



An
Bord
Pleanála

Inspector's Report ABP-313709-22

Development	30 houses with associated site development works.
Location	Kilminchy , Portlaoise , Co. Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	21561
Applicant(s)	Thomas Kelly and Sons Group Ltd
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First & Third Party
Appellants	Thomas Kelly and Sons Group Ltd John Cowhig
Date of Site Inspection	19 th December 2022
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located at the eastern side of Kilminchy, at the north-eastern end of Portlaoise, Co. Laois. Kilminchy, is a large area of recently constructed low rise residential development of detached, semi-detached and terraced dwellings and apartments: comprising areas where there is established development, areas under construction, and undeveloped lands.
- 1.1.2. The site is rectangular in shape having its long axis running north-east to south-west, along the western side of the existing residential road, Lime Tree Avenue. To the west and south-east is residential development. To the east is undeveloped land, part of the Kilminchy lands.
- 1.1.3. Land in the area is generally flat.
- 1.1.4. The Board has before it appeals against the planning authority's (PA's) decision in relation to a site for an 85 Unit Residential Development (313771), on the other side of Lime Tree Avenue.

2.0 Proposed Development

- 2.1.1. It is proposed to construct 30 dwelling houses, consisting of 2 number, two-storey, detached four-bedroom houses (with single-storey returns), 10 number, two-storey , three-bedroom semi-detached houses (including 2 number, with single-storey returns), 6 nr. two and half-storey three-bedroom houses (with dormers to front), 6 number, two-bedroom, two-storey to front with single -storey to rear houses (with velux to rear of roof). The development will be accessed off an existing road and includes all access driveways, related and ancillary services and all associated siteworks.
- 2.1.2. The application was accompanied by a report 'Proposals for Foul and Surface Water Drainage, Water Supply and Roads by Jason Redmond & Associates Consulting Engineers, which includes:

The storm drainage network will include for the provision of drainage and attenuation for 16 out of 30 proposed residential units. The attenuation system is sized to cater for the entire development. The final storm connection for the tank is via existing Manhole SMH1 onto the existing 225mm dia sewer that was previously constructed. The attenuation system will restrict the rate of run-off from the developed site to

match that of the pre-development greenfield levels. A hydrocarbon interceptor will be installed upstream of the attenuation system

- 2.1.3. Foul Drainage – the main foul drainage has been designed in accordance with Irish Water (IW) standards and Code of Practice and will be subject to a connection agreement being in place with IW. The subject site is currently undeveloped. The foul sewer arrangement is similar to the storm drainage as there is an existing foul sewer running adjacent to the site in a northerly direction towards a pumping station in the northern part of the site. The existing sewer is serving the Holdbrook developments to the south and is not yet taken in charge. It is proposed to run separate foul drainage network in 2 separate lines closer to the proposed development. Units 1-16 are proposed to be served by new 150dia line connected to existing FMH2 at the Kilminchy Avenue roundabout. Units 17-30 are proposed to be served by new 150 dia line connected to existing FMH1 to the north of the proposed development at Lime Tree Avenue.
- 2.1.4. Confirmation of feasibility from IW.
- 2.1.5. It is proposed to lay a new foul gravity system to serve the entire development area. Each residential unit is served by a foul drain which then connects to a main foul drainage pipe to be installed under the proposed access roadway or open space. The main foul drainage will be a 150mm pipe throughout the development. The foul drainage would remain in the control of the applicant until taken in charge.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decision, dated 6th May 2022, was to grant permission subject to 17 conditions, including:

3 – restricting first occupancy to individual purchasers.

4 and 5 connection agreements from Irish Water.

6 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.

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

8 a) public lighting in the development shall be LED technology luminaries with minimum 10 year warranty. Lighting levels 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.

9) waste management during construction.

10 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 owners 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.

11 a) The overall rear boundary shall comprise a 1.8m high concrete panel infill fence. The fence shall extend along the south-western side boundary of site no. 1 and join with the existing concrete block wall at that place.

b) Concrete block screen walls shall be suitably capped and plastered on their external public facades.

c) Only native trees and shrubs shall be planted in the proposed landscaping scheme.

d) Planting shall be carried out in the first planting season following date of grant of this permission.

e) In the event of tree/hedge failures, these shall be replaced to the satisfaction of the planning authority.

Reason: Visual amenity and proper planning.

14 a) site works standards

b) internal roads.

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 precise details shall be submitted and agreed in writing prior to commencement of development.

d) stage 3 road safety audit.

16) 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.

17) naming and numbering.

18) Development Charge.

19) Prior to the commencement of development, a contribution of €7,500 shall be payable to Laois Co Co, for the Local Authority to complete a survey and report of the existing surface water drainage system in Kilminchy to ensure that this additional proposed development does not cause an exceedance into the capacity of the lake or the existing drainage network. This is to confirm that this development does not overload or negatively impact the existing drainage system. This survey and report shall be carried out prior to any development works commencing on this development. To this end, the applicant must receive approval from the Road Design Section of Laois County Council prior to commencing development works on the proposed development.

Reason: It is considered reasonable that the developer should contribute towards the expenditure incurred or proposed to be incurred by Laois County Council in respect of the provision/improvement of public services/infrastructure benefitting development in the area of the planning authority.

3.1.2. Condition 19 is subject to appeal.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The first planning report (1st of 3), 1st October 2021, recommending further information on 11 items, includes:

- Density is 42.25 units per ha.
- Re. DMO6 no garden depth is 15m; 11m is not achieved in all cases.
- Contribution – roads and amenity 30 x €3,000 = €120,000.
- There are a number of issues such as in relation to Irish Water services provision, dumping and filling, open space provision and third party objections which are required to be addressed by way of further information request.

3.2.3. Other Technical Reports

3.2.4. Housing, 24 August 2021 – condition.

3.2.5. Fire Officer, 24th August 2021 – conditions.

3.2.6. Environmental Protection, 1st September 2021 – recommending refusal – the neighbourhood of Kilminchy has many historical problems with regards unauthorised discharges of wastewater from individual houses and from the Foul Sewer and Surface Water Networks to watercourses in the area (Kilminchy Lakes and Triogue River). Laois County Council are currently investigating the foul and surface water networks to determine the location and extent of the problems in the housing estate. Recognising the existing problems with the foul and surface water networks, there should be no further developments in this area which require servicing from the existing foul and surface water networks until such time as the existing problems are identified and satisfactorily resolved.

3.2.7. Municipal District, 2nd September 2021 – alterations required. Road not in charge.

3.2.8. Road Design, 24th September 2021 - further information, including:

Surface water drainage & attenuation system – the applicant has submitted a report prepared by Jason Redmond & Associates 'Proposal for Foul and Surface Water Drainage, Water Supply and Roads', within this report the applicant is proposing to

install a Stormtech Attenuation system or similar, the attenuation system has a volume capacity of 55m³.

Road Design will accept a concrete tank or stormtech system.

An existing 225mm dia storm sewer runs parallel to the existing roadway, the existing storm sewer starts at EX SMH 1, located outside of Unit No 17, and flows to the north of the site. This storm sewer connects into the existing storm drainage at Lime Tree Avenue. The applicant is proposing to collect and attenuate from units 1-16, with the remaining units 17-30 being serviced by soak pits. The proposal is not acceptable to the Road Design Office. The preferred option would be to have all surface water run-off passing through the attenuation system.

It should be noted that in the event of extreme wet weather the existing lake within the Kilminchy housing development floods.

- 3.2.9. Waste Management & Environmental Protection, 24th September 2021 – further information – it is proposed to provide on-site soakaways to cater for the storm water runoff on site numbers 17 to 30. It is stated that these soakaways will be designed in accordance with BRE digest 365. Applicant to be requested to carry out BRE digest 365 on-site percolation soil assessment and submit the results.

3.3. Prescribed Bodies

- 3.3.1. DAU – 17th September 2021 – nature conservation – condition re. hedge removal.

3.4. Further Information

- 3.4.1. A further information request issued, 1st October 2021, the request included:

- 1) Consult IW regarding the feasibility of connecting.
- 2) Private open space – depth of rear gardens.
- 3) Density – relatively high – justify.
- 4) Traffic – revised layout indicating traffic calming measures; stage 1&2 Road Safety Audit.
- 5) Electric vehicle charging points – 10% required.
- 6) Parking – visitor parking.

- 7) Signage locations.
- 8) Surface water drainage & attenuation system – per roads design report – comment.
- 9) Lighting
- 10) Third party observations.
- 11) Sectional drawing indicating proposed development relative to the existing dwellings due east.

3.4.2. A further information response was received, 4th February 2022; including:

Storm water drainage – the storm water drainage has been revised as requested.

Proposed use of soak pits has been removed and a revised storm water system with attenuation has been included. This will reduce the run off within the scheme to pre development levels. It will also be a planning gain in respect of the previously approved development which has no such attenuation. This is designed in accordance with the GDSDS policy in respect of storm water attenuation.

3.5. Further Reports

3.5.1. Water Services, 11th February 2022 – no objection.

3.5.2. Housing & Urban Regeneration, 11th February 2022 – no objection. Condition Part V agreement.

3.5.3. Roads Design, 15th February 2022 – indicate acceptance of Road Safety Audit.

3.5.4. Municipal District – 18th February 2022 – conditions.

3.5.5. Planning, 3rd March 2022 - recommending clarification of further information.

3.5.6. A clarification of further information request issued, 1st March 2022; the request including:

- Re.density and querying ownership of the roadway at Limetree Avenue.
- Traffic safety –indicate acceptance of recommendations in stage 1&2 Road Safety Audit.

3.6. Further Reports

3.6.1. Municipal District – 21st March 2022 – satisfied with responses.

3.6.2. Road Design – 28th March 2022 –conditions, including –

The applicant shall pay a contribution of €7,500 to Laois Co Co, for the Local Authority to complete a survey and report of the existing surface water drainage system in Kilminchy to ensure that this additional proposed development does not cause an exceedance into the capacity of the lake or the existing drainage network. This is to confirm that this development does not overload or negatively impact the existing drainage system. This survey and report shall be carried out prior to any works starting on this development. To this end the applicant must receive approval from Road Design Section Laois County Council prior to starting work on this development.

- 3.6.3. Planning, 6th May 2022 – recommending permission. Including - satisfied with responses.

3.7. Third Party Observations

- 3.7.1. Third party observations on the file have been read and noted.

4.0 Planning History

313771, PA Reg Reg 21/543 – on the opposite side of Lime Tree Avenue. Current appeal against the PA's decision to grant permission for 85 houses.

230302, PA Reg Reg 08/293 - on the opposite side of Lime Tree Avenue.

Construction of 150 units comprising 149 no. one-and-a-half and two-storey dwellings (9 no. two bed, 136 no. three bed and 4 no. four bed), 1 crèche, estate roads, footpaths and cycleways, garages, parking spaces and new vehicular accesses onto existing road, granted, 24th March 2009, subject to conditions, including:

Conditions nos. 20 & 21 are particularly relevant:

20. On completion of the development, a full set of “as constructed” drawings shall be lodged with the planning authority.

Reason: To ensure the satisfactory completion of the development.

21. Prior to commencement of development a full detailed ‘as constructed’ drawings, design and specification of the stormwater system for the overall Kilminchy housing estate (planning register reference number 98/542) shall be submitted to and agreed with the planning authority. The details shall

identify deviations, if any, from the stormwater system permitted under planning register reference number 98/542, including:

- area and configuration of attenuation ponds,
- piped network,
- stream piping and culverting, and
- flow control systems of the attenuation ponds.

The details shall demonstrate that any deviations will not impair the efficiency of the system. Otherwise the system shall be brought to the required standard permitted under planning register reference number 98/542.

Reason: To ensure adequacy of the stormwater disposal system.

Extended under ref 14/46. Further extended under 19/94, to expire 31st August 2023.

This refers to lands on the opposite side of Lime Tree Avenue.

Reg. 07/1202 150 no. houses refused.

224051 PA Reg. Ref. 07/636 permission for change of house type and increase by 30 in number of houses no. in the northern part of the overall Kilminchy scheme; part of the overall development of 806 houses, 50 retirement apartments, an 82 bedroom nursing home and a 100 bed hotel at Kilminchy, for which planning permission was granted in January 1999, under ref. no. 98 / 542, subject to 54 conditions.

Reg. Ref: 06/299 permission refused, reason:

The proposed development is on unzoned land and is considered premature pending the adoption of a Local Area Plan for Portlaoise.

211880, Reg.Ref: 04/1574 - Changes to previous approved semi detached house types C and C1 with 4 unit terrace type blocks ref. no. 98 / 542: replacement of 32 no. semi detached 4 bed type C houses with 64 no. 2 bed townhouses in 4 unit terraces type C-R and associated changes to layout. Replacement of 4 no. semi detached 4 bed type C1 houses with 8 no. 2 bed townhouses in 4 unit terraces type C1 – R and associated changes to the layout at Kilminchy. Refused by the Board following a decision to refuse for the reason:

The proposed development on unzoned land would materially contravene a development objective set out in the current development plan for the area for the zoning of land for the use primarily of a particular purpose. The proposed

development would, therefore, be contrary to the proper planning and sustainable development of the area.

208245 PA Reg. Ref. 03/1308 refusal for 121 no. houses, reason - zoning.

Reg.Ref: 03/1050 permission granted for modifications to the parent permission to replace 2 no. semi-detached 4 bed houses with 4 no.2-bed townhouses.

Reg. Ref: 00/764 Change of type and layout of selected houses from previously approved permission at Kilminchy, Portlaoise; change of house type and layout and an increase of 20 units granted; appeal PL11.123561 related solely to contributions.

98/542 Commercial & housing development including 806 houses, 50 retirement apartments, 82 bedroom nursing home and 100 bedroom hotel. This is the parent permission for the overall development at Kilminchy Village.

History in vicinity to north:

313173, PA Reg Ref 21/496 – current first and third party appeals - Construction of 99 residential units and 1 creche. Thomas Kelly & Sons Group Ltd (Applicant).

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

304689 SHD 262 no. residential units (44 no. apartments and 218 no. houses), creche and associated site works. Requires further consideration/amendment, 09/08/2019 Thomas Kelly & Sons Group Ltd (Applicant).

5.0 Policy Context

5.1. Development Plan

5.2. Laois County Development Plan 2021-2027 applies:

Zoned residential 2

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.

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.

5.3. 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.

5.4. **Laois County Council Development Contribution Scheme 2017-2023**

5.4.1. Includes - residential €4,000 per unit.

5.5. **Development Contributions Guidelines for Planning Authorities, 2013**

Re. Special Development Contributions

A special development contribution may be imposed under section 48(2)(c) where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works

should be specified in the condition. Only developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution.

5.6. Natural Heritage Designations

- 5.6.1. The nearest Natura sites are the River Barrow and River Nore SAC (002162) located c 9km, straight line distance to the north, and 9 km to the east, and the Slieve Bloom Mountains SPA (004160) and Slieve Bloom Mountains SAC (000412) located in excess of 11km, straight line distance, to the west.

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. Two appeals have been received.
- 6.1.2. A first party appeal against condition no. 19 has been received from David Mulcahy Planning Consultants.
- 6.1.3. A third party appeal against the decision to grant permission, has been received from John Cowhig, 16 Lake Edge, Kilminchy, Portlaoise, Co Laois.

6.2. The first party appeal grounds include:

- Condition no. 19 imposed a development contribution for a survey and report relating to surface water drainage.
- The Laois Development Contribution Scheme has been incorrectly applied.
- This issue should have been dealt with as part of the assessment of the application and it is unreasonable to condition it.

- There is no provision under section 48 to impose a financial contribution to finance such a survey and report.
- Section 48 (2) (c) whereby a special development contribution may be imposed where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure and facilities which benefit very specific requirements for the proposed development, involves four critical tests.
 - The costs are incurred by a local authority in the provision of public infrastructure or facilities.
 - The public infrastructure or facilities must benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services.
 - The particular works should be specified in the condition.
 - Only developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution.
- They state that:
 - The costs do not relate to the provision of public infrastructure or facilities. They relate to survey work and a report which are to determine if the development might impact on the exceedance into a lake or existing drainage network.
 - The contribution does not relate to any public infrastructure and facilities which benefit very specific requirements for the proposed development.
 - There are no works specified in the condition.
 - The development will not benefit from any specified public infrastructure or facility.

6.2.1. The third party appeal grounds include:

- Concerns regarding details available on LCC website.
- LCC have ignored condition 21 of 08/293 and allowed building on that site. They claim the developer has no control over the lands associated with condition 21.

- Concerns regarding access to information from LCC.
- The further information request on 21/543 requested a survey and report, per condition 21 but the further information request on the subject site did not.
- The surface water has not been built to 98/542 plans.
- The stream, carrying an unknown quantity of water, should have been piped and should not enter the attenuation lake.
- Additional developments have been added which were not in the original calculations.
- The further information request on 21/543 to include 'any and all developments' has been taken out of the condition.
- Membership of the management company (OMC) should be a requirement. There are 718 owners in Kilminchy already in it. This was not mentioned in the FI request or response.
- Concerns regarding sewerage.

6.3. Applicant Response

6.3.1. JRA Consulting Engineers has responded on behalf of the applicant to the third party appeal, which response includes:

- While there was an original scheme granted permission on the subject lands utilising the existing Kilminchy lake network as its attenuation system, the current subject application proposes to attenuate the stormwater flow to predevelopment (existing levels) by the deployment of SUDS and two separate attenuation systems. The combined stormwater discharge for the entire site is limited to 3.9l/s in a 1:100 year event. This was done in consultation with the local authority and the proposed storm water system has been approved by the local authority engineers. The proposal is in line with the GDSDS and Laois County Council's storm water management policy. The storm water discharge from the site connects to the existing public drainage network which is under the control of the local authority, into which it connects currently. There is no net flow increase or change to the path of the stormwater proposed.

- Foul drainage has been designed in accordance with the IW Code of Practice (CoP). The foul drainage is to connect into the existing public foul drainage network. This network is in an area that is in charge, and the infrastructure to be connected to is under the control of IW.
- A certificate of feasibility from IW was submitted with the application and is attached to the response.
- Water and wastewater connections are certified as 'feasible without infrastructure upgrade'. No capacity issues or network issues are identified.
- The appellant has asserted some local drainage issues in the network somewhere in Kilminchy. This would not be unusual in a large scheme that is maturing. It is quite normal that some local drainage issues crop up and need to be addressed by the local authority/IW. The scheme is in charge. Any perceived local drainage issues that are affecting the appellant are best addressed to the local authority/ IW directly. There are no capacity or network issues preventing the subject development.
- Re. OMC, for developments such as the one proposed, standalone units with own front door access, management companies are generally not favoured.

6.4. Planning Authority Response

6.4.1. The planning authority have not responded to the appeals.

7.0 Assessment

7.1.1. I consider that the main issues which arise in relation to this appeal are screening for appropriate assessment, principle of development, owner management company, drainage, the special development charge and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that no appropriate assessment issues arise and it is not considered that the

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

7.3. Principle of Development

- 7.3.1. The subject site is zoned Z2, to provide for new residential development, residential services and community facilities.
- 7.3.2. Subject to detailed considerations including adequate servicing arrangements the proposed development is acceptable in principle.

7.4. Owner Management Company

- 7.4.1. The third party appeal states that there is a management company currently representing 718 owners in Kilminchy and that membership of the management company should be a requirement of the permission. The grounds notes that it was not mentioned in the FI request or response.
- 7.4.2. The applicant response is that management companies are generally not favoured for developments such as the one proposed, of standalone units with own front door access.
- 7.4.3. It is open to residents to seek to have the development taken in charge. I do not consider it appropriate to make membership of an owner's management company a condition of any permission in this case.

7.5. Drainage

- 7.5.1. The plans for drainage of the development at Kilminchy were laid out in the '98 permission. Subsequent permissions relate back to that permission. The subject site is at the eastern side of the original site.

7.6. Surface Water

- 7.6.1. The surface water system for the overall development included attenuation ponds. A stream flowed through the lands which formed the original site, close to the western side. The general direction of natural drainage is north-westwards. As part of the development the culverting of the stream was required. The third party states that

the stream was to be piped through the lands, and kept separate from the site drainage rather than integrated into the drainage/attenuation of the development.

- 7.6.2. The main surface water attenuation is provided by ponds in the south western part of the overall ('98) development. These attenuation ponds have a role in the drainage of the general area, ie. extending beyond the original site.
- 7.6.3. Evidence of flooding in the vicinity of the ponds is given by the third party. Surface water is shown extending beyond across adjoining green space and the road.
- 7.6.4. The local authority has responsibility for surface water drainage. The third party has serious concerns that information has not been forthcoming from LCC in this regard. It can be inferred from the documentation on file that the information available to the local authority, in relation to drainage of the overall lands, is deficient. Notably the contribution required under condition 19 of the decision, for the Local Authority to complete a survey and report of the existing surface water drainage system in Kilminchy, in order to ensure that this additional proposed development does not cause an exceedance into the capacity of the lake or the existing drainage network, is a clear indication that this is the case.
- 7.6.5. The Board must consider whether or not it is reasonable to permit further development, in the absence of information which satisfies the planning authority as to the adequacy of the existing surface water drainage system. The applicant states the storm water discharge from the site connects to the existing public drainage network which is under the control of the local authority, into which it connects currently. This does not overcome any network deficiencies which exist or prove its capacity to take further drainage. I note that they have agreed the attenuation required with the planning authority. It is less clear that there is no net flow increase or change to the path of the stormwater arising from the proposed development.
- 7.6.6. Capacity is not the only matter of concern. The relationship between surface water drainage and the foul sewer network, and interconnections these networks in Kilminchy, is evidenced in foul wastewater entering the third lake. This is a serious concern.

7.7. Foul Sewage

- 7.7.1. The applicant states that the foul drainage has been designed in accordance with the IW CoP. It is to connect into the existing public foul drainage network. This network

is in an area that is in charge, and the infrastructure it is to be connected to is under the control of IW. Water and wastewater connections are certified as 'feasible without infrastructure upgrade'. No capacity issues or network issues are identified.

7.7.2. A certificate of feasibility from IW was submitted with the application and is attached to the response.

7.7.3. It is alleged that foul sewage finds its way into the surface water system.

7.7.4. IFI made a submission in relation to 313771, a concurrent appeal on the opposite side of the road at this location, states that given that there are pre-existing issues in Kilminchy with untreated sewage discharging through storm water overflows and entering the semi-natural lakes in adjacent housing developments, particular care should be taken to ensure the complete separation of the foul sewage and storm water networks.

7.8. As-constructed Drawings

7.8.1. The original development at Kilminchy, which was the subject of a permission in 1998, was subsequently developed in numerous sections by different developers.

7.8.2. As-constructed drawings do not appear to have been provided.

7.8.3. The Board has previously considered issues, similar to those raised by the third party, in 2009 (230302), in relation to a development on the opposite side of Lime Tree Avenue. As part of a condition of the permission granted by the Board, the applicant was required to submit:

'a full detailed 'as constructed' drawings, design and specification of the stormwater system for the overall Kilminchy housing estate (planning register reference number 98/542) shall be submitted to and agreed with the planning authority. The details shall identify deviations, if any, from the stormwater system permitted under planning register reference number 98/542, including:

- area and configuration of attenuation ponds,
- piped network,
- stream piping and culverting, and
- flow control systems of the attenuation ponds.

The details shall demonstrate that any deviations will not impair the efficiency of the system. Otherwise the system shall be brought to the required standard permitted under planning register reference number 98/542.

This was required, 'to ensure adequacy of the stormwater disposal system'.

- 7.8.4. That development was not carried out and 'as-constructed' drawings have not been submitted. The issue remains un-resolved.
- 7.8.5. The first matter to be determined is whether or not it is appropriate to permit any further development, until this issue has been resolved.
- 7.8.6. The Board may consider that a similar condition, to that previously applied for the adjacent development, would adequately address the issue. This would impose a significant burden on a relatively small development. Other yet to be developed lands remain in Kilminchy in the ownership/control of various developers.
- 7.8.7. The solution adopted in the planning decision is for the local authority to carry out review / remediation of the surface water system and, towards the cost, and they have imposed a contribution, in the nature of a special contribution, in their decision. No basis for the amount has been set out. This is referred to further in the assessment of the second appeal below.

7.9. **First Party Appeal**

- 7.9.1. The appellant argues that the condition does not refer to 'works' and therefore is not suitable for a development contribution. A survey / report is only part of a project which would also involve any necessary remediation in order to make the surface water system capable of accepting the further discharge which would arise from the proposed development.
- 7.9.2. I do not accept the argument that a survey / report is not provided for in the definition of works as set out in the regulations. Any project includes survey and design. Although not explicit in the condition, as worded, it is clear that the local authority intend to carry out any necessary remediation work (remediation work being carried out on the piped drainage is referred to in file 313771).
- 7.9.3. I consider it entirely reasonable that the developer be required to pay a special development contribution towards the drainage survey and remediation.
- 7.9.4. Section 48 (2) (c) provides:

A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

7.9.5. Section 48 (12) (c) requires that:

The condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates.

7.9.6. It might be to be preferred that an estimate of costs had been made available together with a list of the developments / sites which will benefit from the works, as the basis of an equitable levy. No estimate of cost has been put forward, nor is any information provided on the other lands / future developments which will benefit. The Board may consider that the planning authority should be requested to provide estimates of costs and their apportionment prior to decision.

7.9.7. In my opinion it is preferable that the planning authority take forward the resolution of the drainage problems in this area, the extent of the necessary works is not likely to be known or readily costed until the survey has been completed, and the contribution set in the draft condition is likely to be a fraction of the remediation costs; therefore I consider the condition acceptable.

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 development, in an area zoned for residential development, is part of the Kilminchy development impacted by servicing capacity constraints, which are being or are to be addressed by the local authority. The proposed development, would benefit from these works and should contribute to the exceptional costs. With the benefit of the remedial works the proposed development 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 4th February 2022 and 4th March 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>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>
3.	<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</p>

	<p>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>
4.	<p>Prior to commencement of development, the developer shall enter into water and waste water connection agreements with Irish Water.</p> <p>Reason: In the interest of public health.</p>
5.	<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 proposed development shall not interfere with existing land or road drainage. 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.</p> <p>Reason: In the interest of orderly development and public health.</p>
6.	<p>Roadways used by residents shall be maintained in a clean state during the construction phase.</p> <p>Reason: In the interest of orderly development.</p>

7.	<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, The Design Manual for Urban Roads, 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, precise details to be submitted and agreed in writing prior to commencement of development.</p> <p>c) A stage 3 road safety audit shall be submitted for the written agreement of the planning authority prior to occupation of the development.</p> <p>Reason: To ensure that the development is carried out and completed to an acceptable standard of construction.</p>
8.	<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>
9.	<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>
10.	<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 demolition and 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>
11.	<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>
12.	<p>A scheme indicating boundary treatments shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In order to screen the development, in the interest of visual amenity.</p>

13.	<p>Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed 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>
14.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
15.	<p>The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and</p> <p>(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site</p>

	<p>development works.</p> <p>The assessment shall address the following issues:</p> <p>(i) the nature and location of archaeological material on the site, and</p> <p>(ii) the impact of the proposed development on such archaeological material.</p> <p>A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.</p>
16.	<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 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) 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>

17.	<p>Prior to the commencement of development, the developer shall pay the agreed sum of €7,500 (seven thousand five euro) to the planning authority, in respect of the completion of a survey and report of the existing surface water drainage system in Kilminchy, to establish any deficiencies in the network in order to ensure that the development does not overload or negatively impact the existing drainage system.</p> <p>Reason: It is considered reasonable that the developer should contribute towards exceptional costs incurred or to be incurred by the planning authority in respect of improvement of infrastructure benefitting development in the area and which will benefit the proposed development.</p>
18.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid 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

24 February 2023

Appendices:

Appendix 1 Photographs

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

Appendix 3 Portlaoise Local Area Plan 2018-2024, extracts.

Appendix 4 Development Contributions Guidelines for Planning Authorities, 2013, extracts.

Appendix 5 Laois County Council Development Contributions Scheme, extracts.

Appendix 6 Planning and Development Act 2000, extracts.