



An
Bord
Pleanála

Inspector's Report

ABP-318058-23

Development	Construction of 49 no. residential units and associated site boundary and site development works.
Location	Inishlounaght, Marlfield, Clonmel, Co. Tipperary.
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	2260698
Applicant(s)	Baile Ard Developments Ltd
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First and Third Party
Appellant(s)	1) Baile Ard Developments Ltd 2) Mark Small
Observer(s)	None
Date of Site Inspection	28 th of March 2024 10 th of July 2024
Inspector	Angela Brereton

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	5
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports	6
3.3. Other Technical Reports	10
3.4. Prescribed Bodies	10
3.5. Third Party Observations	10
4.0 Planning History	12
5.0 Policy Context	12
5.1. Relevant Government Policy / Guidelines	12
5.2. Tipperary County Development Plan 2022-2028	13
5.3. Clonmel and Environs Local Area Plan 2024-2030	16
5.4. Natural Heritage Designations	17
5.5. EIA Screening	17
6.0 The Appeal	19
6.1. Grounds of Appeal	19
6.2. Applicant Response	23
6.3. Planning Authority Response	25
6.4. Observations	26
7.0 Assessment	26
7.2. Planning Policy Considerations	27
7.3. Density, Design and Layout	29

7.4.	Impact on the Character and Amenities of the Area	34
7.5.	First Party Appeal – Condition 22	35
7.6.	Material Contravention and Procedural issues.....	38
7.7.	Access and Permeability.....	41
7.8.	Special Development Contribution.....	45
7.9.	Drainage issues	45
7.10.	Screening for Appropriate Assessment	50
8.0	Recommendation.....	51
9.0	Reasons and Considerations.....	51
10.0	Conditions	51

Appendix 1 – Form 1: EIA Pre-Screening

Appendix 2 – Form 2: EIA Preliminary Examination

1.0 Site Location and Description

- 1.1. The site is located on agricultural lands within the development boundary of the designated local services centre of Marlfield as set out in the Tipperary County Development Plan 2022. It is c.3km west of Clonmel town centre and a short distance to the west and outside of the environs of Clonmel town LAP 2024-2030.
- 1.2. The site is elevated and in view of the steep slope is to be cut out of the western part of a larger field area. The site is in agricultural use and on the day of my July site visit, was in crop. The boundary with the neighbouring estate to the west 'Mountain View' is defined by intermittent hedging. There is a further band of hedging to the north and the site lacks any boundaries to the east (to be taken off the larger agricultural field area). To the south there is a dense boundary of mature hedging that separates the site from the adjoining properties between the site and the public road.
- 1.3. The site frontage is to the L-3620 public road 'Marlfield Road'. There is an existing splayed and gated entrance which is sited on a steep incline and is set back from the public road. Sightlines on either side are somewhat restricted due to the undulating nature of the road and the steep banks, trees to the west and access to the site. There is no footpath, along the site frontage but there is a footpath on the opposite side of the Marlfield Road. There is a single white line along the road in front of the site and it is within the 50 km/h speed limit. There is a sign advertising land for sale (total 7.83 ha) at the frontage of the entrance proximate to the public road.
- 1.4. There is a notable difference in levels between the subject site and the public road, with levels rising steeply from the roadside before becoming more gradual further to the north on the site. There is a c.14m level difference between the level of the public road and the northern most part of the site. There are views to the south.
- 1.5. There is a row of ribbon type residential development to the south on the opposite side of the road, which is on a considerably lower level than the site. There is one-off type housing with road frontage including on either side of the site frontage to the public road. The site adjoins the long-established residential estate to the west, 'Mountain View', which is also a very upland site. The rear of these houses which are elevated and within the settlement of Marlfield can be seen from the site.

2.0 Proposed Development

2.1. Permission is sought for the following on this site at Inishlounaght, Marlfield, Clonmel

Construction of 44no. residential units comprising of:

- 4no. two bed houses;
- 10no. three bed houses;
- 12no. four bed houses;
- 18no. 5 bed houses;
- New vehicular and pedestrian entrance, together with all roads, footpaths, underground services;
- Connection to public services, surface water detention basin;
- Car-parking, pedestrian and cycle connection to Mountain View estate;
- Public open space, public lighting and associated site boundary and site development works.

It is of note that the description of development was revised at Further Information stage to include revisions to the scheme to increase the development site area and to provide 49no. houses. The site area has been increased from 4.18 to 4.58ha.

The planning application was accompanied by a Development Impact Assessment, a Flood Risk Assessment, Site drainage and Infrastructure Report, A Road Safety Audit, a Civil Utilities Planning Report and a Landscape Design Report.

3.0 Planning Authority Decision

3.1. Decision

On the 23rd of August 2023, Tipperary County Council granted permission for the proposed development subject to 22no. conditions. These conditions included regard to the F.I submission and the revised layout for 49 units, Part V, car parking, Construction and Environmental Management, Construction Traffic Management Plan, Connection agreement with Irish Water, Services including foul and surface

water drainage, Landscaping and Open Space, Taking in charge, Public Lighting and Roads Layout. Development Contributions including a Special Development Contribution and insurance bond. Condition no.22 concerns the implementation of a Section 47 agreement to restrict the occupation of housing within the development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner had regard to the locational context of the site, planning history and policy and to the submissions made and the reports submitted. Their Assessment included the following:

- They consider that having regard to the contextual location of the site within the village of Marlfield, on the outskirts of Clonmel, that the proposed low density is acceptable.
- The clustering arrangement of the units, particularly to the west of the site is reflective of the strategy proposed in the Guidelines for Cluster Housing Schemes in Rural Villages and is broadly acceptable to the Planning Authority.
- Given the topographical conditions on site there will be a significant element of groundworks required to provide a build platform across the site.
- The applicant should be advised of the need to provide for a connection to the public footpath in the Mountain View estate.
- They noted that the District Engineer had requested that further information be requested on a number of issues, including sightlines, boundary treatments, footpaths and EV charging points for carparking etc.
- The proposed development has been screened as to the requirement for AA and it has been determined that an AA is not required.
- The applicant has submitted a Flood Risk Assessment with the application. This site is not in an area at risk of flooding as defined in the Flood Risk Management Guidelines.

- They consider that the proposal is acceptable in principle and requested that Further Information be submitted.

Further Information request

The Planning Authority request for F.I included the following:

- Given the level difference between the road and the subject site and that the levels are raised in the southern part of the site, there is concern about the visual impact of units 1 and 2. They requested that consideration be given to the omission of these units.
- They are required to engage with the Local Authority and consider the provision of a connection to the public footpath in the Mountain View estate.
- A minimum of 10% of all visitor car parking spaces shall be provided with functioning electric charging points/stations at a later date.
- To clarify details regarding proposed boundary treatments and retaining walls and to provide a section illustrating how this arrangement will be perceived on the ground.
- The applicant is advised to clarify as to why a connection agreement from Irish Water for a 100 unit scheme is required. In addition to clarify that the proposed 300m extension required to the foul network in the area to accommodate the development proposed will not necessitate the provision of works on private lands.
- To arrange to submit for the consideration of the Planning Authority, revised proposals to address access, circulation and movement listed (i) – (viii) including in relation to internal roads layout and pedestrian access/crossing.
- To arrange to submit, for the consideration of the Planning Authority, revised proposals to address materials/finishes throughout the scheme.
- To submit an external lighting report, to be prepared by a trained and competent Lighting Designer, in accordance with the requirements laid out in the CDP Revised Public Lighting Policy 2022.
- Details regarding materials to be used in footpaths, dropped kerbs etc.

- Proposals to address matters relating to surface water management, including storm water drainage. They also reference concerns to be addressed regarding the Utilities Report. These include regard to storm water attenuation and climate change.

Further Information response

Kenneth Hennessy Architects submitted an F.I response on behalf of the Applicants. This included the following:

Design and Layout

- They note that the scheme has been re-designed (area to the East of the main spine road) to utilise the full extent of the lands available in the Marlfield Settlement Boundary dated July 2022.
- The developable site area has been increased by approx. 1 acre and this additional land has been used to provide 5no. additional dwellings, in addition to turning areas, visitor parking and public open space.
- A revised Part V Agreement has also been included, indicating 10 houses to be allocated to Social and Affordable Housing in Agreement with TCC Housing Development.
- Their Design and Layout response in summary includes regard to and provides details on the following:
 - Houses 1 and 2/Level Differences
 - Pedestrian and Cycle Connection
 - Visitor Parking- EV Charging
 - Retaining Walls
 - Boundaries

Civil Utilities Report

- They refer to the attached response from MWP setting out the basis of the IW Pre-connection Enquiry. They provide that there will not be any requirement for works on third party lands in order to facilitate any required extension to the foul network.

Access, Circulation and Movement

- The location of a potential pedestrian crossing has been re-located and is now positioned east of the main entrance to the development. They provide details.
- They also refer to information provided relative to Drop Kerbs, Speed Restraint Measures, Turning Bays, Carriageway Gradient, Swept Path Analysis. Sight lines/DMURS, Materials/Finishes, Public Lighting and Surface Water Drainage.

Planner's response

Their response to the F.I submission has regard to the various issues raised relative to revisions to design and layout, boundary and retaining walls, services, entrance and internal roads layout including turning bays, the relation of the pedestrian crossing, speed constraint measures, make up of footpath, public lighting and storm water management. They note the revisions to the scheme to provide for a marginal increase to the site area and 49no. units in lieu of 44 as originally proposed.

They provide that a Clarification of Further Information is required to include details relative to issues raised by the Council's District Engineer. This includes relative to:

- Surface Water Calculations
- Speed control measures at central junction.

Clarification of F.I response

Kenneth Hennessy Architects response includes details relative to:

- Design and Site Layout – Alignment of Central Road and details of speed control measures.
- Surface Water Drainage – Infiltration Results/ Design Calculations

Planner's response to CFI

Their response to the CFI submitted includes the following:

- The applicant has provided additional speed control measures which have been agreed with the District Engineer.

- Addition technical data has been provided justifying the surface water infiltration system proposal. They note that the report of the District Engineer has raised no further concerns.

Having examined the plans and particulars submitted with the planning application and subsequently they consider that the proposed development would not have an adverse impact upon the character of the area or the amenities of adjoining properties and would therefore be in accordance with the proper planning and sustainable development of the area. They recommend permission subject to conditions. These include relative to the provision of a special development contribution relative to the provision of a pedestrian crossing.

3.3. Other Technical Reports

Clonmel Borough District Engineer

They noted concerns regarding the surface water design, storm drainage/surface water, the location of the pedestrian crossing and to issues concerning the carriageway and to speed constraint measures.

They reviewed the F.I details provided and comment that it appears that the Soakaway Test results were processed following BRE 365 (2007). BRE 365 was updated in 2016 and that is what should be referred to.

They have regard to the C. F.I submitted and provide that they have no further comments to make.

3.4. Prescribed Bodies

None noted on file.

3.5. Third Party Observations

Third Party Submissions have been received from local residents including from the Marfield Residents Association. In summary their concerns include the following:

- Impact on residential amenity - loss of privacy and overlooking relative to the proximity to adjacent houses in Mountain View.

- More housing estates are not in keeping with the character of the area.
Marlfield is a greenbelt area and this proposal is unfair on local residents.
- There is no commercial development/services e.g. shops etc in the local area.
- Concern about impact/intrusiveness of the proposed development relative to levels, retaining walls/ground levels and boundary treatment on their properties.
- Pedestrian access would mean that the development would adversely affect residents in Mountain View and it would no longer be considered a cul-de-sac.
- Would cause disturbance during construction phase.
- Concern for public health and safety, excessive noise and traffic congestion.
Also relative to light pollution.
- Would impact adversely on views and lead to devaluation of properties.
- Would destroy natural habitat and have a negative impact on the environment in the area.
- Would impact on water supply to the area.
- Impact on surface water drainage from the site and in Mountain View.
Principles of SUDS should be considered in connection to landscaping proposals.
- There should be no surface water run-off to internal access road or public road. Surface water should be piped/drained to a soakpit or watercourse.
- Concerns that the proposed development will increase the potential for surface water flooding along the Marlfield Road (photos included). Regard needs to be had to the impacts of climate change.
- Would result in an increase in traffic on already dangerous access roads and would pose a significant safety risk.
- Concern relative to the proposed internal roads layout and need for turning circles in cul de sacs.

- Concern that there appears to be no planning permission for the modified entrance to the site at present, including the addition of an additional gate to the east of the entrance.
- May result in cumulative negative impacts and a magnification of adverse drainage conditions consequent of planning permission for 9 houses on the site adjacent to the current planning application (Reg.Ref. 18/601519 refers).
- That the developer intends to extend the development at some time in the future into the land to the east of the site.
- Would not comply with Planning Policy in the Tipperary CDP 2022-2028 and the Marlfield LAP -2013. It will result in the coalescing of Clonmel and Marlfield.

4.0 Planning History

Subject site

The Planner's Report notes that there is no recent planning history or record of enforcement relevant to the subject site.

There appears to be no record relative to permission being granted for the access to the subject site.

Site to the south-west

Reg.Ref. 18/601519 – Permission granted subject to conditions by the Council for the demolition of existing house and the erection of 9no. two storey houses, an access road, connection to public services, landscaping and all associated siteworks at Barley House, Marlfield, Clonmel.

These houses have not as yet been constructed. This site is to the southwest of the subject site and is also within the Settlement of Marlfield.

5.0 Policy Context

5.1. Relevant Government Policy / Guidelines

- National Planning Framework – Project Ireland 2040

- Southern Region Spatial and Economic Strategy (RSES)
- Climate Action Plan 2024
- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024)
- Regulation of Commercial Institutional Investment in Housing Guidelines for Planning Authorities (May 2021).
- Design Manual for Urban Roads and Streets, (2019)
- Traffic and Transport Assessment Guidelines (2014)
- Development Management, Guidelines for Planning Authorities (2007)
- Quality Housing for Sustainable Communities - Best Practice Guidelines for Delivering Homes Sustaining Communities (2007).
- Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (BRE 2011)
- The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009).

5.2. Tipperary County Development Plan 2022-2028

Volume 1 - Written Statement

Section 4.2.1/Table 4.2 provides a Framework of Town Plans and Local Area Plans. In the Settlement Hierarchy Clonmel is described as a Key Town (Self-Sustaining Regional Driver). It was noted, that preparation of the Local Area Plan was to commence in 2022. Then the current plan was the Clonmel and Environs Development Plan 2013 (as extended). *As stated in the Core Strategy, the current Town Development Plans and LAPs will remain applicable until they are replaced with LAPs, in accordance with the framework and timeline as set out in Table 4.2.*

Section 4.3.1 notes the strategic location of Clonmel and that it is the largest town in County Tipperary and is addressed in Section 3.5 of the RSES, and the town boundary and compact growth area set out in the Town Profile Plan (Figure 4.2). That the relatively compact nature of the town and its suitability to support a '10

minute town concept' and active travel is evident. That, with excellent environmental and infrastructural capacity, Clonmel is a self-sustaining regional economic driver, and a key location for investment and choice, and will support the overall development of the southern region. Details are given of the Clonmel Strategy for Growth.

Section 5.3.2 has regard to Residential Development in Rural Settlements. As has been noted the village of Marlfield is described as a 'Local Service Centre'. Table 5.1 refers to Cluster Housing in the County.

Policy 5-6 refers: *Support and facilitate cluster housing developments and serviced sites in rural settlements, in line with land zoning provisions, and immediately adjacent to the boundary, where it is demonstrated to the satisfaction of the Council that the development is of a high quality and can link effectively with and contribute positively to the village form. Proposals for cluster housing schemes will need to comply with Tipperary County Councils 'Design and Best Practice Guidelines for Cluster Housing Schemes in Rural Villages, 2018' (as may be amended).*

Volume 3

Appendix 5 refers to 'Design and Best Practice for Cluster Housing Schemes in Rural Villages'. This includes integrating the development with the village and site characteristics. *For phased developments and/or serviced site schemes, a site-specific design strategy will be required to guide the development of each plot.*

Volume 2

This contains the Settlement Guide and Settlement Plans

Marlfield is included in the 'Local Service Centres' Settlement Plans. This provides a Settlement Context for Marlfield Village. This notes the historical context of the village. It is provided that the Settlement Plan has incorporated an agricultural and amenity zoning to ensure a buffer to protect the village and the landscape character.

Infrastructure - Waste water treatment system, operated by Irish Water.

Water Supply: Public water supply available.

Community Facilities: The settlement is served by the adjoining town of Clonmel and fulfils a mainly residential function.

Regard is had to the issue of flooding noting that the SFRA has identified that some lands within the village are prone to flooding. Reference is had to 'The Planning System and Flood Risk Management Guidelines' (DEHLG, 2009).

Objectives: GO1: *To facilitate low density development proposals to meet local housing demands together with the provision of local and community services / facilities and local employment opportunities within the village/settlement boundary in accordance with the principles of proper planning and sustainable development, and the Council's 'Design and Best Practice Guidelines for Cluster Housing Schemes in Rural Villages'.*

Objectives SO1-SO7 refer to the preservation of the character and the sustainable development of the village of Marlfield. These include:

SO2: *To seek the submission of design statement for all village development proposals. This shall ensure that development proposals will be in keeping with the character of the village.*

SO4: *To support the provision of additional passive and active amenity facilities, and in particular to support the development of a walkway between Marlfield and Clonmel subject to resources being available.*

SO6: *To require the submission of Flood Impact Statements, as appropriate, in respect of lands which are liable to flood.*

SO7: *To maintain the integrity of the Natura 2000 sites (lower River Suir SAC) and the proposed NHA (Marlfield Lake) and to support proposals to enhance the ecological and environmental value of these area.*

The Zoning Map shows that the subject site is within the Marlfield Settlement Boundary. It is referred to as 'Amenity and Agricultural Zoning' but does not appear to have an indicative colour coded land use. Having regard to the Zoning Matrix in the CDP (as per Vol. 2 Table 1.3 Zoning Matrix of the CDP i.e. darker green colour coding) the land to the east and north would appear to be zoned for Agriculture. The land to the south on the opposite side of the road is zoned for Amenity (lighter green) and is within the zone of archaeological potential.

5.3. Clonmel and Environs Local Area Plan 2024-2030

The Clonmel and Environs Local Area Plan 2024-2030 is now the pertinent plan. It sets out the local spatial planning framework for Clonmel to 2030. The Plan was made on 12th February 2024 and came into effect on 25th March 2024. This LAP replaces the Clonmel and Environs Development Plan 2013, as varied. This LAP outlines the local spatial planning framework for Clonmel with planning policies and objectives unique to the town.

The Southern Region RSES and Tipperary County Development Plan 2022-2028 designates Clonmel as a 'Key Town' and 'Self-Sustaining Regional Driver', with strong capacity for enterprise and employment growth building on its strengths and specialties.

Policy 1.1: Assess all new development proposals within the boundary of the Clonmel and Environs Local Area Plan 2024-2030 in accordance with the policies, objectives and requirements of the Tipperary County Development Plan 2022-2028 (and any review thereof), and this Plan. Where conflicts arise, the Tipperary County Development Plan 2022-2028 (and any review thereof) shall have primacy in decision-making.

Section 2.4.3 provides the Land Use Zoning Framework. Table 8: Land use zoning that can accommodate new residential growth within Clonmel & Environs.

Consolidation and infill development underpin the development strategy in this LAP in line with achieving Strategic Objective No. 1 (Compact Growth) of the NPF. National Policy Objective (NPO 3c) of NPF requires that at least 30% of all new housing units (532) must be delivered within the existing built-up footprint/compact growth area of the town.

Chapter 5 provides the Strategy for Sustainable Housing. This includes reference to 'Residential Neighbourhoods of Clonmel' (Figure 4 refers). The land to the east of the site within the town boundaries is referred to as being in neighbourhood: 'West of Town Centre'. This notes the provision of new housing on the west side of the town.

Section 7.3 provides the Policy and Objectives. This includes:

Objective 7D: Support the delivery of a greenway between Convent Road and Marlfield Village.

As outlined in the Land Use Zoning Framework in Chapter 9, the purpose of the Strategic Reserve is to ensure the availability of “*long-term strategic and sustainable development sites*” for the future growth of Clonmel. The development of these areas in a piecemeal or discordant way would prejudice the sustainable future development of the town.

Table 17 provides the Zoning Matrix. As shown on Map 1: Land Use Zoning, the subject site is outside of and proximate to the southern environs of Clonmel. The land to the east within the LAP boundaries is zoned for ‘Amenity’ uses. A specific zoning for ‘Agriculture’ is not included within the Clonmel LAP zoning.

A SFRA has been carried out to support the preparation of the LAP is attached as Appendix 6. The SFRA is required to be prepared in accordance with the requirements of ‘the Planning System and Flood Risk Assessment Guidelines for Planning Authorities’ (DEHLG and OPW 2009) and Circular PL02/2014 (DEHLG, August 2014).

5.4. Natural Heritage Designations

The SAC for the Lower River Suir is c. 350m to the south of the proposed development site.

5.5. EIA Screening

An Environmental Impact Assessment Screening report was not submitted with the application.

Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,
- Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.

The subject development is in summary for the construction of 49 houses and all ancillary works on a site of 4.58ha. (as provided in the revisions as per the F.I

submitted). The development falls well below the threshold of 500 dwelling units noted above and also the applicable site area threshold of 10ha. The site is not in an area where the predominant land-use is retail or commercial, so the 2ha threshold is not applicable.

I have given consideration to the requirement for sub-threshold EIA. The site is located within the Settlement of Marlfield, and it is also to be serviced (Volume 2 of the CDP 'Settlement Guide and Settlement Plans' relates). The proposed development will not have an adverse impact in environmental terms on surrounding land uses. The site is not designated for the protection of the landscape or of natural or cultural heritage. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Tipperary County Council, upon which its effects would be marginal.

Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site within an urban area and on lands that are serviced,
- The location of the site outside of any sensitive location specified in Article 109 of the Planning and Development Regulations 2001 (as amended),
- The character and pattern of development in the vicinity,
- The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended).

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the

environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case.

Reference is had to Appendix 1- Form 1 (EIA Pre-Screening) and Appendix 2 – Form 2 (EIA Preliminary Examination) attached to this Report. I conclude that the need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

First Party Appeal

Kenneth Hennesy Architects has submitted an appeal on behalf of the First Party against Condition no. 22 of the Council's permission. Their Grounds of Appeal include the following:

- They note that Clonmel has a long history of manufacturing employment and industrial development. They have regard to and provide details of companies that provide employment in the local area.
- Maintaining this strong manufacturing industrial base is dependent on finding and attracting employees to Clonmel at all levels within these companies, and central to this endeavour is the provision of good quality housing.
- The employers in Clonmel are continuously enquiring about the status and progression of new housing projects to help their sustainability and growth plans for Clonmel.
- These direct enquires are also being made through the state agencies for economic development and they provide a list of these. They note the need to accommodate provision for employees of Clonmel based manufacturing sites, including an ability of companies being allowed to purchase a quantum of houses within new developments for their own employees.

- They confirm that the applicant is not seeking the complete removal of Condition 22 but rather wishes the Board to provide clarity on the limit of the prohibition as it relates to corporate entities.
- This scheme of low-density housing was specifically designed to partially cater for the investment market, in addition to providing a development of much needed family homes for the wider Clonmel area. (They refer to Appendix A – A letter from Moynihan Curran Chartered Surveyors).
- It is the applicant's contention that Condition 22(a) is unduly restrictive and that it will render the development unviable in the current market. The implementation of this condition as it stands, will act as a negative precedent for much needed further residential development within the wider town of Clonmel.
- They refer to Section 28 Guidelines regarding Institutional Investment i.e. 'The Regulation of Commercial Institutional Investment in Housing Guidelines for Planning Authorities' published in May 2021.
- It is the applicant's contention that the implementation of Condition 22 and in particular part (a) is far in excess of any restrictions needed to ensure that this lower density housing development is not *'bulk-purchased for market rental purposed by commercial institutional investors'*.
- The primary grounds of appeal in this instance centre on the blanket restriction on any corporate entity – be they a multi-national employer, personal pension, local employer, even the development company themselves or others being able to purchase a dwelling in the development.
- If the Planning Authority can restrict new housing development to use by persons or a particular class or description then they can surely also restrict the type of corporate entities who should be allowed to purchase within the development.
- Notwithstanding the national focus of the Guidelines there needs to be a degree of flexibility in their implementation, taking account of the viability of housing development in smaller towns.

- There are very few new houses developed in Clonmel in the last 10 years, despite a very strong employment base in the locality. Restrictive planning conditions (such as Condition 22(a)) do little to change this prospect.
- They request the Board to consider the implications of retaining such a restrictive condition for this development.

Third Party

Local Resident, Mark Small, has submitted a Third Party Appeal against the Council's decision to grant permission for the proposed development. His Grounds of Appeal include the following:

The entrance to the site has been modified without planning permission

- There is no planning permission for the existing entrance. The new entrance appears to have been moved approximately 20m west of the original entrance. This entrance has not been in use for many years as can be seen from the 2009 & 2019 photos.

The Development extends into lands zoned 'Agricultural and Amenity' which precludes the development of housing

- They refer to the status of the site under the Settlement Guide & Settlement Plans in the section titled 'Local Service Centres' Settlement Plan' Chapter 27 Marlfield, of the Tipperary CDP 2022-2026.
- The settlement plan has incorporated an agricultural and amenity zoning to ensure a buffer is maintained to protect the village and landscape character of the area. The proposed access and entrance design to the site is clearly within the area zoned 'Agricultural and Amenity' and as odds with the objective 'To protect the village and landscape character of the area'.

The development contravenes the Tipperary CDP 2022-2028

- They reference a number of policies and provide that it is clear that the nature, layout and specific house design is out of keeping with the existing character of the village. – Objective SO2.

- The development of 49 houses on a 9 acre site in the village would be contrary to this objective and is completely out of character with the existing housing on Marlfield Road and the general housing in the village.
- There is ample zoned new residential land to meet local housing needs, in close proximity to Marlfield with the closest within 500m of the proposed development.
- It would appear that the proposed development would be more suited and in compliance with the existing development plans if the development were to be undertaken on zoned lands.

The Entrance to the site poses a hazard to existing traffic and that using the proposed junction

- They refer to the sloping nature of the site, to the road junction with restricted view of traffic on the Marlfield Road. The volume of traffic that 49 units would attract given the nature of the proposed junction could pose a safety issue in very wet or cold conditions for all traffic in the vicinity of the junction.
- The acute nature of the alignment of the junction to the main Marlfield Road, would restrict visibility of a car exiting from the site, seeing cars approaching from Marlfield Village to the west of the junction.
- Sightlines on the approach from the eastern side of the site around the bend and the nature of the hill on approach would not be safe for traffic approaching from the Clonmel/eastern side of the site.

Zoning and Layout

- The site layout indicates that the developer clearly intends to extend the development into lands zoned 'Agricultural and Amenity' which precludes the development of housing.
- Any development into the adjoining land to the east would destroy the unique and historic character of Marlfield Village and the danger is that it would be subsumed into Clonmel town.

Unsafe Road Layout

- They refer to the swept path analysis which shows that trucks cannot easily and safely turn without reversing a significant distance. They are concerned that there is a lack of turning circles within the development.
- The layout of the development is unsafe for large vehicles to circulate as currently designed.

6.2. Applicant Response

Kenneth Hennessy Architects response to the Third Party Appeal includes the following:

- The grounds of appeal are similar to the Submission made by the Appellant and they were addressed in the consideration of the application and further information by the Council.
- They refer to a public meeting held between local residents facilitated by Marlfield Village Association and the applicant and designer of the scheme.
- Many of the issues raised by those present were typical of the issues that arise with any new housing development – traffic, over-looking, boundaries, services etc.
- The Further Information response addressed the issues raised and was circulated to the Marlfield Village Association and no further comments were made.
- While 19 submissions were received, there has only been one Third Party appeal, which is simply a re-run of the original submission.

Modification to Site Entrance without Permission

- The agricultural entrance to the site was relocated slightly as part of a substantial road widening and boundary clearance works carried out by Tipperary County Council.
- The works have greatly improved visibility on this section of the road and have been of benefit to all – residents and other road users alike. They do not see the relevance of this issue in the context of the current application.

Agricultural and Amenity Zoning

- The development proposal is to be accessed from Marlfield Road, via part of the adjoining land. There are no houses proposed on the Agricultural and Amenity zoned lands – development of these lands will comprise of an access road and services which facilitate the housing development.
- Nothing in the proposal impedes on the maintenance of a buffer to protect the village and landscape of the area.
- The provision of a safe access route via the corner of adjoining lands also provides the opportunity to build two detached single storey houses along the Marlfield Road, in keeping with the pattern of development in the immediate vicinity.

Tipperary Development Plan 2022-2028

- They note the Third Party referenced the 'Tipperary County Council Design and Best Practice Guidelines for Cluster Housing' and that as authors they are familiar with the purpose, scope and applicability of these guidelines.
- The Planning Authority have determined that the proposed development is in compliance with the National, Regional and Local planning policies and relevant guidance.

Site Entrance – Hazard to Traffic

- The entrance design has been completed by Malachy Walsh and Partners and has been the subject of a Stage 1 Road Safety Audit which made recommendations for minor adjustments to the originally proposed entrance. These were addressed in the F.I submission.
- The Design Engineer, Planning Authority and Municipal Engineer are satisfied with the proposals in respect of the entrance.

Site Layout – Future Intentions

- Nothing in the current application can facilitate the extension of the development in the future into un-zoned lands without the Development Plan being altered by the Planning Authority.

- The applicant has no control over the zoning status of adjoining lands and has submitted an application for lands which are suitably zoned for housing.
- Any such future development would not be within the scope of the current application.

Roads layout – Large Vehicles

- The Roads Layout has been subject to a Stage 1 Road Safety Audit and detailed Swept Path Analysis.
- The Design Engineer, Planning Authority and Municipal District Engineer are satisfied with the proposals in respect of the road layout, turning areas and cul de sac.

Conclusion

- The site at Marlfield Road has been designed as an imaginative and appropriate solution to the provision of much needed housing in Marlfield and the wider Clonmel and south Tipperary environs.
- The provision of 49 family homes will be a significant and positive development for the village of Marlfield.
- The Third Party Appeal is an objection in principle and to state that homes should be provided elsewhere is not sustainable.
- The proposed development is of an entirely appropriate type and scale, on appropriately zoned lands and is fully supported by local and national planning policies.
- The Planning Authority determined that the proposal would be in accordance with the proper planning and sustainable development of the area, and they ask the Board to concur with that view and grant permission.

6.3. Planning Authority Response

The Planning Authority noted the Appeals, and their response includes the following:

First Party

- Condition no.22 reflects the standard wording as set out in the 'Regulation of Commercial Institutional Investment in Housing: Guidelines of Planning Authorities (May 2021). While the sentiments of the applicant are noted, they do not amount to a justification for the omission of the condition.

Third Party

- They consider that the issues raised by the Third Party have been addressed in the planning reports on file. With respect to the road's safety concern, the reports of the District Engineer did not raise concerns about road safety.

Concluding Remarks

- They consider that the development was permitted having regard to the issues raised and the assessment of the proposal against all applicable guidance including the Tipperary CDP 2022.
- They submit that the Board should uphold the decision of the Council and grant permission.

6.4. Observations

None noted on file.

7.0 Assessment

7.1.1. Having examined the application details and all other documentation on file, including the submissions received in relation to the First and Third Party appeals, the reports of the local authority, and having inspected the site, and having regard to the relevant national/regional/local policies and guidelines, I consider the substantive issues in this appeal to be considered are as follows:

- Planning Policy Considerations
- Density, Design and Layout
- Impact on the Character and Amenities of the Area
- First Party Appeal – Condition 22
- Material Contravention and Procedural issues

- Access and Permeability
- Special Development Contribution
- Drainage issues
- Screening for Appropriate Assessment

7.2. Planning Policy Considerations

- 7.2.1. Project Ireland 2040: National Planning Framework (NPF) is concerned with securing compact and sustainable growth. Objective 4 seeks to: *Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.* Of relevance, objectives 33 and 35 of the NPF seek to prioritise the provision of new homes at locations that can support sustainable development and seeks to increase densities in settlements, through a range of measures.
- 7.2.2. The Regional Spatial and Economic Strategy for the Southern Region 2020-2032 (RSES) notes the importance of Clonmel as a County Town and one of the Key Towns in the Waterford Metropolitan Area. Such towns are described as strategically located urban centres with accessibility and significant influence in a sub-regional context, driving regional growth for the South-East, noting its connectivity including rail and strategic road network. Objective RPO17 seeks to support Clonmel as a self-sustaining regional economic driver and a key location for investment and choice in the Region.
- 7.2.3. In addition, regard is had to the recent ‘Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024)’, and to the amendments to the SPPRs therein as relevant to the subject application. These Guidelines replace the ‘Sustainable Residential Developments in Urban Areas Guidelines for Planning Authorities’ issued as Ministerial Guidelines under Section 28 of the Act in 2009 (now revoked). There is a renewed focus in the Guidelines on the renewal of existing settlements and on the interaction between residential density, housing standards and quality urban design and placemaking to support sustainable and compact growth. This includes that the density of development in rural towns and villages should respond in a positive way to the established context.

- 7.2.4. The Tipperary County Development Plan 2022-2028 describes Clonmel in Section 4.3 as a Key Town in the southern region, defined as a large population scale urban core, functioning as a self-sustaining regional economic driver. Reference is had to Section 3.5 of the RSES, and the town boundary and compact growth is set out in its Town Profile Plan (Figure 4.2). A Strategy is provided to support the sustainable development of the town of Clonmel. This includes that the Council will support the further development of Clonmel as a strong and attractive residential centre.
- 7.2.5. The Clonmel and Environs Local Area Plan 2024-2030 sets out the local spatial planning framework for Clonmel to 2030. The Plan was made on 12th February 2024 and came into effect on 25th March 2024 and is now the pertinent plan for the town. This LAP outlines the local spatial planning framework and includes policy and objectives for Clonmel and Environs.
- 7.2.6. The proposed development site lies directly outside the southwestern Clonmel and Environs boundary. Marlfield is seen as a separate settlement and is located 3km to the west of Clonmel and the recent outward expansion of the town has resulted in only a small area of undeveloped agricultural land remaining between the village and the built-up area of Clonmel. The subject upland site is currently in arable use and was in crop on the day of the July site visit. It lies within the adjoining settlement of Marlfield which is located west of Clonmel, and the settlement boundary is very close to but outside the boundary environs of the town.
- 7.2.7. Volume 2 of the Tipperary CDP 2022-2028 includes the village of Marlfield within the 'Local Service Centres' Settlement Plans. This has regard to the history of Marlfield characterised by a compact village centre, Marlfield House, Marlfield Lake and St. Patrick's Well. Marlfield's historic buildings, natural sloping landscape, mature trees and setting on the River Suir all contribute to a picturesque village setting. Also, noting that agriculture is the predominant use in the settlement plan area, and that the agricultural and amenity zoning seeks to ensure that a buffer is maintained to protect the village and landscape character of the area. That the remaining areas of land within the village may accommodate new residential or other uses.
- 7.2.8. The Zoning Map shows that the subject site is within the Marlfield Settlement Boundary. It along with the existing housing to the south and west does not have an indicative (colour coded) landuse. The land to the east and north is zoned for

Amenity and Agricultural. The land to the south on the opposite side of the road is zoned for amenity and is within the zone of archaeological potential.

- 7.2.9. Volume 2 of the Plan includes an objective in Marlfield to facilitate low density development proposals to meet local housing demands together with the provision of local and community services / facilities and local employment opportunities within the village/settlement boundary in accordance with the principles of proper planning and sustainable development. As has been noted in the Policy Section of this Report Objective GO1 seeks to support low density development proposals and references the Council's 'Design and Best Practice Guidelines for Cluster Housing Schemes in Rural Villages.' Objective SO2 seeks the submission of a design statement for all village development proposals to ensure that the development is in keeping with the character of the village.
- 7.2.10. Section 5.3.2 of Volume 1 of the Tipperary CDP 2022-2028 has regard to Residential Development in Rural Settlements. The Settlement of Marlfield is described as a 'Local Service Centre'. Table 5.1 provides: *Applications for infill development, village housing schemes, and cluster housing schemes of an appropriate character and scale. 'Housing Clusters' in line with the 'Cluster Guidelines' will be considered within, or adjacent to, the village boundary.*
- 7.2.11. Therefore, it would appear that a low-density cluster type residential development maybe acceptable in principle on this site within the settlement of Marlfield, although it needs to be demonstrated that it would be integrated with the village and site characteristics (Volume 3 Appendix 5 of the CDP refers to 'Design and Best Practice Guidelines for Cluster Housing Schemes in Rural Villages'). It is noted that the existing entrance to the site is within what is referred to as the 'Amenity and Agricultural' zoning and that the site is in agricultural use and is not specifically zoned for residential development. Regard is had further to the issues raised in this Assessment below.

7.3. Density, Design and Layout

- 7.3.1. The proposed development as originally submitted, was to comprise the construction of 44no. residential units to include the following housing mix: 4 no. two bed houses; 10 no. three bed houses; 12 no. four bed houses; 18 no. 5 bed houses. Together

with all roads, footpaths, underground services, connection to an existing foul sewer, additions to the existing surface water drainage network, public open space and public lighting and associated site boundary and site development works.

- 7.3.2. The area of this upland site was given as 4.18ha, and with 44no. residential units proposed, the density would be 10.5 units per hectare (gross) and 11.5 units per hectare (net). There have been some revisions to the site boundaries and to the area of the site, as per the F.I submitted. The number of units proposed on site has been increased from 44 units as originally proposed to 49 units. These units are highlighted in red on the revised Site Layout Plan submitted. This has resulted in a marginal increase in gross density from 10.5 to 10.7 units per hectare. The Planners Report provides that this marginal increase in density does not present as a concern as it presents as a more efficient use of lands within the development boundary of an identified settlements. That it is not considered that the increase from a 44 units scheme to a 49 units scheme will undermine the character of the area.

The housing mix in the revised scheme is as follows:

House Type	Proportion of Overall Scheme
2 bed house	8% (4 of 49 units)
3 bed house	31% (15 of 49 units)
4 bed house	22% (11 of 49 units)
5 bed house	39% (19 of 49 units)
Total	49 units

- 7.3.3. The concept of Cluster Housing has been referred to in the application and by the Third Party. They are concerned that the proposed density is too high and that it is clear that a development of 49 houses on this site in the village would be out of character with the existing housing on the Marlfield road and general housing in the village.
- 7.3.4. A Design and Sustainability Statement has been submitted with the application. This provides that the overall scale, form and character of the scheme is sympathetic to the village of Marlfield, and the vernacular architecture which defines it. Also, that the

new development takes precedent from the clustered dwellings to ensure the scale of the village is maintained and the development provides a sense of place.

- 7.3.5. In this respect I would consider that this is a proposed low-density development that would be in character with Objective GO1 of the Marfield Settlement Context.

Design and Layout

- 7.3.6. In response to the Council's F.I request, there have been some revisions to the overall layout as originally submitted. The redesign includes the area to the east of the main spine road, to utilise the full extent of the lands available in the Marfield Settlement Boundary dated July 2022. The applicants provide that this has increased the developable site area (from c.4.18 to 4.58ha.) and this additional land has been used to provide five additional dwellings (i.e. 49 units in total). Also to turning areas, visitor parking and increased public open spaces. Section drawings showing proposed cut and fill on this upland site have been submitted as part of the F.I.
- 7.3.7. In response to the Council's F.I request the applicants provide that they have reviewed the proposal for the development of two detached houses to the front of the scheme and are of the view that they are compatible with the pattern of development in the area. They have revised the houses from two storey to single storey split level dwellings and located the finished ground floor level at 55.00. They submit that these measures have significantly reduced the overall ridge height of the two dwellings and have also eliminated the need for all retaining walls apart from the stone-faced boundary wall. They consider that the proposed development of two storey houses to the front of the scheme is an appropriate proposal and will also serve to assimilate the wider housing scheme into the immediate context.
- 7.3.8. I would consider that these 2no. houses in view of their revised design and lower profile will integrate better into the upland nature of the site and will be more in keeping with the low density housing fronting this area facing the Marfield Road. It is noted however that there appears to be a slight error in the drawing in relation to the roof profile that the Council provided could be addressed. Condition no. 2(c) of the Council's permission refers i.e.: *Revised elevations and roof plans for House type F1 (units 1 and 2) ensuring consistency between the roof plan and the elevation.* If the Board decides to permit, I would recommend the inclusion of such a condition.

- 7.3.9. The revised layout shows a mix of house types, to comprise predominantly detached with some semi-detached housing, as colour coded on the Site Block Plan (received 14/06/2023). These are shown in a cul-de-sac type layout. I note that the submissions from residents in Mountain View to the west are concerned that the proposed houses are too close to the boundary of their estate and their houses. That they will cause overlooking and loss of privacy. However, I would note that the houses are offset from the western boundary and greater than minimum separation distances and rear garden areas are achieved. The houses have not been positioned directly opposite existing dwellings. Regard is also had to screening provided by existing and proposed boundary treatment. I would not consider that significant overlooking or loss of light or privacy will occur.
- 7.3.10. Where possible, homes in new residential developments are to be universally designed to the 'Lifetime Homes' standard set out in Quality Housing for Sustainable Communities (DEHLG, 2007). This includes regard to minimum room sizes, dimensions and overall floor areas when designing residential accommodation. The proposed dwellings would comply with the floor area and minimum room sizes as specified in the spatial standards in Section 5.3.2 and Table 5.1 of these Guidelines.
- 7.3.11. It is of note that a revised Part V Agreement has also been included, indicating 10 houses to be allocated to Social and Affordable Housing, in agreement with Tipperary County Council. A drawing has been submitted as part of the F.I submission noting the location of these houses.
- 7.3.12. If the Board decides to permit, I would recommend, that it be conditioned that details of external finishes be submitted and that all first floor bathroom windows be obscure glazed. Also, that a condition about phasing of the proposed development be included.

Public Open Space, Landscaping and Boundary Treatment

- 7.3.13. A Landscape Appraisal was submitted, the objective being to describe the proposed landscape and external works as part of the residential development of the site in Marlfield. This notes the rising upland nature of the site and that the proposed development is located on part of an agricultural field under tillage. That within the main body of the site there is very limited vegetation. That the perimeter of the site is partially delineated with hedgerows and a description is provided of these. There is

currently no eastern boundary to the proposed site as it is part of a larger agricultural field of arable land.

- 7.3.14. The Landscape Strategy is focused on three principal considerations which include: the creation of a hierarchy of open spaces with pocket parks in close proximity to all houses; to develop the site with a central vegetated spine; to animate the public open space with a sustainable approach to surface water treatment (SuDS). They provide that to strengthen the Ecological corridor Sustainable Urban Drainage System Elements (SuDS) are included. The main entrance to the site is presented as a tree lined avenue. It provides that the primary element of placemaking is evident on entrance to the site where the mature planted verges will integrate into the wider context of Marlfield Demesne.
- 7.3.15. It is noted that as shown in the plans originally submitted 6,086 sq.m of usable public open space is provided within the scheme. As shown on the Site Layout Plan, this primarily comprises of two open spaces in the central area of the site and one adjacent to the access into the site from the public road. As noted in the Civil Utilities Report, the Landscape's Architect documentation and drawings include the use of planting and landscaping towards the amenity of the site from a SuDS perspective.
- 7.3.16. They provide details of boundary treatment. Following concerns about boundary treatment and the location of retaining walls and levels in the original scheme, the F.I submitted provided that a comprehensive review of the requirement for cut/fill and corresponding retaining walls across the site has been carried out. That many finished floor levels have been reduced to align more closely with the existing topography of the site. That this has eliminated the requirement for most retaining elements, apart from those on the southern perimeter boundaries. That the requirement for retaining walls between rear gardens has also been greatly reduced as a result of this review and they are satisfied that there will not be any circumstances which rise to excessive boundary heights. They note that there are no retaining elements facing public open area, apart from the southern boundary wall to Marlfield Road. Regard is had to the Proposed Boundary Treatment Plan submitted, which provides a key showing the various types colour coded.
- 7.3.17. In response to the Council's CFI request they provide further details relative to retaining walls in the Design and Site Layout. This includes additional site section

drawings to illustrate the existing and proposed site levels running in an East/West direction across the front of the site. And fully coordinated with the levels indicated on the site section EE previously submitted. The applicants confirm that they do not envisage any requirement for retaining walls either between Houses 01 and 02, or between House 02 and the adjoining site. They provide that the same relationship between existing, proposed and adjoining levels would also continue in a North/South direction along this boundary.

- 7.3.18. A revised Landscape Layout Plan has been submitted. The proposed stonewall along the Marlfield Road frontage and the provision of concrete post and railings between the development and Mountain View Estate are aesthetically seen as adding to the character of the area. The retention of the mature oaks and chestnut tree on the southwestern corner of the development along with the decision to retain the existing northern ditch and enhance its vegetation are seen as beneficial. Also, the landscaping proposed along the site frontage and adjacent to the entrance to the scheme will help to integrate the site better with the character of the area. It is considered that additional landscaping should be planted along the northern and southern site boundaries to aid screening for the proposed development. If the Board decides to permit, I would recommend, the inclusion of conditions relative to boundary treatment and landscaping details to be agreed with the Planning Authority prior to the commencement of development.

7.4. Impact on the Character and Amenities of the Area

- 7.4.1. The settlement of Marlfield is defined by its compact village centre with a high number of detached single-storey and two-storey dwellings towards the edges of the centre. Historic buildings such as Marlfield House and protected structures in the village add to the defined character of Marlfield, together with the mature landscape and proximity to the River Suir. I would note however, that Marlfield is more of a historic settlement and is not supplied with shops or services.
- 7.4.2. The site commands a rising position over the Suir Valley with distant views culminating in Kilmacomma Hill, the western extent of the Comeragh Mountain range. The site rises from the south to the north with a maximum rise across the site of c.15 metres. Therefore, the proposed development on this upland site, will be

prominent in the landscape. It is provided in the 'Design and Sustainability Statement', submitted that a contemporary play on the vernacular in this development will both merge the scheme with its context, but also define it as new development. Also, that the houses have been limited to two storeys in keeping with scale and form of the neighbouring dwellings, including those in Mountain View to the west. That the scheme as a cluster form of development will integrate and be in character with the village of Marlfield.

- 7.4.3. The L-3620 is a designated scenic route as defined in the Tipperary County Development plan 2022. The views protected are those south over River Suir Valley from Marlfield - Knocklofty Road. the subject site is to the north of the scenic route. As such, it will not have an impact upon protected views.
- 7.4.4. There is concern in the submissions made that the developer intends to extend the development at some time in the future into the land to the east of the site. This land has specifically been zoned 'agricultural and amenity' zoning to ensure that a buffer is maintained to protect the village and landscape character of the area. That the proposal will result in the coalescing of Clonmel Environs and Marlfield. The First Party refutes this and it is noted that this proposal does allow for a narrow strip of the buffer to be maintained. Any further development along the frontage would further erode this buffer and would have to be the subject of a separate application.
- 7.4.5. As has been noted on the Marlfield Settlement Plan Zoning Map in Volume 2 of the CDP the land to the south on the opposite side of the road is zoned for Amenity (lighter green) and is within the zone of archaeological potential. Therefore, if the Board decides to permit I would consider that it would be appropriate for the Board to include a condition relative to archaeological monitoring for this greenfield site.

7.5. First Party Appeal – Condition 22

- 7.5.1. A First Party Appeal has been submitted against Condition no.22 of the permission granted by the Planning Authority under Reg.Ref. 2260698.

Condition no.22 states:

(a) Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location

of each housing unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all residential units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each residential unit for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing including cost rental housing.

(c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified residential units, in which case the planning authority shall confirm in writing to the developer or any person with an interest in the land that the Section 47 agreement has been terminated and the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice of supply of housing, including affordable housing, in the common good.

- 7.5.2. The First Party request the Board to modify this condition on the basis that the condition is considered unjustified and that it would negatively impact the viability of the permitted development on the site. They note that there are a number of employers in the area that are looking for housing for their employees and that there is a shortage of such units in the Clonmel area. The applicant has no issues with the Council seeking to prevent institutional investment funds from purchasing the site and building houses for the letting market only, and thus not resolving the housing shortage in Clonmel. However as drafted this condition also means the major employers in Clonmel and the surrounding areas could not purchase houses to be

occupied by their senior managers or staff. They provide that there is a strong demand and acute shortage of such houses, which in turn is affecting possible and current investment in Clonmel. That this scheme is for low density housing and was specifically designed to cater for this market. This is in addition to providing a development of much needed family homes for the wider Clonmel area.

7.5.3. The First Party considers that Condition no.22(a) is unduly restrictive and that it will render the development unviable in the current market and act as a negative precedent for much needed further residential development within the wider town of Clonmel. They note that there have been very few houses constructed in Clonmel in the past 10 years.

7.5.4. It is noted in the appeal that the wording of the condition is similar to the wording set out in the document “Regulation of Commercial Institutional Investment in Housing Guidelines for Planning Authorities,” published in May 2021. These Section 28 Guidelines for Planning Authorities are aimed to prevent multiple housing and duplex units being sold to a single buyer i.e.: *The recent phenomenon of commercial institutional investors bulk-purchasing, for market rental purposes, the majority of residential units in traditional lower density, housing estates consisting primarily of ‘own-door’ housing units, risks limiting the availability and choice of new homes available to individual purchasers, i.e. those not being a corporate entity, including, but not limited to, first-time buyers, and/or for the purposes of providing social and/or affordable housing including cost rental housing.*

7.5.5. The Guidelines note that this is not desirable given the extent of housing need, for individual households to purchase new houses. They also note the following:

While Section 28 guidelines are general in nature, each planning application for residential development will vary and requires individual assessment, based on the location, nature (including type of housing), extent and scale of the development proposed, and all relevant planning policy requirements and considerations.

7.5.6. It is the applicant’s contention that the implementation of Condition 22, and in particular part (a) is far in excess of any restrictions needed to ensure that this lower density housing development is not ‘bulk purchased for market rental purposes by commercial institutional investors’. The applicant would be willing to accept a revised version of Condition 22(a) which places restrictions of some corporate entities, such

as institutional funds seeking to purchase houses for the rental market. That such a revision would allow for a greater commercial viability of the development. Noting that if the Planning Authority can restrict new housing development to use by persons of a particular class or description, that they can also restrict the type of corporate entities who should be allowed to purchase dwellings in the development. They request the Board to consider the implications of retaining such a restrictive condition for this development and that a more nuanced and appropriate solution be implemented to fulfil the Guidelines intent of restricting corporate institutional investors, thereby ensuring that these proposed houses are made available to as wide range and class of persons as possible.

- 7.5.7. I would be concerned about the enforceability of such a modified condition. In this respect regard is had to the Section 7.3 of the Development Guidelines, 2007 which are Section 28 Guidelines. These refer to the need for conditions to be enforceable. It is difficult to see how such a modified condition could be worded in the interests of equity, and administered and as to whether it would be enforceable by the Planning Authority. I also note that the proposed development site is not within the Clonmel and Environs urban area/town boundary, rather it constitutes a low-density type development, within the village boundaries of the Settlement of Marlfield.
- 7.5.8. I would consider that having regard to the locational context and in order to ensure that there is a mix of tenure within the scheme, that it is appropriate that such a condition be included. If the Board decides to permit I would recommend that this type of condition be included and not amended to cater for different types of corporate entities, in the interests of clarity and to ensure that those units are not bulk purchased for market.

7.6. Material Contravention and Procedural issues

- 7.6.1. Section 34(6) of the Planning and Development Act 2000 (as amended) sets out the procedure under which a planning authority may decide to grant permission for such a development. Section 37(2) of the 2000 Act provides the constrained circumstances in which the Board may grant permission for a material contravention. These include whether the development is of strategic or national importance, where the development should have been granted having regard to regional planning

guidelines and policy for the area etc., where there are conflicting objectives in the Development Plan or they are not clearly stated, or permission should be granted having regard to the pattern of development and permissions granted in the area since the making of the Plan.

- 7.6.2. Reference is had to section 7.15 of the Development Management Guidelines 2007, which advises that caution, should be exercised when refusing permission on the grounds that the proposed development would materially contravene the development plan. That where such a reason is given it must be clearly shown that specific policies/objective of the plan would be breached in a significant way. Section 6.4 refers to *Planning reports – Importance of a balanced approach*.
- 7.6.3. The issue of material contravention is not raised specifically in the current application. However, it is noted as mentioned by the Third Party that the existing entrance to the site is located partly on lands zoned for agricultural and amenity use. Reference is had to the concept of a buffer being retained between the village of Marlfield and the Clonmel Environs. This is noted in the Marlfield Settlement Plan which includes: *The Council recognised that the Marlfield area is a desirable residential area and is vulnerable to excessive development. Therefore, the settlement plan has incorporated an agricultural and amenity zoning to ensure that a buffer is maintained to protect the village and landscape character of the area. The remaining areas of land within the village may accommodate new residential or other uses.*
- 7.6.4. As has been noted the site is outside and to the west of the Clonmel & Environs Development Plan. It is within the Settlement of Marlfield and the Land Zoning Map (Volume 2 of the Tipperary CDP 2022-2028) shows that the majority of the site is within the area shown white, which is shown in the Settlement Plan to accommodate housing. I would consider that there are some lack of clarity in the Marlfield Land Zoning Map in that while there are two different shades of green shown on the map, only 'Amenity' which is the paler shade of green is referred to in the Legend. The agricultural land to the east of the site is shown in the darker shade of green and is not specifically referred to in the Legend. This is of note as the entrance is located on this agricultural land.

- 7.6.5. Appendix 6, Volume 3 of the Tipperary CDP provides the Development Management Standards. Section 2 refers to Settlement Plans and Land Use Zoning. It includes:

A land use zoning framework is set out in Volume 2 Section 3.0, Table 1.2 Land Use Objectives, explains the general land use types applied in the settlements and Table 1.3 Zoning Matrix sets out the typical use types that may be 'acceptable in principle', 'open for consideration' or 'not permitted' on any given land use zone designation.

- 7.6.6. Table 1.1 refers to the Settlement Plan Hierarchy and notes that Marlfield is described as a 'Local Service Centre'. Table 1.2 provides the Land-Use Zoning Objectives. This shows the zoning for 'Amenity' (in the pale green), where the objective is: *To provide, preserve and enhance open space and amenity uses.*

'Agricultural' is shown in the darker green, where the objective is: *To provide for agricultural needs and to protect and enhance the rural environment and setting of the settlement.*

- 7.6.7. Table 1.3 - Zoning Matrix, includes 'Residential' as 'not permitted' in the Amenity zoning. However, it includes 'Residential' as 'open for consideration' in the Agricultural zoning. Therefore, this would imply that the location of the entrance to serve the residential development is not in material contravention of the land use zoning in the Tipperary CDP 2022-2028.

Procedural issues

- 7.6.8. The Third Party is concerned that there appears to be no planning permission for the modified entrance at the site at present including the addition of an additional gate to the east of the entrance. The description refers to 'new vehicular and pedestrian entrance'. That the new entrance appears to have been moved approximately 20m west from its original location. That this entrance has not been in use for many years (as can be seen from the 2009 & 2019 photos submitted). That there is concern about safety issues relative to the sloping nature of the entrance to the site and sightlines at the entrance. In this respect I note that having regard to the aerial photography (dated c. 2006-2012) that the subject access and recessed entrance gate was not then in existence. It appears to be more recent and is now in situ to serve the development site.

- 7.6.9. The Landscape Appraisal submitted with the application notes (Section 2.2 – Existing Site Boundaries) that the roadside boundary to the south of the site has recently been removed and they consider that this is presumably to facilitate a road improvement/widening scheme. This is not part of the subject application. Photos are included showing the site frontage c. 2019 and October 2022. The extant entrance is only shown in the later photograph.
- 7.6.10. The First Party response to the Third Party appeal notes that the agricultural entrance to the site was re-located slightly as part of a substantial road widening and boundary clearance works carried out by Tipperary County Council. They provide that these works have improved the visibility of this section of the road to the benefit of all.
- 7.6.11. The site description on the Public Notices includes reference to a ‘new vehicular and pedestrian entrance’ to serve the development. The issue is that the vehicular entrance from Marlfield Road is in situ, and that the location of this recessed entrance appears to be relatively recent. It would have been more correctly described on the Public Notices as ‘retention of and modifications to existing entrance’. However, while the Board may decide to readvertise, it is noted that the gated entrance is in-situ and that it will need some modifications to facilitate the proposed residential development. In addition, the Council have accepted and dealt with this as a valid application, and the locational context of the existing entrance has not been objected to by the District Engineer and is visible to local residents on the road frontage to Marlfield Road, approaching Marlfield Village.

7.7. Access and Permeability

- 7.7.1. As shown on the plans and seen onsite, the vehicular access from the L-3620, Marlfield Road is existing. The gated entrance is setback from the road and the access is at a skewed angle to the road. Regard is had to the plans submitted and it is noted that the design team are satisfied that the proposed junction complies with the required road engineering requirements. Having regard to sightlines, the proposed exit leads out onto Marlfield Road and is located in a 50kph zone, and not an 80kph zone. The applicants F.I provides that sightlines are deemed to be DMURS compliant for a 50kph zone. Drawings have been submitted, showing that

there will be an element of cut to achieve sightlines to the west of the entrance. Also, a letter of consent has been received from the landowner to the alterations to the roadside boundary necessary to achieve sightlines. It is noted that a Site Location Map has been submitted showing the adjoining landholding to the east, in blue and that this includes the road frontage. The MWP Consulting Report provides that the total landholding is approx.7.5ha.

- 7.7.2. The Council's F.I request included regard to Access, Circulation and Movement. This requested that the pedestrian crossing on Marlfield Road be relocated eastwards to a desire line location for pedestrian crossing. In response the applicants advise that the location of a potential pedestrian crossing has been relocated and is now positioned east of the main entrance to the development. They note that revised details including line marking, lighting etc are now illustrated on the Civil Engineering Drawings. In addition, that the location of dropped kerbs and raised table areas has been indicated on the revised Civil Engineering Drawings as requested. They also provide those finishes for footpaths – concrete – are indicated on the Site Plans and Landscaping Drawings. They note that cast in situ footpaths are not to have a separate kerb.
- 7.7.3. The Council's District Engineer recommended the implementation of a speed constraint measure at the central crossroads of the proposed internal roads layout. They considered that the implementation of same would have a significant impact on any potential speeding within this development. The F.I response provides that the proposed road layout has been reviewed by MWP as road design engineer for the development and they refer to their response. It is also noted that the proposed development has been subject to a Road Safety Audit and the Design Team provide that they are satisfied that the development will not negatively impact traffic in the village or on Marlfield Road. A Stage 1 Road Safety Audit has been submitted.
- 7.7.4. The absence of turning bays at the end of the cul de sac was seen as a safety concern, particularly relative to turning space for service vehicles. The Site Layout Plan submitted as F.I stage shows that it is proposed to provide a cul de sac type internal roads layout within the development with access and egress from the existing recessed access. This includes that two additional turning heads have been added to the cul de sacs on the eastern side of the site. That the overall site area has increased as part of the F.I review and the additional space available has been

allocated to the provision of five additional houses and two turning heads on the eastern part of the scheme. Drawings showing Swept Path Analysis have also been submitted. This analysis demonstrates how the internal site layout permits the movement of service vehicles around it given the low design speeds and residential nature of the site. Details of proposed signage including stop signs and traffic calming have been included within the revised site layout. This includes for a 30km/h 'slow zone' within the estate to slow down traffic at the access to the site, before exiting to the Marlfield Road.

- 7.7.5. It was noted that the carriageway gradient leading to the entrance was of significant concern as the proposed gradient as originally shown was 6.25%, which is significantly greater than the 2% mentioned in Section 9.3 of the Traffic Management Guidelines. The F.I response to the Council's concerns relative to the gradient provides that the proposed entrance road has been realigned, based on the revised Site Boundary. That as was previously suggested the omission of units 1 and 2 would not have been of any further benefit in addressing the gradient of the access road. Revised levels and gradients are indicated on the Civil Engineering Drawings. Regard is had to the Site Levels and Roads Layout Plans submitted.
- 7.7.6. They note that the location of the potential footpath either side of the entrance is aligned with the existing L3620 -2 and will not encroach on the northern edge of this road. That revised Site Plans and Boundary Drawings have been amended to provide more detail on this proposal. That Site Section Drawings also indicate the height of the proposed stone-faced retaining wall to the site boundary.
- 7.7.7. Having regard to the Council's request for a Street Lighting Report, A Public Lighting Design Report has been submitted to demonstrate that the public lighting has been designed in accordance with Tipperary County Council's Revised Public Lighting Policy 2022.

Parking

- 7.7.8. The Site Layout Plan, shows that parking is primarily to be provided within the curtilage of the proposed dwellings, with some visitor parking to be provided on the sides of the two main areas of public open space. There appears to be ample parking available for the proposed development within the scheme.

7.7.9. The F.I response notes that a total of 20 visitor car parking spaces have been identified throughout the scheme and the applicant is in agreement that 10% (2 spaces) would be provided with functioning electric vehicle charging stations/points with ducting provided for the remaining visitor car parking spaces, facilitating the installation of electric vehicle charging points/stations at a later date. Details of the charging stations are provided on the Civil Engineering Drawings.

Permeability

7.7.10. It is noted, that the Site Layout Plan as originally submitted included for a pedestrian/cycle connection to the area of open space in the adjoining estate to the west 'Mountain View'. The Council's F.I request noted that the provision of the proposed pedestrian and cycle connection to the adjoining estate is to be welcomed. That a review of Landdirect.ie would suggest that the green area is in the charge of the Local Authority. They advised that the applicant engage with the Local Authority and consider the provision of a connection to the public footpath in the Mountain View estate.

7.7.11. The F.I response notes that the proposed pedestrian and cycle connection was the subject of several objections and having met with local residents to review the overall scheme, the applicant has decided to omit this aspect of the scheme. They note that the Revised Site Plan Drawings now reflect the removal of this connection. While I note this to be the case from the submissions made, it is also of note that the Marlfield Village Association submission advises that this pedestrian way could be added so as to aid the integration of Marlfield Village and the new development and to facilitate people walking and cycling to the Poppyfield retail park to the east within the environs of Clonmel town.

7.7.12. I note that the scheme has now been revised so that this potential for a pedestrian link between the development site and the adjoining estate has now been omitted. I would consider that it would be desirable to have such a pedestrian/cycle connection into the adjoining 'Mountain View' estate. Otherwise, the scheme had limited permeability and will be very car orientated and cut off from the Marlfield Settlement area, with pedestrian/cyclist access only being by the vehicular entrance from Marlfield Road. In this respect I note condition 2(a) of the Council's permission. I would recommend that if the Board decides to permit that it be conditioned that

details incorporating pedestrian permeability to the Settlement of Marlfield be included in a revised Site Layout Plan, to be submitted for the written agreement of the Planning Authority.

7.8. Special Development Contribution

7.8.1. Condition no.20 of the Council's permission provides for a special contribution of €17,000 towards the cost for to the provision of the required footpath works and a zebra crossing on the public road. The Council has itemised the works required for the pedestrian have been calculated as follows:

- Footpath works to include excavation and backfilling to facilitate ESB connection: €3,000
- ESB fee: €1,000
- Zebra crossing: €13,000

7.8.2. Regard is had to Section 7.12 of the Development Management Guidelines. This includes that 'special' contribution requirements of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. This includes: *A condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.*

7.8.3. In this case I would consider that it has been demonstrated by the Council that such a special contribution condition is appropriate, and if the Board decides to permit. I would recommend that it be included.

7.9. Drainage issues

7.9.1. Reference is had to Planning Policy including 15-7 and Planning Objective 15-C of Volume 1 of the current Tipperary CDP. Policy 15.7 seeks to: *Require all new*

development to provide a separate foul and surface water management system and to incorporate nature-based water sensitive urban design, where appropriate, in new development and the public realm. Planning Objective 15 C seeks to: Provide additional and improved surface water networks to both reduce pollution and support sustainable development.

- 7.9.2. A Civil Utilities Planning Report has been submitted by MWP Engineering and Environmental Consultants, on behalf of the applicants, and updated in the F.I response. The site is to be served by the public water supply and wastewater network. It is proposed to connect the development to the existing watermain in the public road. It is noted that revisions to drainage plans have been submitted as part of the F.I. submission. The proposed development is to be served by a gravity system which drains to a public sewer system along Marlfield Road. This includes that the layout of the gravity system in the site has been designed to allow for the system to operate within the current phase alone and adapt easily for future expansion. An indicative maintenance plan for the sewer system for this project is provided.
- 7.9.3. Having regard to storm water, it is proposed to install a new storm water sewer system within the estate with the integration of SuDS measures throughout the site. They provide that the layout of the site leads itself towards the implementation of SuDs measures. Large green areas provide infiltration areas which allow surface water to infiltrate naturally. Stormwater design for the site has utilised this design. That the discharge rates will mimic greenfield run off flows for the site. That the design has been completed taking cognisance of the Greater Dublin Strategic Drainage Strategy and the Tipperary CDP. Details of the storm drainage proposals are included on the planning drawings showing the proposed site services.
- 7.9.4. Details are given of SuDS management measures, these include that the site has been divided into sub-catchments, each catchment manages its own individual run off. It is submitted that they are designed so that they act individually with the current phase and integrate with future phases. Bioretention Raingardens are proposed to the south of the developable site along the access road and details are given in the Utilities Report of the workings of these. Other SuDS measures include Dry Swales, Infiltration Basins, Rip-rap Apron for outlets of the storm drainage, and the creation of natural habitat areas for natural wildlife.

- 7.9.5. It is provided that the revised surface water drainage system aims to deliver the four pillars of SuDS design – water quantity, water quality, biodiversity and amenity. Surface water runoff will be managed on the site through a combination of hard and soft engineering solutions. A tradition of storm network of gullies and pipe system with the integration of two infiltration basins have been proposed for the hard engineering solutions. This system will be aided with the use of soft engineering solutions such as swales, filter drains, bioretention raingardens and the infiltration basin. These features allow for attenuation of the excess surface water during rainfall events. That the proposed drainage system aims to treat surface water runoff to prevent negative impacts on the development's biodiversity and any receiving waters and details are given of proposals to implement this. That a figure of 20 percent climate change factor has been adopted for the overall design.
- 7.9.6. It was originally submitted that the use of a hydro break has been incorporated into the main stormwater design combined with a storm attenuation tank system, the use of this system limits the storm flow out of the site to less the 2 litres a second. That the combination of these measures helps to reduce the overall green field runoff rate from the site. Interception storage to be provided within the swales, bioretention raingardens and filter drains will provide a level of interception storage, they have not been considered in the volume of interception storage provided within the infiltration basin and the soak ways.
- 7.9.7. The Council's F.I request noted that the pre-connections correspondence with Irish Water includes reference to a 100 unit scheme. They asked the applicant for clarification on this. In addition, they noted that the pre connection enquiry notes that an extension of 300 metres will be required to the foul network in the area to accommodate the development proposed. They ask for clarity that any such extension will not necessitate the provision of works on private lands.
- 7.9.8. The Council's District Engineer requested design figures to justify the proposed SW design. They noted that the F.I document provides that infiltration tests have been completed with positive results. That these figures and calculations should be provided to confirm the adequacy of the proposed design. MWP C.F.I Civil Utilities Report response notes that details of the storm drainage proposals are included on the planning drawings showing proposed site services in Appendix C. An indicative maintenance plan for the sewer system for this project is provided in Appendix D.

Furthermore, that infiltration testing results for the site have been provided in Appendix H in accordance with BRE 365 and design calculations in relation to SuDs measures have been provided in Appendix I.

7.9.9. MWP Consultants noted that the extent of the extension works to the existing public sewer will be carried out by Irish Water within the boundaries of the existing public road infrastructure. The applicant's F.I response refers to the attached response from WP setting out the basis of the IW pre connections enquiry. They provide that there will not be any requirement for works on third party lands in order to facilitate any required extension of the foul network. Also, they note that the surface water system does not rely on attenuation and the requirement for a Hydrobrake has been removed. That the Utilities Report has been revised to provide design calculations which fully justify the proposed surface water infiltration design.

7.9.10. It is also of note that a Maintenance Plan and Schedule for Storm Drainage Infrastructure by MWP Consultants has been submitted as part of the F.I response. The document outlines the design intent for the plan and schedule for the future maintenance of the site drainage infrastructure to mitigate against the risk of flooding on the public road and the site in the interest of amenity and traffic safety.

Flood Risk Assessment

7.9.11. The submissions made note concerns about the impact of the proposed development and flooding issues on the Marlfield Road, which is on a lower level than the site. The site in view of its upland topography is not subject to flooding, but the concern is that the hard surfaces and surface water runoff from the proposed development on this site, will add to flood risk along the Marlfield Road frontage. The FRA includes regard to Recorded Flood Events along the Marlfield Road, the closest single event occurred in Marlfield Village approx. 500m southwest of the site. It notes that the site appears not to have been affected by this flood event.

7.9.12. The Settlement Plan for the village of Marlfield includes that the SFRA has identified that some lands within the village are prone to flooding. *In respect of lands which are liable to flood risk, the Council will require any proposed developments to comply with "The Planning System and Flood Risk Management Guidelines for Planning Authorities (DEHLG, 2009) and any amendment thereof. The Council having regard*

to the nature and scope of development, may require the submission of Flood Risk Assessments, as appropriate, to assess the suitability of development proposals.

Objective SO6 seeks: *To require the submission of Flood Impact Statements, as appropriate, in respect of lands which are liable to flood.*

- 7.9.13. A Flood Risk Assessment has been submitted with the application and as part of the F.I submission. This has been prepared in the context of The Planning System and Flood Risk Management Guidelines for Planning Authorities 2009. The FRA notes that the site is located approximately 350m north-west of the River Suir. It is currently greenfield and existing ground levels in the vicinity of the site vary from approx. 63.75m AOD in the north to 49.74m AOD in the southwest. That the finished floor levels on the site vary from 62.455m to 55.2m. The FRA includes that the OPW Map shows the site being outside the extent of the 0.1% AEP fluvial flood event shown in Figure 3.1. The topography shows a minimum site elevation of 49.7m which is over 28m higher than the predicted levels. Given the distance from the coast, coastal flooding does not occur.
- 7.9.14. The FRA provides that any risk from pluvial flooding can be addressed by designing the storm system in accordance with best practice guidelines using SuDS which will replicate the greenfield scenario insofar as practicable. That appropriately sized pipes and drainage should be provided to prevent flooding within the site and an attenuation system should be incorporated to prevent an increased risk of flooding downstream of the site. It is recommended that the finished floor levels be 150mm above adjacent ground level to minimise risk of surface water ingress. Also, that the stormwater drainage to cater for the rainfall run off within the site be in accordance with the Development Plan.
- 7.9.15. Groundwater flooding occurs when the water table rises to the level of the ground surface due to rainfall and flows out over the surface. The Groundwater Flooding Data Viewer by the GSI do not show any ground water flood risk areas in the vicinity of the site.
- 7.9.16. In response to the Council's CFI request the applicant provided details on surface water drainage and note concerns about historic flooding at the Old Laundry, Marlfield Village. They provide that the Surface Water Management proposals for the development site are very comprehensive consisting of a detailed SuDS,

incorporating bioretention raingardens, swales, and infiltration basins. That infiltration testing on the site verifies that the system as designed will not increase the rainwater runoff from this site. That any drainage/storm water management issues at the Old Laundry can be addressed locally and are beyond the scope or impact of the proposed development.

7.9.17. The OPW flood zoning maps indicate that the site is outside Flood Zones A and B. The FRA provides that proposed type of development is appropriate for this Flood Zone and therefore a justification test is not required.

7.10. Screening for Appropriate Assessment

7.10.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000, as amended.

7.10.2. The subject site is located approx. 350m to the north of the Lower River Suir SAC (Site Code 002137).

7.10.3. The proposed development comprises the construction of 49no. dwellings together with all ancillary works, located on serviced lands within the Marfield Settlement boundary.

7.10.4. No nature conservation concerns were raised in the planning appeal.

7.10.5. No streams/watercourses are identified on site.

7.10.6. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European site. The reason for this conclusion is as follows:

- The nature of the works proposed which are located on serviced lands.
- The distance to the nearest European sites, and the absence of any hydrological or other pathways.

I conclude on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000, as amended, is not required.

8.0 Recommendation

I recommend that permission be granted for the proposed development subject to the conditions below.

9.0 Reasons and Considerations

Having regard to the provisions of the Tipperary County Development Plan 2022-2028, to the locational context of the site within the Settlement of Marlfield, proximate to but outside the boundaries of the Clonmel and Environs Local Area Plan 2024-2030, to the nature of the proposed development and to the pattern of development in the surrounds, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or the amenities of property in the vicinity and would constitute an acceptable form of development at this location. The proposed development, would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 14th and 15th of December 2022, and the 26th of January 2023 and as amended by further plans and particulars submitted on the 14th and 16th of June 2023 and the 28th of July 2023 by the clarification of further information submitted on the 28th of July 2023, and by the further plans and particulars received by An Bord Pleanála on the 19th of September 2023 and the 18th of October 2023 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning

authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interests of clarity.

2. As shown on the Site Plan – Block Plan submitted on the 14th of June 2023 (drawing no. P02 2214), this permission relates to the provision of 49 units and ancillary works.

Reason: In the interests of clarity.

3. Prior to the commencement of development, the developer shall submit details of the following for the written agreement of the planning authority:
 - (a) A revised layout providing for the reinstatement of the proposed pedestrian connection to the open space of Mountainview estate to the west. The amendments to show that this path be provided at the end of the cul-de-sac between units 45 and 46.
 - (b) Details of the materials, colours and textures of all the external finishes to the proposed development.
 - (c) All bathroom windows shall be obscure glazed.
 - (d) Revised elevations and roof plans for House type FI (units 1 and 2) ensuring consistency between the roof plan and the elevation.

Reason: In the interests of residential amenity.

4. The site including the areas of open space shown on the approved plans shall be landscaped in accordance with a landscape scheme which shall be agreed in writing with the planning authority prior to the commencement of development. The landscape scheme shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs which die or are removed within three years of planting shall be replaced in the first planting season thereafter. This work shall be completed before any of the dwellings are made available for occupation.

Reason: In order to ensure the satisfactory development of the open space areas, and their continued use for this purpose.

5. (a) Final details of all proposed site boundary treatments and retaining walls shall be agreed in writing with the planning authority prior to the commencement of development.

(b) The finish of boundary wall B-08, as illustrated on the Proposed Boundary Treatment Plan (14/06/23), shall be amended with a stone finish applied to the public facing sides.

Reason: In the interest of visual and residential amenities.

6. The access from the public road, pedestrian crossing and internal road and vehicular circulation network serving the proposed development, including turning bays, parking areas, footpaths and kerbs, signage and traffic calming measures, shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in the Design Manual for Urban Roads and Streets (DMURS), issued by the Department of the Environment, Community and Local Government in March 2019, as amended. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of amenity and of traffic and pedestrian safety.

7. The development shall be carried out on a phased basis, in accordance with a phasing scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any development.

Reason: To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

8. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

9. The developer shall enter into water supply and wastewater connection agreements with Irish Water, prior to commencement of development. A Confirmation of Feasibility for connection to the Irish Water network shall be submitted to the planning authority prior to the commencement of development.

Reason: In the interest of public health.

10. Public lighting shall be provided in accordance with a final scheme to reflect the indicative details in the submitted Public Lighting Report, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting.

Such lighting shall be provided prior to the making available for occupation of any residential unit.

Reason: In the interests of amenity and public safety.

11. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

12. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

13. A management plan for the control of alien invasive species, including a monitoring programme, shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity and to prevent the spread of alien plant species.

14. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management

company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

15. The construction of the development shall be managed in accordance with a Construction Environment Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of the intended construction practice for the proposed development, including measures for the protection of existing residential development, hours of working, traffic management during the construction phase, noise and dust management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

16. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each unit shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

17. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness, these details

shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of sustainable waste management.

18. Site development and building works shall be carried only out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 hours to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

19. Prior to commencement of development, the developer or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

20. (a) Prior to the commencement of any house in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house), pursuant to Section 47 of the Planning

and Development Act 2000, that restricts all houses permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

- (b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated, to the satisfaction of the planning authority, that it has not been possible to transact each specified house or duplex unit for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified residential units, in which case the planning authority shall confirm in writing to the developer or any person with an interest in the land, that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good in accordance with the 'Regulation of Commercial Institutional Investment in Housing Guidelines for Planning Authorities', May 2021.

21. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
 - (b) employ a suitably-qualified archaeologist prior to the commencement of

development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

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

22. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

23. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and

Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

24. The developer shall pay a financial contribution of €17,000 euro to the planning authority as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of footpath works and zebra crossing on the public road, which benefits the proposed development. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.

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

Angela Brereton
Planning Inspector

9th of August 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-318058-23		
Proposed Development Summary	Construction of 49 no. residential units, new vehicular and pedestrian entrance, together with all roads and services and ancillary works.		
Development Address	Inishlounaght, Marlfield, Clonmel, Co. Tipperary		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	✓		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No		N/A	No EIAR or Preliminary Examination required
Yes	✓	Class/Threshold.....	Proceed to Q.4

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

Inspector: _____ Date: _____

Appendix 2 - Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-318053-23	
Proposed Development Summary	Construction of 49 no. residential units, new vehicular and pedestrian entrance, together with all roads and services and ancillary works. Inishlounaght, Marlfield, Clonmel, Co. Tipperary	
Development Address	Inishlounaght, Marlfield, Clonmel, Co. Tipperary	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The proposed development to include 49 units (stated area 4.58ha) is within the Marlfield Settlement boundaries Tipperary County Development Plan 2022-2028 ('Local Service Centre' Settlement Plan no. 27, Volume 2 of the CDP relates).</p> <p>The proposed development is to connect to public services. As per the documentation submitted, including regard to Construction Management it will not result in significant emissions or pollutants.</p>	<p>No</p> <p>No</p>
<p>Size of the Development</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>This proposal is for the construction of 49 units (stated area 4.58ha) and is well below the threshold of 500 units and below 10ha as per Class 10(b) of Schedule 5 of Part 2 of the Planning and Development Regulations 2001 (as amended).</p> <p>Please refer to the Planning History Section of this Report. No significant cumulative considerations</p>	<p>No</p> <p>No</p>
<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the</p>	Residential Development on serviced site on zoned lands within the Settlement of Marlfield and the proposal includes regard to surface water drainage and the incorporation of SuDS. A Flood Risk Assessment has been submitted and the Justification Test is not	No

<p>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>required as the site is not with Flood Risk zones A and B.</p> <p>The proposal includes the implementation of SuDS in surface water drainage. This has been assessed in the documentation and shown on the drawings submitted, and it is concluded that it will not have a significant effect.</p>	<p>No</p>
<p>Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required</p>	<p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p> <p>Schedule 7A information required to enable a Screening Determination to be carried out.</p>	<p>There is a real likelihood of significant effects on the environment.</p> <p>EIAR required.</p>

Inspector: _____ **Date:** _____

DP/ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)