



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312634-22

<b>Development</b>	Construction of 2 No. 4-storey apartment buildings with a total of 60 apartments and all associated site works.
<b>Location</b>	Ballinakill Shopping Centre, Dunmore Road, Waterford.
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	21792
<b>Applicant(s)</b>	Tony Robinson.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Elaine Fennelly, Liam and Geraldine Curham, Kieran Kennedy, Thomas and Sheila Leonard, and Ballinakill Downs and Island Point Residents Committee.

**Observer(s)**

Rachel Newman and others.

**Date of Site Inspection**

14<sup>th</sup> April 2022.

**Inspector**

Barry O'Donnell

## Contents

1.0	Site Location and Description .....	4
2.0	Proposed Development .....	5
3.0	Planning Authority Decision .....	6
4.0	Planning History.....	9
5.0	Policy Context.....	13
6.0	The Appeal .....	18
7.0	Assessment .....	32
8.0	Recommendation.....	52
9.0	Reasons and Considerations.....	52
10.0	Conditions.....	52

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.69ha and is located at Ballinakill Shopping Centre, Dunmore Road (R683), east of Waterford City. It is accessed from a priority junction access to the Ballinakill Downs estate from Dunmore Road, which also serves existing housing in the vicinity. Dunmore Road is an arterial route into Waterford City and it is serviced by public transport, including a stop on the opposite side of the road to the shopping centre.
- 1.2. The site is primarily greenfield in nature and forms part of an urban block that contains Ballinakill Shopping Centre (also known as the Brasscock Centre), Mowlam Nursing Home, St. Thomas's Church, the Woodlands Hotel and detached and semi-detached housing. The shopping centre is a two-storey neighbourhood centre that contains a mix of retail, commercial and community uses including convenience retail, medical offices, a pharmacy, fast food take-aways, a public house and a salon. The wider area is characterised by low-density housing.
- 1.3. The site is immediately east of the shopping centre site and includes a small portion of its surface parking area. It is bounded to the north and east by the Ballinakill Downs access road and to the south and west by a private road that provides access to the service yard at the rear of the shopping centre and which also provides access to the Mowlam Nursing Home and an Eir telecoms building. The private access road is identified on the application drawings as a right of way.
- 1.4. The block contains a number of detached and semi-detached houses, which are south/south-west of the subject site. These properties are screened from the site by a c.3m tall capped and plastered wall and a stand of trees along shared boundaries that I estimate is c.6m high.
- 1.5. St. Thomas's Church is identified on the National Inventory of Architectural Heritage (Ref. No. 22901801) and is given a 'regional' rating. It appears to be utilised by Dunmore Badminton Club currently.

## 2.0 Proposed Development

2.1. The proposed development entailed within the public notices comprises the construction of 2 No. four-storey apartment buildings, with setbacks at third floor level, providing a total of 60 No. apartments in the following composition: -

	Block A	Block B
1-bed	10	10
2-bed	20	20

2.2. The development also includes 60 No. parking spaces, 60 No. bicycle spaces, bin storage at basement level, 3 No. accessible car parking spaces, minor modification of parking layout at Ballinakill Shopping Centre to provide 22 No. replacement parking spaces for the use of shopping centre patrons, private open space, site infrastructure including plant rooms, internal roads, footpaths, landscaping, open space areas, boundary treatments and associated engineering and site works.

2.3. The proposed development was amended at the additional information stage, in relation to (i) the proposed road, footpath and parking layouts, (ii) the proposed bin storage facility and (iii) incorporation of an area for bulky storage, at basement level. The development was further amended at the clarification of additional information stage, in relation to bin storage proposals.

2.4. The planning application was supported by various technical reports and drawings, including: -

- Architectural and Engineering Drawings,
- Design Statement,
- Housing Quality Assessment,
- Flood Risk Assessment,
- Engineering Services Report,
- Fire Safety and Access Report, and
- Sustainability Report.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

3.1.1. The Planning Authority granted permission on 20<sup>th</sup> January 2022, subject to 24 No. conditions, which included the following: -

- Condition 2 required submission of a revised site layout plan, indicating (a) omission of parking spaces 55-57 and an associated increase in the size of the open space and revisions to the footpath/access ramp in this area, (b) relocation of the bin storage area to an area that abuts the basement access ramp, (c) a suitable play area for children up to 6 years of age within the open space adjoining the bin storage area and (d) details of a new boundary wall/fence at the location of parking spaces 17-22.
- Condition 4(a) requires the development to provide a traffic yield sign and the application of markings at road junctions.
- Condition 5 required a financial contribution of €180,000 in accordance with the S48 development contribution scheme

### **3.2. Planning Authority Reports**

3.2.1. Planning reports dated 11<sup>th</sup> October 2021, 7<sup>th</sup> December 2021 and 19<sup>th</sup> January 2022 have been provided.

3.2.2. The original planning report states that the site is zoned 'general business' and is also identified as a 'neighbourhood centre' by the Waterford City Development Plan 2013-2019 and that, under the zoning, residential development is permissible. The site is stated to be in an intermediate urban location, where higher densities are considered appropriate. Regarding building heights, the report states that taller buildings may be acceptable, but that the applicant had not adequately justified the proposed heights. The report notes that condition No. 3 of permission Reg. Ref. 98/230, a previous grant of permission at the site, required that a portion of the site be reserved for community and recreational uses, and questions how the requirements of the condition can be complied with on the site. The internal layout of the blocks and individual apartments are stated to be in accordance with the 2020 apartment guidelines, save for provision for bulky storage. The report concludes that,

following a review by senior management within the planning department, the proposal is in accordance with the proper planning and development of the area and a request for additional information subsequently issued regarding the following: -

- (1) Applicant to provide a revised site layout indicating (a) access road widths in accordance with DMURS, (b) footpaths a minimum of 2m in width, (c) provision of a marked cycleway from the apartments to the shopping centre, to the side of parking space No. 9, (d) addressing potential parking/vehicle movement conflict in the area of parking spaces 21-22 and (e) a revised location for the bin storage area,
- (2) Applicant to provide confirmation of legal interest over the right of way to the development,
- (3) Applicant to provide details/justification, in context of Section 3.2 of the Urban Development and Building Height Guidelines,
- (4) Applicant to provide additional section drawings,
- (5) Applicant to make provision for bulky storage as per Section 3.32 of the apartment guidelines.

3.2.3. The report also contained a separate appropriate assessment screening report, wherein it was concluded that the project, alone or in combination, would not be likely to have a significant effect on a Natura 2000 site.

3.2.4. The second report followed receipt of the additional information response and followed a further period of public consultation following submission of significant additional information. It summarises and responds to the additional information responses and recommends clarification of additional information in relation to: -

- Applicant to clarify the revised bin store location, where the Planning Authority had received a submission stating that there is a restriction on the placing of bins within a specified distance of the site boundary.

3.2.5. The third report followed receipt of the clarification of additional information response. It summarises and responds to the additional information responses and recommends that permission be granted subject to 25 No. conditions (condition No. 25 is identified to be omitted from the final decision).

3.2.6. Other Technical Reports

An **Environment Department** report dated 6<sup>th</sup> September 2021 has been provided, which outlines no objection to the development subject to conditions.

An undated **Roads and Transportation** report has been provided, which requests that the ability to access the site via right of way be clarified and which also outlines requirements for the layout of the development.

An undated **Water Services** report has been provided, which outlines no objection to the development subject to conditions.

The planning report indicates that the **Chief Fire Officer** office was consulted but did not make a submission.

### 3.3. **Prescribed Bodies**

3.3.1. The Planning Authority report indicates no prescribed bodies were consulted.

### 3.4. **Third Party Observations**

3.4.1. A large number of third party submissions were received, the issues raised within which can be summarised as follows: -

- Overdevelopment
- Inappropriate housing and tenure mix
- Inappropriate building heights and design
- Inadequate open space provision
- Impact on the character and visual amenities of the area
- Overlooking, overshadowing and overbearing
- Impact on access to daylight/sunlight
- Non-compliance with development plan and apartment guidelines requirements
- Noise and emissions to air
- Construction impacts
- Lack of social and community infrastructure
- Requirement to provide a community facility on the site
- Absence of public transport in the area



- Errors within planning documents
- Impact on mental and physical health
- Surface water drainage
- Access, parking and road safety
- Impact on a legal right of way
- Inadequate landscaping proposals
- Anti-social behaviour
- Lack of engagement with local residents
- Interruption to mobile connectivity in the area
- Impact on property values
- A petition was provided.

3.4.2. A number of additional observations were received following the submission of revised public notices and following a period of further consultation. New issues raised can be summarised as follows: -

- Proposed bin store location contravenes terms of deed of easement
- Interference with right-of-way access
- Contextual elevation drawing provided shows the development to be overbearing
- Amended access proposals are dangerous
- Non-compliance with requirements of the Urban Development and Building Heights Guidelines
- Provision for bulky storage leads to an overloaded basement

## 4.0 Planning History

4.1.1. The site has an extensive planning history. Those of relevance to this appeal include: -

**06/500544** – Permission granted on 9th October 2007 for mixed use development including residential (42 no units in total) retail, creche, offices, open space, parking

and 2 no playgrounds, comprises four blocks of 2 storeys and one block of 3 storeys over basement as follows: Block A 18 No 2 bed apartments: Block B: 6 no 2 bed apartments: Block E: 12 no 2 bed apartments: Block C: creche facility (370 sq.mts) including a secure external playground with office above (750sq.mt) Block D: Retail building with mezzanine level (350 sq.m) Youth Pod incorporating play rooms, multi-purpose rooms, arts/educational room, and internet cafe totalling 590 sq.m and 5 no 1 bed apartment and 1 no 2 bed apartment. A total of 174 basement and surface car-parking spaces will be provided and alterations will be made to the existing Car parking together with all associated site works at the Brasscock Centre, Dunmore Road, Waterford.

**04/500451** – (ABP Ref. PL31.210018): Permission refused on 14th July 2005 for the construction of 2 No. 3 storey apartment buildings (Block A & B), underground carpark, 2 tennis courts, 3 storey extn. to side of exist. shop unit No.18 at "Ballinakill Centre". Permission was refused for 3 reasons as follows: -

- 1. The site is zoned for General Business use and is designated as a Local (or Neighbourhood) Centre in the current Development Plan for the area and is subject to a condition of the parent permission (planning register reference number 98/230), which required that a specific part of the site be reserved for community or recreational uses and indicated a timeframe for the provision of such facilities. The zoning objective, designation and requirement are considered reasonable. It is considered that the proposed development, which is predominantly residential in nature and which fails to provide for adequate community and recreational facilities, would seriously injure the residential amenities of existing and future residents of the Ballinakill estate, would contravene materially the provisions of the Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.*
- 2. The proposed development, which encroaches on the existing car park serving the Ballinakill neighbourhood centre, would result in a shortfall of parking on the overall combined neighbourhood centre/appeal site which would result in random and uncontrolled parking within the site and on neighbouring roads at peak times. The proposed development would, therefore, endanger public safety by reason of*

*traffic hazard and obstruction of road users and would seriously injure the amenities of existing residents arising from parking on adjoining roads.*

- 3. The proposed development, by reason of its limited provision of public open space, would result in over-development of the site which would seriously injure the residential amenities of future residents of the area and would be detrimental to the proper development and layout of this neighbourhood centre site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

**03/500351** – (ABP Ref. PL31.205735): Permission refused on 19<sup>th</sup> May 2004 for 61 dwellings, two storey creche facility and external play areas and ancillary works. Permission was refused for 3 reasons as follows: -

- 1. The site is zoned for General Business use and is designated as a Local (or Neighbourhood) Centre in the Waterford City Development Plan 2002 and is subject to a condition of the parent permission (planning register reference number 98/230), which required that a specific part of the site be reserved for community or recreational uses and indicated a timeframe for the provision of such facilities. The zoning objective, designation and requirement are considered reasonable. It is considered that the proposed development, which is predominately residential in nature and which fails to provide for adequate community and recreational facilities, would seriously injure the residential amenities of existing and future residents of the Ballinakill estate, would contravene materially the provisions of the development plan and would, therefore, be contrary to the proper planning and sustainable development of the area.*
- 2. The proposed development, which encroaches on the existing car-park serving the Ballinakill neighbourhood centre, would result in a shortfall of parking on the overall combined neighbourhood centre/appeal site which would result in random and uncontrolled parking within the site and on neighbouring roads at peak times. The proposed development would endanger public safety by reason of traffic hazard and obstruction of road users and would seriously injure the amenities of existing residents arising from parking on adjoining roads.*

3. *The proposed development, by reason of its limited provision of communal open space, the absence of private open space for the majority of apartments within the scheme, limited variation of dwelling type within the development, poor-quality landscaping, extent and prominence of surface car-parking, poor location of town houses in relation to parking spaces and the communal open space, proposal to route commercial traffic through the residential part of the site and by reason of its overall design, would result in a substandard layout which would seriously injure the residential amenities of future residents of the area and would be detrimental to the proper development and layout of this neighbourhood centre site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

**98/230** – Permission granted on 17<sup>th</sup> June 1998 to demolish 2 houses, construct neighbourhood centre, comprising credit union, 3000sq.ft retail unit, 20 sm. service & retail units, licensed premises with restaurant. Inc. car parking, service roads, site works and roundabout junction. Condition No. 3 stated: -

*'The site marked as "site for future community centre" on the site layout plan submitted on 10<sup>th</sup> September 1998, shall be reserved free from development for community or recreational uses. Prior to the commencement of the development, the developers shall submit detailed proposals for the development of this site and shall carry out any permitted development prior to the completion of the overall development; unless in the interim, planning permission has been granted for an alternative community facility in the vicinity and the permitted development has commenced.'*

Permission was subsequently granted for amendments to the approved development under Reg. Ref. 00/358

#### Relevant nearby planning history

**21/1004** – *Ballinakill Shopping Centre*: Permission sought for an enclosed bin store to the rear of the shopping centre. A request for additional information was issued on 20<sup>th</sup> December 2021, requesting the applicant to: (a) demonstrate that the proposal is adequately sized to serve the development, (b) confirm that the development does not impact on an existing right of way and (c) provide further details of traffic

management on the site. At the time of writing, no response to the AI request has been submitted.

**03/585** – *Lands at Ballinakill Downs* (ABP Ref. PL 31.205734): Permission refused for 2 no tennis courts and childrens playground with associated site works.

Permission was refused for 2 reasons as follows: -

- (1) The proposed development would deprive the Ballinakill Estate of a centrally located, attractive green area which is available for use for a variety of active and passive recreational activities. The proposed development would seriously injure the residential amenities of the area and the visual amenities of surrounding houses and would, therefore, be contrary to the proper planning and sustainable development of the area.
- (2) The absence of any parking spaces with the proposed development would result in on-street parking which would seriously injure the residential amenities of the area and endanger public safety by reason of traffic hazard.

## 5.0 Policy Context

### 5.1. Waterford City Development Plan 2013-2019 (as extended)

- 5.1.1. The City Development Plan 2013-2019 remains the operative development plan for the area.
- 5.1.2. The subject site is zoned 'General Business' on the Map A Zoning Map and residential development is identified as being 'generally acceptable in principle' under the zoning. Section 12.4 states that the general business zoning makes provision for a limited expansion of commercial development outside the city centre and to facilitate neighbourhood centre expansion or new neighbourhoods.
- 5.1.3. Section 7.2 identifies a Neighbourhood Structure across the city, with the subject site falling within the 'Dunmore Road – Knockboy / Blenheim & Farronshoneen / Ballinakill' area. Section 7.3.4 states that *'The Farronshoneen/Ballinakill neighbourhood has largely been developed with few remaining greenfield sites. Future development in the neighbourhood will essentially consist of infill development and the change of use of existing buildings. Significant residential development has occurred in the Dunmore Road and Williamstown Road*

*neighbourhoods in the last 20 years. The neighbourhood adjoins the River Suir with access to the riverside and woodlands available, a 20m buffer of open space will be provided between development and the cSAC boundary. It is an objective of this Plan to promote and provide for public access to the riverbanks and to reserve lands free from development to facilitate such access and to provide for a sustainable riverside walk along the southern bank of the River Suir from Canada Street to Blenheim.'*

5.1.4. The following policies are relevant: -

**POL 7.2.1:** To ensure that the growth of the city takes place in an orderly manner that is sustainable in terms of integrated land use, transportation and provision of infrastructure.

**POL 7.2.2:** To implement the Neighbourhood Strategy in order to provide for the development of sustainable neighbourhoods, focused on neighbourhood/district centres with a mix of uses, densities, community facilities and neighbourhood centre uses.

**POL 7.2.3:** To retain, protect and improve the environmental qualities of the existing suburban areas; to reinforce their neighbourhood/district centres and to provide for additional community youth and public services, amenities and facilities as identified in this Plan.

Chapter 13 contains Development Management Standards and Policy POL 13.0.1 states that all development is required to comply with relevant management standards.

## 5.2. National Planning Framework

5.2.1. The National Planning Framework provides an overarching policy and planning framework for the social, economic and cultural development of the country. The NPF sets out 75 no. National Policy Objectives including the following:

NPO 2a: A target of half (50%) of future population and employment growth will be focused in the existing five cities and their suburbs.

NPO 3b: Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints.

NPO 6: Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.

NPO 11: In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.

NPO 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.

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

NPO 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.

### **5.3. Regional Spatial and Economic Strategy for the Southern Region**

- 5.3.1. Section 2.2 of the RSES identifies that Waterford is the principle urban centre in the south-east, is an important national and regional growth driver and requires significant investment and growth. The subject site falls within the Metropolitan Area for Waterford and Regional Policy Objective 10(a) states that the RSES seeks to *‘Prioritise housing and employment development in locations within and contiguous to existing city footprints where it can be served by public transport, walking and cycling.’*
- 5.3.2. The Waterford Metropolitan Area Strategic Plan (MASP) contained within the RSES outlines policy objectives for the development of the area, based on the ambition for

the City and Metropolitan area as an innovation-centred, enterprising, University City with a diverse population, a vibrant cultural sector and a thriving economy.

#### **5.4. Section 28 Ministerial Guidelines**

5.4.1. Having considered the nature of the proposal, the receiving environment and the documentation on file, I am of the opinion that the directly relevant S28 Ministerial Guidelines are:

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas;
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities;
- Design Manual for Urban Roads and Streets; and
- Urban Development and Building Heights Guidelines.

#### **5.5. Natural Heritage Designations**

5.5.1. The subject site is not located within a designated European site. The closest such site is the Lower River Suir SAC (Site Code 002137), which is approx. 300m east. The King's Channel lies within the SAC site and is a proposed Natural Heritage Area.

#### **5.6. EIA Screening**

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

5.6.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,



- Urban development which would involve an area greater than 2 ha in the case of a business district<sup>1</sup>, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.

5.6.3. The subject development is the construction of 60 apartments, together with associated works, on a site with a stated area of 0.69ha. The development falls well below the threshold of 500 dwelling units noted above and also the applicable site area threshold of 10ha. The site is not in an area where the predominant land-use is retail or commercial, so the 2ha threshold is not applicable.

5.6.4. I have given consideration to the requirement for sub-threshold EIA. The site is located in an urban area, which is characterised by a mix of uses including commercial, retail and housing and it is also serviced. The proposed development will not have an adverse impact in environmental terms on surrounding land uses. The site is not designated for the protection of the landscape or of natural or cultural heritage. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Waterford City and County Council, upon which its effects would be marginal.

5.6.5. 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 within an urban area and on lands that are serviced,
- The location of the site outside of any sensitive location specified in Article 109 of the Planning and Development Regulations 2001 (as amended),
- The character and pattern of development in the vicinity,

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<sup>1</sup> A Business District is defined as 'a district within a city or town in which the predominant land use is retail or commercial use'

- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended).

5.6.6. 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**

6.1.1. Separate third party appeals have been received from Elaine Fennelly, Liam and Geraldine Curham, Kieran Kennedy, Ballinakill Downs and Island Point Residents Committee and Thomas and Sheila Leonard. The grounds of appeal contained within each appeal is summarised separately below.

6.1.2. Appeal by Elaine Fennelly: -

- The scale of development proposed is unacceptable and will lead to overlooking and overshadowing of neighbouring property, which includes residential property and a nursing home.
- The development is out of character with the area and the higher level of the site will compound the impact.
- The development will contribute to ongoing anti-social behaviour problems in the area.
- There is inadequate social infrastructure in the area.
- The development will make existing traffic issues in the area worse.
- The Ballinakill Shopping Centre service access from Dunmore Road is used as a rat-run, contrary to its one-way route designation, and this presents safety problems for residents and road-users.

- The addition of more cars to the area will lead to increased emissions, affecting the health of residents.
- Public transport in the area is substandard and cycle lanes are sporadic.
- Social and community infrastructure in the area cannot accommodate further development.
- Apartment developments do not sell in the area and there is a preference for houses or duplexes on the site.
- The Planning Authority impacted residents' ability to comment on the application by delaying the publication of the application documents.

#### 6.1.3. Appeal by Liam and Geraldine Curham: -

- It is unacceptable that the applicant did not consult with local residents.
- The scale and density of development proposed are out of character and will lead to overlooking, overbearing, loss of privacy and loss of daylight/sunlight.
- Drone photographs taken at 10m, 12m and 14.1m heights are provided, simulating the view from proposed apartments and the level of overlooking likely to arise.
- Access and traffic
  - Existing traffic congestion in the area will be increased by the development. It takes up to 15 minutes to exit Ballinakill Downs onto Dunmore Road in the morning and the addition of the proposed development will make it unsafe and virtually impossible to exit the estate in the morning.
  - Previous plans identified the road leaving the shopping centre to be a one-way right of way.
  - The area does not provide a high capacity public transport corridor, nor lend itself to safe biking.
- The absence of adequate open space within the development will put pressure on open spaces within adjacent estates.
- Permission was refused for development of the site for reasons including the requirement to provide community facilities on the site, encroachment on parking

spaces and an overall site/neighbourhood shortfall and overdevelopment of the site. These reasons for refusal apply in this instance also.

- Continued approval of residential developments in the Williamstown and Dunmore Road area, without appropriate facilities, will lead to further congestion and a decreased quality of life for residents.

#### 6.1.4. Appeal by Kieran Kennedy

- By reason of its height and proposed layout and site characteristics, the development will overlook, overbear and disrupt privacy at the appellant's home.
- The proposal constitutes overdevelopment of the site.
- The proposed design is out of character and does not fit design criteria applied to other developments in the area which were required to match existing finishes and colour palettes in the area.
- Access
  - It was proposed by the Council in 2019 to create an effective one-way system on the road from Oscars pub to Woodlands Hotel, in order to stop its use as a rat-run by morning and evening traffic, but this decision was overturned. It is questioned whether this decision was overturned to accommodate a planning application at the subject site.
  - The proposed development will make existing traffic issues in the area worse.
- Easement over right-of-way
  - The appellant has a legal deed of easement over a right of way (a copy of the deed is provided) and consent is not given for modifications or alterations to be made to it.
  - There are 3 separate accesses to the appellant's property from the right of way, which are not accurately shown on the application drawings. Parking spaces are also proposed within the right-of-way.
  - Two sets of double-gates were erected on the right of way over 18 years ago, which were deemed by the Planning Authority to constitute unauthorised development. It is inaccurate of the applicant to state that no warning letters

are in place at the site and copies of letters regarding unauthorised development at the site are provided.

- An overlay drawing is provided, to demonstrate discrepancies between the proposed site layout and the legal easement map. A letter from Nolan, Farrell & Goff Solicitors is also provided in respect of this issue.
- The right-of-way has been used as a two-way public road for some time, which is also unauthorised and which presents a nuisance and a danger to the appellant. Correspondence between the appellant and property owners/tenants is provided as evidence of this issue.
- The proposed access/egress layout for the basement is dangerous and consideration must also be given to third party users of it.
- Proposed signage along the right of way will also be ineffective as it is of an informative type and cannot be enforced by Gardai in the event of misuse.
- A proposed bin store was relocated by the applicant, as part of clarification of additional information, but it remains within 50m of the appellant's residence. No bin store can be permitted within 50m of a private residence.
- The absence of consultation with the appellants demonstrates a lack of respect or consideration.
- Consideration should be given to development of other, more suitable areas of the City. Constant development in this area is to the detriment of already unsustainable infrastructure and neighbourhoods and local roads are unusable at almost all points of the day, due to overdevelopment.
- The development will affect residents at Mowlam Nursing Home.

#### 6.1.5. Appeal by Thomas and Sheila Leonard

- The scale, type and density of development proposed is out of character with the area.
- The development will have a negative impact on the quality of life and well-being of residents in the area.

- Part of the permission granted for the Ballinakill estate was for the provision of a community centre, playground, creche and retail banking unit, which were never delivered.
- The development is not required in Waterford, where there is no acute land shortage, as there is in Dublin.
- The development will overlook the appellants' property and will affect the availability of daylight/sunlight.
- The lack of open space within the proposed development will put pressure on green space elsewhere in the area.
- Traffic problems will be increased by the proposed development, which will add to congestion. The road leaving the Brasscock Centre was previously intended to be a one-way route and it is questioned how the developer can now propose a two-way system.
- There is no high capacity public transport corridor in the area or safe biking route.
- It is disappointing that no community consultation took place.

6.1.6. Appeal by Ballinakill Downs & Island Point Residents & Residents Committee: -

- By reason of its proposed scale and height and site characteristics, the development will impact on the privacy and quality of life of residents at Ballinakill Downs and Island Point, in particular those closest to the site.
- The scale and height proposed are comparable to the University Hospital and are imposing, visually overbearing and injurious to the setting and amenity of the area.
- The development will overlook and overshadow the garden of the adjacent Mowlam Nursing Home. Reference is made to policy H13 of the draft development plan, which relates to nursing home developments.
- The character, form and proportions of the development are unsympathetic to the area. Policy H02 of the draft development plan is referenced.
- All four elevations of the proposed blocks overlook Ballinakill Downs, Mowlam Nursing Home and other houses to the rear. There is also overlooking of units within the development.

- The proposal will add 33% to the housing stock in this area and is over-densification the area.
- Right-of-way
  - The site boundary encompasses the access roadway to and around the site, which is a right-of-way shared with others. There is no basis to modifications, alterations or extended use of it, in the absence of consent from all who have shared ownership.
  - The right-of-way is legally a one-way system that is illegally used as a two-way system. Existing double gates on the right-of-way, which are to be retained, breach the right to use it.
  - Construction of the development will impact usage of the right-of-way, contrary to the deed of easement.
  - Condition No. 2 of the Planning Authority's decision requires omission of parking spaces 55-57. Spaces 17-22 will also need to be omitted as they are within the right-of-way.
- There are legal issues with the proposed means of access/egress.
  - An overlay of the proposed layout and right-of-way is provided, which shows parking spaces within the right of way and relocation of an access point to Kieran and Anne Kennedy's property. It is noted that the applicant does not identify this access point, point C as per the deed of easement map.
  - Proposed signage is informative only and is not enforceable by Gardai.
  - Proposed alterations to the one-way system are complicated and do not comply with DMURS.
- Removal of the unauthorised double-gates will lead to intensification of misuse of the right-of-way. This wasn't considered by the Planning Authority in its decision.
- It is untrue for the applicant to state that no warning letters are pending, regarding the double-gates. Copies of such letters are provided.
- The service yard is a fire escape and point of access for emergency services. It is not a public road and locked gates prevent access when required.

- Access and traffic
  - Increased traffic is unwelcome and will compound existing, documented traffic and parking problems in the area. Dunmore Road is a noted traffic blackspot and is one of the busiest roads in the City.
  - There are no quality bus corridors in the area and no room on this stretch of road to provide them. Densification of this area requires road network improvements. In the absence of this, the proposed development compounds the problem.
- The proposed cycleway has been squeezed in and results in a danger for cyclists, motorists and pedestrians.
- Waterford has a high-dependency on the private car and without investment, green modes and public transport targets identified by the draft development plan will be impossible to meet.
- Site and area planning history
  - Permission was granted under Reg. Ref. 98/230 for development which included community facilities. These were not constructed. Permission was subsequently refused for development of this area under on a number of occasions and the reasons for refusal in each instance stand and should be applied to the proposed development.
  - Permission was refused by the Board under Ref. ABP-303630-19 for 324 units (228 houses and 96 apartments) for reasons which included reference to poor design, lack of variety and distinctiveness, failure to establish a sense of place and failure to respond to site topography. This case of refusal of permission should be considered in the context of this appeal.
- Anti-social behaviour has been a problem in the area. The type of resident attracted to this development gives rise to potential for additional such behaviour, with reference to noise.
- Residents in the area have a preference for 2-storey development and recommend a maximum of 25-28 units on the site.

## 6.2. Applicant Response



6.2.1. A first party response to the appeals was received on 7<sup>th</sup> March 2022, prepared on behalf of the applicant by CDP Architecture. The submission responds to the issues raised within the third party appeals and its contents can be summarised as follows: -

- Response to appeal by Thomas and Sheila Leonard: -
  - The proposed development was designed in accordance with the Planning Authority's guidelines and takes account of its context in regard to height, bulk and scale. The Planning Authority granted permission for the development and reference is made to a number of aspects of the Planning Authority's reports on the application.
  - Regarding overlooking concerns, all adjacent housing is in excess of 22m from the proposed development and in the case of the appellants, they are over 56m away. Existing overlooking patterns between neighbours is worse than that arising from the proposed development.
  - A management company will be set up and it will be its responsibility to ensure there are no issues within the development, as well maintenance and upkeep of the general appearance of the development.
  - Given the orientation of the development to existing housing in the area, the separation distance and the existing screening provided by trees, the development will not result in a loss of natural light to housing.
  - Surface water is proposed to be attenuated within the site, via blue roofs and a hydro-brake/attenuation tank system. It is noted that the Water Services section of the Planning Authority did not object to this aspect of the development.
  - Proposed communal open space (1,539sqm) exceeds the area required by the apartment guidelines and will be adequate to meet the needs of occupants.
  - The Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas recommends higher density developments within 500m of a bus stop and 1km of a light rail stop/station. The Planning Authority's assessment of the application also highlighted the requirement for higher density development on the site.

- The Roads section of the Planning Authority was satisfied that the development would not give rise to a traffic hazard.

6.2.2. Responses to the other appeals are provided on an issue-by-issue basis, as follows:

-

- Anti-social behaviour
  - A management company will be set up, with responsibility for upkeep and maintenance of the development.
  - Whilst existing anti-social behaviour is noted and regrettable, the applicant cannot be responsible for anti-social behaviour outside of the site. Consideration was given during the design stage to natural surveillance and good public lighting design, which minimises the opportunities for anti-social behaviour.
- Green / climate concerns
  - Apartment developments are more sustainable, creating higher densities on under-utilised sites such as this, which already has a neighbourhood centre.
  - A greener development is provided for by the inclusion of bicycle parking spaces and the use of SUDS.
  - Bicycle and car parking spaces are provided in accordance with development plan requirements.
- Safety and road concerns
  - The proposed development will be accessed from a roadway that is currently for the sole use of Ballinakill Shopping Centre tenants and the appellants Kieran and Anne Kennedy. There is a one-way system in place from Dunmore Road to the rear of the shopping centre.
  - A letter was provided by the existing site owner, Laois Sawmills, at additional information stage, which confirms access proposals. It states that subject to a grant of permission, the site owner will enter into a new legal agreement with the applicant to provide for: -
    - Two-way access from the roundabout at Mowlam Nursing Home to the pedestrian and vehicular entrances of the proposed development.

- Two-way access will be maintained for Mowlam Nursing Home and the Eir telecom's building.
- The letter also contains a map and outlines proposals for a proposed one-way traffic system for the service access to Ballinakill Shopping Centre, which includes the erection of signage.
- The proposal was assessed by the Roads section of the Planning Authority, which was satisfied that the development would not give rise to a traffic hazard.
- Right of Way
  - The applicant is within their rights to seek permission for two-way access, where it does not detract from the deed of easement.
  - The Planning Authority's assessment concluded that the development would be in accordance with the proper planning and sustainable development of the area.
- Obstruction of access/unauthorised development
  - The Planning Authority does not deem the security gates to be unauthorised development.
  - The appellants were provided with a set of keys for access to and from the rear yard at the shopping centre, so it is unfounded to say that use of the right of way was withheld.
  - The site owner, Laois Sawmills, has also identified security breaches that arose from the security gates being left unlocked and open.
- Bin storage
  - The applicant was requested at the clarification stage to relocate the proposed bin storage facility. The newly proposed location was provided and it was proposed to screen it with planting. The proposed location does not impede the deed of easement.
  - It is inaccurate of appellants to state that the bin store requires separate planning permission as it is included as part of the subject development.
- Mowlam Nursing Home

- The Planning Authority's assessment of the application found no reasons that the development would affect the nursing home, as has been suggested.
- Other points
  - The development accords with the general business zoning objective applying to the lands and is in accordance with the proper planning and sustainable development of the area.
  - Proposed density is acceptable in this location.
  - The Environment section of the Planning Authority did not object to the development.
  - The development will provide much-needed housing in a well-located area and will increase the density of development on an underutilised site.
  - The development provides an appropriate mix of unit typology.
  - The development will enhance the area.
- The Board is requested to uphold the decision to grant permission.

### 6.3. Planning Authority Response

6.3.1. None received.

### 6.4. Observations

Third party letters of observation have been received from Rachel Newman, Pat Dwyer, Evelyn Brennan, Jane Dwyer, Barry Downes, Eoghan Hartery, Larry O'Donovan, Norma Kenneally, Gary Molloy, Eric and Maureen Fitzsimons, Jordan Kennedy and Elaine Mills.

6.4.1. Submission by Rachel Newman: -

- There are no 4-storey buildings in the area. The housing crisis does not justify a proposal to build an inappropriately high development in an area of low-rise development.
- The development is out of character with the area and will overlook adjacent housing.
- Planning Authority's assessment

- The Planning Authority's report does not acknowledge the absence of capacity in local schools and does not acknowledge the poor level of public transport service in the area.
- The absence of a children's play space from the development should not be ignored. The nearest playground is a 45 minute walk.
- It would be inconsistent to allow the requirement for a community facility on the site to be overridden.
- It is difficult to understand how the Planning Authority granted permission, despite the planner stating that they were not satisfied that the development would make a positive contribution to the streetscape.
- Delays with uploading planning documents to the Planning Authority's website curtailed the public's opportunity to comment on the application.

6.4.2. Submission by Pat Dwyer: -

- The proposal will block mobile phone masts in the area.
- The observer bought their home on the understanding of community facilities being provided and the Board has previously upheld this requirement. The passage of time is not a reasonable basis to consider a grant of permission.

6.4.3. Submission by Evelyn Brennan: -

- The Board cannot grant permission in view of unauthorised development at the site, with reference to the installation and use of gates.

6.4.4. Submission by Jane Dwyer: -

- The subject site was noted as being waterlogged on walkover by the observer.
- The site is 300m from the River Suir, which hosts an abundance of habitats and animal species.

6.4.5. Submission by Barry Downes: -

- Dublin City Council refused permission for a development of 97 apartments in Dublin 6, the circumstances of which are considered to be applicable to the proposed development.

- Apartment developments have been unsuccessful in the City, with reference to the Kingswood and the Paddocks developments.
- The development will lead to a transient population, in view of the absence of variation in unit sizes.
- The development is too tall and will harm the character of the area.
- Proposed open spaces are inadequate.
- The development is proposed on a busy section of road and is accessed via an unmanaged one-way system. There is no cycle lane, bus lane or footpath on both sides of the road into the City.

6.4.6. Submission by Eoghan Hartery: -

- The Planning Authority did not adequately consider impacts on the right-of-way that is proposed to be used to access the development.
- The access road / road network in the immediate area of the site cannot accommodate the development.

6.4.7. Submission by Larry O'Donovan: -

- CGIs submitted with the application are not to scale and do not accurately depict the impact of the development.
- Permission has been refused for development of the site in the past and the reasons for refusal remain pertinent to the proposed development.

6.4.8. Submission by Norma Kenneally: -

- The Ballinakill Downs access road is used as a rat-run and is a danger to residents. Attempts have been made to make the road a one-way route and this has been resumed, following Covid restrictions. It is dangerous to locate the proposed development on this road.
- The road network in the area cannot accommodate additional development.

6.4.9. Submission by Gary Molloy: -

- Apartment developments are not in demand in Waterford and will devalue property.

- Reference is made to media coverage of anti-social behaviour problems at other apartment developments in the City.
- The development will introduce transient occupants and will not add to the community.
- The site was intended to provide community facilities for local residents and these should be provided. It is over 1.5km to the nearest playground in the area.
- The Planning Authority's reports on the application are difficult to understand.

6.4.10. Submission by Eric and Maureen Fitzsimons: -

- The scale of development proposed is at odds with the character of the area and will overlook existing residents.
- The area is characterised by the form and design of houses and a balance needs to be struck between developing the site and the protection of visual and residential amenities.
- A high-density development will affect the health of local residents, with reference to noise and air quality.
- The road network in the area cannot accommodate additional development.
- Parking proposals are inadequate.
- The proposed unit mix does not provide adequate variation and will not address housing demands in the area.
- Proposed open spaces are inadequate.

6.4.11. Submission by Jordan Kennedy: -

- The private road access that leads to the shopping centre service yard is busy and cannot accommodate this development.
- The observer's parents intend to provide additional accesses to their home (Brambledown House) from this private road and the impact of this on traffic flows and visibility is questioned.
- The proposed development requires the consent of the observer's parents to proceed, in view of the deed of easement and right of way entitlement.

- Gates erected at the entrance to the service yard are unauthorised and are functionally connected to the proposed development.
- It is inaccurate of the applicant to state that the development will not have access to the service yard route, as the gated access is open at all times.
- A swept path analysis of the parking area should have been provided.
- Concerns are expressed regarding existing use of the service yard.

#### 6.4.12. Submission by Elaine Mills: -

- Traffic conditions in the area lead to delays in peak periods. Bus services are unreliable due to congestion. It is not sensible to add further development to this congested road.
- Additional cars on the road will increase emissions to air.

### 6.5. **Prescribed Bodies**

6.5.1. The appeal was circulated to the Department of Culture, Heritage and the Gaeltacht (the Development Applications Unit), The Heritage Council and An Taisce. No responding submissions were made.

### 6.6. **Further Submissions**

6.6.1. A further submission was received from the appellants, Ballinakill Downs and Island Point Residents Committee, on 9<sup>th</sup> March 2022, which questions the validity of a submission made by an Elected Member to the Planning Authority, which questions whether the application should be deemed to be invalid and which questions the Planning Authority's processing of the application.

## 7.0 **Assessment**

7.1. Having inspected the site and considered the contents of the appeal, I consider the main planning issues in the assessment of the proposed development are as follows:

- Procedural issue regarding right-of-way
- Principle of development;
- Layout, density and building heights;



- Residential amenity;
- Flood risk and drainage;
- Road safety, access and parking;
- Other issues; and
- Appropriate Assessment.

## 7.2. Procedural Issue Regarding Right-of-Way

- 7.2.1. A number of the appeals and observations reference the existence of a deed of easement regarding the use of the service access from Dunmore Road, adjacent to the south-east corner of Ballinakill Shopping Centre, which provides access to the shopping centre service yard, residential property and which ultimately connects to the roundabout adjacent to Mowlam Nursing Home. The route is identified on the proposed site layout as a right-of-way.
- 7.2.2. In particular the appellants Kieran and Anne Kennedy state that they are grantees of this lane and that their consent has not been given for any modification or alteration of it. The appellants also argue that the proposed site layout misrepresents the accurate location of the right-of-way, that there are 6 No. car parking spaces proposed within it and that a proposed bin store cannot be provided within 50m of their home. A letter from the appellants' solicitor has also been provided which questions the impact of the development on their use of the right of way and entitlements as part of the deed of easement.
- 7.2.3. The applicant acknowledges the existence of a deed of easement and references a letter from the site owner, Laois Sawmills, which was provided at the additional information stage following a request from the Planning Authority, and which states that the development does not interfere with the provisions of the deed of easement.
- 7.2.4. Section 5.13 of the *Development Management Guidelines* (DOEHLG, 2007) provides detailed guidance on the issue of land ownership disputes within planning applications, outlining that the planning system is not appropriate for resolving land disputes and that these are ultimately matters for the Courts. Further, it is advised that permission should only be refused on the basis of land ownership, where it is clear that the applicant does not have sufficient legal title.

7.2.5. Having considered the information available to me, the applicant has asserted the ability to construct the development, if granted, and whilst the appeals clearly contest this, I do not consider it is clear that the applicant does not have sufficient legal title to undertake the development. In these circumstances and in view of the advice of the Development Management Guidelines, I consider it would be unjustifiable to refuse permission on this basis.

### **7.3. Principle of Development**

- 7.3.1. Under the General Business zoning objective set out in the Waterford City Development Plan 2013-2019, residential development is identified as being 'generally acceptable in principle'. The development is therefore in accordance with the zoning.
- 7.3.2. A number of the appeals and observations object to the development of the site for residential purposes, in view of the longstanding requirement of condition No. 3 of Reg. Ref. 98/230 that community or recreational uses are to be provided on the site. The Inspector's report on ABP Ref. PL31.210018 (PA Ref. 04/500451) states that the requirements of this condition were linked to a policy from the 1994 City Development Plan that required neighbourhood centres to be provided either adjacent to existing community facilities or that such facilities should be provided as part of the overall development.
- 7.3.3. I note that there is no such direct policy requirement within the 2013 City Development Plan.
- 7.3.4. Condition No. 3 is clear in its requirement, but it was not complied with at the time and cannot now be technically complied with, given it required that proposals were to be submitted prior to the commencement of development and the agreed development was to be provided prior to the completion of the overall neighbourhood centre development. The neighbourhood centre development is completed and operational for over 15 years at this point and the subject site remains undeveloped.
- 7.3.5. I acknowledge that the Board previously refused permission for the development of the site, in 2004 and 2005 (Reg. Refs. 03/500351 and 04/500451 refer), but in my view, the condition does not accord with advice provided by the Development Management Guidelines (2007) and is unenforceable and I see no mechanism by

which the applicant or site owner can now be obligated to provide community or recreational uses on the site.

- 7.3.6. The National Planning Framework was published in 2018 and its policies in relation to the development of the five major cities, including Waterford, are relevant to this appeal. National Policy Objectives (NPO) 2a and 3b together require that 50% of future population and employment growth will be focused in the existing five cities and their suburbs and that at least 50% of all homes should be provided within their existing built-up areas. NPO11 also states that there is a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.
- 7.3.7. The development of the site is supported by the policies of the NPF and, whilst I understand and acknowledge the appellant and observer desire for additional community and recreational uses in the area, there is no mechanism by which the applicant or site owner can now be obligated to provide community or recreational uses on the site and I consider it would be unreasonable to continue to object to its development on this basis.
- 7.3.8. I note that the Planning Authority granted permission for the development.

#### **7.4. Layout, Density and Building Heights**

- 7.4.1. The proposed layout comprises a perpendicular form, with the two apartment blocks, A and B, addressing the north-east and south/south-east site frontages, and with the site access to the rear, adjacent to the service access to Ballinakill Shopping Centre. Both blocks are effectively rectangular in shape and each contains 30 No. apartments, split over four floors over basement level. Open spaces are distributed around the site and generally occupy areas not given over to built form. Some parking is provided at ground level but the majority is provided at basement level, accessed via a ramped access to the rear of Block A.
- 7.4.2. Appellants and observers express a number of concerns regarding the layout and scale of development, including in relation to the impact on the character of the area, visual impacts, impacts on residential amenity, road and traffic safety impacts and the adequacy of social and community infrastructure in the area to serve the development.

- 7.4.3. Regarding density, the site is located east of Waterford City and is within c.1.2km of a significant employment location, University Hospital Waterford. In accordance with Section 2.4 of the 2020 apartment guidelines, it is in an 'accessible urban location' where higher density development is deemed to be acceptable. I would also note that the site is functionally linked to Ballinakill Shopping Centre, which contains a range of retail and community services, and is served by public transport along Dunmore Road. In view of these considerations, I consider the proposed gross density of c.87 units per hectare is acceptable.
- 7.4.4. Section 3.1 of the *Urban Development and Building Heights Guidelines* (2018) states that it is Government policy that building heights must be generally increased in appropriate urban locations and that there is a presumption in favour of buildings of increased height in urban locations with good public transport accessibility. As I have previously outlined, the site is proximate to a significant employment location and is served by public transport. Given this urban context, I consider this may be an appropriate location for a building of increased height. The Board will be aware that consideration of proposed building heights requires assessment of the factors outlined at Section 3.2 of the Building Heights Guidelines, which include factors at the scale of the city/town, at the scale of the district/neighbourhood/street and at the scale of the site/building.
- 7.4.5. Contextual elevation and section drawing No. 3.1.400 which was provided at the additional information stage depicts the relationship of the development to the adjacent shopping centre and nursing developments. It identifies the 27.08m parapet level maximum height of Block A (the tallest part of the development) as being 1.87m above the ridge of the adjacent shopping centre, which is itself the tallest contextual building in the immediate area. Block B is identified as having a parapet height of 24.46m.
- 7.4.6. St Thomas's Church (also identified as Brasscock Church), to the south of the site and approx 70m from Block B, is listed on the National Inventory of Architectural Heritage (Ref. No. 22901801) and is given a 'regional' rating. The Church is not identified on the Planning Authority's record of protected structures.
- 7.4.7. Mowlam Nursing Home, to the south-east of the site, is identified as having a ridge height of 19.31m.

7.4.8. The Building Height Guidelines state that at the scale of the district / neighbourhood / street, proposals should respond to the surrounding natural and built environment and should make a positive contribution to the streetscape, ensuring that monolithic designs and long, uninterrupted walls are avoided. Having considered the application drawings and from my observations on my visit to the site, I am satisfied that the proposed height and massing of the development respond to the surrounding environment and are appropriate. The site and proposed development are adequately set away from sensitive residential receptors, to ensure there is no abrupt transition in building height. In addition, the development is likely to be visible in contextual views of St Thomas’s Church from Dunmore Road but it will not, in my view, detract from or overpower these views given the separation distance.

7.4.9. The proposal has a contemporary design and materials palette and includes visual breaks in the façade. The third floor of both blocks is set back, which reduces the overall massing of the blocks and provides for an appropriate transition in building scale and overall height. The contemporary design is in contrast to the existing, primarily traditional building design in the area, but I consider the design is of its time and I do not object to it. Whilst I note the appellant and observer submissions regarding the character of the area, the site is not located within an architectural conservation area, and I consider it would be unjustified to refuse permission on the basis of the proposed design.

**7.5. Residential Amenity**

Proposed Apartments

7.5.1. The development contains a mix of 1 and 2-bed apartments units, as follows: -

	Block A	Block B
1-bed, 2-person	10	10
2-bed, 4-person	20	20

7.5.2. The proposed unit mix accords with SPPR1 of the guidelines, which allows for up to 50% of the total to be provided as 1-bed units, and the overall size of each apartment exceeds the minimum requirements of SPPR2. I also note that all units exceed the minimum overall floor area by more than 10%.

- 7.5.3. A Housing Quality Assessment was submitted with the application, which outlines the internal layout of each apartment. I have given consideration to the internal layout of each unit, in the context of the 2020 apartment guidelines, and note that Units 27-30 within Block A and 27 and 30 within Block B are provided with storage either within the kitchen/living/dining area or a bedroom, which affects compliance with the minimum requirements of the guidelines. In each instance, as the overall size of the apartment exceeds the minimum requirement of the guidelines, this minor non-compliance can be addressed by condition.
- 7.5.4. Private open spaces are provided in the form of a balcony or terrace and in each instance the minimum guidelines requirement is exceeded. For the ground floor units, landscaping drawing No. 01 indicates that all terraces will be enclosed by a native hedgerow of 1-1.25m in height. In my view enclosure to a height of 1m is inadequate and will provide for reduced privacy to the ground floor units. Should the Board decide to grant permission, I recommend a condition be attached requiring screening proposals for balconies/terraces to be agreed with the Planning Authority.
- 7.5.5. 32 No. of the apartments (53.3%) are identified as being dual aspect, exceeding the requirements of SPPR4.
- 7.5.6. There is a requirement for 380sqm of communal open space, in accordance with the minimum requirements of the apartment guidelines. The applicant states that the development includes 1,539sqm of communal open space, but this space is not clearly identified on the proposed site layout drawing (which references 1,419sqm of open space). I also note that through the additional information and clarification of additional information submissions, the applicant amended the proposed layout, in particular to provide a bin storage facility within the open space area between Block A and the basement access ramp. In response to this, condition No. 2 of the Planning Authority's decision requires omission of parking spaces 55-57 inclusive, which are adjacent to this open space area, and further amendments to the layout, to provide for a bin store facility and children's play space within the space.
- 7.5.7. There is clearly a large quantitative open space proposed. I would question the practical usability and amenity value of some of the identified areas, but the area in front of Blocks A and B, adjacent to the Ballinakill Downs access road is a large and

usable space and the area between Block A and the basement access ramp provides for a high degree of usability.

- 7.5.8. I consider it is inappropriate to provide a bin store within the open space area between Block A and the basement access ramp. I acknowledge that attempts have been made to find a suitable location for the bin store within the site and that one of the appellants objects to its location adjacent to a shared property boundary. In the circumstances, I consider it appropriate to provide the bin store within Block B, in place of proposed apartment No. 3. The location is accessible to residents, does not give rise to third party impacts and allows for the open space area to be fully utilised. Should the Board decide to grant permission, I recommend a condition be attached requiring omission of proposed apartment No. 3 of Block B and the space subsequently used as a bin storage facility.
- 7.5.9. One of the appeals expresses concern that there is overlooking of apartments within the development. The south end of Block A is in close proximity of the north-east front elevation of Block B, but the potential for overlooking between apartments is addressed by the incorporation of a single high-level window for each of the south-facing units within Block A. High-level windows for these units are identified on the elevation drawings but I acknowledge that they are not identified on the section drawings. This minor anomaly can be controlled by condition, should the Board decide to grant permission.

#### Daylight and Sunlight

- 7.5.10. Section 13.2 of the development plan references the BRE document *Site Planning for Daylight and Sunlight: A Good Practice* (1991) and British Standard 8206 *Lighting for Buildings, Part 2 1992, Code of Practice for Daylighting* and states that all development will be guided by the principles of these documents. Both of these guidance documents have been updated at this point but I consider the principles outlined within them remain relevant.
- 7.5.11. Also of relevance, Section 3.2 of the *Urban Development and Building Heights Guidelines for Planning Authorities* (DHPLG, 2018) outlines a series of criteria which are to be applied in the consideration and assessment of proposed building heights and, of relevance to the issue of daylight and sunlight, it states that appropriate and reasonable regard should be taken of quantitative performance approaches to

daylight provision outlined in guides like the Building Research Establishment's '*Site Layout Planning for Daylight and Sunlight*' (2nd edition, 2011) or BS 8206-2: 2008 – '*Lighting for Buildings – Part 2: Code of Practice for Daylighting*'. The Guidelines go on to state that: -

*'Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives.'*

7.5.12. Section 6.6 of the 2020 apartment guidelines also states that planning authorities should have regard to these BRE or BS standards.

7.5.13. I note that an updated British Standard (BS EN 17037:2018 '*Daylight in Buildings*'), was published in May 2019, to replace the 2008 BS, but this updated guidance does not have a material bearing on the outcome of the assessment and the relevant guidance documents remain those referred to in the *Urban Development and Building Heights Guidelines*.

7.5.14. The BRE guidance sets out minimum values for average daylight factor (ADF) that should be achieved, these are 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. ADF is the ratio of the light level inside a structure to the light level outside of structure, expressed as a percentage. Section 2.1.14 outlines that non-daylit internal kitchens should be avoided wherever possible, especially if the kitchen is used as a dining area too. If the layout means that a small internal galley-type kitchen is inevitable, it should be directly linked to a well-daylit living room. The guidance does not give any advice on the targets to be achieved within a combined kitchen/living/dining layout, although it states that where a room serves a dual purpose the higher ADF value should be applied. The BRE guidance is intended to be applied flexibly, and is only one consideration in apartment/house design. For apartments, or higher density urban schemes, an ADF of 1.5% is considered to be a reasonable target where compensatory design features such as balconies, aspect, outlook, etc. are factored in. In this instance, as the development is located on a



greenfield site and in an area characterised by low building heights, an ADF of 2% is considered to be a reasonable target.

- 7.5.15. No daylight/sunlight assessment was submitted with the application, so I have not been able to confirm that the relevant standards within both the BRE and BS guidance have been achieved. Notwithstanding, I have given consideration to the issue of sunlight and daylight within proposed apartments, in the context of the guidance.
- 7.5.16. As I have previously stated, 32 No. of the apartments are dual aspect, with an aspect facing east, south or west. Each of these units incorporates multiple large/tall window openings and they are, in my view, likely to be well-lit spaces.
- 7.5.17. The remaining 28 No. apartments are single aspect and of these, 22 predominantly face east, south or west. Each of these apartments contains a non-daylit kitchen but, in accordance with the BRE guidance, they are directly linked to a living room that has a large/tall window opening.
- 7.5.18. The remaining 6 units, apartment Nos. 2, 3, 10, 11, 18 and 19 within Block B, are identified by the housing quality assessment as single aspect north-west facing units but, having considered the orientation of each of these units, in my opinion they face predominantly north.
- 7.5.19. Section 3.18 of the apartment guidelines states that north facing single aspect apartments may be considered where overlooking a significant amenity. In this instance the subject site does not overlook a significant amenity and I am concerned that the affected units are likely to experience reduced access to natural light. These units are also likely to be affected by their proximity to Block A, which encroaches to within c.5m of the units at its closest point and which is likely to further reduce light levels within these apartments.
- 7.5.20. I have previously recommended that apartment No. 3 within Block B should be omitted and the space subsequently used as a bin storage area for the development. This apartment is, in my view, likely to most-affected by reduced access to natural light, given it faces north and is also located adjacent to a projecting stairwell element.

7.5.21. The Board will note that as there is no SPPR requirement in respect of inclusion / exclusion of single aspect, north facing units, there is some discretion over the application of Section 3.18. In view of the number of apartments that are likely to experience reduced access to natural light, the Board may however wish to give further consideration to this, as a New Issue.

Neighbouring Housing

7.5.22. A number of the appeals express concern regarding the impact of the development on neighbouring residential properties and the neighbouring Mowlam Nursing Home, with particular reference to overshadowing, overlooking, overbearance and loss of privacy. Concerns have also been expressed about anti-social behaviour in the area.

7.5.23. In response to the appeals, the applicant states that neighbouring houses were considered in the design stage and that there is adequate separation from the development. The submission also states that there is existing overlooking between houses in the area, which is worse than would arise from the development, and that trees provide additional screening from the development.

7.5.24. The development is set away from adjacent housing to the north-east and east by in-excess of 50m and is set away from the closest adjoining house to the south-west, Bramblewood House, by c.37m. I have previously outlined the contextual relationship of the development to Ballinakill Shopping Centre, whereby the tallest element of the proposal is shown to be 1.87m above the ridge level of the shopping centre.

7.5.25. In view of the level of separation from adjacent housing, I do not consider the issue of overbearance arises.

7.5.26. Potential overshadowing impacts are not assessed within the application, given no daylight/sunlight assessment was provided. Notwithstanding this, I have given consideration to the issue, in the context of Section 3.3.7 of the BRE guidance. It recommends that at least 50% of a rear garden should receive at least 2 hours of sunlight on the key assessment date of 21<sup>st</sup> March and, in view of the level of separation to all adjacent housing, I am satisfied that compliance with this recommendation will be maintained. As I have stated previously, housing to the north-east and east is in-excess of 50m from the development and is, in my view, likely to experience limited, if any, overshadowing. Gardens to the south-west may

experience some overshadowing during morning times, but any such overshadowing would be of a minor nature and these properties will continue to receive high levels of sunlight given they are to the south of the development.

- 7.5.27. Overlooking issues similarly do not arise for housing to the north-east and east, given the development faces the front of these houses and also given the aforementioned separation distance.
- 7.5.28. I am satisfied that the majority of the houses to the south-west are also adequately set away from the development and that overlooking of these properties would not be significant or unacceptable, but I have concerns regarding the level of overlooking of Bramblewood House, particularly from the third floor south-west-facing units within Block B which, although set back, contain roof-level balconies that allow for direct overlooking of this neighbouring garden. I have already expressed the view that the proposed four storey building height is acceptable in this location but I consider the third floor of Block B requires reconsideration, in order to alleviate overlooking of Bramblewood House. To this end, should the Board decide to grant permission, I recommend a condition be attached requiring the affected third-floor apartments (Nos. 26 and 27) should be redesigned and should be provided with side-facing balconies and should incorporate high-level south-west facing windows within the main living area.
- 7.5.29. Proposed Block B would overlook the parking area to the front (north) of Mowlam Nursing Home and would not, in my opinion, have any material impact on the amenity of residents.
- 7.5.30. I note the concerns expressed regarding anti-social behaviour in the area. I am satisfied that adequate consideration has been given to designing out anti-social behaviour. The development incorporates active frontages across all elevations and all external/open space areas are overlooked.

## 7.6. **Flood Risk and Drainage**

### Flood Risk

- 7.6.1. The appellant Jane Dwyer expresses concern regarding the risk of flooding in the area, arising from the proposed development.

- 7.6.2. A flood risk assessment (FRA), prepared by Lohan & Donnelly Consulting Engineers, was provided as part of the application. The assessment identifies that the site is located within Flood Zone C, where the probability of flooding is low. It also states that there are no previous flood records for the site.
- 7.6.3. I have given consideration to available flooding records, as referenced by the FRA<sup>2</sup> and I note that the site is shown to be located within Flood Zone C, where the probability of flooding is low. There are also no watercourses within or in the vicinity of the site. In view of the above, I am satisfied that the site is not at risk of flooding and will not increase flood risk elsewhere in the surrounding area.

#### Surface Water Drainage

- 7.6.4. Surface water is proposed to be discharged via attenuated discharge, to the public surface water sewer network at the eastern corner of the site. An Engineering Services report was submitted with the application, which calculates the greenfield run-off rate for the site and which states that attenuated discharges will be maintained at the greenfield run-off rate. A mix of attenuation proposals are incorporated, including blue roofs and an attenuation tank which is located in the open space area to the front of Block A. SUDS are also incorporated, in the form of permeable paving and asphalt for road, parking and footpath areas of the site.
- 7.6.5. The attenuation tank is adequately sized to accommodate run-off from the development and in view of this, I do not object to the proposed surface water drainage strategy.
- 7.6.6. I also note that the Planning Authority did not object to this aspect of the development.

#### Foul Drainage

- 7.6.7. Effluent is proposed to drain to the public sewer via connection at the eastern corner of the site. The Engineering Services report states that a pre-connection enquiry was submitted to Irish Water, but the response to same was not provided. Also, the Planning Authority reports indicate that Irish Water was not consulted on the application.

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<sup>2</sup> <https://www.floodinfo.ie/map/floodmaps/>

7.6.8. The Planning Authority did not express any concerns regarding drainage proposals and there is nothing within the appeal documents to suggest that a connection to the public network cannot be provided. In view of this, I consider it would be unjustified to refuse permission on the basis of foul water capacity in the area.

#### **7.7. Road Safety, Access and Parking**

- 7.7.1. The site is accessed via a private road from the Ballinakill Downs access road that also provides access to the services area of Ballinakill Shopping Centre, Mowlam Nursing Home and an EIR telecoms building. The road is a two-way carriageway up to the point of entry to the shopping centre services yard, at which point it becomes a one-way route, at the point of entry to the shopping centre services yard. There are double-gates at both ends of the service yard and there are advisory signs at the Dunmore Road entrance, to advise that it is a one-way route.
- 7.7.2. The private road is identified as a right of way and is accepted by the applicant as providing access to the residential property owned by the appellant Kieran Kennedy, Brambledown House.
- 7.7.3. The applicant proposes to retain the two-way carriageway up to the point of the access to the site, with access continuing to be provided to the nursing home and EIR telecoms building and that the one-way system through the shopping centre services yard will be maintained, with the erection of additional signage.
- 7.7.4. Appellants and observers have raised concerns regarding road safety and traffic conditions along Dunmore Road. In particular concerns are expressed regarding the ability of Dunmore Road and the Ballinakill Downs access road to accommodate additional traffic and the use of the private road as a rat-run for traffic on Dunmore Road, contrary to the one-way route designation through the shopping centre service yard.
- 7.7.5. Regarding the proposed traffic layout, whilst I note the concerns raised within the appeals and observations regarding road safety and indeed while I observed use of the services yard as a rat-run for traffic during my visit to the site, I consider the proposals are acceptable and allow for a safe means of access and egress to/from the site.

- 7.7.6. It is evident from the application and appeal documents that there is a dispute between parties regarding the deed of easement and the right of way, but this appeal is not a forum for resolving the dispute. As I have stated previously, the applicant has asserted the ability to construct the development and whilst the appeals clearly contest this, in view of advice within the Development Management Guidelines, it would be unjustifiable to refuse permission on this basis.
- 7.7.7. The issue of traffic more generally was not commented on by the Planning Authority and no transport assessment was submitted with the application.
- 7.7.8. The thrust of national planning policy is that a target of 50% of future population and employment growth will be focussed in the five cities and their suburbs (NPF NPO 2(a)) and that higher densities should be provided in accessible urban locations that have access to public transport and/or are proximate to significant employment locations (apartment guidelines and building heights guidelines). These accessible locations facilitate modal shift to public transport and active travel and result in development that is not as dependent on the private car as less accessible locations.
- 7.7.9. In this instance, the site is in an accessible urban location, is zoned and serviced, is proximate to a public transport corridor and a significant employment centre and forms part of a block that contains a mix of commercial and community uses. In my view its development is in accordance with the NPF, the 2020 apartment guidelines and urban development and building height guidelines and whilst I accept that it will result in some additional traffic on Dunmore Road, it would have a minor effect on conditions and there are viable alternatives to the private car, which would reduce any limited effect. On this basis I consider it would be unjustified to refuse permission on the basis of road capacity concerns.
- 7.7.10. 60 No. parking spaces were initially proposed at basement level, together with 3 No. accessible spaces at ground level and a further 22 No. spaces were proposed for shopping centre users, to replace those removed to facilitate the proposed development. The proposals were amended at the additional information and clarification of additional information stages and there are now 53 No. spaces provided at basement level, 6 No. spaces at ground level (including 3 accessible spaces) and 22 No. spaces for shopping centre users.

- 7.7.11. Regarding the residential component, Section 4.19 of the 2020 apartment guidelines states that for higher density developments in accessible urban locations that are served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or eliminated in certain circumstances. In this instance, I consider parking proposals are in accordance with the aforementioned policy and are thus acceptable.
- 7.7.12. I have previously expressed the view that the open space area between Block A and the basement access ramp provides for a high degree of usability, but its size is impacted by the provision of parking space Nos. 55-57 in the immediately adjacent area. I am inclined to agree with the Planning Authority that these spaces should be omitted, in order to enhance the size and usability of the area.
- 7.7.13. Regarding the spaces proposed for shopping centre users, I consider the spaces proposed at the south site boundary (adjacent to the Eir telecoms building) are remote from the shopping centre and should be omitted, with the space incorporated into the proposed development as landscaped open space. I am satisfied that there is adequate parking available in the immediate vicinity of the shopping centre.
- 7.7.14. Regarding the cycle way adjacent to the basement ramp, I am inclined to agree with appellant submissions that it may give rise to conflict between cyclists and motorists, given it directs cyclists into the shopping centre car park and terminates in the immediate area adjacent to parking spaces. I consider the cycleway should be replaced by a footpath that runs to the west of the parking spaces in this area, in order to provide a safe connecting route between the sites.
- 7.7.15. Should the Board decide to grant permission, I recommend a condition be attached requiring that proposed parking space Nos. 55-57 and 17-22 inclusive should be omitted and that the areas should be incorporated into the proposed development as landscaped open space.

## 7.8. Other Issues

- 7.8.1. One observer expressed concern that the development would interfere with mobile phone masts that are located at Ballinakill Shopping Centre. The proposed development involves marginally taller building heights than the adjacent shopping centre building and does not, in my view, present a significant impediment to signals from communications masts in the area. As the issue was not addressed within the

application documents and as the Planning Authority did not comment on it, the Board may wish to consider this further as a new issue.

7.8.2. Appellants have expressed concerns regarding unauthorised development at the shopping centre of the site but this is a matter for the Planning Authority, which has responsibility for enforcement and is not a matter which can be taken into consideration by the Board in its assessment of the application.

7.8.3. I note the concerns expressed by observers regarding the ability of social and community infrastructure to accommodate additional development but I have previously expressed the view that the development incorporates adequate communal open space, in excess of the minimum requirements of the apartment guidelines, to meet the amenity needs of residents.

## 7.9. **Appropriate Assessment**

### Appropriate Assessment Screening

#### *Compliance with Article 6(3) of the Habitats Directive*

7.9.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

#### *Background on the Application*

7.9.2. A screening report for Appropriate Assessment was not submitted with this appeal case. Therefore, this screening assessment has been carried de-novo.

#### *Screening for Appropriate Assessment- Test of likely significant effects*

7.9.3. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

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

#### *Brief description of the development*



- 7.9.5. The development is described at Section 2 of this Report. In summary, permission is sought for construction of two 4-storey apartment buildings with a total of 60 apartments and all associated site works. The subject site has a stated area of 0.69ha and consists of a mainly greenfield, serviced site in an urban location. The site is located adjacent to Ballinakill Shopping Centre and is an area of mixed residential, community and commercial uses. It is accessed from Dunmore Road, via the access road to the Ballinakill Downs estate. Effluent is proposed to drain to the public network and surface water is proposed to drain via attenuated discharge to the public network.
- 7.9.6. Taking account of the characteristics of the proposed development, in terms of its location and the scale of works, I consider the following aspects of the development require examination:
- Impact on water quality within a European site arising from surface water discharges from the site containing suspended solids and/or pollutants.

#### Submissions and Observations

- 7.9.7. The submissions from the appellants, applicant, observers and Planning Authority are summarised as Section 6 of my Report.
- 7.9.8. The Planning Authority's report contains a separate appropriate assessment screening report, wherein it was concluded that the project, alone or in combination, would not be likely to have a significant effect on a Natura 2000 site.

#### European Sites

- 7.9.9. The subject site is not located within a designated European site, with the closest such site being the Lower River Suir SAC (Site Code 002137), which is approx. 300m east.
- 7.9.10. The following additional European sites are located within a 15km search zone: -
- River Barrow and River Nore SAC (Site Code 002162), approx. 6.5km east,
  - Tramore Dunes and Back Strand SAC (Site Code 000671), approx. 7.8km south,
  - Tramore Back Strand SPA (Site Code 004027), approx. 7.8km south,
  - Mid-Waterford Coast SPA (Site Code 004193), approx. 13.5km south,

- Hook Head SAC (Site Code 000764), approx. 14.7km south-east.
- Bannow Bay SPA (Site Code 004033), approx. 15km east,
- Bannow Bay SAC (Site Code 000697), approx. 15km east,

7.9.11. There are no open watercourses/drains within or adjacent to the site, which could provide source-pathway-receptor connectivity to any European site and, in view of this, I consider there is no realistic possibility of significant effects on European sites other than the Lower River Suir SAC, which itself requires consideration given its close proximity to the site. I have therefore not considered these other European sites any further in my assessment.

7.9.12. A summary of the Lower River Suir SAC is presented in the table below.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)	Connections (source, pathway receptor)
Lower River Suir SAC (Site Code 002137)	<ul style="list-style-type: none"> <li>•Atlantic salt meadows</li> <li>•Mediterranean salt meadows</li> <li>•Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation</li> <li>•Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels</li> <li>•Old sessile oak woods with Ilex and Blechnum in the British Isles</li> <li>•Alluvial forests with Alnus glutinosa and Fraxinus excelsior</li> <li>•Taxus baccata woods of the British Isles</li> <li>•Freshwater Pearl Mussel</li> <li>•White-clawed Crayfish</li> <li>•Sea Lamprey</li> <li>•Brook Lamprey</li> <li>•River Lamprey</li> <li>•Twaite Shad</li> <li>•Salmon</li> </ul>	c.300m	No

7.9.13. Available NPWS mapping<sup>3</sup> identifies that Atlantic Salt Meadows habitat within the SAC lies in closest proximity to the subject site.

Impact on water quality within a European site arising from surface water discharges from the site containing suspended solids and/or pollutants

7.9.14. As I have stated, there are no open watercourses or drains within or adjacent to the site. There is therefore no source-pathway-receptor connectivity to the SAC. In view of this, I am satisfied there is no potential for significant effects during the construction phase.

7.9.15. For the operational phase, surface water is proposed to be discharged via attenuated discharge, to the public surface water sewer at the east corner of the site. An engineering services report was submitted with the application, which calculates the greenfield run-off rate for the site and which demonstrates that a mixture of SUDS measures and attenuation within the site will be employed to ensure that there is no increase in the rate of run-off from the site. I am satisfied there is no potential for significant effects on the SAC during the operational phase.

*Screening Determination*

7.9.16. 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 would not be likely to give rise to significant effects on European Site No. 002137, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

7.9.17. This determination is based on the following:

- The absence of any watercourse/drain within or adjacent to the subject site, which would provide source-pathway-receptor connectivity between sites and the separation distance between sites.

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<sup>3</sup> <https://www.npws.ie/protected-sites/sac/002137>

## 8.0 Recommendation

8.1. I recommend that planning permission be granted, subject to conditions as set out below, for the following reasons and considerations.

## 9.0 Reasons and Considerations

9.1. Having regard to the 'General Business' zoning which applies to the site under the Waterford City Development Plan 2013-2019 (as extended), under which residential development is stated to be generally acceptable in principle, subject to the conditions set out below the proposed development would be an appropriate form of development, would not seriously injure the character and visual amenities of the area, would not seriously injure the amenities of residential property in the vicinity and would be acceptable in terms of traffic and pedestrian safety. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by additional information submitted on 10<sup>th</sup> November 2021 and 20<sup>th</sup> December 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The development shall be amended as follows: -</p> <ul style="list-style-type: none"><li>• Apartment Nos. 26 and 27 within Block B shall be reconfigured and provided with (a) side-facing balconies and (b) high-level south-west</li></ul>

	<p>facing windows a minimum of 1.8m above floor level within the main living area.</p> <ul style="list-style-type: none"> <li>• Apartment Nos. 4, 5, 12, 13 20 and 21 within Block A shall incorporate a high-level window a minimum of 1.8m above floor level on the south-east elevation.</li> <li>• The proposed bin store within the amenity space to the rear of Block A shall be omitted and the resultant space shall be incorporated into the amenity space</li> <li>• Apartment No. 3 within Block B shall be omitted and the space shall be provided as a bin storage facility to serve the development.</li> <li>• The cycleway route to the rear basement ramp shall be omitted and replaced by a footpath connection that leads to the shopping centre</li> <li>• Proposed parking space Nos. 17-22 inclusive and 55-57 inclusive shall be omitted from the development and the resultant space shall be incorporated into the open space as part of the development.</li> </ul> <p>Prior to the commencement of development revised plans shall be submitted, for the written agreement of the Planning Authority, which reflect the above.</p> <p><b>Reason:</b> In the interests of proper planning and sustainable development.</p>
3.	<p>Apartments shall be provided with dedicated storage space in accordance with the requirements of the 2020 apartment guidelines.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>
4.	<p>(a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.</p> <p>(b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with the planning</p>

	<p>authority before any of the residential units are made available for occupation.</p> <p><b>Reason:</b> To provide for the satisfactory future maintenance of this development in the interest of residential amenity.</p>
5.	<p>The access to the site shall comply with the Planning Authority's requirements for same and shall incorporate <i>Design Manual for Urban Roads and Streets (2019)</i> place-making principles.</p> <p><b>Reason:</b> In the interest of road and pedestrian safety.</p>
6.	<p>Prior to the occupation of development, a Car Parking Management Plan shall be submitted for the written agreement of the Planning Authority. This plan shall indicate how spaces will be assigned and how use of the car parking will be continually managed. Car spaces shall not be sold, rented or otherwise sub-let or leased to other parties.</p> <p><b>Reason:</b> In the interests of orderly development and traffic safety.</p>
7.	<p>Communal open space which shall include a children's play space shall be provided and laid out in accordance with the Planning Authority's requirements, details of which shall be agreed in writing prior to the commencement of development.</p> <p><b>Reason:</b> In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.</p>
8.	<p>A hard and soft landscaping strategy and boundary treatment plan shall be submitted to and agreed in writing with the planning authority, prior to commencement of the development. The development shall thereafter be carried out in accordance with the agreed scheme.</p> <p><b>Reason:</b> In the interests of visual amenity.</p>
9.	<p>Boundary treatments for private open spaces shall be agreed with the Planning Authority</p> <p><b>Reason:</b> In the interest of residential amenity.</p>

10.	<p>The developer shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of this development.</p> <p><b>Reason:</b> In the interest of public health and orderly development.</p>
11.	<p>Water supply and drainage arrangements shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development.</p> <p><b>Reason:</b> In the interest of proper site drainage.</p>
12.	<p>Public lighting shall be provided in accordance with a public lighting scheme which shall be submitted to and agreed in writing with the planning authority prior to commencement of the development.</p> <p><b>Reason:</b> In the interests of amenity and public safety.</p>
13.	<p>The proposed development shall make provision for the charging of electrical vehicles. All car parking spaces serving the proposed development shall be provided with electrical connections, to allow for the future provision of future charging points and in the case of 10% of each of these spaces, shall be provided with electrical charging points by the developer. Details of how it is proposed to comply with these requirements, including details of the design of, and signage for, the electrical charging points (where they are not in the areas to be taken in charge) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of suitable transportation.</p>
14.	<p>All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting in accordance with the requirements of the planning authority shall be provided to facilitate the provision of broadband infrastructure within the proposed development.</p> <p><b>Reason:</b> In the interests of orderly development and the visual amenities of the area.</p>

15.	<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 include details of intended construction practice, noise and dust management measures, traffic management, parking proposals for construction workers on the site and storage of materials and waste within the site.</p> <p><b>Reason:</b> In the interests of public safety and residential amenity.</p>
16.	<p>During the construction and demolition phases the proposed development shall comply with British Standard 5228 Noise Control on Construction and open sites Part 1, Code of practice for basic information and procedures for noise control.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
17.	<p>Proposals for a naming and numbering scheme for the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate signs, and house/apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority.</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>
18.	<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. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>



19.	<p>Prior to commencement of development, the developer 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 and been granted under section 97 of the Act.</p> <p><b>Reason:</b> 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>
20.	<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 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.</p> <p><b>Reason:</b> 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.</p>
21.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains and other services required in connection with the</p>

	<p>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 form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p><b>Reason:</b> To ensure the satisfactory completion and maintenance of the development until taken in charge.</p>
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Barry O'Donnell  
Planning Inspector

4<sup>th</sup> May 2022.