



An
Bord
Pleanála

Inspector's Report ABP-315737-23

Development	Construction of 31 houses to complete an unfinished estate
Location	Gort Na Greine , Ballinabrannagh , Co. Carlow
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	22188
Applicant(s)	Cieval Limited
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Cieval Limited
Observer(s)	None
Date of Site Inspection	21 st November 2023
Inspector	Catherine Dillon

1.0 Site Location and Description

- 1.1. The subject site is located on lands to the north and west of an existing housing development known as Gort Na Greine in Ballinabrannagh village, approximately 6.2km to the southwest of Carlow town. Gort Na Greine housing estate comprises 42 houses that includes a mixture of two storey semi-detached, detached and terraced houses with a vehicular access off the L-3043. The internal estate road rises above this local road. There are a number of landscaped areas throughout the estate.
- 1.2. The site comprises two areas of land; a rectangular area is to the north, and a smaller linear area to the west of, the Gort Na Greine development. The larger area of land is connected to the main estate by a gap site between two existing houses (Nos. 41 & 43 Gort Na Greine), and is predominantly a greenfield site with evidence of some groundworks including, a partially completed footpath and an unmade vehicular track, some utility trenches and several derelict portacabins. The linear area of land to the west of No. 45 Gort Na Greine has evidence of house foundation slabs.
- 1.3. In terms of topography the larger part of the site gradually rises from east to west and north to south by c.10m. There is a stream along the northern boundary of the site with agricultural and quarry lands beyond. A strong hedgerow with mature trees defines the boundaries. The site has a stated area of 2.95ha and was originally included as part of the adjoining housing development. Access into the subject site would utilise the existing internal vehicular access into the estate.
- 1.4. There is a pedestrian pathway along the southern internal road to the estate that links to the GAA grounds to the south. Ballinabranna National School and the church are positioned at the crossroads of the settlement, on the L-3043 and L-2041 to the south of the site. A pedestrian footpath links the estate to the church and school. There are two further developments to the south and east of the church, Millford Park and Bushfield. Raheendoran approximately 1.6km to the northeast of the subject site forms part of the overall Ballinabrannagh settlement. The Wastewater Treatment Plant (WwTP) serving both settlements is to the east of Raheendoran.

2.0 Proposed Development

2.1. The proposed development is for the construction of 31 residential units consisting of detached, and semi-detached properties, comprising the following mix:

- 8 semi-detached two storey dwellings (at sites Nos.43-50 to the west of the existing estate),
- 1, two storey detached dwelling (at site No.42 a gap site in the existing estate),
- 17, two storey detached dwellings with detached single storey garages at sites Nos. 1-17 (types A/A1/A2, B/B1, D/D1) on the larger site to the rear of Gort Na Greine,
- 5 detached bungalows with detached single storey garages at sites Nos.18-22 (types C1/C2 along the northwestern end of the site).

2.2. The houses would be a mix of 3 and 4 bedroom units, with a minimum floor area of 111m². Each dwelling would have 2 off street car parking spaces. Two open space areas are proposed which equate to 15% of the developable area of the larger site.

2.3. Nine of the proposed units would utilise the existing estate road along its southern boundary next to the GAA grounds. The remaining units would be accessed using an entrance to the east of the existing estate with a spine road leading to cul de sac areas.

2.4. A pedestrian link between the subject site and the existing estate to the north of the detached house on site No.42 is proposed.

2.5. The development would have a density of 10.5 houses to the hectare.

2.6. The following documentation was submitted with the planning application and in response to a further information request:

- A Design Statement which includes the 12 design criteria of the Urban Design Manual, A Best Practice Guide, DEHLG (2009).
- Site service details.

- A letter from the Manager of Ballinabranna Water Co-Op Society Ltd., dated 30th August 2022, confirming the Society has no objection in principle to the development.
- Attenuation report/details.
- DMURs compliance report.
- Outline Construction Environmental and Resource Management Plan.
- Archaeological Test Excavation Report.
- Outdoor lighting report.

This is the development under consideration in this appeal.

3.0 **Planning Authority Decision**

3.1. **Decision**

By order dated 13th January 2023, Carlow County Council issued a notification of decision to refuse planning permission for 31 residential units, landscaping and associated works on the following grounds:

‘The subject site is proposing to connect via third party infrastructure and subsequently to the Ballinabrannagh Wastewater Treatment Plant which at present does not have the available capacity to cater for the proposed development. Having regard to the absence of detail on the adequacy of third party infrastructure and relevant consents to connect to same and given the existing deficiencies in the provision of sewerage facilities for Ballinabrannagh and the period within which this constraint may reasonably be expected to cease the proposed development is considered premature and if permitted would be prejudicial to public health and contrary to the proper planning and sustainable development of the area.’

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

3.2.2. The initial planner’s report sought further information on 29th July 2022, requesting details in relation to 7 items which included:

1. Requested applicant to liaise and submit correspondence from Irish Water to confirm the availability of the capacity of the existing wastewater treatment plant and delivery of upgrade required to facilitate the development.
2. Willingness of the applicant to accept a condition precluding occupation of the development pending an upgrade of the necessary wastewater infrastructure.
3. A letter of consent to connect to the Ballinabrannagh Group Water scheme.
4. Design Statement, repositioning of house on site No.14, DMURS compliance, public lighting, issues concerning the connectivity & permeability of the development.
5. Details on the attenuation system and surface water loading.
6. Consultation with the Chief Fire Officer regarding Fire Safety.
7. Archaeological Impact Assessment.

3.2.3. The second planner's report dated 12th January 2023, considered the applicant had addressed several of the Planning Authority's concerns in the further information response regarding the proposed development, but had not confirmed the availability of the wastewater infrastructure required to facilitate the development within the life of any permission granted. This report noted there was no clear timeframe for the delivery of any potential upgrade of the Wastewater Treatment System (WwTS), as the proposed design has not yet been formalised, and the necessary planning consents had not been obtained for any upgrade. In addition, it noted the Irish Water sewer connection is via third party infrastructure located on the adjoining residential development which has not been taken in charge and for which there are known issues regarding relevant consents to connect to the infrastructure. It was therefore considered the proposed development was premature pending the upgrade of the Ballinabrannagh WwTP.

3.2.4. Other Technical Reports

Water Services: Report dated 19/7/2022 from Senior Engineer and reference is made to a report and recommendation from A/SEE Water Services: Notes that while pre connection is feasible subject to an upgrade, this upgrade is likely 3 years from realisation at best. The WwTP has been funded under the towns and villages

programme, design to be completed and no planning permission has been granted for the upgrade. Applicant to get full connection agreement with IW.

Water Services email from A/SEE dated 18/7/2022: Raheendoran WwTP currently has a loading of 694 persons equivalent (P.E.) and is designed for ≤ 500 P.E. and is overloaded. The applicant has applied to Irish Water for a pre-connection and this is feasible subject to upgrades. Irish Water also state that the existing wastewater network is not taken in charge, and the existing network would have to be proven to comply with Irish Water's Code of Practice, so that the proposed estate can connect to a network which is in charge by Irish Water as fully functional and complying with Irish Water standards.

In relation to the Water, the water is provided by a group water scheme, 'Ballinabrannagh Group water scheme'. Applicant is to provide letter of acceptance from the group water scheme agreeing to allow them to connect to the scheme.

Water Services: A/Senior Executive Engineer email dated 5/1/2023: Following further information response states that the WwTP is currently overloaded and has a Licence 'Certificate of Authorisation ≤ 500 P.E current loading IW 2019' (Published data 694 P.E) and will require a Discharge Licence also the estate has not been taken in charge and there is known issues with the constructed existing network within the estate. Until such time as Irish Water takes the estate in charge, i.e the network is in compliance Irish Water then we cannot approve.

Raheendoran WwTP is currently being reviewed by Irish Water with a view to upgrading, timeline is unknown.

Senior Engineer: Email dated 9/1/2023: As per the report returned from Irish Water dated 6th January 2023 it is noted '*that any connection agreement to be issued for this development will include conditions only allowing connections to be completed once the WwTP upgrade works are complete*'. (Planning Authority's emphasis)

Furthermore, Irish Water notes that upgrade to the waste water treatment plant (WwTP) '*could be completed in 2028 but is subject to change and subject to securing any relevant statutory consents (such as planning permission for upgrade works)*'. (Planning Authority's emphasis).

The proposed development is therefore premature as the waste water treatment option proposed by the applicant for the disposal of wastewater arising from the proposed development is not currently available, nor are these works programmed by the Sanitary Authority namely Uisce Eireann/Irish Water for completion within a specified time, needing a successful planning authorisation themselves. As no acceptable proposal has been presented for the management of wastewater arising from the development it would not be recommended that the planning authority granted permission in these circumstances.

Carlow Municipal District Office- Senior Executive Engineer: Report dated 27/7/22. Notes Gort Na Greine has not been taken in charge and the estate requires a wearing course of tarmacadam and some remedials on the footpath which can be addressed in the Taking in Charge process. No objection from a roads and transport perspective subject to conditions regarding roadside drainage, surface water and provision of a Construction Management Plan. Sightlines are acceptable.

Environment: Report dated 27/7/22 from Executive Engineer to Senior Engineer: Recommends further information in relation to whether the existing surface water attenuation designs/systems installed can accommodate the proposed development, and compliance with SuDS policy.

Transportation: Report dated 28/7/22 from A/Senior Executive Engineer, requesting revised public lighting system.

Chief Fire Officer: Report dated 14/9/22 from Senior Assistant CFO: No objection from a fire safety aspect subject to recommendations.

Housing Department: The planning report refers to a letter dated 2/6/2022 from the housing department which sets out that the Part V requirements for the overall development have been met through the provision of 9 social units and 9 affordable units. The final Part V agreement was signed off on the 13/11/2017 (copy attached to file) and no further obligations are required.

Environment Dept: Report of Senior Executive Engineer (Environment) dated 21/12/23 in response to Further information received. The environment section was satisfied with the Construction Environmental Management Plan subject to it being updated to include the recommended mitigation measures outlined in the

archaeological test excavation report and recommended conditions in the event of planning permission being granted. The report also notes the site is not deemed as a flood risk.

Environment- Senior Engineer: Report dated 5/1/23 was satisfied that the design/details regarding the existing attenuation system for the existing development can accommodate the surface water loading for the proposed development and the attenuation design is in compliance with Carlow County Council's SuDs policy. Recommended a grant of planning permission subject to conditions.

3.3. Prescribed Bodies

Irish Water: Report dated 12/7/22 requesting further information, noting that while pre connection is feasible subject to upgrade, this upgrade is likely 3 years from realisation at best. Funded under the towns and villages programme, design yet to be completed and no permission for the upgrade yet.

Irish Water: Report dated 6/1/23 following further information response states IW has plans to progress an upgrade to the WwTP. It is estimated this could be completed in 2028 but is subject to change and to securing any relevant statutory consents (such as planning permission for upgrade works.). It is noted that any connection agreement to be issued for this development will include conditions only allowing connections to be completed once the WwTP upgrade works are complete.

As the proposed connections to the Irish Water network will be via infrastructure, which is not taken in charge by Irish Water, and has known issues, any connection agreement issued will include further conditions requiring the applicant:

a) To secure all consents required to connect to this third party owned infrastructure and to provide a Deed of Easement to Irish Water to provide all relevant rights to access, control, operate, maintain, etc., this infrastructure.

b) To carry out any required works to ensure that the condition of the third-party infrastructure meets all relevant standards. Irish Water therefore respectfully requests that, should Carlow Planning Authority, as the competent authority, decide to grant permission, that any grant of permission be conditioned including that the applicant sign a connection agreement with Irish Water prior to the commencement

of the development and adhere to the standards and conditions set out in that agreement.

Department of Housing, Local Government & Heritage: Report received 14/7/22 requesting an Archaeological Impact Assessment due to the large site area and subsurface archaeology maybe encountered.

Department of Housing, Local Government & Heritage: Report dated 4/1/23 in response to the archaeological test excavation and broadly concurs with the conclusions and recommendations detailed in the testing report and recommends condition to be attached in any granted planning permission.

3.4. **Third Party Observations**

None

4.0 **Planning History**

4.1. Parent Permission for Gort Na Greine

P.A Ref: 06/429: Planning permission was granted by Carlow County Council on 29th September 2006 for the construction of 82 no. dwellings comprising 13 no. detached storey and a half style dwellings, 12 no. blocks of semi-detached storey and a half style dwellings, 6 no. blocks of 3 storey and a half style dwellings, 7 no. bungalows, 22 no. detached dormer style dwellings, ancillary road networks, new site entrance, all ancillary site works and services, subject to 25 conditions.

A number of development contributions were attached to the permission regarding roads and a bond. Of particular relevance to this appeal are the following conditions:

Condition 20 -required a special contribution of €147,600 in respect of upgrading sewer network and wastewater plant.

Condition 21- required a development contribution of €141,411.46 in respect of public wastewater to facilitate the proposed housing.

Condition 24- required a development contribution of €398,969.15 in respect of Scheme No.5 in respect of Ballinabrannagh.

This permission has expired.

4.2. **Also of relevance-**

P.A Ref: 16/278: Planning permission was granted by Carlow County Council on 3rd May 2017, for 19 units in Millford Park to retain the partially constructed house numbers 59-66 inclusive as granted under pl ref: 04/739 and amended under pl ref: 06/88 and full planning permission is sought for the completion of same, all ancillary site works and services.

P.A Ref: 18/326: Planning permission was granted in June 2019 for three sludge drying reed beds at the existing Raheendoran Wastewater Treatment Plant.

5.0 **Policy Context**

5.1. **Carlow County Development Plan 2022-2028**

Ballinabrannagh is designated as a 'Larger Serviced Rural Village' and is a 4th tier settlement within the 6th tier settlement hierarchy for the county. These settlements are located throughout the County providing important local services with populations ranging generally over c.200 to 466. Ballinabrannagh had a population of 466 in the 2016 census, and is one of the larger serviced villages. The policy within the Core Strategy for these villages is to promote Serviced Villages as an attractive housing option for rural areas of the county through the promotion of quality of life, placemaking, and sufficient local service and infrastructure provision (CS P12 refers). The Core Strategy in Table 2.7 of the CDP proposes a housing target for Ballinabrannagh of 27 units with a residual of 6 units over the lifetime of the Plan.

The level of growth allocated to Ballinabrannagh under the Core Strategy is impacted due to capacity constraints in the wastewater infrastructure. The settlement has been allocated limited residential growth levels acknowledging the potential for individual private wastewater treatment units for one - off dwellings pending future upgrades of the public infrastructure.

5.1.1. **Chapter 6 Infrastructure and Environmental Management**

This chapter notes Irish Water has recently announced funding for the provision of a WwTP upgrade at Ballinabrannagh under the "Small Towns and Villages Growth Programme" (STVGP) and that Ballinabrannagh has a group water scheme.

5.1.2. **Policy PW O2:** Work and support Irish Water in progressing the “Small Towns and Villages Growth Programme” which is intended to provide growth capacity at WwTPs (and WTPs) in smaller settlements which would not otherwise be provided for in the current Investment Plan.

5.1.3. **Chapter 15 Town and Village Plans/Rural Nodes**

5.1.4. **Larger Serviced Village - Strategic Policies**

LSV P1: Facilitate development at a sustainable level, addressing vacancy, infill / brownfield development while supporting small scale residential schemes, local services, small scale employment and community facilities. The Council will support high quality designed development on sites within the village boundaries subject to proper planning considerations and the environmental carrying capacity of the area.

LSV P2: To support the development of a “New Homes in Small Towns and villages” initiative which would augment the delivery of actions by Local Authorities, Irish Water, communities and other stakeholders in the provision of services and serviced sites to create “build your own home” opportunities within the existing footprint of rural settlements to provide new homes to meet housing demand.

5.1.5. **Section 15.4 Larger Serviced Villages**

Ballinabrannagh & Raheendoran are considered as one settlement. In Section 15.4.2 of chapter 15 of the CDP the objectives and policies for Ballinabrannagh/Raheendoran village are outlined. The overall objective is ‘To promote Ballinabrannagh / Raheendoran village area as a settlement with a strong village character to be protected and enhanced, while strengthening the existing and proposed services and supporting growth of the local community to sustainable levels subject to environmental capacity constraints.’ The subject site has 2 zonings within the village Plan, the larger rectangular site is zoned ‘New Residential’ and the linear and infill site areas are zoned ‘Existing/Infill’ Residential.

Of note are the following policies specific to Ballinabrannagh within the Village Plan:

BB P1: Ensure that future development will be subject to the availability and adequate provision of the necessary physical infrastructure and specifically be subject to the upgrading of the existing sewage plant to a level that can accommodate future development and population increases.

BB P2: Support the complementary functions of Ballinabrannagh and Raheendoran to share their social and recreational, physical and heritage services and recognise their interdependence and shared responsibility to protect and facilitate sustainable development.

BB P3-7: relate to consolidating the village form, placemaking, strengthening the sense of place and encouraging infill development within the village boundaries.

BB P8: To seek the satisfactory overall completion of Gort na Greine Housing Development and to consider the provision of a maximum of 22 no. residential units on new residential zoned lands, subject to the appropriate phasing of the scheme and high-quality design and siting considerations, which will provide for an integrated development including pedestrian permeability through the site to the existing adjoining development. The scheme shall also provide high-quality landscaping and public open space provision and shall comply all other proper planning and sustainable development considerations as appropriate.

BB P16: Seek to ensure that strong linkages to the village core are provided and that new development addresses connectivity to the core of the settlement, community / service facilities with the provision of footpaths/ cycleways, where deemed appropriate.

5.1.6. **Chapter 16 - Development Management Standards**

This chapter sets out sets out standards and criteria to be applied in the assessment of planning applications with Section 16.8 concerning residential development, in terms of layout, amenity, public and private open space and density. Section 16.8.2 sets out a density of 25-30 units per hectare in the village cores and 20-25 units per hectare on the edge of centre of smaller towns and villages.

5.2. **Regional Spatial & Economic Strategy (RSES) for Southern region**

RPO 3 Local Authority Core Strategies

In preparing Core Strategies, local authorities shall determine a hierarchy of settlement and appropriate growth rates in accordance with the guiding principles (including environmental protection) and typology of settlement in the RSES.

5.2.1. **National Planning Framework (NPF)**

The NPF requires the capacity of Carlow's infrastructure to be assessed in accordance with National Policy Objective (NPO) 72a-c. This NPO requires Planning Authorities to apply a standardised, two-tier approach to differentiate between land that is serviced (Tier 1 lands) and land that is serviceable within the lifetime of the Development Plan (Tier 2 lands). This Infrastructure Land Assessment allows an informed decision to be made as to whether or not to zone land for residential development as part of the Core Strategy.

NPO 72a: Planning authorities will be required to apply a standardised, tiered approach to differentiate between i) zoned land that is serviced and ii) zoned land that is serviceable within the life of the plan.

NPO 72b: When considering zoning lands for development purposes that require investment in service infrastructure, planning authorities will make a reasonable estimate of the full cost of delivery of the specified services and prepare a report, detailing the estimated cost at draft and final plan stages.

NPO 72c: When considering zoning land for development purposes that cannot be serviced within the life of the relevant plan, such lands should not be zoned for development.

5.3. **Natural Heritage Designations**

The River Barrow & River Nore SAC (site code:002162) is circa 1.2km to the east and 6.8km to the west of the site. Slaney River Valley SAC (site code: 000781) is circa 15km to the east and Blackstairs Mountains SAC (site code: 000770) is 19km to the south east of the site. There is no hydrological link from the application site to the River Barrow.

5.4. **EIA Screening**

Refer to completed Form 2 on file. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations. I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA is therefore not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. This is a first party appeal submitted by Peter Thomson on behalf of the applicant, of which the main points can be summarised as follows:

- The proposed development is in accordance with the existing 'New Residential' Development Plan zoning.
- The site is a brownfield site.
- There are no objections raised by the Planning Authority in respect of the quantum, layout, scale or design of the proposed houses or the housing layout generally.
- The Department have no objections in respect of archaeology subject to conditions.
- Irish Water were consulted in respect of the original application and further information and had no objections subject to conditions.
- The parent permission (P.A Ref: 06/429) was granted subject to several financial (supplementary, development and special) contribution conditions (namely, 19, 20, 21,22, 23, 24 &25) between the Council, the applicant and other developers which became the basis to fund the upgrading of the infrastructure to support new development in Ballinabrannagh including water and wastewater. (copies of financial figures attached)
- The applicant proposes to continue to fund the infrastructure to service the balance of the lands.
- The applicant has no objection to a planning condition that restricts the occupancy of individual houses pending connection to the water and wastewater mains. Such conditions are reasonable and enforceable. Reference is made to a similar appeal in County Waterford (ABP Ref: 306860-20).

- Applicant intends to pursue Carlow County Council in its obligations in respect of agreements reached under planning permission Ref: 06/429, which was permitted on an understanding all the houses would be built and serviced.
- It is not a concern of the Planning Authority should the applicant have to enter into agreements with Irish Water.
- It would appear the Planning Authority are concerned that the lands providing infrastructure will involve traversing /developing on third party lands. The applicant owns the section of road which is outside the red line boundary and has also developed the water and wastewater infrastructure under this section of road which connects to the public mains. The applicant has therefore no cause to engage with third parties beyond Irish Water and can provide Deeds of easements to Irish Water in this regard.
- Makes reference to the Water Services section and Environment sections' reports not being available on line.

6.2. Planning Authority Response

The Planning Authority consider that a planning condition restricting occupancy pending connection to water and wastewater is premature in this instance, having considered the various reports from Irish Water and Water Services there was considerable uncertainty regarding the availability of the infrastructure required to facilitate the development within the life of any permission granted. The upgrade works required for the WwTP have not obtained the necessary statutory consents and are subject to change. Water Services consider it unlikely that the works will be completed within the lifetime of a planning application and Irish Water state they may be completed by 2028 but this is subject to change. There are also known issues with wastewater in the adjoining residential development which has not been taken in charge that are also of concern.

The Planning Authority respectively advise that all reports in the application were scanned in and available from the 18th January 2023 (i.e 5 days after the decision date).

Notwithstanding the content of the appeal, the position of the Planning Authority remains as per the planner's report recommendation. The Board is directed to the

details set out in the planning reports and internal department reports for the planning application.

6.3. **Observations**

None

7.0 **Assessment**

7.1. I have read the entire contents of the file, including technical reports and submissions from prescribed bodies, visited the subject site and its surroundings, had particular regard to the issues raised in the grounds of appeal, noted the planning authority's request for additional information and the appellant's response to same. I have also had regard to the relevant provisions of the Carlow County Development Plan 2022-2028, and regional and national policies. There are no national monuments on the site and the site is outside any flood zone and the Planning Authority were satisfied with the layout of the development. I therefore consider the main issues in this appeal to be as follows:

- Planning policy and Core Strategy,
- Capacity of wastewater treatment plant,
- Other issues, and
- Appropriate Assessment

7.2. **Planning Policy and Core Strategy**

The subject site lies within the Ballinabrannagh/Raheendoran village boundary, the objective for the settlement is to strengthen *the existing and proposed services and support the growth of the local community to sustainable levels subject to environmental capacity constraints*. The rectangular area of land in the subject site is zoned 'New Residential' within the village Plan, and the objective for this category of zoning is 'To provide for new residential development, supporting community facilities and other facilities and services incidental to residential development', subject to a high-quality design and layout. I consider this area of lands within the

subject site as a greenfield site where new residential development is permitted in principle.

- 7.2.1. There is a distinction between 'new residential' and 'existing/infill residential' zoning within the Plan. I note the linear area of land to the west of Gort Na Greine and the infill plot within the estate are zoned 'Existing/infill Residential'. The objective of this category of zoning is 'To provide and improve existing residential amenity; to provide for appropriate infill residential development; to provide for new and improved services.' Residential development is also permitted in principle on these zoned lands.
- 7.2.2. Policy BB P8 of the Ballinabrannagh/Raheendoran village Plan seeks the satisfactory overall completion of the Gort na Greine Housing Development and to consider the provision of a maximum of 22 no. residential units on new residential zoned lands, subject to the appropriate phasing of the scheme and high-quality design and siting considerations. The proposed development is for 31 residential units, however 8 of the proposed units would be on the western (linear area) of the estate where there are existing foundations, and 1 of the units would be an infill house within the estate. The remaining units (22) would be on the greenfield lands to the north of Gort Na Greine. The proposed development would therefore comply with Policy BB P8 of the village Plan.
- 7.2.3. I also note the larger subject area is zoned 'New Residential' and is identified in the Objectives Map of the village Plan as 'BR3' and is on Infrastructure Assessment Lands. Infrastructure Assessment Lands is explained in detail in Appendix X of the Development Plan and in the NPF Policy Objectives 72 a-c outlined above. In essence NPO 72 a-c of the NPF requires that the zoning of undeveloped lands is carried out in accordance with a standardised methodology to avoid zoning lands that cannot be brought forward for development due to deficiencies in necessary infrastructure and services. Infrastructure and services, include foul sewer drainage and water supply. The development of lands under this designation must be aligned with the infrastructure investment programmes of Irish Water for example, or is, based on a written commitment of the relevant agency to provide the identified infrastructure within a specified timescale i.e within the lifetime of the Development Plan. The Planning Authority may also commit to the delivery of the required and

identified infrastructure in its own infrastructural investment programme (i.e. Budgeted Capital Programme) in order to support certain lands for zoning. When considering zoning land for development purposes that cannot be serviced within the lifetime of the relevant plan, such lands should not be zoned for development.

7.2.4. In Volume 2b Appendix X Infrastructure Assessment of the Carlow CDP, the BR3 lands on the zoning map for the village has been assigned an 'amber' colour which indicates that infrastructure/services are either, not available, or further investment in same is required and that this investment is likely to be provided during the lifetime of the Plan. Given that the lands have been zoned in the CDP, it is considered reasonable that subject to the infrastructure being available during the lifetime of the Plan, the development of the subject site is acceptable. However, despite the lands being zoned neither the Water Services section or Irish Water in this instance are providing any insurance that the WwTP upgrade will occur during the life of any planning permission/or within the life of the CDP to service the development proposed. The capacity and upgrading of the WwTP will be discussed further in 7.3 below.

7.2.5. In the Core Strategy Table 2.7 of the Development Plan a target of 27 units on 4.86 hectares for the Ballinabranagh village is proposed for the lifetime of the Plan with a residual of 6 units over and above the minimum required. This would equate to a density of 5.5 units per hectare which is extremely low and would be an inefficient use of land and the associated infrastructure that goes with it. Nevertheless, Policy BB P8 promotes the completion of Gort Na Greine in addition to a further 22 units on zoned residential lands. The appeal development would therefore comply with this policy but would result in the housing targets in the Core Strategy being exceeded within the lifetime of the Plan, being greater than 27 units as specified in the core strategy.

7.2.6. The primary purpose of the core strategy is to provide an evidence-based rationale for the quantum of land proposed to be zoned to accommodate and align with projected demand over the period of the Development Plan. However the proposed development would exceed the housing target specified for the village over the lifetime of the Plan. I therefore find there are a number of anomalies in the aforementioned policies for Ballinabranagh village and that specified in the core

strategy allocation for the village. The subject site has been zoned for 'new residential' on BR3 category lands, which states that the investment in infrastructure is required, but that this investment is likely to be provided during the lifetime of the Plan. Notwithstanding the 'BR3' objective in the Plan, neither Irish Water or the Planning Authority can provide a time frame for when the upgrade works to the WwTP would be implemented which is contrary to the 'BR3' objective.

7.3. Capacity of wastewater treatment plant (WwTP)

Irish Water's capacity register for Ballinabrannagh identifies there is no spare capacity available at present and the Water Services section of the Planning Authority state the WwTP is currently at 694 persons equivalent (P.E.), but designed for <=500 P.E.. The existing WwTP is therefore currently operating in excess of its capacity. I also note the existing WwTP was granted planning permission in 2019 (P.A Ref: 18/326) for three drying sludge reed beds to eliminate a need for storing the sludge on site and transporting the sludge by tanker.

- 7.3.1. However, in chapter 6 of the CDP, it is stated that Irish Water has recently announced funding for the provision of a WwTP upgrade at Ballinabrannagh under the "Small Towns and Villages Growth Programme" (STVGP). Nevertheless, both the Council's Water Services section and Irish Water in their responses to the proposed development are both in agreement that although there is funding and plans for an upgrade to the WwTP, there are no design proposals or planning permission for this upgrade. The Council's Water Services section consider the design proposals and planning permission is likely to be 3 years 'at best', and Irish Water state that plans to progress the works could be completed in 2028 but with the caveat that this could be subject to change. The comments from the Water Services section and Irish Water on this planning application state there is no indication that the treatment plant for the village will be undergoing an upgrade in the immediate future which is at variance with the future housing projections for the village and Policy PP B8 and the BR3 objective for the subject site.
- 7.3.2. Given the public sewerage system constraints at this time, it is evident that the development of the village of Ballinabrannagh has been permitted to exceed the capacity of its treatment plant and the need to effectively cease to increase development within the village is a necessity until such time as appropriate

upgrading of basic public services has taken place. Both the Planning Authority and Irish Water express issues regarding to the taking in charge of the existing Gort Na Greine development. Irish Water in their comments on the proposal to the application confirm that infrastructure to facilitate the development can be provided within the life of the permission if granted. However, in Irish Water's response to the further information they note any connection agreement to be issued for this development will include conditions only allowing connections to be completed once the WwTP upgrade works are complete, comply with their CoP, and third party consent is secured.

7.3.3. The planning authority and Irish Water have raised the issue of providing infrastructure that will involve traversing /developing on third party lands. The applicant states they own the section of road which is outside the red line boundary and have also developed the water and wastewater infrastructure under this section of road which connects to the public mains. The applicant therefore contends they have no reason to engage with third parties beyond Irish Water and can provide Deeds of Easements to Irish Water in this regard.

7.3.4. However, it is my understanding from the documentation as submitted the third party consent issue relates to the connection to the existing Gort Na Greine estate's foul connection, which has not been taken in charge and there is known issues with the constructed existing network within the estate. Until such time as Irish Water takes the estate in charge, i.e the network in the existing Gort Na Greine estate is in compliance with Irish Water's CoP, Irish Water cannot approve it and take it in charge. However, I would remind the Board that under Section 34 (13) of the Planning and Development Act 2000 as amended, that a person shall not be entitled solely by reason of a permission under this section to carry out any development.

7.3.5. The applicant has provided details of the financial development contributions paid to the Council in the existing Gort Na Greine development towards the wastewater treatment upgrade as part of the parent permission. This permission was granted in 2006 for 82 units and 42 of the units have been constructed and sold to date, with the last of the units completed in 2010. I would be of the opinion these levies would be substantially higher if the development was to be considered today. Nevertheless, the applicant has the right to seek for any excess financial

contributions owed to them from the Planning Authority, and this is not a matter for the Board, and I do not consider this a material consideration in this appeal.

- 7.3.6. The applicant in their grounds of appeal have no objection to a planning condition restricting the occupancy of individual houses pending connection to the water and wastewater mains. There are outstanding issues regarding the connection of the existing estate to the WwTP and whether it complies with Irish Water's Code of Practice (CoP), and I consider it unreasonable therefore to grant planning permission for an additional 31 units subject to the units not being occupied, until the existing estate has been taken in charge by Irish Water and is in compliance with their CoP. In reaching this conclusion I have had regard to the existing Gort Na Greine estate not having been taken in charge, outstanding issues regarding the connection of this estate to the WwTP, and the submissions by Irish Water and Waters Services not having a target date for the upgrade to the WwTP. The occupation of the units cannot happen in any case until critical infrastructure is in place and it would be unreasonable to attach a condition which prevents the units being occupied for an indeterminate amount of time, particularly as an application has yet to be made to upgrade the existing treatment plan.
- 7.3.7. National Policy states that lands that cannot be serviced within the life of the Plan should not be zoned. Nevertheless, the lands are zoned but neither the Local Authority or Irish Water can confirm when the WwTP upgrade will commence other than to say it will/could be within the life of the Plan. Policy NPO 72b of the NPF requires planning authorities to provide the applicant with a reasonable estimate of the full cost of delivery of the required infrastructure to the identified zoned lands. The planning authority have not been forthcoming on this aspect, and the Board may be minded to seek additional information in this regard.
- 7.3.8. Both national and local policies and in particular the Core Strategy for Carlow seeks to ensure a coordinated and balanced approach in the provision of housing and the availability/capacity of infrastructure, which in this instance would be wastewater facilities. To permit the development of the lands in the absence of the available wastewater treatment facilities is at variance with this approach. In conclusion therefore I consider permitting a development of 31 units to an existing development which currently has wastewater issues and without a time frame for the proposed

upgrade to the WwTP is not in the interest of orderly and sustainable development as the required infrastructure should be in place or is available before the development comes into effect. Accordingly, I would recommend a refusal of permission on the grounds of prematurity.

7.4. Other Issues

7.4.1. The applicant refers to a decision made in 2020 by An Bord Pleanála Ref: (ABP Ref: 306860-20) in Lemybrien Co. Waterford. This development was for 16 units and 3 serviced sites and planning permission had previously been granted on the site for 26 units. The treatment plant was at capacity in the village. The Board granted planning permission having regard to the R3 Residential Phased zoning, planning history and location of the site in an established village and at a significant remove from the nearest European Site, and to the nature, form, scale, density and design of the proposed development. Whilst I acknowledge each planning application is considered on its own merits, I wish to make the Board aware there are a number of differences between the current appeal before the Board and the aforementioned appeal which are as follows:

- ABP Ref: 306860 – was for a much smaller development (16 units plus 3 serviced sites),
- Lemybrien is a much smaller village than Ballinabrannagh,
- There had been no additional housing estates granted or constructed since the parent permission in the village (granted in 2005).
- The design and layout intended reusing the existing concrete footprint previously constructed on the site.
- The appellant had provided an estimated cost for the proposed upgrade of the WwTP.
- It was considered the development being refused on prematurity until water and sewage facilities were provided, would stall and stagnate the sustainable growth of the village.
- There was no history of unfinished estates within this village and this was the only development proposed within the village.

- The site was considered a brownfield site.

I therefore consider the current appeal proposal would have a more significant impact on an WwTP that is exceeding its capacity than the appeal mentioned by the applicant.

7.5. **Appropriate Assessment**

- 7.5.1. The proposed development would be located at its closest point circa 1.2km west of the River Barrow & River Nore SAC (site code:002162). There are no hydrological links from the subject site to the SAC. However, the proposed development if permitted would discharge to the existing WwTP which is currently operating in excess of its capacity and discharges into the River Barrow and River Nore SAC, designated for (among other species and habitats) the Freshwater Pearl Mussel.
- 7.5.2. I note planning permission was granted in P.A Ref: 18/326 for three sludge drying reed beds to remove the requirement of transferring sludge generated at the Raheendoran WwTP off site on a regular basis. The existing treatment plant is located circa 242m west from the River Barrow & River Nore SAC and discharges treated effluent to the River Barrow. An Appropriate Assessment screening report was carried out for this development, and it was concluded there would be no impact on designated aquatic species as a result of the development.
- 7.5.3. However, the current development would increase the level of sludge in the WwTP which had not been accounted for in the reed bed proposal. In terms of water quality impacts there is the potential for discharges from the WwTP to threaten the quality within the SAC. The river quality of the River Barrow and River Nore is classified as moderate. The existing treatment plant drains to the River Barrow and I note overflow drainage from the reed beds will be directed to the head of the treatment plant which is a closed system with no impact on final discharge quality from the WwTP.
- 7.5.4. I consider that the issues arising in terms of the obligations of the Habitats Directive will be required to be addressed by Irish Water during its advancement of the WwTP upgrade and the onus will be on same to provide the information necessary for the relevant competent authority to adjudicate as to whether the proposal would/would not be likely to have significant effects on the European site. The requirements of

the Water Framework Directive and the Surface Water Regulations will also be required to be assessed. However, in the absence of details on the upgrade of the treatment plant it cannot be definitively concluded that the proposed development would not be likely to have significant effects on the Conservation Objectives of the European Site.

7.5.5. A Construction Environmental Management Plan (CEMP) was submitted in the appellant's further information response to the planning authority. The mitigation measures address on-site activities primarily during the construction phase of the development. The mitigation measures do not address the existing deficiencies in the WwTP. The information available is insufficient in respect of the WwTP to determine whether or not the proposed development individually, or in combination with other plans or projects would not be likely to have significant effects on the integrity of the River Barrow and River Nore SAC.

7.5.6. On the basis of the information provided with the application and the appeal, and, particularly having regard to the absence of an examination of the likely significant effects the proposed development would have on the conservation objectives of the River Barrow & River Nore SAC, in relation to the proposed connection to the WwTP, which is deficient in capacity and from which discharge flows into the River Barrow and therefore has a hydrological connection to the River Barrow & River Nore SAC, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not result in adverse effects on the integrity of River Barrow & River Nore SAC or any other such designated European, in view of their Conservation Objectives.

8.0 Recommendation

8.1. I recommend planning permission is refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. It is considered the proposed development would be premature by reference to the existing capacity deficiencies in the Ballinabrannagh wastewater

treatment plant to which connection is proposed and the period in which the constraint may reasonably be expected to cease. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and development of the area.

2. On the basis of the information provided with the application and the appeal and particularly having regard to the absence of an examination of the likely significant effects the proposed development would have on the conservation objectives of the River Barrow & River Nore Special Area of Conservation (site code 002162) in relation to the proposed connection to the Ballinabrannagh Wastewater Treatment Plant which is deficient in capacity and which discharge from the plant flows into the River Barrow and has a hydrological connection to the River Barrow & River Nore Special Area of Conservation (site code 002162), the Board cannot be satisfied that the proposed development individually, or in combination with other plans and projects would not result in adverse effects on the integrity of the River Barrow & River Nore Special Area of Conservation (site code 002162) in view of the site's Conservation Objectives. In such circumstances, the Board is precluded from considering a grant of permission for the proposed development.

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.

Catherine Dillon
Planning Inspector

15th December 2023

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-315737-23		
Proposed Development Summary	Construction of 31 houses to complete an unfinished estate		
Development Address	Gort Na Greine, Ballinabrannagh , Co. Carlow		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	X	Class 10 (b)(i) Construction of more than 500 dwelling units	Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
		Conclusion	
No		N/A	
Yes	X	Class 10 (b) (i) Construction of more than 500 dwelling units	Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP 315737-23	
Proposed Development Summary	Construction of 31 houses to complete an unfinished estate	
Development Address	Gort Na Greine, Ballinabrannagh , Co. Carlow	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The development comprises the construction of 31 houses on zoned lands where residential is permitted in principle.</p> <p>The removal of topsoil and small amounts of C&D waste will be managed in accordance with a CEMP. Localised construction impacts will be temporary.</p>	<p>No</p> <p>No</p>
Size of the Development	31 houses on 2.95ha.	No

<p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>The size of the development is not exceptional in the context of the existing built environment.</p> <p>The proposed development would adjoin an existing estate.</p>	<p>No</p> <p>No</p>
<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The River Barrow & River Nore SAC (site code 002162) is located 1.2km east and 6.8km to the west of the site. Refer to section 7.5 of the Inspectors Report where AA was not screened out.</p> <p>The site is zoned for residential use in the CDP, which was subject to SEA & AA.</p>	<p>No</p> <p>No</p>
<p>Conclusion</p>		
<p>EIA not required.</p>		

Inspector: Catherine Dillon

Date: 15/12/2023