, room size, storage provision, unit mix, dual-aspect, private

amenity space, floor-to-ceiling heights, and core arrangement as set out in the said Apartment Guidelines.

Daylight, Sunlight and Overshadowing

- 7.6.1. Section 6.6 of the Apartment Guidelines 2020 includes regard to daylight and sunlight standards/guidelines i.e. *Planning authorities should have regard to quantitative performance approaches to daylight provision outlined in guides like the BRE guide 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting' when undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision.*
- 7.6.2. The Section 28 Ministerial Guidelines on Urban Development and Building Heights 2018 refers to BS 8206-2:2008 (British Standard Light for Buildings- Code of practice for daylighting). I also note and acknowledge the publication of the updated British Standard (BS EN 17037:2018 'Daylight in buildings'), which replaced the 2008 BS in May 2019 (in the UK). Reference is also had BRE 209 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011).
- 7.6.3. It is of note that neither the Carlow CDP nor the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 reference these documents. Section 11.3.1.2 of the Carlow CDP 2015-2021 refers to Daylighting and Solar Gain. This has regard to aspect and orientation. Section 11.5.4 includes that single aspect apartments should allow the main living rooms to face south or west and that north facing units should be excluded. That the orientation of the buildings within the site should maximise energy efficiency. As noted, there are some north facing single aspect units within the scheme.
- 7.6.4. Policy REC P25 of the Joint Spatial Plan includes relative to the provision of communal open space: *A hierarchy of public open space types are provided in larger developments that are fit-for-purpose, interlinked, benefit from adequate sunlight and daylight, incorporate hard landscaping as well as soft landscaping to increase usability.*
- 7.6.5. There is a Daylight & Sunlight Assessment submitted in the Design Statement with the application as originally submitted relative to the 3no. blocks. This concludes (section 4.2) that all living rooms and bedrooms in the units assessed exceed the

minimum levels set out and meet the recommendations of the BRE Guidelines and BS8202 Part 2: 2008 Lighting for Buildings, Code of Practice for Daylighting.

- 7.6.6. Regard is had to the Daylight and Sunlight Assessment originally submitted. Shadow Diagrams were then also submitted. Appendix A of this Assessment shows Shadow Casting Diagrams and this notes that there will be overshadowing outside of the site of the Barrow Track to the west and to the open space to the north of Block C. However, this has not been updated to show the revised scheme submitted as part of the F.I. I would consider that this is an issue in that the number of blocks has been reduced and the orientation has been revised, particularly of Block no.2 which will now have an east/west orientation and a different impact.
- 7.6.7. As noted in the submissions made, Hazel Court Residents Association are concerned about the impact of the scale and height of proposed development. This includes loss of light and overshadowing. Hazel Court is a two storey housing development located to the north of the proposed development and is some distance (in excess of 50m) to the northeast. The Shadow Diagrams as submitted with the Design Statement for the original scheme, show some evening overshadowing may occur at 17.00 during the March Equinox. As shown on the original plans the proposed location of Block C while sited further to the west, was in a relatively similar to the siting orientation to that now proposed for the more northerly Block no.1 which has now been reduced by one storey. Therefore, having regard to this and the set back from Hazel Court, I would not consider that overshadowing from Block no.1 would be significant.
- 7.6.8. On the revised Site Layout Plan, Block no.1 is shown set back c. 22m and offset from the rear and to the north of the 3 storey apartment block on the adjoining site to the east. Having regard to the orientation/offset of the existing 3 storey block to the east, and the limited number of windows in its western side elevation, and the set back of the proposed development, it does not appear that this will impact significantly on sunlight/daylight or overshadowing to the block to the east.
- 7.6.9. However, having regard to the revised design and layout I would consider that the impact of the current proposal will be different to the Sunlight and Daylight Assessment originally submitted and some overshadowing to the areas open space

areas proposed may occur. In view of the revised orientation of Block no.2 this will also result in additional overshadowing to Montgomery Street and the Barrow Track.

7.6.10. However, in the absence of up-to-date Daylight & Sunlight Assessments and Shadow Diagrams for the revised scheme, it is difficult to assess or ascertain the impact of the proposed development both within the site and on the wider area. In this respect I would consider that insufficient information has been submitted to ascertain the impact of the revised scheme.

Landscaping and Open Space

7.6.11. A Landscape Masterplan has been submitted with the revised plans. This has been designed to illustrate the soft and hard landscape proposals for the scheme. Noting that the design has been influenced by the presence of the River Barrow SAC, road sightlines, Ceatharlach Carlow walkway and the All Ireland Pollinator Plan. The Landscape strategy provides details of the proposed planting (Planting Schedule). This includes that as per the ecological recommendations the scheme indicative locations for bat and bird boxes.

7.6.12. It is noted that in general the existing planting on the site, which includes shrubs and immature trees are to be removed. It is important that steps are taken to ensure that construction works do not impinge on the roots of the mature trees to the north of the subject site. Block no.1 is shown setback c.2/3m from the northern boundary. These deciduous mature trees which while outside the site, are close to the northern boundary wall, provide screening and soften the visual impact in the summer months from the Barrow Track and the cemetery.

7.6.13. Policy REC P24 of the Joint Spatial Plan seeks to provide public open space in the order of 10% of the site. Where provision of that order is not practicable by reason of site or locational constraints, development contributions may be accepted in lieu and will be allocated towards public leisure and amenities within the area. The Amended Site Layout Plan provides that public amenity open space of 740m² will be provided. The area of the site is given as 0.4749ha so this is in excess of the 10% requirement.

7.6.14. The design comprises a communal open space, to provide passive amenity. This includes an informal looped path and south facing seat in the soft landscaped area. An informal concrete paving path has been selected to add more interest into the

communal open space. The main area of open space is shown between Block nos.1 and 2 and at the side of the blocks that are shown set back c. 6m from the Barrow Track. In order to improve permeability, it is proposed to provide a pedestrian access to the Barrow Track. The western boundary of the site with the Barrow Track is to be significantly landscaped to soften the connection between the open space and the Barrow Track.

7.6.15. Policy REC P26 seeks to ensure the following types of spaces and recreational facilities in association with new residential development:

Dwelling Units	Communal Amenities Required
51-150	Landscaped passive recreational space Open space for informal play Playground for younger children (min 100 sq metres) Youth space suitable for teenagers (min 100 sq metres) Multi-use games area (tennis/basketball) Outdoor gym for adults

7.6.16. It is noted that the proposed open space provision is deficient in these requirements. I would also be concerned about the distribution and functionality of the open space throughout and would consider that it appears incidental rather than central to the scheme. In particular, the strip to the west of the blocks. It is of note that the north and eastern part of the site is shown dominated by on site surface parking.

7.7. Impact on the ACA and the Character of the area

7.7.1. Regard is had to Section 28, 'Architectural Heritage Protection: Guidelines for Planning Authorities, 2011'. Chapter 3 refers to the protection of Architectural Conservation Areas, in order, to retain the overall architectural or historic character and pattern of development of the area. Section 3.4 refers to Setting and ACAs and to the influence of the setting of groups of structures on the character of the group and wider area. Reference is had to the preservation of views/vistas.

- 7.7.2. Section 11.17.1 of the Carlow CDP 2015-2021 refers to Development in ACAs and advises that regard be had to the above Guidelines and notes the more restrictive criteria for development within ACA's. It is of note that the site is c.60m to the west of the Montgomery Street ACA and while seen in vistas from the street does not adjoin the ACA. However, it needs to be ascertained that the proposal would not detract from the setting of the ACA.
- 7.7.3. Section 9 of the Joint Spatial Plan concerns the Built and Natural Heritage. In this respect Core Aim 9 seeks to: *Protect the natural, architectural and archaeological heritage of the Greater Carlow Graiguecullen Urban Area and the special character of its landscape in light of its contribution to the distinct character and identity of the Area.* It is noted that the natural and built environment of the Greater Carlow Graiguecullen Urban Area plays an intrinsic part in the contemporary and the historical development of the town.
- 7.7.4. The Council's first reason for refusal includes that the proposal would be contrary to Policy HER 008 in the Joint Spatial Plan. This seeks to: *Preserve and enhance the special character of Architectural Conservation Areas within the Greater Carlow Graiguecullen Urban Area.* Montgomery Street is within an Architectural Conservation Area. It is of note that the subject site is to the west of and outside of the ACA. However, the proposed development will be seen in views westwards from Montgomery ACA and will break the vista/skyscape at the end of the Street towards the River Barrow.
- 7.7.5. There is concern in the submissions made that the overall landscape character will be severely affected and impact on the streetscape and heritage of the Architectural Character Area. In relation to the proposed design and layout regard must be had as to the impact on the locational context and the character of the area taking into account the scale, height and massing of the proposed blocks. Also, as to the impact on the visual amenity of the ACA to the east and the River Barrow and adjoining Track to the west.
- 7.7.6. There are two existing apartment blocks on the street (Milverton House and Auburn apartments). They are significantly set back from the street with the parking area in front. Milverton House is a 3 storey block that adjoins the eastern part of the site. The height as originally proposed at 4-6 stories would be 2- 3 times higher than

adjoining development, including in the lower profile Montgomery Street. In comparison, the First Party submits that that the proposed development as revised will enhance the ACA and will have a lessor visual impact and impact on the character and amenities of the area.

- 7.7.7. It is noted that a separate document 'Photomontages and Positional Imagery' has been submitted with the F.I. showing before and after images. As per the VIA it is submitted that the design best responds to the site conditions and challenges within the context, succeeds in preventing overlooking and provides a positive visual impact on the current urban form of the area.
- 7.7.8. I would consider that the elevation as seen from Montgomery Street will appear very prominent and while outside the ACA will form a focal point at the end of the street (View 1 refers). It will provide for a larger scale more contemporary 4 storey block, as a contrast to the existing more set back 3/2 storey apartment blocks to the east and the more traditional architecture in the ACA.
- 7.7.9. The blocks will also be very visible from the Barrow Track and will form a more dominant feature in the landscape for pedestrians and cyclists and, particularly when viewed looking northwards (Views 2 & 3 refer). When walking southwards (towards Carlow town) while some screening is provided (View 4) by the existing mature trees to the north of the site boundary, these are deciduous and Block no.1 will be more visible in the Winter months. The view northwards by the former Celtic Linen site (View no.5) shows the prominence of Block no.2 from the Barrow Track.
- 7.7.10. Computer Generated Images 1, 3 & 4 show views of the blocks when taken within the subject site and no.2 the elevations as seen from the Barrow Track. Contiguous Elevations have also been submitted showing views from Montgomery Street and the Barrow Walk.
- 7.7.11. It is noted that a report 'Architectural Quality of Apartment development' by Sean Mahon Architect has been submitted with the First Party Appeal. This provides that the amended design as submitted at F.I stage lessens the impact on Montgomery Street and the Barrow Track. That the height of the buildings has been reduced and the buildings have been placed to optimise views towards the river and to enhance the permeability of the site to allow pedestrians and cyclists to penetrate the site at various nodes. Also, to ensure the minimum of overlooking of adjacent housing and

to respect the privacy of existing residents. They submit that the proposed two apartment blocks which are respectively 4 and 5 storey buildings are a significant reduction from the previously proposed 5 and 6 storey buildings, and appropriate for the subject site and can be assimilated into the surrounding context in Carlow Town.

- 7.7.12. An Architectural Heritage Impact Assessment has also been submitted with the Appeal. This refers to the impact of the proposed development and on the ACA. It takes the form of a Conservation Report on the existing built fabric, its setting and a summary of the impact of the proposed development. This assessment is based on visible existing built and natural features and does not include buried features that can only be evaluated by an archaeologist.
- 7.7.13. Details are provided of the historical context of the site having regard to a Gas Works in the mid 19th century and Brennan's Bacon Factory in the 1940's. Note is had of Historical Mapping to the OS Mapping for the present day that shows the site cleared. They refer to the unique setting of the site within a previous industrial area and contend that this allows for an increase in height as previously the buildings on site were of a much higher scale than the surrounding residences. It is noted that this has not been documented and the site has been cleared for a considerable time.
- 7.7.14. Montgomery Street has a wide variety of buildings and styles from different eras. From terraces of Georgian housing to the more modern 2000's apartment blocks to the east of the site. Photographs are included. The First Party provide that the proposed development has been designed to provide a quality scheme and to integrate into the area. The site has a degree of complexity due to shape. That the front block has been set behind the street line in keeping with the three-storey building immediately adjacent to it.
- 7.7.15. They submit that, although the site is outside the ACA the design nonetheless endeavours to incorporate many of these aspects and respects its surroundings. However, having regard to the proposed design and layout I would not consider to be the case. I note that having regard to this integration issue the proposed apartment block 02 is set further forward of the three-storey building and block 001 is set further back. Therefore, the building will not integrate well and appear to jut out into the vista at the end of Montgomery Street. While the design of the proposed

apartment development is relatively standard, taking into account its locational context and prominence it will not enhance the character of this sensitive site.

Conclusion

- 7.7.16. In conclusion, I would consider that as has been shown in the documentation and drawings submitted, and the Photomontages and Positional Imagery, the scale, height and massing of the proposed development both as originally submitted and as revised at F.I stage, would be significant having regard to the locational context. It would appear overly dominant in vistas and in the skyline and would not integrate well with the Montgomery Street ACA. It would be prominent but would not present a development that would enhance views from the River Barrow and Barrow Track.
- 7.7.17. I would consider that having regard to the design and layout, the blocks would need to have more regard to the locational context of this sensitive site, be redesigned and reduced in scale and height to a maximum of 3 to 4 storeys and set further back from the River Barrow, and the road frontage. The scheme as presented would represent an overdevelopment that is not optimum for the site. As such, it would impact adversely on the character and amenity of the area including views/vistas from the River Barrow and the Barrow Track and would provide an overly dominant feature in the landscape, that would be out of character, and not enhance and the character with the area and would not integrate with Montgomery Street ACA. Therefore, I would consider that the proposal including as per the revised scheme, would be contrary to Core Aim 9 and Policy HER 008 of the Joint Spatial Plan.

7.8. Archaeology

- 7.8.1. There is concern that very little mention is given to the historical Graveyard located off the Barrow Track with access route through Hazel Court. That consideration of this impact on the views to the old graveyard has not been adequately addressed in the Reports submitted. The Barrow cemetery/Graveyard is not only a historic heritage site for Carlow town. The burial ground is still in use.
- 7.8.2. The Development Applications Unit of the Department of Tourism, Culture, Arts etc. noted that the proposed development requires extensive groundworks in an area of possible archaeological potential due to its proximity to Recorded Monument CW007-001 – *Burial Ground*. That this monument is subject to statutory protection in the

Record of Monuments and Place, established under section 12 of the National Monuments (Amendment) Act 1930-2014. That in light of this, it is possible that hitherto previously unrecorded subsurface archaeological features associated with this RMP including *in situ* human remains, maybe disturbed during the course of groundworks required for this development. They recommend a number of conditions relative to archaeological monitoring during the course of the construction works. Also, that an archaeological mitigation strategy outlining the preservation *in situ* and/or archaeological excavation according to best practice will be required.

It is recommended that if the Board decide to permit that an archaeological monitoring condition be included.

7.9. Traffic, Access and Parking

- 7.9.1. Direct access to the site is through the historic urban residential Montgomery Street ACA running east west, followed by the newly developed Andy Murphy Road parallel to the south and linked with the upgraded Barrow Track Road and hard surfaced barrow pedestrian walkway and pedestrian bridge. The site is located within the urban area and within the 50kph zone. Montgomery St is served by the Athy Rd, which is an Urban Regional Rd, R417, and is linked to the new Andy Murphy Rd.

Traffic & Transportation Assessment

- 7.9.2. The TTA for the proposed development was prepared to address part of the Council's F.I request, whereby a TIA and Road Safety Audit Stage 1/ 2 was requested in respect of Montgomery St, the entrance to the site and the link to the Andy Murphy Road. A separate Stage 1/ 2 RSA report was undertaken in November 2020. They submit that a scoping document was issued to Carlow Co.Co. Transportation Department in November 2020 and provide details of this.
- 7.9.3. The TTA report includes an overview of the nature of the development and current traffic generation adjacent to the site, determined by data collected by a traffic survey carried out at a number of nearby junctions on Wednesday 4th of November, 2020, along with quantification of the additional traffic expected at the site as a result of the construction of the new residential units. In view of the time period regard is also had to Covid-19 Adjustment Factors.

- 7.9.4. The TTA notes the revised proposal for 60 no. units. That, the site will be accessed through an existing gated access off Montgomery Road to the south, with minor reconfiguration of the existing access point to accommodate the site development and construction, and to accommodate all anticipated traffic levels. Anticipated traffic levels arising as a result of the proposed development are detailed in Sections 4 and 5 of the TTA report. Reference is had to Section 5.2.6 of the Carlow CDP 2015-2021 and they provide that DMURS principles have been used by the Design Team in designing the proposed access. They note that the full design layout for the proposed site access layout will be finalised post planning and at detailed design stage, following further consultation and agreement with the Local Authority.
- 7.9.5. They have regard to the local road network. Montgomery St. is a single carriageway urban road subject to a speed limit of 50 km/hr. It is predominantly residential and there is separate accesses to the existing apartment developments to the east. They note the entrance to the former Celtic Linen site, now derelict on the opposite side of the road. Montgomery Street is characterised by on street parking and narrow footpaths and a few raised ramps.
- 7.9.6. The junctions analysed as part of this TTA are as follows:
- Junction 1: R417 Athy Road/Montgomery Street, priority controlled T-Junction.
 - Junction 2: Barrow Track/Montgomery Street/Andy Murphy Road, mini roundabout.
 - Junction 3: R417 Athy Road/Andy Murphy Road/Greenbank Road, priority controlled Junction.
 - Junction 4: Access into the site off Montgomery Road, priority controlled T-Junction.
- 7.9.7. An analysis is provided of each of these, indicating in general a low level of traffic at the time of the survey and that spare capacity exists within this road network. Figures/Photographs showing the layout of these junctions are included. This includes that the Barrow Track continues as an off-road walking route running along the western boundary of the site adjacent to the Barrow River. Photos of the existing layout on this section of the track have been shown in figure 31 and 32. The site

design is to include for increased permeability and accessibility for Vulnerable Road Users (VRUs) to and from the site to this walking route.

- 7.9.8. Section 4 provides details of the Traffic Survey carried out at these junctions. This notes that the collected traffic data is included in Appendix B of this Report. Traffic in these surveys may be reduced and regard is had to Covid 19 Adjustment Factors to ensure a robust assessment is undertaken. The Council confirmed that there are no plans to implement any significant network improvements in the vicinity of the proposed development site which will have an impact on current traffic volumes or distribution and which need to be taken into consideration in the TTA report.

Proposed Site Access and Internal Access Road

- 7.9.9. It is proposed to use the current access to the site with minor modifications as noted in the TTA. They provide that the direct access junction to the site, Junction 4 is to be fully compliant with the requirements of Direct Access Layouts, DMURS and other relevant standards. That the existing and proposed junction is sufficient to accommodate the swept paths and turning movement proportion of anticipated vehicle sizes, including refuse and emergency vehicles. Swept Path Analysis have been included – Appendix A and Figures 53 -56 relate.
- 7.9.10. The proposed access will continue to operate as a priority junction with more than adequate capacity to cater for all anticipated traffic flows, as outlined in Section 6 of the TTA. The proposed internal road cross section will be a constant of 5.5m along its length, which is adequate for a low speed DMURS environment. Regard is had to visibility splays and it is noted that the proposed access junction layout and form has been amended to reflect a new entrance location offset several metres west of the existing access gate – reference is had to drawings in Appendix A of the TTA. In addition, that this demonstrates that visibility can be achieved in accordance with DMURS and they note recommendations as regard the access have been included in the revised design.

Trip Generation and Distribution

- 7.9.11. Section 5 of the TTA refers. This refers to baseline traffic for the opening year of 2021 and in addition in accordance with the TII guidelines, the capacity assessment was also based on traffic conditions forecast for design years 2026 (+5 years) and 2036 (+15 years).

7.9.12. To estimate the likely volumes of traffic that will be generated by the proposed development, trip rates recommended by TRICS for proposed uses were extracted from the database and applied pro-rata to the relevant development quantum (Table 4 refers and a summary is provided in Appendix C). To ensure a worst-case scenario robust assessment of the impact of this additional development generated traffic on access junction and surrounding road network, these anticipated peak hour development flows were factored up by 30%.

7.9.13. They provide details of trip distribution of baseflow plus generated traffic. They have regard to the use of traffic modelling – PICADY (junctions) and ARCADY (roundabout configuration). Regard is had to different scenarios (Figures 60 – 71 relate) to Forecast Background Traffic Flows for the opening year and +15 during both AM and PM peaks. An assessment is made of traffic flows at the junctions. It was found that the assignment of the anticipated development generated flows to the network during the established peak hours, with directional distribution outlined, will other than on Junction 2 PM (an increase of 10.82% at the opening year 2021, which is just above the advisory threshold of 10%) have a negligible impact on the capacity of any of the local links and junctions, as well as the site access junction.

Traffic Impact

7.9.14. Section 6 includes a Junction Analysis and has further regard to traffic modelling. A summary of the analysis results for the existing network Junctions 1-3 and the proposed Development Access Priority Junction 4 for the AM and PM peak hours are provided in Tables 6-9. Reference is had to traffic modelling and use of PICADY and ARCADY – details are included in Appendix C of the TTA – TRICS OUTPUT. The results show that these junctions will operate well within capacity in both AM and PM peak hours, including up to the design year of +2036.

7.9.15. They provide that there are no significant implications in terms of the conclusions of the assessment and the TTA based on the low volume of existing and proposed development, with negligible anticipated delays and queues at the junctions. It concludes that the analysis shows that even in 2036 design year, which represents the highest projected future design flows, the Access Junction and surrounding road network junctions to the east and south, through which all the development traffic will

travel, will operate with significant spare network residual capacity in both AM and PM Peak hours.

Mobility Management

- 7.9.16. Section 7 of the TTA has regard to Pedestrians and Cyclists. This notes that the nature of site activity, along with the urban location and environment, as well as proximity to the Town Centre are likely to generate significant demands to access to and from the site by more sustainable transport modes such as walking and cycling. Provision will therefore be made for accessible bicycle parking spaces within the site, along with the provision of a compact network of footways to provide access to and from buildings within the site. In this respect regard is had to Section 5.3 of the Carlow CDP 2015-2021 – Sustainable Transport and Accessibility.
- 7.9.17. They have regard to Parking and Public Transport noting that the train station is located within 1km east of the proposed development site. It is of note that Carlow Town Centre does not have a local bus service and the town does not include a bus stop within a reasonable distance of the site. The Council's Transportation Section provide that delivery in the initial NTA proposal is some time away. That any proposal to extend the service to this area will be subject to assessment by the NTA and consider that it will not be a viable proposal in the short to medium term.

Car and Bicycle Parking

- 7.9.18. Montgomery Street has limited restricted roadside parking. It is noted that a small area of roadside spaces will be taken up to facilitate the access to the new development. It is also necessary to avoid overspill carparking onto Montgomery Street and proximate to the Barrow Track, which is used by pedestrians. The plans as originally submitted had a parking shortfall i.e 380. spaces for 78no. apartments. The Transportation Section noted this shortfall and that on street parking is limited and cannot meet existing demand. That long stay car parks in the town centre are some distance away and cannot meet the demand this site would generate. They recommended refusal if the applicant is not prepared to address the deficit in parking, as they were concerned that the proposal would lead to on street parking on footpaths and on a narrow road and will contribute to an unnecessary risk to users in particular vulnerable users and emergency services trying to access the buildings.

- 7.9.19. The revised layout includes 60no. surface car parking spaces on the north-eastern part of the site, to the north and rear of the existing 3 storey apartment block. While there is a high wall at the rear of this block, this will result in additional comings and goings. The onsite carparking layout is illustrated in the revised Site Layout Plan and in Figure 57 of the TTA. I would consider that while it is preferable to have the increased number of carparking spaces that the north-eastern part of the site layout will appear dominated by parking. It is noted that there has been no consideration of the provision of under croft parking in the scheme.
- 7.9.20. Policy TRANS P45 of the Joint Spatial Plan relates to the Car Parking Standards. This provides for 1 space per unit for apartment developments within the 'Town Centre' zoning. As noted by the Council's Transportation Section, the revised parking layout complies with this standard.
- 7.9.21. Policy TRANS P32 refers to cycle parking standards. This is one per apartment unit in the 'Town Centre zoning, therefore a minimum of 60no. cycle spaces should be provided on site. As shown on the revised Site Layout Plan, covered cycle parking is to be provided in 3 separate areas of the site, adjacent to Blocks no. 1 & 2 and to the rear of the carparking area close to the north-eastern boundary of the site.

Permeability

- 7.9.22. There is concern in the submissions made that the pedestrian access route proposed from the site will directly enter onto the Barrow Track is inappropriate and unsafe. However, I note that it is proposed to provide a pedestrian entrance to the Barrow Track and I would consider that it is important to provide permeability within the scheme. In addition, to ensure that there are safe and overlooked pedestrian linkages provided within the development.
- 7.9.23. The submissions from the Hazel Court Residents note that there is no mention of the existing right of way located on the Hazel Court side of the development (north side of the development). That this area gives direct (through their residential area) to both the Barrow Track and the historic graveyard located to the north. On site I did not see that there was a connecting path through the site but noted that the area to the north between the site and the cemetery has been developed as an area of public open space with separate access to Hazel Court.

Road Safety Audit

- 7.9.24. A detailed design Stage 1/ 2 Road Safety Audit in respect of Montgomery Street, the entrance to the site and the link to Andy Murphy Road has been submitted with the application. A number of recommendations were made to enhance safety and accessibility for all road users, which are to be considered for implementation by the Design Team at detailed design stage.
- 7.9.25. The TTA summarises a number of safety issues noted on the surrounding road network. These include relative to the interface with the Barrow Track and provision for safe movement of pedestrians along the eastern boundary of the link to the north of the mini roundabout at Junction 2. Also, regard to issues with signage and the poor condition of the existing carriageway and footpath to the east of the site. Section 7.4 provides that the scope of the Stage 1/ 2 Audit was limited to the normal requirements of a Stage 1/ 2 detailed design Audit for the subject site, to include the proposed site access and immediate tie-ins to the road network, along with an overview of the internal site layout. Figures 79 – 109 of the TTA relate.

Summary and Conclusions

- 7.9.26. These are provided in Section 8 of the TTA. This includes that the cumulative impact of increased traffic arising as a result of the development will have a negligible impact on the access junction, link and surrounding network junctions examined in the report. The road network and all surrounding links examined will continue to operate in an efficient manner well below capacity/saturation levels in the course of the design years up to 2036. The results of the traffic modelling show a significant amount of spare capacity at the junctions examined within the TTA report.
- 7.9.27. The TTA does not include any specific road design proposals, however, suggests that mitigation measures where required, taking into account the traffic impact assessment results and findings of the Stage 1/ 2 RSA. The conclusions of the TTA are that there is no mitigation required aside from minor adjustments to the site entrance on Montgomery Street, which include the removal of existing walls and pillars each side to improve visibility and geometry.
- 7.9.28. Other recommendations were made within the Stage 1/ 2 RSA to improve sightlines at the entrance to be taken into account at detailed design stage, including measures to ensure parked vehicles do not obstruct visibility or movement at the proposed site access. That the final junction access will accommodate all anticipated traffic

demands and the proposed 60 surface car parking spaces within the site will also cater more than adequately for the forecast trips to and from the development.

- 7.9.29. The Council's Transportation Section confirms that the TTA included the junctions as requested. They note that the output of the TTA is that roads and junctions in the immediate area will not be significantly affected as a result of the proposed development and that there is only one junction ie. no.2 - the mini roundabout at the Barrow Track that will experience an increase of more than 10%. This is a newly constructed section of roadway and is operating well below its capacity or saturation level and as such the impact will be minimal. They note that the applicant has submitted an RSA 1/2 and are in agreement with the findings and recommend that the recommendations of the RSA are included as a standard condition.
- 7.9.30. Having regard to the details submitted at F.I stage including the TTA and RSA Stage 1/ 2, I would concur with this. However, I would, have some concerns that the proposed layout will be very dominated by surface carparking to the detriment of the design and layout and the provision of more landscaping and quality open space.

7.10. Infrastructure – Provision of Services

- 7.10.1. An Engineering Planning Report has been submitted with the application, relative to the scheme as originally submitted. This includes that wherever practicable runoff flows and pollutants should be managed onsite, rather than being directed to the nearest receiving waters. They note that Surface Water Drainage Systems (SuDS) , involves an integrated approach which considers land use planning, water quality, water quantity, amenity and habitat enhancements. There is an extensive use of SuDS proposed for the site (green roofs -using sedum and permeable surfaces). Details of attenuation storage and surface run-coefficient for the development are included in Appendix 4.
- 7.10.2. It is noted that there is a surface water sewer on Montgomery Street adjacent to the proposed development. The Report provides that they have been advised by the Council that it serves a number of gullies in the immediate area and connects to the River Barrow via a non-return valve. They have been advised that the sewer only operates during low river conditions and they therefore would not be allowed to

connect to it. They have shown a connection to the existing combined sewer located on Montgomery Street which they believe is the Council's preferred choice.

- 7.10.3. The location of the public sewer (& watermain) are shown on the Irish Water Map included in Appendix 6. The foul drainage from the development is to be connected to the existing public sewer on Montgomery Street. The Report recommends that it be fitted with a non-return valve.
- 7.10.4. They are proposing that the water supply to the development shall be from the existing 100mm (UPVC) public mains located on Montgomery Street. They have regard to Irish Water in this matter. Appendix 5 provides confirmation that the proposed connection to the foul system and the water supply is feasible with infrastructure upgrade by Irish Water.
- 7.10.5. The Council's Engineering Section is concerned that the surface water outfall at Montgomery St is not suitable for a discharge from this site. They note that applicant proposes to connect the SW to the combined sewer on Montgomery St and that Irish Water would have to consent to this. If this consent is not forthcoming the applicant will be required to discharge direct to the River Barrow via their own outfall. Pumping may then be required if gravity connection during a flood event cannot be sustained. They provide that ideally the system should have a gravity connection with a control valve and then a pumped system in the event of flooding and recommend this be confirmed by F.I. They note that discharge will require a licence, attenuation and petrol interceptor. They advised that the submitted 'Engineering Planning Report' be amended to take account of these issues. Also, that it set out in greater detail as to how the proposed surface water arrangement will comply with current standards.
- 7.10.6. The F.I submission notes that details of the proposed SuDS for development are included in the revised Engineering Planning Report, including 'green roofs' on the blocks and permeable paving. Attenuation is proposed for the development as shown and a full retention separator is to treat all run-off coming from the roofs and balconies of the apartments and the car parking areas. The revised drawings, show the attenuation storage tank beneath the central area of open space between the blocks and the surface water drainage layout has been revised to incorporate an outfall directly to the River Barrow. A hydrobrake (flow control device is to be fitted). They provide that consent in principle subject to a licence agreement has been

received from Waterways Ireland for the proposed connection and a copy of the consent is included in Appendix 5 of the Engineering Planning Report.

7.10.7. A pumping station is proposed to drain the development during a flood event which prevents the gravity outfall from functioning fully. A duty and standby pumping station is to be connected to the attenuation tank at high level to pump water over the flood defence walls into the river when the river rises above the level of the outfall pipe therefore reducing the flow below the designed outflow rate which could potentially fill the tank.

7.10.8. The Council's Engineering Section advises that the site is located only a short distance upstream of the CSO located on the combined sewer serving this area. They note that the applicant has proposed to separate out the surface water and then attenuate and provide an interceptor trap and has proposed to undertake a direct discharge to the River Barrow with a pump out facility during high river level. They consider this acceptable and recommend requirements as proposed be included as a standard condition. They also note that there may be an opportunity to utilise the existing outfall at Montgomery Street to negate the need to provide a new outfall provided same is done in consultation with the Council.

7.10.9. It is noted that the Council's Environment Section considers that the overall approach is satisfactory but that a more detailed report is required to demonstrate compliance with the Council's SuDS policy. If the Board decides to permit, I would recommend, that conditions relative to surface water drainage and having regard to the outflow pipe to the River Barrow, be included.

7.11. Flood Risk Assessment

7.11.1. Concerns have been raised about flooding i.e that the River Barrow frequently bursts its banks, and increasingly so during extreme weather. That flood water can impact on the Barrow Track and that there is continuing pressure from flooding on local residences in the area. Especially in terms of the creation of a new flood plain which could have a significant impact on local residents.

7.11.2. It is of note that the Council's Environment Section recommended that the Flood Risk Assessment in the Engineering Planning Report be amended to have regard to details outlined in the '*Planning System and Flood Risk Management, Guidance for*

Planning Authorities' (DEHLG/OPW, 2009). They provide that as outlined in the guidance document, the presence of flood protection structures should be ignored in determining flood zones. They also recommend that the Road Section advise on the required boundary flood protection measures to be incorporated into the proposal, having regard to the Carlow Town Flood Relief Scheme.

- 7.11.3. The Council's Transportation Section notes that it is incorrect to state (Section 2.0 of the FRA as originally submitted) that the site is located within the 'Defended area' of the Carlow Flood Relief Scheme, as the area is outside the defended area. That the walls of the Carlow flood defence system are located along the section of Montgomery St bounding the site and extend along the front of the site from the river. They provide that it would be preferable that these walls would have extended along the Barrow Track to the west of the site, ie. the river boundary and that they would then return to the north of the site to a point above the 1% flood level + 300.
- 7.11.4. Internally the site is relatively level aside from raised embankments along the western perimeter to the River Barrow. The developer proposes to raise levels above the flood level and to landscape the slope to the Barrow Track. The proposal needs to take account of public safety during flood events and to include some form of parapet in the proposals for boundary treatment to the River Barrow.
- 7.11.5. It is advised, by the Council's Engineering Section that details of these flood protection works would need to be agreed with the Council prior to commencement. In addition, that it is preferable that road levels in the area of the junction of Montgomery St and the Barrow Track be raised. That this was not possible at the time of the FRA due to third party threshold levels. Also, that any works to modify walls, footpaths and boundaries would need to be subject to a separate FRA. That the FRA will need to reference the compensatory area required in the catchment if the site is to be developed. They advise that further details of the boundary treatment to the Barrow Track and confirmation that there will be a flood wall to +300 above the 1% flood level and a parapet included.
- 7.11.6. As part of the Council's F.I request the applicant was advised to submit a Site Specific Flood Risk Assessment report for the proposed development in accordance with the requirements of '*The Planning System and Flood Risk Management – Guidelines for Planning Authorities 2009*'. It is noted that Section 2.25 of the

Guidelines provides that the presence of any flood protection measures should not be considered when determining flood zones. The likelihood and extent of residual risk needs to be considered and the site specific flood risk assessment should include a Justification Test in accordance with the Guidelines. In addition, that the SSFRA will need to reference the compensatory area required in the catchment if this site is to be developed.

Site Specific Flood Risk Assessment

7.11.7. An SSFRA to assess the potential flood risk to the proposed development site and to assess the impact that the development as proposed may or may not have on the hydrological regime of the area has been submitted in response to the Council's F.I request. This has been undertaken in consideration of: *The Planning System and Flood Risk Management – Guidelines for Planning Authorities DOEHLG 2009*. Regard has been had to 'Step 1 – Screening, Step 2 – Scoping and Step 3 – Assessing.

Screening and Scoping Assessment

7.11.8. This has regard to the Guidelines, to OPW Flood Hazard Maps, CFRAM Study Catchment FRA and Management and to Reports from the County Council that mention the site. As shown on Figure 2 this assessment has determined that there is one hydrometric gauging station located on the River Barrow within the general vicinity of the proposed development site. There are 22 years of water level flow measurement data available for this station for hydrometric years 1998 to the Present. Figure 3 illustrates an extract from the PFRA Mapping for Ireland as produced by the OPW. This shows that the proposed development site is within the Flood Zone for the Fluvial – Indicative 1% AEP (100 yr) Event. There is no mapped indicative pluvial or groundwater flood zones within the boundary of the site.

7.11.9. The SSFRA includes figures to illustrate that there have been a number of flood events within the vicinity of the site. They note that the historic 6 inch and 25 inch mapping does not indicate historical flood zones associated with the River Barrow within the immediate vicinity of the proposed development site. The Geological Survey of Ireland Mapping (Figure 7) indicates the proposed development site is entirely underlain by Made Ground. Alluvium deposits are mapped adjacent to the northern and western site boundary, but do not encroach within it.

- 7.11.10. The South Eastern CFRAM Study has been undertaken by the OPW and the final version of the flood maps was issued in November 2016. OPW CRAMS flood map (Figure 8) illustrative predictive extreme fluvial extent zones associated with the River Barrow in the vicinity of the proposed development site. This shows the site is within a 'Defended Area' and falls within a predictive 0.1% AEP (1 in 1000 year) fluvial flood zone. It is noted that this is different to that shown on Figure 3 (undefended) – OPW PFRA Mapping as stated above. As noted in the Council's Engineers Reports the site is currently outside of the defended area.
- 7.11.11. Predictive CFRAM flood maps submitted include Figure 12 which indicates that the mid-range (1% AEP) future climate change scenario fluvial flood zone is mapped within the entire site boundary. Figure 13 indicates that the mid-range (0.1% AEP) future climate change scenario fluvial flood zone is mapped within the entire site boundary.
- 7.11.12. The Scoping Assessment has regard to the Screening Assessment noting that the most significant hydrological feature in the vicinity of the proposed development site is the River Barrow, which is located close to the western site boundary. The primary potential flood risk to the proposed development site can be attributed to an extreme fluvial flood event in the River Barrow. Secondary flood risk can be attributed to a potential surcharge/failure of the urban drainage/water supply infrastructure or due to a potential blockage in either of the two bridges located 492m upstream and 345m downstream of the site boundary. They consider that there is sufficient quantitative information available, based on the results of detailed hydraulic modelling undertaken along the River Barrow, to provide a reasonably accurate delineation of flood zones and information on extreme flood levels at and in the general vicinity of the proposed development site.

Assessing Flood Risk

- 7.11.13. The specific flood risks to and from the proposed development site are assessed in the subsequent 'Assessing Flood Risk' Section 6 of the SSFRA refers. In view of the findings an analysis an assessment is made of the estimated 1% AEP (1 in 100 year) and 0.1% AEP (1 in 1000 year) fluvial event from the River Barrow close to the western boundary of the site. Utilising this information, predicted flood levels in the

River Barrow adjacent to the proposed development site have been interpolated as summarised in Table 3.

- 7.11.14. Regard has been had to Topographical Survey and Contour Mapping which was used to develop a Digital Terrain Model (DTM) of the proposed development site area. This is illustrated in Figures 14 and 15 of the SSFRA. The highest topographical elevation surveyed within the boundary of the proposed development site is 48.573m OD, which is located in the eastern area of the site, the lowest is 46.283m OD, which is located in the south-western area of the site. Findings show that a small portion of the northern, western and southern area of the site is below the predicted (1% AEP) in 100 year flood level (Flood Zone A) and the western, central and eastern areas of the site are below the predicted (0.1% AEP) in 1000 year flood level (Flood Zone B). Drawings in Appendix A refer.
- 7.11.15. In addition, the SSFRA provides an assessment of secondary and residual pluvial flood risk which can be attributed to a potential surcharge/failure of the urban drainage/water supply network in the vicinity of the proposed development site. The following infrastructure has been identified in the vicinity of the site where development is proposed – Foul/combined sewer and Water Main on Montgomery Street. They provide that based on the existing topography surcharged water is anticipated to flow away from the site in a southerly direction, as Montgomery Street declines in a southerly direction.
- 7.11.16. Regard is also had to the secondary flood risk of Pluvial – Bridge Blockage relative to the bridges to the north and south of the site (Figures 18 and 19 refer). In view of their distance from the site (as noted above) it is not anticipated that blockage of either of the bridges will result in significantly increased flood risk to the site. It is concluded that the secondary and residual flood risk to the proposed development site attributed to a potential surcharge or blockage is considered to be low.
- 7.11.17. Section 7 notes that an analysis was undertaken to assess the depths and volumes of flood waters that may potentially inundate the existing site during the occurrence of a 1 in 100 year (1% AEP) and 1 in 1000 year (0.1% AEP) extreme flood event in the River Barrow. Drawings illustrating this are included in Appendix A of the SSFRA. The potential maximum and mean flood depths and volumes for the defended scenario (above the height of the flood defence wall at 47.5m OD) are

summarised in Table 5 of the Report. It is of note that the defended scenario is in reference to the flood defence wall that is required as part of this development by the Council (it is not currently extended). In addition, that the flood defence wall will provide protection up to a 1 in 100 year (1% AEP) flood event in the River Barrow.

Flood Defence Walls

- 7.11.18. It is of note that separately, the F.I response includes an Engineering Report on the 'Construction Methodology of the Proposed Flood Defence Wall at the Former Greenvale Site, Montgomery Street.' This notes the proposed flood defence wall will replace the earthen berm along the boundary. The proposed works consist of the construction of a c.140m long flood defence wall and the extent is shown on Figure 1 of this Report and the revised drawings submitted. Access and egress from the site is to be via the existing entrance on Montgomery Street.
- 7.11.19. The flood defence wall is designed to protect the site from a 1 in 100 year flood event which is the same level of protection that is provided by the Carlow Flood Relief Scheme. Details are provided of the Methodology and Sequence of the construction work and of mitigation measures proposed to prevent any discharge of contaminated water to the River Barrow and River Nore SAC. This includes regard to best practice measures, and the erection of a silt fence during construction works. Also, that it would be preferable that the flood wall would be 0.3m above the 1% flood level and have a parapet included.
- 7.11.20. Section 8 of the SSFRA provides a discussion which includes that in order to ensure sustainable development of the site and to minimise the flood risk to the site, it is proposed to set the finished floor levels (FFLs) of the proposed apartment blocks to a minimum of 0.5m above the 0.1% AEP (1 in 1000 year -Flood Zone B) fluvial flood level of 47.638 OD, i.e $0.5\text{m} + 47.638\text{m OD} = 48.138\text{m OD}$. They recommend that the proposed ESB Substation be constructed at 47.938m OD.
- 7.11.21. They include that following discussion with the Council, it is proposed to extend the existing flood defence wall located close to the southern site boundary to a location beyond the northern site boundary as illustrated in Figure 20 and Appendix B. The existing wall is constructed to an elevation of 47.5m OD, which provides flood protection against a 1% AEP fluvial flood event including a level of freeboard above

this. It is proposed to extend the existing wall to this same level as far as the northern boundary of the site.

Compensatory Measures

- 7.11.22. The Council advised that improvement works will be required to include flood protection measures in the area in order to facilitate the proposed development. The applicants were advised to consult with the Council as to the extent of such works and compensatory area and to address same as shown on the revised drawings as appropriate. Any works required to third party lands outside of the application site boundaries will require to have written consent of the relevant third party landowner(s).
- 7.11.23. An analysis has been undertaken to assess the depths and volumes of flood waters that may potentially inundate the undeveloped area of the proposed apartment blocks during a 1 in 1000 year (0.1%) AEP) extreme flood event River Barrow. This is on the basis of the site being defended by the proposed flood defence wall in order to determine any potential displacement of flood water above the wall level that may occur if the wall is overtopped during a 0.1% AEP event. In this event, the potential maximum flood displacement volumes of the two apartment blocks are summarised in Table 6 of Section 8.1 of the SSFRA.
- 7.11.24. Section 8.2 notes that, it is proposed to provide flood storage compensation within the proposed development site boundary to compensate for the volume of flood water displaced by the proposed apartment blocks within the site. This compensation is provided for any potential lost flood plain storage that may occur above the level of the proposed flood defence wall which is 47.5m OD for the 0.1% AEP event. Details are provided of the overall volume of flood waters to be accommodated within the open space area of the proposed development site. It is noted that there is limited open space available within the proposed layout plan to provide for flood storage compensation. It is therefore proposed to utilise the proposed car park area, access road, footpaths and green open space to compensate for the displaced water from the construction of the apartment blocks (Figure 22 refers). The volume of storage to be provided within the site is summarised in Table 7.
- 7.11.25. The volume of flood storage is achieved by limiting the proposed ground levels within the area as shown in Figure 22. The proposed ground levels are given with an

average = 47.41m OD. The note that the volume of storage provided during a 1 in 1000 year (0.1% AEP) extreme flood event is greater than the volume displaced by the construction of the apartment blocks and altering the site levels for the proposed layout and therefore the impact, is considered to be low. Although the preferred option would be to provide flood storage compensation in an area solely of open green space, in some instances it may be permissible to allow a carpark to flood particularly if the flooding is minimal and they refer to the 'Development and Flood Risk – Guidance for the Construction Industry 2004' document. They provide that due to the nature of the site and surrounding area flood velocities within the site are anticipated to be low.

7.11.26. The SSFRA recommends that the proposed development site incorporate an appropriately designed and constructed storm-water management system and discharge storm-water runoff from the development site to existing Greenfield runoff rates. That, the development as proposed is therefore not expected to increase flood risk elsewhere. It is predicted that the proposed site would not result in any alteration to the existing fluvial and hydrological regime in the area and would not result in an increased flood risk elsewhere.

7.11.27. Section 9 recommends, that in order to demonstrate compliance with *The Planning System and Flood Risk Management Guidelines* and to ensure a sustainable development that the operator of the residential site implements and operates a Flood Evacuation Plan for the Facility and provides an outline for this.

Development in the context of the Guidelines – Justification Test

7.11.28. Regard is had to *The Planning System and Flood Risk Guidelines* and it is noted that a portion of the proposed development site is within Flood Zones A (high probability of flooding) with part of the site in B (moderate probability of flooding). Table 3.1 of the Guidelines provides a Classification of Vulnerability for different types of development. Residential is classed as *Highly vulnerable (including essential infrastructure)* and commercial/warehousing etc as *Less vulnerable development*. This provides that development in Zone A should be water compatible or avoided and/or only considered in exceptional circumstances, such as in city and town centres and where the Justification Test has been applied. Zone B is also concerned about siting highly vulnerable development and also calls for a Justification Test to

be applied. Table 3.2 provides a Matrix of vulnerability versus flood zone to illustrate appropriate development and that required to meet the Justification Test.

7.11.29. In the context of the Guidelines, Section 11 of the SSFRA provides a Justification Test for Development Management. This notes that in consideration of the scenario that the proposed development site is undefended, that a portion within the northern, western and southern area of the site falls within a predicted (1% AEP) 1 in 100 year fluvial flood zone (Flood Zone A) and that the western, central and eastern area of the site falls within a predicted (0.1% AEP) 1 in 1000 year fluvial flood zone (Flood Zone B).

7.11.30. Where 'Highly Vulnerable Development' is proposed within a delineated 'Flood Zone A' or 'Flood Zone B', it must be established that the development satisfies the criteria of the Justification Test as described in Box 5.1 of the Guidelines 'Application of the Justification Test in development management'. A response to each of the criteria in Box 5.1 of the Guidelines is provided in the SSFRA. In summary they provide the following:

1. The subject site is located on land zoned 'Town Centre' in the Joint Spatial Plan for The Greater Carlow Graiguecullen Urban Area 2012-2018. They submit that in view of the zoning that the site is particularly suitable for a medium to high density residential scheme and that services and services capacity are already available.
2. The proposal has been subject to an appropriate flood risk assessment that demonstrates in summary:
 - (i) Flood Storage Compensation shall be provided to reduce the overall flood risk as a result of the construction blocks and altering the ground levels in the site to accommodate the proposed layout. The proposed volume of flood storage and the proposed development is not expected to result in an adverse impact to the hydrological regime of the area and is not expected to increase flood risk elsewhere.
 - (ii) It is proposed to extend the existing flood defence wall to encompass the site boundary, to defend against a 1% AEP fluvial Flood event in the River Barrow, with a level of freeboard. The proposed FFLs of the proposed apartment blocks are to be raised a minimum of 0.5m above

the predicted 0.1% AEP flood level of 47.638 OD to a level of 48.138m OD. The proposed ESB Substation is to be constructed a minimum level of 0.3m above the 0.1% (1 in 100 years) fluvial flood level of 47.938m OD. They also provide details of a Flood Evacuation Plan.

- (iii) It is recommended that the proposed development site shall incorporate an appropriately designed and constructed storm water management system and discharge storm water runoff from the developed site to existing Greenfield runoff rates. The SSFRA indicates that the residual and secondary flood risk to the proposed development site is low. Access for emergency services would not be impeded or restricted.
- (iv) The subject site is specifically subject to urban design objectives and policy under the Joint Spatial Plan for The Greater Carlow Graiguecullen Urban Area 2012-2018. They note objectives for Carlow Town and for the River Quarter and have regard to specific urban design objectives, including relevant to Opportunity Site 17 (the subject site). This includes regard to the site without flood defences as being within Flood Zone A and has regard to the Justification Test that has been carried out to accord with the *Planning System and Flood Risk Management Guidelines*.

7.11.31. Based on the information assessed and as provided in the Justification Test it is of note that Section 12 provides a summary of conclusions and recommendations in consideration of the findings and analysis of the SSFRA. This concludes that based on their recommendations, the overall development of the site would not result in an increase in pluvial flood risk elsewhere nor an adverse impact to the hydrological regime of the area and is not expected to adversely impact on adjacent lands or properties or increase flood risk elsewhere. They consider that the proposed development is appropriate from a flood risk perspective.

Consideration of Alternatives

7.11.32. The subject site is identified as Opportunity Site 17 in the '*Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 (as extended)*'. This notes that the site is located within Flood Zone A and that undefended, there is a 1% of greater

of flooding each year without flood defences. This provides that following the guidance of 'The Planning System and Flood Risk Management Guidelines', the application of the Justification Test and consideration of the flood defences, less vulnerable types of development are suitable on these lands. These include as described in the Flood Risk Guidelines, retail/commercial/warehousing playing pitches, showrooms and storage uses. Details for Opportunity Site 17 note that residential uses maybe acceptable to upper floors subject to emergency flood risk management assessment and management plan.

7.11.33. The F.I advised that the applicant be required to demonstrate how this proposed development complies with the Guidance provided for same where less vulnerable uses should be considered, particularly on ground floor level. The Guidelines include regard to the sequential approach and investigation of alternatives and avoiding or minimising the risk (Section 3.1 Planning Principles).

7.11.34. The First Party refer to current planning policy and guidelines relative to flood risk and provide that the application of the sequential test has been applied by the Council in the past as it relates to the subject site, as part of their environmental and flood risk assessment process when the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Areas 2012-2018 was first drafted, and more recently extended for the town and the subject site itself. They also refer to 'The Planning System and Flood Risk Management Guidelines for Planning Authorities 2009'. That notwithstanding the statutory position, the sequential test has already been applied to the subject site, and that it passed the test for the, in principle, inclusion of residential under its statutory land use zoning designation.

7.11.35. Alternative less vulnerable more compatible sites in Flood Zones B and C, including on zoned lands have not been considered. It is provided that, this is the applicant's only development site and the proposed development is for the redevelopment of this brownfield site. However, having regard to the Planning History, previous uses established on the site were non-residential. Reference is had in the Joint Spatial Plan to the River Quarter including a number of opportunity sites i.e. the subject site (former pig-slaughter site) as being suitable for wholesale development.

7.11.36. It is noted that the permission granted by the Board (Ref. PL42.263312 refers) for the development of the Celtic Linen site on the opposite site of Montgomery St, was

for a mixed-use development. This showed the 38no. apartments situated on the first to fourth floor levels, with retail and medical centre located on ground floor levels. As noted in the Planning History Section above, this site was not subsequently developed, permission has expired and that site remains vacant. However, of note is that apartments were not proposed at ground floor level.

- 7.11.37. This appears similar in the apartment development that has been constructed near the River Barrow and closer to the town centre, where there appear to be other non-residential uses at ground floor level. It is of note that Riverdell Apartment Complex is a 4/5 storey apartment complex closer to the town centre shopping area and the River Barrow. This contains retail space at ground floor level with apartments above.

Other Considerations

- 7.11.38. Regard is had to the Local Authority comments relative to the SSFRA submitted. The Engineering Section notes that the applicants have agreed to continue the flood defence wall to a level of 47.5m along the Barrow Track and return along the southern boundary. They provide recommendations including revisions to the existing ramp to the footpath and the possibility that a flood gate be included to negate the need for them to return the flood wall along the southern boundary and to eliminate the ramp effect. If permission is granted, they recommend a condition be included that the developer undertake revised boundary treatment to the southern and western boundary of the site with details to be agreed with the Council and OPW prior to construction. They have regard to the site context and have concerns about compensatory storage, creating flow paths for flooding elsewhere. Their recommendation is that the compensatory area not be provided and that levels on site be revised to reflect this.

- 7.11.39. The Council's Environmental Department has regard to the SSFRA and to the management and mitigation measures proposed and to the conclusion that the site would not result in any alteration to the existing fluvial and hydrological regime in the area and would not result in an increased flood risk elsewhere. They recommend that detailed design proposals will need to be submitted to the Planning Authority for approval in advance of construction works. They conclude that it is not possible to recommend a grant of permission on the basis of the F.I submitted.

7.11.40. I have had regard to these reports and to the concerns of the Environmental Sections of the Council, and note that the applicant has proposed residential development on ground floor in both blocks for this 'highly vulnerable' development area and that in view of the circumstances, there is no sequential test to consider alternative sites for residential development that are not at risk of flooding. In addition, that the proposed development will require revisions and extensions to the existing flood defence walls to become a defended site. That there is no evidence of consultation with the OPW on this matter. I would concur that the revisions to the existing defence walls are considered a significant development which could not be appropriately dealt with by conditions given the complexities involved in such infrastructure.

Conclusion

7.11.41. The proposal which includes highly vulnerable residential development is to be located on a site that is within Flood Zone A and is dependent on the construction, continued upkeep and maintenance of the flood defence to be established and a Flood Event Management Plan. It is noted that alternative less vulnerable more compatible sites in Flood Zones B and C located further from the River Barrow, including on residential zoned lands have not been considered. The Guidelines include regard to the sequential approach and investigation of alternatives and avoiding or minimising the risk (Section 3.1 Planning Principles).

7.11.42. In this case, despite the recommendations of the SSFRA, I am not convinced having visited the site and noted the width and proximity to the River Barrow in this location, and having regard to the documentation submitted that relative to the potential risk for flooding and the precautionary approach that this is the most suitable or desirable site for the location of the scale and nature and design of the proposed residential development, including on ground floor level. An element of doubt relative to the appropriateness of the proposed apartment development in this location, flood risk and need for further investigation including of alternatives in design and layout is still extant. The issue of the implications of providing the flood defence walls and relative to compensatory storage needs to be further considered. Therefore, I would consider that having regard to the Guidelines, the decision to refuse relative to a level of uncertainty regarding the flood risk issue has not been overcome.

7.12. Ecology

- 7.12.1. An Ecological Impact Assessment (EclA) was submitted with the application. This has regard to a Desk Study and Consultation and to Field Surveys. The EclA included regard to Habitats, Mammals (including Bats) and Flora. An ornithological survey was also carried out. Evidence for breeding of and bird species listed under Annex 1 of the EU Birds Directive was also conducted within the environs of the site.
- 7.12.2. Section 3 provides an Identification of Sites of Conservation Importance. This includes regard to the designed sites and the proposed natural heritage sites. Table 3. 2.1 provides the Qualifying Interests and General Conservation Objectives for the Natura 2000 sites: The River Barrow and River Nore SAC and The River Slaney SAC which are within 15km radius of the site, the former adjoining the site to the west. Details are given relative to the impacts on the habitats, flora/fauna in the area during Construction and Operational Phases. Regard is had separately to the Natura 2000 sites in the stand-alone AA (NIS) in this Assessment below.
- 7.12.3. It is of note that the EclA was subsequently updated/revised in response to the Council's F.I request, to provide a complete survey of the subject site. There are similarities between both documents and regard is had to the original and revised EclA's in the Assessment below.

Habitats and Flora

- 7.12.4. The site is located on the eastern side of the River Barrow on Montgomery Street to the north of Carlow town centre. It is isolated from the adjoining towpath of the Barrow by an earthen berm. The site was previously cleared of vegetation but has since recolonised and is now overgrown in part. It is provided that no habitat designed for nature conservation purposes, or plant species protected under the Floral Protection Order 2015, will be impacted by the construction of the proposed development of these lands, which would be deemed of local importance for biodiversity. The proposed development will result in the creation of a new urban environment dominated by the apartment development and infrastructure and will ultimately result in a loss of biodiversity in this locality. New landscaping planted associated with the proposed development will mature over time.

Fauna

- 7.12.5. The Submissions made are concerned that the proposal will negatively impact on ecology, including otters and kingfishers and a colony of bats. That the impact in terms of light and noise pollution impacts both at construction and operational stage have not been adequately considered. That inappropriate lighting from the proposed apartments will impact negatively on the character of the area and on the River Barrow SAC. That it will adversely affect bats and other fauna.
- 7.12.6. The EclA provides that a dedicated large mammal survey was carried out by the Ecologist and that there was no evidence of any large mammals including badger utilising the site. It is submitted that there were no signs of otter or an otter holt recorded in this location. However, otter are known from this stretch of the river and form part of the qualifying interests of the SAC.
- 7.12.7. Noise, lighting during the winter months and increased activity during construction period on site could cause disturbance to species such as otter which forms part of the qualify interest of the SAC and several species of bats which hunt and forage over the river.

Bats

- 7.12.8. The EclA provides that there was no evidence of any species of bats roosting within the site. They note that a section of the River Barrow downstream of Montgomery Street is surveyed annually by Bat Conservation Ireland as part of the All Ireland Daubenton's Bat Waterways Survey. Leisler's bat was recorded hunting overhead early in the night. There was significant activity of common and soprano pipistrelle bats, which were recorded foraging in the small wooded area adjoining the graveyard to the north of the site. These bats may have emerged from a residential building located further east on Montgomery Street. Later in the night Daubenton's bat were recorded foraging over the river surface in the vicinity of the site.
- 7.12.9. Having regard to construction and operational phases they note that there are potential impacts on several legally protected species which are found within or adjoining the site arising from its development – these include bats which are listed under Annex IV of the EU Habitats Directive, and birds which are protected under the Wildlife Act 1976 (as amended). The potential impacts on bats arising from the development of the site include: Potential barrier to bat activity on the site from

inappropriate lighting; Loss of foraging areas through the loss of foraging habitats and a decrease in invertebrate diversity within the environs of the site.

Birds

- 7.12.10. A number of common urban bird species were recorded and details are noted of these. Birds associated with the river included: grey heron, mallard, mute swan, grey wagtail and moorhen. No observations of kingfisher were made during the site visit and no suitable habitat for species is present along this stretch of river. Kingfisher was recorded from this stretch of the river (Fig.7 refers). They noted that birds of prey such as sparrowhawk are likely and summer visitors, such as swallow and swift were recorded overhead.
- 7.12.11. The main impacts on birds arising from the construction and operational phases arise from the loss of breeding and feeding territories associated with the loss of habitats within the site. They submit that the development of an urbanised habitat with apartment blocks and open spaces within the site will in the long term favour those bird species that readily adapt to such habitats and they provide a list of common garden birds etc.

Fisheries

- 7.12.12. The lands at Montgomery Street are located within the Barrow catchment (Catchment 14) and within the Barrow sub-catchment (Barrow _SC_090). The River Barrow adjoins the site (IE_SE_14B012460). The river is classified as a river of 'Moderate' status and as a waterbody 'at risk' of not achieving 'Good Status' under the Water Framework Directive.
- 7.12.13. Regard is also had to the comments of Inland Fisheries Ireland, who are charged with the protection, conservation and promotion of fisheries within their functional area. They note fish species in the river and that it is deemed a salmonid watercourse and contains fish species that are among the qualifying interests of the River Barrow and River Nore SAC.
- 7.12.14. Their Observation notes that the River Barrow supports a variety of fish species including Eel, Pike, Bream, Perch and Rudd. The River Barrow and its tributaries are also likely to support populations of the Freshwater Crayfish at this location. They are particularly concerned that extra care should be taken when using concrete on

site, to eliminate the risk to all forms of aquatic life. Also, that it is important to incorporate best practice into construction methods and strategies to minimise discharges of silt/suspended solids to waters. That systems should be put in place to ensure that there shall be no discharge or suspended solids or any other deleterious matter to watercourses during the construction/operational phase and during any landscaping works. That oil and fuels should be stored in secure bunded areas and care and attention should be taken during the construction works. Where site works involve the discharge of drainage water to receiving rivers and streams, temporary oil interceptor facilities should be installed and maintained. They provide that waste oils, empty oil containers and other hazardous wastes should be disposed of in accordance with the requirements of the Waste Management Act, 1996.

Invasive Species

- 7.12.15. In the event, that invasive plant species such as Japanese Knotwood and Himalayan balsam, are found on the site prior to construction they should be removed and destroyed in accordance with accepted best practice for the particular species involved. All works which may impact on invasive species, including Japanese Knotweed are to be undertaken in compliance with best practice and national legislation, including best practice management guidelines. Landscaping proposals must ensure that they do not include non-invasive species which are known or have potential to impact on native habitats.

Construction and Operational Phases

- 7.12.16. Potential impacts on flora and fauna arise during both the Construction and Operational Phases of the proposed development. The Inland Fisheries Ireland note that Construction Statements and Method Statements are not yet available. They are concerned that the construction phase of the proposed works has the potential to convey deleterious matter from such works such as concrete, silt, fuel, lubricating and hydraulic oils from construction plant and equipment downstream unless proper safeguards are in place. That an adverse impact on fisheries should be avoided.
- 7.12.17. The activities associated with the proposed development that have the potential to affect the ecology of the site and surrounding area including the adjoining SAC include: Direct Habitat Loss; Disturbance; Fragmentation; and Potential Water Pollution.

Remedial or Reductive Measures

7.12.18. Reference is had to habitats and species in the adjoining SAC and these are listed separately relative to the consideration of the NIS in this Assessment below.

Pollution prevention and avoidance measures are to be implemented during the construction and operational phase of the project to include the following:

- Minimise disturbance and impacts to bird species listed under Annex I of the EU Birds Directive which use the River Barrow and Nore SAC (namely kingfisher, their habitats and prey – benthic fauna and fish).
- Minimise disturbance to bats, which are all species listed under Annex IV of the EU Habitats Directive which use the River Barrow and Nore SAC.
- Minimise disturbance and impacts to other protected species of bird and non-avian fauna protected under Irish Wildlife legislation, which use the river.
- Improve biodiversity within the development for a variety of species including pollinators.

7.12.19. Details are given of Remedial or Reductive Measures in Section 7.0 of the Updated EclA. These include:

- A project ecologist/Ecological Clerk of the Works will be appointed to oversee ecological aspects of the project.
- No works will be undertaken outside of the project working area without prior consultation with the project ecologist.
- The contractor will be briefed regarding the legal protection afforded to adjoining lands including the towpath and aquatic habitats of the River Barrow and sensitivities regarding same.
- They have regard to Site Compound and Establishment. This includes screening of the river from the works, and to ensure that floodlights do not reach the river corridor.
- In order to avoid direct impacts on breeding birds site clearance works associated with the development will be undertaken outside of the breeding season in accordance with the Wildlife (Amendment) Act (2000).

- Details are provided relative to Pollution Control and Spill Prevention. This includes regard to a Waste Management Plan. They also refer to best practice guidelines relative to reducing impact on Water Quality.
- They submit that they will adhere to standard best practice measures which are regularly used on construction sites in and adjacent to water and sensitive habitats and are proven to be effective.
- Should an accident spill or leak occur, appropriate containment and clean-up plans will be implemented accordingly. NPWS and Inland Fisheries Ireland will be contacted in the case of any spills into the adjoining river.
- Management of concrete dust – controls shall be put in place to prevent concrete dust and wet leachate reaching the river and adjoining SAC.
- Waste Management.
- They provide details for the control of Non-Native Invasive Species (NNIS) during construction works.
- They refer to Landscaping Proposals and to the recommendations of the Pollinator Friendly Planting Code All-Ireland Pollinator Plan 2015-2020.
- Reference is had to Lighting during Construction and Operational Phases. The main impacts that could occur during the operational phase arise from lighting and disturbance associated with same on fauna using the watercourse. A Lighting Design Report and Specifications have separately been submitted.
- Consideration has been given to the potential for light spill from the buildings themselves and the best practice guidance presented in the Bat Conservation Trust Guidance Note - 8/18 – Bats and artificial lighting in the UK.
- The new buildings and the boundary wall of the development will incorporate integrated roosting and nesting opportunity for bats and birds. These are to be specified by the project ecologist at detailed design stage.
- Regard is had to Protection Measures for Birds under the Wildlife Act, 1976.
- SUDS Measures to reduce potential impacts on the adjoining SAC and river corridor. Measures included within the design of the project include:

- Green roofs to all buildings,
- Bio-swales,
- Permeable paving and car parking bays, and
- Soft landscaping.

It is submitted that these measures will reduce potential impacts on ecology and on the adjoining SAC and the river corridor. Planting recommendation for these will be specified by the project ecologist at detailed design stage.

Conclusion

7.12.20. The EclA provides that overall impact on flora and fauna within this site is deemed moderate to negative. The habitats on site will be altered through the development of the apartment blocks. Remedial measures are outlined in Section 7 and include that a project ecologist/ecological clerk of the works will be appointed to oversee the ecological aspects of the proposal. The EclA concluded that detailed mitigation measures have been presented to reduce impacts on same in the vicinity of the proposed development and surrounding lands.

7.12.21. It is noted that the Council does not object to the mitigation measures referred to in the revised EclA. If the Board decides to permit, I would, recommend that it be conditioned that the mitigation measures in the EclA be implemented.

7.13. Appropriate Assessment

Screening

7.13.1. In accordance with the obligations under the Habitats Directive and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a European site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision, by carrying out appropriate assessment. The first stage of assessment is 'screening.'

7.13.2. The methodology for screening for Appropriate Assessment as set out in EU Guidance and the Department of Environment, Heritage and Local Government is:

1. Description of the plan or project and local site or plan area characteristics.
2. Identification of relevant European site and compilation of information on their qualifying interests and conservation objectives.
3. Assessment of likely significant effect-direct, indirect, and cumulative, undertaken on the basis of available information.
4. Screening Statement with conclusions.

Project Description and Site Characteristics

- 7.13.3. The proposed development is located on a 'Brownfield site', located adjacent to the River Barrow on Montgomery Street, in Carlow Town. The proposal as originally submitted was for 78no. apartments in 3no. 4-6 storey blocks. A Habitats Directive Assessment by Faith Wilson Ecological Consultant was submitted with the application as originally submitted. As per the revised scheme this was reduced to 60 apartments in 2 separate 4-5 storey blocks with surface car parking for 60 cars and includes the provision of a flood defence wall.
- 7.13.4. Subsequently, in response to the Council's F.I request, a revised Natura Impact Statement by James O'Neill Associates, Environmental Affairs. This was to have regard to matters raised (including greater detail on the proposed surface water management system). The revisions to the original scheme are not noted in the description of development in revised NIS, which I would consider to be of issue. Regard is had in my Assessment to both documents, which are relatively similar, with particular note of the further details submitted in the revised Screening Report. The latter has regard to the Screening Rationale: Direct and Indirect Impacts.
- 7.13.5. The lands proposed for development on Montgomery Street are not currently the subject of any nature conservation designations. There are two Natura 2000 sites within a 15km radius of the site i.e:
- The River Barrow and River Nore SAC (Site Code: 002162) – the site bounds the River Barrow to the west.
 - The Slaney River SAC (Site Code 00781) – c.10.8km east of the site and not hydrologically connected to the Carlow town area.

The Qualifying Interests and General Conservation Objectives of these two Designated Natura 2000 sites are as follows:

European Site (code) and distance from proposed development	List of Qualifying interest/Special Conservation Interest	General Conservation Objectives	Connections (source, pathway receptor)	Considered in further screening Y/N
<p>River Barrow and River Nore SAC 002162 Adjoins the site to the west</p>	<p>Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Reefs [1170] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glaucopuccinellietalia maritimae) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260] European dry heaths [4030] Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430] Petrifying springs with tufa formation (Cratoneurion) [7220] Old sessile oak woods with Ilex and</p>	<p>To maintain or restore the favourable conservation condition of the Annex I habitats(s) and/or the Annex II species for which the SAC has been selected.</p>	<p>There is source – pathway – connectivity between the proposed development site and the River Barrow and River Nore SAC This adjoins the site and is hydrologically connected to it as surface waters from the site and town drain to the river.</p>	<p>Yes</p>

	<p>Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p><i>Vertigo moulinsiana</i> (Desmoulin's Whorl Snail) [1016]</p> <p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]</p> <p><i>Austropotamobius pallipes</i> (White-clawed Crayfish) [1092]</p> <p><i>Petromyzon marinus</i> (Sea Lamprey) [1095]</p> <p><i>Lampetra planeri</i> (Brook Lamprey) [1096]</p> <p><i>Lampetra fluviatilis</i> (River Lamprey) [1099]</p> <p><i>Alosa fallax fallax</i> (Twaite Shad) [1103]</p> <p><i>Salmo salar</i> (Salmon) [1106]</p> <p><i>Lutra lutra</i> (Otter) [1355]</p> <p><i>Trichomanes speciosum</i> (Killarney Fern) [1421]</p> <p><i>Margaritifera durrovensis</i> (Nore Pearl Mussel) [1990]</p>			
<p>Slaney River Valley SAC 000781 10.8km east</p>	<p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Atlantic salt meadows (Glauco-</p>	<p>To maintain or restore the favourable conservation condition of the Annex I</p>	<p>There is no source – pathway-receptor connectivity between the</p>	<p>No</p>

	<p>Puccinellietalia maritima) [1330]</p> <p>Mediterranean salt meadows (Juncetalia maritimi) [1410]</p> <p>Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260]</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Petromyzon marinus (Sea Lamprey) [1095]</p> <p>Lampetra planeri (Brook Lamprey) [1096]</p> <p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Alosa fallax fallax (Twaite Shad) [1103]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Lutra lutra (Otter) [1355]</p> <p>Phoca vitulina (Harbour Seal) [1365]</p>	<p>habitats(s) and/or the Annex II species for which the SAC has been selected.</p>	<p>proposed development and the SAC</p> <p>There is no potential for impact</p>	
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Slaney River Valley SAC

7.13.6. Note is had of the Table above and the qualifying interests and conservation objectives of this Natura 2000 site, which is c.10.8kms east from the application site. The project is not hydrologically connected to the Slaney River Valley SAC, which is

in a different catchment and hence potential impacts on this Natura 2000 site are ruled out.

7.13.7. In view of the proximity and hydrological connection this proposal has potential to impact on the integrity of the River Barrow and River Nore SAC and this is considered further in the Screening Rationale below.

7.13.8. Otherwise, it has been concluded on the basis of the project, the data contained within the relevant assessment and a review of the ecological contents and locations of other protected site (and potential sources, pathways and receptors associated therewith) that the source-pathway-receptor mechanism cannot be established for any additional Natura 2000 sites.

River Barrow and River Nore SAC

7.13.9. The subject site is hydrologically connected to the SAC as surface waters from the site drain to the River Barrow. No land area from within the designated boundaries is required to implement the proposed development. The development is not located within a site designated for nature conservation purposes but adjoins the River Barrow and River Nore SAC. The proposed development is outside of the designated boundaries. It is separated from the River Barrow by the Barrow Track walkway, and it is provided will not result in any loss or reduction in habitat extent within the designated areas.

Screening Rationale: Direct Impacts

7.13.10. The Applicant's NIS as revised notes, that the only significant Pathway for potential indirect impacts on the Natura 2000 sites is via the discharge of materials and effluents as waterborne pollutants into the surface waters on and around the proposal site which may drain into downstream designated area. It is submitted that the maintenance of water quality within the designated site is sufficient to avoid all ecological impact in the current instance i.e.

- The River Barrow and River Nore SAC is adjacent to the site and is hydrologically connected to it as a surface waters from the site and town drain to the river.
- Discharges to surface waters have the potential (in the absence of mitigation) to result in localised adverse changes to water quality parameters. Details of

the components of such discharge have not been clarified. However, the use of SuDS is noted. Also, that surface water discharge will be subject to licence from Irish Water.

7.13.11. As noted in the Drainage Section above regard is had to surface water discharge in the Engineering Reports submitted. It is proposed to utilise a SuDS system and attenuation within the site. The revised plans show that the surface water drainage layout has been revised to incorporate an outfall directly to the River Barrow. The revised NIS screening provides that the outflow is located outwith the formal boundary of the Barrow & Nore SAC. Additionally, that the project will not directly impact upon mobile or migratory species which utilise the European Site. Therefore, it is provided that the maintenance of water quality within the designated site is sufficient to avoid all ecological impact in the current case.

Screening Rationale: Indirect Impacts

7.13.12. The proposed development in view of its proximity to the River Barrow has the potential to disturb feature species of the Natura 2000 site in terms of indirect impacts upon water quality. Regard is had in Section 3.4 of the revised NIS to the indication of the potential impacts on the Natura 2000 Site which may result from the effects identified and detailed in terms of: - Loss; Fragmentation; Disruption; Disturbance; Changes to Key Elements of the Natura 2000 Site (water quality etc).

Assessment of likely Significant Effects

7.13.13. As per Section 3.4 of the Revised NIS these include:

- Reduction of Habitat Area – The proposed development is outside of the designated boundaries and will not result in any loss of or reduction in habitat extent within the designated area.
- Disturbance to Key Species – The proposed development has the potential to disturb feature species of the SAC in terms of indirect impacts upon water quality. There is the potential during the construction phase for the discharge of polluting materials, including hydrocarbons, and the mobilisation of silts, sediments and other pollutants into the landscape.
- Habitat Degradation - The proposed development does have the potential to indirectly impact the Natura 2000 site in terms of habitat degradation as a

result of discharge to surface water. Such impacts may give rise to habitat loss and impact upon the sedentary and migratory species for which the site has been designated.

- Reduction in Species Density – Habitat loss and impacts upon migratory species may result in reduction species densities as a result of discharges to surface waters.
- Changes in Key Indicators of Conservation Value – Water quality is of relevance to both the quality of feature habitats and the stability and viability of populations of feature species.

7.13.14. In general terms I would consider that having regard to the information submitted including in the revised NIS that the proposed development does have the potential to indirectly impact on water quality and the site selection features and conservation objectives of the SAC Site. I would concur with the screening assessment which concludes that significant effects cannot be ruled out and that a Stage 2 Appropriate Assessment is required.

Screening Statement and Conclusions

7.13.15. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) could have a significant effect on the River Barrow and River Nore SAC (Site Code 002162), in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is therefore required.

7.14. Stage II Appropriate Assessment

The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177U and 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section. The areas addressed in this section are as follows:

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

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

On the matter of screening the need for 'Appropriate Assessment', I have set out under Section 7.13 of my report above. In this case 'Appropriate Assessment' is required as it cannot be excluded on the basis of the information available to the Board that the proposed development individually or in-combination with other plans or projects in its vicinity would have a significant effect on the following Natura sites:

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

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

Potential for direct and indirect effects

7.14.1. The Screening for AA (as noted in Section 7.13 above) identified that the potential impacts that could cause a significant effect on the qualifying interests and conservation objectives of the River Barrow and River Nore SAC during the proposed works and operation are via land, surface water and air pathways through the potential release of silt and sediment, pollutants/leachate during construction and operation into the adjacent riparian and aquatic habitats impacting on the quality of these habitats and the aquatic species they support within the River Barrow and River Nore SAC.

7.14.2. Additional impacts via land and air pathways are through physical disturbance of habitats and /or disturbance of species which form part of the qualifying interests of the SAC caused by noise and increased activity during construction works and lighting impacts during construction and operation.

Construction Phase

7.14.3. The construction phase of the project entails first setting up the main site compound and storage areas for materials within the site. The original NIS notes in Section

3.2.1 that there will be a need for material to be brought into the site to ensure the levels required as part of the preliminary flood risk assessment are met. The construction of the apartment blocks and associated infrastructure will then commence.

7.14.4. All of these activities have the potential to release silt and sediment, dust, pollutants/leachate during construction and operation into the adjacent riparian and aquatic habitats which include the following habitats:-

Hydrophilous tall herb fringe communities of plains and of montane to alpine levels [6430], which form part of the qualifying interests of the SAC and which in turn support the following species:

- *Austropotamobius pallipes* (White-clawed Crayfish) [1092]
- *Petromyzon marinus* (Sea Lamprey) [1095]
- *Lampetra planeri* (Brook Lamprey) [1096]
- *Lampetra fluviatilis* (River Lamprey) [1099]
- *Alosa fallax fallax* (Twaite Shad) [1103]
- *Salmo salar* (Salmon) [1106]
- *Lutra lutra* (Otter) [1355]

7.14.5. All of which from part of the qualifying interest of the SAC. Conservation Objectives relative to these Qualifying Interests are available on the NPWS website and are included with the NIS. All, of the above are dependent on water quality being maintained in the River Barrow SAC. However, it is noted that details as to whether each of these species will be significantly impacted during construction and operational phases have not been included in the NIS.

7.14.6. Noise, lighting during the winter months and increased onsite activity during construction period could cause disturbance to species such as otter which forms part of the qualifying interest of the SAC and several species of bats which hunt and forage over the river.

Operational Phase

7.14.7. The main impacts that could occur during the operational phase arise from lighting and disturbance associated with same on fauna using the watercourse. Section 3.3 of the Habitats Directive Assessment as originally submitted refers mainly to impact on biodiversity and as these include species other than the qualifying species and

they are discussed in the context of the Ecological Impact Assessment Reports as submitted. Any potential for impact on the qualifying species through changes to water quality in the River Barrow is of concern.

Mitigation Measures

7.14.8. Section 3.4 of the original NIS refers to Mitigation Measures. This includes that pollution prevention and avoidance measures will be implemented during the construction and operational phase of the project. Mitigation measures will be required to ensure that silt and sediment does not enter the watercourse during the construction phase and that other measures are implemented to ensure that noise and lighting disturbance impacts are minimised during the construction and operational phase of the project. Also, that landscaping proposals if not designed sensitively, could result in the spread and introduction of unwanted non-native and potentially invasive plant species to the SAC.

7.14.9. Mitigation Measures are outlined (as noted in the EclA Section above) in 'Remedial or Reductive Measures' in Section 7 of the revised Ecological Impact Assessment Report. These are designed to protect the Conservation Objectives and Qualifying Interests of the River Barrow and River Nore SAC, Natura 2000 site.

7.14.10. It is noted that the revised NIS makes reference to the following documents also for consideration:

- 'Site Specific Flood Risk Assessment' – in summary the development as proposed is not expected to result in an adverse impact to the hydrological regime of the area or to result in an increased flood risk elsewhere.
- 'Construction Methodology for the Construction of the Flood Defence Wall'.
- 'Engineering Planning Report' – methodologies detail the proposed works and define some of the environmental measures that will be implemented during the construction and operation of the works in order to manage, minimise or mitigate potential environmental impacts that may arise as a result of the proposed works.

7.14.11. The primary concern is with regard to the accidental discharge of contaminated water to the River Barrow and River Nore SAC. A detailed list of impact elimination and avoidance measures during Construction Phase is outlined in Section 4 of the

revised NIS and considered within the Stage II AA. This includes that wet concrete and cement are very alkaline and corrosive and can cause serious pollution to watercourses. Disposal or raw or uncured waste concrete is to be controlled to ensure that watercourses will not be impacted. Reference is has best practice measures relative to the construction works. These include that a bunded area (with the capability of storing 110% of the capacity of the containers stored within it) is to be constructed for the storage of fuels, lubricants and hydraulic fluids. Spill kits are to be made available, and measures are provided relative to refuelling, oiling and greasing and chemicals are to be stored on site in sealed containers etc. It is also of note that the revised Engineering Planning Report submitted refers to the extensive use of SuDS on site and provides that wherever practicable runoff flows and pollutants should be managed on site, rather than being directed to the nearest receiving river.

7.14.12. It is noted that the 'Construction Methodology for the Proposed Flood Defence Wall' report submitted in response to the Council's F.I request, refers in Section 4 to Methodology and Sequence of Work. This includes: *The primary concern is with regard to the accidental discharge of contaminated water to the River Barrow SAC. Of relevance to the proximity to the River Barrow and the SAC – Any and all excavated material shall be stored on site away from the watercourse.*

7.14.13. The NIS provides that these mitigation measures are considered to be deliverable and comprehensive. That they are sufficient to eliminate all potentially significant impacts upon the River Barrow and River Nore SAC. That this review of project proposals has concluded that with the inclusion of these mitigation measures no adverse effects upon the Natura 2000 Sites are likely to arise in view of the site conservation objectives.

Issues for Consideration

7.14.14. The Council's second reason for refusal is not satisfied that the applicant has fully demonstrated that the proposed development would not give rise to ecological impacts that would not significantly affect the River Barrow and River Nore SAC and its conservation objectives. It is noted that their Environmental Department considers that it is not possible to recommend a grant of permission on the basis of the further

information submitted. They had regard to the Revised NIS and their points are summarised as follows:

- The NIS as revised describes the proposed development as 78 units which are located in three blocks as per the original proposal. This has not been revised to 60 units in two blocks and the NIS has not been amended accordingly.
- There will be a direct surface water outflow to the Natura 2000 site, which has not been assessed in Section 2.1 of the revised NIS.
- The potential impacts arising from Invasive Species Introduction have not been considered in sufficient detail with regard to Qualifying Interest which are within the zone of influence of the project.
- Detailed Conservation Objectives for all SAC Qualifying Interest have not been examined in the context of potential impacts.
- Mitigation measures are not examined in sufficient detail with regard to the prevention of polluted runoff during the construction phase.

7.14.15. These concerns are noted, and I would consider need to be clarified and need further investigation. Having regard to the outflow pipe, I note the revised Surface Water Drainage Plan shows the route from the site to the River Barrow. The mitigation measures in Section 4 of the revised NIS provide that outfall from the attenuation tank shall run through a flow control device which shall limit the outflow to the Greenfield run-off rate.

7.14.16. While I note the mitigation measures and the proposed use of SuDS within the scheme, I would consider that there is insufficient information given in the NIS as to whether the proposed development, including the construction of the flood defence wall, will impact significantly on water quality and on the Conservation Objectives and Qualifying Interests of the species in the River Boyne SAC.

Cumulative Effects

7.14.17. The NIS as originally submitted notes that the Carlow County Development Plan 2015-2021 has been through the AA process as has the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area incorporating the Carlow Town DP 2012-2018 and its subsequent variations. They provide a list of large housing

developments which have undergone the AA process in Carlow town (Figure 10 relates). Section 3.1 of the revised NIS provides that a review of the project indicates that there are no other development proposals situated close the proposal site with the potential to give rise to cumulative or synergistic impacts.

7.14.18. I would consider that in-combination and cumulative impacts of the project when taken together with other plans and projects have not been dealt with in either the original or revised NIS's submitted.

Appropriate Assessment Conclusion

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

7.14.20. Having carried out screening for Appropriate Assessment of the project, it was concluded in both the original and revised NIS(s) as submitted by the Applicant, that the proposed development may have a significant effect on the:

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

Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying interests/special conservation interests of this site in light of their conservation objectives.

7.14.21. As concluded where potentially significant adverse effects were identified a range of detailed mitigation measures have been developed to reduce and avoid impacts on the River Barrow and River Nore SAC. The review of the project proposals has concluded that no significant ecological impacts upon Natura 2000 sites are likely to arise should the project proceed with current committed mitigation. That as no significant or perceptible impacts are predicted as a result of the 'project' it is reasonable to assume that impacts are *de minimis* and that no cumulative or synergistic impacts will arise. That the AA carried out as submitted has demonstrated that the project:

- Will have no direct adverse impacts on the designated site; and
- Will have no indirect adverse impacts upon the designated site.

That there will be no likelihood for significant effects on any European sites, and there will be no adverse effects on European site integrity during the construction or operation of the proposed development in combination with other plans or projects.

7.14.22. However, I am concerned that insufficient information/scientific evidence has been submitted as to whether it can be said with certainty, that the proposal as originally submitted or as revised, will not impact significantly on the qualifying species and the sites conservation objectives. Also, that the issues as raised in the Council's Environmental Report as outlined above have not been adequately addressed. That the revised NIS does not address how the changes made to the design and layout of the scheme including the construction of the flood defence wall as per the Further Information submitted will impact on the SAC. The Potential for In-Combination/Cumulative Impacts has not been adequately addressed. A Findings of No Significant Effects has not been submitted. Therefore, having regard to the precautionary principle, and the reasonable scientific doubt, it cannot be said with confidence, that the proposal will not impact on the integrity of the SAC.

7.14.23. On the basis of the information provided with the application and appeal, including the Natura Impact Statement 2020 and as revised in 2021, and in light of the submissions made and the assessment carried out above, the Board cannot be satisfied that following an Appropriate Assessment the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of River Barrow and River Nore SAC (Site Code 002162) in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting planning permission.

7.15. Material Contravention

7.15.1. The Council's second reason for refusal relative to AA refers to material contravention of Heritage Policy -2 and Heritage Objective -5 of the Carlow CDP 2015 - 2021. Reference is had to these in the Policy Section above.

7.15.2. Section 34(6) of the Planning and Development Act 2000 (as amended) sets out the procedure under which a planning authority may decide to grant permission for such a development. Section 37(2) of the 2000 Act provides the constrained circumstances in which the Board may grant permission for a material contravention.

These include whether the development is of strategic or national importance, where the development should have been granted having regard to regional planning guidelines and policy for the area etc., where there are conflicting objectives in the Development Plan or they are not clearly stated, or permission should be granted having regard to the pattern of development and permissions granted in the area since the making of the Plan.

- 7.15.3. In this instance the proposed development is clearly not of strategic or national importance. While the site is within the 'Town Centre' mixed use zoning, there is no policy or guidelines advising that such a development should be not be permitted in this area. The Council's reason no.2 for refusal considers that the proposed development would contravene materially Heritage Objective – 5 and Heritage Policy – 2 of the Carlow CDP 2015-2021 and would therefore be contrary to the proper planning and sustainable development of the area.
- 7.15.4. Heritage – Policy 2 is a detailed policy relative to AA under Article 6 of the Habitats Directive. This includes as quoted in the Council's reason for refusal – *to support the protection of habitats and species covered by the EU Habitats Directive...* Furthermore, *to only authorise development after the competent authority has ascertained, based on scientific evidence that the plan or project will not give rise to significant adverse direct, indirect or secondary effects on the integrity of any European site.*
- 7.15.5. Based on the information submitted with the application the Planning Authority is not satisfied that the applicant has fully demonstrated that the proposed development, would not give rise to ecological impacts, and would not significantly affect the River Barrow and River SAC (Site Code 002162) and its conservation objectives. Accordingly, the proposed development would contravene materially Heritage Objective – 5 and Heritage Policy 2 of the Carlow CDP 2015-2021 and would therefore be contrary to the proper planning and development of the area.
- 7.15.6. I would consider that the policy and objectives are clearly stated. It is noted that while Heritage Policy 2 is more detailed relative the need to ensure no significant impact, and the achievement of favourable conservation status of protected habitats and species in Natura 2000 sites, Heritage - Objective 5 refers also to the protection

of habitats and species listed in the annexes to and/or covered by the EU Habitats Directive etc and to ecology.

- 7.15.7. I would consider that based on the AA screening and assessment as submitted and the conclusions reached above, that the proposed development would be materially contrary to Heritage Policy 2 and Heritage Objective 5 of the Carlow CDP 2015-2021.

8.0 Recommendation

- 8.1. I recommend that permission be refused for the Reasons and Considerations below.

9.0 Reasons and Considerations

1. On the basis of the information provided with the planning application and appeal and in the Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects, would not be likely to have a significant effect on River Barrow and River Nore (Site Code: 002162), or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.
2. The site is located within and proximate to the River Borrow and, as shown on the OPW Flood Maps, is currently undefended, primarily in Flood Zone A in an area at risk of fluvial flooding. On the basis of the submitted documentation, and despite the Site Specific Flood Risk Assessment and Justification Test carried out and the proposal to extend the flood defence wall, and to provide flood storage compensatory measures on site, the Board is not satisfied that the applicant has provided sufficient information to demonstrate compliance with the planning principles in section 3.1 of 'The Planning System and Flood Risk Management Guidelines for Planning Authorities, November 2009', to apply the precautionary approach and to show that alternative more reasonable sites for this 'highly vulnerable' development are not available in areas at lower flood risk. The proposed development, which includes apartment development on ground floor level, would, therefore, constitute an unacceptable risk of flooding to future

occupants, would conflict with the Ministerial Guidelines and would be contrary to the proper planning and sustainable development of the area.

3. Having regard to the Sustainable Urban Design Standards for New Apartments Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in March, 2020, the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in May, 2009, and the policies and objectives in the Carlow Development Plan 2015-2021 (as varied) and the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018, it is considered that the proposed development, by reason of the response to the site context, and in particular the design, height, scale, massing and layout of the apartment blocks, would result in overdevelopment of the site, would be overbearing and visually obtrusive, and would detract from the character and visual amenities of the proximate Montgomery Street Architectural Conservation Area and the Barrow Track along this section of the River Barrow. The proposed development would be contrary to Core Aim 9 and to Objective HER 008 of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Angela Brereton
Planning Inspector

10th of June 2022