



An  
Bord  
Pleanála

# Inspector's Report

## ABP-313365-22

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<b>Development</b>	Construction of 33 houses, part reconstruction and enhancement of boundaries and associated site works.
<b>Location</b>	Rathdrum, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	21/1300
<b>Applicant(s)</b>	Myrtlebrook Limited.
<b>Type of Application</b>	Planning Permission.
<b>Planning Authority Decision</b>	Grant Permission.
<b>Type of Appeal</b>	First Party & Third Party
<b>Appellant(s)</b>	Myrtlebrook Limited Killian's Glen Residents.
<b>Observer(s)</b>	Aoife Byrne Keith & Rachel Halpin.
<b>Date of Site Inspection</b>	7 <sup>th</sup> of September 2023.
<b>Inspector</b>	Elaine Sullivan



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## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 3.86 ha and is a greenfield site located on the northern outskirts of Rathdrum in County Wicklow. The site is to the rear of the Killian's Glen housing estate which is accessed from the Hidden Valley Holiday Park and Rathdrum Rugby Club access road. This road connects with the R752 at its southernmost extent, approximately 1.2km from Killian's Glen and adjacent to the bridge over the River Avonmore. It is proposed to access the development through the existing Killian's Glen housing estate. Pedestrian access to the site is currently available from a laneway, known as Kelly's Lane, off Lower Street to the south of the site. This laneway is partially tarmacked and provides access to four houses. It also forms part of the south-western boundary of the site and this section of the laneway is unpaved and overgrown.
- 1.2. The topography of the site rises steeply from south to the northwest and is at a higher level to the housing estate. There are two watercourses traversing the site from west to east. One of the watercourses currently crosses over the laneway to the south-west of the site and on the occasion of the site visit, there was significant pooling of water along the lane and on adjoining land to the north.
- 1.3. The site is bound to the north by greenfield lands and the Rathdrum Rugby Club lands. To the east is the Killian's Glen housing estate and some additional dispersed housing. Further east and on the opposite side of the Avonmore River is the Hidden Valley Caravan and Holiday Park. Directly to the south are some open land and one-off houses along the access lane from Lower Street. To the east the site is bounded by fields to the rear of houses which face onto Main Street.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the construction of 33 detached and semi-detached houses, (9 x 4-bed, 17 x 3-bed and 7 x 2-bed), on a greenfield site in the settlement of Rathdrum.
- 2.2. Access to the development would be from the Killian's Glen housing estate and would be via an access road that connects with the R752. It is proposed to connect the development with the existing public watermain and foul drainage network. The

foul drainage would connect to the existing sewer in the Killian's Glen housing estate.

- 2.3. An additional pedestrian connection is proposed from the village to the south-western corner of the site via Kelly's Lane from Lower Street. It is also proposed to retain and improve the access along an agricultural laneway that runs along the eastern boundary of the site.
- 2.4. Landscaping plans for the site would involve part reconstruction and enhancement of the traditional stone/sod boundaries and retaining all trees. One of the watercourses would be reprofiled and integrated into the public open space. The other watercourse would flow through the private gardens of two houses.

### 3.0 Planning Authority Decision

#### 3.1. Decision

Planning permission was granted by the Planning Authority, (PA), subject to 23 planning conditions, three of which are appealed by applicant. The following conditions are subject to the First Party appeal,

##### **Condition No. 3 –**

*No development shall be commenced until cash security for the provision of and satisfactory completion of open space, roads, footpaths, storm water sewers, public lighting, other public facilities, including maintenance until taken in charge by Wicklow County Council, and the satisfactory compliance with the conditions of this permission, has been given. This cash security is required by the Council for application at its absolute discretion if such facilities are not duly provided to its satisfaction. The cash security shall be given by: - Lodgement with the Council of the sum of €888.000 (eight hundred and eighty-eight thousand euro). If development has not commenced within one calendar year from the date of the grant of this permission, or if it remains incomplete within three years of the commencement of development, the Council may at its discretion require an increase in the amount of the cash security in line with the Wholesale Price Index - Building & Construction*

*(Capital Goods) published by the Central Statistics Office or the cost of completing the outstanding works, whichever is the greater.*

*REASON: To ensure the satisfactory completion of the site development works, in the interests of residential amenity and the proper management of roads and services*

**Condition No. 9 –**

*The dwarf retaining wall structure along the boundaries adjoins public open space 7 between units 15-16 shall be a maximum of 1.2m in height.*

*REASON: In the interest of residential amenity and adequate surveillance.*

**Condition No. 19 (b) –**

*The landscaping and tree planting shall be carried out before or during the first planting season or part thereof occurring after the commencement of development. Any plants, which become seriously damaged, shall be replaced by others of similar size and species.*

*REASON: In the interests of visual amenity and integrating the development into the landscape.*

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The decision of the PA was informed by three reports by the Planning Officer, (PO). The first report dated the 13<sup>th</sup> of December 2021 requested further information, (FI). The second report dated the 7<sup>th</sup> of March 2022 requested a clarification of further information and the third report dated the 6<sup>th</sup> of April 2022 recommended that planning permission be granted.

The first report, dated the 13<sup>th</sup> of December 2021 includes the following,

- The development was assessed under the Wicklow County Development Plan 2016-2022. The site is zoned objective R10 – New Residential Rural Fringe with a small portion of the site zoned VC – Village Centre. Therefore, the principle of the development is acceptable.

- The density of the development is below what is required for the site, which would be equivalent to 39 units. However, the PO notes that the topography of the site restricts the developable area and in this instance the density is acceptable.
- Further information was requested on 14 points which relate to, how the developer intends to address the uncompleted development in Killian's Glen, issues related to land ownership, adequacy of internal road network and connection with the regional road network, connection to existing drainage network and sewer in Killian's Glen, site drainage details, landscaping and public open space, site layout and design details and new pedestrian access via Kelly's Lane.

The second report dated the 4<sup>th</sup> of March 2022 assessed the information submitted by the applicant and requested clarification on 7 points which related to the following,

- Regularisation of the access road,
- Ownership of the land along the shared boundary with Killian's Glen,
- Adequacy of the road entrance in terms of pedestrian access and drainage,
- Provision of Open Space,
- House types,
- Stream within private property, and,
- Management of the pedestrian laneway.

The third report of the PO dated the 6<sup>th</sup> of April 2022, assessed the information submitted and recommended that permission be granted.

### 3.2.2. Other Technical Reports

- **Water and Environmental Services** – The report dated the 1<sup>st</sup> of December 2021 has no objection to the proposal but recommends that some issues be addressed prior to commencement of development. The report dated the 4<sup>th</sup> of March 2022 assessed the FI and states that the applicant's submission does not state how the proposal meets the requirements of the Greater Dublin Strategic Drainage Study, (GSDSDS), and the Ciria SuDS Manual C753 for interception storage.

- **Housing Department** – Part V proposals are satisfactory.
- **Transportation, Water & Emergency Services** – The report dated the 19<sup>th</sup> of November 2021 has no objection to the proposed development. Details are listed for clarification or submission prior to the commencement of development. The report notes that the applicant should provide a commentary on the impact of the development will have on the receiving road network. Comments issued on the 4<sup>th</sup> of March 2022 further to the FI, had no objection to the proposal.
- **Arklow Municipal District Office** – The report dated the 9<sup>th</sup> of November 2021 states that further details are required regarding pedestrian crossing points, the installation of raised tables, public lighting, landscaping, manholes and gully traps, and the creation of a pedestrian link along Kelly's Lane. Autotrack drawings for internal roads should be provided. Details of roads and footpaths to be agreed. The memo dated the 29<sup>th</sup> of February 2022 notes that details of the pedestrian crossing and location have not been provided and that pedestrian crossings within the development do not comply with current standards. Comments issued on the 16<sup>th</sup> of March 2022 state that a pedestrian crossing is required as shown.

### 3.3. Prescribed Bodies

- **Uisce Éireann** – The report dated the 2<sup>nd</sup> of December 2021 requests further information regarding a pre-connection enquiry, third-party approval for a connection to the sewer in Killian's Glen and a condition and capacity survey on the existing sewer. The report dated the 17<sup>th</sup> of February 2022 has no objection to the proposal.
- **Department of Housing Local Government and Heritage** – The report dated the 20<sup>th</sup> of December 2021 recommends that archaeological planning conditions be attached should permission be granted.



### 3.4. Third Party Observations

17 submissions were received by the PA within the public consultation stage. The issues raised are summarised as follows,

- Delay in online access to the planning file,
- Killian's Glen housing estate and proposed access road is not completed,
- Overlooking of existing housing,
- Inadequate and unsafe access onto the R752,
- Inadequate and unsafe access road from the R752 junction,
- Impact on the Low Town ACA,
- Additional traffic through the existing estate,
- Impacts on existing residential amenity,
- Query about the planning status of the proposed internal road,
- Traffic predictions are based on outdated figures,
- The access road is very busy with traffic to and from Hidden Valley,
- Impact on existing flora and fauna,
- Insufficient infrastructure and water supply,
- Insufficient legal interest in the proposed pedestrian laneway,
- Drainage issues on surrounding lands

One further submission was received from Edward Kelly on foot of the submission on further information. The submission states that –

- There is an encroachment by Folio WW349 onto third party lands on Kelly's Lane. This needs to be corrected.
- Water from blocked watercourses on the applicant's land is currently flooding third party lands on Kelly's Lane. The planning application shows a watercourse entering this site, which is incorrect.

A further submission was received from Edward Kelly on foot of the submission made in the clarification of information request. The submission refers to existing rights of way along Kelly's Lane and discrepancies in Folio maps for this area.

## 4.0 Planning History

No planning history for the subject site.

Relevant planning history on adjoining sites –

Adjoining the site to the east – development at Killian's Glen –

- **UD5244C** – Enforcement file opened by the PA on the 11<sup>th</sup> of June 2020 regarding unauthorised development at Killian's Glen. The unauthorised development relates to non-compliance with conditions attached to PA Ref. 17/331 and 18/966.
- **18/966** – Planning permission granted by the PA on the 4<sup>th</sup> of April 2019 for revisions to development permitted under PA Ref. 17/331 and 17/882 to allow for revisions to the site boundary.
- **17/822** - Planning permission granted by the PA on the 25<sup>th</sup> of August 2017 for revisions to development permitted under PA Ref. 17/331 incorporating amendments to the site entrance, revisions to site boundaries and associated site works.
- **17/331** – Planning permission granted by the PA on the 16<sup>th</sup> of May 2017 for 25 houses and associated site works with a similar site layout to that previously granted under PA Ref. 07/900 and extended under PA Ref. 11/4869.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The site is located within the administrative boundary of Wicklow County Council. The operative Development Plan for the area is the Wicklow County Development Plan, (WCDP), 2022-2028, which came into effect on the 23<sup>rd</sup> of October 2022.

- 5.1.2. The application was assessed by Wicklow County Council in accordance with the policies and objectives of the Wicklow County Development Plan 2016-2022, which was the operative Development Plan at the time. On review of the contents of both plans, I note to the Board that there is a material change to the zoning objective for the site in the current Development Plan.
- 5.1.3. Under the previous Development Plan, the subject site was zoned objective ‘R10 – New Residential Rural Fringe’, which sought, ‘To protect, provide and improve residential amenities at a lower density not exceeding 10 units/ha’. A small portion of the site containing an access lane was zoned VC- Village Centre (Low Town). The zoning for the site was set out in the Rathdrum Local Area Plan 2017-2023 which came into effect on the 4<sup>th</sup> of June 2017 and is now expired.
- 5.1.4. The development of the town is now guided by the Rathdrum Town Plan, which is contained in Volume 2 of the WCDP 2022-2028. Within this plan the subject site is no longer within the settlement boundary of Rathdrum and has been de-zoned. The Core Strategy for the WCDP states that when assessing the targeted housing growth rate for towns and villages, legacy housing developments which were in train were considered. In some cases, this resulted in a higher than appropriate growth rate for the settlement. Rathdrum is categorised as a Level 4 town, which are generally targeted for growth rates of 20% - 25%. However, Rathdrum was found to have a targeted growth rate of c. 45%, due to legacy housing developments under construction. Therefore, the goal is to limit further development other than for town centre / infill / regeneration. (Section 3.4 – Population & Housing Allocations).
- 5.1.5. As the site is outside of the designated settlement, it is categorised as a ‘rural area’ in the WCDP. Part 1.2 of the Rathdrum Town Plan states that, ‘All lands located outside the plan boundary are considered to be within the rural area. Within these areas, planning applications shall be assessed having regard to the objectives and standards for the rural area, as set out in Volume 1 of the Wicklow County Development Plan’.
- 5.1.6. The following sections of the **WCDP 2022-2028** are relevant to the proposed development,
- The subject site is located outside of the settlement boundary of Rathdrum and is categorised as a rural area.

### **Section 6.3.8 – Rural Housing –**

**Section 6.3.5** – Density standards for Rathdrum are 30-41+ units per hectare for Centrally Located sites; 20-35 dwellings per hectare for Edge of Centre sites and densities of less than 15-20 units per hectare on Edge of Small Town / Village sites. (Table 6.1).

### **Housing Objectives -**

- CPO 6.1 - New housing development shall be required to locate on suitably zoned or designated land in settlements and will only be considered in the open countryside when it is for the provision of a rural dwelling for those with a demonstrable housing social or economic need to live in the open countryside.
- CPO 6.36 - Urban generated housing shall not be permitted in the rural areas of the County, other than in rural settlements that have been deemed suitable to absorb an element of urban generated development as set out in the Settlement Strategy.
- CPO 6.41 - Facilitate residential development in the open countryside for those with a housing need based on the core consideration of demonstrable functional social or economic need to live in the open countryside in accordance with the requirements set out in Table 6.3, Rural Housing Policy.

### **Appendix 1 – Development and Design Standards – Section 3.2.4**

Greenfield Developments – Small-medium scale housing developments – shall consider the following:

- Visual integration and physical connectivity,
- No degradation of existing residential and visual amenities,
- Access to future development lands adjoining the site should be facilitated in the design,
- Natural features and biodiversity should be enhanced, including but not limited to, water courses, green corridors, mature trees and hedgerows.
- Ecological impact assessment may be required.

## **Rathdrum Town Plan**

### **Section 1.1.2 – Population and Housing –**

The objectives for the delivery of housing in Rathdrum require that –

- A minimum of 30% of the targeted housing growth shall be directed into the existing built-up area of the settlement, on lands zoned ‘town centre’, ‘village centre’, ‘existing residential’ and ‘mixed use’, and,
- To require that new residential development represents an efficient use of land and achieves the highest density possible, having regard to minimum densities as set out in Table 6.1 (of Chapter 6 of the County Development Plan) subject to the reasonable protection of existing residential amenities and the established character of existing settlements.

## **5.2. National Guidance**

### **5.2.1. Development Management Guidelines for Planning Authorities, (2007).**

#### **Chapter 7 – Drafting Planning Conditions**

Planning conditions should be:

- Necessary – i.e., whether, without the condition, either permission for the development would have to be refused, or the development would be contrary to the proper planning and sustainable development in some identifiable manner.
- Relevant to planning – the requirements of a condition should be directly related to the development to be permitted or the condition may be ultra vires and unenforceable.
- Relevant to the development permitted.
- Enforceable – conditions should be effective and capable of being complied with.
- Precise – every condition should be precise and understandable.
- Reasonable - a useful test of reasonableness may be to consider whether a proposed condition can be complied with by the developer without

encroachment on land that he or she does not control, or without otherwise obtaining the consent of some other party whose interests may not coincide with his/hers.

### 5.2.2. **Project Ireland 2040 - National Planning Framework (NPF)**

The NPF 2040 was adopted on the 29th May 2018 with the overarching policy objective to renew and develop existing settlements rather than the continual sprawl of cities and towns out into the countryside. The NPF sets a target of at least 40% of all new housing to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites. It also seeks to tailor the scale and nature of future housing provision to the size and type of settlement.

### 5.2.3. **Sustainable Residential Development in Urban Areas (Guidelines for Planning Authorities), 2009**

The Guidelines set out the key planning issues to be considered in the provision of new housing development in terms of sustainable development. Rathdrum would be categorised as a 'Smaller Town' in the Guidelines.

#### **Chapter 6 – Smaller Towns and Villages**

Advice contained in this chapter states that;

- Development in smaller towns and villages must be plan led.
- New development should contribute to compact towns and villages,
- Higher densities are appropriate in certain locations,
- Offer alternatives to urban generated housing,
- The scale of new residential schemes for development should be in proportion to the pattern and grain of existing development.

#### **Section 6.11– Density – Edge of centre sites.**

Densities to a range of 20-35 dwellings per hectare will be appropriate.

#### 5.2.4. **Regulation of Commercial Investment in Housing, (Guidelines for Planning Authorities, May 2021).**

Ministerial Guidelines issued under Section 28 of the Planning and Development Act 2000 (as amended), seek to address the regulation of commercial institutional investment in certain housing developments.

The Guidelines are relevant in this instance as they relate to residential development that includes 5 or more houses or duplexes that are not specified as 'build to rent' development at planning stage.

They require that planning conditions be attached to restrict new houses and duplexes to first occupation and use by individual purchasers and those eligible for social and affordable housing including cost-rental, in order to ensure an adequate choice and supply of housing.

### 5.3. **Natural Heritage Designations**

5.3.1. No designations apply to the subject site.

### 5.4. **EIA Screening**

5.4.1. Having regard to the nature and scale of the proposed development, which is for 33 no. houses with ancillary site works on a greenfield site, it is considered that 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**

#### First Party Appeal

The first party appeal relates to Conditions 3, 9 and 19(b) of the decision of the PA. The grounds of appeal include the following:

- Condition No. 3 - the applicant requests that the condition be revised to require an insurance bond in lieu of a cash deposit sum.
- Condition No. 9 - the applicant contends that the wording of the condition requires clarification. To secure passive surveillance, the maximum height of 1.2m should refer to the height as taken from the finished floor level of House No. 15 and 16. There is no need for a retaining wall and would be an additional and undue expense. The applicant requests that the condition be revised accordingly.
- Condition No. 19 (b) – the applicant contends that this condition is restrictive. The construction period for the development is estimated to be 24 months. The applicant requests that the landscaping and tree planting be implemented in the second planting season following the commencement of development.

### Third Party Appeal

The grounds of the third-party appeal are summarised as follows:

- The appellant alleges that unauthorised development has taken place at the entrance to the Killian's Glen estate which has not been regularised. The permission granted seeks to consolidate the unauthorised development which is ultra vires.
- It is argued in the appeal that issues relating to drainage and traffic on the private road between the Killian's Glen estate and the R752 were not addressed by the PA or the applicant. The appeal also notes that the third report of the PO states that a number of issues should be addressed by way of permission, which did not occur.
- The appeal argues that the existing estate roads are inadequate and have not been fully completed. Public lighting at the junction between the estate and the private road is inadequate and the proposed pedestrian crossing does not address the lack of a continuous pedestrian pathway between the estate and the public road.
- The requirement of Condition No. 19 to retain mature trees and hedgerows where possible does not adequately address the concerns raised by third



parties regarding locally roosting bats and woodpeckers. The clearing of a laneway bordering the estate will also have a destabilising effect on the sloping ground with negative adverse effects on the existing estate.

## 6.2. Applicant Response

- No response was received to the third-party appeal.

## 6.3. Planning Authority Response

A response was received from the PA on the 17<sup>th</sup> of May 2022 and includes the following,

- Regarding the first party appeal to Condition No. 3, the PA notes that the Board has previously upheld a similar condition which was appealed under ABP PL.27.241834.
- The option of a bond of an insurance company or other security over and above a cash deposit would, (and has in the past), undermine the PA's control over the completion of housing estates. Experience has shown that this is the most effective way of achieving timely and satisfactory completion of housing developments.
- The cash deposit removes the need for third parties such as insurance companies or banks, which, in the past has led to conflicting opinions of completion and delays.
- The PA is very active in completing developments where developers have not fulfilled their responsibilities. Independent contractors are employed by the PA to carry out this work. This is only workable where the PA holds cash deposits to pay for these works.
- Cash deposits are held by the PA in separate bank accounts and do not form part of the PA's ongoing financial resources. They can only be used for the specific purpose of ensuring completion of developments. Where applicable, interest on the cash deposits is paid when returned to the developer.
- The PA allows cash security to be reduced where a construction phasing programme is agreed. This allows a reduced amount to be submitted for a

specific phase, which can then be rolled on to the next phase when the first is substantially completed. This process is not possible with insurance/bank bonds and the full amount of the bond must be put in place for the full duration of the construction of the development until it is taken in charge.

- The PA has a very good record of achieving completion of estates. The requirement for cash deposits has been one of the processes that helps to achieve this.
- Regarding Condition No. 9, the PA has no objection to the condition being modified. The word 'retaining' is not required and the typographical error 'adjoin' should be corrected. The following wording is suggested, *'The proposed boundary dwarf walls of House No's 15 and 16 which abut Public Open Space No. 7 shall be a maximum height of 1.2m above the Finished Floor Level of those houses'*.
- Regarding Condition No. 19 (b), the PA consider that it important that the landscaping be undertaken as the development progresses. It is suggested that the wording of the condition could be amended to read, *'The landscaping and tree planting shall be carried out before or during the first planting season occurring after the commencement of each phase prior to occupation of that phase. The requirements of this condition shall be incorporated into the phasing plan required under Condition No. 7. Any plants that become seriously damaged shall be replaced by others of similar size and species'*.

#### 6.4. Observations

One joint observation was received from Aoife Byrne and, Keith and Rachel Halpin.

- The observers are residents of No's 4 and 16 Killian's Glen which are the houses located at the end of the cul-de-sac that would become the vehicular access point to the proposed development.
- There is a concern that the agricultural lane bounding both properties will be opened for vehicular land pedestrian access and will impact on privacy. The observers request that a wall be constructed along the boundary to address

this. Under the original permission for the estate, (PA Ref. 18/966), a 2m block wall was constructed for some houses adjoining public areas.

- No's 4 and 16 are located on a lower gradient to the proposed development and the observers are concerned that there is a flood risk from surface water runoff from the development.

## 7.0 Assessment

### 7.1. First Party Appeal

- 7.1.1. As the development is subject to a first party appeal and a third-party appeal, I will deal with each appeal separately. The first party appeal relates to three planning conditions which were attached to the decision of the PA to grant permission.

Condition No. 3 states that,

*No development shall be commenced until cash security for the provision of and satisfactory completion of open space, roads, footpaths, storm water sewers, public lighting, other public facilities, including maintenance until taken in charge by Wicklow County Council, and the satisfactory compliance with the conditions of this permission, has been given. This cash security is required by the Council for application at its absolute discretion if such facilities are not duly provided to its satisfaction. The cash security shall be given by: - Lodgement with the Council of the sum of €888.000 (eight hundred and eighty-eight thousand euro). If development has not commenced within one calendar year from the date of the grant of this permission, or if it remains incomplete within three years of the commencement of development, the Council may at its discretion require an increase in the amount of the cash security in line with the Wholesale Price Index - Building & Construction (Capital Goods) published by the Central Statistics Office or the cost of completing the outstanding works, whichever is the greater.*

*Where the developer proposes in writing to the Planning Authority to carry out the proposed development in phases, a reduced cash security will be computed by the Planning Authority proportionate to the development works required to make each phase viable. This cash security can be partially rolled from one phase to another depending on the Planning Authority's assessment of the works outstanding in each*

*phase and where the storm water sewers, public lighting, roads, footpaths and open spaces, required to facilitate the houses constructed in that phase, have been completed to an appropriate standard. All relevant information to show compliance with the appropriate standards (e.g., Engineers Certification, CCTV of storm water sewers, RECI Certs etc.) should be submitted to the Planning Authority in advance of any request to roll the cash security from a particular phase to another phase of the development. The return, of the cash security shall be subject to, inter alia, the report of an independent chartered engineer (with professional indemnity insurance) confirming that all materials and workmanship of the site infrastructure is in accordance with the plans and specifications submitted.*

*REASON: To ensure the satisfactory completion of the site development works, in the interests of residential amenity and the proper management of roads and services.*

- 7.1.2. The applicant requests that they be permitted to submit an insurance bond in lieu of a cash deposit sum. No reason is given as to why the use of an insurance bond is requested. The response of the PA notes that the Board has previously upheld conditions of this nature and states that the use of a cash deposit helps to ensure the timely and satisfactory completion of housing estates. It has been the experience of the PA that the bond of an insurance company, or security other than a cash deposit would undermine the PA's control to oversee completion through delays caused by third parties and conflicting opinions of what constitutes 'completion'. Cash deposits are held by the PA in separate bank accounts and do not form part of the PA's ongoing financial resources. They can only be used for the specific purpose of ensuring completion of developments. Where applicable, interest on the cash deposits is paid when returned to the developer. A reduction in cash security can be accommodated by the PA where a construction phasing programme is agreed. This allows a reduced amount to be submitted for a specific phase, which can then be rolled on to the next phase when the first is substantially completed.
- 7.1.3. I accept that the provision of a cash deposit is a useful tool in achieving the satisfactory completion of housing developments, and acknowledge the PA's reason for attaching Condition No. 3 is to ensure the prompt completion of development without the use of third parties. The PA has also submitted that a reduced level of cash security can be accommodated if the development was subject to phasing. In

consideration of the foregoing, I am satisfied that the condition is necessary for the development and is relevant to the development. It is also reasonable and enforceable. Should permission be granted for the development, I recommend that the wording of Condition No. 3 be retained.

Condition No 9 requires that,

*The dwarf retaining wall structure along the boundaries adjoins public open space 7 between units 15-16 shall be a maximum of 1.2m in height.*

*REASON: In the interest of residential amenity and adequate surveillance.*

- 7.1.4. The applicant requests that the wording of this condition is clarified and puts forward that the phrase 'retaining wall' should be changed to 'boundary wall'. The response of the PA states that the word 'retaining' is not required and the typographical error 'adjoin' should be corrected. An alternative wording is suggested. It is clear that an error was made in the drafting of this condition, and I accept the argument of the applicant that a retaining wall would be unnecessary. I recommend that, should planning permission be granted, the wording of Condition No. 9 be amended to read as follows:

- 7.1.5. *'The proposed boundary dwarf walls of House No's 15 and 16 which abut Public Open Space No. 7 shall be a maximum height of 1.2m above the Finished Floor Level of those houses'.*

Condition No. 19 (b) requires that,

*The landscaping and tree planting shall be carried out before or during the first planting season or part thereof occurring after the commencement of development. Any plants, which become seriously damaged, shall be replaced by others of similar size and species.*

*REASON: In the interests of visual amenity and integrating the development into the landscape.*

- 7.1.6. The applicant argues that that the construction of the development would take a minimum of 24 months to complete and that the requirement to carry out landscaping in the first planting season is restrictive. The applicant requests that the wording of this condition be amended to allow the landscaping to be carried out during the second planting season following commencement instead.

7.1.7. In their response to the appeal, the PA consider it important that the landscaping be undertaken as the development progresses and suggested that the wording of the condition could be amended to read, *'The landscaping and tree planting shall be carried out before or during the first planting season occurring after the commencement of each phase prior to occupation of that phase. The requirements of this condition shall be incorporated into the phasing plan required under Condition No. 7. Any plants that become seriously damaged shall be replaced by others of similar size and species'*.

7.1.8. The successful implementation of the landscaping scheme is an important factor in the satisfactory completion of the housing development. The sloping nature of the site, it's semi-rural location and the presence of water courses in the public open space is acknowledged. Adequate landscaping and tree planting would help integrate the development into the surrounding countryside. I recommend that this condition be retained and that the wording be amended to reflect the suggestion of the PA which allows for a phased delivery of the landscaping plan.

## 7.2. **Third Party Appeal**

7.2.1. Having examined the application details and all other documentation on file, inspected the site and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal can be addressed under the following headings:

- Principle of Development
- Access Arrangements
- Flora & Fauna
- Drainage
- Appropriate Assessment

## 7.3. **Principle of Development**

7.3.1. In the Rathdrum Town Plan contained in Volume 2 of the WCDP 2022-2028, the subject site is no longer within the settlement boundary of Rathdrum and has been

de-zoned. The amendment to the settlement boundary and land use zoning was carried out by the PA when Rathdrum was found to have a higher than appropriate targeted growth rate, (45%), due to legacy housing developments under construction. Therefore, the goal is to limit further development other than for town centre / infill / regeneration. (Section 3.4 – Population & Housing Allocations). To consolidate development within the town centre the objectives for the delivery of housing in the Rathdrum Town Plan require that –

- A minimum of 30% of the targeted housing growth shall be directed into the existing built-up area of the settlement, on lands zoned ‘town centre’, ‘village centre’, ‘existing residential’ and ‘mixed use’, and,
- New residential development represents an efficient use of land and achieves the highest density possible, having regard to minimum densities as set out in Table 6.1 (of Chapter 6 of the County Development Plan) subject to the reasonable protection of existing residential amenities and the established character of existing settlements.

7.3.2. Under the Rathdrum LAP 2017-2023, (now expired), the site was zoned R10 – New residential Rural Fringe, which supported a lower density of development, not exceeding 10 units per hectare. The proposed development would have a density of less than 10 units per hectare, (uph), which was considered acceptable by the PO given the sloped topography of the site. Table 6.1 of the WCDP sets out the density standards for Rathdrum. The relevant category for the subject site within this table is an ‘Edge of Centre’, which should have a density of 25-30 dwellings per hectare. The subject proposal falls well below this standard.

7.3.3. As the site is outside of the designated settlement, it is categorised as a ‘rural area’ in the WCDP. Part 1.2 of the Rathdrum Town Plan states that, *‘All lands located outside the plan boundary are considered to be within the rural area. Within these areas, planning applications shall be assessed having regard to the objectives and standards for the rural area, as set out in Volume 1 of the Wicklow County Development Plan’*. Chapter 6 of the WCDP sets out the housing objectives for rural areas and include the following:

- CPO 6.1 - New housing development shall be required to locate on suitably zoned or designated land in settlements and will only be considered in the

open countryside when it is for the provision of a rural dwelling for those with a demonstrable housing social or economic need to live in the open countryside.

- CPO 6.36 - Urban generated housing shall not be permitted in the rural areas of the County, other than in rural settlements that have been deemed suitable to absorb an element of urban generated development as set out in the Settlement Strategy.

- 7.3.4. Furthermore, the settlement strategy for the county requires that occupants demonstrate a housing need based on the core consideration of demonstrable functional social or economic need to live in the open countryside, (Table 6.3- Rural Housing Policy, Volume 1, WCDP).
- 7.3.5. Based on the policies and objectives of the WCDP 2022-2028, the principle of development on the site is not acceptable. The site is no longer zoned for housing and is outside of the settlement boundary. It would therefore materially contravene the settlement strategy for the county and Objectives CPO 6.1 and CPO 6.36 of the Wicklow County Development Plan and would result in an unacceptable form of development. It would also fail to meet the density standards for the town as set out in Table 6.1 of the WCDP and would not be in accordance with local and national planning policy which seeks to consolidate development within settlements and to regenerate and rejuvenate town centres.
- 7.3.6. I note that the Board is not constrained by Section 37(2) of the Planning and Development Act. Under the Planning and Development Act 2000, as amended. In cases where a material contravention has been identified, it is open to the Board to grant permission in the following four circumstances. These circumstances, outlined in Section 37(2)(b), are in the (i) national, strategic interest; (ii) conflicting objectives in the development plan or objectives are not clearly stated (iii) conflict with national/regional policy and section 28 guidelines; and (iv) the pattern of development and permissions granted in the vicinity since the adoption of the development plan.
- 7.3.7. I do not consider that the proposed development meets any of the circumstances outlined in Section 37(2)(b) as it is,



- Not strategic in nature - whilst the provision of housing is an important consideration, the proposed development is not of national importance.
- The objectives in the Development Plan as they relate to the site are clearly stated and do not support its development,
- The development would be in conflict with national policy as set out in the NPF which seeks to consolidate existing developments and encourage the development of brownfield sites, and,
- It is not in accordance with any development or permissions granted in the vicinity since the adoption of the Development Plan.

Therefore, I do not recommend that the Board exercise its discretion under Section 37(2)(b) of the Planning and Development Act (as amended) in this instance.

#### **7.4. Access Arrangements**

7.4.1. Concerns were raised in the grounds of appeal regarding the safety of the proposed vehicular and pedestrian access to the development. Vehicular access to the site would be through the existing Killian's Glen housing estate, which is accessed off the Hidden Valley access road. I would agree with the appellant that the existing pedestrian access to the estate requires improvement. Sightlines from the entrance are restricted by an ESB substation on the public road to the south of the entrance and there is a curve in the road to the north of the entrance. The footpath in the estate is narrow and does not continue along the public road. Therefore, pedestrians must cross the road to access the footpath which only runs along the eastern side of the road.

7.4.2. It is proposed to move the ESB substation to achieve satisfactory sightlines at the access point. However, no further improvements to the pedestrian facilities at the access was proposed. This issue was raised by the PO in their reports but was not substantially addressed by the applicant. There is also some ambiguity regarding the planning status of the entrance to Killian's Glen housing estate. Planning permission for the estate was granted under PA Ref. 17/331. Permission to amend the development and the layout of the access was permitted under PA Ref. 17/822 this layout that has been constructed. (For the information of the Board, the access

layouts permitted under PA Ref. 17/331 and 17/822 are shown in Appendix A of this report). A subsequent application to amend the development was lodged under PA Ref 18/966 and approved by the PA. This layout reverted to that permitted originally under 17/331 and the access was not constructed in accordance with this layout. When queried by the PO, the applicant stated that the layout in 18/966 was submitted in error by a different agent and it was never intended to revert to the original layout. In their report of the 6<sup>th</sup> of April 2022, which assesses the clarification of further information, the PO notes that the development has been constructed as per the requirements of PA Ref. 17/822 and that a planning application to address any outstanding irregularities for Killian's Glen was lodged with the PA. This planning application was registered under PA Ref. 22/269 but was withdrawn by the applicant following a request for further information.

- 7.4.3. It is not within the remit of this appeal to adjudicate on unauthorised development, and I accept the opinion of the PO that the existing access has been constructed in accordance with a previous planning permission. However, I am not satisfied that the layout adequately accommodates safe pedestrian movement to and from the estate. Should the Board be minded to grant planning permission for the development, I recommend that a planning condition be attached to address the lack of pedestrian facilities.
- 7.4.4. The issue of the safety of the junction at the R752 was also raised by third parties and information was submitted showing hap-hazard and double parking along the access road and close to the junction. This issue was raised by the PA in their assessment of the application and an Engineering Report was submitted by the applicant. The report found that the layout and width of the road was adequate to accommodate its original function and that it was compliant with the standard carriageway for local streets as defined in the DMUR's, (i.e., between 5-5.5m with lane widths of 2.5-2.75m). The report also found that the junction with the R752 had adequate sightlines and public lighting but would benefit from road markings.
- 7.4.5. It was evident from the site visit that the T-junction with the R752 would become busy during certain times. The availability of on-street parking is restricted in this area, and it is clear from submissions hap-hazard parking occurs around this junction. Whilst I accept that this junction may not function efficiently due to physical constraints and double parking, I do not consider that the provision of an additional

33 houses would have a significant contribution to the level of traffic using this junction. In their response to the clarification of FI the applicant states that they are willing to provide a pedestrian crossing along the access road. This would help to improve the pedestrian environment along the road.

- 7.4.6. A new pedestrian connection to the stie is proposed from Lower Street and along Kelly's Lane. This laneway is a shared access route from the town and extends along the southern-western boundary of the site. The utilisation of an existing access route would be advantageous for future residents. However, the laneway behind the site is overgrown with ponding in place on the occasion of the site visit. Extensive clearing works would be required to make the laneway functional. Issues raised regarding Folio boundaries along Kelly's Lane are civil issues to be dealt with between the parties.
- 7.4.7. Concerns were also raised regarding the use of the existing agricultural lane that extends from a point beside the estate entrance and along the southern boundary of Killian's Glen. The lane extends to the side of house No's 4 and 16 in Killian's Glen and the residents are concerned that the clearing out of this laneway will encourage anti-social behaviour. This issue was raised by the PA and the applicant responded that the laneway is a right of way to the agricultural lands to the north of the site and that it is independent to the housing development. The applicant intends to clear it as part of the development works to make good the eastern boundary of the proposed development and to prevent it from becoming a no-man's land. The PA found this response acceptable. I would share the concern of the PA and the residents that it may become a no-man's land or a dumping area. On the occasion of the site visit, the laneway was secured by a gate. The application does not state how the laneway would be secured on either side of the entrance to the estate and this issue requires clarification. Should be Board be minded to grant permission for the development, I recommend that this issue be addressed through a relevant planning condition.

## 7.5. Flora & Fauna

7.6. Within the grounds of appeal, it is argued that the ecological impacts of the development were not properly assessed or considered. The appellants note that the Ecological Impact Assessment, (EclA), was not carried out at the optimal time to assess terrestrial mammal activity and question the results. Whilst the limitations of the timing of the field survey is noted, the EclA also states that a desktop survey was also carried out and the National Biodiversity Data Centre, (NBDC) records were consulted for species of conservation significance. Based on this data, no species of conservation importance were noted on the site. It is also acknowledged that whilst some protected species, (such as badger, hedgehog and the common frog), were not observed on the site, they may be present and mitigation measures recommend that a preconstruction mammal/amphibian survey should be carried out to ensure that mammals of conservation importance are not present on the site.

7.7. It is unclear if a bat survey was carried out as part of the EclA and the only mitigation measure recommended for bats relate to the installation of suitable lighting on the site. Treelines along the site boundaries could be used by birds and bats for nesting, roosting and commuting / foraging. Construction activity would result in disturbance to these species but as the treelines will be retained the habitats and commuting / foraging routes will not be destroyed. I note the location of the site, which is adjacent to open fields of similar character, and I am satisfied that any concerns regarding the disturbance of fauna on the site can be addressed through additional surveys and appropriate mitigation measures.

## 7.8. **Drainage**

7.8.1. The sloping topography of the site and its implications regarding drainage and the potential for existing houses to be impacted from flooding or surface water runoff was raised by third parties. I am satisfied that the issue of drainage on the site has been sufficiently addressed in the application. A Flood Risk Assessment was undertaken for the development and found that the site would not be at risk from flooding or would result in a flood risk to surrounding development. Proposals for Surface Water Drainage on the site include an attenuation tank, and an independent surface water network for the development that would discharge surface water from hardstanding areas at a restricted Greenfield rate, via a new concrete headwall to a drainage ditch

that runs along the southwestern boundary of the site. Existing watercourses would also be profiled to cater for run-off discharge. I am satisfied that adequate drainage provisions can be provided to deal with the surface run-off from the site and I note that this is a requirement of the GDDS and the Development Plan. It is also noted that the PA has no objection to the drainage proposals for the site.

## 7.9. Appropriate Assessment

- 7.9.1. A Stage 1 Screening for Appropriate Assessment was submitted with the application and concluded that, *‘There is no possibility of significant impacts on Natura 2000 sites, features of interest or site specific conservation objectives. A Natura Impact Statement is not required’*.
- 7.9.2. In accordance with obligations under the Habitats Directives, 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. The first stage of assessment is screening.
- 7.9.3. The proposed development is for the construction of 33 houses on a greenfield site. A full description of the development is provided in Section 2.0 of this report.
- 7.9.4. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s). The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.
- 7.9.5. The closest European sites are,

Site Code	Name	Distance from site
<b>SAC</b>		
IE000733	Vale of Clara (Rathdrum Wood) SAC	100m to the north
IE000717	Deputy’s Pass SAC	4.2km

IE002122	Wicklow Mountains SAC	8.4km
IE000729	Buckroney-Brittis Dunes and Fern SAC	12.6km
IE001766	Maherabeg Dunes SAC	12.9km
IE002249	The Murrough Wetlands SAC	13km
<b>SPA</b>		
IE004040	Wicklow Mountains SPA	8.4km
IE004186	The Murrough SPA	13km
IE004127	Wicklow Head SPA	14.6km

- 7.9.6. There is no hydrological connection from the site to any of the Natura 2000 sites. Two streams traverse the site and surface water will drain to these streams and to the Avonmore River to the south of the site. This river is part of the Avoca catchment, which does not drain to, or have any connection to a Natura 2000 site. Any potential pathways from the site to Natura 2000 sites would be overland or from airborne particles and dust deposition.
- 7.9.7. Given the absence of any hydrological connection to any Natura sites, the only other site that would be close enough to be within the Zone of Influence for any overland or airborne pathways would be the Vale of Clara (Rathdrum Wood) SAC, which is 100m to the north of the site.
- 7.9.8. The features of interest for the Vale of Clara SAC are '*Old Sessile Oak woods with Ilex and Blechnum in the British Isles [91A0]*' and the Conservation Objective seeks '*To restore the favourable conservation condition of Old sessile oak woods with Ilex and Blechnum in the British Isles in Vale of Clara (Rathdrum Wood) SAC...*'. Any potential impacts on the conservation objectives of the designated site would be limited to the removal of the existing biodiversity corridor between both sites and the distribution of dust during the construction phase. It is not proposed to remove any of the existing site boundaries or treelines from the site and the level of dust generated during the construction phase would not be of a scale that would impact on the features of interest of the SAC. There are no plans or projects that would

combine with the proposed development to generate any cumulative impacts on any nearby Natura 2000 sites.

- 7.9.9. I have reviewed the qualifying interests and conservation objectives of the nearest European sites and, having regard to the nature and scale of the proposed development and the separation distances to the nearest European site, no Appropriate Assessment issues arise. It is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

- 8.1. I recommend that planning permission be refused for the development.

## **9.0 Reasons and Considerations**

The site is located outside of the settlement boundary of Rathdrum as defined in the Wicklow County Development Plan 2022-2028. The proposed development would therefore be on land categorised as a rural area and would not be in accordance with Objective CPO 6.1 which requires new housing to be located in designated settlements. It would also fail to meet the required density standards as set out in Table 6.1 of the Development Plan and would not be in accordance with local and national planning policy which seeks to consolidate development within settlements and to regenerate and rejuvenate town centres.

The Board considers that the proposed development would materially contravene the objective CPO 6.1 of the Wicklow County Development Plan 2022-2028 and pursuant to the provisions of section 37 (2)(b) of the Planning and Development Act, 2000, is precluded from the granting of planning permission for the proposed development as none of the provisions of section 37 (2)(b ) (i), (ii), (iii) or (iv) of the said Act apply in this case. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Elaine Sullivan  
Planning Inspector

11<sup>th</sup> of September 2023



**Appendix A – Permitted Access Layouts**

**Layout permitted under PA Ref. 17/331 -**



**Layout permitted under PA Ref. 17/822 -**

