



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316136-23

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<b>Development</b>	Construction of 88 dwelling units, creche and associated works.
<b>Location</b>	Annabella, Mallow, Co. Cork.
<b>Planning Authority</b>	Cork County Council.
<b>Planning Authority Reg. Ref.</b>	224497.
<b>Applicant(s)</b>	Oakfield Resources Limited.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party v Refusal.
<b>Appellant(s)</b>	Oakfield Resources Limited.
<b>Observer(s)</b>	1. Gerard Meade & Others.
<b>Date of Site Inspection</b>	7 <sup>th</sup> November 2023.
<b>Inspector</b>	Daire McDevitt

## **1.0 Site Location and Description**

The site, with a stated developable area of c.2.86 hectares and a total site area of 3.28ha when storm and foul drainage infrastructure is included, is located on the southern site of Kennel Hill Road which links to the N72. It is c.1.2km from Mallow town centre. Access to the site is off Kennel Hill Road (L1203). On the opposite side of the Kennel Hill road a residential development is under construction.

The lands are bounded to the northeast by two single dwellings which are accessed off Kennel Hill road, to the east by Dernville housing estates with Westbury Heights estate further south. The boundaries are predominantly hedgerows along the road frontage and along the eastern and western boundaries with a cluster of trees located to the south. Site levels fall north to south with a woodland area located to the south and west of the spurs and overall landholding from which the site is taken. The application site redline boundary extends southwards to accommodate the proposed wastewater infrastructure with a pumping station proposed to the south access via a proposed track off the L9004 to the south. There is another spur which extends westwards to accommodate the proposed attenuation and stormwater proposals.

## **2.0 Proposed Development**

Permission is sought for the construction of a residential development comprising 88 residential units (2 no. 1-bed, 71 no. 3-bed and 15 no. 4-bed), comprising 54 no. houses (28 no. semi-detached and 26 no. townhouse units), 32 no. duplex and 2 no. apartment. The proposed development will also consist of creche, new vehicular and pedestrian access from Kennel Hill Road, car parking, shared open spaces, landscaping, a pumping station and all associated ancillary development and site works necessary to facilitate the development.

Further Information Response received 2<sup>nd</sup> & 9<sup>th</sup> September 2022 in an attempt to address the 22 items requested.

Clarification of Further Information Response received 3<sup>rd</sup> February 2023 in an attempt to address the 14 items requested.

## 3.0 Planning Authority Decision

### 3.1. Decision

Notification of the Decision to Refuse Permission was issued by Cork County Council on 1<sup>st</sup> March 2023 for the following reason:

*“On the basis of the information submitted, the applicant has not demonstrated that the arrangements provided for dealing with wastewater disposal from the development, including the pump station, are adequate to cater satisfactorily for the development and that the proposed development would not contribute to water pollution at this location or that it would not be prejudicial to public health. The proposed development is therefore contrary to the proper planning and sustainable development of the area”.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

There are a number of planners reports (primary/further information and clarification of further information) which give consideration to the observations and submissions received, set out the assessments and rationale for the planning authority’s decision. Below is a brief summary of each report and points of note raised.

#### **Area Planner Report (29/04/2022)**

In addition to a comprehensive assessment of the proposed development, issues of note considered include:

- The development was assessed having regard to the Kanturk Mallow Municipal District LAP 2017. Under which the site is zoned New Residential with a Medium A density.
- Located in an Area of High Value Landscape as per the 2014 County Development Plan.
- Reference to 5 Observations received (2 of which from Residents Association). Issues raised relate to public conflict, access for all users, traffic,

services, surface water management, infrastructural deficits, density, visual impact, poor layout and design, impact on SAC and landscaping/tree protection.

The report includes comments from the SEP dated 29 April 2022 which set out that the developer was made aware of the changes in the land use zoning and timescales involved at pre-application stage. Notwithstanding, the SEP concluded that the principle of development can be considered at the present time under the current zoning objective in the Kanturk Mallow Municipal District Local Area Plan 2017.

Further Information recommended on 22 points relating to: 1) visual impact of 4 terraced blocks across southern section and overbearing impact from blocks 61 to 68, 2) potential overlooking, 3) open space beside no.20 to be incorporated into the residential property, 4) site sections to show existing and proposed levels and extent of cut and fill, 5) play area for creche, 6) signage for creche, 7), private open space and boundary treatment for apartments and creche building, 8) schedule of accommodation, 9) capacity of road network and need to review TTA, 10) Revised site layout regarding Engineering requirements (13 points), 11) raised pedestrian crossing on Kennel Hill, 12) Detail of access to pumping station, 13) provision for cyclists, 14) locations of retaining wall, 15) SuDS details, 16) drainage layout, 17) details of pumping station alarms and controls, 18) CEMP, 19) revised landscape plan, 20) updated Arboricultural Impact Assessment and Tree Survey to take account of issues raised, 21) Part V and 22) public lighting (7 points).

**Area Planner Report (29/09/2022)** following submission of FI.

The report provides an assessment of the 22 points of FI submitted which I do not propose to summarise. Points of note raised in the report include:

Noted that the 2022 County Development Plan came into effect and that the site is identified as Residential Reserve under objective MW-RR-04 and objective ZU-18-12 also noted. The SEP comments dated 29/09/22 state *“Having regard to the planning authority’s approach relating to transitional arrangements for dealing with planning applications in the cross over between development plans, it is noted that planning applications submitted/lodged prior to CDP 2022 coming into effect on the 6<sup>th</sup> June 2022 will be decided on the basis of the 2014 CDP/LAPS2017/TDPs (superseded*

*statutory plans), having had regard to the adopted CDP and any potential material contraventions. If there is a material planning policy change between the superseded statutory plans and CDP 2022 then consideration will be given to going through the material contravention process to facilitate issuing a positive decision. Therefore, if the planning authority were minded to grant permission for the proposed development a material contravention would be required at a later date.”*

Clarification of further Information recommended on 14 items relating to: 1) visual dominance of the terraced blocks to the south of the site (reduce height, removal floor), 2) Part V proposals, 3) impact on trees/hedgerows along site boundaries and the woodland area to the south, 4) landscape proposals, 5) boundary treatment, 6) pumping station details, 7) special contribution regarding works at the N72/Kennel Hill junction, 8) proposals for mobility impaired, 9) parking provision, 10) revised sweep path analysis, 11) revised sightline drawings, 12) details for manoeuvring of vehicles in/out of site safely, 13) sections for retaining walls and 14) gully layout.

**Report dated 28/02/2023.** (Includes comments from SEP and SP).

The report provides an assessment of the 14 points of CFI submitted and concluded that the responses to items no. 6 (pumping station details), 10 (revised sweep path analysis) and 12 (details for manoeuvring of vehicles in/out of site safely) are unacceptable.

The report concluded that there are outstanding technical issues, particularly in relation to the proposed pumping station in terms of its design, suitable access and emergency management. There is no certainty on the provision of power for the operation of the pumping station, no details of the substation submitted.

The Senior Planner comments, signed and dated 28/02/23, noted that under the current Development Plan, the main part of the site is identified as Residential Reserve under objective MW-RR-04. The western section of the site which includes the proposed attenuation and stormwater measures overlap with the defined greenbelt for Mallow town as set out in objectives RPS-4, RP5- 9 and RP5-20 of the County Development Plan. The southwestern section of the site which includes the pump station and part of the access road overlaps with the Green Infrastructure zoning objective MW-GC-16. Therefore, if the planning authority were minded to grant permission for the development a material contravention would be required.

However there are still significant technical items which have not been adequately addressed and further clarification cannot be procedurally facilitated. And therefore concluded, having regard to the cumulative issues in relation to the fundamental technical aspects of the application, that the planning authority is not satisfied on the basis of the information received that the arrangements for dealing with wastewater disposal from the development, including pump station, area adequate to cater satisfactorily for the proposed development would not be prejudicial to public health.

### **3.2.2. Other Technical Reports**

#### **Area Engineer:**

**Report dated 29/04/22.** Further Information required relating to surface water, road and footpaths, retaining walls, access to pumping station.

**Report dated 29/09/22.** Clarification of Further Information recommended in relation to 1) willingness to pay a special contribution for improvement the N72 and Kennel Hill junction, 2) revised site layout plan to show consideration for mobility impaired, 3) parking provision, 4) size of parking spaces, 5) sweep path analysis, 6) access to pumping station, 7) manoeuvring of vehicles, 8) retaining walls and 9) gully arrangements.

**Report dated 24/02/23.** Grant of permission recommended subject to conditions.

#### **Estates Engineer:**

**Report dated 28/04/22.** No objection subject to 7 conditions relating to compliance with guidelines (Site Development Works and Traffic Management) , insurance bond, cash security, construction drawings and naming.

**Report dated 17/02/23.** No objection subject to 1 no. condition.

#### **Public Lighting**

**Report dated 7/04/22.** Further Information required relating to 1) Lighting Reality Public Lighting Design Report, 2) update site layout with Lux levels, 3) update layout to show no trees within 10 of light, 4) design for conflict class lighting on public road in vicinity of entrance. 5) revised layout with hinged columns, 6) lighting of proposed stepped access, 7) lighting of access pathways and paved areas around creche to be augmented, 8) plan of ducting/circuitry layout for public lighting.

**Report dated 13/09/22.** No objection subject to 4 no. conditions.

**Report dated 10/02/23.** No objection subject to 4 no. conditions.

**Environment:**

**Report dated 22/04/22.** Further Information required relating to 1) SuDS, 2) details of pumping station emergency alarms and controls, storage and flow and 3) CEMP.

**Report dated 28/09/22.** Clarification of Further Information recommended in relation to issues raised by the Water Services Engineer (WSE).

**Report dated 20/02/23.** No objection subject to 7 no. conditions.

**Ecology Office Planner:**

**Report dated 27/04/22.** Further Information required relating to 1) revised landscape plan to include native alternatives to non-native species proposed and 2) need to update Arboricultural Impact Assessment and Tree Survey as it does not consider potential impact to trees and woodland are located along the proposed service access roadway, stormwater outfall area and pumping station site.

It is noted that AA Screening cannot be completed until the items under FI are submitted.

The Senior Planner in comments dated 28/02/23 noted that the Ecology section confirmed that an assessment and a determination with respect to appropriate assessment would be required in relation to any amendments arising from the outstanding issues.

**Report dated 21/02/23.** No objection subject to 7 no. conditions.

**The Planners Report on the CFI response references a phone call dated 27/02/23** noting a determination in respect to AA would be required in relation to any amendments arising from the outstanding issues and concurred with the proposed refusal reason.

**Archaeologist:**

**Report dated 26/04/22.** No objection subject to condition relating to engagement of archaeologist to monitor topsoil removal, groundworks etc.

**Housing Officer:**

**Report dated 31/03/22.** Further Information required relating to 1) redesign of house types to reduce footprint in keeping with guidance set out in Quality Housing for Sustainable Communities guidelines and 2) documentary evidence of the date of acquisition of site to show exempt from 20% Part V obligation.

**Email dated 18/03/2022.** 'Application can be validated subject to evidence being submitted to support the 10% Part V'.

**Report dated 9/09/22.** No objection subject to 10% Part V contribution.

**Email dated 17/02/23.** Nothing further to add.

### **Water Services:**

**Report dated 29/04 2022.** Further Information required relating to sewer collection network, details for pumping station, emergency storage, boundary treatment to pumping station, access to pumping station, water connection to be provided at pumping station, septicity check for rising main and drawings of proposed Header Manhole on M+N72 with details of rising main termination and vent stack.

**Report dated 22/09/22.** Clarification of Further Information recommended in relation to 1) document to be proofed and resubmitted, 2) storage capacity details, 3) emergency storage capacity details, 4) power supply, 5) GSM signal strength, 6) mitigation measures to prevent flooding during surcharges, 7) details of foul waste disposal plan and 8) access to pumping station.

**Report dated 23/02/23.** Not satisfied with the detail of information submitted which is considered to be incomplete with outstanding issues remaining relating to the pumping station, turning circle, verification of signal testing, management of foul waste disposal and confirmation of agreement with IW in relation to same and swept path analysis for trucks accessing pumping station.

### **Fire & Building Control:**

**Report (email) dated 13/05/2022.** No objection subject to conditions.

## **3.3. Prescribed Bodies**

**Irish Water (3/05/22):**



IW note that the developer has liaised with IW and a CoF issued. IW have no objection to the proposal subject to the constraints of the CoF and recommended conditions relating to 1) connection agreement, 2) connections subject to constraints of the IW Capital Investment Programme and 3) development in compliance with IW standards codes and practice.

Water: connection feasible subject to upgrade (developer will be required to provide a contribution towards costs).

Wastewater: connection feasible subject to upgrade. Upgrades to Mallow WWTP are scheduled to be completed in 2022, (developer will be required to provide a contribution towards costs).

### **3.4. Third Party Observations**

Six Observations are noted on file submitted to the planning authority at application stage.

- Brian Carey,
- Tina & Jim Moloney, Martin O’Gorman, Gerard Meade, Maura Meade, Norah Roche, Thomas Hayes, Ted Geary, Clódagh Bergin, Mícheál Fitzpatrick and Carol O’Sullivan (Observers to the current appeal).
- John Lehane.
- Nicola & Jim Lehane.
- Dernville Residents Association (c/o Edward Williamson).
- Kevin Buckley.

Issues raised relate to public conflict, access for all users, traffic, services, surface water management, infrastructural deficits, density, visual impact, poor layout and design, impact on SAC and landscaping/tree protection

The submission received from the current Observers broadly raises similar issues to the observation lodged on the appeal, which are set out in section 6.3 of this report.

## **4.0 Planning History**

**Site:**

**PA Ref. 06/4049 (ABP PL.04.223090)** refers to a decision to refuse permission for 290 residential units and creche on the grounds that 1) premature pending

construction and opening of the proposed Link Road from Park Road to Navigation Road (N72) and 2) not satisfied there is adequate water supply for the scale of development.

**PA Ref. 06/7958** refers to a grant of permission for access road and associated works through a proposed residential.

### **Lands to the north on the opposite side of Kennel Hill Road**

**ABP 312640-22** refers to a SHD application for the construction of 299 residential units and creche.

**ABP 317015-23** refers to the inclusion of the lands on the RZLT Map. ABP confirmed the local authority determination.

**ABP 317016-23** refers to the inclusion of the lands on the RZLT Map. ABP confirmed the local authority determination.

Pa Ref. 15/6119 (ABP Ref. 246853) refers to the removal of disused farm buildings and construction of 61 dwellings.

#### **Other:**

The grounds of appeal refer to PA Ref 19/7081 (ABP Ref.307414) for 44 units on lands MW-RR-04. This case refers to lands at Old Course, Spaglen, Mallow and not the lands which are the subject of this application on lands zoned MW-RR-04.

## **5.0 Policy Context**

### **5.1. Local**

The operative plan is the **Cork County Development Plan 2022-2028** which came into effect on the 6<sup>th</sup> June 2022. (The planning authority notification of decision is dated 1<sup>st</sup> March 2023). The Plan includes policies, objective and standard for development within Cork County. I do not propose to summarise all relevant ones hereunder. Of particular note I wish to highlight the following:

The proposed development is located on lands which are the subject of different land use zoning objectives and designations.

The bulk of the site is located on lands identified in Volume 3 North Cork under land Use Zoning Objective **MW-RR-04 Residential Reserve** which is subject to Development Plan **Zoning Objective ZU-18-12 Residential Reserve** as defined in Volume 1.

The southwestern section of the site which includes the pump station and part of the access road overlaps with lands identified in Volume 3 North Cork under Green Infrastructure zoning objective **MW-GC-16** which is subject to Development Plan **Zoning Objective ZU-18-13 Green Infrastructure** as defined in Volume 1.

The western section of the site which includes the proposed attenuation and stormwater measures overlap with the defined greenbelt for Mallow town (**GB 1-2**) as designated in the Mallow Land Use Zoning Map in Volume 3.

Chapter 5 Rural Cork includes numerous objective specific to Greenbelt areas. Of particular notes in this instance are objectives RP5-19 Greenbelts around Settlements, RP5-21 (Greenbelts around Main Towns GB1-2).

The SEP Report dated 29/09/2022 noted that it the planning authority was minded to grant permission for the proposed development a Material Contravention would be required.

## **Volume 1 Main Policy Material**

### **Chapter 18 Zoning and Land Use**

#### **Residential Reserve (RR)**

Section 18.3.27 In the Metropolitan Towns there are lands which were zoned for development in the 2017 Local Area Plans, but which will generally not be required over the period of the Plan to 2028 but have been included in the Residential Reserve where they comprise infill or contiguous sites or have a planning history for residential use and can form part of the long term sequential expansion of the settlement.

Section 18.3.28 Similarly, where such lands exist in the key towns of Mallow and Clonakilty and some County Towns, they have also been included in the Residential Reserve, where considered appropriate.

Section 18.3.30 In addition to protecting these lands for the long term expansion of these settlements, consideration may be given to the development of some of these 'Residential Reserve' lands before the end of the current plan period where the Planning Authority is satisfied that the development of zoned lands is progressing faster than expected and a shortage may arise or where lands zoned for residential use may not be delivered as expected over the Plan period. The development of such lands will only be considered from the beginning of year four of the Plan (May 2025) in order to give zoned lands an opportunity to come forward for development, and under the following circumstances:

a) Delivery of housing on zoned lands is proceeding faster than anticipated and additional land is required for the remaining Plan period, or

b) It can be clearly demonstrated, to the satisfaction of the planning authority, that a zoned parcel of land will not come forward for development due to infrastructural or other demonstrable constraints during the remaining period of the Plan, and the proposed residential lands can be serviced and offer a reasonable substitute in terms of being delivered within the lifetime of the Plan, sequential development, connectivity, access to services and amenity etc., to secure the population and housing targets for the settlement.

c) The Planning Authority is satisfied that delivery of the development can reasonably commence before the end of the Plan period, and infrastructure is in place or can be provided to facilitate same.

d) Where development is considered under (b) above the scale of development shall not generally exceed the capacity of the zoned lands it is replacing.

e) Objective ZU 18-11 will also apply to lands identified as Residential Reserve.

f) It can be demonstrated that the housing target for the area set out in the Core Strategy cannot otherwise be achieved within the Plan period.

g) The development would not result in the Core Strategy targets being exceeded, or unduly prejudice the development of new 'Residential' zoned land within those targets County

#### **Development Plan Objective ZU18-12: Residential Reserve**

Provide a land reserve for the long term orderly development of the Metropolitan towns of Carrigaline, Carrigtwohill, Cobh and Midleton and the Key Towns of Mallow and Clonakilty and some County Towns where appropriate. Such lands will not generally be required for development over the period of the Plan to 2028. From the beginning of year four of the Plan (May 2025), consideration may be given to the development of some 'Residential Reserve' lands where the Planning Authority is satisfied that:

- a) Delivery of housing on zoned lands is proceeding faster than anticipated and additional land is required for the remaining Plan period, or
- b) It can be clearly demonstrated, to the satisfaction of the planning authority, that a zoned parcel of land will not come forward for development due to infrastructural or other demonstrable constraints during the remaining period of the Plan, and the proposed residential lands can be serviced and offer a reasonable substitute in terms of capacity, sequential development, connectivity, access to services and amenity etc., to secure the population and housing targets for the settlement.
- c) The Planning Authority is satisfied that delivery of the development can reasonably commence before the end of the Plan period, and infrastructure is in place or can be provided to facilitate same.
- d) Where development is considered under (b) above the scale of development shall not generally exceed the capacity of the zoned lands it is replacing.
- e) Objective ZU 18-11 will also apply to lands identified as Residential Reserve.
- f) It can be demonstrated that the housing target for the area set out in the Core Strategy cannot otherwise be achieved within the Plan period.
- g) The development would not result in the Core Strategy targets being exceeded, or unduly prejudice the development of new 'Residential' zoned land within those targets.

#### **Development Plan Objective ZU-18-13: Green Infrastructure**

Three subcategories of Green Infrastructure zonings have been identified to which includes:

b) Retain and generally protect appropriate areas for their landscape, amenity or nature conservation value or their current or future flood management role, within Green Conservation (Landscape amenity/ nature conservation) area.

No development other than development which supports Green Infrastructure will be considered in these areas. Any proposals in Green Infrastructure areas will need to ensure the protection and enhancement of the integrity of biodiversity and to recognise the importance of wildlife corridors and sites of nature conservation and be in accordance with Article 10 of the Habitats Directive.

Section 5.4.4 notes that The Town Greenbelts define the visual setting around the main towns and have been established to prevent sprawl and control linear roadside development.

### **Volume 3 North Cork**

Mallow is designated as a Key Town in the Regional Spatial and Economic Strategy (RSES) for the Southern Region. The overall vision for Mallow is to sustainably strengthen the employment-led growth and town centre-led regeneration of Mallow as a regional economic driver, leverage its strategic location and accessibility on inter-regional road and rail networks to build upon inherent strengths, in particular food production and tourism potential, while protecting and enhancing the natural environment of the Blackwater Valley.

**Objective MW-RR-04 Residential Reserve.** See objective ZU-18-12 Residential Reserve of the Plan. Proposals on these lands should set out an orderly framework for the overall co-ordinated and phased development of the area taking into account infrastructural deficits and the topography and visibility of the site within the wider area.

Development of this residential reserve is dependent on:

- Provision of satisfactory access proposals that address the needs of the site and its surrounding context.
- The availability of appropriate water and wastewater infrastructure to cater for the needs of the development.

- Mitigation of any negative effects on the landscape, natural and built heritage of the area.

Section 2.4.7 sets out that as part of the Council's commitment to deliver compact growth within the town, a new focus is placed on the better utilisation of the existing building stock, prioritisation of brownfield and under-utilised land and identification of regeneration and infill opportunities that can contribute positively to Mallow's housing stock and 30% target of 331 units. It is proposed that the 1,105 new housing units required to 2028 be delivered primarily on Residential and Mixed-Use Zoning including Compact Growth Sites.

Section 2.4.10 notes that It is considered appropriate that some strategic reserve is retained for future residential development and an additional 4 areas have been zoned in the plan as Residential Reserve. This includes a significant portion of the former North East Urban Expansion area which includes lands north of St. Joseph's Road (MW-RR-01) which makes up an area of c.56 hectares. The second area is an infill site of approximately 4 hectares to the south of the town at Goulds Hill (MW-RR-02) between the Primary Health Care Centre and an adjoining residential area. To the west of the town 2 further sites (MW-RR-03 and **MW-RR-04**) have also been included.

Section 2.4.11 sets out that "In accordance with objective ZU-18-12 Residential Reserve in Volume One, Chapter 18 of this Plan, consideration may be given to the development of these 'Residential Reserve' sites prior to the end of the current plan period under certain specified circumstances".

## 5.2. Regional

### **Regional Spatial and Economic Strategy for the Southern Region**

This strategy provides a framework for development at regional level. The RSES promotes 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.

## 5.3. National

### **National Planning Framework – Project Ireland 2040**

This document sets out the Government's strategic national plan for shaping the future growth and development of Ireland for the period up to 2040.

Objective 3a is to deliver 40% of all new homes nationally, within the built-up footprint of existing settlements. Objective 11 is to prioritise development that can encourage more people to live or work in existing settlements whilst Objective 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location. Objective 35 is to increase residential density in settlements through a range of measures including restrictions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

### **Housing for All – A New Housing Plan for Ireland to 2030 (2021).**

It is a multi-annual, multi-billion euro plan which will improve Ireland's housing system and deliver more homes of all types for people with different housing needs.

The government's overall objective is that every citizen in the State should have access to good quality homes:

- to purchase or rent at an affordable price.
- built to a high standard and in the right place.
- offering a high quality of life

The government's vision for the housing system over the longer term is to achieve a steady supply of housing in the right locations with economic, social and environmental sustainability built into the system.



The policy has four pathways to achieving housing for all:

- supporting home ownership and increasing affordability
- eradicating homelessness, increasing social housing delivery and supporting social inclusion
- increasing new housing supply
- addressing vacancy and efficient use of existing stock

Housing for All contains 213 actions which will deliver a range of housing options for individuals, couples and families.

### **Climate Action Plan 2023 (CAP 2023)**

Plan implements carbon budgets and sectoral emissions ceilings and sets out a roadmap for taking decisive action to halve emissions by 2030 and reach net zero no later than 2050.

The Annex of Actions to CAP23 includes an action to prepare sustainable settlement guidelines and to review planning guidelines to ensure a graduated approach in relation to the provision of car parking.

### **National Sustainable Mobility Policy (SMP) 2022**

This sets out a strategic framework for active travel and public transport to 2030, to help Ireland meet its climate targets.

## **5.4 Ministerial Guidelines**

Having considered the nature of the proposal, the receiving environment, the documentation on file, including the submissions from the planning authority, I am of the opinion that the directly relevant Section 28 Ministerial Guidelines are:

- Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities (2024).
- Design Manual for Urban Roads and Streets (2013, updated 2019).

- Urban Development and Building Height Guidelines for Planning Authorities (2018)
- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020, updated in 2022).
- Appropriate Assessment of Plans and Projects in Ireland - Guidelines for Planning Authorities (2009, updated 2010).
- The Planning System and Flood Risk Management Guidelines, 2008

## **5.5 Natural Heritage Designations**

The site is not located within, adjacent or abutting a designated site. The closest designated sites of relevance are:

Blackwater River (Cork/Waterford) SAC (site code 002170) c.115m to the south (portion where pumping station and access track is proposed and located c. 50m to the south of the main site where the residential scheme proposed would be located.

Kilcolman Bog SPA (site code 004095) is located c.12km to the north.

## **5.6 Environmental Impact Assessment Screening**

See Completed Form 1&2 attached as appendices. 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, therefore, is not required.

## **6.0 The Appeal**

A first party appeal has been received against the planning authority's decision to refuse planning permission.

### **6.1. Grounds of Appeal**

The grounds of appeal seek to overcome the reason for refusal and are summarised as follows:

- Item no. 17 of the further information request dated 29<sup>th</sup> April 2022 related to matters raised in the reason for refusal.
- Items no. 6 & 12 of the clarification of further information request dated 29<sup>th</sup> September 2022 related to matters raised in the reason for refusal.
- The reason for refusal is based on comments by the Water Services Engineer dated 23<sup>rd</sup> February 2023.
- The reason for refusal is inconsistent with the proper planning and sustainable development of the area.
- The reason for refusal refers to a single technical issue, wastewater which is the responsibility of Irish Water. It is submitted that the proposed wastewater infrastructure was designed in consultation with Irish Water.
- The applicant received a Confirmation of Feasibility from Irish water which sets out that 600 units is feasible subject to upgrades to be completed in 2022. Irish Water in their submission raised no objection to the development.
- The reason for refusal could have been addressed by the use of an appropriate condition. Reference to SHD application TA04.312640 and conditions no. 18, 2 and 25. Reference to an application Donabate, Co. Dublin where Fingal County Council granted permission for 151 residential development with condition no. 9 addressing wastewater.
- The Water Services report dated 23/02/2023 raised 5 items that required further information: 1) proofing of document, 2 & 5 ) swept path analysis, 3)GSM signal and 4) details for foul waste disposal in the event of failure. All of which are matters that do not justify a reason to refuse permission.
- A substation for the pumping station not required.

It is submitted that the decision to refuse permission should be overturned as:

- The reason for refusal relates solely to arrangements for wastewater disposal which is the responsibility of Irish Water and Irish Water did not object to the proposal.

- Suitable arrangements for wastewater disposal could be secured by way of a planning condition as is common practice.
- The minor technical details requested were either addressed in the cfi response from the 2<sup>nd</sup> February 2023, beyond the scope of planning or not possible to provide due to the procedures of ESB.

**Other:**

Appendix 1 refers to additional planning considerations.

Under the Previous Development Plan to site was zoned residential. Under the 2022 Plan the site is zoned Residential Reserve Site and objective ZU 18-12 applies.

It is submitted that the planning authority raised no objection to the proposed development and that is it at the discretion of the Board to grant permission notwithstanding that the proposal would be a material contravention of the 2022 Cork County Development Plan. The grounds of appeal have set out a justification for material contravention under section 37(2)(b) of the Planning and Development Act 2000 as amended.

Material Contravention is noted in the SEP Report dated 29/09/2022, transitional arrangements between Plans and noted that Cork County Council did not refuse permission on the grounds of Material Contravention.

Appendix 2 includes 'Annabella Pumping Station GSM/Mobile Broadband Coverage Assessment Report'.

## **6.2. Planning Authority Response**

Response received dated 18/04/2023. The following comments by the SEP dated 18<sup>th</sup> April 2023 are highlighted.

- The planning authority respectfully requests that An Bord Pleanála upholds the decision of the planning authority. Notwithstanding Irish Waters responsibilities in relation to wastewater generally and the confirmation of feasibility submitted with the application documentation dated 17 August 2021 which was considered feasible subject to upgrades, the planning authority had serious reservations regarding the level of technical detail provided by the applicant to accommodate the proposed development, particularly in relation

to wastewater servicing including the pumping station, and felt it was not of a satisfactory standard to demonstrate that the development would not be prejudicial to public health.

### **6.3. Observations**

One third party Observation was received from Gerard Meade, Tina & Jim Moloney, Martin O’Gorman, Maura Meade, Norah Roche, Thomas Hayes, Ted Geary, Clódagh Bergin, Mícheál Fitzpatrick and Carol O’Sullivan (referred to as Gerard Meade & Others in this Report) whom are residents of Annabella/Kennel Hill/Scarteen. It broadly reiterates issues raised with Cork County Council at planning application stage which are summarised as follows:

#### **Excessive Development.**

- If the proposed development is granted it would result in a 180% increase in residential units in the Kennel Hill area.
- Scale and density of the proposal is not in keeping with the type and nature of existing residential developments in the Kennel Hill area.

#### **Public Road Capacity.**

- There are serious concerns in relation to the existing capacity deficiency of the road network serving the area.
- Access is proposed off the L1203 (Kennel Hill Road), where capacity is a major issue at the junction with the N72 which is adjacent to the railway viaduct and Annabela roundabout has little capacity to accommodate the additional traffic that would result from the development.
- Application is reliant on proposal contained in a permitted SHD in relation to upgrading of the Kennel Hill and N72 junction. The entire proposal is based on the assumption that the M20 will be in place and bypass Mallow. The proposed development is therefore premature pending the upgrade of the road network in the area, including the M20.
- The Relief Road would have minimal impact on addressing existing capacity demands on the Annabella roundabout.

- No consideration given to traffic from 'The Dutch Tulip' which is accessed off the N72.
- Inadequacy of proposals.
- Query Traffic survey, carried out on one day (16<sup>th</sup> January 2020).
- Query TTA which appears to consider the proposed development in isolation.
- It is submitted that the actual cumulative impact of the additional traffic associated with the proposed developments in the Kennel Hill area is significantly underestimated and that the details in the traffic survey are inaccurate and misleading.
- The traffic will also impact on residents of the wider rural area.
- Junction improvement will impact on HGVs /buses.

#### **Water services infrastructure**

- Drinking water status of Mallow is 'Amber' in the 2022 Cork County Development Plan which implies that some development may proceed but significant works are required to accommodate planned population target. IW have further advised that the necessary upgrades are not currently on IW's Investment Plan.
- There are concerns in relation to capacity of the existing water supply scheme to supply the proposed development and the associated adverse impacts on the water supply to existing customers on the scheme.
- There are also concerns in relation to the provision of the recommended firefighting flows.

#### **Land Use zoning.**

- The site is zoned Residential Reserve (MW-RR-04) in the Cork County Development Plan 2022-2028.
  - As such no consideration should be given to an application on these lands until June 2026.
  - Permission already granted to 299 units SHD on lands zoned Residential Reserve to the north of the site.

- Access to the site is dependent on the progressing of the M20 and upgrading of Kennel Hill/N72 junction which have not yet advanced.
- The water and wastewater infrastructure are not in place to cater for the needs to the proposed development.
- The western section of the site which includes the proposed attenuation and stormwater measures overlaps with the defined Greenbelt for Mallow town and the southwestern section, which includes the pumping station and access road overlaps with the Green Infrastructure Zoning Objective MW-GC-16.

### **Impact on pedestrians/cyclist.**

- The Annabella roundabout is not suitable for cyclists and poses major safety concerns which could have fatal consequences.
- There are no designated cycle lanes on Kennel Hill.
- It is a steep incline and a challenge for cyclists.
- The footpath is too narrow and not adequate to cater for additional pedestrian from the proposed development.
- Lack of footpath connectivity.
- Increase vehicles movements as no schools nearby and safety concerns regarding cyclist and pedestrian due to poor infrastructure.

### **Overall layout.**

- Areas of public open space are notably small given the scale of the development.
- Scant regard for child safety in the overall design, location and space afforded to green/recreational areas.
- Importance of private gardens for people's mental health.
- Poor design with no external access to many rear gardens.
- Substandard layout due to form and lack of sufficient high quality usable open spaces, would injure the amenities of future residents and mitigate against the provision of a high quality urban design with an attractive pedestrian and green infrastructure.

### **Impact on Blackwater River SAC**

- The site is located within the River Blackwater SAC.
- Issue of surface water disposal and potential impact on Freshwater Pearl Mussel.
- While the river quality is considered 'Good Status'. It is not sufficient to meet the ecological quality objective for the Freshwater Pearl Mussel under the Freshwater Pearl Mussel Regulations 2009 and any increase in nutrient loading or site inputs into the water course would likely contribute to the difficulty in meeting these standards.

### **Planning History**

- History of refusals in the area. Reference to 3 applications for residential schemes refused by ABP on appeal.

## **7.0 Planning Assessment**

Having examined the application details and all other documentation on file, including submissions/observations received in relation to the application and appeal, and having regard to the relevant national/regional and local policies and guidance, I consider that the main issues in this appeal are as follows:

- Context & Principle of Development
- Wastewater Infrastructure
- Issues raised by Observers.
- Appropriate Assessment

NOTE: Documentation on file refers to Irish Water, since January 2023 it has been rebranded as Uisce Eireann.

### **7.1. Context & Principle of Development**



### 7.1.1 Context

Between the initial application being lodged with Cork County Council and the date it issued its decision, there was a change in Development Plan. The Cork County Development Plan 2022-2028 came into effect in June 2022 and therefore was in effect on the date the planning authority made its decision. My assessment is based on the policies and objectives of the Cork County Development Plan 2022-2028.

Observers raised concerns that the planning authority failed to have regard to the Residential Reserve, Green Infrastructure and Greenbelt zoning objectives of the site as outlined in red in the Cork County Development Plan, which was in effect when the decision was made by the planning authority.

The planning authority was broadly satisfied with the overall quality of the proposed development, the crux of the reason for refusal related to outstanding technical issues pertaining the wastewater disposal and pumping station that were not addressed to the satisfaction of the planning authority. It was further noted that any grant of permission would require a material contravention of the Cork County Development Plan 2022-2028.

The proposal for 88 houses at Annabella, Kennel Hill in Mallow. I have reviewed the application documentation and information submitted with the appeal, the submissions by the local authority, the third party submissions at application and appeal stage and I broadly concur the design and layout are acceptable. Issues raised by third parties have been addressed at application stage by the planning authority. I address issues raised in the third party observation received by An Bord Pleanála in respect of the current appeal before the Board in section 7.3.

Having regard to the foregoing I do not propose to carry out a de-novo assessment of the proposed development and my assessment shall focus on the principle of

development, the reason for refusal and the appellant's attempt to address this along with issues raised in the third party observation.

### **7.1.2 Principle of Development**

The operative plan is the Cork County Development Plan 2022-2028 which came into effect on the 6<sup>th</sup> June 2022.

The bulk of the site is on lands zoned under land Use Specific Objective MW-RR-04 Residential Reserve. This refers to Section 2.4.11 sets out that "In accordance with objective ZU-18-12 Residential Reserve in Volume One, Chapter 18 of this Plan. Which sets out that from the beginning of year four of the Plan (May 2025), consideration may be given to the development of some 'Residential Reserve' lands where the Planning Authority that the development satisfies criteria set out. The objectives set out that if the planning authority is satisfied that the development of zoned lands is progressing faster than expected and a shortage may arise or where lands zoned for residential use may not be delivered as expected over the plan period. The development of such lands may be considered from the beginning of year four of the plan (May 2025) in order to give zoned lands an opportunity to come forward for development, and under the certain circumstances. (I refer the Board to section 5.1 where the Objective is set out in detail).

I have reviewed objective ZU-18-12 of the Plan and am satisfied that the current proposal before the Board does not fall under 'certain specified circumstances' set out. As such the proposal materially contravenes the MW-RR-04 objective which applies to the bulk of the site.

The southwestern section of the site which includes the pumping station and part of the access road encroaches on lands zoned under Land Use Specific Objective MW-GC -16 Landscape Amenity/Conservation (Mallow southwest). Navigation Road Amenity Corridor. Objective ZU-18-13 Green Infrastructure sets out that no development other than development that supports Green Infrastructure will be considered in these areas. The proposal contravenes this land use zoning objective as the pumping station and access road are ancillary to a proposed residential development, which is not permitted on MW-GC-16 lands.

The western section of the site which includes the proposed attenuation and stormwater measures is located on lands identified as greenbelt for Mallow town under Specific Objective MW-GB1-2 as indicated in Volume 3 which includes the lands on the Land Use Zoning Map. Chapter 5 Rural Cork of the County Development Plan contains numerous objectives specific to Greenbelt areas. Of particular notes in this instance are objectives RP5-19 Greenbelts around Settlements, RP5-21 (Greenbelts around Main Towns GB1-2). The proposal contravenes the requirements for residential development on lands identified as MW-GB1-2 lands.

The Cork County Council SEP Report dated 29/09/2022 highlighted that if the planning authority was minded to grant permission for the proposed development a material contravention would be required. The appellants have submitted an argument in the grounds of appeal that a material contravention under section 37(2)(b) of the Planning and Development Act is justified in this instance and that the Board would not be precluded from granting permission. Section 37(2)(b) refers to instances where the planning authority refused permission on the grounds that the proposed development materially contravenes the development plan. This is not the case. The planning authority's reason for refusal refers to deficit of information pertaining to wastewater infrastructure and not a material contravention of the plan.

Having regard to the wording of Objective MW-RR-04 and ZU-18-12, MW-GC-16 and ZU-18/11 I am of the view that the proposed development before the Board constitutes a material contravention of the land use zoning objectives for the land under the Mallow Land Use Zoning Map, Volume 3 North Cork in the Cork County Development Plan 2022-2028 which also includes lands under MW-GB1-2 and would therefore be contrary to the proper planning and sustainable development of the area to consider the development of said lands.

Having regard to the foregoing I am of the view that the proposed development before the Board constitutes a material contravention of the land use zoning and would therefore be contrary to the proper planning and sustainable development of the area and permission should be refused accordingly. Notwithstanding the above conclusion, I propose to consider the grounds of appeal and issues raised by the

third party observers in my assessment in order to provide as complete an assessment as possible.

## **7.2. Wastewater infrastructure**

A first party appeal was lodged against the planning authority's single reason for refusal.

*“On the basis of the information submitted, the applicant has not demonstrated that the arrangements provided for dealing with wastewater disposal from the development, including the pump station, are adequate to cater satisfactorily for the development and that the proposed development would not contribute to water pollution at this location or that it would not be prejudicial to public health. The proposed development is therefore contrary to the proper planning and sustainable development of the area”.*

The appellant in the grounds of appeal have set out in detail how they addressed significant further information and clarification of further information request. It is submitted that the outstanding issues are either beyond the control of the appellant or can adequately be addressed by condition as demonstrated in examples cited.

I note Uisce Eireann raised no objection in their submission dated 3/05/22 subject to appropriate conditions. The Area Engineer following assessment of information submitted concluded no objection to the proposed development subject to appropriate conditions. The water services section highlighted outstanding issues and the planning authority concluded that notwithstanding Irish Waters responsibilities in relation to wastewater generally and the confirmation of feasibility submitted with the application documentation dated 17 August 2021 which was considered feasible subject to upgrades, the planning authority had serious reservations regarding the level of technical detail provided by the applicant to accommodate the proposed development, particularly in relation to wastewater servicing including the pumping station, and felt it was not of a satisfactory standard to demonstrate that the development would not be prejudicial to public health.

The crux of the reason for refusal relates to matter raised by the Water Services section in relation to the following items: outstanding matters raised relating to:

a) details relating to the pumping station, in particular the plan arrangement, b) turning circle for pumping station, c) verification of signal testing, d) management of foul waste disposal and confirmation of agreement with IW in relation to same and e) swept path analysis for trucks accessing pumping station.

I have reviewed the information on file, the grounds of appeal and submissions received from Uisce Eireann and third parties and notwithstanding concerns raised by the planning authority I would conclude that outstanding matters are of a nature that could be required to be resolved through the use of appropriate conditions if the lands were considered suitable for residential development. Furthermore some of the items are subject to agreement with Uisce Eireann whom outlined no objection subject to conditions. However, as outlined previously it is my recommendation that permission be refused on the basis of a material contravention of the zoning objectives and I am recommending refusal in that regard.

### **7.3. Issues raised by Third Party Observers**

Notwithstanding that it is my recommendation that permission be refused on the basis of a material contravention of the zoning objectives. I consider it appropriate to address the additional concerns raised by Third Party Observers.

The bulk of the issues raised in the Observation before the Board were raised and addressed by the planning authority in detail at application stage which I address below:

#### **Excessive Development.**

It is submitted that the scale and density of development is not in keeping with the type and nature of existing residential developments in the Kennel Hill area. I would argue that this is not the case. Residential development is under construction directly north of the appeal site on the opposite side of Kennel Hill which does not follow the traditional pattern of ribbon development along the road as one moves westwards. While I have concerns in relation to elements of the overall design, scale and layout proposed I do not consider them to such an extent that permission would be refused on this basis if the lands were available for development.

#### **Public Road Capacity.**

Observers have submitted that there are serious concerns in relation to the existing capacity deficiency of the road network serving the area. Some of the issue raised are beyond the remit of this application. The Area Engineer noted no objection subject to appropriate conditions.

The zoning of the lands Residential Reserve in the 2022 Development Plan set out that one criteria required to be met, amongst others, if the lands are to be brought forward for development early is that the planning authority should be satisfied that delivery of the development can reasonably commence before the end of the plan period and infrastructure is in place or can be provided to facilitate same.

### **Water services infrastructure**

It is submitted that the drinking water status of Mallow is 'Amber' in the 2022 Cork County Development Plan which implies that some development may proceed but significant works are required to accommodate planned population target. IW have further advised that the necessary upgrades are not currently on IW's Investment Plan. And that there are concerns in relation to capacity of the existing water supply scheme to supply the proposed development and the associated adverse impacts on the water supply to existing customers on the scheme.

The closest watercourse is the Annabella Stream which runs in a north south direction c.150m to the west of portion of the site where the stormwater outlet is proposed and separated from the site by an area of Woodland. The stream is c. 250m west of the bulk of the site is a tributary of the Blackwater.

The EU (Dinking Water) Regulations 2023, came into effect through the transposition of EU Directive 2020/218 into Irish Legislation. Mallow WWTP Discharge License D0052. Site Update Reference LR075675 (accessed 25 January 2024) noted items required.

EPA website accessed 25 January 2024 and noted the 2022-2027 third cycle of the WFD assigned gave the Annabella stream (IE\_SW\_18B0215510 ) a projection of 'At Risk'. The section of the main channel of the River Blackwater IE\_SW\_18B0215510 closest to the site (c.175m to the south) is identified as 'Amber' and 'At Risk' of achieving good status.

The 3<sup>rd</sup> Cycle Blackwater (Munster) Catchment Report (HA 18) dated February 2022, accessed via EPA website on the 25<sup>th</sup> January 2024.

The zoning of the lands Residential Reserve in the 2022 Development Plan set out that one criteria required to be met, amongst others, if the lands are to be brought forward for development early is that the planning authority should be satisfied that delivery of the development can reasonably commence before the end of the plan period and infrastructure is in place or can be provided to facilitate same.

### **Land Use zoning.**

Issues raised regarding land use zoning are addressed in section 7.1.

### **Impact on pedestrians/cyclist.**

It is submitted that the Annabella roundabout is not suitable for cyclists and poses major safety concerns which could have fatal consequences. Overall there are inadequate footpaths and cycle lanes to serve the proposed development. The Area Engineer noted no objection subject to appropriate conditions.

The zoning of the lands Residential Reserve in the 2022 Development Plan set out that one criteria required to be met, amongst others, if the lands are to be brought forward for development early is that the planning authority should be satisfied that delivery of the development can reasonably commence before the end of the plan period and infrastructure is in place or can be provided to facilitate same.

### **Overall layout.**

Concerns raised with regard to the substandard layout due to form and lack of sufficient high quality usable open spaces, would injure the amenities of future residents and mitigate against the provision of a high quality urban design with an attractive pedestrian and green infrastructure.

As referred to above, while I conclude that elements of the proposed development can be improved upon. I do not propose to address this matter in detail as the lands are not available for development at present and any application in the future would need to have regard to all relevant objectives/standards set out at national, regional and local level.

### **Impact on Blackwater River SAC**

It is submitted that the site is located within the River Blackwater SAC. I refer to the AA screening in section 7.4, the Blackwater River (Cork/Waterford) SAC (site code 2170) c.115m to the south (portion where pumping station and access track is proposed and located c. 50m to the south of the main site where the residential scheme proposed would be located.

It is submitted that the issue of surface water disposal and potential impact on Freshwater Pearl Mussel. It is also submitted that while the river quality is considered 'Good Status'. It is not sufficient to meet the ecological quality objective for the Freshwater Pearl Mussel under the Freshwater Pearl Mussel Regulations 2009 and any increase in nutrient loading or site inputs into the water course would likely contribute to the difficulty in meeting these standards. As noted above there are no direct hydrological links to the River Blackwater (Cork/Waterford SAC. I refer to the AA screening in section 7.4.

### **Planning History**

History of refusals in the area. Reference to 3 applications for residential schemes refused by ABP on appeal. I note the history of the area includes grants and refusals and wish to highlight that each application/appeal is assessed on its own merits having regard to the policies/objectives/standards in place.

However, as outlined previously It is my recommendation that permission be refused on the basis of a material contravention of the zoning objectives and I am recommending refusal in that regard.

## **7.4 Appropriate Assessment**

### **7.4.1 Context**

An Appropriate Assessment Screening Report (dated February 2022) was submitted with the application. The local authority Ecology Officer carried out a screening in their report dated 27/04/22 and noted that screening could not be completed until items of further information were submitted. In their report dated 21/2/23 following CFI they concluded no objection subject to conditions. The area planner references a phone call (27/02/23) in which it is stated that the Ecologist noted an AA



Determination would be required and that the Ecology Officer concurred with the recommended reason for refusal.

#### **7.4.2 Compliance with Article 6(3) of the Habitats Directive**

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

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 before consent can be given.

The proposed development at Annabella, Kennel Hill, Mallow, Co. Cork, a residential development comprising 88 units, creche and ancillary works which includes a pumping station, is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

### **7.4.3 Screening for Appropriate Assessment (Stage 1)**

#### **Description of Development**

Section 3.2.2 of the AA Screening Report includes a description of the development. I refer the Board to section 2 of this report.

#### **Description of Site Characteristics**

The site, located on the periphery of Mallow town accessed off Kennel Hill, is a greenfield with mature trees, hedges along the northern, eastern and western boundaries. A woodland area is located to the west and beyond this the Annabella stream. The site is taken from a larger plot of land at this location. The site occupies the northern portion of the field with 2 spurs off it, one to the south where the pumping station is proposed to be located and one to the west to where the stormwater infrastructure including attenuation is proposed. The River Blackwater is located to the south, c.475m from the bulk of the site and c.175m to the south of the southern spur. The River Blackwater (Cork/Waterford) SAC (site code 2170) is located c.450m and c.115m to the south. The Annabella stream (also referred to as Annabella river) is a tributary of the Blackwater River. There are no direct hydrological or ecological connections to the SAC. There is an indirect hydrological connection through the new foul system to the Blackwater River and Bayllis via the upgraded Mallow WWTTP.

#### **Relevant prescribed bodies consulted**

At application stage the application was referred to the relevant prescribed bodies by Cork County Council. In response to the referrals, no submissions in relation to appropriate assessment were received from the prescribed bodies. The appeal has been referred to prescribed bodies, no responses received.

The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- Habitat loss/ fragmentation/alteration
- Habitat degradation as a result of hydrological impacts.
- Disturbance and displacement impacts on QI/SCI
- Changes in water quality and resource

No Natura 2000 sites have a direct hydrological connection to the proposed development site. However, potential pathways / connections between the application site and the River Blackwater (Cork/Waterford) SAC are via wastewater discharge from the Mallow wastewater treatment plant. It is envisaged that the overland flow outlet will disperse stormwater runoff over vegetation.

### **Designated sites within Zone of Influence**

The AA Screening submitted with the application refers to the Zone of Influence to include the Blackwater River (Cok/Waterford SAC (site code 002170) and Kilcolman Bog SPA (site code 004095). The AA Screening concluded that beyond reasonable scientific doubt, based on objective information and considering the conservation objectives of the relevant European sites, that significant impacts from the project, individually or in combination with other plans and projects on the Blackwater River (Cok/Waterford SAC (site code 002170) and Kilcolman Bog SPA (site code 004095) can be excluded.

In determining the zone of influence, I have had regard to the nature and scale of the project, the distance from the development site to the European Sites, and any potential pathways which may exist from the site to a European Site. The site is not within or directly adjacent to any European Site. The site is greenfield lands with a wooded area to the west and beyond this the Annabella Stream. It is bounded to the east by residential development, to the north by Kennel Hill road and the south by agriculture lands, woodland area, a minor road and Navigation Road (N72) to the south of the land buffer. The nearest surface water feature is the Annabella Stream to the west of the site separated from the site by an area of woodland.

There is no direct a hydrological link with the Blackwater River (Cork/Waterford) SAC. Given the sloping nature of the site southwards there is potential for surface water runoff from the development during the construction phase, however given the distance from the SAC and the intervening land uses, vegetated buffers, houses and roads, therefore potential for pollutants to reach the SAC or the potential to adversely affect the European site and the QI habitats and species for which this site is unlikely.

Potential for indirect impacts are unlikely given the distance between the site and the SAC. Disturbance related impacts are unlikely given the lack of habitats on site suitable for QI (Otter only terrestrial QI), no ex situ impacts given the location and context of the site.

The application site is not located within or adjacent to any European site. As noted above there is a potential indirect hydrological connection arises in the form of surface water run-off to the Blackwater River via land at construction and operational stages. The Blackwater River runs through the Blackwater Callows SPA, (site code 004094) however, this sites would be at greater remove and subject to further dilution effects within the river such that significant effects from the proposed development are not considered likely. Similarly, I note that a number of the sites within a 15km radius are at a significant remove from the application site and in respect of which there is no pathway or connection which could give rise to significant effects on the conservation objectives of those sites.

The foul sewer water will be connected to an existing public network system. As such there is an indirect connection to the Blackwater River (Cork/Waterford ) SAC via the foul networks via the Mallow wastewater treatment plant (WWTP). Using the source-pathway-receptor model, foul waters from the proposed development will ultimately drain to the Blackwater River, located to the south of the proposed development site, and therefore may indirectly have an impact. Therefore, the European site with qualifying interests, which is potentially linked to the proposed development is the Blackwater River (Cork/Waterford ) SAC (site code 002170).

Given the scale of the proposed development, the lack of a direct hydrological connection, the dilution provided and the distances involved other sites along the Blackwater River are excluded from further consideration this screening. I do not consider that any other European sites fall within the zone of influence of the project based on a combination of factors including the nature and scale of the project, the distance from the site to European sites, and any potential pathways which may exist from the development site to a European site, aided in part by the applicant's Appropriate Assessment and Natura impact Statement the conservation objectives of Natura 2000 sites, the lack of suitable habitat for qualifying interests, as well as by the information on file and I have also visited the site.

Having regard to the above, I consider the following Natura 2000 site to be within the Zone of Influence is the Blackwater River (Cork/Waterford) SAC (site code 002170) and Kilcolman Bog SPA (site code 004095). In determining the zone of influence, I have had regard to the nature and scale of the project, the distance from the development site to the European Sites, and any potential pathways which may exist from the site to a European Site.

**European Site Name [Code] and its Qualifying interest(s) / Special Conservation Interest(s) (\*Priority Annex I Habitats)**

**Blackwater River (Cork/Waterford) SAC (site code 002170)**

Estuaries [1130], Mudflats and sandflats not covered by seawater at low tide [1140], Perennial vegetation of stony banks [1220], Salicornia and other annuals colonising mud and sand [1310], Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330], Mediterranean salt meadows (*Juncetalia maritimi*) [1410], Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation [3260], Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0], Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0], *Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029], *Austropotamobius pallipes* (White-clawed Crayfish) [1092], *Petromyzon marinus* (Sea Lamprey) [1095], *Lampetra planeri* (Brook Lamprey) [1096], *Lampetra fluviatilis* (River Lamprey) [1099], *Alosa fallax fallax* (Twaite Shad) [1103], *Salmo salar* (Salmon) [1106], *Lutra lutra* (Otter) [1355], *Trichomanes speciosum* (Killarney Fern) [1421]

Conservation Objectives:

- To restore the favourable conservation condition of the Freshwater Pearl Mussel.
- To maintain the favourable conservation condition of White-clawed Crayfish.
- To restore the favourable conservation condition of Sea Lamprey.
- To maintain the favourable conservation condition of Brook Lamprey.
- To restore the favourable conservation condition of Twaite Shad.
- To maintain the favourable conservation condition of Atlantic Salmon.
- To maintain the favourable conservation condition of Estuaries.
- To maintain the favourable conservation condition of Mudflats and sandflats not covered by seawater at low tide.
- To maintain the favourable conservation condition of Perennial vegetation of stony banks
- To maintain the favourable conservation condition of Salicornia and other annuals colonizing mud and sand.
- To restore the favourable conservation condition of Atlantic salt meadows.

**Location Relative to the proposed development site**

c. 450m south of the bulk of the site and c.115m from the southern spur.

<ul style="list-style-type: none"> <li>To restore the favourable conservation condition of Otter.</li> </ul>	
<ul style="list-style-type: none"> <li>To maintain the favourable conservation condition of Mediterranean salt meadows.</li> <li>To maintain the favourable conservation condition of Killarney Fern.</li> <li>To maintain the favourable conservation condition of Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation.</li> <li>To restore the favourable conservation condition of Old sessile oak woods with Ilex and Blechnum.</li> <li>To restore the favourable conservation condition of Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae).</li> </ul>	
<p><b>Kilcolman Bog SPA (site code 004095)</b></p> <p>Whooper Swan (cygnus cygnus ) [A038], Teal (anas crecca) [A052] Shoveler (anas clypeata) [A056] Wetland and Waterbirds [A999]</p> <p>To date generic conservation objectives apply for the site, again the overall aim being to maintain or restore the favourable conservation status of the qualifying interests</p>	<p>c.12km north of the site.</p>

I do not consider that any other European sites fall within the zone of influence of the project based on a combination of factors including the nature and scale of the project, the distance from the site to European sites, and any potential pathways which may exist from the development site to a European site. See also the conservation objectives of Natura 2000 sites, the lack of suitable habitat for qualifying interests, as well as by the information on file, including observations made by prescribed bodies at application stage and I have also visited the site.

#### 7.4.4 Assessment of Likely Significant Effects on Designated Sites

I consider that Kilcolman Bog SPA located c 12km to the north can be screened out from further assessment due to the scale and location of the proposal within the development boundary of Mallow, the surrounding pattern of development and the separation distances between the proposed development and the European site.

Potential indirect effects on the Blackwater River (Cork/Waterford) SAC (Site Code 002170) relate to:

- Potential impact from operational wastewater discharges from the Mallow WWTP to the Blackwater River which if not properly treated could cause eutrophication of the receiving waterbody.
- Potential impact from surface water overland flows during construction and operational phases.

Taking account of the characteristics of the proposed development in terms of its location and the scale of works, there is potential for significant effects upon this Natura 2000 site arising from the operational phase of the proposed development. The following issues are considered for examination in terms of implications for likely significant effects on European sites:

- Possibility that the release of sediment and pollutants from the proposed development into the streams and transported downstream could have detrimental impacts on the water quality of the Blackwater River and therefore have a detrimental impact on the QIs for River Blackwater (Cork/Waterford) SAC, in particular the Freshwater Pearl Mussel, Sea lamprey, Brook lamprey, River lamprey and White Clawed crayfish.
- Surface water emissions associated with the proposed works could impact on aquatic habitats via increased silt levels in surface water runoff and resuspension of riverbed sediments and inadvertent spillages of hydrocarbons from fuel and hydraulic fluid.
- Inadvertent spillages of hydrocarbon and/or chemical substances during construction could introduce toxic chemical into aquatic environment via direct means or surface water runoff.



- Hydrocarbon contamination could potentially impact on water quality and thus could impact on aquatic qualifying species for the Blackwater River (Cork/Waterford) SAC namely Freshwater Pearl Mussel, Brook Lamprey and River Lamprey. There could also be impacts on salmonids which are important component of the Freshwater Pearl Mussel lifecycle and on European Eel which is now considered endangered.

Given the scale of the development, the lack of direct hydrological connection and the presence of existing structures buffering the site from the SAC contamination from run off during construction is not likely.

With regard to habitat loss and fragmentation, given the site is not located within or adjoining any European sites, there is no risk of direct habitat loss impacts and there is no potential for habitat fragmentation.

There is no direct pathway via groundwater, air or land to Natura 2000 sites and the nearest European site is the River Blackwater (Cork/Waterford) SAC (site code 2170) located c. 450m and c.115m to the south of the proposed development to the south with inter alia woodland and public road as intervening land uses.

There are no drains or watercourses within or in the vicinity of the site. There are no direct hydrological links to the River Blackwater. I consider given the location of the site vis a vis the Blackwater river to the south, there is no potential for pollution to enter the watercourses, across the terrestrial buffer and public road via overland flow from the surface water runoff to the south or storm overflows to the Annabella stream to the west during construction and operational phases.

The habitats within the site are not of value for qualifying species of the Natura 2000 sites. The site itself does not provide suitable habitats/environments for these species. No ex-situ impacts on qualifying species are therefore considered likely.

In relation to the operational phase of the development, I note surface water from the proposed development will discharge via overland flow outlet to the west of the site. Which will disperse runoff over vegetation.

It is a policy of Cork County Council Objective WM 11-10: Surface Water, SuDS and Water Sensitive Urban Design to require that all new developments incorporate sustainable drainage systems (SuDS). As such, the design entails a suite of SuDS measures that will be incorporated into the proposed development. This will reduce the flow rate of surface water run-off and largely eliminate the risk of pollution to waterbodies arising from surface water run-off during the Operational Phase. While the use of SUDS measures are not intended to avoid or reduce the harmful effects of a project on a European site, they will reduce peak flow rates and the likelihood of suspended solids or hydrocarbons entering the water system. They are clearly not included as a measure to mitigate potential impacts on European sites. Furthermore, the scale of the proposed development relative to the rest of the area served by that system means that the impact on the flows from that system would be negligible and would not have the potential to have any significant effect on any Natura 2000 site.

It is proposed to discharge foul sewerage by means of a new sewer and discharge to the public sewer. There is an indirect hydrological pathway between the application site and the Blackwater River (Cork/Waterford) SAC via the public drainage system and the Mallow WWTP (Reg. D0052).

UE secured permission from Cork County Council in January 2020 under ref. 19/5078 for extensive improvement works to the wastewater treatment system within the town including removal of combined storm overflows, development of stormwater storage, increased gravity sewer network capacity, increased pumping capacity to the WWTP and increased treatment capacity at the WWTP to 22,000 p.e. to cater for the 10 year design horizon. The application was accompanied by a NIS and was subject of Appropriate Assessment. The works are considered to assist in achieving the objectives of the Water Framework Directive by improving water quality in the River Blackwater and assisting the Blackwater in Mallow in achieving good water quality status. Uisce Eireann have completed the upgrade works to the Mallow WWTP to increase capacity. Uisce Eireann Waste Water Treatment Capacity Register, June 2023 (accessed online 25<sup>th</sup> January 2024) assigns Mallow WWTP a Green status where Green indicates spare capacity.

Based in the available documentation I concluded that it provides a reasonable basis to conclude that this proposed development would not be likely to give rise to significant effects on the conservation objectives of European Sites, either individually, or when taken together and in combination with other plans or projects. The increased loading on the plant arising from the development proposed herein will not be significant in the context of the available capacity remaining. The scale of the proposed development relative to the rest of the area served by that system means that the impact on the flows from that system would be negligible and would not have the potential to have any significant effect on any Natura 2000 site.

I note that a Construction Environment Management Plan submitted February 2022, updated August 2022) has been prepared for this scheme and accompanies the application. The measures outlined are regarded as best work practices that are an integral part of the proposed development that will be implemented by those carrying out the development at the same time and as part of the same process, as opposed to separate measures that would be conceived and implemented to mitigate potential impact on Natura 2000 sites.

The site, at a remove from the designated site within the town boundary would not give rise to issues in terms of noise and disturbance during the construction phase. Having regard to permitted improvement works to the WWTP providing additional capacity for a 10 year design horizon as detailed above, no significant in-combination or cumulative effects are identified in relation to potential effects associated with other plans or projects.

#### **7.4.5 Mitigation measures**

No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

#### **7.4.6 Determination**

The proposed development was considered in light of the requirements of Section 177U of the Planning and Act 2000 as amended. Having carried out screening for appropriate assessment of the project, it has been concluded that there is no potential for significant effects on the Blackwater River (Cork/Waterford) SAC (Site Code 002170), Kilcolman Bog SPA (site code 0044095) as a result of the project

individually or in combination with other plans or projects cannot be excluded in view of the Conservation Objectives of that site, and Appropriate Assessment is therefore required.

I consider that the particular characteristics of the project for which permission is being sought in the current application, including its location on a fully serviced site are such that it would not be likely to have a significant effect on any Natura 2000 site, either individually or in combination with other projects. This exclusion can be made in view of the objective information set out in the application and this report. It is therefore reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Blackwater River (Cork Waterford SAC (site code 002170), Kilcolman Bog SPA (site code 0044095) or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required. In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harming effects of the project on any European Sites

## **8.0 Recommendation**

I recommend that permission be refused for the following reasons and considerations.

## **9.0 Reasons and Considerations**

The site is located within the settlement boundary of Mallow as defined in Volume 3, North Cork of the Cork County Development Plan 2022-2028. The proposed development is located on land zoned under land use objective MW-RR-04 (Residential Reserve) which is the subject of certain criteria including not being available for development prior to May 2025. Therefore, the development on said lands, would not be in accordance with local, regional or and national planning policy which seeks to consolidate urban development within identified settlements in accordance with adopted Core Strategies. Furthermore portion of the site is located

on lands zoned MW-GC-16 (Green Infrastructure) where residential development is not permitted.

The Board considers that the proposed development would materially contravene the land use zoning objective MW-RR-04 (Residential Reserve) in Volume 3, North Cork and objective ZU-18-12 volume 1 of the Cork County Development Plan 2022-2028 and land use zoning MW-GC-16 (Green Infrastructure) and objective ZU-18-13 volume 1 of the Cork County Development Plan 2022-2028 MW-GB1-2 (Greenbelt) on Mallow Land Use Zoning map Volume 3, North Cork, pursuant to the provisions of section 37(2)(b) of the Planning and Development Act, 2000, is precluded from the granting of planning permission for the proposed development as the provisions of section 37(2)(b) of the said Act apply in this case. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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

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Dáire McDevitt  
Senior Planning Inspector

26<sup>th</sup> January 2024

**Appendix 1 - Form 1**

**EIA Pre-Screening**

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP 316136-23						
<b>Proposed Development Summary</b>	Permission for 88 no. residential dwellings, creche and associated site works.						
<b>Development Address</b>	Annabella, Mallow, Co. Cork						
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)			<table border="1"> <tr> <td><b>Yes</b></td> <td></td> </tr> <tr> <td><b>No</b></td> <td>No further action required</td> </tr> </table>	<b>Yes</b>		<b>No</b>	No further action required
<b>Yes</b>							
<b>No</b>	No further action required						
<b>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?</b>							
<b>Yes</b>			EIA Mandatory EIAR required				
<b>No</b>	x	Class 10(b)(i) construction of more than 500 dwelling units.	Proceed to Q.3				
<b>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]?</b>							
		<b>Threshold</b>	<b>Comment (if relevant)</b>				
<b>No</b>		N/A	No EIAR or Preliminary Examination required				
<b>Yes</b>	x	Class 10(b)(i) construction of more than 500 dwelling units.	Proceed to Q.4				
<b>4. Has Schedule 7A information been submitted?</b>							

No		Preliminary Examination required
Yes		Screening Determination required

**Form 2**

**EIA Preliminary Examination**

<b>An Bord Pleanála Case Reference</b>	ABP 316136-23	
<b>Proposed Development Summary</b>	Permission for 88 no. residential dwellings, creche and associated site works.	
<b>Development Address</b>	Annabella, Mallow, Co. Cork.	
<p><b>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.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development</b></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 88 residential units and creche on lands zoned residential reserve and green infrastructure.</p> <p>The removal of topsoil and any C&amp;D waste will be managed in accordance with a CDWMP. Localised construction impacts will be temporary.</p>	<p>No</p> <p>No</p>
<p><b>Size of the Development</b></p> <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>88 residential units and creche.</p> <p>The size of the development is not exceptional in the context of the existing built environment.</p> <p>The proposed development would increase residential units in the area by for 88 units.</p>	<p>No</p> <p>No</p>

<p><b>Location of the Development</b></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 Blackwater (Cork/Waterford) SAC (site code 2170) is located c.450m and c.115m respectively to the south and Kilcolman Bog SPA (site code 004495) is c.12km to the north. Refer to section 7.4 of the Inspectors Report where AA was screened out.</p> <p>There is no evidence of other significant environmental sensitivities in the area.</p>	<p>No</p> <p>No</p>
<p><b>Conclusion</b></p>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p>EIA not required.</p>		

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_