



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315169-22

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<b>Development</b>	Construction of 22 new residential units, new vehicular access from the existing Blackwater Heights estate; connection to public sewers & mains water supply; and all ancillary site works.
<b>Location</b>	Archdeaconry Glebe, Kells, Co Meath
<b>Local Authority</b>	Meath County Council
<b>Type of Application</b>	Application for approval made under Section 177(AE) of the Planning and Development Act, 2000 (local authority development requiring appropriate assessment)
<b>Prescribed Bodies</b>	Inland Fisheries Ireland
<b>Observer(s)</b>	Kieran O Kelly on behalf of Kells Anglers.
<b>Date of Site Inspection</b>	7 <sup>th</sup> July 2023
<b>Inspector</b>	Bríd Maxwell

## 1.0 Introduction

- 1.1. Meath County Council is seeking approval from An Bord Pleanála to undertake the construction of 22 no residential units, new vehicular access from the Blackwater Heights Estate and all associated site works necessary to facilitate the development inclusive of road/footpath revisions, boundary treatments, vehicular parking arrangements, SUDS drainage and landscaping.
- 1.2. The subject site is located circa 500m southwest of the River Boyne And River Blackwater SAC (Site code: 002299) and the River Boyne and River Blackwater SPA 18/(Site code: 004232) which are designated European sites. There are several other designated European sites (SPAs and SACs) in proximity to the proposed works (see further analysis below). A Natura Impact Statement (NIS) and application under Section 1177AE was lodged by the local authority on the basis of the development's likely significant effect on European Sites.
- 1.3. Following a previous Appropriate Assessment Screening Determination under Article 250(3)(b) of the Planning and Development Regulations in relation to the proposed development it was deemed by An Bord Pleanála that a Natura Impact Statement was required. (JN17.309480). A screening determination by the Board under Article 120(3)(b) of the Planning and Development Regulations as to whether the proposed development would be likely to have significant effects on the environment requiring EIA (Ref. ABP-309479-21), found that the proposal was not likely to have significant effects on the environment and accordingly an EIA was not required.
- 1.4. Section 177AE of the Planning and Development Act 2000 (as amended) requires that where an appropriate assessment is required in respect of development by a local authority, the authority shall prepare an NIS and the development shall not be carried out unless the Board has approved the development with or without modifications. Furthermore, Section 177V of the Planning and Development Act 2000 (as amended) requires that the appropriate assessment shall include a determination by the Board as to whether or not the proposed development would

adversely affect the integrity of a European site and the appropriate assessment shall be carried out by the Board before consent is given for the proposed development.

## **2.0 Proposed Development**

2.1. The proposed development consists of

- 22 new residential units comprising 6 no 2-bed single storey units, 6 no 2 bed two storey houses and 10 no 3 bed two storey houses;
- New vehicular access points from the existing Blackwater Heights Estate
- Connection to public sewers and mains water supply and all ancillary site works necessary to facilitate the development inclusive of road / footpath revisions, boundary treatments, vehicular parking arrangements, SUDS drainage and landscaping.

## **2.2. Accompanying documents:**

The application is accompanied by a number of documents including :

- Natura Impact Statement Appropriate Assessment
- Flood Risk Assessment
- Site Lighting Report
- Engineering Report
- Desk based review and assessment
- Design Aspects Report - Proposed Mechanical and Electrical Services Installations
- Architectural, Structural and Civil Engineering Drawings.

I note also that the applicant provided supplementary information which was submitted to the Board on 11th October 2023 in response to a request for

additional information by the Board dated 17<sup>th</sup> August 2023. This included an Invasive Alien Species Management and Control Plan, landscaping plan, and a schedule of accommodation.

The further information was assessed in accordance with Section 177AE of the Planning and Development Act, 2000 as amended and was considered not to constitute significant further information.

### **3.0 Site and Location**

- 3.1. This application relates to site a located to the north of Kells Town Centre in County Meath. Kells lies off the M3 motorway c16km from Navan and 65km from Dublin. The subject site comprises a c.0.866 hectare (ha) greenfield site which is bounded to the west by two detached houses on large sites, and to the north, east and south by existing housing estates (Archdeaconry View, Cherry Hill Court and Blackwater Heights, respectively). The site is sloping falling from south to north, with levels on site ranging from c66mOD at the northern part of the site to c71.05mOD towards the southwestern boundary of the site. Dwellings on Archdeaconry view to the north are terraced into the hillside with an embankment / retaining wall forming the northern site boundary. The River Blackwater is located c. 500m to the north. The site is fenced and overgrown with evidence of previous fill (a number of mounds), shrubs and grass. The engineering report accompanying the application notes made ground (consisting of cohesive clay fill with some timber and concrete fragments) towards the southeastern part of the site.
- 3.2. The River Blackwater is located c. 500m north of the site and forms part of the River Boyne and River Blackwater SPA (Site Code 004232) and the River Boyne and River Blackwater SAC (Site Code 002299) which are designated European sites. A Natura Impact Statement (NIS) and application under Section 177AE was lodged by the Local Authority on the basis of the proposed development's likely significant effect on a European site.

## 4.0 Planning History

4.1 Meath County Council (MCC) Previous Part 8 Application Ref. P8/21002 – subsequent to the initiation of the Part 8 process requests were submitted seeking a determination from the Board as to whether EIA or an NIS would be required for the proposed development and were duly determined by the Board as follows:

**ABP.17.309479** EIS Direction. The Board decided that the proposed development would not be likely to have significant effects on the environment and accordingly an EIA is not required. (Board Order attached)

**ABP.309480** NIS Direction. The Board decided that a Stage 2 Appropriate Assessment and submission of an NIS is required (Board Order Attached). In its reasoning and consideration the Board referred, inter alia, to existing issues with the Kells Wastewater Treatment Plant in terms of both capacity and treatment efficacy and surface water overflow SW3, as identified in the 2019 Annual Environmental Report (AER) for the plant and the uncertain timeframe for the implementation of upgrade works, as well as the moderate water quality status of the River Blackwater in the Kells area, the uncertainty with regard to in combination effects with other permitted development projects which will also use the Kells Waste Water Treatment Plant.

4.2 Concurrent Section 177AE before the Board ABP.314282 relates to site circa 400m to the south bounded by Archdeaconry Glebe to the north, Maudlin Road to the east and Carrick Street to the south. Development involves 36 residential units and refurbishment of 9 existing derelict units to provide 11 new units giving a total of 47 residential units. I note that during the course of the application the Board requested additional information in relation to a number of matters including a clarification and schedule of compliance with the appropriate standards with respect to public open space provision, private open space provision. Clarification was also sought in light of apparent discrepancies as raised in submissions by Inland Fisheries Ireland IFI and Kells Anglers with respect to the existing capacity of the Kells Waste water treatment plant. Also concerns were raised with regard to storm water overflow SW3 and discharge to the Newrath Stream (A tributary of the Kells Blackwater SAC and

SPA) and elaboration was sought with regard to the current status of the outflow and quality of the discharge entering the Newrath stream. Also, in light of a number of permissions granted for residential and commercial developments the council was invited to consider the cumulative impact in combination with the proposal when assessing capacity and possible impact on existing stormwater overflow systems. Ecological surveys were sought to establish the possibility for use of buildings proposed for demolition by bat spaces and an assessment survey for invasive species and appropriate measures / management plans.

#### **4.3 Other recent developments within the town boundary include the following (non-exhaustive list):**

**MCC Ref. 22502** – Permission granted in October 2022 at Townparks, Moynalty Rd, Kells for the erection of 28 no. two-storey houses to include for habitable attic space (4 no. 4 bed detached and 24 no. 4 bed semi detached houses) with minor variations to site boundary from that previously granted under KA200324. Permission also sought to use existing Willmount View entrance onto public road, new internal service roads, footpaths and grass margins, associated landscaping, public lighting and open space and all ancillary and associated site works.

**MCC Ref. KA200324** – permission granted in July 2021 at Townparks, Moynalty Rd, Kells for construction of a total of 36 two storey dwellings consisting of 16 three bedroom semi-detached and 8 three-bedroom end of terrace dwellings together with 8 two-bedroom mid-terrace and 4 two-bedroom end of terrace dwellings. Site entrance from adjacent residential development, new internal roads and services, footpaths, public lighting, public green, landscaping and connections to public services.

**MCC Ref. KA180577** – permission granted in December 2018 at Townparks, Moynalty Rd, Kells for erection of 74 no. two-storey houses and 5 no. detached domestic garages comprising 12 no. 4 bed detached houses, 20 no. 4 bed semi-detached houses, 4 no. 3 bed semi-detached houses, 30 no. 3 bed terrace houses and 8 no. 2 bed terrace houses in a variety of house types. Permission also sought for site entrance onto public road, new internal service roads, footpaths and grass margins, associated landscaping, public lighting and open space, connections to

public services to include for upgrading of foul sewer pumping station, provision of ESB sub-station and all ancillary and associated site works. The development to be carried out on a phased basis in 3 stages.

**ABP 301669-18** (MCC. Ref. KA171335) – Permission granted in May 2019 at Cavan Road, Kells for construction of a new two storey service station with ancillary retail and food court including measuring 1771 m<sup>2</sup> GIA all associated site works.

**305421** (MCC Ref:KA190355 )Permission granted March 2020 on lands to the rear of 4 Maudlin Road for 2 no detached houses and associated site works.

**301344** (MCC Ref: KA/171170) Permission granted November 2018 for construction of 5 no two storey houses new entrance onto Stonebridge access road and all ancillary works. Access to Stonebridge Housing Estate Rear of Maudlin Road.

**302161** (MCC Ref: KA17792) Permission granted June 2018 for demolition of two dwellings and construction of 2 detached two storey dwellings and 6 no two storey semi detached dwellings at Maudlin Road Kells.

## 5.0 Legislative and Policy Context

- 5.1. **The EU Habitats Directive (92/43/EEC):** This Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) and 6(4) require an appropriate assessment of the likely significant effects of a proposed development on its own and in combination with other plans and projects which may have an effect on a European Site (SAC or SPA).
- 5.2. **European Communities (Birds and Natural Habitats) Regulations 2011:** These Regulations consolidate the European Communities (Natural Habitats) Regulations 1997 to 2005 and the European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010, as well as addressing transposition failures identified in CJEU judgements. The Regulations in particular require in Reg 42(21) that where an appropriate assessment has already been carried out by a 'first' public authority for the same project (under a separate code of legislation) then a 'second' public authority considering that project for appropriate assessment under

its own code of legislation is required to take account of the appropriate assessment of the first authority.

5.3. **National nature conservation designations:** The Department of Culture, Heritage and the Gaeltacht and the National Parks and Wildlife Service are responsible for the designation of conservation sites throughout the country. The three main types of designation are Natural Heritage Areas (NHA), Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) and the latter two form part of the European Natura 2000 Network.

5.4. European sites located in proximity to the subject site include:

- River Boyne and River Blackwater SPA (Site Code 004232) c.5km north.
- River Boyne and River Blackwater SAC (Site Code 002299). C 5km north.
- Girley (Drewstown) Bog SAC (002203) – c7km southwest
- Killyconny Bog (Cloghbally) SAC (00006) – c. 8km northwest

5.5. **Planning and Development Acts 2000 (as amended):** Part XAB of the Planning and Development Acts 2000-2017 sets out the requirements for the appropriate assessment of developments which could have an effect on a European site or its conservation objectives.

- 177(AE) sets out the requirements for the appropriate assessment of developments carried out by or on behalf of local authorities.
- Section 177(AE) (1) requires a local authority to prepare, or cause to be prepared, a Natura impact statement in respect of the proposed development.
- Section 177(AE) (2) states that a proposed development in respect of which an appropriate assessment is required shall not be carried out unless the Board has approved it with or without modifications.
- Section 177(AE) (3) states that where a Natura impact assessment has been prepared pursuant to subsection (1), the local authority shall apply to the Board for approval and the provisions of Part XAB shall apply to the carrying out of the appropriate assessment.



- Section 177(V) (3) states that a competent authority shall give consent for a proposed development only after having determined that the proposed development shall not adversely affect the integrity of a European site.
- Section 177AE (6) (a) states that before making a decision in respect of a proposed development the Board shall consider the NIS, any submissions or observations received and any other information relating to:

The likely effects on the environment.

The likely consequences for the proper planning and sustainable development of the area.

The likely significant effects on a European site.

## 5.6. Policy Context

### 5.6.1 National Planning Framework – Project Ireland 2040 (February 2018)

5.6.1.1 This is the Government's plan for shaping the future growth and development of Ireland out to 2040. It is envisaged that the population of Ireland will increase by up to 1 million by that date and the strategy seeks to plan for the demands this growth will place on the environment and the social and economic fabric of the country. It sets out 10 no. goals, referred to as National Strategic Outcomes.

5.6.1.2 Under National Strategic Outcome 1 (Compact Growth), the focus is on pursuing a compact growth policy at national, regional, and local level. From an urban perspective the aim is to deliver a greater proportion of residential development within existing built-up areas of cities, towns, and villages, to facilitate infill development and enable greater densities to be achieved, whilst achieving high quality and design standards.

5.6.1.3 The NPF includes a specific Chapter, No. 6, entitled 'People Homes and Communities', which includes 12 objectives. Amongst the objectives set out in section 6.6 of Chapter 6 are:

- High level priorities include use of existing housing stocks as a means to meet future demand.

- Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location (Objective 33).
- Increase residential density in settlements through a range of measures including reductions in vacancy, re-use of buildings, infill development schemes, area or site-based regeneration and increased building heights (Objective 35).

## **5.6.2 Housing for All – A New Housing Plan for Ireland, Department of Housing, Local Government and Heritage September 2021**

5.6.2.1 In order to meet the twin NPF objectives of tackling climate change and delivering more compact growth, Housing for All recognises that there is a need for developments at scale in our cities, particularly close to public transport nodes and where walking and cycling can become the dominant form of mobility within our town centres.

5.6.2.2 This Plan recognises that in order to resolve the housing crisis we need to give consideration to every viable and sustainable option at our disposal.

## **5.6.3 The Planning System and Flood Risk Management Guidelines 2009**

5.6.3.1 In considering proposals for development which may be vulnerable to flooding and that would generally be inappropriate a number of criteria may be considered under a Justification Test. These include that the subject lands are designated for the form of development and that the proposal has been subject to a flood risk assessment that demonstrates that measures to ensure that residual risks can be managed to an acceptable level.

## **5.6.4 Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009**

5.6.4.1 These guidelines encourage sustainable urban development through the avoidance of excessive suburbanisation and the promotion of higher densities in appropriate

locations. The greatest efficiency will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally. Development at net densities less than 30 dwellings per hectare should generally be discouraged, particularly on sites in excess of 0.5 hectares.

### **5.6.5 Eastern and Midland Regional and Spatial Economic Strategy**

5.6.5.1 This plan which came into effect on June 28th, 2019, builds on the foundations of Government policy in Project Ireland 2040, which combines spatial planning with capital investment. Chapter 4 (People & Place) sets out a settlement hierarchy for the Region and identifies the key locations for population and employment growth.

5.6.5.2 This strategic plan seeks to determine at a regional scale how best to achieve the shared goals set out in the National Strategic Outcomes of the NPF and sets out 16 Regional Strategic Outcomes (RSO's) which set the framework for city and county development plans. These include:

- RSO 2 Compact Growth and Urban Regeneration - Which seeks to promote the regeneration of our cities, towns, and villages by making better use of under-used land and buildings within the existing built-up urban footprint and to drive the delivery of quality housing and employment choice for the Region's citizens.

### **5.6.6 Meath County Development Plan 2021-2027**

5.6.6.1 The Meath County Development Plan 2021-2027, was adopted by Meath County Council on the 22nd of September 2021 and came into effect on the 3rd of November 2021. Chapter 2 of the Development Plan sets out the Core Strategy.

5.6.6.2 Under Section 2.4.3 the settlement of Kells is designated as a 'Self-Sustaining Growth Town.' It defines such towns as having a moderate level of jobs and services – includes sub-county market and commuter towns with good transport links and capacity for continued commensurate growth to become more self-sustaining. Section 2.10.2 states that in the Self-Sustaining Growth Towns of Kells, there will be a focus on consolidation and the provision of employment opportunities in tandem with population growth in order to allow these centres to

become more self-sufficient. The availability of infrastructural services and community infrastructure will also be an important factor in determining the quantum of new housing and population growth that these settlements could absorb.

5.6.6.3 Section 2.10.4 of the plan outlines the Household allocation for 2020- 2027 for Kells at 452 and the potential units to be delivered on infill/ brownfield lands at 400 units. The Quantum of land zoned for residential use is 19.67 ha and the Quantum of land zoned for existing residential use (ha) is 135.2 ha.

5.6.6.4 Section 3.6 of the Plan deals with the matter of land use zoning in each settlement and it sets out that: *“the quantum of lands zoned for residential uses is reflective of the population projection and household allocation for each settlement as set out in the Core Strategy”*. With regard to employment and economic activity the plan states that *“what is of interest is the fact that the Kells MD, which is characterised as being rural in character, has the second highest number of jobs in the County.”*

5.6.6.5 Kells has a unique cultural and built heritage and is accordingly a designated heritage settlement. Kells is an important centre for local enterprise and employment. The designation of the Kells Municipal District as a Regional Economic Development Zone (REDZ) has had a positive impact on employment and enterprise activity in the town.

5.6.6.6 The settlement strategy objectives set out in Chapter 3 include:

- **SH OBJ 5:** To prepare new local area plans for the following settlements within the lifetime of this Plan: Navan, Dunboyne/Dunboyne North/Clonee, Ashbourne, Kells, Trim, Dunshaughlin, Ratoath, Enfield, Bettystown-Laytown-Mornington East-Donacarne-Mornington (East Meath), Oldcastle, Athboy, Duleek, and Stamullen. As part of the preparation of these Plans, a detailed infrastructure assessment, consistent with the methodology for a Tiered Approach to Zoning under Appendix 3 of the NPF will be undertaken for each settlement.

5.6.6.7 The housing policies set out in Chapter 3 includes:

- SHPOL 2 “To promote the consolidation of existing settlements and the creation of compact urban forms through the utilisation of infill and brownfield lands in preference to edge of centre locations.”

- SHPOL 3 “To support the creation of healthy and sustainable communities that encourages and facilitates walking and cycling and general physical activity through the implementation of best practices in urban design that promotes permeability and interconnecting spaces.”
- SH POL 4: “To promote social integration and the provision of a range of dwelling types in residential developments that would encourage a mix of tenure ...”
- SH POL 5: “To secure a mix of housing types and sizes, including single storey properties, particularly in larger developments to meet the needs of different categories of households”.
- SH POL 6: To support the provision of accommodation for older people and for people with disabilities at appropriate accessible locations.

5.6.6.8 The housing objectives set out in Chapter 3 includes:

- SH OBJ 13: “To secure the implementation of the Meath Housing Strategy 2020-2026”.

5.6.6.9 Section 3.8.5 sets out that the lands zoned for residential purposes include ‘A1’ (Existing Residential); ‘A2’ (New Residential); ‘B1’ (Commercial/Town or Village Centre) and ‘C1’ (Mixed Use).

5.6.6.10 Section 3.8.9 sets out the design criteria for residential development and states that “well designed residential developments can make a significant contribution to the creation of an attractive urban environment where people want to live, work, and socialise. It further states that “applications for new residential developments should strive to create a sense of place by responding positively to local surroundings” and that new buildings should be designed to take account of the potential implications of climate change as well as improving the energy efficiency of buildings that would reduce the consumption and therefore greenhouse gas emissions.

5.6.6.11 Chapter 3 sets out the following housing development housing polices:

- SH POL 7: “To encourage and foster the creation of attractive, mixed use, sustainable communities that include a suitable mix of housing types and tenures with supporting facilities, amenities and services that meet the needs of the entire community and accord with the principles of universal design in so far as practicable”.

- SH POL 8: “To support the creation of attractive residential developments with a range of housing options and appropriate provision of functional public and private open space that is consistent with the standards and principles set out in the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas and the associated Urban Design Manual...”.
- SH POL 9: Promotes higher densities at appropriate locations in a manner consistent with the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas.
- SH POL 10: Requires applications for residential development to take an integrated and balanced approach to movement, place making and streetscape design. In a manner consistent with the Design Manual for Urban Roads and Streets.
- SH POL 11: Encourages improvements in the environmental performance of buildings.
- SH POL 12: Promotes innovation in architectural design.
- SH POL 13: Requires all new residential developments to accord with the Development Management Standards and Land Use Zoning Objectives set out in Chapter 11.

5.6.6.12 Chapter 3 includes the following housing development objectives:

- SH OBJ 22: Requires all new residential development to accord with SPPR 1 to SPP4 of the Urban Development and Building Heights Guidelines. As well as SPPR 1 to SPPR 9 of the Sustainable Housing Design Standards for New Apartment Guidelines for Planning Authorities.
- SH OBJ 23: Requires all new residential developments in excess of 20 residential units to provide for a minimum of 5% universally designed units in accordance with the requirements of the ‘Building for Everyone: A Universal Design’.

5.6.6.13 Chapter 6, Section 6.9 outlines the policy in relation to Wastewater for the county and states that it is the policy of the council:

- INF POL 11: To liaise and work in conjunction with Irish Water during the lifetime of the Plan in the provision, upgrading or extension of wastewater collection and treatment systems in the County to serve existing and planned future populations

and enterprise in accordance with the requirements of the Core and Settlement Strategies.

5.6.6.14 Chapter 11 sets out the Development Management Standards and Land Use Zoning Objectives. In the accompanying Development Plan maps the site is zoned 'A1 - Existing Residential. The stated land use objective for such zoned lands reads: "To protect and enhance the amenity and character of existing residential communities."

5.6.6.15 Section 11.5.11 outlines the Council's approach to Public Open space under the following objectives:

- DM OBJ 26: Public open space shall be provided for residential development at a minimum rate of 15% of total site area. In all cases lands zoned F1 Open Space, G1 Community Infrastructure and H1 High Amenity cannot be included as part of the 15%. Each residential development proposal shall be accompanied by a statement setting out how the scheme complies with this requirement.

5.6.6.15 Section 11.5.12 outlines the objectives in relation to Private Open Space with Table 11.1 outlining Minimum Private Open Space Standards for Houses with one/two bedroom requiring 55sqm, three bedroom requiring 60sqm and 4 bedroom requiring 75sqm.

5.6.6.16 Within Volume 2 – Written Statement and Maps for Settlements an overview of the development strategy for Kells is provided, however it is also stated that a detailed Local Area Plan for the town will be prepared during the life of this Plan. The stated vision for the town is *“For Kells to be recognised as a strategic economic centre for north Meath with a vibrant mix of employment, businesses, retail, services and tourism opportunities, intrinsically linked to its rich historical and cultural heritage and character.”*

5.6.6.17 Section 5.34 states the following with regard to water services:

- Water: Water supply for Kells is sourced from the Kells/Oldcastle Supply. There is capacity in this water supply to accommodate growth during the lifetime of the Plan. However, there are localised network constraints.

- Wastewater: Wastewater is discharged to a Treatment Plant on the Headfort Road. Spare capacity at this Treatment Plant is currently limited. Irish Water plans to upgrade this treatment plant from its present capacity of 8,000 p.e. to 13,500 p.e. It is anticipated that this will upgrade will be completed during the lifetime of this Plan.
- KEL OBJ 2 - To support and encourage residential development on under-utilised land and/or vacant lands including 'infill' and 'brownfield' sites, subject to a high standard of design and layout being achieved.
- KEL OBJ 12 - To liaise with and support Irish Water to endeavour to provide adequate water services to meet the development needs of Kells within the Plan period.

## **6.0 The Natura Impact Statement**

- 6.1. Meath County Council's application for the proposed development was accompanied by a Natura Impact Statement (NIS) which scientifically examined the proposed development and the European sites. The NIS identified and characterised the possible implications of the proposed development on the European sites, in view of the site's conservation objectives, and provided information to enable the Board to carry out an appropriate assessment of the proposed works.

## **7.0 Consultations**

- 7.1. The application was circulated to the following bodies:
- The Heritage Council
  - An Taisce
  - The Manager Irish Water
  - Development Applications Unit, Archaeological Licensing Unit, National Monuments Service, Department of Culture, Heritage and the Gaeltacht.



- Department of Culture, Heritage and the Gaeltacht
- Development Applications Unit National Parks and Wildlife Service.
- Inland Fisheries Ireland
- The Office of Public Works
- Iarnród Éireann.

7.2 Arising from the circulation to prescribed bodies, a response was received from Inland Fisheries Ireland (IFI), accompanied by a copy of EPA site visit report (Inspection 5 May 2019) in respect of Kells wastewater treatment plant. The IFI submission is summarised as follows:

- Noting the context of the EU Water Framework Directive (2000/60/EC) which requires the protection of the ecological status of river catchments and by reference to Article 5 of the 2009 Surface Water Regulations which requires that a public authority in performance of its functions shall not undertake those functions in a manner that knowingly causes or allows deterioration in the chemical status or ecological status of a body of surface water.
- The Kells Blackwater is currently at “good” status (2020) as opposed to “moderate” in 2018. The river is a prominent game and course fishing facility with prominent stocks of atlantic salmon, brown trout, eels and lamprey.
- It is understood from the 2020 Annual Environmental Report AER as submitted to the EPA that the design organic capacity of Kells WWTP is 9,800 PE an increase from 8,000PE in 2019. The actual organic capacity left is reported at 1,787PE. However the hydraulic capacity is 5,400PE while the maximum hydraulic load is 6,773PE.
- One of the most persistent and notable issues with the Kells WWTP infrastructure is stormwater overflow SW3 situated on the banks of the Newrath tributary of the Kells Blackwater at the back of Grand Priory housing estate (Townparks Td). This stormwater line overflows on a regular basis due

to heavy rains and the combined system of sewerage in Kells. Irish Water have added a basket to the outfall which screens paper and rags, however this is not sufficient to treat contaminated wastewater that discharges to the Newrath tributary, that has limited dilution, and makes its way to the main channel of the Kells Blackwater. Any further additions to this wastewater line will only serve to further exacerbate this discharge overflow problem.

- Upgrading of stormwater overflow SW3 to comply with the criteria outlined in the DoEHLG “Procedures and Criteria in relation to Storm Water Overflows, 1995” was due to be completed by 2014 but is now not due till 2028.
- Capital upgrade for Kells was originally due to commence in 2021. During EPA visit 2019 it was stated that IW confirmed plans in place to upgrade Kells WWTP and wastewater network. As part of upgrade SW03 was to be discontinued.
- During EPA site visit (6/12/2020) the waste water treatment plant operator confirmed a drinking water abstraction point located approximately 15km downstream of the treatment plant on the Kells river. It was noted by the inspector that the licensee was unclear of incident notification procedure for notifying the drinking water plant in the event of an incident at the wastewater treatment plant and network.
- Kells Town Development Plan 2013-2019 recognises the lack of capacity in terms of water and wastewater.
- Noting judgement of the Court of Justice of EU CJEU Case C462/15 Bund furUmwelt und Naturschutz eV v Bundesrepublik Deutschland) amongst other things the CJEU held that member states are required, unless a derogation provided by the Water Framework is granted, to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the WFD.

- Note Bord decisions 248992 and 303509, 306108, 308029 Virginia Co Cavan on grounds of inadequacy of Virginia WWTP to accept wastewater.
- The proposed development is dependent on the delivery of an upgrade to the plant. The nature and extent of the necessary works is unclear and the necessary consents are not in place and there is no defined timeline for the works. The proposed development would be premature by reference to the existing deficiencies in the provision of sewerage facilities and the period within which the constraints may reasonably be expected to cease.

### **7.3 Public Submissions:**

7.3.1 A detailed submission was received from Ciaran O Kelly, on behalf of Kells Anglers. Grounds of objection are summarised as follows :

- Concerns regarding loss of open space. Application site is one of the few remaining green areas in a sea of housing estates. Original plans designate the site as a play area.
- Meath County Council appear to be intent on disregarding policies relating to open space requirements, noting also ABP 314282.
- Private and/or communal open space falls below the requirements of the Sustainable Urban Housing Design Standards for New Apartments Guidelines under Section 28 of the Planning and Development Act.
- Design is poorly devised with increased parking compromising pedestrian safety.
- Overdevelopment. Excessive density.
- Negative impact on the sunlight enjoyed by properties directly to the east of the proposed new units.
- EPA not consulted and are aware of ongoing licencing and pollution issues at Kells WWTP and more importantly are fully aware of the true capacity of Kells WWTP.

- Quality of the NIS is deficient. It is stated that it is prepared by Moore Environmental Services on behalf of An Bord Pleanála rather than on behalf of the applicant Meath Co Council. It misleadingly states that IW and the EPA publish AERs for Kells WWTP when in fact IW produce the AERs and the EPA simply publish them on their website. EPA does not necessarily agree with the data in the AERs. Application details contradict IW 2020 AER for Kells regarding capacity.
- Statement that available capacity is 1,787 PE where actual capacity as per design is 8000PE despite the fact that the full load for Kells and environs is currently around 10,500PE.
- Concern regarding raw sewage being directly pumped raw into the Newrath stream from the WWTP at SW3 storm water outlet and flooding directly into the Newrath Stream from a number of housing estates. The entire Kells sewage system is in a deplorably dangerous condition as stated in the 2015 Mott McDonald report prepared for MCC and IW.
- Concern regarding conflicting capacity figures provided in various applications.
- Information on Blackwater and its catchment comes from NPWS documents 2014 and 2010 which are out of date.
- Concerns arise as NPWS have failed to provide a legally required protection plan for the Blackwater and Boyne SAC/SPA thus far only producing a set of generic conservation objectives.
- Issue of climate change has not been addressed within the NIS.
- NIS refers to generic data with no detailed information on the area of the Blackwater SAC SPA in the vicinity of the site. The application and NIS has not included even the most rudimentary of environmental assessments on the site and the SAC SPA.
- Since 2013 Meath Co Council and IW have knowingly continued to divert up to 30% of the town's raw sewage directly into the Newrath Stream from where the sewage flows into the Blackwater River SAC/SPA.

- 2015 Motte Mc Donald report repeatedly highlights inadequate capacity within the existing wastewater pipe network throughout the town, also noting urgent works required because of overflow in heavy rainfall events.
- MCC fully aware of long term sewerage problems at Blackwater Heights. The community living between Cavan Road and Moynalty Road have been subject to extreme sewage waste smells since the opening of the Park Ri Development on Cavan Road.
- No evidence of capacity increase at Kells WWTP has been provided.
- Environmental and water systems of the Blackwater are in danger of decline and health of the human population is at risk from the unmonitored levels of raw sewage entering the protected water system.

#### **7.4 First Party Response to Further Information Request.**

7.4.1 The Board issued a request for additional information by letter dated 17 August 2023 seeking details in relation to Kells Wastewater Treatment Plant capacity, and with respect to stormwater overflow SW3 and discharge to the Newrath stream (tributary of the Kells Blackwater SAC and SPA). Other matters addressed included an ecological assessment and invasive species survey, open space provision review, a schedule of accommodation, landscaping scheme and boundary treatment details, contiguous elevations and section drawings to demonstrate context.

7.4.2 The response received on 11<sup>th</sup> October included correspondence from Uisce Eireann (formerly Irish Water) and a response with regard to the matter of Kells Wastewater Treatment capacity. These matters are addressed under the relevant headings in the assessment set out below.

## 8.0 Assessment

8.1. Under the provisions of Section 177AE(6) of the Planning and Development Act 2000(as amended), the Board is required to consider the following in relation to this type of application:

- the likely consequences for the proper planning and sustainable development of the area,
- the likely effects on the environment, and
- the likely impacts on any European sites

8.2. **The likely consequences for the proper planning and sustainable development of the area:**

8.2.1 In terms of the principle of development I consider that the proposed development can reasonably be viewed as entirely compatible with the development plan provisions for these lands as set out in the Meath County Development Plan 2021-2027. I note that the site is zoned A1 existing residential. The objective is “to protect and enhance the amenity and character of existing residential communities.” Infill developments are normally acceptable subject to the amenities of surrounding properties being protected and the uses, scale, character and design of any developments respecting the character of the area.

8.2.2 As regards the core strategy Section 2.10.4 of the plan “Distribution of Population and Households in the County” outlines the household allocation for 2020- 2027 for Kells at 452 and the potential units to be delivered on infill/ brownfield lands at 400 units. The quantum of land zoned for residential use (ha) is 19.67 ha and the quantum of land zoned for existing residential use (ha) is 135.2 ha.

8.2.3 Regarding density, Objective DM OBJ14 of the development plan outlines that densities of 25units per hectare – 35 units per hectare shall be encouraged for Kells

as a self-sustaining town. The proposal for 22 houses on .866 hectares equates to c25 per hectare which I consider to be acceptable on this site and in the context of the established density of development in the vicinity. I do not agree with the third party assertion that the density is excessive.

8.2.4 Regarding configuration and layout I note Objective DM OBJ 26 of the Meath County Development Plan 2021-2027 states that public open space shall be provided for residential development at a minimum rate of 15% of total site area and that each residential development proposal shall be accompanied by a statement setting out how the scheme complies with this requirement. I note that this was addressed in the Board's request for additional information dated 17<sup>th</sup> August 2023, whereby the applicant was requested to submit such a statement. In response it was asserted that the combined open space areas within Archdeaconry View and Cherryhill Court are well provided and that the proposed development will result in an amalgamation of open space areas and enable connectivity and coalescence of these housing schemes.

8.2.5 Three areas of public open space are proposed within the scheme design, I note that the area of open space towards the northeastern end of the site which has a stated area of 600m<sup>2</sup> incorporates in part an existing open space area serving dwellings on Archdeaconry view and Cherryhill court and therefore is not entirely new public open space. The total stated area of public open space (600m<sup>2</sup>+393m<sup>2</sup>+485m<sup>2</sup>) 1,478m<sup>2</sup> equates to 17% of the stated total site area. I further note that the open space area along the northern boundary with Achdeaconry View is designated as a drainage zone and will not be accessible to residents however will nevertheless contribute to the amenities of the area and can be considered within the quantum of open space provision. Whilst the site layout indicates that this area is to be bounded by a 2m high concrete block wall the document submitted in response to the Board's further information request indicated that the area would be edge planted with a mix of semi-mature birch and alder to provide screening to neighbouring dwellings. I am of the view that the proposal is acceptable in terms of meeting the requirements of the development plan standards and the provision of a well devised and varied landscaping scheme incorporating semi mature tree species and wildflowers will

improve biodiversity. I consider that it is reasonable to accept that the proposal will enable improved connectivity and the coalescence of established housing areas and that the level of open space provision in the locality is acceptable.

- 8.2.6 As regards the submission of Mr O Kelly on behalf of Kells Anglers asserting that the site constitutes previously designated open space, it is evident from its location and layout that the site is an infill left over undeveloped space. It is currently not accessible to the local community and therefore I am satisfied that its development will not represent a loss of amenity green space.
- 8.2.7 As regards the detailed design and layout of the housing units they are designed to comply with the Quality Housing for Sustainable Communities Guidance in terms of layout, size etc. I note that a schedule of accommodation was provided in response to the Board's request for additional information and demonstrates that the proposal meets the requirements of the DEHLG Quality Housing for Sustainable Community Guidelines and relevant standards within the Meath County Development Plan. As regards private open space provision for the proposed development the relevant minimum quantitative standards are achieved.
- 8.2.8 As regards the visual character, aesthetics and the architectural treatment of the development I consider that the proposal to be appropriate and suitably assimilates to the setting. The dwellings incorporate a smooth render finish with select brick. The design and layout of the scheme is in my view to a reasonable standard and is responsive to the site context.
- 8.2.9 Regarding configuration and in terms of mix, it is stated within the application that the design mix is intended to mirror the social housing demand in Kells as far as possible with an appropriate mix of single storey and two storey units. The typology and density has been specifically designed to include a number of single storey units which, it is outlined, are in chronic short supply. It is evident that the proposed



development is designed to integrate with the established residential communities on the vicinity.

8.2.10 Regarding access the proposed layout provides for two connection points to existing roads in Blackwater Heights. Pedestrian access is proposed to Cherryhill Court and Archdeaconry View. The proposed access points are considered appropriate. Car parking is provided adjacent to the dwellings in accordance with the development plan requirement for two car parking spaces per dwelling. I consider that the provision is adequate to cater for the needs arising. As regards cycle access it is envisaged that cyclists will share the road surface with vehicular traffic. Notably there are currently no cycle tracks on any of the surrounding roads.

8.2.11 Having regard to the proposal being a residential development on currently underutilised lands and which is consistent with the established residential land use at this location, it is reasonable to determine that the proposed serviced housing would be in keeping with the zoning objectives for the area. Overall, having regard to the detailed layout and existing land use provisions clearly set out in the statutory Development Plan it is in my view reasonable to conclude that the proposed development is of an appropriate standard and is in accordance with the proper planning and sustainable development of this area.

### **8.3. The likely effects on the environment**

8.3.1 As regards the likely environmental impact my considerations are as follows. The proposed infill residential scheme is to be developed within an established residential area and with due regard to population, the proposed development would provide a number of housing units to assist in the accommodation of an element of the current housing need in Kells.

8.3.2 With regard to biodiversity, I note the appropriate assessment below with regard to the potential affect on the integrity of any European sites. Having regard to the details of the proposed development including the provision for retention of existing

hedgerow along the western boundary together with the incorporation of mitigation including the invasive species management and control plan and construction management plan, it is reasonable to determine that mitigation measures which will minimise adverse impact. There is no evidence of use of the site by bats or other rare or protected species and it is considered that mitigation measures are appropriate in terms of avoiding adverse impact. The provision of a landscaping scheme incorporating a suitable mix of native species will improve local biodiversity.

8.3.3 The proposed development on this residential site would not have any significant unacceptable direct or indirect impacts in terms of land and soils. Regarding water supply two connections are proposed to the existing public watermain – Blackwater Heights and Cherry Hill Court. Regarding foul water management the proposal is to connect to the existing public sewer system at Archdeaconry View and Cherryhill Court. A pre connection enquiry dated 4 January 2022 included as appendix E to Engineering report by Roughan O Donovan confirms that based on desk top analysis the proposed connections for water supply and foul sewer can be facilitated. I note that Kells Waste Water Treatment Plant provides treatment type 3P-Tertiary P Removal.

8.3.4 I note the submissions received in relation to the application from Inland Fisheries Ireland (IFI) and Kells Anglers which refer to apparent inconsistencies and conflicting information within Annual Environmental Reports with regard to existing capacity at the Kells Wastewater Treatment Plant. The submissions allege that the proposed development would be premature by reference to the existing deficiencies in the provision of sewerage facilities in Kells and the period within which the constraints may reasonably be expected to cease. The applicant was invited by the Board to respond to the submissions made and to address the matter of wastewater treatment capacity of the plant. The response received by the Board on 11 October 2023 noted that Uisce Eireann (formerly Irish Water) indicated that there are no capacity issues and that the proposed development can be facilitated without the need for infrastructure upgrades. A detailed response from Uisce Eireann dated 2 October 2023 was appended which also addresses the issue. It is outlined that since

2010 six separate and substantial investment projects have contributed to the improved compliance of Kells WWTP and have significantly increased the biological treatment capacity of the plant. It is asserted that submissions of IFI and Kells Anglers are therefore not up to date. The upgrades are summarised as follows:

Year	Description	Treatment Capacity	Plant Loading (PE)
2010	Investment of more than €1m in improvement / optimisation works which included the provision of, a storm tank, Salinisation Units (solids removal prior to secondary activated sludge treatment), and a new final effluent outfall discharging to the river Blackwater rather than to the Newrath Stream.	8,000	7,141
2016	New Belt Press Unit provide increased efficiency of solids removal from activated sludge process.	8,000	8,441
2017	Installation of a ferric dosing system to control Orthophosphate levels in final effluent and meet Wastewater Discharge Licence ELV.	8,000	8,141
2018	Installation of a replacement inlet screen.(Beginning in 2017 in consultation with EPA, changed and refined methodology for calculation of loadings to produce more accurate and reliable assessments.	8,000	7,767
2019		8,000	7,870
2020	Upgrade of the aeration system to a fine bubble diffused Air (FBDA) aeration system.(The fine bubble diffused air upgrade installed and commissioned in 2020) The 2021 AER stated plant capacity was 8,000PE due to reporting error and should have read 9.800)	9,800	7,958
2021	Installation and commissioning of automatic wasting of solids from the aeration basins to improve plant control.	9,800	8,013
2022		9,800	8155

8.3.5 The population of Kells is 6,608 (Census 2022). The current loading on the Kells WWTP as Per 2022 AEAR is 8,155PE. Regarding the apparent variation in year to year loading, stated in AERs this is accounted for by revisions to the method of

calculation. Prior to 2017 treatment plant loadings nationally were arrived at by influent readings taken periodically depending on the size of the plant. These were found to be unreliable because of variations in flow and inlet concentration conditions, sampling processes and analysis error ranges. In 2017, and in consultation with the EPA, Uisce Eireann changed and refined its methodology for the calculation of loadings to produce more accurate and reliable assessments. It is asserted that the fine bubble diffused air aeration system installed at Kells WWTP in 2020 is considerably more effective as well as being more energy efficient, significantly increasing capacity of the aeration system and guaranteeing year round ammonia compliance. As a result the overall capacity of the Kells WWTP is now 9,800PE. It is noted that Kells WWTP was fully compliant with its wastewater discharge licence emission limit values for 2020 and 2021. One exceedance in 2022 related to the commissioning of the new automatic wasting system, but was otherwise compliant in 2022 and to date in 2023 is fully compliant.

8.3.6 Uisce Eireann contends that the significant plant upgrades detailed have ensured that Kells WWTP has the capacity to consistently meet both the urban wastewater treatment Standards and wastewater discharge licence limits and has sufficient spare capacity to cater for the growth of Kells town for several years. Reference is made to evidence of the good performance of Kells WWTP in that the EPA assigned in 2020 a Q4 or “good” status to the Kells Blackwater River downstream of the Kells WWTP whereas it was “moderate” in 2018.

8.3.7 On the issue of stormwater overflow SW3, it is noted that it is one of just two stormwater overflows from the Kells wastewater agglomeration, the other being from the stormwater holding tank at the treatment plant itself. Both overflows are licensed by the EPA. Whilst the issue of more frequent than expected discharges, identified in the 2015 Mott MacDonald preliminary report, and referred to in Kells’s anglers submission, is acknowledged, it is noted that significant improvements have been made since the 2015 report including the removal of a large blockage and the installation of basket type screen at the outfall of SW3. These measures have substantially improved the compliance of the stormwater overflow. When the

storm water overflow activates after intense rainfall the caretaker is alerted by an alarm to his phone and inspects the screen following each such event. When the basket screen is approximately half full or more of screenings it is emptied by a contractor.

8.3.8 Regarding the submission of Kells Anglers that raw sewage being diverted to the Newrath stream it is outlined that this is not the case as the licenced stormwater overflow SW3 activates only following heavy rainfall. Wastewater discharged in this way from the EPA licensed storm overflow is heavily dilute and screened and hence does not have a significant impact in terms of water quality in either the Newrath stream or the Blackwater River.

8.3.9 I note that the most recent AER for Kells. 2022 (Wastewater Discharge Licence Ref. D0127-01) states that the WWTP performed largely well in 2022 in respect to compliance with ELVs. During commissioning of new software / controls on the desludging system there was a short duration / minor exceedance experienced in respect to ammonia. Regarding future upgrades the submissions by Uisce Eireann indicate that whilst a major capital upgrade of Kells WWTP was proposed as far back as 2012, this upgrade was deferred in 2017, in favour of quicker more targeted upgrades such as the orthophosphate removal system, the aeration upgrade and the licensed storm overflow upgrade which have resulted in significant additional treatment capacity at Kells WWTP and improved performance at Kells WWTP and SW3. Plans for future upgrade works include extending the sewer network, remediating structural network defects, eliminating, or further upgrading the EPA licensed storm overflow (SW3) as well as additional storm handling facilities at the WWTP site. It is anticipated that this project will be realised within the coming five years. I note that Uisce Eireann's website lists imminent upgrade works to commence in relation to the wastewater treatment plants at Kells and Trim.

8.3.10 On the basis of the information submitted it is considered that sufficient evidence has been provided to demonstrate that extant permissions in Kells in combination

with the proposed 22 residential unit development can be accommodated and the proposed development is acceptable in terms of proposals for both foul and surface water discharges.

8.3.11 Regarding flood risk and climate change considerations, I note the flood risk assessment submitted by Roughan and O Donovan, Consulting Engineers which outlines that the site is within flood zone C and will not be impacted by flooding. Based on the information submitted I consider that it can be concluded that the proposed development, would not have any significant unacceptable direct or indirect impacts in terms of hydrology and hydrogeology. The proposed development would not have any significant notable unacceptable direct or indirect impacts in terms of air quality and climate at this urban location. The proposed development can be adequately accommodated by existing public services at this location and the road network can safely accommodate traffic generated. The proposal, therefore, would not have any significant unacceptable direct or indirect impacts on material assets.

8.3.12 Regarding impact on cultural heritage the application is accompanied by a desk based review and assessment by Niall Roycroft which assesses the archaeological and heritage aspects of the proposal. It notes that archaeological monitoring during the construction of the Cherry Hill Court housing estate discovered and archaeologically excavated two burnt mounds fulacht fia sites that have been recorded on the sites and monuments record as ME017-069001 and ME017-069002. The report recommends that the site is archaeologically trial trenched to an area of around 12% of the site area. Should archaeological remains be found during this process then those remains should be assessed for their significance and if appropriate, preserved by record.

8.3.13 In terms of landscape and visual impact, it is noted that the site of the proposed development is in an urban area, comprising a fenced overgrown area between established residential estates. The proposed development would not have a significant visual or landscape impact. Regarding impact on established residential

amenity given the separation distance from established dwellings no significant impacts arise in terms of overlooking or overshadowing. Overall, I submit to the Board that the proposed development would likely have significant positive environmental impacts and would constitute sustainable development.

## **8.4 The Need for EIA**

8.4.1 I note that the question of need for EIA was previously addressed by the Board under Planning ref ABP-309479-21 and it was determined that the Council should not be directed to prepare an EIA report in respect of the proposed development. I observe that the proposed development would provide 22 residential units on a site area of .87 hectares, in the built up area. It is clear that the proposed development, therefore, is one which does not require mandatory environmental impact assessment and that the housing component falls very far short of the 'more than 500 dwelling units', while the land area would fall very far short of the '10 hectares within the built up area threshold. I make the following additional observations: The proposed development comprises a small scale infill residential development within an established residential area. There are no known proposed developments of any significant scale in the vicinity of the proposed scheme. The proposed development would be sited on an established residential landholding which is zoned for residential purposes and which is a fully serviceable site. The proposal is a compatible development with the established uses in the vicinity and provides for connectivity between established residential areas.

8.4.2 The siting of the proposed development would not affect areas of ecological, cultural or conservation value. The proposed development would provide housing in the serviced urban area of Kells at a location planned for a development of this nature. The proposed development would be consistent with the pattern, form, scale, and nature of development permitted at this location. The proposed development would not result in any known significant cumulative impacts with development already approved and functioning at this location. Overall, it may reasonably be concluded that the proposed development would not exceed the threshold of any project defined in Schedule 5 of the Planning and Development Regulations. Having regard

to the considerations of the likely environmental significance of the proposal, it may reasonably be concluded that the proposed development would not result in any significant environmental impacts. It is, thus, reasonably determined that Environmental Impact Assessment is not required and the requirement to submit an Environmental Impact Assessment Report does not arise.

**8.5 The likely significant effects on a European site:** The areas addressed in this section are as follows:

- Compliance with Articles 6(3) of the EU Habitats Directive
- The Natura Impact Statement
- Appropriate Assessment

**8.5.1 Compliance with Articles 6(3) of the EU Habitats Directive:** The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.

### **8.5.2 The Natura Impact Statement**

8.5.2.1 The application was accompanied by an NIS by Moore Group Environmental Services which described the proposed development, the project site and the surrounding area. The NIS contains a section referenced as Stage 1 Screening Assessment which refers to the Board's previous determination ABP309480-21 that concluded that a Stage 2 Appropriate Assessment was required. The NIS outlined the methodology used for assessing potential impacts on the habitats and species within the two European Sites that have the potential to be affected by the proposed development. It predicted the potential impacts for these sites and their conservation objectives, it suggested mitigation measures, assessed in-combination effects with



other plans and projects and it identified any residual effects on the European sites and their conservation objectives.

8.5.2.2. The NIS was informed by the following studies, surveys and consultations:

- A desk top study.
- An examination of aerial photography and maps.
- Online data available from [www.npws.ie](http://www.npws.ie)
- National biodiversity data centre records.

8.5.2.3 The report concluded that, subject to the appropriate treatment of wastewater, the possibility of adverse effects on the integrity of the European sites considered in the NIS (having regard to their conservation objectives) or on the integrity of other European sites arising from the proposed development either alone or in combination with other plans or projects, can be excluded beyond reasonable scientific doubt.

8.5.2.4 Having reviewed the NIS and the supporting documentation, I am satisfied that it provides adequate information in respect of the baseline conditions, does clearly identify the potential impacts, and uses best scientific information and knowledge. Details of mitigation measures are provided. I am satisfied that the information is sufficient to allow for appropriate assessment of the proposed development.

### **8.5.3 Appropriate Assessment**

8.5.3.1 I consider that the proposed development of a housing development of 22 dwellings at Archdeaconry Glebe, Kells Co Meath is not directly connected with or necessary to the management of any European site.

8.5.3.2 Having regard to the information available, nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source pathway

receptor principle and sensitivities of the ecological receptors the following European Sites are considered relevant to include for the purposes of initial screening for the requirement for Stage 2 appropriate assessment on the basis of likely significant effects.

European sites considered for Stage 1 screening:

Site Name European Code	Qualifying Interests	Distance	Connections – Source pathway receptor	Considered further in screening
<b>1. River Boyne and River Blackwater SAC (Site Code 002299)</b>	Alkaline fens [7230]  Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> ( <i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i> ) [91E0]  <i>Lampetra fluviatilis</i> (River Lamprey) [1099]  <i>Salmo salar</i> (Salmon) [1106]  <i>Lutra lutra</i> (Otter) [1355]	0.5km	Yes  During the operational phase hydrological connection to River Blackwater via surface water drainage system and Kells WWTP	Yes  Hydrological connection to SAC could give rise to change in water quality.
<b>2. River Boyne and River Blackwater SPA (Site Code 004232)</b>	Kingfisher ( <i>Alcedo atthis</i> ) [A229]	0.5km	Yes  During the operational phase hydrological connection to River Blackwater via surface water drainage system and Kells WWTP	Yes  Hydrological connection to SPA could give rise to change in water quality.

8.5.3.3 Based on my examination of the NIS report and supporting information, the NPWS website, aerial and satellite imagery, the scale of the proposed development and likely effects, separation distance and functional relationship between the proposed works and the European sites, their conservation objectives and taken in conjunction with my assessment of the subject site and the surrounding area, I would conclude that a

Stage 2 Appropriate Assessment is required for two of the European sites referred to above.

8.5.3.4 I note that a 3km zone of influence is reasonable and appropriate based on the extent at which potential impacts may be carried via identified pathways and this incorporates the entire town of Kells in order to assess cumulative effects. This zone of influence is appropriate having regard to the nature of the proposed development, the nature of the receiving environment and the source-pathway-receptor model,. The only two European Sites within the zone are the River Boyne and River Blackwater SPA (Site Code 004232) and the River Boyne and River Blackwater SAC (Site Code 002299), both of which are c. 0.5km north of the site.

8.5.3.5 **Relevant European sites:** The Conservation Objectives and Qualifying Interests, including any relevant attributes and targets for these sites, are set out below.

Site Name	Qualifying Interests	Distance	Connections – Source pathway receptor	Considered further in screening
<b>1. River Boyne and River Blackwater SAC (Site Code 002299)</b>	Alkaline fens [7230] Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) [91E0] <i>Lampetra fluviatilis</i> (River Lamprey) [1099] <i>Salmo salar</i> (Salmon) [1106] <i>Lutra lutra</i> (Otter) [1355]	0.5km	Yes During the operational phase hydrological oconnection to River Blackwater via surface water drainage system and Kells WWTP	Yes Hydrological connection to SAC could give rise to change in water quality.
<b>2. River Boyne and River Blackwater SPA (Site Code 004232)</b>	Kingfisher ( <i>Alcedo atthis</i> ) [A229]	0.5km	Yes During the operational phase hydrological connection to River Blackwater via surface water	Yes Hydrological connection to SPA could give rise to change in water quality.

Site Name	Qualifying Interests	Distance	Connections – Source pathway receptor	Considered further in screening
			drainage system and Kells WWTP	

### 8.5.3.6 River Boyne and River Blackwater SAC Site code: 002299

8.5.3.6.1 This site comprises the freshwater element of the River Boyne as far as the Boyne Aqueduct, the Blackwater as far as Lough Ramor and the Boyne tributaries including the Deel, Stoneyford and Tremblestown Rivers. These riverine stretches drain a considerable area of Meath and Westmeath, and smaller areas of Cavan and Louth. The River Blackwater is the element of the site located within proximity of the subject site. The Blackwater is a medium sized limestone river which is still recovering from the effects of the arterial drainage scheme of the 1970s. Salmon stocks have not recovered to the numbers that existed pre-drainage. The Deel, Riverstown, Stoneyford and Tremblestown Rivers are all spring-fed, with a continuous high volume of water.

#### 8.5.3.6.2 Conservation Objectives:

To maintain or restore the favourable conservation condition of the Annex I habitats and/or the Annex II species for which the SAC has been selected. The qualifying interests of the River Boyne and River Blackwater SAC are:

- Alkaline fens [7230]
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]
- *Lampetra fluviatilis* (River Lamprey) [1099]
- *Salmo salar* (Salmon) [1106]
- *Lutra lutra* (Otter) [1355]

#### **8.5.3.6.3 Potential direct and/or indirect effects:**

During the construction phase, the existing grassland, scrub and trees on the site will be removed or otherwise disrupted, and there will be general construction-related noise, dust, lighting and potential for pollutants or silt-laden runoff to occur. However, having regard to the 500m separation distance from the European Sites identified above, the lack of any watercourses linking the site to the River, and the nature of the site which is an infill area surrounded by existing suburban development, I am satisfied that there is no hydrological pathway between the proposed development and the European Sites during the construction phase. Considering the characteristics of the qualifying interests of the European Sites, as listed above, I am also satisfied that no other form of pathway exists and that the site would not be likely to play a supporting or ex situ role for any of the identified habitats or species. I am therefore satisfied that the construction phase of the proposed development is not likely to have a significant effect on the European Sites, or any other European site, in view of the conservation objectives for these sites.

8.5.3.6.4 Potential indirect impacts on the River Boyne and River Blackwater SAC are considered in terms of hydrological connectivity between the Proposed Development and the River Blackwater. During the operational phase there will be a hydrological connection to the river Blackwater as a result of the proposed surface water and foul sewage systems. The proposed surface water drainage system includes an attenuation tank, permeable paving and a petrol interceptor, and it will connect to the existing surface water system in the area which ultimately discharges to the River Blackwater. The proposed foul drainage system will connect to the existing foul system in the area, which is treated at Kells Wastewater Treatment Plant, with treated effluent discharged to the River Blackwater. SUDs measures are incorporated to minimise impact on water quality and quantity amenity and biodiversity. Based on the scale of the development and the controlled greenfield runoff rate I am satisfied that surface water discharge will not have a significant negative effects on the River Boyne and River Blackwater SAC or its qualifying interests above.

8.5.3.6.5 The NIS states that a worst-case scenario may arise were the project to result in a significant detrimental change in water quality in the River Blackwater either alone or in combination with other projects or plans as a result of indirect pollution, the effect would have to be considered in terms of changes in water quality which would significantly affect the habitats or food sources for which River Boyne and River Blackwater SAC species is designated. Species such as Salmon, and Kingfisher and Otter relying on prey species requiring good water quality status are susceptible to such changes.

8.5.3.6.6 Regarding Alkaline Fen and Alluvial Woodland there will be no direct impacts on River Boyne and River Blackwater SAC and there will be no habitat loss or fragmentation as a result of the proposed development. Section 3.4 of the NIS states that having considered direct impacts and ruling them out, indirect impacts are considered in terms of source pathway vectors. Potential impacts on the River Boyne and River Blackwater SAC are considered in terms of hydrological connectivity between the proposed development and the river Blackwater.

8.5.3.6.7 Regarding Lamprey: There will be no direct impacts on Lamprey species and so the main concern is with regard to water quality and indirect impacts on water quality and prey species.

8.5.3.6.8 Regarding Salmon, there should be no significant decline in out-migrating smolt. There should be no decline in number and distribution of spawning redds due to anthropogenic causes and a value of at least Q4 at all sites sampled by EPA should persist. While direct impacts may be ruled out, impacts on water quality and indirect impacts on salmonids and salmonid habitats are a consideration.

8.5.3.6.9 Regarding Otter there will be no direct impacts on Otters and so the main concern is with regard to water quality and indirect impacts on water quality and prey species. Each of these species is listed as one of the qualifying interests of the River Boyne and River Blackwater SAC designation. However, there will be no direct impacts on these Annex II species as a result of the Proposed Development.

A worst-case scenario may be considered whereby the proposed project may result in a significant detrimental change in water quality in the River Blackwater either alone or in combination with other projects or plans as a result of indirect pollution. The effect would have to be considered in terms of changes in water quality which would affect the habitats or food sources for which the River Boyne and River Blackwater SAC species are designated.

### **8.5.3.7 River Boyne and River Blackwater SPA**

8.5.3.7.1 The River Boyne and River Blackwater SPA is a long, linear site that comprises stretches of the River Boyne and several of its tributaries; most of the site is in Co. Meath, but it extends also into Counties Cavan, Louth and Westmeath. The section relevant to the subject site includes the River Blackwater section from its junction with the River Boyne in Navan to the junction with Lough Ramor in Co. Cavan. Most of the site is underlain by Carboniferous limestone but Silurian quartzite also occurs in the vicinity of Kells and Carboniferous shales and sandstones close to Trim. The site is a Special Protection Area (SPA) under the E.U. Birds Directive of special conservation interest for the following species: Kingfisher. The River Boyne and River Blackwater Special Protection Area is of high ornithological importance as it supports a nationally important population of Kingfisher, a species that is listed on Annex I of the E.U. Birds Directive.

#### **8.5.3.7.2 Conservation Objectives:**

To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA. The special conservation interest of the River Boyne and River Blackwater SPA is:

- Kingfisher (*Alcedo atthis*) [A229].

#### **8.5.3.7.3 Potential direct and/or indirect effects:**

There will be no direct impacts on Kingfisher and so the main concern is with regard to water quality and indirect impacts on water quality and prey species.

## **8.6 Possible Impacts on QIs/SCIs of European Sites**

- 8.6.1 As stated previously there are no direct impacts identified which may affect the annexed habitats or species of the SAC or SPA. The proposed development will have no impacts upon the integrity or the site structure of the River Boyne and River Blackwater SAC or on the River Boyne and River Blackwater SPA. Having established this, the appropriate assessment emphasis is placed on potential indirect and cumulative impacts. The primary consideration in terms of source-vector-pathways for indirect impacts relates to surface water and potential indirect impacts on hydrologically linked habitats and aquatic species.
- 8.6.2 The potential for indirect impact is considered whereby the proposed development would result in a significant detrimental change in water quality either alone or in combination with other projects or plans as a result of indirect pollution of surface water. The effect would have to be considered in terms of changes in water quality which would affect the habitats or species for which the River Boyne and River Blackwater SAC and SPA are designated.
- 8.6.3 The pathway connections from the subject site to the River Blackwater are considered within the NIS and it is stated that the likelihood of impacts on hydrologically connected environmental sites is low and will be avoided by appropriate treatment of wastewater at Kells WWTP. Section 3.5.2 of the NIS notes that Kells WWTP underwent upgrading works in 2020 and the Annual Environmental Report (AER) 2021 states that the plant has assimilative capacity for the next three years. I note the correspondence of Uisce Eireann, provided in response to the Board's request for additional information, which outlines that the plant upgrades carried out at Kells WWTP have ensured that the plant has the capacity to consistently meet both the Urban Wastewater Treatment Standards and Wastewater Discharge Licence limits and has sufficient capacity to cater for the growth of Kells Town for several years. I refer also to the elaboration on the matter of wastewater treatment as outlined under Section 8.3 above.

## **8.7 Potential in-combination effects**



### 8.7.1 Wastewater and Surface Water

Section 3.6 of the submitted NIS contains an Assessment of In-Combination Effects. This section considers impacts in addition to the proposed works which may include other relevant projects and plans in the area. This step aims to identify at this early stage any possible significant in-combination of the proposed development with other such plans and projects on the Natura 2000 site. A review of the National Planning Application Database was undertaken and the database was then queried for developments subject to grants of planning permission within 500m of the Proposed Development within the last three years. 8 no. applications are detailed and there are no predicted in-combination impacts identified, this is mainly by virtue of the size and scale of the permitted developments, and location within the suburban environment of the town of Kells. I also note concurrent appeal before the board 314282 for 47 residential units at Carrick Street and Maudlin Street. No predicted in combination effects are identified.

8.7.2 I note the concerns raised in the submissions of Inland Fisheries Ireland and Kells Anglers in relation to the capacity of the plant to deal with the proposed development in-combination with other permitted developments in the town which also utilise the plant. Uisce Eireann in their response dated 02 October 2023 outlined details of the Kells WWTP capacity at 9,800PE (taking into account the upgrades at the plant) and current loading of 8,155 PE. The response states that the Kells WWTP was fully compliant with its wastewater discharge licence emission limit values for 2020 and 2021. One exceedance was recorded in 2022 and this related to the commissioning of the new automatic wasting system, but other than that it was compliant. The significant plant updates as detailed under Section 8.3 of this report above have ensured that the Kells WWTP now has capacity to consistently meet both the Urban Wastewater Treatment standards and its Wastewater Discharge Licence limits. It is asserted that the WWTP can comfortably treat the cumulative loading and cater for the growth of Kells town for several years. Regarding SW3 stormwater overflow from the Kells agglomeration also highlighted in the submissions received I note the response to the request for additional information which outlined improvements made to SW3. Regarding water quality within the River Blackwater, Irish Water note that evidence of good performance of the Kells WWTP is clear from the EPA

assignment in 2020 of a Q4 or “Good” status to the Kells Blackwater whereas the status was “moderate” in 2018. Based on the information provided I am satisfied that the effectiveness of the improvements to the waste water treatment plant have been demonstrated and that sufficient capacity exists to cater for the development proposed without significant impacts on the relevant Natura 2000 sites.

8.7.3. Based on my review of the website of Meath County Council there are no other projects relevant for consideration in terms of potential in-combination effects. Having regard to the above information I am satisfied that given the proposed effective treatment of wastewater at Kells WWTP, the proposed development will have no predicted impacts on local ecology and biodiversity or on hydrologically linked European sites, either alone or in combination with other developments within the surrounding area.

## **8.8 Mitigation measures**

8.8.1 As outlined above any possible impacts on the relevant Natura 2000 sites would only be indirect and relate to the treatment of wastewater at the Kells WWTP. Based on the submissions of Uisce Eireann, the current WWTP has the capacity to cater for the proposed development and that the stormwater overflow (SW3) is effective. I am satisfied that based on the evidence provided indicating the capacity of the wastewater treatment plant no impacts will occur that may adversely impact on the site integrity of any designated European sites.

8.8.2 I am satisfied that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of this European site in light of its conservation objectives (subject to the implementation of mitigation measures outlined above).

## **8.9 Appropriate Assessment Conclusion**

8.9.1 The proposed local authority housing development has been considered in light of the assessment requirements of Section 177AE of the Planning and Development

Act 2000, as amended. Having carried out screening for Appropriate Assessment of the project, it was concluded that the project may have a likely significant effect on River Boyne and River Blackwater SAC (site code: 002299) and River Blackwater SPA (site code: 004232). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives.

8.9.2 Having regard to the foregoing assessment I consider that it is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, and beyond any reasonable scientific doubt that the proposed development, individually or in combination with other plans and projects would not adversely affect the integrity of European site no. 002299 or site no. 004232, or any other European site, in view of the site's Conservation Objectives. I am satisfied that the project will not cause any delays or interrupt progress towards achieving the conservation objectives of the sites and will not disrupt factors that help maintain the favourable conservation conditions of the site.

## **9 Recommendation**

9.1 On the basis of the above assessment, I recommend that the Board approve the proposed development subject to the reasons and considerations below and subject to conditions including requiring compliance with the submitted details and with the mitigation measures as set out in the Appropriate Assessment.

### **Reasons and Considerations**

In coming to its decision, the Board had regard to the following:

- (a) the EU Habitats Directive (92/43/EEC),
- (b) the European Union (Birds and Natural Habitats) Regulations 2011 (as amended),
- (c) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the

proposed development and the likely significant effects of the proposed development on a European Site,

- (d) the conservation objectives, qualifying interests and special conservation interests for the River Boyne and River Blackwater SAC (site code: 002299) and River Blackwater SPA (site code: 004232),
- (e) the policies and objectives of the Meath Development Plan, 2021-2027,
- (f) the nature and extent of the proposed works as set out in the application for approval,
- (g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,
- (h) the submissions received in relation to the proposed development, and
- (i) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter.

#### **Appropriate Assessment:**

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the River Boyne and River Blackwater SAC (site code: 002299) and River Blackwater SPA (site code: 004232) are the only European Sites in respect of which the proposed development has the potential to have a significant effect.

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development for the affected European Sites, namely the River Boyne and River Blackwater SAC (site code: 002299) and River Blackwater SPA (site code: 004232), in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:

- i. the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- ii. the mitigation measures which are included as part of the current proposal, and
- iii. the conservation objectives for the European Sites.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the integrity of the aforementioned European Sites, having regard to the site's conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the site's conservation objectives and there is no reasonable scientific doubt remaining as to the absence of such effects.

**Proper Planning and Sustainable Development/Likely effects on the environment:**

It is considered that, subject to compliance with the conditions set out below, the proposed development would not have significant negative effects on the environment or the community in the vicinity, would not give rise to a risk of pollution, would not be detrimental to the visual or landscape amenities of the area, would not seriously injure the amenities of property in the vicinity, would not adversely impact on the cultural, archaeological and built heritage of the area and would not interfere with the existing land uses in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

**Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and additional plans and particulars submitted on 11th October 2023, except as may otherwise

be required in order to comply with the following conditions. Where any mitigation measures or any conditions of approval require further details to be prepared by or on behalf of the local authority, these details shall be placed on the file and retained as part of the public record.

**Reason:** In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.

2. Prior to the commencement of development, the local authority, or any agent acting on its behalf, shall prepare in consultation with the relevant statutory agencies, a Construction Environmental Management Plan (CEMP), incorporating all mitigation measures indicated in the Natura Impact Statement and demonstration of proposals to adhere to best practice and protocols. The CEMP shall include:
  - a. Location of the site and materials compounds including areas identified for the storage of construction waste,
  - b. Location of areas for construction site offices and staff facilities,
  - c. Intended construction practice for the development, including hours of working,
  - d. Means to ensure that surface water run-off is controlled in line with a Sediment Control Plan, such that no deleterious levels of silt or other pollutants enter local surface water drains or watercourses,
  - e. Containment of all construction related fuel and oil within specifically constructed bunds to ensure that fuel spillages are fully contained,
  - f. The management of construction traffic and off-site disposal of construction waste,
  - g. Specific proposals as to how the measures outlined in the CEMP will be measured and monitored for effectiveness,

- h. Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels; and
- i. A record of daily checks that the works are being undertaken in accordance with the CEMP shall be maintained on file as part of the public record.

**Reason:** In the interest of protecting the environment and in the interest of public health.

- 3. The local authority 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:
  - a) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues:
    - i. the nature and location of archaeological material on the site, and
    - ii. the impact of the proposed development on such archaeological material.
  - b) Complete a detailed archaeological excavation informed by additional test excavation across the whole phase of works to be completed prior to any construction starting on site. In addition an updated Archaeological Impact Assessment, should be completed.
  - c) Complete a report, containing the results of the above assessments, regarding any further archaeological requirements (including, if necessary, archaeological excavation). This report shall then be submitted to the Department of Housing, Local Government and Heritage with any proposals agreed prior to commencement of

construction works. Following this the Council will provide suitable arrangements acceptable to the Department of Housing, Local Government and Heritage for the recording and removal of any archaeological materials which is considered appropriate to remove.

**Reason:** In order to conserve the archaeological heritage of the site and secure the preservation (in situ or by record) and protection of any archaeological remains that may exist within the site.

4. The County Council and any agent acting on its behalf shall ensure that all plant and machinery used during the works should be thoroughly cleaned and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens.

**Reason:** In the interest of the proper planning and sustainable development of the area and to ensure the protection of the European sites.

5. The construction of the development shall be managed in accordance with a Construction and Traffic Management Plan.

**Reason:** In the interests of amenity, public health and safety.

6. The internal road network serving the proposed development, including turning bays, junctions, sightlines, pedestrian routes, footpaths and kerbs shall comply in all respects with the provisions of the Design Manual for Roads and Streets.

**Reason:** In the interests of pedestrian and traffic safety and in order to comply with national policy in this regard.

7. The landscaping scheme shown on Drawing No. 23MH03-DR-200, as submitted to the Board on the 11th day of October, 2023 shall be carried out within the first planting season following substantial completion of external



construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species.

Reason: In the interest of residential and visual amenity.

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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Bríd Maxwell  
Planning Inspector

08 November 2023