

An  
Bord  
Pleanála

## Inspector's Report ABP-312256-21

Development	28 houses and all associated site development works.
Location	Newtown, Rathangan, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	21586
Applicant(s)	Moortrim Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Jason Cross and Amanda Quille Freddie Conlan Simon Cross Emma and Gary Cross.
Observer(s)	None.
Date of Site Inspection	21 <sup>st</sup> of September 2022
Inspector	Karen Hamilton

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## 1.0 Site Location and Description

- 1.1. The site is a greenfield site located to the north of Rathangan, Co. Kildare. The site is located along the west of the regional road (R414) which radiates north from the town of Rathangan. There is a continuous footpath from the town to the front of the site.
- 1.2. A large agricultural engineer firm is located along the south of the site. A row of large, detached dwellings is located on the opposite side of an access road to the north of the site. The Rathangan GAA and tennis club is on the opposite side of the R414 to the east. The lands to the west are agricultural.

## 2.0 Proposed Development

- 2.1. The proposed development would comprise of the following:
  - Construction of 28 no dwellings,
  - Temporary new access from the southeast, set aside for a road reservation area along the north of the site and future permanent access north following the completion of a proposed link road between R414 and the R401,
  - All other associated works.

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to grant permission subject to 38 no conditions of which the following are of note:

C11- Prior to the occupancy of the residential units, the Developer shall arrange for the transfer of lands and set back from the boundary to construct the Local Area Plan Roads Objective, as indicated with purple shading on drawing NRB-RFI-001 dated 16/01/2021.

C13- Submission of a revised site layout illustrating a revised pedestrian and cycle way access onto the R414 Regional Road in place of the vehicular access once the new access has been constructed on the delivery of the Roads Objective RN 25 (ii)

of the Rathangan Small Town Plan of the Kildare County Development Plan 2017-2023.

C21- Submission of all noise mitigation measures to be integrated into the scheme as identified in the Clarke Planning Design Statement on page 14 and 15.

C33- Identification of the archaeological site, temporary fencing and protection of the site during design and construction.

C34- Archaeological monitoring.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission following the submission of further information as summarised below:

##### Further Information

1. Redesign of the layout and the overlooking of the open space, redesign of House no. 13 and 20 and alternative unit types for units 13-20.
2. Submission of sufficient storage facilities for House type B.
3. Redesign to include parking spaces, storage in units and access routes
4. Revised information on the proposed acoustic barrier and FlorAwall.

Following the submission of further information, the housing section requested clarification as summarised below:

1. Submission of details in relation to the storage spaces for House Type B
2. Submission of details for the storage shed for House type E
3. Location of the Bin Store for House Type D
4. Details of the stairs for House Type D
5. The kitchen layout for House Type D
6. Parking spaces for House Type D

Overall, the planners report noted and accepted the design, density (17uph), the open space and landscaping and boundary treatment.



### 3.2.2. Other Technical Reports

Transportation Section: No objection subject to conditions.

Water Services: No objection subject to conditions.

Environment: No objection subject to conditions

Housing: No objection subject to conditions

Environmental Health Officer: No objections subject to conditions.

Chief Fire Officer (CFO): No objection subject to conditions.

### 3.3. Prescribed Bodies

Irish Water: No objection subject to conditions

Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (DAU): No objection subject to conditions.

### 3.4. Third Party Observations

Five submissions were received from third parties who live in the vicinity of the site and/or are owners of the commercial premises to the south of the site. These parties have appealed the grant of permission by the PA and the issues raised are like those detailed in the grounds of appeal.

## 4.0 Planning History

### 4.1. Subject Site

**ABP 307029-20 (Reg Ref 19/343)**

Permission refused for 32 no housing units and new future pedestrian connections for the following reason:

1. Having regard to the proximity of the proposed houses to the site boundaries, the over-reliance on 2m high boundary walls throughout the scheme and a lack of appropriately designed dual aspect corner units, which results in a lack of natural surveillance / passive supervision of public areas, it is considered that the proposed design and layout would constitute an inappropriate housing scheme

which would not contribute positively to the public realm and would therefore, be contrary to Policy HD 1 of the Kildare County Development Plan which requires new residential development to be of a high quality design and Policy DL 1 which aims to promote a high quality of design and layout in new residential developments and ensure a high quality living environment for residents, in terms of the standard of individual dwelling units and the overall layout and appearance of the development. The proposed development would, therefore, seriously injure the amenities of the area and of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

#### **Reg Ref 07/635**

Permission was granted in 2009 for the construction of 28 no. houses. In 2014, an extension of duration for a period of 5 years was granted to this permission under Reg. Ref. 13/953.

#### **4.2. Surrounding Sites**

##### **PL09.305503 (Reg Ref 19/782)**

Outline permission was refused in 2020 for the construction of 35 no. houses on a site located approx. 1.2km southeast of the appeal site along the southern boundary of Rathangan. Permission was refused as the proposed development was not in accordance with the C9 land-use zoning objective.

##### **PL09.300991 (Reg Ref 17/875)**

Permission was refused in 2018 for the construction of 9 no. dwellings on a site located approx. 1.2km southwest of the appeal site along the western boundary of Rathangan. The reasons for refusal related to (1) the negative impact on existing residential and visual amenities and (2) the proposed scheme, which is described as an extension to a previously permitted scheme does not integrate with the previously permitted development due to the layout and lack of direct frontage onto the street.

## 5.0 Policy Context

### 5.1. Kildare County Development Plan 2017-2023

The Rathangan Small Town Plan comprises Section 1.7 of Volume 2 of the Kildare County Development Plan 2017-2023.

The function of a small town is to develop as key local centres for services with levels of growth to cater for local need at an appropriate scale and to support local enterprise to cater for local demand.

The rate of growth will be controlled to limit pressure on services, the environment and unsustainable commuting patterns.

Table 4.2 permits a density of 20-35 units at edge of centre sites within a small town / village.

Chapter 16 sets out Urban Design Guidelines

Chapter 17 sets out Development Management Standards

### 5.2. Rathangan Small Town

The site is zoned as C, New Residential, where it is an objective 'to provide for new residential development'

#### Housing

The site is referred to C1 on the land use zoning map.

- RN 1 Encourage the development of residential schemes over the lifetime of this Plan largely within the Town Centre (A), and New Residential Zones (C1-C9) in accordance with the principles of proper planning and sustainable development.

#### Roads Objectives

A road's objective is illustrating along the north of the site on Map V2- 1.7A of the development plan. The following policies apply:

- RN 19: Provide a high-quality footpath network throughout the town by improving pedestrian facilities through the refurbishment of footpaths,



construction of new footpaths and the provision of appropriate crossing facilities as necessary on the following routes:

(ii) Along the R414 Regional Road from Market Square to the development boundary.

- RN 25: Seek the construction and/or completion of the following transport link/ and to preserve these routes free from development:

(ii) .....From the R414 Regional Road at the end of New Street to the R401 Regional Road including new crossings of the Slate River and the Grand Canal.

### 5.3. Natural Heritage Designations

There are no European sites within the vicinity of the site

### 5.4. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Four appeals have been received in relation to the grant of permission by the PA. The grounds of appeal are submitted from members of family business beside the site (Cross Agricultural Engineers (CAE) along the south of the site and JAC farming business LTD) and a homeowner in the vicinity of the site. The issues raised in the grounds of appeal are similar, therefore I have summarised these under common themes below.

#### 6.1.1. Plans and Particulars



- The proposal can not be undertaken having regard to the treatment of the common boundary and the proposed temporary entrance.
- Condition No 3 cannot be achieved without comprising the existing hedge or acoustic barrier.
- Condition No 4. The flora wall is not included in the landscape masterplan.
- The red line boundary encroached onto land within the appellants ownership.
- The site notice was not located as per the drawings and set back from the road
- The width of the proposed entrance is not shown on the site layout map.

#### 6.1.2. Previous reason for refusal

- The proposal should be refused for the same reasons as was refused previously and KCC noted road safety issues, substandard temporary access onto the R414 and noise issues.
- The report by the Transport Section on the previous application stated the proposed entrance would be a traffic hazard.
- A letter from the Senior Planner on the previous application considered there was a real risk to the amenity of the future occupants from the noise and disturbance of the industrial activity to the south.

#### 6.1.3. Noise Issues

- The Noise report is invalid as it refers to house locations in the previous application (19/343) and not the existing proposal (21/586).
- The development is located beside an industrial facility.
- An Independent noise report was submitted to state that the noise assessment with the application is acceptable, inter alia, was undertaken during a time when works were not at peak.
- Mitigation measures to reduce the impact of the noise from the industrial use include acoustic barriers.
- It is not considered a 1.8m acoustic barrier could adequately mitigate the noise impact. The measures would not alleviate any impact on the first floors.

- The proposal would increase complaints to KCC in relation to noise.
- The noise survey was undertaken during the ploughing championship when the work at CAE would have been reduced.
- ABP previous refusal referred to an overreliance on boundary walls.
- An independent noise survey undertaken by the appellant indicated that the noise of CAE site exceeds the minimum standards, and the development site was not suitable for residential.
- There is insufficient technical information in the plans and particulars on the proposed wall.
- The FloraWall Is inappropriate for a residential estate and can be used as a climbing frame for children.
- The houses along the southern boundary should be single storey.
- Condition No 21 or 22 can be implemented.

#### 6.1.4. Road Safety Issues

- Works to the entrance require the cutting back of hedgerows not within the applicants control and require third party agreement.
- The strategy audit does not deal with the sightlines.
- There is no report from the Roads Design Section in KCC.
- The entrance cannot be called temporary as KCC have no budget to undertake the works required for the road.
- The applicants transport assessment does not take into consideration the abnormal loads into CAE (up to 27m).
- The applicant should access the development from the along the north of the site.
- The Inspectors report previously noted the proposed development was dependant on the construction of the link road.
- KCC had issues with the previous entrance ABP 307029-20 (Reg Ref 19/343), and it is not evident there are any changes in this application.

- The entrance remains a traffic hazard and would endanger public safety.
- There is no indication from KCC when the link road will be developed.
- The conditions do not provide any clarity on the delivery of the link road.
- There is potential for significant time for the development with a substandard entrance.
- The stage 1 RSA outlines significant issues with the entrance.
- The entrance into the site is substandard.
- There will be a significant impact and conflict between the traffic movements of on the future residents entering the proposed development and the traffic entering the commercial site to the south.
- Two large lorries can not pass on the entrance road.
- KCC have undertaken road safety improvements (pedestrian crossing, traffic lights and speed bumps). The road is no less able for high density development.
- The entrance is beside a busy GAA pitch and combined with the commercial use to the south there is a potential for 526 vehicles turning in the vicinity.
- There are serious dangers from the movement of the farm machinery and large articulated trucks

#### 6.1.5. Health and Safety

- The siting of a new residential development beside an industrial site will lead to injuries and possible fatal accident.
- Workplace accidents are the highest within the agricultural sector.
- The Florawall will be used as a climbing frame should the greenery not grow on the structure.

#### 6.1.6. Privacy

- CAE have commercial sensitive projects and rely heavily on privacy.
- The proposed development would infringe on the commercial privacy.

#### 6.1.7. Attached independent assessments



- Road Safety Audit- Stage 1
- Technical Noise Assessment Report concludes that noise levels will still be above the minimum irrelevant of the height of the wall barrier.
- FloraWall technical document
- Copies of Internal Council reports from a previous application 19/343

## 6.2. Applicant Response

The Planning Consultant has submitted a response on behalf of the applicant. The submission was accompanied by a Roads Engineers report, A Noise Letter and historic correspondence from the Noise Consultants. An amended site layout drawing includes the reorientation of the dwellings to allow an increased distance from the southern boundary. The issues raised are summarised below:

### 6.2.1. Access to the site

- The proposed access is in the same location as the previous application in 2019 (19/343).
- The access is on a temporary basis until KCC construct the link road along the north of the site.
- The Board accepted the design and access arrangements of this access in the previous application.
- The Board were satisfied that any problems which arise from the access into the commercial development where an issue for the owners and dealt with under a separate code.
- The entrance has been designed in accordance with DMURS.
- A rebuttal of the third-party appeal has been submitted by Engineers Report which states that the proposed uses are substantially the same as the previous application.
- The development is a very low generator of traffic movements

### 6.2.2. New Footpath along R414



- The upgrade works along the R414 include traffic calming and upgraded pedestrian access as is normal in an urban setting.
- The road carriageway has not been reduced by any new footpath.

#### 6.2.3. Sightlines and R414 Access Design

- The existing access will be improved.
- Drwg NRB-RFI-002 includes all dimensions and works at a scale of 1:200 and is based on a topographical survey.
- Autotrack analysis indicates that all refuse trucks etc can be accommodated on the site.

#### 6.2.4. Access to Cross Engineering Ltd (CAEL)

- The recommendations of an independent Stage 1/ 2 RSA have been included in the scheme.
- KCC have not raised any issues with regard the access.
- The Autotrack analysis illustrates HGVs up to 16.5m entering the site, vehicles over this size require permits.
- The issues identified in the appellants submission should be addressed on tier lands to make an appropriate and safe access.

#### 6.2.5. Objective RN25 of the Rathangan Small Town Plan

- The development does not prejudice the delivery of the road's objective.
- The development is design in accordance with DMURS and provides safe access.

#### 6.2.6. Noise Abatement

- A response from the applicants Noise Engineers refers to the appellants independent Noise Report.
- It is stated that the appellants submitted noise report is based on inappropriate guidance (ProPG) for the assessment of commercial and industrial noise, the modelling approach is overly conservative (use of al

operations scenario at one time) and they have not adequately considered the technical memo dated March 2020.

#### 6.2.7. Boundary Treatment

- The proposed FlorAwall along the south of the site (2m) will mitigate against noise from the commercial property.
- Details of the FlorAwall have been submitted.
- The wall is north facing and can support a range of planting.
- The existing hedge along the south of the site will be retained and there is no reason why this cannot be trained.
- There is a noise condition imposed on permission 88/258 (condition No. 12) which restricts noise levels at 50d BA during the day.

#### 6.2.8. Location and design of the proposed houses adjoining the site boundary

- The appellants consider the dwellings along the southern boundary should be single storey.
- There are constraints on the site including archaeology in the centre, road's objective along the north, a residential property to the east and commercial property to the south.
- The initial layout included houses 5.8m from the boundary after further information these were moved closer to the boundary.
- Proposed alterations to the layout of the houses in Drwg No 5104-03-102, includes the relocation of units 16, 17 and 28 northwards c. 5.8m and the relocation of units 12 and 21 by c. 2.5m to the northern site of the site.

#### 6.3. Planning Authority Response (PA)

A submission has been received from the PA. The PA notes the business to the south of the site was the subject to an enforcement action which has been closed and there is no planning history on this site.

The third-party submissions are noted, and a summary of the response is summarised below:

## Road Objective RN 25 (ii) of the Rathangan Small Town Plan

- The design allows for the transfer of lands and set back from the boundary to enable the future construction of the road identified in this objective.

### Proposed Entrance of the R414

- The proposed entrance will be replaced by a pedestrian and cyclist access once the new road is delivered in line with the road's objective.
- It is accepted the delivery of the road will take time as the project will need funded by KCC, and lands purchased from third parties.
- A stage 1 and 2 RSA has been undertaken and included HGVs entering the adjoining commercial site.
- A stage 3 RSA will be carried out once the development is complete and will include the performance and turning movements at the new entrance into the R414.
- The RSA noted traffic speeds at the new entrance should be within the 50 km/hr as it is located between two sharp radii horizontal bends which act as traffic calming.
- The consultant report submitted with the application notes the new entrance complies with DMURS standards.
- An autotrack analysis of the turning movements of 16.5m HGVs entering and existing the adjacent industrial development showed that the HGVs did not cross the subject site entrance.
- The autotrack analysis also analysed the movements of refuse and fire tender vehicles entering and exiting the proposed development.

#### 6.3.1. HGVs using the adjoining site.

- The third parties consider the autotrack analysis is not representative as up to 27m vehicles use the site.
- KCC Roads, Transport and Public Safety Department deem any vehicle between 16.5m to 27m as Abnormal Loads and would require a Permit to



travel on the roads in Kildare. This size of vehicle would have vehicle escorts, traffic management and control arrangement and only travel off peak hours.

#### 6.4. Observations

None received

#### 7.0 Assessment

7.1. The appellant's submissions are accompanied by independent reports relating to the roads design and noise assessment. The applicant's response also includes reports as rebuttal to the grounds of appeal.

7.2. An amended site layout has been submitted with the applicant's response to the grounds of appeal as a response to noise issues raised in the grounds of appeal. The Board did not consider these as significant new planning issues and the site layout was not recirculated. I have addressed these issues below.

7.3. The main issues can be dealt with under the following headings:

- Planning History
- Traffic and Transport
- Noise
- Other
- Appropriate Assessment

#### Planning History

7.4. The grounds of appeal note the previous refusal on the subject site ABP 307029-20 (Reg Ref 19/343) and consider the proposed development has not overcome the previous reasons for refusal. The Board refused the previous proposal for 32 no dwellings having regard to the design and layout, over reliance on 2m high boundary walls, lack of appropriately designed dual aspect units and poor surveillance of open space.

7.5. The grounds of appeal consider the previous reason for refusal remains and has not been addressed. The PA included three reasons for refusal on the previous



application. These related to design and layout, roads, and noise impact. These are referenced throughout the grounds of appeal. As stated above the Board refused permission for one reason relating to design and layout.

- 7.6. The proposed development includes a new layout and design proposal on the site and includes 28 no. dwellings, new central open space, and inclusion of dual aspect units. No issues have been raised by the PA in relation to the design and layout of the scheme. I have addressed the issues of concern relating to the roads and noise separately below.

## **Traffic and Transport**

### Introduction

- 7.7. The proposed access into the site is from the Newtown Road (R414). This access is to the north of the access for the commercial premises (Cross Agricultural Engineering CAEL and JAC Farming Ltd), directly south of the site and on the opposite side of the road (R414) from the GAA/ tennis club entrance.
- 7.8. The proposed entrance is located to the north of the entrance to the appellant's commercial property. Concern is raised in relation to conflict between the users of the proposed development and those of the commercial development. The integration of a new road and the use of the proposed entrance as a temporary access is also raised. The applicant's response to the grounds of appeal refers to the planning history, the Board's acceptance of the previous entrance (which remains the same) and overall compliance with the DMURS standards.

### Objective RN 25

- 7.9. The Kildare development plan includes a roads objective for a new road along the north of the site. Objective RN 25 seeks the construction and/or completion of the following transport link/ and to preserve these routes free from development:
- (ii) .....From the R414 Regional Road at the end of New Street to the R401 Regional Road including new crossings of the Slate River and the Grand Canal.
- 7.10. The site layout plan sets aside lands required by KCC for the delivery of this road and includes a potential access onto the road, once delivered by KCC. Two conditions are included on the grant of permission, significant for the design and

layout of the proposal and the delivery of the road's objective. Condition No. 11 requires the transfer of lands and setback of the boundaries along the indicative road and Condition No 13 requires the existing access to be converted for pedestrian and cycle use only once the new access (and associated new road) have been delivered by KCC in line with Roads Objective RN 25 (ii).

- 7.11. I consider the design and layout of the proposal sufficiently illustrates the indicative road and provides a potential future access onto this road. I consider the conditions included by the PA are reasonable to allow the integration of the site with the road, therefore down grading the access onto the Newtown Road for pedestrian and cyclist only.

#### Sightlines

- 7.12. Upgrade works along Newtown Road have been undertaken since the previous application. These include the installation of traffic lights and traffic calming at either side of the entrance to the GAA pitch/ tennis club, on the opposite side of the road. The PA response to the grounds of appeal notes these works ensure a reduce of speed traveling along this section of the road and considers the DMURS standards for road speed at 50km/hr is acceptable. I note the design of the road when travelling both north (traffic calming) and south (sight stopping distance) and Drwg no. NRB-RFI-002 which clearly illustrates the sightlines, dropped kerbs, tactile paving and landscaping and I consider the proposal can comply with the required standards. I do not consider the applicant is reliant on lands outside their control to achieve the sightline, as stated in the grounds of appeal.

#### Traffic Movements

- 7.13. The grounds of appeal have raised a significant number of issues relating to traffic and transport. These include the design and location of the access from Newtown Road, the information contained in the road's reports, the delivery of the road's objective and the general movement and flow of traffic along Newtown Road. The grounds of appeal are accompanied by a Roads Engineers report (Stage 1 Road Safety Audit). It is argued that the previous Inspector's report 19/343 did not take into consideration the traffic calming measures close to the site (Newtown Road) and there is a conflict of traffic users.

7.14. In relation to the movement of traffic and potential conflict with the site to the south, I note the Inspector's Report on the previous scheme ABP 307029-20 (Reg Ref 19/343). The Inspector noted the design and layout of the access, which followed DMURS standards, and the movements associated with the commercial activity, and concluded that those vehicular movements should be undertaken in accordance with specific Health and Safety Obligations. I note Autotrack analysis of the entrance includes the movement of HGVs up to 16.5m. The response from the PA noted the requirement for a Permit for HGVs over 16.5m, which is dealt with under a separate code.

7.15. I note the information contained in the appellant's independent RSA. I consider any issues raised only relate to the movement of traffic into and out of the appellant's site rather than movements associated with the appeal site. This is matter for the appellants, as discussed above.

#### PA report and conditions

7.16. The appellant considers the report of the Transport Section is absent and a full assessment of the traffic issues has not been considered by KCC. I note a report from the Roads and Transport Section of KCC (dated June 2021) notes no objection to the proposal subject to the inclusion of 23 no conditions. Roads specific conditions have been included in the final grant of permission (Condition No.11 and Condition No 13) which I consider reasonable to ensure the integration of proposed roads infrastructure necessary to comply with Objective RN 25. KCC confirm their intention to deliver the road once the budget is available and all necessary third-party agreements are in place. In addition to this, the Transport Section recommended a stage 3 RSA.

#### Conclusion

7.17. Having regard to the limited traffic associated with 28 no dwellings, the location of the site and the design and layout of the access, I do not consider the vehicular access is substandard and the proposal would not endanger public safety by reason of traffic hazard. I consider the proposal sets out an appropriate strategy necessary to integrate to the delivery of future transport infrastructure.



## Noise

### Introduction

- 7.18. A Noise Assessment was submitted with the application. The grounds of appeal raised concern with the information contained in this assessment and submitted an Independent Noise Assessment highlighting inadequacies in the initial report. The grounds of appeal consider the noise generated from the existing commercial operation along the south of the site will have a negative impact on the future occupants of the proposed development.

### Planning History and Amended Design

- 7.19. The previous application submitted to the Board included a 2.6m high acoustic wall. The appeal statement included a Noise Technical Memorandum concluded that with the screen barrier in place, noise would exceed the measured background levels by a maximum of 4 dB and, therefore, result in a 'low adverse' impact during the daytime period. The Inspectors' report noted the location of House No. 5 and 19 from the southern boundary and raised concern in relation to the location and overall design of the development. The reason for refusal related to the overall design and layout of the proposal rather than the location of the proposed dwellings along the south of the site and the impact from the noise of the commercial operation.
- 7.20. The overall design and layout have been amended since the previous refusal. The applicant has also submitted an amended design as an alternative for the Board to consider should they require a greater separation distance between the southern boundary and the proposed dwellings. In this regard the dwellings (No. 5, 16, 17 and 28) are located c. 2m from the current boundary. The existing hedge will be retained and a 2m high FlorAwall Environmental barrier fence along the entire southern boundary.
- 7.21. The proposed changes to the design and layout do not, in my opinion represent a significant alteration to the overall design of the proposal and the general design and layout of the estate has been retained. I note the separation distance between the dwellings and the proposed boundary has been increase by c. 1m, which I consider reasonable having regard to the inclusion of a FlorAwall along the south of the site, further detailed below. Overall, I consider the layout submitted in the applicant's



response to the grounds of appeal (Drwg No. 5104-03-102, dated 25<sup>th</sup> of January 2022) is acceptable.

#### Noise Assessment

- 7.22. As stated above both the applicant and the grounds of appeal have submitted noise assessments. These assessments concentrate on the impact of the commercial development on the proposed development. The grounds of appeal are mostly concerned that the operation of the site and the associated noise from the activity will lead to complaints from the future occupants of the residents.
- 7.23. The applicants noise assessment which accompanied the application measured the noise from three locations within the site. The closest location NMP1 recorded levels from 47.3 dBL<sub>Aeq,t</sub>, increasing to 82.9 dBL<sub>Aeq,t</sub> at intermittent times when a piece of machinery was in use. The background noise level was recorded at 39.4 dBL<sub>Aeq,t</sub>. As mitigation against any impact from the commercial activity a noise barrier is proposed along the southern boundary of the site, adjacent to the commercial business. It is considered this barrier will reduce the noise levels by c. 10 dBL<sub>Aeq,t</sub>. The grounds of appeal do not consider this barrier is sufficient to mitigate against noise and their independent noise survey considers baseline noise levels are much higher than previously noted. The applicant's noise consultant has submitted a rebuttal to this assessment clarifying issues and raising concern with the appellants assessment.
- 7.24. I note all the information submitted in relation to the noise assessment and the scale of the commercial activity to the south of the site. I consider the applicant's information is sufficient to assess the impact on the future occupants of the proposed development. The Board will note these lands, and lands to the south of the commercial activity are both zoned for residential use in the development plan and have been considered as appropriate locations by the PA.
- 7.25. I consider the activity on the commercial lands is such that it would raise noise levels at intervening periods, rather than continuously, as referenced in the noise assessment. I consider the retention of the existing hedgerow and inclusion of the noise barrier (discussed below) is sufficient to ensure no significant negative impact on the future occupants of the proposed development.

### Noise Barrier

- 7.26. The grounds of appeal note the orientation of the wall and consider there will be insufficient sunlight available to support the growth of planting along the wall. The appellant's independent noise assessment also questions the durability of the barrier (timber materials). It is also noted that the landscaping plans fail to integrate this wall.
- 7.27. The FlorAwall is designed to provide adequate sound insulation so sound transmitted is absorbed rather than diffracted over the wall. The wall is designed to integrate planting. I note the promotional information refers to the use of the FlorAwall as an acoustic barrier for highways, airports, residential development etc.
- 7.28. I note various references to noise barriers and heights in the documentation. Appendix B of the noise assessment includes a Jakoustic reflective barrier as noise mitigation example. This is a heavy planed timber boards rather than stepped and planting such as the FlorAwall. I note the site layout plan and the applicant's response to the grounds of appeal refer to a 2m high FlorAwall, which I consider is the most appropriate and relevant noise barrier. The location of the barrier facing north will support the growth of the planting on the proposed barrier.
- 7.29. Condition No 21 and No 22 relate to the delivery of the boundary treatment and the FlorAwall, which the appellant considers cannot be complied with. I consider the submission of information can be complied with and will ensure the existing mature boundary treatment along the southern boundary will be retained. I note the Landscaping Masterplan does not consider the alterations to the design and layout, nor does it provide any finish to the lands within the road reservation area, I consider the planting scheme on the noise barrier should be completed before occupation of any properties. These issues relating to the additional planting scheme and completion of works can be reasonably addressed in a condition like that included by the PA.

### Conclusion

- 7.30. Overall, I consider the information submitted in the noise assessment is sufficient to assess the impact of the works associated with the commercial activity to the south and the proposed residential development. The site is zoned for residential use and

mitigation to any pontifical impacts from the commercial development includes the construction of a noise barrier along the south, which I consider reasonable.

## **Other**

### Archaeology

- 7.31. There are 6 no. RMP sites located within 400m of the appeal site. There is a small circle shaped enclosure, approx. 10m in width, located approx. 10m north of the appeal site (KD017-068). The remaining features are a Ringfort (KD017-068), Castle (KD017-011004), Medieval Church (KD017-011003), Architectural Fragment (KD017-011008) and graveyard (KD017-007).
- 7.32. An Archaeological Assessment Report and Impact Statement accompanied the application which indicates an area of preservation in situ over the central open space area. The impact on archaeology was not raised in the grounds of appeal. The Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (DAU) raised no objection to the proposal subject to the preservation in situ and archaeological monitoring, which I consider reasonable.

### **Appropriate Assessment**

- 7.33. Having regard to the nature and scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

## **8.0 Recommendation**

- 8.1. I recommend a GRANT of permission for the reasons and considerations and subject to the conditions listed below.

## **9.0 Reasons and Considerations**

- 9.1. Having regard to:

- a) The residential zoning on the site and the policies and objectives of the Kildare County Development Plan 2017- 2023,



- b) The nature, location and extent of the proposed development and the established character and pattern of development in the vicinity of the site,

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area, would be acceptable in terms of traffic safety and convenience and would be in accordance with the provisions of the Kildare County Development Plan and with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application [as amended by the further plans and particulars received by An Bord Pleanála on the 25<sup>th</sup> of January 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars</p> <p>Reason: In the interest of clarity</p>
2.	<p>The proposed development shall be amended as follows:</p> <p>(a) Detailed plans, sections, and layout of the FlorAwall noise barrier along the southern boundary of the site. The barrier shall be a minimum height of 2m.</p> <p>(b) A site layout plan at a scale of 1:500 indicating a revised pedestrian and cycle way access onto the R414 Regional Road in place until such times as the new entrance is constructed on the delivery of the Roads Objective RN 25 (ii) of the Rathangan Small Town Plan of the Kildare County Development Plan 2017-2023.</p>



	<p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of visual and residential amenity.</p>
3.	<p>The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, shall be in accordance with the detailed standards of the planning authority for such works.</p> <p>Reason: In the interest of amenity and of traffic and pedestrian safety.</p>
4.	<p>Prior to commencement of development, land required by the planning authority for road improvement on the northern boundary of the site (as indicated in the lodged documentation) shall be reserved free from development and shall be marked out on site and finished in consultation with the planning authority.</p> <p>The developer shall arrange for the transfer of lands and a set back from the boundary to construct the road as indicated on Drwg NRB-RFI-001.</p> <p>Reason: In order to prevent development on lands which may be required for future road improvement.</p>
5.	<p>The landscaping scheme shown on the Landscape Masterplan as submitted to the planning authority on the 30<sup>th</sup> of April 2022 shall be amended to reflect the design and layout in Drwg No. 5104-03-102.</p> <p>Landscaping shall be carried out within the first planting season following substantial completion of external construction works.</p> <p>In addition to the proposals in the submitted scheme, the following shall be carried out:</p>

	<ul style="list-style-type: none"> <li>Proposals for the planting scheme along the FloorAwall shall include native species and planting shall be completed before the occupation of any residential units.</li> <li>Proposals for temporary landscaping for the area required for the Road Reservation.</li> </ul> <p>All planting shall be of a native species and shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>Reason: In the interest of residential and visual amenity</p>
6.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, construction traffic management and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity</p>
7.	<p>Comprehensive details of the proposed public lighting system to serve the development shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. The agreed lighting system shall be fully implemented and operational, before the proposed development are made available for occupation.</p> <p>Reason: In the interest of public safety and visual amenity</p>

8.	<p>The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which exist within the site. In this regard, the developer shall:-</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and</p> <p>(b) employ a suitably qualified archaeologist prior to commencement of development. The archaeologist shall assess the site and monitor all site development works and consult with the Planning Authority where necessary.</p> <p>(c) undertake the works required by the Planning Authority, including, the preservation of material in situ, landscaping, temporary fencing, signage information etc prior to the occupation of any property.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.</p>
9.	<p>The applicant or developer shall enter into water wastewater connection agreement(s) with Irish Water, prior to commencement of development.</p> <p>Reason: In the interest of public health.</p>
10.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>



11.	<p>Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).</p> <p><b>Reason:</b> In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas</p>
12.	<p>A minimum of 10% of all communal car parking spaces should be provided with functioning EV charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the Planning Authority prior to the occupation of the development.</p> <p><b>Reason:</b> To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles</p>
13.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All</p>

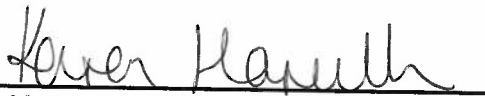
	<p>existing over ground cables shall be relocated underground as part of the site development works.</p> <p>Reason: In the interests of visual and residential amenity.</p>
14.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.</p> <p>Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
15.	<p>Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.</p>
16.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for</p>

	<p>and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
17.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit, or other security to secure the provision and satisfactory completion, and maintenance until taken in charge by the local authority, of roads, sewers, watermains, drains, car parks, open spaces and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The security to be lodged shall be as follows -</p> <ul style="list-style-type: none"> <li>(a) an approved insurance company bond in the sum of € 56,000.00, or</li> <li>(b) a cash sum of € 56,000.000 to be applied by the planning authority at its absolute discretion if such services are not provided to its satisfaction, or</li> <li>(c) such other security as may be accepted in writing by the planning authority.</li> </ul> <p>Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge</p>
18.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid</p>



prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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



Karen Hamilton  
Senior Planning Inspector

23<sup>rd</sup> of September 2022