



An
Bord
Pleanála

Inspector's Report ABP-317722-23.

Development	10 no. detached houses.
Location	West of Oldtown Lawns Road and south of Newtown Manor Estate, Kill, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	221378.
Applicant	Cavan Developments Holdings Limited.
Type of Application	Permission.
Planning Authority Decision	Refuse permission.
Type of Appeal	First Party
Appellant	Cavan Developments Holdings Limited.
Observers	<ol style="list-style-type: none">1. Iain McDonald2. John and Debbie Gough3. Residents of Newtown Manor4. Lisa and Darragh Callaghan.

Date of Site Inspection

17 October 2023.

Inspector

Mairead Kenny.

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1.0 Site Location and Description

- 1.1. The proposed development site (PDS) is located within a suburban area to the south of Kill Co. Kildare. The small town of Kill which is close to Naas is accessed from the M7. Kill has expanded to the south and southwest in particular. The town centre area is towards the north of the settlement close to the motorway junction while the site is to the south of the town centre and at the edge of the built-up environs. The subject site comprises a rectangular strip of land of stated area of 0.4 ha. It is positioned adjacent and to the north of Newtown Way a recently completed distributor road and to the south of Newtown Manor housing estate. 3 no. cul de sacs within Newtown Manor adjoin the PDS; working from west to east these cul de sacs are 'The View', 'The Court' and 'The Avenue'.
- 1.2. The northern boundary of the PDS is defined by mix of boundary features and trees associated with Newtown Manor estate. The boundary features include solid walls of c 1.8m height and lower walls topped by open railings of overall height of no more than 2m.

2.0 Proposed Development

- 2.1. The proposed development as amended by the significant further information received by the planning authority on 8 June 2023 comprises:
- 10 no. detached dwellinghouse.
 - Vehicular access to be provided by extending 3 no. existing cul de sacs.
 - 21 new parking spaces and relocation of 9 no. on street parking spaces at The Court.
 - All associated site works.
- 2.1.1. The further information submitted included revisions to house types, car parking arrangements, roads layout and drainage.
- 2.1.2. The further information submitted included an Acoustic Design Statement, Road Safety Audit and Sunlight/shadow Analysis.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to refuse permission for the reasons summarised below:

- Having regard to the quality of the residential layout and allocation of on street vehicular parking spaces the proposed development is in conflict with DMURS which states that on street parking should not be allocated to individual dwellings. The proposed development fails to provide an appropriate design response for the site which is zoned B, fails to comply with the zoning objective, would seriously injure the residential amenities of future occupants and would therefore be contrary to the proper planning and sustainable development of the area.
- Having regard to the footpaths and parking spaces and the requirement to reverse onto the pedestrian footpath, the proposed development would endanger public safety by reason of traffic hazard, result in obstruction of road users and restrict lines of sight and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main points of the original report include:

- No flood events, scenic views or cultural heritage monuments at or near the site.
- No pre-planning consultation.
- Subject site did not form part of the Newtown Manor site – parent permission for adjacent residential development is Reg. Ref 04/1143 (168 dwelling units) and the permitted layout relates to Reg. Ref 05/2256.
- Under the KCDP 2017 – 2023 the site is zoned B. The policies for Kill include to facilitate residential development largely within the town centre zone on areas designated as existing residential/infill and on lands zoned new

residential in accordance with principles of proper planning and sustainable development.

- The distributor road to the south of the subject site will serve lands further west and north-west where permission has been granted for housing which is under construction.
- The housing target for Kill up to 2023 is nearly met. Development within the area zoned existing residential/infill do not contribute to the target housing allocation outlined in the CDP. The principle of an infill residential development is acceptable.
- The current boundary treatment of Newtown Manor and the appearance of the site provides a poor frontage onto the distributor road.
- The design solution for Parcel 1 (corner site) where a cluster of buildings is proposed is generally acceptable.
- Parcel 2 (mid) comprising 4 no. detached houses - the assessment of impacts on residential amenity would be aided by a daylight/sunlight study. The degree of overlooking from existing balconies is limited by the design of units. There are some concerns regarding the largely blank gable ends fronting onto the distributor road.
- Parcel 3 (the north-west portion of the site) – the design solution is generally acceptable subject to the overall sunlight analysis study required.
- The proposed layout is generally acceptable in terms of design and visual impact. There are concerns regarding the overall car parking strategy and it is envisaged that amendments will be required to the overall layout.
- The existing public open spaces at Newtown Manor satisfy the requirements to cater for 10 no. additional dwellings.
- The private open space is partially to the side of dwellings but the areas appear to be private and will obtain an acceptable degree of natural light.
- Further information is required in relation to parking. It is accepted that there is congestion within Newtown Manor.
- Smaller neighbourhood retailing and childcare facilities have been permitted as part of strategic housing developments under construction in Kill.

- The submitted EclA is accepted. Mitigation measures can be conditioned if permission is granted.
- The Part V proposal submitted has been assessed. The applicant will be required to provide further information at a later stage.
- Further information is required in relation to car parking and potential impacts on the distributor road which also serves the SHD lands.
- Objections to the pedestrian access points are noted but the connections will aid permeability and improved walking and cycling.
- Due to a rising main close to the site further investigations are required.

The recommendation to seek further information relates to:

- Daylight and sunlight, overlooking.
- Design of façades facing distributor road to avoid blank appearing gables.
- Relocation of an existing ESB mast.
- Internal storage.
- Additional details relating to Part V.
- Vehicle parking proposals need to be revised.
- Acoustic design statement required.
- Road safety audit required.
- Construction management plan to be submitted.
- Hours of operation.
- Acoustic design statement and stage 1 and stage 2 road safety audit to be submitted.
- Location of the existing rising main to be clarified and if necessary, engagement with Irish Water regarding a diversion.
- Pre-connection enquiry with Irish Water to be undertaken.
- Drainage system to include SUDS.

- To have regard to the 2023 – 2029 KCDP which will come into effect on 28 January 2023.
- AA Screening Report attached and photographs refer.

Second report

- Recommends refusal of permission for two reasons.

3.2.2. Selected Technical Reports

Roads, Transportation and Public Safety Department

The main points of the report of 13 January 2023 include:

- Parking pressures within Newtown Manor is noted – existing pressures and conflict and the unauthorised parking of vehicles on the streets and footpaths at The Court may worsen as residents of both the proposed development and existing apartments will be competing to gain access to the 17 no. on-street parking spaces.
- There would be an increased hazard due to obstruction, vulnerable road users and line of sight and endangerment of public health.
- The parking spaces are not directly located within the curtilages of the proposed houses – the parking spaces are not directly accessible to a number of house units – the preference is for 2 spaces within the curtilage to serve the housing units.
- In the absence of revised proposals there would be serious concerns due to the deficit in parking proposals and the existing parking pressures.
- The required revisions are described.
- The report states that the application site is located adjacent to the partly completed road objective KL 14 proposed Kill – Johnstown Road (A) to Hartwell road (B). The applicant is requested to address concerns pertaining to road noise that may be generated by the fully completed road objective and the detrimental impact this may have on future potential residential amenity and health of occupiers and to submit an acoustic design statement to include predicted traffic movements including future traffic increases on the completed

road objective and to include calculations of noise at the facades of the houses.

- Submit road safety audit (stage I and stage II) and revise the scheme accordingly. To include assessment of unauthorised parking on the streets and footpaths at Newtown Manor estate.

Housing Estates

The report of 21 December 2022 sets out requirements including prior agreement with the applicant on a Construction and Demolition Waste Management Plan. Noise control limits and hours of operation during construction.

Water Services

The report of 6 December 2022 recommends further information in relation to an existing rising main and if required, engagement with Irish Water regarding diversion of the rising main, pre-connection enquiry regarding connection to water and sewer infrastructure and suitable SuDS features to be incorporated in the drainage system, which will be nature-based solutions.

3.3. Prescribed Bodies

Irish Water

The report of 18 November 2022 states that there is an existing rising main in close proximity to the development boundary and that the exact location should be determined and identified. It is not permitted to construct a building on or in close proximity to an Irish Water asset. Where required, the applicant shall engage with Irish Water regarding the possibility of a diversion. The applicant is required to engage with Irish Water through the submission of a pre-connection enquiry to determine the feasibility of connection to public water and sewer infrastructure.

3.4. Third Party Observations

- 3.4.1. 22 no. third party submissions received.
- 3.4.2. The issues raised include:

- principle of pedestrian access points – this serves no purpose; the access points are unacceptable and contrary to residents expectations when purchasing and will undermine residential amenity and lead to disruption
- adverse impact on existing apartments by overlooking and overshadowing
- Newtown Manor is recently taken in charge and has inadequate parking
- Kill village of 4000 people lacks school capacity and has only one GP, one shop and one pharmacy
- access for services including emergency services is already congested and this problem will be magnified
- concern relating to antisocial behaviour
- preference to retain the area as a biodiversity strip.

18 no. Submissions were received following revised public notices.

The issues raised reiterate the key points in the original set of observations.

Furthermore in relation to the revised layout and additional parking (both of which were amended as part of the further information submission) it is stated:

- There are safety concerns regarding unwanted traffic and general concerns regarding changes to the area as a playspace for children.
- The proposed additional parking spaces are of no benefit and parking is already a problem and is restricted.
- The proposed development is considered to be of poor quality.

4.0 Planning History

Newtown Manor

Reg. ref. 032695 relates to a grant of permission for 68 dwelling units – this is the relevant permission for the development of Newtown Manor. The proposed development site (PDS) was not part of the subject site.

Lands to the West of Newtown Manor

ABP-305416-19 relates to a strategic housing application for 147 no. residential units at lands to the west of Newtown Manor. Permission was granted and appears to

have been implemented. The subject site included a small part of the distributor road adjacent the PDS and the remainder of the road adjacent the PDS was shown as being in the ownership of the applicant.

Between the above SHD site and Newtown Manor a GAA pitch has been developed with access onto the distributor road; the southern point of the access road marks the western boundary of the PDS.

Reg. ref. 15119 provided for an extension of duration to reg. ref 032695 for the construction of 68 dwellinghouses. The site defined on the website myplan.ie includes the site of the distributor road which is now in place to the south of the proposed development site (PDS) but does not include the PDS.

The Stables

This residential development lies to the south-west of the distributor road. The original permission was granted under Reg Ref 001209. The access to the proposed development was described as being to the Kill to Furness Road, which is the public road which runs north south and is to the east of Newtown Manor. Subsequent permissions for amendments to site layout under reg. ref. 012133 was granted having regard *inter alia* to the new distributor road.

5.0 Policy Context

5.1. National Planning Framework (NPF)

- 5.1.1. This contains a range of National Policy Objectives which are supportive of increased densification, infill development and compact growth.

5.2. The Eastern and Midland Regional Spatial and Economic Strategy 2019 – 2031

sets out several overall regional objectives. The RSES sets out a settlement hierarchy (Table 4.2 in the RSES) with Dublin city at the top and moving down to towns and villages which are to be defined in County Development Plans. There is a requirement on planning authorities to develop core strategies to achieve compact, sequential and sustainable development. There is a target that at least 50% of all new homes to be built, to be within or contiguous to the existing built-up area of Dublin city and suburbs, and a target of at least 30% for other urban areas.

5.3. **Kildare County Development Plan 2023-2029**

5.4. The site is zoned objective B 'to protect and improve existing residential amenity, to provide for appropriate infill residential development and to provide for new and improved ancillary services'.

5.5. Kill is defined as a Small Town - housing target of 119 no. additional units to 2028.

5.6. A range of policies in Chapter 3 address residential development and include:

- encouragement of infill development in older residential areas
- make best possible use of underutilised lands and buildings including infill, brownfield and publicly owned sites
- promote and support sustainable residential consolidation and intensification through consideration of applications for infill development
- support new housing to deliver compact and sustainable growth and ensure that at least 30% of all new homes in settlements are within the existing built-up footprint
- have regard to relevant national guidance
- promote residential densities appropriate to location and context
- ensure a balance between the protection of existing residential amenities, established character of the area and the need to provide for sustainable residential development
- support high-quality design a new housing and promote housing that is attractive, safe and adaptable.

5.7. Two particular objectives of the Kill Small Town Plan are relevant to roads and transport:

- ST K15 is to protect a range of roads listed from development including (i) kill – Johnstown Road (A) to the Hartwell Road (b) which is intended as the primary relief road to take industrial and commercial traffic from the Hartwell road to the N7. It is also an objective to investigate the feasibility of extending the relief road towards Rochford to the east of the town. (ii) Main Street adjoining the site of the former ambassador hotel (C) to the proposed kill/Johnstown Road (A).

- Objective ST K18 is to facilitate provision of linked pedestrian/cycle network routes around the town.

5.8. Natural Heritage Designations

No nearby designated sites.

Indirect connection to Grand Canal pNHA at 4.5km distance.

6.0 EIA Screening

- 6.1. The proposed development is within a class relevant for EIA but is significantly below the threshold for triggering the requirement for submission of an EIAR and carrying out EIA. The relevant class is 10(b) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, which requires the submission of an EIAR in relation to applications for the construction of more than 500 dwelling units.
- 6.2. Having regard to the scale of the proposed development which is very modest as compared to the threshold in the regulations for triggering the requirement for EIA, to the nature of the site within an area zoned for development, the nature of any foreseeable emissions from the proposed development and the availability of public water supply and wastewater treatment capacity, and the factors set out in Schedule 7 of the Regulations, I am satisfied that there are no likely significant impacts arising from the proposed development and that submission of an EIAR and carrying out of an EIA is not required in this instance. While there is potential for biodiversity effects, I consider that the impacts arising would not constitute significant impacts which would warrant submission of an EIAR.

7.0 Grounds of Appeal

The main points of the first party appeal are:

- The proposed development provides for a high-quality, pragmatic, residential layout that complies with DMURS and does not necessarily seek to allocate on-street vehicle parking spaces to individual dwellings.
- The proposed development accords with policies and objectives of the development plan with regard to development management and land-use

zoning and provides for a suitable infill development of appropriate density and design which will provide quality living space and protect existing residential amenity.

- The proposed development provides for clear continuous footpaths for pedestrians within the application site boundaries and will not endanger public safety or create any additional traffic hazard.
- The proposed development makes efficient use of the available infill site which is zoned for infill residential development.
- Reason 2 relates to existing development outside of the boundaries of the application site. Clear continuous footpaths for pedestrians within the site are proposed. There is no proposal for on street vehicle parking spaces which would block proposed footpaths.
- This small infill development with minor extensions to 3 no. existing cul-de-sacs will not endanger public safety or create additional traffic hazard. The scheme is designed to fully integrate with the existing estate thus minimising impact on existing setting.
- Given the zoning objective the development is considered permitted in principle. The site is a leftover piece of land which has been unoccupied since construction of Newtown Manor 15 years ago. It will ultimately form part of Newtown Manor estate.
- The existing footpath, cycle lane, grass verge and road will be retained and are not part of the proposed development.
- Preliminary talks have been held regarding the ESB mast and existing street lighting is also to be repositioned as part of the proposed development.
- The SHD scheme to the West/Northwest has changed the context of the existing road to the south of the site. The site represents an eyesore on the visual amenity of the area. The new houses will create a new building line more benefiting the existing road. The layout will ensure no additional traffic onto the existing road. For these reasons the site represents an ideal infill residential development opportunity.
- Figure 3 shows the proposed site layout November 2022.

- As a result of the request for further information appropriate amendments were made to the proposed development.
- The proposed development complies with DMURS and does not necessarily seek to allocate on street vehicle parking spaces to individual dwellings.

8.0 Planning Authority Response

No response.

9.0 Observations

Lisa and Darragh Callaghan

9.1.1. The main points of the observation are:

- objection to proposed pedestrian access points which serve no purpose
- the proposed right of ways which ultimately lead to a very busy main road will greatly affect safe use of The View including by children at play
- we request a condition that a new secure boundary wall with no openings at The View be put in place and a condition attached.

Residents of Newtown Manor

9.1.2. The main points of the observation are:

- Permission should be refused as the proposed development will impact a mature estate and affect 3 no. cul de sacs.
- It is not clear why the site has been excluded from the previous applications as it is in the ownership of the applicant since 2005.
- The site zoning requires the protection and improvement of existing residential amenity and provide for new and improved ancillary services. The proposed development does the opposite. It would adversely impact the 5 apartment blocks and the house along the southern side of the estate.
- Negative impacts particularly on two apartment blocks front of the new houses by overshadowing and blocking of views.

- Overlooking and privacy impacts as the houses will immediately overlook the balcony on the existing apartment 7 The Avenue.
- The opening up of six pedestrian walkways to the main road will remove the safety of the cul-de-sacs as a playspace for children.
- Absence of new or improved ancillary services.
- In the overall area in the last 10 years 750 houses have been permitted in Kill and proposed facilities for crèches at Newtown Manor and Kilheale Manor and shop have not been realised by this developer.
- Failure to provide within curtilage parking spaces for the dwelling units as requested by KCC. The proposed development will result in on Street vehicle parking to serve the existing development and will displace 9 no. existing allocated car parking spaces. The use of the 14 new spaces is not clear as it is stated that they are to be used by the 7-no. new residential units but not necessarily allocated to individual dwellings. These communal spaces will be used by all residents.
- The road safety audit was conducted during off-peak hours and does not address the issue of parking in the estate. The estate is at full capacity. The survey should have been undertaken outside of working hours.
- Bin storage for the new houses is not specified. Bin collection currently takes place from an area to be allocated in future to new parking spaces. General concern relating to emergency vehicles access.
- The proposed pedestrian/cycle ways at each of the cul-de-sacs will allow young children to get out of the estate with ease and to access a busy road. The proposed pedestrian and cycle ways have the potential also to increase crime in the estate. The opening up of the access points is unwarranted.
- Regarding the construction phase there is concern relating to parking within the estate for the duration. There will be noise associated with vehicles and with the actual construction. This will adversely impact residents who work from home or on a shift pattern. There are general concerns relating to the proximity of a construction site in terms of health and safety including how this site will be fenced off to prevent entry by children. Concerns were expressed relating to fumes, dust, mud and noise. The two-year duration of construction

will adversely impact daily life and cannot be described as minimal disruption. The applicant has not presented a coherent plan for the proposed development.

- The houses have inadequate private outdoor space. There is inadequate separation between the proposed houses.
- The village lacks community facilities and services including medical and educational services and has only one shop and one pharmacy to service 4000 people.
- The estate has been taken in charge by KCC and it is inappropriate that consideration be given to opening it up to infill development. The site is little more than a grass verge tapering from 15 m in width at the eastern end to 7 m at the western end. This is not an appropriate site. Permission should be refused.
- A set of enclosed photographs demonstrate the situation with parking and access by vehicles.

John and Debbie Gough

9.1.3. The main points of the observation are:

- Newtown Manor is an established and completed estate which began construction in 2005 and was taken in charge in 2022. It has one entrance/exit and provide safety for the families that live here and the hundreds of young children that play outside every day.
- The developer is constructing another estate of hundreds of houses in Kill village, Kilheale Manor. A crèche which was to be constructed as part of Newtown Manor never transpired and the building was converted into apartments. A shop which was planned in Kilheale manner also never transpired. The village has inadequate services namely one doctor, one pharmacy and one shop, one primary school which is at full capacity and a population of 4000 people.
- The Small Towns Plan has an objective to provide for appropriate infill development and for new and improved ancillary services. The proposed development fails to comply with the zoning objective, would seriously injure

the residential amenities of future occupants and be contrary to the proper planning and sustainable development of the area. The proposed development will also injure the residential amenities for existing occupants.

- The proposed pedestrian walkways pose a danger from antisocial behaviour, potential crime and child endangerment.
- At peak times the estate road is reduced to a single lane traffic and there is lack of visibility and provision for emergency vehicles. Allowing construction traffic to enter the estate which is heavily populated by young children is unacceptable. The road traffic report does not give an accurate picture of the parking situation.
- Regarding hours of construction the construction vehicles will enter into the estate around the time that children are going to school. Our apartment on that below us (including our main living/kitchen area) will be directly overlooked. We are in the apartment block outlined in orange. We have asked that the house in front of us be altered or moved to maintain privacy, to no avail. Despite the sunlight report submitted we consider our light will be affected also.

Iain McDonald

9.1.4. The main points of the observation are:

- The applicant has owned the land since 1990, did not included in the original application and should not now be allowed to amend the design of the completed estate which was handed over to KCC in 2022.
- The proposed development does not protect or improve existing residential amenity.
- The area is severely lacking in community services and amenities. The developer has failed to provide crèches and a shop.
- Parking arrangements are inadequate and unclear and the area is already congested.
- The proposed passageways are completely unwarranted.

- The construction will have a massive impact on the ability of children to play safely outside, will impact residents doing school runs and those working at home.

10.0 Further Responses

None.

11.0 Assessment

11.1. Principle

- 11.1.1. By reason of the zoning objective and the planning history I agree with the conclusion presented in the planning authority reports that the development of this site for residential use is acceptable in principle.
- 11.1.2. This long narrow 0.4 ha strip of land was zoned for development under the KCDP 2000-2017 and the recently adopted KCDP 2023 – 2029 retained this objective.
- 11.1.3. I have undertaken an extensive review of the planning history available online and have found no record of any application being made at the PDS. The PDS was not included in the parent permission for Newtown Manor, which was constructed around 2005 and was taken in charge in 2022 according to the submissions on file. As such there is no question that the site comprises lands which were previously designated as open space associated with Newtown Manor residential development.
- 11.1.4. In terms of the suitability of the site for alternative uses it is appropriate to comment on the existing and use as open space. I consider that taking into account the location of the lands adjacent the distributor road and its configuration, the site has limited opportunity for meaningful active use for residents. I do not consider that the site is inherently suited to its existing use as open space and in particular I do not consider that there would be any justification for retaining the lands as a passive amenity area; development of this area for housing could benefit the amenities of the area as well as providing for more intensive use of serviced urban lands. There is no development plan objective which would support the third-party requests for the land to be retained for biodiversity.

- 11.1.5. The site is of not insignificant scale and comprises an isolated plot of zoned serviced lands. Having regard to the national, regional and local policy provisions as well as the planning history I am satisfied that residential development is appropriate.
- 11.1.6. For clarity it should be noted that I disagree with the description of the site as an eyesore. The long strip of land is unkempt and is in contrast to the otherwise well-maintained roadside lands in this area but this is easily rectified by a simple maintenance programme. I do not consider that the present condition of the site justifies the proposed development or confers an urgency with respect to the timing of its development. I do consider that there is some merit in arguments presented by the first party in relation to the creation of a more appropriate boundary to the distributor road. However, the overriding reason for my conclusion relating to the suitability of the site for residential development relies on the zoning objective, the planning history and my comments below relating to the site layout and arrangements for access and parking.
- 11.1.7. Following my conclusion that the development of the site for residential use is appropriate in principle, the second matter to be determined in this appeal is whether the proposed development protects and improves existing residential amenity; as pointed out by observers this is a key requirement which is embedded in the zoning objective.

11.2. Residential amenity

- 11.2.1. In this section I will consider the detailed design of the proposed dwellings and their interaction with the existing residential units to the north. I address the impact on sunlight/daylight, examine the potential for overlooking and the impact on views from existing residential units.
- 11.2.2. At the outset I refer to the grounds of appeal and in particular section 7.7.1 – 7.7.2 wherein the conclusion is presented that the proposed development complies with the land-use zoning objective and provides for an appropriate design response and that this has been accepted by the planning authority. I would agree with the general thrust of the appeal statements insofar as I note that the original planner's report does not raise any specific concerns relating to overlooking and that in relation to two of the three 'parcels' which are analysed in the planning reports, the only concern expressed is to do with sunlight/daylight. Overlooking is noted to have been

raised in the third-party observations but there is no indication in the planner's report that this concern was shared. In analysing compliance with the development management standards pertaining the planner concludes that the proposal is broadly acceptable in terms of density, that there is sufficient public open space within Newtown Manor and that the private open space requirements at each of the proposed units is met. The arrangement for private open space was considered to be acceptable notwithstanding that it was not provided in the form of rear gardens. The planner's final report notes the conclusions of the sunlight/shadow analysis as reported by Armstrong Fenton and provides the following assessment – 'the additional details provided in relation to potential overshadowing of adjoining properties is noted and it is generally accepted that the proposed development is in line with BRE requirements for daylight/sunlight'. The planner's report is silent on the issue of overlooking which was referenced in the RFI as being a concern of third parties. The conclusions presented on page 21 of the final report states that the design and layout as proposed fails to meet the criteria of a successful infill scheme, that there are concerns regarding the quality of the overall layout in terms of residential / visual amenities and permission should be refused.

11.2.3. Having considered the contents of the two planner's reports on the file I would largely agree with the appellant's position. I do not consider that the reports justify the reasons for the refusal of permission which refers to 'fails to comply with the zoning objective for the site, would seriously injure the residential amenities of future occupants'. My own assessment follows below.

11.2.4. The sunlight/daylight analysis presented by Chris Shackleton Consulting notes in conclusion that 100% of tested neighbouring gardens and balconies pass the BRE requirements as do 100% of private amenity spaces. The assessment of shadow shows that all amenity spaces will pass the BRE test of 2 hours of sunlight on 21 March. When the result for amenity spaces associated with the proposed development is tested against the criteria that over 50% of the amenity receives 2 hours of sunlight and adjusted to take into account that gardens at A8, A9 and A10 are 50% over-provision then all of the new provided private amenity spaces also passed the BRE requirement. I accept the conclusions of the report presented and consider that it is useful guidance in terms of sunlight/daylight impacts. Having regard to the pattern of development, the orientation and the separation between buildings I am satisfied that the proposed development would not give rise to

adverse effects in this respect. In this regard I note that there is approximately 10 m between apartments 22 – 25 The Court and the proposed houses and also between the apartments 4 – 7 The Avenue. In terms of the receipt of sunlight/daylight to these buildings and their associated balconies (in some cases) or living rooms (for an example at the first-floor level at the side of 1-4 The View).

11.2.5. Regarding the potential for overlooking and secondly whether or not the proposed outlook of the existing residential units would be significantly adversely impacted by the proposed development I am satisfied that the design of the proposed houses generally ensures avoidance of significant effects. At various positions across the site the potential for overlooking and for significant impacts on the outlook from existing rooms / balconies is precluded by presence of trees and fenestration and in some cases by orientation. In addition, the proposed house design provides for use of obscure glazing at appropriate locations in order to avoid overlooking.

11.2.6. In relation to the potential for adverse effects on existing residential units I consider that the proposed development would result in significant adverse effects due to the proximity of the proposed houses at one particular location of the site. In this regard I note that there appears to be a kitchen window to the side of 1-4 The View at first floor level and a similar fenestration at first floor level at 26-29 The Court. I consider that due to the proximity of the proposed two-storey houses at a distance of 3.2 m there would be a significant adverse impact on residential amenities, I refer to the proposed houses which are depicted in sections G-G and H-H. In my opinion the design of the proposed houses adjacent these apartments is unacceptable by reason of the first-floor component as well as the proximity to the existing apartments. The proposed development would significantly interfere with the outlook from the apartments and the separation distance is inadequate resulting in a failure to protect the residential amenities of existing residential units.

11.2.7. The decision of the planning authority references the residential amenities of future occupants. Regarding the potential for overlooking of the proposed gardens associated with the 10 no. detached houses I consider that there will be areas at each dwellinghouse where it will be possible to secure a reasonable degree of privacy. I am satisfied that the proposed dwellinghouses meet the relevant development plan standards for internal space, private open space and storage and that having regard to the good design and layout achieved, the private garden space

proposed and the general quality of the proposed scheme the proposed development is suitable and will meet the needs of future occupants.

- 11.2.8. Apart from the two dwellinghouses close to apartments 1-4 The View and 26-29 The Court, I would not consider that a refusal of permission is warranted. In general, I consider that taking into account the detailed design of the proposed houses and the orientation of the two-storey components, the proposed development would not give rise to significant adverse effect on the amenities of those existing residential properties by reason of impacts on sunlight/daylight or adverse visual effects.
- 11.2.9. With respect to the overall matter of residential amenity I refer to the details of the existing and boundary treatment which are described on the submitted landscape design drawings. I consider that the proposals are suitable and note that they make provide for privacy screening as well as tree protection.
- 11.2.10. My conclusion in relation to the decision of the planning authority as outlined in reason 1 is that the proposed development does not comply with the zoning objectives and fails to adequately protect existing residential amenities in the area.

11.3. Access and layout

- 11.3.1. I refer herein to the road structure and the parking arrangements. In general I agree with the appeal statements that the most pragmatic, logical approach to vehicular access to the site is from the three existing cul-de-sacs at Newtown Manor estate. That refers to the long-term operational traffic. I consider that the proposed extensions to the existing cul-de-sacs would not add materially to the level of traffic and that the vehicle traffic generated would not give rise to traffic safety or congestion. With respect to the use of the cul-de-sac as a location for children's play, I find no evidence in the submitted third-party observations to support a conclusion that the limited additional traffic associated with residential development would constitute a significant change in the nature of the cul-de-sac. Notwithstanding my broad support for the road layout, there are some matters of detail which were raised in the submissions of local residents and the reports of the officials of the planning authority and which are addressed in the next paragraphs.
- 11.3.2. Reason 1 of the decision of the planning authority references the allocation of on street parking spaces which states is contrary to DMURS. The context is a concern by local residents which is supported by officials of the planning authority that there

is a deficiency of parking within Newtown Manor estate. The proposed development as revised by the further information provides for 6 no. on-curtilage car parking spaces and 15 no. on-street carparking spaces to serve the proposed 10 no. dwellinghouses. Taking into account house buyers' preferences the applicant proposes the allocation of on-street parking spaces to individual houses but also acknowledges that this matter could have been dealt with by way of a condition by the planning authority. The proposed development also provides for relocation of 9 no. existing on-street carparking spaces so that The Court cul-de-sac could be extended. I agree with the approach of the planning authority as expressed in reason 1 namely that it is appropriate that these spaces are not allocated. I agree with the first party appeal submission that this could be addressed by condition. I disagree with the appeal submission that section 4.4.9 of DMURS (which does not allow for allocation of on street parking to individual houses) is suitable for larger scale developments only. Taking into account the provision of an additional two parking spaces for each of the proposed houses, the fact that some of these spaces will be on the street and subject to them being available for use by existing and future residents, I have no objection to the proposed development on the basis of the amount of parking proposed. If the Board decides to grant permission it is appropriate that a condition be attached to the effect that all on street parking is available to all residents and is not allocated for use in association with any particular dwelling house.

11.3.3. Reason 2 of the decision of the planning authority concerns a lack of clear continuous footpaths for pedestrians, the requirement for cars to reverse onto a pedestrian footpath to exit the parking spaces and consequently endangerment public safety, obstruction of road users and restriction of lines of sight. The proposed development is stated to provide for continuous footpaths which integrate within existing footpaths and none of which are blocked by proposed parking spaces. The appeal response notes that at The Avenue, The Court and The View the proposed footpaths integrate with existing footpaths. It acknowledges that the existing hammerhead at The View there is an existing lack of a footpath which matter was raised in the road safety audit submitted and which is described as an existing condition, which is outside of the site boundary and is under control of the local authority. In the submitted appeal document additional crossing points within the proposed development are described and it is noted that these could have been

conditioned by the planning authority. I agree with the applicant's submission that the proposed development does largely provide for clear continuous footpaths. The more substantive issue in my opinion relates to the matter of cars reversing over pedestrian footpaths. In the revised layout submitted as further information this occurs at 3 no. houses only, all of which have the benefit of on curtilage car parking and I agree with the applicant that this is a standard arrangement. My conclusion therefore with respect to reason 2 is that it does not raise a substantive issue insofar as the proposed parking arrangements very similar to those which exist within Newtown Manor estate. For the most part in the proposed revised layout there is no crossing of footpaths by egressing vehicles. In addition I consider that it is reasonable to have regard to the constraints of the site and the small number of houses involved. While the road safety audit has raised some minor issues the report of Pinnacle Consulting Engineers also provides a solution to the relevant issues as illustrated in figures 1, 2 and 4 of the appeal submission. I recommend that reason 2 of the decision of the planning authority not be upheld.

11.3.4. The Board may wish to consider the alternatives available other than that selected by the applicant and in particular whether access onto Newtown Way (the distributor road to the south) would be more suitable. The appellant's position is that Objective SDK 15 of the Kill STP prohibits the provision of vehicle access to the site from the distributor road. I have examined the website of Kildare County Council and refer to Volume 2 Part 1 of the development plan 2023-2029 under which it is an objective to protect routes of future roads listed hereunder from development. I note in addition that the relevant distributor road is depicted on See Map V2 – 1.3b as (i) Kill - Johnstown road (A) to the Hartwell Rd (B) and described as being intended as the primary relief road to take industrial and commercial traffic from the Hartwell Road to the N7. While I found no explicit reference to the prohibition of vehicle access to the site from the distributor road such a provision might be reasonably inferred based on the development plan. Even apart from the provisions of the development plan it would appear to me that having regard to the configuration of the site, achievement of a single access point onto Newtown Way would be difficult as the site size and configuration would militate against development of an internal access road, by reason of the level of encroachment on the lands available for housing. In addition I consider that the environment for pedestrians and cyclists along the distributor road would benefit from maintaining a continuous pathway. Overall it is my opinion that in

the interest of traffic safety and proper functioning of the road a new direct access to the distributor road is not a preferable approach. The best option to secure development of the land is therefore as proposed by the applicant in the form of extending the existing pattern of development.

11.3.5. I consider that the proposed pedestrian access from Newtown Way into the residential cul-de-sacs is in keeping with local and national policy relating to permeability. The opening up of the cul-de-sacs in this manner is subject of widespread objection from residents. Residents in particular refer to the fact that on purchasing the dwellinghouses their understanding was that it was a cul-de-sac. In my opinion to forego this element of the development would be to miss an opportunity to convenience existing and future residents in the area. Increasing the permeability of the urban area would encourage more trips to be made by foot and bicycle in the direction of the village of Kill where there are services and also onward public transport connections. I conclude that the proposed pedestrian connections are in keeping with the proper planning and sustainable development of the area and I do not recommend that they be omitted.

11.4. **Biodiversity**

11.4.1. Some observers have referenced the suitability of the site for protection of biodiversity and that it should be retained and developed in such use. The EclA submitted by the applicant follows an assessment of protected habitats and species and also a bat transect survey.

11.4.2. Table 4 – 1 of the EclA identifies designated sites within the zone of influence buffer and I am satisfied that there is no potential for significant effects and in this respect. I note that only the Grand Canal pNHA is hydrologically connected and that is at a distance of 4.5 km.

11.4.3. The site itself is deemed to be of high local ecological importance. The dry grassland habitat which dominates the site is considered to be of high local ecological importance as a place of refuge for local wildlife and as a supporting area for foraging activities. The linear treeline comprising immature lime trees and silver birch is of high local ecological importance due to its potential for future nesting opportunities and foraging opportunities and 2 no. bat species were recorded feeding in this area. Evidence of badger was recorded within the grassy verge. Otter, pine

marten and hedgehog have been documented in the wider area and are 'screened in' for potential impacts. An assessment of potential impact on White clawed crayfish is also provided due to the hydrological connectivity between the site and Rathmore stream which supports a population of this species which is protected under the Wildlife Act and under Annexes II and V of the Habitats Directive.

11.4.4. The topic of mammals overall is addressed in section 6.4.3 of the EclA and this notes that there were no direct or indirect signs of otter , pine marten or hedgehog but that they may occasionally visit the area for foraging and commuting. In this section I refer to badger in particular as they are known to use the site and any mitigation relevant to badger would be relevant to the other mammals. Regarding the impact on badgers the recorded evidence as reported in the EclA is indirect evidence in the form of droppings. It is considered that the general area may be used for occasional foraging and commuting activities and that in the absence of mitigation during the construction phase impacts may arise in the form of disturbance or degradation or fatalities. The report is silent on the matter of badger setts. The potential for adverse effects due to the accidental introduction of pollutants into the habitats is relevant also. The significance of impacts during construction is described as negligible and following mitigation including measures to protect surface and groundwater and to prevent disturbance and/or accidental entrapment the residual impact in the operation phase is described as neutral. The specific mitigation measures which are referenced include limits on working to daylight hours, use of lighting at night to be avoided and general obligation on the contractor is to ensure no harm to wildlife by maintaining site efficiency and clearing away materials which could result in fauna being trapped. Operational impacts are not anticipated and biodiversity enhancement proposals are noted in this respect.

11.4.5. With respect to the potential for impacts on badger, I do not consider that the EclA adequately addresses the importance of the site as a foraging / commuting area. I do not consider that there is evidence of a full understanding of the importance of this linear site with respect to setts in the area. It is not clear whether or not the other side of the distributor road comprises an equally suitable commuting route. I am not satisfied that the mitigation measures for the construction period are sufficiently targeted. I would like to see more information with respect to the potential for impacts on badger on site and in the wider area. I am not persuaded by the statement presented that the biodiversity enhancements described in section 7.2 will be

sufficient to mitigate impacts on badger once the development is completed. In my opinion the site layout does not provide for sufficient scope for suitable areas to be developed for future use by commuting mammals.

- 11.4.6. Regarding White clawed crayfish I am satisfied that there is no likelihood of significant adverse impacts subject to suitable construction and compliance with the measures set out in sections 7.1 of the EclA.
- 11.4.7. I am satisfied that the site, which is described as being of low – moderate foraging and commuting suitability for bats and that the mitigation measures involving external lighting could be suitable subject to further agreement with the planning authority. In principle I would also accept that the operational phase could result in a significance of residual impacts of negligible value. I note in addition the availability of alternative foraging and commuting areas to the south of the distributor road.
- 11.4.8. In conclusion I consider that the potential for adverse effects on badger (and other terrestrial mammals) is not suitably addressed in the EclA. In my opinion a revised site layout / more targeted mitigation may be needed to ensure that the site retains its value as a commuting route. But in the first instance its importance for mammals needs to be further investigated. If the Board decides to refuse permission for the proposed development, I recommend that this matter be raised as an issue in the Board's direction. To refuse permission on the basis of biodiversity impacts would constitute a new issue in this case.

11.5. Other issues

- 11.5.1. I consider that the proposed development complies with the core strategy.
- 11.5.2. I note the reference to a lack of services in the area and the comment in the planner's report that a retail / childcare facility is under development at the strategic housing scheme.
- 11.5.3. As referenced briefly above I agree with the conclusion of the planning authority that the development management standards in the development plan are met. The planning authority reports contain an assessment of the public open space requirements and I agree with the conclusion presented that there is ample space within the overall estate.

- 11.5.4. I am satisfied that the proposed development will create a new and more vibrant frontage to the road / streetscape resulting in an upgrading of the area.
- 11.5.5. I consider that the submitted CTMP will ensure that construction traffic impacts, do not adversely impact the safety or efficiency of the road network in the area. A single point of access will be available onto Newtown Way for the construction period. The construction period is estimated to take place over 12 to 24 months and to involve approximately 25 construction workers at peak. The mitigation outlined in the CTMP document submitted includes measures relating to the timing of traffic generation, construction worker parking, traffic management measures including speed limits and protection of safe areas for pedestrians. Regarding parking for the duration of the construction phase this CTMP acknowledges the limited number of available spaces in the area and proposes to encourage public transport and car pooling and discourage illegal parking and parking within Newtown Manor. It is appropriate that this aspect of the proposed construction management is subject of further agreement with the planning authority to ensure that the stated objective of minimising parking in residential areas and ensuring safe parking arrangements are achieved.
- 11.5.6. I note that observers reference the disruption effects including with regard to residents who work from home. This is a relatively small-scale construction involving standard equipment and techniques and there is no evidence of any unusual ground conditions. I am satisfied that subject to good building practice and finalisation of the CTMP noise control will be ensured by suitable mitigation measures.
- 11.5.7. Subject to finalisation of a detailed CTMP with the planning authority I am satisfied that there would be no significant adverse effects on the residential amenities of the area and that risks to local residents and road users will be mitigated.
- 11.5.8. I consider that the potential for adverse effects due to road traffic noise have been overstated by the planning authority in the further information request. I accept the conclusions of the Acoustic Design report.
- 11.5.9. At the time of making of the application the lands identified as extensions to the existing cul-de-sacs were within the ownership of the applicant as the taking and charge process had not been completed. The relevant lands have now been taken in charge according to submissions on the file. There is no indication of any objection from the local authority on the basis of legal rights. Given the timing of the

application and taking in charge no letter of consent is submitted with the application, which I consider is acceptable.

11.5.10. Part V proposals require further clarification but have been advanced.

11.5.11. The site can be suitably served in terms of water supply and wastewater disposal. SUDS features are incorporated.

11.6. **Appropriate Assessment**

11.6.1. Having regard to the nature and small scale of the proposed development comprising 10 houses on zoned serviced lands and to the distance from the nearest European site, no Appropriate Assessment issues arise. Therefore, it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

12.0 **Recommendation**

12.1. I recommend that planning permission be refused for the reasons and considerations below.

13.0 **Reasons and Considerations**

Having regard to the established pattern of development in the surrounding area, the fenestration at first floor apartments at 1-4 The View and 26-29 The Court and the 3.2m separation between existing windows and the proposed two-storey houses, it is considered that the proposed development would seriously injure the amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

Mairead Kenny
Senior Planning Inspector

8 November 2023