



An  
Bord  
Pleanála

## Inspector's Report ABP-312814-22

<b>Development</b>	Construction of 54 units. Remove part of boundary screen walls and create entrance road. Installation of foul and surface water drains and associated site works.
<b>Location</b>	Ballycullenbeg, off Harbour Street, Mountmellick, Co Laois.
<b>Planning Authority</b>	Laois County Council
<b>Planning Authority Reg. Ref.</b>	216
<b>Applicants</b>	Kilkenny Investment Property Holdings Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Michael Clear
<b>Date of Site Inspection</b>	16 <sup>th</sup> June 2022
<b>Inspector</b>	Dolores McCague

## Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	6
3.4. Prescribed Bodies .....	9
3.5. Third Party Observations .....	9
3.6. Further information .....	10
3.7. Further Reports .....	10
3.8. Further Reports .....	12
3.9. Prescribed Bodies .....	15
4.0 Planning History .....	15
5.0 Policy Context .....	15
5.1. Development Plan .....	15
5.2. Mountmellick Local Area Plan 2018 - 2024 applies: .....	16
5.4. Natural Heritage Designations .....	18
5.5. EIA Screening .....	18
6.0 The Appeal .....	18
6.1. Grounds of Appeal .....	18
6.2. Applicant Response .....	20
7.0 Assessment .....	21
7.2. Appropriate Assessment .....	21
7.3. Principle of Development .....	22
7.4. Land ownership .....	22
7.5. Flood Risk .....	22
7.7. Sewerage .....	24
7.8. Other Issues .....	25
8.0 Recommendation .....	26
9.0 Reasons and Considerations .....	26
10.0 Conditions .....	26

## **1.0 Site Location and Description**

- 1.1.1. The site is located at Ballycullenbeg, off Harbour Street, Mountmellick, Co Laois, on the south eastern side of Mountmellick town centre. The site adjoins Grange Hall a residential estate. There is a gateway access directly to Harbour Street from the site. The boundary with Grange Hall is a high block wall. To the south-east of the main body of the site there are open fields. The site extends south east and then east as a strip of ground crossing field boundaries and extending to a field some distance away to the south east.
- 1.1.2. The land ownership details given, show the site to be part of a landholding which includes the section of road and adjoining green areas between the houses at Grange Hall and the junction at Harbour Street, with consent for access and demolition of the boundary wall at Grange Hall from the landowner.
- 1.1.3. Land in the area is flat so that although Grange Hall surface water drains west to Davitt Road, the surface water from the subject site will drain east.
- 1.1.4. The site inspection was carried out from roads and areas outside the site.
- 1.1.5. The site is given as 1.5429ha.

## **2.0 Proposed Development**

- 2.1.1. The proposal comprises low rise residential development, with access from the existing access road to Grange Hall from Harbour Street.
- 2.1.2. The proposed development is for 54 dwelling units comprising of the following:
  - 1. 48 No. dwellings in terraces of 4 dwellings, comprising of 22 No. 3 bedroom 2 storey end-terrace units, 14 No. 3 bedroom 2 storey mid-terrace units, 8 No. 2 bedroom 2 storey mid-terrace units; 2 No, 2 bedroom bungalow end-terrace units & 2 No, 2 bedroom bungalow mid-terrace units, and 6 No. semi-detached 3 bedroom 2 storey dwellings.
  - 2. Remove part of existing boundary screen wall and create new entrance road, vehicular entrance and footpaths onto Grange Hall. Continue the existing entrance wall facing onto Harbour Street to No. 1 Harbour Street and returning alongside No. 1 Harbour Street.

3. Installation of all necessary and associated site works to include foul drains connecting onto Harbour Street and surface water drains with underground attenuation connecting to existing watercourse, telecommunications, water and service ducts, roadways, footpaths, green spaces, landscaping, public lighting, ESB and communications mini-pillars, car parking, signage, bin storage areas etc.

2.1.3. The application received 8<sup>th</sup> January 2021, was accompanied by:

Drawings

Development Design Statement

Archaeological and Cultural Heritage Impact Assessment

Traffic and Transport Assessment

Civil Engineering Report.

2.1.4. In response to the request for further information, documents received 8<sup>th</sup> September 2021, include:

Drawings

Response

Flood Risk Assessment

Geophysical Survey Report

Quality Audit.

2.1.5. In response to the request for clarification of further information, documents received, 19<sup>th</sup> November 2021, include:

Drawings.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. The planning authority decided to grant permission, subject to 19 conditions, including:

3 a) Foul effluent shall be collected and discharged to the public foul sewer. Prior to commencement of development, the developer shall obtain a Connection Agreement

and Confirmation of Feasibility from Irish Water statutory body in this regard and submit them to the planning authority for its written agreement.

b) Any necessary agreements are required to be in place prior to connection of the proposed development. The capacity requirements shall include the cumulative capacity required to provide for other proposed and consented developments in Mountmellick.

Reason: In the interests of public health, residential amenity and proper planning.

5 a) All surface water run-off from roofs, entrances and parking areas shall be collected and disposed of to the public surface water sewer network. No such surface water run-off shall be allowed to flow onto the public roadway or adjoining properties.

b) The rate of surface water discharge from the development to the public surface water network shall be regulated taking account of existing discharges from adjacent lands and provision made for such retention and throttling/ flow restriction as necessary to regulate the discharge.

c) The proposed development shall not interfere with existing land or road drainage.

d) Precise details including in relation to type, plans, elevations, sections, indicating size and specification of the surface water attenuation system shall be submitted for the written agreement of the Planning Authority and Road Design Section prior to commencement of development. the systems shall provide for concrete type tanks only, to the satisfaction of the Planning Authority and Road Design Section.

Reason: To prevent flooding of the public road, in the interests of traffic safety and in the interests of public health.

18a) The applicant is required to engage the services of a suitably qualified archaeologist to monitor, under licence, all ground works associated with the proposed development.

b) Should archaeological material be found during the course of monitoring, the archaeologist may have work on the site stopped pending a decision on how best to deal with the archaeology. The developer shall be prepared to be advised by the National Monuments Service of the Department of Housing, Local Government and Heritage with regard to any necessary mitigation action (for example preservation in

situ or excavation) and shall facilitate the archaeologist in recording any material found.

c) The Planning Authority and the National Monuments Service of the Department of Housing, Local Government and Heritage shall be furnished with a report describing the results of the monitoring.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

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

#### **3.2.1. Planning Reports**

3.2.2. There are three planning reports on the file, the first recommending further information, which issued, includes:

The main body of the site is rectangular with two irregular off-shoots, to the north and south-east respectively. These are for accommodating service lines. The site is relatively flat with a gentle decline to the south. No watercourses are present. There is a mature hedge and trees along the north-eastern boundary and an area of scrub near the south-western boundary. The north-western boundary is the rear boundary of long established semi-detached, single storey dwellings fronting Harbour Street with the boundary comprising a mixture of concrete panelling, block walls and vegetation. The south-eastern boundary is open.

- The vast majority of the site is zoned Residential 2 – New Proposed Residential in the Mountmellick LAP 2018-2024.
- The development is fully acceptable within such a zoning.
- A very minor portion of the development site coinciding with the service corridor due north-west, is zoned Open Space & Amenity. The area in question is to be used as a service route, not considered a material contravention. It is currently used as a lane to access farmland.
- The site is well outside the confines of the critical Flood Zones A and B as indicated in the Strategic Flood Risk Assessment of the Plan.

- Having regard to the distance factor, the availability of supporting infrastructure and the absence of a directly connecting water course, no materially negative impacts on the SAC arising from the proposed development are anticipated.
- There is provision for a total of 6 no. social housing units within the scheme (370-40, 47 and 48). The proposal is acceptable to the Housing Section.
- Density 34.99 ha, 14.16 per ac.
- Per Development Plan - a 2 bedroom house should have 60 sq m of private open space while a 3 bedroom house should have 75 sq m. These requirements are met for all sub-sites.
- It also states that in general, a minimum distance of 22m should be achieved between opposing first floor windows at the rear of dwellings and that in general, a 15m rear garden is provided. The Council will only consider exceptions to the standards in exceptional circumstances where an otherwise high quality design solution is proposed, which has full regard to the characteristics and context of the site.
- No garden depth is 15m, while the default depth of 11m is achieved in the vast majority of sub-sites, the exceptions being numbers 29-32, a terrace of single storey two beds and number 22 a semi-detached two storey 3 bed. Only if these units are conclusively for elderly occupants would the planner not be opposed to such a shortfall.
- Public open space of 1,140 sq m (7.3% of the overall curtilage) is centrally located and 558 sq m (3.6% of the overall curtilage) is provided at the south-western end of the site. The combined exceed the 10% minimum provision required.
- Issues have been raised by third parties include in relation to traffic safety, surface water drainage, flood risk, foul drainage infrastructure.

### 3.3. Other Technical Reports

#### 3.3.1. Western Area Roads Department 28<sup>th</sup> January 2021 – refer to roads design.

3.3.2. Housing Section 28<sup>th</sup> January 2021 – no objection subject to standard Part V agreements.

3.3.3. HSE, SEHO – 2<sup>nd</sup> February 2021 – condition - CEMP.

3.3.4. Roads Design – 15<sup>th</sup> February 2021 – further information:

Road safety:

Pedestrian crossings

Footpath widths

Traffic calming measures.

Public Lighting:

Design and specifications in compliance with IS EN 13201 and address:

At the main entrance.

Within the housing development and at the location of pedestrian crossings.

The design shall be in accordance with Laois County Council Public Lighting Specification and Laois County Council Public Lighting Pre-Planning Guidance.

Cycle Infrastructure:

A walking audit and a cycle audit in accordance with the Design Manual for Urban Roads and Streets guidance and Transport Infrastructure Ireland standards.

Detailed Construction Traffic Management Plan to include:

Details of arrangements for prioritising the safety of pedestrians, cyclists and other road users, routes for construction traffic, parking during construction phase, the location of the compound for storage of plant and machinery and the location of storage of deliveries on site.

Drainage:

Site specific flood risk assessment.



Re polystorm modular cell attenuation system – the PA is not satisfied; concrete type tank only.

Re. discharge to existing drain to the rear of the development. the applicant shall demonstrate that the existing drain has the capacity to cater for the additional loading generated by this proposed development.

Flood history:

Known peak water levels in the watercourse channel.

Physical evidence of flooding and overtopping of watercourse channel.

Any erosion of watercourse upper-banks.

Local knowledge about flooding of adjoining crop or grass fields.

Electric vehicle charging points:

10% of parking spaces and indicate ducting for all remaining car parking spaces facilitating the installation of electric vehicle charging points/stations.

Traffic volume & construction traffic:

The access will be onto the R422 where there is a slight bend and where sightlines are sometimes obscured by parking.

Stage 1 & 2 Road Safety Audit to address:

The existing access route and the main entrance to the development.

The additional traffic flow onto the R422.

The applicant to address how they will maintain the existing access roadway and R422 during construction.

### **3.4. Prescribed Bodies**

- 3.4.1. Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, 12 February 2021 – re. archaeology recommending further information.

### **3.5. Third Party Observations**

- 3.5.1. Third party observations have been read and noted.

### **3.6. Further information**

#### **3.6.1. A further information request on the following points issued:**

1 Consult IW

2 Consent for access

3 Design of pedestrian access.

4 Cycling infrastructure.

5 Electrical vehicle charging points.

6 Stage 1 & 2 Road Safety Audit to address:

The existing access route and the main entrance to the development.

The additional traffic flow onto the R422.

The applicant to address how they will maintain the existing access roadway and R422 during construction.

7 Public lighting

8 Surface water drainage.

9 Private open space

10 Public open space

11 Archaeology

12 Third party objections

13 Amend house types to have a wider variety of semi-detached and possibly detached.

### **3.7. Further Reports**

#### **3.7.1. Following receipt of further information response the following reports were received:**

3.7.2. Housing & Urban Regeneration Department Water Services & Rural Water, 14<sup>th</sup> September 2021 – no objection subject to standard Part V agreement.

3.7.3. Western Area Roads Department 14<sup>th</sup> September 2021 – no observations – refer to Roads Design.

### 3.7.4. Roads Design Office - 17<sup>th</sup> September 2021

Road safety:

Pedestrian access – the applicant has submitted a Road Signage & Marking layout plan (drg no. K0563-GAR-XX-XX-DR-C-0050 Rev P03) indicating 1 no. raised table at the junction where housing units 29 & 49 are located. Road Design office is not satisfied with the proposal. Further traffic calming measures are required on the section of roadway from the main entrance to housing unit no. 18. The applicant shall submit a revised layout plan indicating traffic calming ramps designed in accordance with the Department of Transport – Traffic Management Guidelines.

Public Lighting: The applicant shall liaise with the Roads Design Office in relation to the location and design of the Public Lighting to be agreed for this development. The Public Lighting shall be so designed that access is available at all times and shall not be obstructed by vehicles. Public Lighting shall be provided prior to the making available for occupation of any dwelling.

Quality Audit:

Issues have been identified:

Section 4.3.1 relating to the main access point and pedestrian access between the public open space.

Section 4.11.1 – bin stores, access to the bins when car parking spaces are in use.

Section 4.13 parking.

Section 5.2.1 cycle lanes and shared areas.

Applicant to address and submit revisions.

### 3.7.5. The second planning report, 1<sup>st</sup> October 2021, recommending clarification of further information, which issued 4<sup>th</sup> October 2021, includes:

- In relation to item 1 Irish Water, the results of consultation regarding the feasibility of the proposed development connecting to and being serviced by its network have not been submitted.
- In relation to item 2 consent, the folios and accompanying maps have not been submitted.

- In relation to item 3, the Road Design office is not satisfied with the proposal. Additional further traffic calming measures in accordance with the Department of Transport – Traffic Management Guidelines are required on the section of roadway from the main entrance to housing unit no. 18.
- In relation to item 6 Traffic Volume & Construction Traffic, the Quality Audit Action Plan has identified a number of issues:
  - Section 4.3.1 relating to the main access point and pedestrian access between the public open space.
  - Section 4.11.1 – bin stores, access to the bins when car parking spaces are in use.
  - Section 4.13 parking
  - Section 5.2.1 cycle lanes and shared areas.
  - Please address
- In relation to item 8, Drainage, details of concrete attenuation tank, referenced in Appendix B, have not been submitted.

### **3.8. Further Reports**

- 3.8.1. Post receipt of clarification of further information response:
- 3.8.2. Housing & Urban Regeneration Department Water Services & Rural Water, 25<sup>th</sup> September 2021 – no objection subject to standard Part V agreement.
- 3.8.3. Roads Design Office, 2<sup>nd</sup> December 2021: no objection; recommending conditions.
 

Materials and finishes of road surface, footpaths and parking areas – liaise.

Construction stage Traffic Management Plan

Construction Management Plan

Ensure no damage to the public footpath or roadways.

No debris or construction materials to be deposited on the public roadway or in the vicinity of the site.

The applicant shall install the raised traffic calming tables as indicated on drawing no. K0563-GAR-XX-XX-DR-C-0050 Rev P05.

The applicant shall install the pedestrian crossing point at the junction of the main entrance and Harbour Street as indicated on drawing no. K0563-GAR-XX-XX-DR-C-0050 Rev P05.

The applicant shall liaise with the Road Design Office prior to commencement of the development in relation to the Public Lighting for the development.

3.8.4. Western Area Roads Department 3<sup>rd</sup> December 2021 – no observations.

3.8.5. The third planning report, 20<sup>th</sup> January 2022, recommending permission, which issued 25<sup>th</sup> January 2022, includes:

3.8.6. Response from IW re connection – (re. 92 dwellings whereas 55 in original application has been revised to 52); subject to a valid connection agreement the proposed connection can be facilitated; further detailed studies and or investigations to confirm the available capacity of the public sewer at Emmett Terrace / Connolly WWPS (waste water pumping station) to determine the full extent of any upgrades which may be required prior to agreeing to the proposed connection.

3.8.7. Noting satisfactory responses to items 2 – 7.

3.8.8. Re. item 8 the response includes:

There is no physical evidence of flooding and overtopping of watercourse channel. There is no known flood history within the site. It is noted that some photos submitted by third parties indicate the presence of water on the surface of the field. This is likely as a result of some local depressions within the site and would be natural on lands of this nature. The development of the site will include a surface water system and this pluvial flooding will not occur on the developed land thereafter.

3.8.9. The development is located in flood zone C and not in the critical A or B zones.

3.8.10. The development lies outside the area designated as Benefitting Lands. In terms of the proposed Mountmellick Flood Relief Scheme, there are no works proposed that fall within any of the three options presented in the scheme.

3.8.11. All existing information has been reviewed regarding flood risk for the site. The agent is satisfied, based on the available information, that the proposed finished levels and

the overall proposals for this development achieve full compliance with the requirements of the DoEHGL 2009 document 'The Planning System and Flood Risk Management Guidelines for Planning Authorities'.

- 3.8.12. Agent is further satisfied that a justification test is not required and have prepared the flood risk assessment with a view to providing commensurate assessment of the risks of flooding, as set out in the Guidelines.
- 3.8.13. Overall the flood risk to the proposed site is low.
- 3.8.14. Two concrete attenuation tanks of 183 cubic metres and 335 cubic metres are being provided.
- 3.8.15. Private open space – there are 5 dwellings where the 11 m rear garden depth could not be achieved: 21, 22, 26, 27 and 28. Units 21 and 22 have one obscure glazed landing window at first floor level, and no risk of overlooking. The open space for both exceed minimum requirements. Units 26, 27 and 28 are single storey and face the side of unit 29, a similar type. The open space exceeds minimum requirement of 60 sq m.
- 3.8.16. Public open space – the scheme has been redesigned: the main space is slightly reduced to 1,097 sq m, the lesser is increased to 713 sq m – total 1,810 sq m which equates to 11.2%.
- 3.8.17. Re item 11 of the FI request – a geophysical survey has been carried out. The survey has revealed evidence for earlier agricultural activity, former field divisions some of which correspond with the location of field boundaries on the 6" mapping. Possible subdivisions have also been identified, although this is tentative. Possible trends indicative of ploughing activity may be associated with the field boundaries, this is speculative. A possible short ditched feature is of archaeological potential. Broad responses and disturbance within the north-western corner are typical of rubble or structural material and may be the remains of a former structure. Consultation with Department of Housing, Local Government and Heritage is recommended to establish if any additional archaeological works are required.
- 3.8.18. Re item 13 – the application has been amended to:
- 52 units:

36 no 3 bedroom, semi-detached, 2 storey units with floor space ranging from 98 – 106 sq m.

8 No. 4 bedroom semi-detached, 2 storey dwellings with floor space of 124 sq m.

7 No, 2 bedroom terraced single storey units of 66 sq m floor space.

1 No. detached 4 bedroom 2 storey unit of 124 sq m floor space.

The most noteworthy aspects are the decrease in terraced units from 48 to 7, the corresponding increase in semi-detached units from 6 to 44, and the inclusion of 1 detached unit.

### **3.9. Prescribed Bodies**

- 3.9.1. Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, 30 September 2021 – re archaeology having reviewed the Archaeological and Cultural Heritage Impact Assessment, and Geophysical Survey Report, there is still archaeological potential; recommending conditions.

## **4.0 Planning History**

None stated.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. Laois County Development Plan 2021 – 2027 is the operative plan. Relevant provisions include:

Aim 1: Provide for the growth of County Laois towards a target population of up to 89,790 by 2023, this to be structured in a balanced manner between the Principal Town of Portlaoise (up to 25,382) and the county balance (up to 64,408), encompassing: [i] the consolidation of the Key Service Town of Portarlington, [ii] the measured growth of the five Service Towns [Abbeyleix, Graiguecullen, Mountmellick, Mountrath and Stradbally], two Local Service Towns [Durrow, Rathdowney], and

villages of population not exceeding 800 and [iii] the maintenance of viable rural communities in the hinterlands of these towns and villages;

Table 5: Core Strategy Table includes for Mountmellick a requirement to 2023 of 27ha of residential land for an increase of 257 households.

DM03 Density of residential development - the number of dwellings to be provided on a site should be determined with reference to the document Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009). Within these Guidelines a range of residential densities are prescribed, dependent on location, context, scale and availability of public transport.

Mountmellick is a self sustaining town.

## **5.2. Mountmellick Local Area Plan 2018 - 2024 applies:**

Residential 1 – Existing Residential - Objective: To protect and improve the amenity of developed residential communities. Purpose: This zone is intended primarily for established housing development. It is an objective on land zoned for Residential 1 to protect established residential amenity and enhance the quality with associated open space, community uses and where an acceptable standard of amenity can be maintained, a limited range of other uses that support the overall residential function of the area, such as schools, crèches, small shops, doctor's surgeries, playing fields etc.

Residential 2 – New Proposed Residential - Objective: To provide for new residential development, residential services and community facilities.

Purpose: This zone is intended primarily for housing development but may include a range of other uses particularly those that have the potential to facilitate the development of new residential communities such as open space, schools, crèches, small shops, doctor's surgeries, playing fields etc. The improved quality of residential areas and the servicing of orderly development will be priority. New housing and infill developments should be of sensitive design, which are complimentary to their surroundings and do not adversely impact on the amenity of adjoining residents. No piecemeal development can take place unless it does not conflict with the possible future development of the reserved development areas of the town.



Open Space & Amenity Objective: To preserve, provide for and improve active and passive recreational open space. This zoning applies to a small portion of the development site, coinciding with the service corridor due north-west.

Purpose: The Council will not normally permit development that would result in a loss of open space.

### **5.3. Strategic Flood Risk Assessment**

- 5.3.1. A strategic flood risk assessment was carried out as part of the Mountmellick Local Area Plan 2018 – 2024.

It includes:

The recommendations proposed in this SFRA for dealing with flood risk in Mountmellick are based on the general policy approach to flood risk as well as national guidance based on best planning principles for managing flood risk:

Identify Flood Risk at an early stage in the planning process.

AVOID or minimise development in areas at risk of flooding.

Permit development in areas at risk of flooding ONLY where there is no alternative or reasonable site available in areas at lower risk.

Select an appropriate land use where development is necessary in areas at risk of flooding.

A precautionary approach to be taken to reflect uncertainties in flood datasets, to provide for climate change and performance of flood defenses. Development should be designed with consideration of possible future changes in flood risk including the effect of climate change.

Land required for current and future flood management e.g. Conveyance and storage of flood water and flood protection schemes should be identified and safeguarded from development.

Flood risk to, and arising from, new development should be managed through location, layout and design incorporating Sustainable Drainage Systems and compensation for any loss of floodplain should be compensated for elsewhere.

#### **5.4. Natural Heritage Designations**

- 5.4.1. The nearest Natura site is the River Barrow and River Nore SAC (site code 002162), located 175 m straight line distance, but in excess of 6.5km downstream.

#### **5.5. EIA Screening**

- 5.5.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### **6.0 The Appeal**

#### **6.1. Grounds of Appeal**

- 6.1.1. A third party appeal against the planning authority's decision to grant permission have been submitted by Michael Clear, Davitt Road Mountmellick.
- 6.1.2. The grounds include:
- The context is the existing Grange Hall Estate. The storm pipe network and foul sewer systems for the entire estate enters the appellant's property at the north-east end and traverses the full length of the property, entering Davitt Road directly outside the property, opposite both local primary schools.
  - These facilities were installed in June 2004 and planning permission and road opening permits had to be issued by Laois County Council at the time, however according to the Council, no such drawings or certificates exist.
  - The land survey document for the site identifies a leeway, but no compliance documentation can be furnished.
  - When the site surveys were being commissioned for the new development (subject site) this information was not included or considered.
  - Since installed, no maintenance of the pipes has been undertaken. Videos and photographs have been provided to Laois Co Co identifying the flooding

issue arising from these pipes and their inability to cope with the capacity of waters channelling through them.

- The property has a very low water table and the pipes are not sealed. Surface water drainage and other contaminants are leaking into the property. The pipes have contributed to the flooding that has occurred several times over the years.
- There are no ventilation pipes or stacks on the sewer or storm network.
- The original landowner of the Grange Hall estate and the landowner of the new development are the same persons. Common ground for both roads means that traffic and contamination entering the storm and sewer network will be multiplied by 5 or 6 fold; also construction contaminants.
- Following flooding in December 2015 IW and Laois Co Co installed return valves on storm/sewer pipes on the five original cottages on Davitt Road. These are not connected to the storm and wastewater services that flow through his site.
- Following severe flooding in 2017 a video was supplied to Laois Co Co showing the impact of the pipes. The house remains uninhabitable since then.
- The current Grange Hall's reliance on this pipe network, and by association and proximity the proposed development, has amplified concerns.
- Conditions which are worthy of review:
  - 10 (a) 'No part of the proposed development shall encroach, oversail or otherwise physically impinge upon any adjoining property save with the prior agreement of the owner(s) thereof'. This development will result in an indirect impingement owing to the risks outlined.
  - 5 (c) the proposed development shall not interfere with existing land or road drainage. This development in its current form will do so.
  - 3(b) 'Any necessary agreements are required to be in place prior to connection of the proposed development. The capacity requirements shall include the cumulative capacity required to provide for other proposed and consented developments in Mountmellick.' Grange Hall is an unfinished and

non-compliant estate and is being used as the conduit and crucial development for this proposed estate.

- As Grange Hall has not been taken in charge, permission for the demolition of an existing wall is questionable.
- One critical point arising from the original request for further information has not been addressed and should be further reviewed. Point 8 C drainage – the applicant was required to demonstrate that the existing drain network within the area has the capacity to cater for the additional loading generated by this proposed development; the five requirements to be addressed included local knowledge. Local knowledge was not accounted for in the response, sections of which are quoted.
- Regarding the reference to pluvial flooding in the Garland report, referencing the photographs of flooding supplied, they state that this pluvial flooding will not occur on the developed land thereafter. However ‘low’ this risk, it compounds the problem to his property.

## **6.2. Applicant Response**

6.2.1. Fewer Harrington & Partners have submitted the response on behalf of the applicant to the grounds of appeal, which includes:

- The foul network is not connected to the Grange Hall network and runs in the opposite direction.
- The storm network is not connected to the Grange Hall system and does not connect to the network beside the appellant’s house. It is completely independent and runs in the completely opposite direction and outfalls to an existing water course putting no additional pressure on the public storm drain. The storm network is designed in accordance with SUDS and Laois Co Co requirements.
- They request dismissal of the appeal.

6.2.2. Attached to the response is a letter from Garland Consulting Engineers, which includes:

- This development is not an extension of the Grange Hall Estate and is being constructed by a different developer.
- The storm network is not connected to the existing Grange Hall Estate stormwater network. It discharges to the existing open drain to the southeast of the development, in the opposite direction to Grange Hall / Davitt Road, following attenuation to greenfield runoff rate.
- The wastewater from the development is not discharging to Grange Hall Estate wastewater network. It discharges to the existing wastewater network, below Harbour St, north of the development away from Grange Hall / Davitt Road. The wastewater network below Harbour St, discharges to the existing Emmet Terrace / Connolly pump station. They will be upgrading the existing wastewater network below Harbour St at the request of Laois Co Co and IW to accommodate this development. At no point does the wastewater from the development discharge through the existing wastewater network adjacent to 5 Davitt Road.

## 7.0 **Assessment**

- 7.1. The issues which arise in relation to this appeal are: appropriate assessment, the principle of the development, land ownership, flood risk, sewerage, and the following assessment is dealt with under those headings.

### 7.2. **Appropriate Assessment**

- 7.2.1. A NIS has not been submitted with the application.
- 7.2.2. The proposed developed is within a zoned and serviced area. The outfall for the surface water drainage is via the Triogue River to the River Brosna. The nearest point of the discharge to the SAC is in excess of 6.5km downstream.
- 7.2.3. Flood Risk and sewerage are dealt with under separate headings later in this assessment.
- 7.2.4. Having regard to the nature and scale of the proposed development, I am satisfied that no appropriate assessment issues arise and it is not considered that the

proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

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

- 7.3.1. The subject site is zoned – Residential 1 - Existing Residential (a portion immediately north east of Grange Hall), Residential 2 - New Proposed Residential (the main part), and Open Space & Amenity (a portion along Grange Hall road and including the existing field entrance corridor); part of the site, that located in the field to the east of the main site, comprising a long narrow strip together with a small eastern extension of the site, is unzoned, being outside the development area of Mountmellick. Although the Local Area Plan states that the council will not normally permit development that would result in a loss of open space, the loss of open space is minimal and therefore the proposed development is acceptable in principle.

### **7.4. Land ownership**

- 7.4.1. The grounds of appeal states that the original landowner of the Grange Hall estate and the landowner of the new development are the same persons.
- 7.4.2. The only part of the Grange Hall development which is part of the subject land holding, currently, is the section of road and adjoining green areas between the houses at Grange Hall and the junction at Harbour Street. The remainder of the Grange Hall development, which is the main concern of the third party appeal, is not otherwise associated with the subject lands.

### **7.5. Flood Risk**

- 7.5.1. The grounds of appeal includes concerns regarding flood risk.
- The storm pipe network and foul sewer systems for the entire estate enters the appellant's property at the north-east end and traverses the full length of the property, entering Davitt Road directly outside the property, opposite both local primary schools.

- These facilities were installed in June 2004 and planning permission and road opening permits had to be issued by Laois County Council at the time, however according to the Council, no such drawings or certificates exist.
- The land survey document for the site identifies a leeway, but no compliance documentation can be furnished.
- When the site surveys were being commissioned for the new development (subject site) this information was not included or considered.
- Since installation no maintenance of the pipes has been undertaken. Videos and photographs have been provided to Laois Co Co identifying the flooding issue arising from these pipes and their inability to cope with the capacity of waters channelling through them.
- The property has a very low water table and the pipes are not sealed. Surface water drainage and other contaminants are leaking into the property. The pipes have contributed to the flooding that has occurred several times over the years.
- There are no ventilation pipes or stacks on the sewer or storm network.
- The original landowner of the Grange Hall estate and the landowner of the new development are the same persons. Common ground for both roads means that traffic and contamination entering the storm and sewer network will be multiplied by 5 or 6 fold; also construction contaminants.
- Following flooding in December 2015 IW and Laois Co Co installed return valves on storm/sewer pipes on the five original cottages on Davitt Road. These are not connected to the storm and wastewater services that flow through his site.
- Following severe flooding in 2017 a video was supplied to Laois Co Co showing the impact of the pipes. The house remains uninhabitable since then.
- The current Grange Hall's reliance on this pipe network, and by association and proximity the proposed development, has amplified concerns.

7.6. The river Owenass which flows through Mountmellick is a tributary of the River Barrow and is subject to flooding.

7.6.1. A Flood Risk Assessment was submitted in response to the request for further information. Figure 3 shows the site location in relation to the Owenass River and the

River Barrow and it can be seen that the surface water outfall is via tributaries of the Triogue River which joins the River Barrow in a rural area some distance downstream of the town.

- 7.6.2. The proposed development will not contribute to the flood risk the subject of the appellant's concern. Since the subject site is not reliant on the foul sewer or surface water sewer in Grange Hall, and will not contribute to the existing problem, flood risk should not be a reason to refuse or modify the proposed development.

## **7.7. Sewerage**

- 7.7.1. The proposed development is to discharge to the public sewer on Harbour Street.
- 7.7.2. Wastewater drawing K0563-GAR-XX-XX-DR-C-0020 Rev 03 indicates a point of connection to the existing mains sewer on Harbour Street. The existing wastewater pipe to be upgraded from 225mm to 300mm by IW. There is a pumping station at Connolly St. which may require upgrading to facilitate the proposed development.
- 7.7.3. The Civil Engineering Report accompanying the planning application states, in relation to foul drainage, that following on site reviews and discussions with Laois County Council the existing pipe below Harbour Street was deemed under capacity and upgrade works are required to upgrade the pipe from 225mm diameter to 300mm diameter to cater for the development. No upgrade works to the existing pump station are required. These matters will be further developed with Irish Water during the formal connection application process which requires a grant of planning permission to progress.
- 7.7.4. A letter from IW to the applicant dated 8<sup>th</sup> January 2020, was attached as appendix D of the 'Civil Engineering Report' and again in response to the clarification of further information request. It states that:

Based on the details provided in the pre-connection enquiry and on the capacity currently available in the network(s), as assessed by Irish Water, they advise that subject to a valid connection agreement being put in place, the proposed connection to the Irish Water network(s) can be facilitated.

It will be necessary to carry out further detailed studies and/or investigations to confirm the available capacity of P.S (pumping station) at Emmett Terrace /



Connolly WWPS (wastewater pumping station) to determine the full extent of any upgrades which may be required to be completed to Irish Water infrastructure, prior to agreeing to the proposed connection. For such studies and/or investigations to be progressed by IW the applicant will be required to enter into a Project Works Services Agreement. IW will also require them to contribute a relevant portion of the cost of works to achieve such upgrades.

They require all infrastructure to be designed and installed in accordance with the IW Codes of Practice and Standard Details and that the design be submitted to IW for assessment prior to submitting the planning application.

The correspondence does not constitute an offer.

- 7.7.5. Notwithstanding that the correspondence indicates that some of these matters should have been resolved prior to making the planning application, it appears that any capacity issues at the pumping station and any other infrastructural upgrades necessary to facilitate the connection can be carried out subject to apportioning costs.
- 7.7.6. A condition requiring these matters to be resolved to the satisfaction of the planning authority, prior to the commencement of development, is necessary to ensure clarity and compliance, however sewerage should not be a reason to refuse or modify the proposed development.

## **7.8. Other Issues**

- 7.8.1. The proposed development involves removing a large section of wall which currently forms the boundary between the Grange Hall estate and the adjoining field. The field access is currently located between the boundary along the side of No. 1 Harbour St and the wall bounding the Grange Hall estate. It is proposed to retain this boundary wall where it approaches Harbour St and to erect a second high boundary along the flank of No. 1 Harbour St, leaving the existing entrance as a walled enclosure with a gate at either end. This land is zoned open space. It is unclear what the intention is regarding this piece of ground. Having regard to the zoning and the fact that the proposed development involves the loss of some open space, it is considered reasonable to require that the existing boundary wall be removed in its entirety from the end of the first house in Grange Hall estate and that the area, at the junction,

between Grange Hall road, and the new boundary wall to the side of No. 1 Harbour St be developed as public open space.

## 8.0 Recommendation

- 8.1.1. In accordance with the foregoing I recommend that permission should be granted, for the following reasons and considerations and in accordance with the following conditions.

## 9.0 Reasons and Considerations

- 9.1.1. Having regard to the provisions of the Laois County Development Plan 2021 – 2027 and the Mountmellick Local Area Plan 2018 - 2024, it is considered that, subject to compliance with the conditions set out below, the proposed residential development, would not be at risk of flooding or contribute to flood risk on adjacent lands, would be adequately provided with public sewerage, would not unduly diminish the availability of public open space or seriously injure the amenities of the area, and would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 8<sup>th</sup> day of September 2021 and 19<sup>th</sup> day of November 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 or as otherwise stipulated by conditions hereunder, and the proposed development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.</p> <p><b>Reason:</b> In the interest of clarity.</p>
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2.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p><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>
3.	<p>a) Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each housing unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all residential units permitted to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each housing unit, it is demonstrated to the satisfaction of the planning authority that it has it has not been possible to transact each of the residential units for use by</p>

	<p>individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified residential units, in which case the planning authority shall confirm in writing to the developer or any person with an interest in the land, that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.</p> <p><b>Reason:</b> To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.</p>
4.	<p>Prior to commencement of development, the applicant shall submit a revised site layout for agreement in writing with the planning authority, showing the existing boundary wall removed in its entirety from the end of the first house in Grange Hall estate to Harbour St, and the area at the junction, between Grange Hall road, and the new boundary wall to the side of No. 1 Harbour St, developed as public open space.</p> <p><b>Reason:</b> To ensure satisfactory public open space provision.</p>
5.	<p>a) The developer shall enter into water and wastewater connection agreements with Irish Water and shall, prior to the commencement of development, submit to the planning authority for its written agreement: a connection agreement, confirmation of feasibility, and confirmation of agreement to drainage designs for wastewater from Irish Water; and confirmation of agreement to water supply design from Irish Water.</p>

	<p>b) Any necessary agreements are required to be in place prior to connection of the proposed development. The capacity requirements shall include the cumulative capacity required to provide for other proposed and consented developments in Mountmellick.</p> <p><b>Reason:</b> In the interest of public health.</p>
6.	<p>Surface /storm water drainage systems shall comply with the details submitted, and shall accord with the requirements and specifications of Laois County Council.</p> <p>b) the proposed development shall not interfere with existing land or road drainage.</p> <p>d) Precise details of the surface water attenuation system shall be submitted for the written agreement of the Planning Authority prior to commencement of development. the system shall provide for concrete type tanks only.</p> <p><b>Reason:</b> To ensure satisfactory storm / surface water drainage in the interests of proper planning and sustainable development.</p>
7.	<p>Details of boundary treatments, for the perimeter of the site including the side boundary of No. 1 Harbour St, and for individual sites shall be submitted, for the written agreement of the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of visual and residential amenity.</p>
8.	<p>Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>

9.	<p>The site shall be landscaped in accordance with a detailed scheme of landscaping, to be submitted, for agreement in writing with the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of amenity.</p>
10.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.</p> <p><b>Reason:</b> In the interests of visual and residential amenity.</p>
11.	<p>The site works including roads and footpaths shall be constructed at least to the construction standards set out in the section 2 of “Recommendations for Site Development Works for Housing Areas” issued by the Department of the Environment and Local Government in November 1998.</p> <p><b>Reason:</b> To ensure that the development is carried out and completed to an acceptable standard of construction.</p>
12.	<p>Lighting proposed shall be LED technology lights with minimum 10 year warranty. Lighting levels to conform to IS EN 13201.</p> <p>Any external lighting shall be cowled and directed away from the roadway and adjoining properties.</p> <p>Applicant shall consult with the ESB prior to commencement of development.</p> <p><b>Reason:</b> In the interests of safety and residential amenity.</p>
13.	<p>A minimum of 10% of all car parking spaces shall be provided with EV charging stations/points, and ducting shall be provided for all remaining car</p>

	<p>parking spaces to facilitate the installation of EV charging points/stations at a later date.</p> <p><b>Reason:</b> To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles.</p>
14.	<p>The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,</p> <p>(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and</p> <p>(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p><b>Reason:</b> In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.</p>
15.	<p>Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the</p>

	<p>developer has obtained the planning authority's written agreement to the proposed name(s).</p> <p><b>Reason:</b> In the interest of legibility and to ensure the use of locally appropriate place names for new residential areas.</p>
16.	<p>Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.</p> <p><b>Reason:</b> In the interest of sustainable waste management.</p>
17.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:</p> <ul style="list-style-type: none"> <li>a) Location of the site and materials compound including areas identified for the storage of construction refuse;</li> <li>b) Location of areas for construction site offices and staff facilities;</li> <li>c) Details of site security fencing and hoardings;</li> <li>d) Details of on-site car parking facilities for site workers during the course of construction;</li> </ul>



	<p>e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site.</p> <p>f) Measures to obviate queuing of construction traffic on the adjoining road network;</p> <p>g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;</p> <p>h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any road or footpath during the course of site development works;</p> <p>i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;</p> <p>j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;</p> <p>k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil.</p> <p>l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.</p> <p>m) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.</p> <p>n) Proposals to make good any damage to existing roadways.</p> <p><b>Reason:</b> In the interest of amenities, public health and safety.</p>
18.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.</p>

	<b>Reason:</b> In the interests of visual and residential amenity.
19.	<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, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The 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>
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</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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Planning Inspector

12 July 2022

Appendix 1 Photographs.

Appendix 2 Laois County Development Plan 2021-2027 extracts.

Appendix 3 Mountmellick Local Area Plan 2018- 2024 extracts.