



An
Bord
Pleanála

Inspector's Report ABP-313173-22

Development	Construction of 99 residential units and a creche.
Location	Rathevan, Portlaoise, Co. Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	21496
Applicants	Thomas Kelly & Sons Group Ltd
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellants	Tony Duncan and others Rossdarragh Ratheven Residents Group and others Dr Thomas H McDonagh Dr John M D Browne
Observers	David Goggin & others
Date of Site Inspection	31 January 2023
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1.2. The site is located in the townland of Rathevan, Portlaoise, Co. Laois at the north-eastern end of the extended town, in an area of urban expansion comprised mainly of residential development. The site is part of a large field, one of two interconnected fields in the same ownership. To the west and south west are large areas of recently constructed low rise, low-density, mainly semi-detached two storey houses known as Ratheven and Rosdarragh. Farther to the south-west is the recently developed Portlaoise Secondary Schools campus (Scoil Chriost Rí and St Mary's CBS) on Borris Road. To the north and north east there are single one off houses on large sites along rural roads, two bounding the immediate site on the Shaen Road. North west is The Hermitage, an area of recently constructed low rise, low-density, semi-detached and terraced two storey houses and detached single storey houses. To the south is Kilminchy, a large area of recently constructed low rise residential development of detached, semi-detached and terraced dwellings and apartments. To the east is agricultural land. The subject site is also currently in agricultural use. At the north eastern corner of the site, outside the delineated boundary but partly within the landholding, there is a small lake known as Red Lough. On the date of inspection the laneway access in the vicinity of the lake was flooded.
- 1.1.3. Portlaoise town centre is 2.7km south-west.
- 1.1.4. The Board has before it appeals against two planning authority (PA) decisions in relation to sites in Kilminchy to the south: 301709 and 313771, where issues raised include foul and surface water servicing.
- 1.1.5. The site slopes down from north to south by 9.5m.
- 1.1.6. The site is given as 4.6ha.

2.0 Proposed Development

- 2.1.1. The proposed development, (per application lodged 9th July 2021), is the construction of a residential development comprising a total of 99 no. residential units and a crèche.
- 2.1.2. The schedule of residential accommodations is given in the notices as:
- 4 no. 2-bedroom back-to-back duplex apartments;

10 no. 2-bedroom semi-detached dwellings;
14 no. 3-bedroom semi-detached dwellings;
5 no. 3-bedroom detached dwellings;
4 no. 3-bedroom staggered townhouses;
20 no. 3-bedroom terraced townhouses and
42 no. 4-bedroom semi-detached dwellings.

2.1.3. The development includes:

A total area of 0.4 hectares provided for the purposes of public open space which equates to 12% of the net site area with a multi-use games area.

The construction of a new distributor road adjoining the existing Rathevan link road at the north west of the site (with potential future link provided to the Portlaoise Northern Orbital Route), internal access roads; pedestrian footpaths; pedestrian crossing points; cycle lanes; along with a future bus corridor / bus gate route.

New storm water connections located at the existing Rathevan link road and at the south west corner of the site. New connection to the existing public foul network located at the south west corner of the site.

A total of 212 no. parking spaces and 211 no. cycle parking spaces (all surface level); of these spaces, 13 no. car spaces are provided for the crèche.

All site landscaping works; electricity substations; boundary treatments; planting; lighting; servicing; signage; surface water attenuation; bin storage; associated site development above and below ground, and ancillary works.

2.1.4. The application is accompanied the following documents:

Architectural Design Statement,
Traffic Impact and Transport Assessment Report,
Hydrogeological Report,
Stormwater Discharge Assessment,
Foul and Surface Water Drainage & Water Supply Report,
Landscape Design,
Archaeological Impact Assessment,

Building Lifecycle Report,
Computer Generated Images,
Ecological Impact Assessment,
Appropriate Assessment Report and NIS,
Construction Demolition & Waste Management Plan,
Construction Traffic Management Plan,
Road Safety Audit, and a
Planning Report

A Letter of consent and a Letter from Irish Water (IW) re pre-connection enquiry are also provided.

2.1.5. The applicants Planning Report includes:

Proximity to Scoil Chríost Rí and St Mary's CBS. The proposal provides a Distributor Link Road and future opportunities to link the surrounding road network to the planned Portlaoise Northern Orbital Route.

The site is part of a Masterplan.

Pre-planning meetings are referred to:

13th January 2021; 22nd January 2021, 12th February 2021 and 2nd March 2021; some of which included representatives from Irish Water. The need for the upgrade of a section of pipework along Collier's Lane and additional storage at the pumping station location was discussed.

The connection point for the surface water drainage infrastructure is downstream of Kilminchy lakes. Rainwater falling onto roofs of dwellings will be directed towards individual soakaways provided to the rear gardens of each dwelling.

The proposed creche is adjacent to Red Lough. Careful regard has been given to the potential impacts, and measures are set out to ensure the protection of the Red Lough applying the precautionary principle. The site is located within the Portlaoise Aquifer Protection Zone which provides the public water supply for the greater Portlaoise and Mountmellick area. The Red Lough is a naturally occurring water body which is located at the northern site boundary. Approximately one third of the

surface area is within the subject site and two thirds within the adjacent residential plots.

The reports/ assessments prepared provide information pertaining to Red Lough, rated as of local importance (lower value) and no rare, protected or threatened species of flora is known or likely to occur. There is no water source evident that recharges the lough.

Without the monitoring of water levels and water quality, it is not possible to determine the exact nature of the Red Lough, nor the source of recharge.

There will be no discrete discharge or interaction with Red Lough as part of the proposed development. There will be no discharge of foul waters to Red Lough. Rainfall run-off adjacent to the lough will be captured within storm water drainage system. It is proposed to excavate ground adjacent to the lough's perimeter. As set out within the Construction Demolition & Waste Management Plan prepared by Thomas Kelly & Sons Group, in order to ensure existing water quality in nearby watercourses/sources (including Red Lough) is maintained, an adequate level of appropriately located silt fencing will be erected and maintained as a protective measure during the construction phase. Steel estate railing is proposed to be erected around the perimeter of the lough that will ensure an appropriate boundary treatment, while preventing any interaction with and eliminating risk to the lough on the site side.

Surface water drainage – it is proposed to collect the surface water run-off from the proposed development in an underground surface water network. This network will collect the stormwater generated by the road network and direct it towards a discharge point to the existing storm water pipe to the south west via a new attenuation tank, located within the green space area of the site. A stormwater Discharge Assessment for the proposal has been prepared by JBA Consulting. The assessment sets out that post-development, the discharge rate from the site will be restricted to 21L/sec for all storm events which represents a 68% reduction in the maximum rate at which water is conveyed from the site, and is considered a substantial reduction on current discharge rates for various storm events. The rate of discharge from the site will be controlled by Hydrobrake and much reduced which will alleviate pressure on downstream infrastructure.

Foul Sewer – it is proposed to lay a new foul gravity system to serve the entire development area. Approximately half of the site will drain by gravity to the existing public foul drainage network towards the south west corner of the site. It is proposed to collect the foul flow generated by the development in a new, underground gravity network which will discharge towards the south west corner of the site. From here, it will connect to the foul sewer located in the adjacent residential scheme which has been taken in charge by the Local Authority. This foul network eventually discharges to the foul public sewer located on the Dublin Road, which discharges to the existing wastewater treatment plant currently serving the Portlaoise area. The connection to the public foul sewer will be via a crown-to-crown connection facilitated through a new manhole constructed on the public network.

Refusal reason no. 8 of the previous application, reg. ref. no 10/569 (PA's decision. The board's refusal omitted this reason):

when considered in the absence of the Portlaoise Northern Orbital Route and having regard to the inadequate capacity of the proposed entrance at Rathevan/Rossdarragh, the existing inadequate traffic arrangements at this area, the inability to cater for existing traffic and the additional traffic movements arising from this development which would occur on the road network including the existing Hermitage roundabout, it is considered that the current development is premature pending the upgrading of the Rathevan/Rossdarragh access arrangements and/or the provision of the PNOR in its entirety.

This refusal reason has since been overcome with the provision of upgrade works as part of the Part 8 Borris Road realignment and Colliers Lane/Dublin Road junction improvement scheme.

2.1.6. The Hydrogeological Report, prepared by Golder Associates includes:

GSI vulnerability mapping is presented in Drawing 3 of Appendix A. Groundwater vulnerability at the site has been defined by GSI as 'high' in the west and 'moderate' in the east. This will largely be determined by the presence of limestone derived till in the east and sand and gravel deposits indicated to the west of the site. If proven to be a karstic feature and spring water fed, the area of Red Lough to the north should be considered 'extreme' due to the aquifer being directly exposed to surface influences.

The following receptors have been identified as potentially at risk from proposed activities at the site:

Groundwater of the Allenwood formation, which contributes to the public supply wellfields located 1km north-east of site located within a Source Protection Zone.

The Red Lough water feature located immediately beyond the northern boundary, and

The Rathevan stream and downstream receptor River Barrow and River Nore SAC.

Potential impacts:

Construction phase impacts:

Earthwork activities,

Construction,

Installation of associated underground services, and

Installation of footpaths, roadways and car parking facilities.

From:

Increased runoff and / or sediment loading of surface waters caused by the removal of vegetation,

Changes in surface water runoff direction and increased runoff and/ or sediment loading of surface waters due to changes in topography,

Pollution of surface water and groundwater from waste generated by temporary toilet facilities,

Pollution of surface water and groundwater from waste generated by uncontrolled material storage,

Potential to mobilise contaminants associated with any unidentified buried septic or storage tanks associated with former agricultural use,

Alteration of groundwater and surface water chemistry due to the introduction of materials such as bitumen and concrete,

Hydrocarbon contamination of surface water or groundwater caused by the unmanaged spillage of fuels or lubricants from site plant or vehicles used during construction,

Introduction of contamination via imported backfill to the site,

If hydro-geologically connected, potential point source contamination of groundwater via the Red Lough or contamination of Red Lough via groundwater.

Operational phase impacts:

Vehicular movements and parking,

Residential living activities (eg gardening, sewage / wastewater production),

Offsite discharge of storm waters captured via the on-site drainage system (reported to ultimately drain downstream to the Ratheven Stream),

From:

If hydro-geologically connected, potential point source contamination of groundwater via the Red Lough or contamination of Red Lough via groundwater,

Increased runoff and / or sediment loading of surface waters caused by covering the site ground surface with impermeable or semi-permeable material,

Reduction of recharge to the underlying aquifer system by covering the site ground surface with impermeable or semi-permeable material, (however the masterplan for the site footprint covers less than 0.1% of the source protection zone, and any impacts upon recharge are likely to be negligible),

Contamination of surface water and / or groundwater via accidental spillages or leaks of domestic related wastes or materials (including hydrocarbon spillages from parked cars),

Contamination of groundwater via leakage of pipes carrying domestic sewage, and

Pollution of public and private water supplies via contamination of groundwater.

Design Considerations and Mitigation Measures:

Drainage interceptor systems,

The proposed design predominantly follows the existing contours of the site with minimal recontouring of the site topography,

The majority of earthworks are not anticipated to exceed 3m BGL with most concrete foundations and drainage infrastructure to be installed at shallower depths,

Historical groundwater information (sec 2.4.4) anticipates groundwater would be encountered at an approximate depth of 4.5m bGL and is therefore not anticipated to be encountered during the works,

Should groundwater be encountered during the construction phase, any dewatered groundwater encountered will be assessed for visual or olfactory signs of contamination (eg oily slick or foul odour). If observed to be clean, the water will be allowed to infiltrate back to ground adjacent to the excavation. If contaminated, the water will be discharged via the interceptor system.

The design does not include any deep trench runs located adjacent to the Red Lough and therefore is not anticipated to dewater the feature, and

The design is such that, where possible, rainwater will be captured and allowed to infiltrate to ground. Only concrete roads and footpaths will be positively drained.

Mitigation during construction is listed in 3.3.3 of the report.

Mitigation during construction is listed in 3.3.4 of the report.

Impact following mitigation is listed in table 3, of the report.

Noting that uncontrolled use of materials associated with domestic activities (eg pesticides) still remain, dilution within the aquifer beneath the site is likely sufficient to reduce the impact of any small-scale domestic spills on the quality of the Red Lough to minimal. The contribution of the aquifer, located under the footprint of the site, to the overall aquifer volume and source zone for public supply, is considered to

be extremely small and any impact upon groundwater quality at the public supply well, to be minimal.

2.1.7. The letter from Irish Water (IW) re. pre-connection enquiry, includes:

- IW advises that connections to its network can be facilitated. In the case of water no upgrade is required.
- 'Wastewater connection is feasible subject to upgrade. The sewer network upstream of the Borris Road pumping station does not have the capacity for the additional discharges associated with this development. In order to facilitate this connection it will be necessary to carry out works to the wastewater network upstream of this pumping station to remove stormwater and infiltration and offset the impact of this development. Should you proceed with this connection, IW will carry out these storm separation works and the cost of these will be included in your connection agreement.'

2.2. The Screening Report & Natura Impact Statement Information for Stage 1 Screening & Stage 2 Appropriate Assessments, prepared by Minogue & Associates Environmental Consultancy, includes:

It identifies the potential for effects on the River Barrow and River Nore SAC, in the absence of mitigation.

Mitigation measures are set out.

Measures to protect surface water quality and groundwater quality during construction:

A project-specific Construction Stage Environmental Management Plan (CSEMP) will be prepared prior to construction. It will cover all potentially polluting activities and include mitigation measures for critical elements such as storage and handling of harmful materials. These mitigation measures will be incorporated into the CSEMP and implemented on site by the contractor. The list of best practice guidelines which will be followed is given in section 6.1.4 of the Natura Impact Statement.

The construction contractor will be required to implement the following specific mitigation measures, all of which will be incorporated into the CSEMP:

The petrol interceptor system is to be installed as one of the priority works during the start of the construction phase. Once installed, any captured surface water will be discharged via this interceptor system.

It is not anticipated that there will be a need for dewatering during the construction phase due to the fact that all designed construction activities are planned to be carried out in the unsaturated zone. However, should a need for groundwater dewatering be encountered during construction, the groundwater will be discharged via the interceptor system.

Should groundwater be encountered during the construction phase, any dewatered groundwater will be assessed for visual or olfactory signs of contamination (e.g. oily slick or foul odour). If observed to be clean, the water will be allowed to infiltrate back to ground adjacent to the excavation. If contaminated, the water will be discharged via the interceptor system. This will result in the separation of sediment and other contaminants from the water prior to its discharge, and will ensure that the water is of adequate quality before it enters the surface water drainage system.

The site will be engineered to ensure that there is no direct overland run-off of water or sediment to the Ratheven Stream. This may require the installation of a perimeter swale during the construction phase in order to ensure no run-off of surface water or sediment reaches this receptor. It is noted that there is a residential estate located between the site and the Ratheven Stream, which would act as a partial buffer to some impacts (e.g. via installed surface water collection systems).

All refuelling of plant or vehicles will be carried out off-site, or within designated refuelling areas, installed with hydrocarbon interceptors to capture any spillages. All fuel containing equipment such as portable generators shall be placed on drip trays. Care and attention should be taken during refuelling and maintenance operations. Particular attention should be paid to gradient and ground conditions, which could increase risk of discharge to waters.

All plant will be parked in designated areas, installed with hydrocarbon interceptors; or spill trays will be placed under the plant, in order to capture any spillages.

All plant and machinery will undergo regular maintenance in order to reduce the risks of leaks.

All hazardous material will be stored in designated secure bunded areas, installed with chemical interceptor, or spill trays will be placed under the materials, in order to capture any accidental leakages or spillages during storage. This will prevent any seepage of potential pollutants into the surface water network or groundwater. These designated areas will be clearly sign-posted and all personnel on site will be made aware of their locations and associated risks. All fuels and chemicals required to be stored on-site will be clearly marked.

All temporary toilet facilities will be located in designated areas, installed with interceptors or hardstand bunding in order to capture any accidental leakage or spillage of sewage.

All stockpiles of soil will be covered in order to reduce the risk of erosion by wind or rain.

The use of bitumen, cement and wet concrete will be carried out in the unsaturated zone, and use within or adjacent to exposed areas will be carefully controlled.

All bitumen paving or concrete installations will be carried out in accordance with the relevant existing Irish standards and guidance.

All backfill imported to the site will be uncontaminated and in line with the relevant Irish standards and guidance.

All stripping of topsoil and surface materials will be kept to a minimum to avoid reducing the thickness of the unsaturated zone.

Weather conditions will be taken into account when planning construction activities to minimise risk of run-off from the site.

A register of all hazardous substances, which will either be used on site or expected to be present (in the form of soil and/or groundwater contamination) will be established and maintained. This register will be available at all times and shall include as a minimum:

- Valid Safety Data Sheets;

- Health & Safety, Environmental Controls to be implemented when storing, handling, using and in the event of spillage of materials;

- Emergency response procedures / precautions for each material; and

- The personal protective equipment required when using the material.

Implementation of response measures to potential pollution incidents.

Robust and appropriate spill response plan and environmental emergency plan will be prepared prior to works commencing and they will be communicated, resourced, and implemented for the duration of the works. Emergency procedures/precautions and spillage kits will be available, and construction staff will be trained and experienced in the emergency procedures to apply in the event of accidental fuel spillages.

All trucks will have a built-on tarpaulin that will cover the excavated material as it is being hauled off-site, and wheel wash facilities will be provided at all site egress points.

Water supplies will be recycled for use in the wheel wash. All waters will be drained through appropriate filter material prior to discharge from the construction site.

Implementation of measures to minimise waste and ensure correct handling, storage and disposal of waste (most notably wet concrete, pile arisings and asphalt).

Provision of exclusion zones and barriers (e.g. silt fences) between earthworks, stockpiles and temporary surfaces to prevent sediment washing into the drainage systems and hence downstream receiving water environment.

Specific measures to prevent the release of sediment, over baseline conditions, to the Ratheven Stream (a tributary of the River Triogue, which in turn is a tributary of the River Barrow) via the surface water drainage system, during the construction work, which will be implemented as the need arises. These measures include, but are not limited to, the use of silt fences, silt curtains, settlement lagoons and filter materials.

Prevailing weather and environmental conditions will be taken into account prior to pouring of cementitious materials for the works adjacent to any surface water drainage features, or drainage features connected to same. Pumped concrete will be monitored to ensure no accidental discharge. Mixer washings and excess concrete will not be discharged to surface water drainage systems. Concrete washout areas will be located remote from surface water drainage features, to avoid accidental discharge to watercourses. Washing out of any concrete trucks on site will be avoided (dry brush chutes will be used instead).

All of the above measures implemented on site will be monitored throughout the duration of construction to ensure that they are working effectively, to implement maintenance measures if required/applicable and to address any potential issues that may arise.

Measures to protect surface water quality and groundwater quality during operation:

All surface water run-off will be drained via the proposed surface water drainage system, where it will pass through a petrol interceptor system prior to discharge off-site.

Accidental spillages of fuel and oils from vehicles parked on impermeable material will be captured as run-off to the above described surface water drainage system and petrol interceptor.

There will be no discharges of sewage or domestic waste water to the underlying geology. All wastewaters and sewage waste will be captured and processed via the foul water drainage system.

Regular maintenance of the surface water and foul water drainage system will be carried out in order to ensure they are kept in good working order to ensure the risk of leakage from these systems to the underlying aquifer is minimised.

Regular maintenance and silt clearance of the petrol interceptor system will be carried out in order to ensure they are kept in good working order and can achieve the required mitigation.

There will be open space areas where groundwater recharge will be possible, eg. gardens, open grassed areas etc. Rainwater captured from roofs and collected via the drainpipe will be discharged to ground via soakaway pit installed in the garden of each residential property.

Residual Impacts:

There are no residual impacts that affect the integrity of the River Barrow and River Nore SAC.

In-combination assessment

None of the potential impacts associated with the proposed development will result in any perceptible residual effect on the receiving environment. Any plan or existing / proposed project that could potentially affect the River Barrow and River Nore SAC,

in -combination with the proposed development must adhere to the overarching environmental protective policies and objectives of the relevant land use plans. These will ensure the protection of European sites across all identified potential impact pathways and will include the requirement for any future project to undergo screening or appropriate assessment. There is no potential for adverse in-combination affects.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decision, dated 16th March 2022, was to grant permission subject to 20 conditions, including:

2 a) this permission is for a creche in Zone 1 and 64 no. residential units in Zone 2 (nos 27-50 inclusive, 57-71 inclusive, 1-26 inclusive).

b) the remainder of the development, comprising 35 no. units in zones 3 and 4, is not permitted.

c) zones referenced above are as indicated in Drg PP04 A1 Rev 0, received on 09/07/2021.

d) A site layout to this effect shall be submitted for the written agreement of the planning authority prior to commencement of development.

Reason: Development to the extent of the kind proposed in the submitted application would be premature by reference to the order of priority, if any, for development indicated in the development plan, in the interests of the proper planning and sustainable development of the area.

3) - compliance with part V.

4) restricting first occupancy to individual purchasers.

5) and 6) connection agreements from Irish Water.

7 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 in relation to location, capacity, 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 the commencement of development. The system 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.

8) external finishes.

9 a) public lighting in the development shall be LED technology luminaries with minimum 10 year warranty. Lighting levels to be in accordance with IS EN 13201.

b) Developer is required to consult with ESB regarding any overhead power line prior to the commencement of any work on this development.

c) any external lighting shall be cowled and directed away from the public roadway and adjoining properties.

10) waste management during construction.

11 a) No part of the proposed development shall encroach, oversail or otherwise physically impinge upon any adjoining property save with the prior written agreement of the owner(s) thereof.

b) All public and private property shall be adequately protected at all times particularly during demolition and construction works.

c) Any damage caused to the adjoining public thoroughfare shall be made good at the developer's expense to the satisfaction of the planning authority.

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

12 a) to g) boundaries and planting.

13) open space.

14) car parking and bicycle parking.

15 a) site works shall be in accordance with the Department of the Environment document 'Recommendations for Site Development Works for Housing Areas'. Traffic signage shall be provided in accordance with the requirements of 'Traffic Signs Manual', Department of Transport. Manholes shall be constructed in accordance with Laois County Council's document 'Code of Practice for Chamber & Gully Top Installations'.

b) The developer shall ensure that the internal road network serving the proposed development including turning bays, junctions, parking areas, crossings, footpaths, cycleways and kerbs shall comply with the standards contained in the Department of Environment, Community and Local Government document 'Design Manual for Urban Roads and Streets', (DMURS).

c) The tie-in of the proposed access road and footpaths serving the proposed development and the adjoining infrastructure shall be to the satisfaction of the planning authority and Road Design Section with whom precise details shall be agreed in writing prior to commencement of development.

d) The design of the south eastern ends of the two internal access roads and footpaths extending south-eastwards shall be submitted for the written agreement of the planning authority and Road Design Section prior to commencement of development.

e) pavement, road and raised table finishes shall be impermeable. As a result of this requirement to change permeable paving to impermeable paving, the developer shall recalculate the attenuation volumetric requirements, revising plans and particulars accordingly. Precise details shall be submitted to the planning authority prior to commencement of development.

f) precise details in relation to location and design of bin collection storage points shall be submitted for the written agreement of the planning authority and Road Design Section prior to commencement of development.

16) electrical and cabling to be underground.

17) a security of €6,500 per house.

Reason: To ensure the satisfactory completion of this development and in the interests of residential amenity and proper planning.

18) naming and numbering.

19) Archaeology.

20) Development Charge.

3.2. Planning Authority (PA) Reports

3.2.1. Planning Reports

3.2.2. The first planning report, 27th August 2021, recommending further information on 17 items includes:

Noting the Residential 2 zoning.

Noting compliance with development plan standards. Noting compliance with SPPRs except SPPR 5, the requirement for minimum ground floor, ceiling height of 2.7m.

Access is to be from an estate road in Rosdarragh which joins the Borris Road, c 250m due south-west. Borris Road, county primary road L-2133, is the key urban route in this part of Portlaoise. From the access point in the north-western curtilage of the site, a distributor road will extend initially north-eastwards and then south-eastwards along the outer perimeter of the site. A series of internal access roads will run south-westwards from the distributor road. The distributor road also provides a future link to the planned Portlaoise Northern Orbital Route (PNOR) located further to the north of the site.

Development of the PNOR is included as an objective in the Portlaoise LAP 2018-2024. There is no provision for vehicular or pedestrian connectivity to Kilminchy at the end of the distributor road in the south-east corner of the site curtilage.

A potential bus corridor permeability point is indicated.

Irish Water (IW) – no report received since the planning application was made. A copy of correspondence between the applicant and Irish Water dated 19th June 2021 has been submitted by the agent. In it IW advises that connections to its network can be facilitated. In the case of water no upgrade is required. In the case of foul water, upgrades are required upstream of the Borris Road pumping station.

Foul sewer connection – to Dublin Rd (as stated) or to network upstream of Borris Road pumping station (per Irish Water correspondence).

If the applicant is proposing to install soakaways in the rear garden areas of all the individual housing units, the applicant shall submit separate individual soil infiltration tests and submit a soakaway design calculation for each individual site in accordance with BRE Digest 365.

3.2.3. Other Technical Reports

3.2.4. Municipal District, 3rd August 2021 – re. discrepancies in drawings, road safety audit, signage, crossings, and road opening licence.

3.2.5. HSE – EHO, 29th July 2021 – conditions.

3.2.6. CFO, 23rd July 2021 – conditions.

3.2.7. Housing & Urban Regeneration Dept Water Services & Rural Water, 22nd July 2021 – part V condition.

3.3. **Further Information (FI)**

3.3.1. A FI request issued 1st September 2021, on 17 items, including:

Infrastructural area, explain the term.

Open space standards.

Apartment standards.

Geophysical survey.

Traffic calming.

Pedestrian crossing.

Stage 2 Road Safety Audit.

Electric Vehicle Charging Points.

Parking.

Open Space – Park area – furniture.

Pavement, Road & Raised Table finishes.

Permeability.

Public transport.

Congestion.

Surface water drainage – PA can accept a concrete tank or stormtech system; where individual soakaways are proposed tests separate individual infiltration tests

for each individual site required, in accordance with BRE Digest 365, (2 were carried out for the entire development). Noting flooding within Kilminchy housing development during extreme wet weather.

Foul Drainage – re. statement ‘discharge to foul sewer on Dublin Road’ and IW statement that discharge is to system upstream of Borris Road pumping station, clarify.

Respond to third party submissions.

3.3.2. A FI response was received, 18th February 2022, including:

‘Infrastructural area’, includes attenuation, underground foul and surface water drainage connections, this area is fenced off and not accessible to future residents. It is not used for the calculation of public open space.

Private open space for apartments – drawing showing open space for apartments, from 44 sq m to 82 sq m, which exceeds the 7sq m requirement.

Apartment standards – floor to ceiling height increased to 2.7m.

Geophysical survey – survey provided.

Traffic calming – additional traffic calming measures/ramps included.

Pedestrian crossing – New controlled pedestrian crossing proposed.

Stage 2 Road Safety Audit – provided.

Electric Vehicle Charging Points – 10% functioning unit locations and ducting to all units.

Parking – locations of proposed visitor parking spaces – 7 additional spaces shown.

Open Space – park area, furniture – shown.

Pavement, Road & Raised Table finishes – currently the raised tables are indicated as being finished with paviers, however should Laois County Council (LAA) Roads Department have a preference for imprinted asphalt, that can be provided in lieu.

Permeability – the spine road will terminate at the boundary, as this is the extent of ownership of the applicant. The intention is to provide a bus gate barrier to allow public transport and adequate space for pedestrians and cyclists to pass each way. Existing roadway adjoining is not yet in charge.

Public transport – the proposed spine roadway has been designed to accommodate a town bus type service. There are no single dwelling access points. All access will be in forward gear at appropriate spacing for a residential dwelling. The spine road

was discussed at pre-planning. In the spirit of DMURS the streetscape, with houses facing north east, was discussed. This is a residential neighbourhood link road and designed as a self-regulating street, with an active street edge and a strong sense of place. The proposed arrangement will strike the right balance.

Congestion – the development will not have a significant impact on the Dublin Road / Colliers Lane roundabout. LCC have a part 8 granted for a roundabout upgrade. The development contributions will contribute proportionately.

Surface water drainage – noting the acceptance of stormtech; no individual soakaways are now proposed. The attenuated stormwater will discharge downstream of the Kilminchy Lake system and outfall.

The proposed attenuated stormwater outflow for the proposed development is discharged downstream of the Kilminchy lake system and has no bearing on the flow or levels within lake system. It will not require any increase in capacity to the current Kilminchy lake attenuation system. Laois County Council have undertaken works on the Kilminchy lakes over the past year or so, in respect of raising the lake banks to prevent the occasional overtopping of banks which occurred there previously.

Foul Drainage is discharging to existing public foul sewer in the adjacent Rosdarragh estate. This is the agreed location for discharge per the IW confirmation of feasibility. This is served by the Borris Road pumping station downstream.

Third party submissions – many observations refer to the proposed development being premature and there being inadequate capacity within the wastewater treatment system. Pre-planning meetings and confirmation of feasibility is referred to.

Kilminchy Lakes and related issues – this issue is unrelated to the proposed development.

Red Lough – reports are referred to.

Traffic congestion at school campus – report is referred to.

Archaeology - report is referred to.

Access through laneway from Derrygarron Road to the north east: the proposal has been amended to remove the access via the current agricultural entrance.

3.4. Further Reports

3.4.1. Water Services, 11th March 2022 – conditions.

3.4.2. Housing & Urban Regeneration Dept. Water Services & Rural Water, 24th February 2022 – condition.

3.4.3. Roads Design, 2nd March 2022 – clarification of FI:

Increased attenuation.

All ducting and EV charging points to be in areas to be taken in charge.

Only 4 additional visitor spaces proposed, revisions invited.

Confirm finishes.

Public transport response is not acceptable. Show official bus stop location to National Transport Authority specification, details to include castle kerbing, signage, drop kerbing and facilities for ambulant people etc.

Re. the request for a study of traffic improvements, to reduce disproportionate queues and consider the option of providing a signalised junction, pedestrian movements to be considered in the analysis; no study has been provided.

Bin collection points - Roads Design request suitable bin storage points that include contained areas that will prevent bins being blown over.

3.4.4. Municipal District, 3rd March 2022:

One sign is not in accordance with Dept of Transport Signs Manual.

Additional road crossings required.

An additional traffic calming ramp required.

Details required of termination of cycleway/footpath and links at the site boundary into the adjoining access roadway.

Fixed bollards required on road sections.

Stage 3 Road Safety Audit to be submitted on completion.

Road opening licence: prior to commencement of works at L-81030-3 to form new entrance and link and on the public road to provide for service connections.

3.4.5. Final planning report, 16th March 2022 – re zoning, when the application was submitted the development site was zoned in its entirety as 'residential 2 – new proposed residential' in the 2018-2024 LAP. Arising from the terms of the draft

direction, 7th March 2022, relating to the making of the Laois County Development Plan 2021-2027, a significant portion of the southern end of the development site is now considered to be not zoned for residential development; 35 no. residential units would be impacted as a result.

The majority of the proposed development is not impacted by the Draft Direction. The density is 23.52 units per hectare or 9.5 units per acre. By today's evolving density standards, that would not be considered excessive.

Taking everything into account including the advice from IW, permission is recommended.

3.5. Prescribed Bodies

- 3.5.1. DAU, 16th August 2021 – archaeology – previous unknown burials were uncovered during construction works in an adjacent development; geophysical survey recommended.

DAU, 3rd March 2022 – archaeology – conditions.

- 3.5.2. Irish Water, 15th March 2022 (post FI) – wastewater – in order to facilitate this connection it will be necessary to carry out works upstream of the Borris Road wastewater pumping station to remove stormwater and infiltration and offset the impact of this development. The applicant will be required to fund the cost of these upgrades, the nature and extent of which will be determined as part of a connection agreement with IW. IW will carry out these storm separation works. For any upgrades which may not be within the public domain a wayleave in favour of IW would be required at connection application stage.

In respect of the Borris Road wastewater pumping station IW are progressing with plans relating to funding and delivery of the required upgrade works to service demand and growth in the wider area.

IW has reviewed the further information submitted by the applicant and notes proposals in relation to storm water discharging to the Kilminchy Lake. IW expects all mitigations proposed in respect to surface water will be fully implemented. The applicant shall ensure the attenuated stormwater will discharge downstream of the Kilminchy Lake system.

IW in conjunction with Laois Co Co have begun storm water separation works which involves the sealing of manholes near Kilminchy Lake in the public domain, some of which has already been completed, which is expected will alleviate flooding downstream.

They recommend a condition.

3.6. Third Party Observations

- 3.6.1. Third party observations have been read and noted. Issues raised are similar to those in the grounds of appeal.

4.0 Planning History

307411 SHD 262 no. residential units (206 no. houses, 56 no. apartments), childcare facility and associated site works at Rathevan, Kilminchy, Port Laoise, Co. Laois. Applicant Thomas Kelly & Sons Group Ltd, withdrawn, 7/9/2020.

304689 under the SHD legislation pre-application consultation, in respect of 262 no. residential units (44 no. apartments and 218 no. houses), creche and associated site works at Rathevan, Kilminchy, Port Laoise, Co. Laois; Thomas Kelly & Sons Group Ltd (Applicant); requires further consideration/amendment, 09/08/2019.

238447 PA Reg Ref **10/569** for erection of 494 dwellings in a mixture of detached, semi-detached and apartment types; and comprises 56 two-bed, 240 three-bed and 176 four-bed dwellings, all two storeys in height, 48 two-bed apartments in three blocks of 3.5 storeys in height with a combined floor area of 50,602.7 square metres; about 350 metres of carriageway, including a roundabout link to the Portlaoise Northern Orbital Route (PNOR), provision of approximately 875 metres of primary road network of 7.3 metres in width and estate roads, cycleways and footpaths; etc. on a site of 18.21 hectares

Refused for 3 reasons: 1 - would fail to constitute a logical and sequential expansion of the town of Portlaoise and would undermine the timely completion of the many unfinished residential estates within the development boundary; 2 - the Board is not satisfied that the proposed development would not give rise to a heightened risk of flooding in the area and further downstream in the local surface water drainage system; 3 - would result in a fragmented distribution of communal amenity open

space wherein much of this open space would be of limited utility and would be in the nature of enlarged roadside verges.

The inspector's report includes: 'The letter from Iarnród Éireann notes that the railway culvert has a finite capacity and, over the past decade, that much development has been allowed to discharge into the watercourse. It states that the developer should be asked to demonstrate that the receiving Irish Rail culvert has the capacity to accept this increased discharge'...'the Board cannot be satisfied that this proposed development would not give rise to a heightened risk of flooding in the area'.

5.0 Policy Context

5.1. Development Plan

5.2. Laois County Development Plan 2021-2027 applies:

Under the core strategy, Portlaoise is designated as a Principal Town and it is anticipated that the population of the town will reach 25,832 persons by 2023. The housing land requirement to meet projected growth is 78ha.

Zoned residential 2 and 'unzoned', (the zoning would approximate to the adjoining strategic reserve).

The northern part of the site is zoned 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 foster the development of new residential communities such as schools, crèches, small shops, doctor's surgeries, playing fields etc.

It is an objective on land zoned for residential 2 to promote development mainly for housing, 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. Within this zoning category the improved quality of residential areas and the servicing of orderly development will be the Council's priority. New housing and infill developments should be of sensitive design, which are complementary to their surroundings. No piecemeal development can take place unless it does not conflict with the possible future development of the reserved

development areas of the town. Adequate undeveloped lands have been zoned in the Plan for residential use to meet the requirements for both public and private house building over the Plan period.

The Ministerial Direction on the Plan impacts the subject site.

5.3. Strategic Environmental Assessment (SEA)

The SEA for the plan states in relation to Public Water Supply Policy Objectives – ‘WS 1 Continue in conjunction with Irish Water to ensure a Safe and Reliable Water Supply by managing the sustainability and quality of drinking water from source to tap to protect human health’.

5.4. Portlaoise Local Area Plan 2018-2024. Relevant provisions include:

Zoned residential 2

Portlaoise is constrained to the east and northeast by the Portlaoise Aquifer Protection Zone, which provides the public water supply for the greater Portlaoise and Mountmellick area. The motorway provides a physical boundary to the south east and south. The Dublin/Cork Railway line intersects the town in a North/East-South/West direction.

5.5. **Planning and Development Act 2000 as amended.**

S31AN (11) From the adoption of a development plan—

(a) such provisions as—

(i) are required to be included in a development plan by virtue of a direction issued by the Minister under section 31, and

(ii) are not so included,

shall be deemed to be included in that development plan, and

(b) such provisions of the development plan as do not comply with a direction so issued shall be deemed not to be included in that development plan.

5.6. **Natural Heritage Designations**

- 5.6.1. The River Barrow and River Nore SAC (site code 002162), c 10km distant, is the closest Natura site.

5.7. EIA Screening

- 5.7.1. 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. Four third party appeals have been received against the planning authority's decision to grant permission:

Tony Duncan,

Rosdarragh Ratheven Residents Group c/o Aisling Byrne, Secretary; with correspondence attached from John Cowhig (including 2 CDs) and also attached a letter signed by six Councillors, of Portlaoise Municipal District,

Dr Thomas H McDonagh,

Dr John M D Browne.

- 6.1.2. The issues raised in the appeals include:

Piecemeal non-Sequential Development:

The application refers to masterplan and is similar to the SHD, with land warehoused. The area around the creche and Red Lough are clearly knitted into the masterplan. Piecemeal development should not be entertained.

There are many other developments, including applications closer to the town.

The fragmented, piecemeal nature of the application (which enshrines the masterplan), is such that development will be ongoing for many years. There is no demand. There are nearly 1745 units with permission in the town.

Permission for 760 houses granted at Kilminchy 20 years ago – still incomplete.

It would be more beneficial to finish off estates where planning permission has been granted.

Ghost estates remain in Portlaoise.

There are over 100 houses for sale in Portlaoise.

The density is likely to mean anti-social behaviour.

There is a lack of facilities and the site is remote from the town centre: a previous refusal reason.

Drainage:

Application 307411 was withdrawn, following an IW letter dated 29th July 2020, stating the need for significant upgrades to the drainage system and also the requirement to upgrade the Borris Road pumping station; copy of letter is provided.

Drainage / flood risk – letter re. significant upgrades required by IW, was the main reason 307411 was withdrawn.

Groundwater is vulnerable. Flood plains map shows 1:100 flooding. Karsified aquifer at risk, e.g lack of maintenance of street gullies.

Flood plain.

Little has changed since 2011, (date of previous refusal), in fact the situation has worsened.

Conditions 13a & 7d conflict. Where could the applicant locate attenuation? Flooding is a big issue.

Lack of compliance with condition no. 21 of 230302 (08/293).

Kilminchy is a can of worms because of the total lack of building control and planning enforcement.

Regarding proposed surface water outfall to Rossdarragh downstream of Kilminchy lake system, there is a 900dia storm pipe which is laid under the grassed walkway beside the third lake in Rossdarragh. This is not in Rossdarragh, it doesn't appear on any drawing related to Kilminchy, no planning permission exists for this pipe. The 900 dia pipe in Kilminchy is the surface water pipe claimed to be in Rossdarragh, in a part alleged to be taken in charge. Re. the letter from IW, it is not a certificate of feasibility. The pumping station does not have capacity and is already over capacity. Downstream of Kilminchy is The Hermitage where there are on-going surface water

& sewerage issues also. There should be no development in or around Kilminchy until the problems, which already exist, are sorted out.

Copy of 2015 letter from Laois County Council (LCC) provided, refers to survey to identify the cause of the most recent discharge, due to blockage of the foul sewer; and the intention to prepare an Asset Needs Brief (ANB) to survey the extent of this problem within the areas that are taken in charge, and to carry out remedial works to seal the foul sewer to avoid contamination of the surface water sewer.

Red Lough – Apart from the applicant there are two other owners of Red Lough, who were not consulted. Condition 11 is not adequate. They will not give their consent. This is a habitat, it is spring fed, and likely to have connectivity to the karstified aquifer. Groundwater contamination has not been addressed. Potential for surface water contamination and impact on the SAC. EIA is required. There is development to the waters edge and a bin/waste area even closer. If water rises there is a flood risk. It should be dedicated as a sanctuary. The creche and car spaces should be relocated with houses 58-61 omitted. Zone 1 should be frozen until PNOR is in place.

Roads / Traffic:

Premature until PNOR is in place (reason no 2 of refusal, 10/569). LAP 2018-2024 and 2021-2027 show half the outlying lands zoned strategic reserve.

Traffic congestion already exists. There are 3 schools with 2,300 children in the vicinity. Traffic congestion is a problem in the morning and mid afternoon, including double parking, making entrance and exit difficult and dangerous.

Congestion on Borris Rd, Colliers Lane & Derrygarron Rd.

Inadequate junction at Rathmannagh Rd.

Inadequate current local infrastructure – one proposed vehicular entrance / exit is proposed via the roundabout which serves Rosdarragh and Ratheven. It is not suitable during construction or at completion. There are already issues with traffic at this roundabout. Construction entrance from Rosdarragh is not acceptable. Impact on residents.

A parking facility to serve all the schools is needed before any further residential, commercial, or traffic generating development is permitted within the area.

Traffic potential for up to 100 cars from the 64 houses and traffic to creche.
Congestion on Borris Rd and Colliers Lane.

The Dublin Road roundabout with Collier's Way is at breaking point.

Secondary school students & pedestrian safety.

The Traffic Impact Report is inadequate; survey of 25th January 2018 cannot be relied on; peak time is 4.30 – 5.30. All developments are not included.

Roads are not suitable for a bus; a better solution would be the PNOR.

The previous zoning was applied in circumstances where PNOR was to be constructed; now removed from the National Planning Framework.

Residential Amenity:

The proposed open space areas have limited usability.

Risk to children from warehoused land.

Some overlooking distances don't comply with the development plan. Average distances of 24m restricts residents of Rosdarragh Glen who may wish to build two storey extensions.

The 15m rear garden encouraged in the plan, is not achieved. Houses in Rosdarragh Glen achieve 15m rear gardens.

Garden sizes appear to have taken the side entrances into their calculations, contrary to the CDP 8.5. The calculations do not account for hedging.

A 1.8m high concrete post with a lower concrete panel is proposed. A higher wall would be expected, even without the level differences. Where the level differences are at their most critical there is no hedge to provide screening. There is no detail of the height which will be achieved by the proposed landscaping and the time it will take.

The proposed road perpendicular to Rosdarragh Glen will pose a security risk.

Noise is of concern. The 8 unit roads could be used for sports, see ES 14 of the Noise Action Plan.(ES 43-49 refer to noise).

Light pollution is of concern see ES 19, (ES 50-52 refer to light pollution).

The apartment block or duplex is proposed close to appellant's house, out of context with that already built, at a higher level and will take from the existing houses; appellant's bedrooms will be overlooked.

There is no plan to build a retaining wall between the development and appellant's property at Rossdarragh Hill. The houses will be 8-10 ft above his level. Concerns include privacy, noise, ground stability.

Water lodging in two appellants' gardens at Rossdarragh Hill, making them unusable until the laying of drainage pipes and creation of a soakhole; still a problem in prolonged rain; there is still stagnant water, a potential public health risk. The proposed development is at a higher level. Concerns regarding further runoff.

Water pressure at Rossdarragh Hill is poor.

Previous refusal, most reasons remain valid e.g. location of the creche.

Conditions for Agreement:

Conditions for agreement exclude appellants.

5a & 5b – they wish to see feasibility of connection details. All upgrade works should be prior to commencement, not prior to connection; 7c & d - there is a conflict between 2b and 7c. Location and details are to be provided, they don't have access to this information; 12a – boundary treatment - they don't have access to this information.

Specific conditions concerns – 2a & 2b - is the apartment block included?

They question why PV / Solar panels are not mandatory within the development.

They query the maintenance of the landscaping after the 2 year obligation has passed.

Existing roads, footpaths and lighting have been neglected, it should be conditioned that the developer provides rejuvenation of the existing road.

Archaeological – all work should require the agreement of LCC before commencement.

Red Lough, the historical and archaeological context.

Cash deposit required rather than a bond.

Other Issues:

Lack of social infrastructure eg. community centre, shop.

The absence of bungalows is discriminatory towards elderly and those with disability.

Their estate has had years of antisocial behaviour and had to remove a playground and close-up a public walkway within the estate, due to the lack of a proper boundary between their estate and Kilminchy. This is the same developer and they have serious concerns about the site boundary between their estate and the proposed new development.

There were ongoing debates with the then developer, who is now this developer, regarding the sub-standard chicken wire boundary between Kilminchy and Rossdarragh / Ratheven.

6.2. Applicant Response

6.2.1. The applicant responses to the grounds of appeals include:

The overall masterplan site includes for the potential delivery of 262 no. units within 4 no. distinct design zones across the landholding.

They refer to condition no. 2 which reduces the scale of the development by the omission of 35 units.

They point out that land has been rezoned from 'residential 2' to 'strategic reserve' in the county development plan. The application was made under the previous county development plan and the LAP 2018-2024 which is currently in force. They note the notification of intention to issue a Direction and the map of the Draft Plan which is the subject of the draft direction.

The PA decision, not to revert to the draft zoning, is referred to; and the Board is invited to consider the reinstatement of the 35 houses.

In response to the grounds: that the masterplan is a cut and paste of the SHD application - its purpose is to provide a coherent and planned approach to the delivery of residential development as part of the zoning, in a sequential manner.

In response to the grounds that the development is discriminatory - it has been designed with due regard to the principles of accessible design including 'Buildings for Everyone'. Page 11 of the Architectural Design Statement outlines the main features which comply with universal access:

Level access to homes and ease of access through the public realm.

A range of houses.

A welcoming and positive aspect to passers-by.

Generous footpaths and cycle routes and a number of pedestrian crossings.

In response to the grounds which refer to open space – it is central to the layout and usable. The adjusted open space is greater than 10%.

In response to the grounds which refer to surface water disposal and wastewater - connections have been dealt with following numerous meetings with the local authority and Irish Water. Surface water, attenuated to QBar standard, will discharge downstream of the Kilminchy lake system.

In response to the grounds which refer to attenuation and flooding – the applicant will provide the precise details of location, capacity, size and specification prior to the commencement of development. This will ensure that the location is in an area that is acceptable to the planning authority and does not encroach on usable open space.

There have been no recorded events of flooding in Rossdarragh. Waterlogged back gardens are most likely due to over compacted soils. The proposed development will positively drain the lands and reduce the potential for overland flow. The attenuated stormwater discharge does not enter the Rossdarragh network.

In response to the grounds regarding Red Lough and habitats – lands outside the applicant's control are not affected. Red Lough will not be affected. The Golder and Associates report and other reports are referred to, including detailed bat and bird surveys. Red Lough is acknowledged as a sensitive receptor and mitigation measures, through design, have been considered, to avoid, reduce or ameliorate potential adverse effects.

In response to the grounds regarding groundwater contamination – the Golder and Associates (Hydrogeological) report and other reports are referred to, as are the mitigation measures, to avoid, reduce or ameliorate potential adverse effects.

In response to the grounds regarding water quality - reports on file are referred to.

In response to the grounds regarding EIA and Habitats Directive – EIA screening was carried out, the Practice Note for Local Authorities by the Office of the Planning

Regulator is referred to. Screening for Appropriate Assessment was carried out and this was followed by a stage II NIS.

In response to the grounds regarding Bin / Waste areas and Creche – this application relates to areas within the red line. The location of the creche has been carefully considered. The boundary with Red Lough will be a 900mm railing on a 900mm solid blockwork wall.

In response to the grounds regarding traffic congestion, in particular the Borris Road access – the ‘Traffic Impact and Transport Assessment Report’ is referred to.

The scheme is not reliant on the delivery of a future orbital route.

The scheme was stated to improve pedestrian permeability and significantly reduce walking distances. While it is acknowledged that the permitted scheme has been reduced in scale, the principle of the initiatives proposed have not changed and pedestrian permeability will remain a key feature. The local road network operates within capacity and will continue to operate within capacity at the design year. The surveys were carried out between 8 and 9.30am and 4.30 and 6pm. The RSA stages I and II provide additional detail surrounding the viability of the proposed development from a road safety perspective.

The construction of residential units within walking distances of social infrastructure, such as schools, is justified, and would serve to reduce traffic congestion, encourage alternative forms of transport and facilitate walking and cycling. A busconnect / walking route to Portlaoise’s largest residential area, Kilminchy, has been incorporated in consultation with Laois County Council.

Details of construction traffic management were included in the Construction Management Plan. The main road access is designed for much greater traffic volumes.

In response to the grounds regarding privacy / overlooking - the development has been designed at an oblique angle to the existing residences and no direct overlooking would occur. The finished floor levels for the apartment / duplex units are 1m above the houses in Rosdarragh heights estate not 2.3m to 2.4m as stated. The side to side offset of 14m + is adequate given the oblique angle. Units 27-30 have been orientated to ensure that first floor windows are not in the line sight of any neighbouring properties. Units 29 & 30, which obliquely face No. 10 Rosdarragh Hill

from the southern first floor wall, have no habitable window, and have opaque glazed bathroom windows; a drawing extract is provided.

In response to the grounds regarding lack of local infrastructure - the planning report submitted with the application is referred to. The local community is well served by schools, childcare facilities, shops, bars, restaurants and services in the Kilminchy neighbourhood centre, within walking distance. In the masterplan, a convenience store is included in zone 1 adjacent to the creche, and a public amenity and MUGA (multi user games area) play facility in zone 4.

In response to the grounds regarding archaeology - the Archaeological Impact Assessment Report and the Geophysical Survey Report are referred to, and also condition no. 19.

6.3. Planning Authority Response

6.3.1. The planning authority have not responded to the grounds of appeal.

6.4. Observations

6.4.1. An observation on the appeals has been received from David Goggin & others. It includes concerns regarding:

Leapfrogging contrary to sequential development.

Fragmented approach.

Conditions:

5 a) and b) – system does not have capacity – development is premature.

10 d) – entrance from a small lane along the northern boundary. Noise impact. Disruptive to those living on Shaen Road.

11 a) to c) – Red Lough located in proximity, is an area of high groundwater vulnerability. Human activity poses a threat to groundwater. It could be that the aquifer is directly exposed at this location. A plan for the protection of this area is required. Observers are one of three owners, and do not consent.

15 a) to d) – road loops, not serving the area. Location of the creche not appropriate. There is no proven need.

7.0 Assessment

- 7.1. I consider that the main issues which arise in relation to this appeal are as follows: appropriate assessment, the principle of the development, piecemeal development, drainage, impact on groundwater, roads & traffic, residential impact, the draft conditions and other issues, and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

- 7.2.1. In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site, there is a requirement on the Board, as the competent authority in this case, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision, by carrying out appropriate assessment.
- 7.2.2. A Natura Impact Statement (NIS) including an AA Screening report was submitted with the application.

Description of the Development

- 7.2.3. The applicant provides a description of the project on pages 7 to 9 of the report.

Appropriate Assessment - Screening

- 7.2.4. I agree that five European sites are within a possible zone of influence of the proposed works by virtue of their immediate proximity or location downstream via a hydrological connection:

Mountmellick SAC,

River Barrow and Nore SAC,

Ballyprior Grassland SAC,

Slieve Bloom Mountains SAC, and

Slieve Bloom Mountains SPA.

- 7.2.5. There is potential for contaminants to enter surface water and groundwater and to impact protected downstream sites.

- 7.2.6. The site-specific conservation objective of the Mountmellick SAC is to maintain the favourable conservation of the species Desmoulin's Whorl Snail, which is a water-dependent species, (dependant on stable and specific ground water conditions¹), but the protected site is a disused stretch of the Grand Canal, not hydraulically connected to the subject site, and in a different groundwater body. The likelihood of any significant effects can be excluded with confidence.
- 7.2.7. The site-specific conservation objective of the Ballyprior Grassland SAC is to restore the favourable conservation condition of semi-natural dry grasslands and scrubland facies on calcareous substrates. The protected site is in an area which also drains to the River Barrow but it is not hydraulically connected to the subject site. Although in the same groundwater body, it is remote from the subject site and the likelihood of any significant effects can be excluded with confidence.
- 7.2.8. The site-specific conservation objectives Slieve Bloom Mountains SAC are:
- To restore the favourable conservation condition of Northern Atlantic wet heaths with *Erica tetralix*,
 - To restore the favourable conservation condition of Blanket bogs, and
 - To restore the favourable conservation condition of Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*.
- The protected site is not hydraulically connected to the subject site and the likelihood for any significant effects can be excluded with confidence.
- 7.2.9. The site-specific conservation objectives Slieve Bloom Mountains SPA is to restore the favourable conservation condition of hen harrier. The protected site is not hydraulically connected to the subject site. There is no suitable habitat for hen harrier within or near the subject site. The likelihood of any significant effects can be excluded with confidence.
- 7.2.10. The site-specific conservation objectives for the River Barrow and Nore SAC relate to the qualifying interests which are mainly water dependent habitats and species. The protected site is hydraulically connected to the subject site. The likelihood of

¹ National Parks & Wildlife Service website.

significant effects cannot be excluded. Appropriate Assessment, stage 2, is therefore required.

Table 1 Screening summary

European Site	Site Code	Relevant QI & SCI	Distance	Potential for significant effects on conservation objectives
Mountmellick SAC	002141	Desmoulin's Whorl Snail.	c9km straight line (SL) distance to north.	No, not hydraulically connected.
Ballyprior Grassland SAC	002256	Semi-natural dry grasslands and scrubland facies on calcareous substrates	c12km SL distance to south-east.	No, not hydraulically connected.
Slieve Bloom Mountains SAC	000412	Hen Harrier	c11km SL distance to west	No. Not hydraulically connected. No ex-site impacts.
Slieve Bloom Mountains SPA	004160	Northern Atlantic wet heaths; Blanket bogs; and Alluvial forests.	c9km SL distance to west	No. Not hydraulically connected.
River Barrow and River Nore SAC	002162	Estuaries Mudflats and sandflats not covered by seawater at low tide Reefs Salicornia and other annuals colonising mud and sand Atlantic salt meadows Mediterranean salt meadows	c 9km SL distance to the north and 9 km to the east.	Yes there is a potential pathway via surface water and groundwater to the protected site.

		<p>Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachium</i> vegetation</p> <p>European dry heaths</p> <p>Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels</p> <p>Petrifying springs with tufa formation</p> <p>Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i></p> <p>Desmoulin's Whorl Snail</p> <p>Freshwater Pearl Mussel</p> <p>White-clawed Crayfish</p> <p>Sea Lamprey</p> <p>Brook Lamprey</p> <p>River Lamprey</p> <p>Twaite Shad</p> <p>Salmon</p> <p>Otter</p> <p>Killarney Fern</p> <p>Nore Pearl Mussel</p>		
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7.3. Screening Conclusion

- 7.3.1. Having carried out AA Screening I am satisfied that in the absence of mitigation the potential for significant effects cannot be excluded for River Barrow and River Nore SAC and that AA is required, no additional sites need to be brought forward for inclusion in the AA.

7.4. Appropriate Assessment of implications of the proposed development

- 7.4.1. Appropriate Assessment: integrity test.

- 7.4.2. The main issue as identified through AA screening is that the development may result in decreased water quality. Protective measures are required to ensure that the risk of adverse effects on the conservation objectives of River Barrow and River Nore SAC are excluded.

7.5. Submissions and Observations

- 7.5.1. A number of submissions on the proposed alteration have been received, including concerns in relation to groundwater and proximity to Red Lough in particular.

7.6. Mitigation measures.

- 7.6.1. Mitigation measures are set out in the NIS under the headings:

Measures to protect surface water quality and groundwater quality during construction and measures to protect surface water quality and groundwater quality during operation:

- 7.6.2. The Hydrogeological Report, prepared by Golder Associates sets out:

Mitigation during construction listed in 3.3.3 of the report.

Mitigation during construction listed in 3.3.4 of the report.

There is further mitigation proposed in Table 3 of the report, including:

- development of a robust construction phase Environmental Management Plan (including an outline for materials management); and
- that trenches for underground foul water pipework be sealed using low permeability materials e.g. low permeability clay.

- 7.6.3. In my opinion the implementation of the proposed mitigation measures referred to above will ensure that the potential for the project to impact on surface water and groundwater, such as to have adverse effects on the qualifying interests of the downstream protected site River Barrow and River Nore SAC, is excluded. With the application of the proposed measures, the proposed development will not affect the attainment of the conservation objectives of this protected site or any other European site, and adverse effects on site integrity can be excluded with confidence.

7.7. In-Combination Effects

- 7.7.1. When other projects are considered along with the proposed development there will not be any in-combination effect on European sites.

7.8. Conclusion and Appropriate Assessment Determination in relation to Site Integrity

- 7.8.1. Having carried out screening for Appropriate Assessment of the project, it was concluded that in the absence of mitigation the development may have a significant effect on a European site. Consequently, an Appropriate Assessment was required

of the implications of the project on the qualifying features of this site in light of its conservation objectives.

- 7.8.2. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site No,002162, River Barrow and River Nore SAC or any other European site, in view of the site's Conservation Objectives.
- 7.8.3. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.
- 7.8.4. This conclusion is based on:
- the location outside of a European site,
 - a full and detailed assessment of all aspects of the proposed project including proposed mitigation measures,
 - detailed assessment of in combination effects with other plans and projects,
 - no reasonable scientific doubt as to the absence of adverse effects on the integrity of River Barrow and River Nore SAC.

7.9. Principle of Development

7.10. Zoning

- 7.10.1. The site is zoned part 'residential 2' and part 'unzoned'. In relation to the latter term the zoning description of adjoining land is 'strategic reserve'.
- 7.10.2. The northern part of the site is zoned 'residential 2 – New Proposed Residential'. This part of the site corresponds to the area referred to in condition 2 of the decision to grant planning permission, i.e. the area in respect of which permission for development was given in the decision to grant.
- 7.10.3. The final planning report states – when the application was submitted the development site was zoned in its entirety, residential 2 – new proposed residential, in the 2018-2024 LAP. Arising from the terms of the draft direction, 7th March 2022, relating to the making of the Laois County Development Plan 2021-2027, a significant portion of the southern end of the development site is now considered to

be not zoned for residential development; 35 no. Residential units would be impacted as a result.

- 7.10.4. The applicant's response to third party appeals, 11th May 2022, (in contrast to the applicant's response, 27th April 2022, to the first third party appeal) states that the site is entirely zoned residential. It notes the draft Ministerial Direction and the Chief Executive Report in response, and requests the Board to consider the reinstatement of the 35 no. units omitted from the PA's decision.
- 7.10.5. The Ministerial review of the draft plan, had not concluded when the appeal was submitted.
- 7.10.6. On 28th September 2022 the Minister issued a letter and Direction to the planning authority which includes a direction in relation to the subject site: to reinstate the zoning status of the subject land to that of the draft plan i.e. the subject land reverts to 'not zoned'.
- 7.10.7. The planning authority's website in respect of the County Development Plan zoning map for Portlaoise, has to date (27 February 2023) not been adjusted to reflect this change; maps 2.2 and 2.10 refer.
- 7.10.8. While the LAP has not been reviewed and therefore the zoning of the entire site in the LAP remains 'residential 2 – New Proposed Residential', this is superceded by the County Development Plan.

7.11. Suitability and Amount of Housing

- 7.11.1. The amount of housing in the town is referred to in the appeals. It is stated that ghost estates remain in the town; that other lands remain undeveloped closer to the town centre such that the proposed development is leapfrogging. It is of concern that the absence of bungalows is discriminatory towards elderly and those with disability.
- 7.11.2. A considerable amount of housing has been constructed in Portlaoise in the past few decades. The need to adopt a sequential approach when zoning lands for development, whereby centrally located development sites are prioritised for new development, was the basis of the Ministerial Directive. The directive affects only part of the subject site, as referred to above. It can therefore be considered that the development of the zoned land is acceptable.
- 7.11.3. In relation to the concern that the development is discriminatory towards elderly and those with disability, the applicant states that the design has taken account of

Buildings for Everyone. The publication 'Building for Everyone, A Universal Design Approach' is the relevant guidance. It does not include a requirement to incorporate bungalows into any development.

- 7.11.4. The Board should not consider reinstatement of the 35 no. units omitted from the grant. In respect of the remainder of the proposed development, subject to other considerations such as traffic and servicing, the proposed development is acceptable in principal.

7.12. Piecemeal Development

- 7.12.1. Concerns are expressed that the application is part of a masterplan, similar to the SHD application, and that land will be warehoused. The view is expressed that piecemeal development should not be allowed and that warehoused land poses a risk to children.
- 7.12.2. The applicant acknowledges that this site is part of a masterplan.
- 7.12.3. The development of this land was anticipated at earlier stages in the evolution of the general area, as evidenced by the existing short spur road which is now to serve the site. These lands have been zoned for development in the past. It doesn't seem unreasonable that the development the subject of this appeal should have been conceived within a concept of how overall development might unfold. That doesn't imply that such overall development will ever be permitted or will ever take place.
- 7.12.4. In relation to the warehousing of land and the risk to children. The land is currently in use as agricultural land. It can be anticipated that whatever land remains undeveloped will continue to be used as agricultural land. There are no buildings on the land which might, in a 'warehoused' situation, be of concern as regards risk to children. The permissible development is compact, with a clear break between this part of the site and the remaining lands, which can be adequately fenced and secured. The remaining site will continue to be agricultural land. The continued use of the remaining site and associated land for agricultural should not be a risk to children.

7.13. Drainage

- 7.13.1. Drainage is an area of third party concern.

- 7.13.2. Responding to concerns raised in relation to surface water drainage, the applicant states that the proposed development discharges downstream of the Kilminchy lake system and has no bearing on the flow or levels within the lake system.
- 7.13.3. The natural drainage in this area, can be seen on historic ordnance survey mapping. It runs due west from the south western corner of the site, and then north to a culvert under the railway line and on to the Triogue river. This line is north and downstream of the Kilminchy lakes. The outlet from Kilminchy lakes runs in the same direction.
- 7.13.4. I note that the inspector's report on 238447, for a site which included the subject site, refers to a letter from Iarnród Eireann noting that the railway culvert has a finite capacity. Iarnród Eireann has not made a submission in relation to the subject application. A considerable area of developed land drains to that culvert and the proposed development, which will include attenuation, will not contribute significantly to the flow.
- 7.13.5. A previous permission referred to by Mr John Cowhig, in the Rosdarragh Ratheven Residents Group appeal, refers to an area in Kilminchy, and is not directly related to the subject site. The surface water outfall from the subject site is downstream of Kilminchy, and the point of connection to the foul sewer is also downstream of Kilminchy.
- 7.13.6. Irish Water have indicated their acceptance in principle of the foul wastewater discharge to the public network, subject to the carrying out of works upstream of the Borris Road wastewater pumping station which the applicant will be required to fund.
- 7.13.7. The planning authority have indicated their acceptance of the surface water discharge to the public network.
- 7.13.8. Drainage should not be a reason to refuse or modify the proposed development.

7.14. Impact on Groundwater

- 7.14.1. The potential impact on groundwater is raised as a concern by appellants. A Hydrogeological Report was submitted with the application. A number of issues in relation to groundwater arise in that report.
- 7.14.2. Receptors identified as potentially at risk from proposed development are:

Groundwater of the Allenwood formation, which contributes to the public supply wellfields located within 1km north-east of site located within a Source Protection Zone.

The Redlough water feature located immediately beyond the northern boundary, and

The Rathevan stream and downstream receptor River Barrow and River Nore SAC.

- 7.14.3. A list of potential construction phase impacts and potential operational phase impacts are noted, in relation to these receptors.
- 7.14.4. It is stated that the proposed design predominantly follows the existing contours of the site with minimal recontouring of the site topography; and that the majority of earthworks are not anticipated to exceed 3m BGL with most concrete foundations and drainage infrastructure to be installed at shallower depths, and historical groundwater information anticipates groundwater would be encountered at an approximate depth of 4.5m bGL. Groundwater is therefore not anticipated to be encountered during the works.
- 7.14.5. The access road proposed near the north western corner of the site, is in a cut, being an extension of the existing spur roadway at this location which is in currently a cut. The sectional drawings, shown on drawing no. PP014 Rev 0, as sections AA and BB, show the cut in those locations to be in excess of 4.5m bGL. The Hydrogeological report provides a response in relation to groundwater encountered during the construction phase, intended as a short-term response. The possibility that groundwater could discharge from such a cutting and continue on completion of the construction should be established prior to construction and specific proposals agreed.
- 7.14.6. Mitigation measures for construction and operational stages are set out (3.3.3 and 3.3.4). Table 3 sets out impacts on various receptors following mitigation, where residual impacts are noted. These residual impacts are in relation to reduced water quality in Ratheven Stream, in Red Lough and in groundwater contributing to public water supplies. The report recommends additional measures to be put in place to further reduce the potential impacts of the development:

Trenches for underground foul water pipework be sealed using low permeability materials e.g. low permeability clay.

Development of a robust construction phase Environmental Management Plan (including an outline for materials management); and

If possible, it is recommended that restrictions on the use of gardening-based pesticides be emplaced in the residential area.

7.14.7. Although noting that uncontrolled use of materials associated with domestic activities (eg pesticides) is a concern, the Hydrogeological Report states that dilution within the aquifer beneath the site is likely sufficient to reduce the impact of any small-scale domestic spills on the quality of the Red Lough to minimal; the contribution of the aquifer located under the footprint of the site to the overall aquifer volume and source zone for public supply is extremely small, and any impact upon groundwater quality at the public supply well is minimal.

7.14.8. The zoning for residential development, followed strategic environmental assessment. The mitigation measures set out in sections 3.3.3 and 3.3.4 of the report and two of the additional mitigation measures set out above should be conditioned as part of any permission on this site. In relation to the recommendation regarding, 'restrictions on the use of gardening-based pesticides'; this would not, in my opinion, be an enforceable condition.

Red Lough

7.14.9. In relation to Red Lough the report states:

Considering the information available, water levels of the Red Lough may be maintained via the following:

Rainfall recharge, either direct or via surface water run-off (whilst the majority of the site slopes to the south-west corner, the area immediate to the Red Lough slopes towards the waterbody);

Karstic spring-water originating as groundwater of the Allenwood Formation; and/ or

Drainage of groundwater from the sand and gravel deposits in the north-western area of the site.

'Without monitoring of water levels and water quality, it is not possible to determine the exact nature of the Red Lough, nor the source of recharge, and it should continue to be considered as a sensitive receptor to the development, with potential for point source recharge to the bedrock aquifer'.

- 7.14.10. The report states that there will be no direct discharge to or interaction with Red Lough as part of the construction, and that the majority of the site topography slopes away from the Red Lough, except for a small area in the north of the site can be seen to slope towards the water feature; such that the proposed mitigation is that a perimeter swale may need to be installed during the construction phase in order to ensure no runoff of surface water or sediment reaches this receptor.
- 7.14.11. In my opinion in the absence of evidence that Red Lough is not a karstic feature, hydrologically connected to the Allenwood groundwater, the proposed mitigation is insufficient. Until such time as there is evidence of the source of the water in Red Lough, no development should take place north of the proposed access road. Only the creche and associated parking of the current development would be impacted by such a requirement. A larger area, not part of the subject application, is indicated for a 'future planning application' for housing and a small neighbourhood centre. Any future planning application for development north of the access road, should be accompanied by evidence of the source of recharge of the lake.
- 7.14.12. As noted in the Hydrogeological Report, the site is within the outer protection zone for the well which serves as the public water supply for Portlaoise, and as also pointed out in the report, other developments and zoned land are located within the outer protection zone. The SEA for the development plan (2021-2027) does not identify a conflict in this regard. Subject to the omission of that part of the proposed development closest to Red Lough and the implementation of mitigation measures in the Hydrogeological Report, referred to earlier, I consider that impact on groundwater should not be a reason to refuse or further modify the proposed development.

7.15. Roads / Traffic:

- 7.15.1. Traffic congestion is raised in the grounds of appeal. It is stated that the development is premature until the Portlaoise Northern Orbital Route (PNOR) is in place. It is stated that traffic congestion is a problem in the morning and mid afternoon, due to the 3 schools with 2,300 children with issues including double parking making entrance and exit difficult and dangerous; and congestion experienced on Borris Rd, Colliers Lane & Derrygarron Rd.

- 7.15.2. The Traffic Impact and Transport Assessment Report, which accompanied the planning application, carried out a traffic Study in consultation with Laois County Council, including examining the junctions: L2133 with Rathevan / Rosderra Local Road; the Hermitage roundabout; and the mini roundabout on Dublin Road / Colliers Lane, where a 28m diameter roundabout under Part VIII is proposed.
- 7.15.3. The study found that all the junction would perform satisfactorily and in particular the Dublin Road / Colliers Lane mini roundabout would have reserve capacity, (section 8 of the report).
- 7.15.4. In response to item 14 of the further information request, requesting the applicant to propose mitigation measures to address capacity at the Colliers Lane/ Dublin Road junction during peak periods; to liaise with Roads Design Section to conduct a study of improvements to reduce disproportionate queues and consider upgrading the junction; and to consider pedestrian movements in the analysis. The applicant responded that Kilgallen and Partners had been engaged separately by Laois County Council in respect of the cycle/pedestrian linkages along the Dublin Road including the Colliers Lane roundabout; it has been demonstrated that the proposed development will not have a significant impact on the Dublin Road / Colliers Lane roundabout in the year of opening or the design horizon; Laois County Council have a part 8 granted for a roundabout upgrade and the lands have been acquired for same; and the development contributions will contribute proportionately to any upgrade.
- 7.15.5. The applicant response to appeals refers to the Traffic Impact and Transport Assessment Report and also states that the scheme improves pedestrian permeability and significantly reduces walking distances. The local road network operates within capacity and will continue to operate within capacity at the design year. The surveys were carried out between 8 and 9.30am and 4.30 and 6pm.
- 7.15.6. I note the planning authority acceptance of the further information response. I am satisfied that the proposed development will not unduly contribute to traffic congestion.
- 7.15.7. Construction traffic - the impact of the construction entrance from Rosdarragh on residents, stated not to be acceptable. is a concern of the grounds of appeal.

- 7.15.8. The applicant response states that details of construction traffic management were included in the Construction Management Plan; the main road access is designed for much greater traffic volumes.
- 7.15.9. The existing spur road through Rossdarragh, which will serve as the construction and operational access, is located close to the entrance to the Rossdarragh / Ratheven area, where there is no direct access to any dwellings. In my opinion the use of the road in Rossdarragh for construction traffic would not unduly impact on the residential area.
- 7.15.10. The impact of roads and traffic should not be a reason to refuse or further modify the proposed development.

7.16. Residential Impact

- 7.16.1. In response to appellant's concerns that existing soil drainage is poor and the proposed development will exacerbate the problem experienced in appellants gardens, the applicant response is that waterlogged back gardens are most likely due to over compacted soils. I consider that there is no evidence that the proposed development will adversely affect the drainage of other properties.
- 7.16.2. The apartment block is stated to be out of context with the existing development, that it will be at a higher level, will take from the existing houses, and, being higher than and close to an appellant's house, the bedrooms will be overlooked.
- 7.16.3. The apartment block is similar in its appearance to a semi-detached block and not a great deal larger. It is somewhat elevated, with reference to the existing adjacent dwellings due to the rising ground, just as the dwellings on the adjoining lands respond to the rising ground. The block is not unduly close to the existing dwelling. As illustrated in the appellant's response, the orientation of the windows is such that overlooking is avoided. The appellant's concern regarding the need for a retaining wall can be addressed by condition.
- 7.16.4. Concerns have been raised regarding boundary treatment. I consider it appropriate for all boundary treatments to be subject to agreement with the planning authority.
- 7.16.5. In relation to the concern raised that the proposed open space areas have limited usability. It should be noted that the development which would be permitted, per condition no. 2 of the decision, is significantly less than that shown in the layout. I

accept the applicant's response that the open space is central to the layout and usable, and that the adjusted open space is greater than 10%.

7.16.6. The concern has been raised that 15m rear gardens, encouraged in the development plan, is not achieved in the layout; whereas houses in Rossdarragh Glen achieve 15m rear gardens, and the distances may restrict residents of Rossdarragh Glen wishing to build two storey extensions. Larger gardens and the achievement of reasonable density are opposing forces. First floor window distances, as proposed, are reasonable in all cases. Any future extension planning applications would be treated on their merits; design can be used to overcome potential overlooking concerns.

7.16.7. In relation to concerns regarding noise and light pollution. There is very little basis for such concerns when they relate to potential issues in adjoining residential developments.

7.16.8. It is stated that water pressure at Rossdarragh Hill is poor. Irish Water have stated that connection to the public water main can be facilitated without upgrade.

7.16.9. I consider that residential impact should not be a reason to refuse or modify the proposed development.

7.17. Other Issues

7.17.1. The lack of social infrastructure is raised as a concern by appellant's. It is stated that there is no shop in the vicinity of the site. As pointed out in the applicants response the site is close to the large school complex, west of the Borris Road, a range of retail and commercial services is provided at Kilminchy Avenue north of the Dublin Road, and along the Dublin Road. I consider that social infrastructure should not be a reason to refuse or modify the proposed development.

7.17.2. Appellants and observers, who share ownership of Red Lough, state that they will not consent to works in the vicinity of the lake. The Board has no function in relation to ownership disputes.

7.18. Draft Conditions

7.18.1. Appellants object to conditions for later agreement, on the basis that they are excluded from the process.

7.18.2. In relation to conditions 5a & 5b – they wish to see feasibility of connection details.

Condition 5(a) states 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 upgrades to the capacity of the Borris Road Wastewater Pumping Station are required to be in place prior to connection of the proposed development.

7.18.3. Appellants state that all upgrade works should be prior to commencement, not prior to connection. In my opinion it is sufficient to have agreement prior to commencement. There can be no objection to the necessary upgrade works taking place in tandem with the proposed development, provided that they are in place prior to connection.

7.18.4. In relation to 7c & d – regarding provision of details of surface water drainage for agreement, appellants object that they don't have access to this information and that a conflict exists between 2b which removes a portion of the proposed development, and 7c. In my opinion the appellants are not prejudiced by details of drainage being agreed, in the context that the details which have been submitted are broadly acceptable.

7.18.5. Regarding the specific conditions – 2a & 2b – querying if the apartment block is included in the permitted development. The apartment block is included in the development as permitted in the PA's decision.

7.18.6. Appellants object to conditions 12a – boundary treatment – 'details of site boundary treatment including in relation to type, extent, finish, height and colour shall be submitted to and agreed in writing with the Planning Authority prior to commencement of development. The only specific proposals in this regard, is in relation to the adjoining property at Rosdarragh Hill where it is stated that a retaining wall is required. In my opinion the appellants are not prejudiced by details of boundary treatment being agreed, in the context that the details which have been submitted are broadly acceptable. The condition should be amended to include the requirement for retaining walls as required.

- 7.18.7. The question of PV / Solar panels, whether they should be mandatory or not, the provision of PV /solar panels is not a 'requirement' of national or local policy and is therefore outside the remit of the Board.
- 7.18.8. As regards the maintenance of the landscaping after its establishment as required by condition, it is open to residents to seek to have the development taken in charge. Any issues regarding existing roads, footpaths or lighting being neglected, except where it bears of the suitability of these services for use in connection with the proposed development, is outside the remit of this application / appeal.
- 7.18.9. Appellants object to condition 19 re. archaeology stating that all work should require the agreement of LCC before commencement.
- 7.18.10. The DAU in their submission of 3rd March 2022 recommended the following as condition:
- The applicant is required to engage the services of a suitably qualified archaeologist to carry out an Archaeological Assessment of the development site, in relation to archaeological features and deposits previously identified during the geophysical survey. No sub-surface work should be undertaken until the Archaeological Assessment has been completed and commented on by the Department of Housing Local Government and Heritage.
- The archaeologist should carry out any relevant documentary research and inspect the development site. This assessment shall also define a buffer area or areas contiguous with the archaeology identified during the geophysical survey. No sub-surface work should be undertaken in the absence of the archaeologist without his/her express consent.
- A programme of test excavation shall be carried out at locations chosen by the archaeologist (licensed under the National Monuments Acts 1930-2004), having consulted the site drawings and the National Monuments Service (NMS) section of the Department.
- Having completed the work, the archaeologist should submit a written report stating their recommendations to the NMS section of the Department of Housing Local Government and Heritage. Where archaeological material/features are shown to be present, preservation in situ, preservation by record (excavation) or monitoring may be required.
- 7.18.11. I consider that the foregoing condition adequately addresses the matter.

8.0 Recommendation

- 8.1.1. In accordance with the foregoing I recommend that the proposed development be permitted, for the following reasons and considerations, in accordance with the following conditions.

9.0 Reasons and Considerations

The proposed residential development, in an area zoned for residential development, would not unduly impact on the residential amenities of existing residents, or unduly impact on traffic congestion, would be adequately provided with infrastructure and community services and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the documents submitted 18th February 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>This permission is for residential units in zone 1 only of the development as shown on drawing number PP004 A1 Rev-0 received by the planning authority on 09/07/2021. The remainder of the residential development shall not be carried out, being in contravention of the zoning. The proposed creche and associated parking and access, north of the access road, shall not be carried out, being unduly close to Red Lough.</p>

	<p>Reason: In the interest of orderly development and to protect groundwater quality.</p>
3.	<p>Mitigation measures set out in sections 3.3.3 and 3.3.4 of the Hydrogeological Report shall be implemented in full. In addition, prior to the commencement of development a robust construction phase Environmental Management Plan, including an outline for materials management, shall be submitted for the written agreement of the planning authority; and trenches for underground foul water pipework shall be sealed using low permeability materials e.g. low permeability clay.</p> <p>Reason: To prevent water pollution.</p>
4.	<p>Prior to commencement of development the groundwater levels along the access road at the northern end of the site shall be established, and mitigation measures agreed in relation to any groundwater which may be encountered in the excavation for the proposed road.</p> <p>Reason: In the interest of orderly development and to protect groundwater quality.</p>
5.	<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>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
6.	<p>Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.</p>
7.	<p>Prior to commencement of development, the developer shall enter into water and waste water connection agreements with Irish Water.</p> <p>Foul effluent shall be connected to the public foul sewer. Any necessary upgrades to the capacity of the Borris Road Wastewater Pumping Station shall be in place prior to connection of the proposed development or occupation of any unit.</p> <p>Reason: In the interest of public health.</p>
8.	<p>All surface water runoff shall be collected and disposed of within the site to the surface water sewer. No such surface water run-off shall be allowed to flow onto the public roadway, foul sewer or adjacent properties. The rate of surface water discharge from the development to the public surface water network shall be regulated taking account of existing discharges from</p>

	<p>adjacent lands and provision made for such retention and throttling/flow restriction as necessary to regulate the discharge.</p> <p>The proposed development shall not interfere with existing land or road drainage.</p> <p>Precise details in relation to location, capacity, size and specification of the surface water attenuation system shall be submitted for the written agreement of the planning authority prior to commencement of development.</p> <p>Reason: In the interest of orderly development and public health.</p>
9.	<p>a) The site development works shall be carried out and completed at least to the construction standards set out in the 'Recommendations for Site Development Works for Housing Areas' issued by the Department of the Environment and Local Government in November 1998 and the Planning Authority's codes of practice. Following completion, the development shall be maintained by the developer, in compliance with these standards, until taken in charge by the planning authority.</p> <p>b) The tie-in of the proposed access road and footpaths serving the proposed development and the adjoining infrastructure shall be to the satisfaction of the planning authority and Road Design Section, precise details to be submitted and agreed in writing prior to commencement of development.</p> <p>c) The design of the south-eastern ends of the two internal access roads and footpaths extending south-eastwards shall be submitted and agreed in writing prior to commencement of development.</p> <p>d) The road, footpaths and raised table finishes shall be impermeable. As a result of this requirement to change permeable paving to impermeable paving the developer shall recalculate the attenuation volumetric requirement, revising plans and particulars accordingly. Precise details shall be submitted and agreed in writing prior to commencement of development.</p>

	<p>e) Precise details of the location and design of bin collection storage points be submitted and agreed in writing prior to commencement of development.</p> <p>Reason: To ensure that the development is carried out and completed to an acceptable standard of construction.</p>
10.	<p>The applicant is required to engage the services of a suitably qualified archaeologist to carry out an Archaeological Assessment of the development site, in relation to archaeological features and deposits previously identified during the geophysical survey. No sub-surface work should be undertaken until the Archaeological Assessment has been completed and commented on by the Department of Housing Local Government and Heritage.</p> <p>The archaeologist should carry out any relevant documentary research and inspect the development site. This assessment shall also define a buffer area or areas contiguous with the archaeology identified during the geophysical survey. No sub-surface work should be undertaken in the absence of the archaeologist without his/her express consent.</p> <p>A programme of test excavation shall be carried out at locations chosen by the archaeologist (licensed under the National Monuments Acts 1930-2004), having consulted the site drawings and the National Monuments Service (NMS) section of the Department.</p> <p>Having completed the work, the archaeologist should submit a written report stating their recommendations to the NMS section of the Department of Housing Local Government and Heritage. Where archaeological material/features are shown to be present, preservation in situ, preservation by record (excavation) or monitoring may be required.</p> <p>Reason: To ensure the continued preservation, wither in situ or by record of places, caves, sites, features or other objects of archaeological interest.</p>

11.	<p>All upper floor rear and side bathroom windows shall be fitted with opaque glass.</p> <p>Reason: In the interest of orderly development.</p>
12.	<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. Details shall be agreed with the planning authority prior to commencement of development.</p> <p>Reason: In the interests of visual and residential amenity.</p>
13.	<p>At least 10% of communal parking spaces shall be provided with functioning electric vehicle charging stations / points. Ducting shall be provided for all remaining communal parking spaces.</p> <p>Reason: In the interest of orderly development.</p>
14.	<p>Public lighting in the development shall be LED technology luminaries with minimum 10 year warranty. Lighting levels in accordance with IS EN 13201.</p> <p>External lighting shall be cowled and directed away from the public roadway and adjoining properties.</p> <p>Reason: In the interests of residential amenity and traffic safety.</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</p>

	<p>estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed names shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the names of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed names.</p> <p>Reason: In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.</p>
16.	<p>a) No part of the proposed development shall encroach, oversail or otherwise physically impinge upon any adjoining property save with the prior written agreement of the owner(s) thereof.</p> <p>b) All public and private property shall be adequately protected at all times particularly during construction works.</p> <p>c) Any damage caused to the adjoining public thoroughfare shall be made good at the developer's expense to the satisfaction of the planning authority.</p> <p>Reason: In the interests of public safety, residential amenity and proper planning.</p>
17.	<p>(a) A scheme indicating boundary treatments and landscaping shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>(b) This shall include details of retaining walls as required.</p> <p>(c) Boundary screening and mature hedgerows and trees shall be retained where feasible.</p> <p>(d) Only native trees and shrubs shall be used in the landscaping scheme.</p>

	<p>(e) The planting shall be carried out in accordance with the agreed scheme and shall be completed within the first planting season following the substantial completion of external construction works.</p> <p>(f) Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>(g) The scheme shall include any necessary fencing of the lands adjoining the proposed development, including those within the subject site in which residential development is not permitted.</p> <p>Reason: In order to screen the development, in the interest of visual amenity.</p>
18.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall include a Construction Stage Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction / demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
19.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit, or other security to secure the provision and satisfactory completion of roads, sewers, watermains, drains, car parks, open spaces and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to</p>

	<p>the satisfactory completion of any part of the development. The security to be lodged shall be as follows –</p> <p>(a) a cash sum of €6,500 (six thousand five hundred euro) per dwelling to be applied by the planning authority at its absolute discretion if such services are not provided to its satisfaction, or</p> <p>(b) such other security as may be accepted in writing by the planning authority.</p> <p>Reason: To ensure the satisfactory completion of the development.</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>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

Planning Inspector

27 February 2023

Appendices:

Appendix 1 Photographs

Appendix 2 Laois County Development Plan 2021-2027, extracts.

Appendix 3 Extracts from Chief Executives Report regarding Ministerial Direction.

Appendix 4 Extracts from Planning and Development Act 2000

Appendix 5 Strategic Environmental Assessment, Laois County Development Plan 2021-2027 extracts.