



An
Bord
Pleanála

Inspector's Report ABP-318346-23

Development	96 houses for the elderly, crèche and 5 a side football pitch
Location	Brallistown, Athy Road, Kildare, County Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	23/60110
Applicant(s)	Colbid Investment Holdings Limited.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v Refusal
Appellant(s)	Colbid Investment Holdings Limited.
Observer(s)	Anne Heffernan.
Date of Site Inspection	23 rd October 2024
Inspector	Susan McHugh

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1.0 Site Location and Description

- 1.1. The site is located within the townland of Brallistown in a rural area approx. 2.2 km by road southwest of Market Square, at the centre of Kildare Town, County Kildare.
- 1.2. The entrance to the appeal site is approx. 1.2 km south of Junction 13 on the M7 Motorway. Junction 13 is a very busy junction which serves Kildare Town and Kildare Tourist Village Outlet to the North and the R415 (Kildare / Athy Road) to the south.
- 1.3. The appeal site is accessed via an existing entrance and wayleave serving an existing nursing home off the R415. The R415 (Kildare / Athy Road) is a heavily trafficked road, along which a speed limit of 60 km/hr applies. The appeal site includes a linear section of road along the R415 which extends northwards to the L7024 Newtown Cross-Mooretown Cross.
- 1.4. The L7024 Crossroads with the R415 is located approx. 0.5 km to the north of the proposed entrance to the appeal site. The L7024 which runs east/west effectively delineates the southern development boundary for Kildare Town. The L7024 and northwards along the R415 are provided with existing footpaths.
- 1.5. The appeal site is bounded to the north, east and south by agricultural land, with the Lourdesville nursing home located directly to the south and west of the site. The area to the north and west of the appeal site is characterised by one off rural bungalows which have vehicular access/egress directly onto the R415. The existing house to the northwest which adjoins the site is home to the observer in the appeal.
- 1.6. A mature hedgerow defines the north and eastern boundaries and part of the southern boundary. There is also a hedgerow that traverses the site from north to south. There is an agricultural access that runs along part of the southern boundary of the site that provides access to a farmyard.
- 1.7. The site is relatively flat and is currently in agricultural use. It has a stated site area of 4.778ha.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of 96 no. houses for the elderly, crèche & 5 a side football pitch.
- 2.2. The housing units consist of 2-bedroom semi-detached single storey bungalows. Each house is provided with a private rear garden and either in curtilage car parking or immediately adjacent.
- 2.3. Four main areas of open space are proposed within the development. These are located inside the entrance to the north which has a stated areas of 2,576sqm, and area to the south of main entrance 1,157.2sqm, a central area of 2,576 in front of the crèche, another area with a stated area of 1,468.5sqm. Total area 7,777.7sqm.
- 2.4. The single storey crèche has a stated area of 468sq.m. and includes 4no. classrooms, W.C.'s, sleep room, staff room, central kitchen, reception, office, store, an associated outdoor play area (1,030sq.m.). It includes building mounted signage (1.8sq.m.), and boundary treatments. There is provision for 30 no. car parking spaces (inclusive of 3 no. accessible parking spaces) and set down area, covered bicycle stands and outdoor bin storage.
- 2.5. One no. 5 aside football pitch measuring 36.5m x 27.5m, with 6 no. 18m high training lights and poles, and associated fencing and ball stop netting is proposed. This will include a 2m wide hard standing looped walkway around the perimeter of pitch, coach set down area, and 15no. car parking spaces and covered bicycle stands.
- 2.6. A single storey administration building with a stated area of 63.8sq.m. to include 2no. offices and W.C. is proposed to be located to the south of the football pitch.
- 2.7. The proposal includes all associated drainage connection works and site development works including ESB substation and switch room.
- 2.8. A foul pumping station is proposed in the southeastern corner of the development, and development includes foul and surface water drainage, landscaping, path lighting and boundary treatments.
- 2.9. The application was accompanied by the following
 - Architectural Design Statement
 - Letter of consent from applicant

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to **refuse** permission for the above-described development for five no. reasons.

1. The Community and Educational zoning of the site seeks to protect and provide for the development of community and educational facilities such as local civic, religious, community and educational facilities including schools, churches, meeting halls, healthcare, childcare, courthouse and other community facilities. Dwelling units are not permitted under this zoning as outlined in the Land Use Zoning Matrix Table 15 of the Kildare Town Local Area Plan 2012-2018. The proposed 96 no. dwelling units for the elderly would materially contravene this zoning objective of the Kildare Town Local Area Plan 2012-2018. The proposed development is therefore considered to be contrary to the proper planning and sustainable development of the area.
2. Section 6.4 of the National Planning Framework seeks to facilitate housing for elderly persons within communities close to existing services and facilities. Additionally, Section 3.11.1 of the Kildare County Development Plan 2023-2029 outlines the importance of appropriately located residential accommodation for the elderly close to public transport, community facilities, retail and other amenities. Objectives HO O21 and HO O22 of the Kildare County Development Plan 2023-2029 requires residential accommodation for the elderly to be in a central, accessible, convenient location within communities. The application site is a significant remove from Kildare town with no proposal to include a footpath or cycle path into the town would be contrary to the aforementioned sections and objectives within the Kildare County development Plan 2023-2029 and Section 6.4 of the National Planning Framework. The proposed development is therefore considered to be contrary to the proper planning and sustainable development of the area.
3. Having regard to the remote location of the application site from Kildare town, at a remove from the community that will use the proposed crèche and five a-side pitch, the proposed development is considered to be highly inappropriate

and would contravene, NPO 13 of the National Planning Framework which seeks to accommodate childcare facilities in well located sites within or close to existing built up areas, policies SC P2 & SC P13 and objectives SC 09, SC 073, SC 078 & SC 08 and sections 15.6.1 & 15.6.5 of the Kildare County Development Plan 2023-2029 and policy HP 12 and objective C O1 Kildare Town Local Area Plan 2012-2018 which all seek to accommodate childcare facilities and community infrastructure/open spaces in accessible and appropriate locations, in well-connected areas, in the vicinity of new and existing residential development, close to communities and proximate to existing/planned communities that are linked by cycle/pedestrian infrastructure. The proposed development is therefore considered to be contrary to the proper planning and sustainable development of the area.

4. Having regard to the rural location of the application site at a remove from Kildare town, where the proposed development is highly dependent on the use of private car and in the absence of any proposed infrastructure element to support a modal shift from the private car, the proposed development would contravene policies TM P1 & TM P2 of the Kildare County Development Plan 2023-2029 which seek to promote and prioritise sustainable development through facilitating walking, cycling and public transport. Having regard to the foregoing, the proposed development would therefore, be contrary to the proper planning and sustainable development of the area.
5. Due to the rural location of the site where there are no measures to segregate Vulnerable Road Users (VRUs), limit speed and collision severity along the regional road the R415 and due to the lack of footpath and cycle path infrastructure proposed as part of the development, the proposed development would endanger public safety by reason of a traffic hazard and would, therefore, be contrary to the proper planning and sustainable development of the area.
6. Having regard to Policy UD O1 of the Kildare County Development Plan 2023-2029 which requires a high standard of urban design to be integrated into the design and layout of new developments and Section 15.4.5 of the Kildare County Development Plan 2023-2029 which requires proposals for residential development to fully address the 12 Criteria for sustainable residential

development as outlined in the Urban Design Manual – A Best Practice Guide (DoEHLG, 2009). The proposed development particularly in relation to the poor layout dominated by the internal road network with a multiplicity of cul de sacs and the poor location of the 5 a-side pitch and crèche, the poor design and material choice for residential units and other structures on site, the lack of any landscape plan and the lack of any distinctiveness does not meet the requirements of the 12 Criteria for sustainable residential development as outlined in the Urban Design Manual – A Best Practice Guide (DoEHLG, 2009). The proposed development would set an undesirable precedent for similar poor-quality developments in the County and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report - dated 3rd October 2023

Basis for planning authority decision. Include;

- *Principle of development* - Proposed uses acceptable within the Kildare Local Area Plan 2012-2018 with the exception of residential units, proposed dwelling units for the elderly would contravene this zoning objective which seeks to protect and provide for community and educational facilities.
- Site is at a significant remove from Kildare town with no proposal to include a footpath or cycle path into the town would be to the detriment of the intended occupants and is therefore not considered to be an appropriate location.
- Note remote location of site from the town, at a remove from the community, that is beneficial to the social needs of elderly persons, and that will use the crèche, five a-side pitch and with no infrastructure element to support a modal shift, the proposed development is considered to be highly inappropriate and would contravene the policies, objectives and sections of the Kildare CDP 2023-2029 and the NPF.
- *Legal Interest* - Part of the site extends along the regional road but no letter of consent from the Transportation section of Kildare County Council has been included. Part of the site is included as a connection to the existing watermain

at the crossroads with the Nurney /Athy Road and the Kildangan Road, and a connection to the foul sewer is also proposed to the northwest of the site.

- *Design /Layout:* The poor-quality design and layout of the development does not accord with the 12 Criteria for sustainable residential development as outlined in the Urban Design Manual – A Best Practice Guide (DoEHLG, 2009)
- *Water/ Wastewater Treatment* - A new connection to the public mains is proposed for water supply. The wastewater is to be dealt with via the public sewer. The surface water is dealt with via a public sewer/drain-
- *Access* - Site is to be accessed off the R415m via a wayleave which services the existing nursing home. There is no public footpath or cycle path along the R415 (Athy/Nurney road) at this location. Proposed development will be heavily reliant on the private car to access the site.
- Given the rural location of the site and lack of any proposed for additional infrastructure to facilitate a modal shift from the private car, such as a footpath & cycle path, the proposed development is considered to ignore more sustainable modes of transport such a walking and cycling.
- Proposed development is considered to be highly inappropriate and would endanger public safety by reason of a traffic hazard and would contravene the National Planning Framework, the Kildare County Development Plan 2023-2029.

3.2.2. Other Technical Reports

- **Transport and Mobility Department:** Report dated 20/09/2023 recommends **refusal**. The report refers to the proposed development as premature pending major connecting infrastructure to Kildare Town. Concern is also raised regarding the remote location of the application site from the town, the residential community that will use development with no cycle tracks or footpaths to support a modal shift. There is a consequential risk to vulnerable road users (VRUs) of injury from collisions.

- **Municipal District Engineer:** Report dated 06/09/2023 recommends **further information**, in relation to the detailed design of the section of road between the proposed development and the L7024 to DMURS Standards.
- **National Roads Office (NRO):** Report dated 14/09/2023 recommends **further information** and sought a Traffic Impact Assessment and Noise Impact Assessment.
- **Water Services:** Report dated 30/08/2023 recommends **further information** in relation to a Drainage SuDS Strategy, where the proposed developments will be put forward for taking in charge, a Stage 1 Stormwater Drainage Design Audit 4, a receiving network analysis for the existing Surface water drain to which it is proposed to discharge, and a site-specific Flood Risk Assessment (SSFRA)
- **Environment Report:** Report dated 07/09/2023 recommends no objection subject to requirements in relation to Construction and Demolition Resource Waste Management Plan (RWMP), foul sewage and soiled water discharge, surface water, noise control and operational waste management plan (OWMP).
- **Chief Fire Officer:** Report dated 12/09/2023 recommends **further information** in respect of turning facilities for emergency vehicles and an auto-track analysis.
- **Building and Development Control:** Report dated 12/09/2023 recommends no objection subject to requirements.

The application was circulated to the Heritage Officer, Parks, and Strategic Projects and Public Realm (SPPR) but no reports were received.

3.3. Prescribed Bodies

- **Irish Water / Uisce Eireann:** Report dated 03/10/2023 recommends further information. Report notes that a Pre-Connection Enquiry has been issued to Uisce Eireann outlining the applicant's proposals to connect to the Public Water and Wastewater network. Recommends that an Uisce Eireann

Confirmation of Feasibility for the proposed network connections be submitted.

- **Transport Infrastructure Ireland (TII):** Report dated 03/10/2023 notes that the development is at variance with official policy in relation to control of development on/affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012), as the proposed development by itself, or by the precedent which a grant of permission for it would set, would adversely affect the operation and safety of the national road network.
- **Health and Safety Authority (HSA):** Report dated 25/08/2023 recommends no observations.

The application was circulated by the PA to Inland Fisheries (IF), ESB Networks, Health Service Executive (HSE), and Environmental Health Officer (EHO) but no reports were received.

3.4. Third Party Observations

One no. submission was received by the Planning Authority from the observer in the current appeal. Issues raised are similar to those raised in the observation and are summarised in Section 6.3 below.

4.0 Planning History

Concurrent Application

PA Reg. Ref. 23/60026: Permission was **refused** 01/09/2023 for the construction of the following;

- (i) single storey crèche (467sq.m.) to include 4no. classrooms, W.C.'s, sleep room, staff room, central kitchen, reception, office, store, an associated outdoor play area (2,724sq.m.), building mounted signage (1.8sq.m.), boundary treatments, 67 no. car parking spaces (inclusive of 6 no. accessible parking spaces) and set down area, covered bicycle stands and outdoor bin storage,

- (ii) 1 no. 140m x 80m all-weather GAA pitch, 6 no. 18m high training lights and poles, all fencing and ball stop netting, 2m wide hard standing looped walkway around the perimeter of pitch and covered bicycle stands
- (iii) 1no. single storey male and female changing room building (108sq.m.),
- (iv) bespoke park (9,766sq.m.) to include soft and hard landscaping area, outdoor seating area (179sq.m), playground area (775sq.m), ecology garden (477sq.m), butterfly garden (479sq.m), sensory garden (718sq.m), sensory play area (335sq.m.),
- (v) coach car park (763sq.m.) to facilitate 2no. 52-seater coaches and 2no. mini coaches and all associated drainage connection works and site development works including ESB substation and switch room, foul and surface water drainage, landscaping, path lighting and boundary treatments, all at Brallistown, Athy Road, Kildare, Co. Kildare

Reasons for refusal included the following;

1. Having regard to the remote location of the application site from Kildare town, at a remove from the community that will use the proposed crèche, the GAA pitch and the park, the proposed development is considered to be highly inappropriate and would contravene, NPO13 of the National Planning Framework which seeks to accommodate childcare facilities in well located sites within or close to existing built up areas, policies SCP2 & SCP13 and objectives SC09, SC073, SC078 & SC08 and sections 15.61 & 15.6.5 of the Kildare County Development Plan 2023-2029 and policy HP12 and objective CO1 Kildare Town Local Area Plan 2012-2018 which all seek to accommodate childcare facilities and community infrastructure/parks/open spaces in accessible and appropriate locations, in well-connected areas, in the vicinity of new and existing residential development, close to communities and proximate to existing/planned communities that are linked by cycle/pedestrian infrastructure. The proposed development is therefore considered to be contrary to the proper planning and sustainable development of the area.

2. Having regard to the rural location of the application site at a remove from Kildare town, where the proposed development is highly dependent on the use of private car and in the absence of any proposed infrastructure element to support a modal shift from the private car, the proposed development would contravene policies TM P1 &

TM P2 of the Kildare County Development Plan 2023-2029 which seek to promote and prioritise sustainable development through facilitating walking, cycling and public transport. Having regard to the foregoing, the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Due to the rural location of the site, where there are no measures to segregate Vulnerable Road Users (VRUs), limit speed and collision severity along the regional road the R415 and due to the lack of footpath and cycle path infrastructure proposed as part of the development, the proposed development would endanger public safety by reason of a traffic hazard and would, therefore, be contrary to the proper planning and sustainable development of the area.

The planning decision of the PA was not appealed to the Board. The applicant Colbid Investment Holdings Limited is the same as in the current First Party appeal to the Board.

Lapsed Permissions

PA Reg. Ref 06/1448: Permission **granted** 07/09/2007 for 64 no single storey two-bedroom retirement homes (four no detached and sixty units as semi-detached) together with a 163 sq m single storey day care centre, a provision of 131 car parking spaces, access to existing site entrance from public road at Brallistown, Athy Rd, Kildare, for Seamus Brennan.

PA Reg.Ref. 15/770: Permission **granted** 19/10/2015 for Extension of Duration for Planning Ref. No. 09/1385 at Lourdesville Nursing Home, Brallistown Commons, Athy Road, Kildare, Co Kildare, for Shay Brennan.

PA Reg.Ref. 09/1385: Permission **granted** 13/10/2010 for an extension (measuring 3,924.64sq.m.) to the existing nursing home (measuring 1,212.81sq.m.) consisting of 64 single bedrooms with en suite facilities, day rooms, dining areas, new kitchen and food preparation area, oratory, equipment storage rooms, and all ancillary related rooms, car parking and all necessary associated site development works and also modifications and alterations to existing Lourdesville Nursing Home at Lourdesville Nursing Home, Brallistown Commons, Athy Road, Kildare, Co Kildare, for Shay Brennan.

5.0 Policy Context

5.1. National Policy

5.1.1. Project Ireland 2040 - National Planning Framework (NPF)

National Strategic Outcome 1 - Compact Growth

‘Carefully managing the sustainable growth of compact cities, towns and villages will add value and create more attractive places in which people can live and work. All our urban settlements contain many potential development areas, centrally located and frequently publicly owned, that are suitable and capable of re-use to provide housing, jobs, amenities and services, but which need a streamlined and co-ordinated approach to their development, with investment in enabling infrastructure and supporting amenities, to realise their potential. Activating these strategic areas and achieving effective density and consolidation, rather than more sprawl of urban development, is a top priority.’

National Strategic Outcome 4 - Sustainable Mobility

‘In line with Ireland’s Climate Change mitigation plan, we need to progressively electrify our mobility systems moving away from polluting and carbon intensive propulsion systems to new technologies such as electric vehicles and introduction of electric and hybrid traction systems for public transport fleets, such that by 2040 our cities and towns will enjoy a cleaner, quieter environment free of combustion engine driven transport systems.’

National Strategic Outcome 8 - Transition to a Low Carbon and Climate Resilient Society

‘The National Climate Policy Position establishes the national objective of achieving transition to a competitive, low carbon, climate-resilient and environmentally sustainable economy by 2050. This objective will shape investment choices over the coming decades in line with the National Mitigation Plan and the National Adaptation Framework. New energy systems and transmission grids will be necessary for a more distributed, renewables-focused energy generation system, harnessing both the considerable on-shore and off-shore potential from energy sources such as wind,

wave and solar and connecting the richest sources of that energy to the major sources of demand.'

Section 2.6 Securing Compact and Sustainable Growth

'The physical format of urban development in Ireland is one of our greatest national development challenges. Analysis undertaken in the preparation of the National Planning Framework, shows that more than anything else, getting the physical form and location of future development right offers the best prospects for unlocking regional potential.

Presently, the fastest growing areas are at the edges of and outside our cities and towns, meaning:

A constant process of infrastructure and services catch-up in building new roads, new schools, services and amenities and a struggle to bring jobs and homes together, meaning that there are remarkably high levels of car dependence and that it is difficult to provide good public transport;

A gradual process of run-down of city and town centre and established suburban areas as jobs, retail and housing move out, leaving behind declining school enrolments, empty buildings and a lack of sufficient people to create strong and vibrant places, both day and night;

That most development takes the form of greenfield sprawl that extends the physical footprint of our urban areas, and when it is the principal form of development, works against the creation of attractive, liveable, high quality urban places in which people are increasingly wishing to live, work and invest, and

A significantly higher carbon footprint than the EU average, in part due to higher transport and energy demand, mostly based on fossil fuels, that has worked against achieving agreed climate action targets.

A preferred approach would be compact development that focuses on reusing previously developed, 'brownfield' land, building up infill sites, which may not have been built on before and either reusing or redeveloping existing sites and buildings.

An increase in the proportion of more compact forms of growth in the development of settlements of all sizes, from the largest city to the smallest village, has the potential to make a transformational difference. It can bring new life and footfall, contribute to

the viability of services, shops and public transport, increase housing supply and enable more people to be closer to employment and recreational opportunities, as well as to walk or cycle more and use the car less.

Along with transport demand, higher densities and shorter travel distances will also reduce energy demand and use. Multi-storey and terraced buildings in close proximity require less energy and make renewables-based systems of energy distribution such as district heating, more feasible.

Creating more compact development in Ireland has been traditionally more difficult to achieve than a continuous process of pushing development outwards, towards 'greenfield' locations and requires focus on four key areas:

1 The 'liveability' or quality of life of urban places – how people experience living in cities, towns and villages. This includes the quality of the built environment, including the public realm, traffic and parking issues, access to amenities and public transport and a sense of personal safety and well-being;

2 Making the continuous regeneration and development of existing built-up areas as attractive and as viable as greenfield development. This requires greater certainty and cost equalisation as a result of a steady supply of sites and land and investment in infrastructure and amenities through more active land management in urban areas;

3 Tackling legacies such as concentrations of disadvantage in central urban areas through holistic social as well as physical regeneration and by encouraging more mixed tenure and integrated communities;

4 Linking regeneration and redevelopment initiatives to climate action, to support a reduced carbon footprint through greater energy efficiency and use of renewables.

In the long term, meeting Ireland's development needs in housing, employment, services and amenities on mainly greenfield locations will cost at least twice that of a compact growth-based approach. Accordingly, subject to implementation of sustainable planning and environmental principles, the National Planning Framework sets the following urban development targets:

Section 6.4 Age Friendly Communities

Older People

‘ESRI projections indicate that the number of people aged over 65 will more than double to 1.3 million people by 2040 making up approximately 23% of the population. This compares to 13.5% in 2016. In addition, it is expected that the population aged over 85 will quadruple.’

‘Government policy is to support older people to live with dignity and independence in their own homes and communities for as long as possible. In providing a more seamless and appropriate continuum of housing choices with appropriate supports for older people and a built environment that is attractive, accessible and safe, older people will be supported and motivated to enjoy more active, healthy and connected lives and to age confidently and comfortably in their community.’

‘This further reinforces the need for well-designed lifetime adaptable infill and brownfield development close to existing services and facilities, supported by universal design and improved urban amenities, including public spaces and parks as well as direct and accessible walking routes.’

‘The provision of such accommodation can provide opportunities for older people to downsize from larger houses within their existing communities. This may be integrated with more supportive communal and specialist care accommodation that will be required by some older people.’

The ‘Age Friendly Ireland’ Initiative provides leadership and guidance in identifying the needs and opportunities of an ageing population and is embedded within the local government system, which, with support from Government, is the best placed to respond to change at a local level.

National Policy Objective 30

Local planning housing, transport/accessibility and leisure policies will be developed with a focus on meeting the needs and opportunities of an ageing population along with the inclusion of specific projections supported by clear proposals in respect of ageing communities as part of core strategy of city and county development plans.

Section 6.5 Childcare, Education and Life Long Learning

National Policy Objective 31

Prioritise the alignment of targeted and planned population and employment growth with investment in:

- The provision of childcare facilities and new and refurbished schools on well-located sites within or close to existing built-up areas, that meet the diverse needs of local populations;

5.2. The Climate Action Plan 2024

The Government of Ireland's Climate Action Plan was published in June 2019 by the Department of Communications, Climate Action and Environment. The Climate Action Plan 2024 (CAP24) is the third annual update to Ireland's Climate Action Plan 2019. This plan is prepared under the Climate Action and Low Carbon Development (Amendment) Act 2021, and following the introduction, in 2022, of economy-wide carbon budgets and sectoral emissions ceilings.

5.2.1. Climate Action and Low Carbon Development (Amendment) Act 2021

This Act amends the Climate Action and Low Carbon Development Act 2015. It sets out the national objective of transitioning to a low carbon, climate resilient and environmentally sustainable economy in the period up to 2050. The Act commits us, in law, to a move to a climate resilient and climate neutral economy by 2050.

An Bord Pleanála is a relevant body for the purposes of the Climate Act. As a result, the obligation of the Board is to make all decisions in a manner that is consistent with the Climate Act.

5.3. Section 28 Guidelines

5.3.1. Sustainable Residential Development and Compact Settlement Guidelines 2024

These Section 28 Guidelines replace the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities (2009) and support the application of densities that respond to settlement size and different contexts within each settlement type. In accordance with the principles contained in the NPF, the Guidelines seek to prioritise compact growth and a renewal of existing settlements. Section 3.3 of the Guidelines refers to Settlements, Area Types and Density Ranges. For each settlement tier it sets out,

- priorities for compact growth,

- areas common to settlements at each tier, and
- recommended density ranges for each area. For each application it will be necessary for the planning authority to identify,
- the most applicable settlement category based on the categories described in Section 3.34,
- the most applicable area type based on the area descriptions detailed in Section 3.3 (e.g. central, urban, suburban or edge- refer also Figure 3.1), and
- the recommended density range for that area.

Section 5 sets out the Development Standards for Housing and contains four specific planning policy requirements (SPPR's) which take precedence over Development Plan standards.

- SPPR 1 – relates to separation distances between buildings and requires a minimum of 16 metres between opposing windows above ground level.
- SPPR 2 – sets out the minimum private open space standards for houses.
- SPPR 3 – relates to car parking standards. In city centres car parking should be minimised, substantially reduced or wholly eliminated. In accessible location (defined in Table 3.8) the maximum rate should be 1.5 car spaces per dwelling. In intermediate and peripheral locations (defined in Table 3.8) the maximum rate of car parking shall be 2 spaces per dwelling.
- SPPR 4 – relates to cycle parking and storage facilities.

5.3.2. **Other Relevant Policy Documents include:**

- DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012),
- Design Manual for Urban Roads and Streets (DMURS) 2019.
- Permeability Best Practice Guide – National Transport Authority.
- The Planning System and Flood Risk Management (including the associated Technical Appendices) (2009).
- Childcare Facilities Guidelines for Planning Authorities (2001) and Circular PL3/2016 – Childcare facilities operating under the Early Childhood Care and Education (ECCE) Scheme.

5.4. Regional Policy

The Regional Spatial & Economic Strategy 2019-2031 (RSES) Eastern & Midlands Regional Assembly (EMRA) provides for the development of nine counties including Kildare and supports the implementation of the National Development Plan (NDP).

Regional Policy Objective 4.83 seeks to ‘support the consolidation of the town and village network to ensure that development proceeds sustainably and at an appropriate scale, level and pace in line with the cores strategies of the county development plans’.

- Kildare is located within the Core Region of Dublin
- Table 6.1 Kildare is identified within the Level 3 Town and/or District centres and Sub County Town Centre (Key Service Centres)

5.5. Kildare County Development Plan 2023-2029

The Kildare County Development Plan came into effect on 28th January 2023 and is the current statutory plan for Kildare, including Kildare/the subject site.

The Core Strategy is provided in **Chapter 2**, and this sets out population projections over the lifetime of the plan. Table 2.7 provides the ‘Settlement Hierarchy and Typology County Kildare’ and Kildare Town is designated as a ‘Self-Sustaining Growth Town’, along with Newbridge, Leixlip and Athy. Table 2.8 provides the Core Strategy Table and Kildare has a planned population increase of 1,182 persons over the life of the plan.

Objective CS 04: ‘Ensure that sufficient zoned and adequately serviced lands are available to meet the planned population and housing growth of settlements throughout the county in line with the Core Strategy and the Settlement Hierarchy.’

Objective CS 05: ‘Promote compact growth and the renewal of towns and villages through the development of underutilised town centres and brownfield sites, and where appropriate, pursue through active land management measures a co-ordinated planned approach to developing appropriately zoned lands at key locations, including regeneration areas, vacant sites and under-utilised areas in cooperation with state agencies, while also maintaining a ‘live’ baseline dataset to monitor the delivery of population growth on existing zoned and serviced lands to

achieve the sustainable compact growth targets of 30% of all new housing within the existing urban footprint of settlements.'

Chapter 3 refers to 'Housing' and the following is noted:

Policy Objective HO P8 seeks to 'Ensure that groups with specialist housing needs, such as older persons, people with disabilities, the homeless, Travellers, those in need of emergency accommodation including those fleeing domestic violence, are accommodated in a way suitable to each of their specific needs.'

Section 3.11.1 Older Persons –

'The Kildare Age Friendly Strategy 2019-2021 reports that the ageing of the population from this point onwards will represent one of the most significant demographic and societal developments and challenges that Ireland has encountered. ESRI projections indicate that the number of people over the age of 65 in Ireland will reach 1.3 million by 2040 or about 23% of the total population, compared to 13.5% in 2016. According to Census 2016, there were 22,104 people over 65 living in Kildare in that year, representing 10% of the county's population. It is anticipated that by 2031, 16% of the population of County Kildare will be over the age of 65 years, with this rate increasing to 21% by 2040.

The changing nature of the age profile of the county requires greater consideration of the housing needs of older persons:

- Sheltered housing, nursing homes and other residential facilities catering specifically for older persons should be appropriately located close to public transport, community facilities, retail and other amenities.
- For those who wish to continue to live independently in their community but wish to rightsize / downsize, it is important to provide a range of attractive and appropriately located accommodation choices which will in turn address the underutilisation of larger houses, particularly in more established areas.

Older persons require housing that is appropriate and responsive to more complex needs, enabling them to enjoy more active, healthy and socially connected lives and to age healthily and safely within their community.

The NPF recognises that in providing a more seamless and appropriate continuum of housing choices with appropriate supports for older persons and a built environment that is attractive, accessible, and safe, older persons will be supported

and motivated to enjoy more active, healthy and connected lives and to age confidently and comfortably in their community.'

Policy Objective HO 018 Support high-quality design in new housing and to promote housing that is attractive, safe, and adaptable to the needs of existing and future households. Kildare County Council will support innovative construction methods to deliver sustainable and adaptable housing.

Policy Objective HO 020: seeks to 'Support the delivery of housing options to meet the needs of older persons and support older persons to live independently in active retirement, where possible.'

Policy Objective HO 021: seeks to 'Meet the needs of older persons and people with a disability by requiring the provision of alternative accommodation, such as age-appropriate homes, independent and assisted living units, day-care facilities, nursing homes and specialised care units (e.g. dementia specific units) to meet the needs of older persons and to facilitate the provision of a range of housing options for older persons in central, convenient and easily accessible locations, integrating such housing with mainstream housing through the application of a location specific objective (Specific Local Objectives (SLO) at appropriate and optimised strategic locations particularly on Council owned lands in mandatory Local Area Plans in County Kildare.'

Policy Objective HO 022: seeks to 'Support the provision of specific purpose-built accommodation, including assisted living units and lifetime housing and adaptation of existing properties, which will include opportunities for 'downsizing' or 'right sizing' within communities.'

Policy Objective HO 023: seeks to 'Promote co-location of facilities (including childcare facilities and facilities for older persons) at sustainable locations where they can avail of existing and planned social and community infrastructure, in particular, and to examine a range of community facilities and to encourage meanwhile use in some cases.'

Policy Objective HO 024: seeks to 'Support the implementation of the Kildare Age Friendly County Strategy 2019-2021 (and any subsequent strategy), promoting the delivery of Lifetime Homes and to support the provision of housing that is adaptable for an ageing population. The Council will also support and promote, in a timely

manner, the delivery of specialist accommodation appropriate to the specific needs and wishes of older persons in co-operation with the voluntary sector, AHBs, the HSE, and other relevant bodies.'

Policy Objective HO 025: seeks to 'Engage and develop strategies with the Approved Housing Bodies with responsibility for housing for older persons to develop accommodation in town centres more suited to those with reduced mobility.'

Chapter 5 refers to 'Sustainable Mobility and Transport'

5.2.3 Regional Spatial and Economic Strategy (RSES), 2019-2031

'The RSES acknowledges that the transport sector is one of the main contributors to national Green House Gas (GHG) emissions and emphasises the importance of promoting a modal shift away from a dependence on the private car to more sustainable modes of transport, in order to facilitate greater efficiency in transport networks thereby addressing the impacts of climate change.'

TM P1 'Promote sustainable development through facilitating movement to, from, through and within the County that is accessible to all and prioritises walking, cycling and public transport.'

TM P2 'Prioritise and promote the development of high-quality, suitable, safe and sustainable walking and cycling pathways and facilities, both intercounty, intra-county (in consultation with all relevant stakeholders including neighbouring local authorities) and within the towns and settlements of County Kildare within a safe road/street environment that will encourage a shift to active travel that is accessible for all, regardless of age, physical mobility, or social disadvantage, subject to all relevant and cumulative environmental assessments and planning conditions. New projects (including greenways, blueways and cycleways) should first be subject to the undertaking of feasibility assessment. Where feasibility is established, a Corridor and Route Selection Process will be undertaken where appropriate, for relevant new road infrastructure in two stages", Stage 1 – Route Corridor Identification, Evaluation and Selection and Stage 2 – Route Identification, Evaluation and Selection.'

Chapter 10 Community Infrastructure Creative Places

Policy SC P2: 'Require the delivery of a range of universally accessible, integrated, and well-connected social, community, cultural, and recreational facilities, close to

the communities they serve through the designation and safeguarding of specific land uses at appropriate strategic and optimised locations in settlement plans and mandatory Local Area Plans in County Kildare’.

Objective SC 07: ‘Support and encourage the clustering of community facilities such as community centres, with a priority towards community and youth facilities, sports and leisure facilities, schools, childcare facilities, facilities for older persons, and open spaces to create multi-purpose community hubs.’

Objective SC 09: Ensure that all communities are supported by a range of sporting facilities that are fit for purpose, accessible and adaptable and that recreational and sports amenity space is provided that supports the work of Kildare Sports Partnership in promoting participation in sports and physical activity for all.

Objective SC 073: ‘Promote the clustering of education related services and facilities proximate to existing/planned community, recreation, sporting, and childcare facilities that are linked to cycle/pedestrian infrastructure.’

Section 10.8.3.1 Age Friendly Kildare

In future proofing County Kildare to cater for an increased older population we can help make it a County that allows people to age in their community whilst also creating stronger more sustainable settlements. Such an aspiration requires an integrated approach and targeted investment at many levels from social infrastructure to mobility and housing. In this regard, Kildare County Council is leading the way and there are many examples where measures are actively being implemented to make Kildare an age friendly County.

‘Supported housing and longer-term residential care facilities for older people should be fully integrated into the local community. These facilities should be within walking distance of the town centre, key services, public transportation, car parking and public spaces set within a universally designed and age friendly public realm.’

Policy SC P6: Facilitate the provision of continuing care facilities for older persons, such as own homes (designed to meet the needs of older persons), sheltered housing, day-care facilities, nursing homes, step down care centres, and specialised care units (e.g. dementia specific units) at appropriate locations throughout the county.

Objective SC 035: Cater for the diversity of older people's needs by promoting adaptability and flexibility in the design of homes and the promotion of appropriate commercial and community facilities in population centres with higher proportions of older people.

Objective SC 036: Provide for nursing homes in urban and appropriately located rural settings in the county and to site residential care facilities for older persons close to community and social facilities (e.g., shops, health services etc.) ensuring older persons can remain part of and contribute to existing communities, subject to AA screening and where applicable, Stage 2 AA.

Objective SC 037: Require a mobility strategy to accompany applications for nursing homes and residential care facilities detailing connections to amenities, parks, open spaces and local town/village/neighbourhood centres for access to services and facilities.

Section 10.13 Childcare Facilities

The provision of childcare facilities, in its various forms, is recognised as a key piece of social infrastructure required to enable people to participate more fully in society. Childcare services in Kildare are delivered primarily by the private and voluntary sectors and regulated under the Childcare Act 1991 and the Childcare Regulations 2016. 327 Kildare has a rapidly growing population with the highest rate of young people in the State. According to the 2016 Census, the population aged 0-4 residing in Kildare was 17,314 representing 7.8% of the total population higher than the State average of 7%. Settlements with the highest rates associated with this age cohort were Straffan, Kilcock, Kilmeague, Rathangan and Monasterevin.

Given the extent of housing development throughout the county in recent years it is essential that the childcare infrastructure, services and supports required, are in place and easily accessible. Central to this is the provision of good quality and accessible childcare and early education facilities at community level.

Policy SC P13: 'Support and facilitate the provision of good quality and accessible childcare facilities at suitable locations within the County in consultation with the Kildare County Childcare Committee, subject to AA screening and where applicable, Stage 2 AA.'

Objective SC 077: ‘Have regard to the criteria specified in the Childcare Facilities for Planning Authorities, DEHLG (2001), Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020) and any updated policy guidance, regarding the provision of childcare and early years education facilities.’

Objective SC 078: ‘Require the provision of childcare facilities close to existing built-up areas including: - Business Parks and major employment centres - Neighbourhood and district retail centres - Large scale retail developments - The vicinity of schools and major educational facilities - Adjacent to community centres and facilities - Adjacent to public transport nodes - Convenient to new and existing residential developments.’

Objective SC 080: Support the provision of childcare facilities within or co-located with community buildings, such as community centres and schools.

Chapter 14 Urban Placemaking and Regeneration

Objective UD 01: ‘Require a high standard of urban design to be integrated into the design and layout all new development and ensure compliance with the principles of healthy placemaking by providing increased opportunities for physical activities, social interaction and active travel, through the development of compact, permeable neighbourhoods which feature high-quality pedestrian and cyclist connectivity, accessible to a range of local services and amenities.’

Chapter 15 Development Management Standards

Section 15.4.5 Design, Layout and Boundary Treatments

‘The design and layout of new residential development offers the opportunity to establish exceptional standards in terms of placemaking and urban design through the integration of high-quality connectivity, open space and sustainable mobility features from the outset. While the Kildare Rural House Design Guide (Appendix 4) outlines the requirements for layout and boundary treatment for rural dwellings, proposals for residential development in towns and villages will be required to fully address the 12 Criteria for sustainable residential development as outlined in the Urban Design Manual – A Best Practice Guide (DoEHLG, 2009), as well as the guidance set out in Section 14.6 of this Plan.’

15.6.1 Active Open Spaces

These are generally playing pitches, courts, and sports grounds. Individual development is needed to deliver some, or all the space required. However, contributions via development levies can also assist in the delivery of such infrastructure for the community. Residents in Kildare towns (as identified in the settlement hierarchy) should have access to active open space facilities such as courts, playing pitches / sports grounds within a 10-minute walk of their home.

15.6.5 Formal / Informal Play Spaces

Formal play spaces are generally designed to facilitate children and teenagers play. They are usually located within an existing public park or amenity that is easily accessible from residential areas (e.g. 5-minute walk/400 metres). Developments shall provide 'scale appropriate' children's play in semi-private or public open spaces through provision of a scale appropriate Natural Play Area. It is the Planning Authority's preference that an imaginative approach is adopted by developers to delivering play spaces. All play areas shall be natural play spaces with landscaping and natural features e.g. logs, mounding, boulders, and sensory planting, equipment with no moving parts. Play features should be centrally located so that they are accessible and supervised.

Section 8.1.3 Zoning Matrix

'Uses other than the primary use for which an area is zoned may be permitted provided they are not in conflict with the primary use-zoning objective. The Zoning Matrix (Table 15) illustrates the acceptability or unacceptability of various uses for each of the zoning objectives. Table 16 defines the terms used in the zoning matrix.

The land use zoning matrix is intended to provide guidance to potential developers.

5.6. Kildare Local Area Plan 2023-2029

- 5.6.1. The Kildare Town Local Area Plan was adopted on 26th October 2023 and came into effect from 6th December 2023.

Section 2.2.1 refers to Achieving the Vision, and Figure 2.2 sets out six no.

Strategic Development Principles. The Strategic Development Principles relevant to the proposed development include;

Creating Compact and Connected Communities

‘Consolidation and infill development underpin the development strategy in this Plan in line with National Strategic Outcome No. 1 (Compact Growth) of the National Planning Framework (NPF).’

Accordingly, the Plan provides for circa 65% of all new homes to be developed within the defined Built-Up Area of the town. This approach to land use zoning therefore seeks to consolidate the built urban form by prioritising the development of identified sequentially preferable lands in order to ensure the delivery of sustainable compact development in the town whilst also preventing further urban sprawl.

‘In seeking to implement the principles of the 10-minute settlement in the town, the Plan incorporates a range of measures to encourage active travel, reduce car dependency, improve the permeability of the town centre and connect neighbourhoods.’

Furthermore, the Plan also includes a number of specific targeted measures to improve access to public transport options. It is considered that these provisions of the Plan, if fully implemented will assist in the creation of a people-centred, walkable and cycle-friendly town. This is in line with the National Strategic Outcomes of the NPF including National Strategic Outcome No. 4 relating to sustainable mobility and National Strategic Outcome No. 8 relating to the transition to a Low Carbon and climate resilient society.’

Delivering ‘Catch-up’ Infrastructure

‘The Social Infrastructure Audit prepared to inform this Plan highlights the additional provision of childcare, educational and recreational facilities that is required for the existing and future population. The Plan ensures that adequate provision is made for social infrastructure through the identification of zoned land for such uses and supporting objectives.

The Plan requires a network of high quality and universally accessible public open spaces to be provided at appropriate locations in the Plan area and includes lands zoned for community purposes.

Section 6.5.1.2 Childcare

Section 6.5.1.5 Sports and Recreation

Section 6.5.1.9 Neighbourhood Centres

Objectives for Education, Childcare and Healthcare Facilities

HCO 3.1 'Support and facilitate new facilities and improvements / expansion of existing educational, including third level and further educational opportunities which may arise, early learning, childcare and healthcare facilities, at appropriate locations in Kildare Town, and encourage the co-location of childcare with educational uses.'

HCO 3.2 'Support the provision of appropriately located and purpose-built early learning and childcare facilities to meet the pro-rata childcare needs of housing development during the plan period. Childcare facilities will be required, by a condition of planning permission, to be developed within the first phase of any new residential development.'

The Kildare Age Friendly Strategy 2019-2021

It reports that 'the ageing of the population from this point onwards will represent one of the most significant demographic and societal developments and challenges that Ireland has encountered'.

It also recognises 'the need to provide a choice of housing, suitable to all age groups and people at different stages of the life cycle; the existing social mix in the area; the need to cater for specialist groups such as older or disabled people'.

'There are a number of groups with specific design and planning needs that must be considered in the planning and design of the built environment and in the location of social and community facilities. These groups include older persons children and young people, people with disabilities, ethnic minorities, and the Traveller community.'

5.7. Natural Heritage Designations

- 5.7.1. The subject site is not located within or bordering any designated Natura 2000 sites. The following Special Areas of Conservation (SAC) sites and proposed Natural Heritage Areas (pNHA) are in proximity to the appeal site.

Name	Site Code	Designation	Distance from Site
Pollardstown Fen	000396	SAC	6.4km NE

Mouds Bog	002331	SAC	8.9km NE
River Barrow and River Nore	002162	SAC	10.1km SW
The Curragh	000392	pNHA	2.9km NE
Pollardstown Fen	000396	pNHA	6.4km NE
Mouds Bog	002331	pNHA	8.9km NE

5.8. EIA Screening

- 5.8.1. The PA determined that the proposed development is not listed in Schedule 5 (Part 1 or Part 2) of the Planning and Development Regulations as amended nor does it meet the requirements for sub-threshold EIA as outlined in Section 103 of the Planning and Development Regulations 2001 as amended, and that no EIA is therefore required.
- 5.8.2. See completed Form 2 on file. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, or an EIA determination therefore is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal against the decision to refuse permission by the planning authority has been lodged by Reid Associates Planning Consultants dated 31st October 2023 on behalf of the applicant. The appeal is accompanied by the following;

- Kildare Town Local Area Plan 2012-2018
- Extract from SFRA Draft LAP 2023-2029
- Archaeological Review of Lands Proposed for Community and Educational Zoning, Kildare Town

The grounds of appeal can be summarised as follows:

Reason for Refusal No. 1

- Development Plan zoning objective for the site is zoned E 'to protect and provide for the development of community and educational facilities.
- A subcategory of the community land use objective E1 seeks to provide for elderly housing.
- The CDP sets out at section 8.1.3 of the Kildare LAP 2012-2018 that the zoning matrix is to provide guidance to developers. In other words, it is not the final arbiter on the suitability or otherwise of a particular use within the zone. The policy states that other uses, which are not in conflict with the primary use may be permitted.
- Submit that the proposed housing for the elderly and the crèche and five a side playing pitch are all uses, which are entirely compatible with the purpose and function of the zoning objective. There is a dearth of playing pitch facilities and crèche facilities within the town.
- The land use zoning objective E is the only objective with a subcategory E1 to provide for the needs of the elderly.
- This recognises the special needs of the elderly as a community objective. It doesn't necessarily preclude housing for the elderly within an area zoned E having regard to its overall compatibility with the development of community uses. If it did, then it would have been included within another land use zone such as objective B existing residential or Objective C new residential. The needs of the elderly are particularly highlighted in the E1 reference within the overall land use zoning objective E. The E1 reference is expansionary to include elderly housing, and this is not incompatible with the overall E zoning objective.
- Contend the only site subject to the E1 designation in the 2012-2018 LAP land use map is within a pluvial flood zone and a high risk of archaeological zone.

- The potential future dezoning of the subject appeal site in the draft Kildare LAP 2023-2029 does not provide a balanced strategy for elderly housing and curtails necessary infill housing on serviced land.
- The review of the draft Kildare LAP 2023-2029 shows that the central LAP area within the bounds of the red line (which does not include the appeal site) is located within a pluvial risk flood zone. This militates against vulnerable residential use, in particular housing within the entire LAP area.
- The land use zoning map does not consider the consequences of the need for site flood risk assessment for future residential development within the central area of Kildare town. Raising floor levels above potential flood levels is not a viable option for elderly housing.
- Add to this the archaeological risks at the only sites zoned E as set out in the archaeological report and it is clear that the draft Kildare LAP 2023-2029 does not designate any suitable site for elderly housing. The applicant argues there is no viable alternative to the subject site.
- Submits the Board has the power under section 37(2)(a) to grant permission, which materially contravenes the development plan where certain criteria apply:
- Submit that there is a case in this instance for the Board to materially contravene the zoning objective for the Kildare LAP 2018-2018 and the forthcoming LAP 2023-2029 as the proposed development satisfies the criteria set out in section 37(2)(b) of the Planning Act.
- Contend that issues raised in the PA report are not based on the evidence of the urgency to meet housing needs of the elderly and do not accord the housing strategy objectives.
- Submit that there is a substantive case under each of the criteria stipulated in the Act to support and justify the Board making a decision to grant permission in material contravention of the development plan.

Reason for Refusal No. 2 Location of Residential Accommodation for the Elderly

- Submit that reason for refusal is not justified on the basis of national policy as set out in the NPF 2040 and development plan policy.
- NPF Objective 30 is to avoid an ageing population crisis. The NPF and the RSES highlights the urgent need for response planning policy to avoid ageing population crisis. This policy predated the 2022 Census results.
- Asserts that the Kildare CDP 2023-2029 firmly bases its policy objectives within the framework of 'The Kildare Age Friendly Strategy 2019-2021'.
- Policy Objective HO P9 - Submits the overriding criteria and test of development plan housing policy is that the specialist housing needs of older persons be satisfied suitable to their needs first and locational criteria are subsidiary. Close to services is adequate this does not imply the need for a town centre location as in the case of Kildare the town centre
- Policy Objectives HO-020 to HO-025 support the proposed development.
- Policy HO 020 is not location specific and promotes development as provided for in the appeal.
- The primary purpose of Objective HO-021 is to meet the needs of older persons.
- There are no (Specific Local Objectives (SLO)) to identify optimal locations in Kildare town and reference to Magee Barracks as a suitable location is precluded on the basis Flood risk and archaeology.
- The subject site provides a good location close to services while establishing a cluster of such uses alongside community uses.
- Submit that the design of the proposed housing meets the specialist housing requirements of the 65+ older cohorts and is in compliance with and supports the objectives of HO-023 to HO-025 for the co-location of childcare facilities.
- They will provide lifetime houses (HO-024).
- The applicant has contacted and is willing to engage with Cluid an approved housing body in respect of the provision of the elderly housing.

- Section 3.11.1 of the KCDP highlights the need to take action now to provide elderly housing. It does not justify or substantiate grounds for refusal.
- Public transport serving the local needs in Kildare town is extremely limited, irrespective of the location of the site. There is a bus stop adjacent it is much more feasible that where a cluster of 96 houses are to be provided that local public transport service to meet the needs of elderly residents and the adjacent nursing home could be orchestrated by the management company to cater for the short trips within the local vicinity.
- The location does not need to be centrally located to be accessible.
- The subject site is only 500m from the nearby Centra shop at Grey Abbey Road and c.900m from the Kildare Village Outlet where a wide range of national and international retail services are available.
- The PA report identified that there is a need for 490m of public footpath to connect the site by footpath to the existing path serving the development at Grey Abbey.
- The applicant is willing to pay a financial contribution towards the provision of such a footpath, where it is necessary to serve the existing residents in the area irrespective of whether the development is permitted.
- Submit proposed development is in accordance with national and development plan policies and objectives and would be in accordance with the proper planning and sustainable development of the area.

Reason for Refusal No. 3 Childcare Facilities and Community Infrastructure

- Submit site is not remote but well located proximate to national level retail facilities and local retail services
- Contend site is proximate to the Grey Abbey, housing development of 208 houses currently under construction. The provision of a crèche and playing pitch will compliment that residential use within 500m distance, which is reasonable.
- It will support the co-location of crèche and community uses with elderly housing supporting inter-generational development. It will act as the impetus

for the provision of a footpath linking the established housing on the R415 with the newly developing Grey Abbey development. There is only one crèche to serve the 208 housing units and no playing pitches, so the proposed community uses are well located to provide for demand locally.

Reason for Refusal No. 4 Dependence on Private Car

- Submit there is no evidence to support Reason No.4.
- The site is proximate to Kildare Town and within the development boundary and speed limit zone.
- As the dispersed nature of housing in the environs of the town is currently configured residents depend on car transport.
- Submit that the proposed development provides an opportunity to secure a shift in mode from private car to taxi and community transport as part of the modal mobility management of this retirement village scheme.
- The clustering of 96 units beside the Nursing Home allows the opportunity to develop a mobility management scheme.
- The developer is willing to pay a financial contribution towards the provision of a path from Grey Abbey to the site and this will significantly improve pedestrian safety along.
- Assert that the refusal of permission supports the status quo where all existing residents rely on their car.

Reason for Refusal No. 5 Traffic Hazard

- Submit that the subject site is not a designated rural area and is within the town limit and proximate to existing services including Centra, national retail services at Kildare Outlet Village and Grey Abbey.
- Submit that the proposed development seeks to provide investment in provision of footpath infrastructure, which the applicant will both facilitate and financially contribute to.

Reason for Refusal No. 6 Policy UD01 of the KCDP 2023-2029 – Urban Design

- *Site layout* - Similar to the Grey Abbey View development granted by the Board and therefore continues a similar established approach to housing layout.
- Layout is designed to accommodate the needs of the elderly.
- Accepts no landscape plan submitted but includes a comprehensive approach to tree planting.
- Proposed dwellings are single storey, height, scale and layout assimilate into the established landscape character of the area.
- The entrance from the regional road is framed by open space and tree planting. Each semi-detached pair of houses incorporates a garden tree.
- Gardens are designed to address needs of special needs children.

Conclusion

- The site has access to existing public services infrastructure.
- Proposed development provides a high quality contemporary and elegant design for a modest infill housing scheme to provide much needed elderly housing within a short distance of local retail and national retail services.
- The refined simplicity of the design allied to significant native tree planting will assimilate the proposed development into the landscape character of the area.
- Proposed development is supported by national policy to address the housing crisis for provision of elderly housing.
- Previous permission for 64 shelter housing units at the site sets a precedent for the suitability of the subject location for elderly housing.

6.2. Planning Authority Response

The planning authority confirmed its decision and considered the issues raised by the appellant have been considered in the Planner's Report.

6.3. Observations

One observation was submitted to the Board from the following party.

- Ann Heffernan

The issues raised can be summarised as follows;

- Inaccurate site boundary shown as a red line boundary on Rural Map D-01 not acknowledged by PA. Red line encroaches on the entrance to adjoining property to the NW and extends northwards all the way up to the R415 to Newtown Cross Roads, submit boundary is illegal.
- Assume that the red line indicates the proposal for a footpath from the proposed development to Newtown Cross and is included in the total site area which is inaccurate.
- Contend there are a number of inaccuracies and errors in applicants appeal to the Board.
- *Established Precedent* - applicant submits that precedent for sheltered housing is already established. This is disputed given the planning history on the site is for a nursing home.
- *Accessibility* – Proposed site is not 500m from Centra on the Grey Abbey Road (it is actually 1.2km.) and is not 900m from Kildare Village Outlet (actually c.2km).
- Dispute assertion that proposed elderly housing will provide for the sustainable infill of elderly housing within a pattern of frontage residential development along the Athy Road, as the National Stud lands lie to the east of the proposed development and not to the north. Submit the proposal would create a precedent potentially allowing the developer to apply for permission for the neighbouring property that is also under their control.
- *Infill Development* – References to infill development in the appeal are totally inaccurate. The site is surrounded on three sides by agricultural fields.
- *Public Transport* – Note subject site is served by one Rural Link bus running sporadically and only stopping at the Lourdesville stop by request, where there is no bus shelter.

- *Playing Pitch Facilities* – Dispute reference to dearth of playing pitches within Kildare town.
- *Floodlights* – Erection of six no. floodlights around the proposed training would be detrimental to residents and wildlife in the area.

6.4. **Oral Hearing Request**

The 1st Party submitted a request that an Oral Hearing be held. By order dated 21/03/2024, the Board decided that the appeal could be adequately addressed by written submissions.

7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings;

- Land Use Zoning / Principle of Development
- Residential Accommodation for the Elderly
- Childcare Facilities and Community Infrastructure
- Access and Parking
- Traffic Safety
- Design and Layout
- Land Ownership / Letters of Consent

7.2. **Introduction**

7.2.1. The principle of development has already been established under previous planning permissions granted on site. These permissions were assessed under the now expired Kildare LAP, were never implemented on site and have now expired. The current application is assessed in accordance with current planning policy at National Regional and Local level. A concurrent application was lodged under PA Reg. Ref.

23/60026 which was refused planning permission, but this decision was not subject of an appeal to the Board.

7.3. Land Use Zoning / Principle of Development

- 7.3.1. The Kildare County Development Plan 2023-2029 came into effect on 28th January 2023. A decision to refuse planning permission was issued by Kildare County Council 4th October 2023. The PA decision was based on the Kildare County Development Plan 2023-2029 and Kildare Town Local Area Plan 2012-2018 (as extended).
- 7.3.2. The current Kildare Town Local Area Plan 2023-2029 was adopted on 26th October 2023 and came into effect from 6th December 2023. The first party appeal and observation to the appeal were lodged 3rd November 2023.
- 7.3.3. In the interest of clarity, I will base my assessment on the current Kildare County Development Plan 2023-2029 and Kildare Town Local Area Plan 2023-2029 the latter of which came into effect after the notification of decision to refuse permission.
- 7.3.4. Under the Kildare Town Local Area Plan 2023-2029 the vision for Kildare over the lifetime of the plan is to *'promote the social, economic and physical development of Kildare Town as a self-sustaining growth town in a compact, permeable and sequential manner, to address deficiencies in social infrastructure so communities may thrive; to ensure the town centre develops as an inclusive, vibrant, attractive and connected place; to harness the town's existing strengths of equine, ecclesiastical and retail assets; and to create a high quality, low carbon, universally accessible environment for residents and visitors alike'*.
- 7.3.5. The strategic principles to achieve this vision are set out in Figure 2.2.1 and include 'creating compact and connected communities', delivering 'catch-up' infrastructure' and 'supporting intergenerational community living'.
- 7.3.6. Under the Kildare Town Local Area Plan 2023-2029 the appeal site has been excluded from the red line development boundary as it extends to the south of Kildare town. The appeal site does not therefore now benefit from a designated land use zoning objective.

- 7.3.7. Reason for refusal no. 1 refers to the Community and Educational zoning objective for the site under the Kildare Local Area Plan 2012-2018. It states that as dwelling units are not permitted under this zoning that the proposed dwelling units would materially contravene the zoning objective. The Kildare Town LAP 2012-2018 has now been superseded by the Kildare Town LAP 2023-2029, and as such this reason for refusal is effectively academic.
- 7.3.8. The first party appellant submits that the central areas identified in the Kildare Town Local Area Plan 2023-2029 are unsuitable suitable for elderly housing as they are located within areas identified as within a pluvial flood zone and with a high risk of archaeology. In this regard I note the LAP was informed by a SFRA. I have also had regard to the Archaeological Review of Lands Proposed for Community and Educational Zoning, Kildare Town prepared by IAC Archaeology dated 1st September 2023 which accompanied the appeal. Notwithstanding the case made by the applicant this does not change the fundamental fact that the subject site is excluded from the LAP and does not benefit from a designated land use zoning objective.

Material Contravention

- 7.3.9. The first party appellant acknowledges the potential 'dezoning' of the subject appeal site in the draft Kildare LAP 2023-2029.
- 7.3.10. It is submitted by the appellant that the Board can under section 37(2)(a) grant permission which materially contravenes the development plan. The appellant submits that the proposed development satisfies the criteria set out in section 37(2)(b) of the Planning Act (as amended).

(2) (b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that:

- (i) the proposed development is of strategic or national importance*
- (ii) there are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy*

directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of the development, and permissions granted, in the area since the making of the development plan’.

- 7.3.11. In relation to item (i) It is submitted by the applicant that the provision of elderly housing to provide for an increase of over 80% in the over 65+age cohort in Kildare is necessary to address the housing crisis is of national strategic importance. Referring to section 6.4 and NPO 30 of the NFP 2040 the applicant submits that when such elderly housing needs are not clearly provided for, the Board has an obligation to implement the NPF, which has overriding national importance and is of paramount importance in this regard.
- 7.3.12. I would strongly disagree with this assertion, and do not consider that the proposed development is of strategic or national importance.
- 7.3.13. In relation to item (ii) the applicant submits that the Kildare LAP 2012-2018 supports built dwellings for the elderly and refer to section 7.2.4 and objective HP 01 which relate to the implementation of the housing strategy.
- 7.3.14. I note that the Kildare County Development Plan 2023-2029 and the provisions contained therein, including Table 2.8 (core strategy) which identifies a housing target of 430 for Kildare to the end of 2028. Kildare is designated as a Self-Sustaining Growth Town in the settlement hierarchy.
- 7.3.15. Having regard to the housing strategy clearly set out in the Core Strategy, the fact that the CDP includes zoning objectives for Kildare, the fact that the Kildare Town LAP excludes the appeal site, and the passage of time since the appeal was lodged, I am satisfied that the proposed scale and location of the development proposed within the overall policy context is unacceptable.
- 7.3.16. The LAP remains the guiding land use strategy, and I am satisfied there is sufficient policy context to make a recommendation to refuse permission, particularly in the absence of an extant zoning objective for the site.

- 7.3.17. I am satisfied that the current Kildare Town LAP 2023-2029 aligns with and was adopted having regard to the Core Strategy which underpins the Kildare CDP 2023-2029, and that there are no conflicting objectives in the development plan, and are clearly stated, insofar as the proposed development is concerned.
- 7.3.18. In relation to item (iii) the applicant submits that permission for the proposed development should be granted, but I see no overriding justification for same.
- 7.3.19. In relation to item (iv) the applicant submits that permission should be granted for the proposed development having regard to the established pattern of a nursing home development located on the neighbouring site. It is submitted that this was clearly the rationale for the original designation of the lands for community uses to secure a clustering of elderly housing and nursing home use as mutually supporting uses for an increasing elderly population.
- 7.3.20. I have had regard to the previous planning permission for sheltered housing for 64 housing units at the subject site, PA Planning Ref. 06/1448 which was granted in 2007. I would accept that at the time this permission established the suitability of the site for sheltered housing for the elderly, and that in the interim the housing need of this age group have increased. National Regional and Local policy however, along with climate action now require a much stronger emphasis on compact development.
- 7.3.21. I have also had regard to the permission granted for housing on the Walker Hall site and Grey Abbey site to the north referred to by the applicant. Both are located within the Kildare Town LAP boundary and benefit from being located much closer to and connected via footpaths to Kildare town.
- 7.3.22. The applicant submits that the location of the National Stud lands to the north of the site means that permission for the proposed development will not set a precedent but will provide for the sustainable infill of elderly housing within a pattern of frontage residential development along the Athy Road. It is also argued that it will support Council policy to manage one off housing as it provides for a consolidated approach to housing for the elderly. It is also submitted that the proposed development supports the core land use strategy of the development plan to consolidate housing development on a publicly serviced infill site.
- 7.3.23. On this point I agree with the observer to the appeal in that the appeal site does not constitute an infill site. I am satisfied that the subject site which is in agricultural use

and surrounded by agricultural land apart from the nursing home with which it is proposed to share an entrance, is effectively a greenfield site.

7.3.24. Having considered the file, and the provisions of the Plans, as outlined above, I consider that the Planning Authority's conclusion that the development materially contravenes the Plan is reasonable.

7.3.25. In the circumstances, the Board would have to address itself to the requirements of this section in the event that it was minded granting a permission in this case.

7.3.26. I refer the Board to the judgment in the Highlands Residents Case 2020 IEHC 622 where the Court found that that the relevant lands could not be said to have been zoned for residential development under the Development Plan, and while the Board could materially contravene the Development Plan it could not in respect of zoning.

7.3.27. I am satisfied, therefore, that the proposed development which is located on a greenfield site outside the existing and planned built up area of Kildare Town is not acceptable in principle and would, therefore, materially contravene the Kildare County Development Plan 2023-2029 and be contrary to the proper planning and sustainable development of the area.

7.4. Residential Accommodation for the Elderly

7.4.1. Reason for Refusal No 2 refers to 'Section 6.4 of the National Planning Framework which seeks to facilitate housing for elderly persons within communities close to existing services and facilities. Section 3.11.1 of the Kildare County Development Plan 2023-2029 outlines the importance of appropriately located residential accommodation for the elderly close to public transport, community facilities, retail and other amenities is also noted.

7.4.2. Objectives HO O21 and HO O22 of the Kildare CDP 2023-2029 requires residential accommodation for the elderly to be in a central, accessible, convenient location within communities.

7.4.3. The PA consider the application site to be at a significant remove from Kildare town with no proposal to include a footpath or cycle path into the town which would be contrary to the aforementioned sections and objectives within the Kildare CDP 2023-2029 and Section 6.4 of the NPF.

- 7.4.4. I note the strategic development principles as outlined in Figure 2.2 to achieve the vision for Kildare Town as contained within the Kildare Town Local Area Plan 2023-2029. Those principle most relevant to the current proposal include Creating Compact and Connected Communities and Delivering 'Catch-up' Infrastructure.
- 7.4.5. In considering the location of the appeal site, in terms of location relative to walking distances, access to public transport viz a via train and bus services this is considered further under section 7.6 of my report below.
- 7.4.6. The First Party appellant notes that the subject site is only 500m from the nearby Centra store at Grey Abbey Road and c.900m from the Kildare Village Outlet where a wide range of national and international retail services are available.
- 7.4.7. In terms of accessibility, I concur with the observer to the appeal, that the subject site as measured from the actual development is closer to 1.2km from the existing Centra shop and c.2km from Kildare Village Outlet. It cannot therefore be argued that the site is convenient to these retail services, or that they necessarily provide for the everyday retail needs of the elderly. I note the closest Tesco Supermarket is located west of Market Square.
- 7.4.8. In terms of proximity to community facilities, retail and other amenities, I note the subject site is outside the defined built-up area of Kildare town. Given the nature and scale of the development which provides for 96 houses for the elderly, which is not proximate to any other community facilities or other amenities such as parks, I consider the proposed development inappropriate at this location.
- 7.4.9. Having regard to the foregoing I consider that the development of the subject site for residential purposes would comprise an inappropriate isolated development outside the existing built footprint of the town and not reflective of the established character of the neighbouring lands in this rural area.
- 7.4.10. I am not satisfied that the first party appeal has addressed this reason for refusal and in my opinion is contrary to National Strategic Outcome 1 - Compact Growth of the NPF, Section 3.11.1 and Objectives HO O21 and HO O22 of the Kildare CDP 2023-2029.
- 7.4.11. The proposed development is therefore, considered to be contrary to the proper planning and sustainable development of the area.'

7.5. Childcare Facilities and Community Infrastructure

- 7.5.1. Reason for Refusal No. 3 refers to *'the remote location of the application site from Kildare town, at a remove from the community that will use the proposed crèche and five a-side pitch, the proposed development is considered to be highly inappropriate and would contravene, NPO 13 of the National Planning Framework which seeks to accommodate childcare facilities in well located sites within or close to existing built up areas, policies SC P2 & SC P13 and objectives SC 09, SC 073, SC 078 & SC 08 and sections 15.6.1 & 15.6.5 of the Kildare County Development Plan 2023-2029.*
- 7.5.2. It refers to *'policy HP12 and objective CO1 Kildare Town Local Area Plan 2012-2018 which all seek to accommodate childcare facilities and community infrastructure/open spaces in accessible and appropriate locations, in well-connected areas, in the vicinity of new and existing residential development, close to communities and proximate to existing/planned communities that are linked by cycle/pedestrian infrastructure.'*
- 7.5.3. In terms of Delivering 'Catch-up' Infrastructure, I note the findings of the Social Infrastructure Audit (SIA) carried out to inform the preparation of the Kildare Local Area Plan 2023-2029. The additional provision of childcare, educational and recreational facilities required for the existing and future population is highlighted and the plan identifies zoned land for such uses and supporting objectives.
- 7.5.4. It is noteworthy therefore that the Kildare LAP does not identify the subject site for such uses. I also note that the appeal site is not in proximity to any existing of planned primary and post primary schools, any universally accessible public open spaces or lands zoned for community purposes.
- 7.5.5. The Kildare Local Area Plan 2023-2029 does acknowledge that additional childcare provision is required to cater for the planned population growth within the town. It is also noted however that if all seven extant permissions for new childcare facilities as part of permitted new residential schemes are implemented there would be sufficient provision for the unmet demand during the lifetime of the plan to 2029.
- 7.5.6. The Kildare LAP 2023-2029 identifies 13 sports facilities / clubs in Kildare Town which accommodate three outdoor playing pitches; two all-weather six-a-side pitches and a walking/ running track at St Brigid's Park. The LAP notes that this provision

would marginally exceed Guidance for Different Recreational Facilities (2015) for both the existing population and the projected additional population envisaged over the plan period.’ I would therefore concur with the observer to the appeal that there is sufficient provision of playing pitches in Kildare Town.

- 7.5.7. The Kildare LAP 2023-2029 acknowledges that most facilities are associated with schools and have limited availability to the public, with the majority of facilities located to the north of the town. It is again noteworthy that the Kildare LAP 2023-2029 does not identify the subject site for such recreational uses.
- 7.5.8. The applicant has not provided a ‘Social Infrastructure Audit’ in support of the application or the appeal. The Planning Authority noted that no information is provided within the application in relation to the crèche regarding the number of children, number of staff, opening hours. This information which is needed to determine the nature and operation of the proposed commercial use is not submitted as part of the First Party appeal either.
- 7.5.9. I am not satisfied that there is a requirement for a childcare facility and playing pitch at this location to serve the proposed elderly housing units or that the subject site is the appropriate location for such uses. The proposed development would therefore be contrary to NPO 31 of the National Planning Framework, in addition to SC P2 & SC P13 and objectives SC 09, SC 073, & SC 078 and sections 15.6.1 & 15.6.5 of the Kildare County Development Plan 2023-2029.
- 7.5.10. I am not satisfied the applicant has adequately addressed this reason for refusal in the appeal.

7.6. Access and Parking

- 7.6.1. Reason for Refusal No. 4 refers to *‘the rural location of the application site at a remove from Kildare town, where the proposed development is highly dependent on the use of private car and in the absence of any proposed infrastructure element to support a modal shift from the private car, the proposed development would contravene policies TM P1 & TM P2 of the Kildare County Development Plan 2023-2029 which seek to promote and prioritise sustainable development through facilitating walking, cycling and public transport’.*

- 7.6.2. Kildare Town is served by mainline rail services (Dublin to the West / South and Southwest). The site is located approx. 3km by road southwest of Kildare Train Station.
- 7.6.3. The Kildare Town LAP 2023-2029 identifies distances from the train station in 400m intervals, with the outer 2km band extending to the southern boundary of the defined built-up area to the southern end of the Kildare town LAP boundary in the vicinity of the Newtown Cross Roads. The appeal site as already noted is a further 500m to the south of Newtown Cross. This section of the R147 does not benefit from any public footpaths, cycleways, or street lighting on either side of the road.
- 7.6.4. The application notes the location of a bus stop which is adjacent to the site entrance allowing bus transport to Kildare Town. The Planners Report of the PA notes that 'the only public transport to the site is a local bus that stops at Lourdesville nursing home. TFI route 883, this bus runs 4no. times a day Monday to Wednesday and with 6no. times a day on Thursday- Saturdays. In some of these services a stop at Lourdesville Nursing home must be requested. The times range from c.08.13 to 23.30.'
- 7.6.5. On the day of my site inspection however, I did not observe any bus stop in the vicinity of the site. I can also confirm that while on site mid-morning during the week I did not see any buses stopping or travelling in either direction along this route.
- 7.6.6. The proposed development will provide for residential units for the elderly, childcare facility and sports grounds/recreational development which will be served by the existing vehicular access from the Regional Road R147, which already serves the adjoining nursing home. The Lourdesville Nursing Home provides for 30 bedrooms and includes an adjoining car park for staff and visitors.
- 7.6.7. A total of 96 no. car parking spaces are proposed to serve the 96 no. houses. This equates to 1 space per household. The crèche will be provided with 30 no. spaces (0.5 spaces x 6 staff =3 and 1 space per 4 children = 27). The GAA (5 a side) pitch will include provision for 15 no. spaces. A further 26 no. Visitor car parking spaces are proposed providing an overall total of 167 no. car parking spaces to serve the overall development. In addition, bicycle parking is proposed with 11 no. spaces serving the crèche and 20 no spaces serving the GAA (5 a side) pitch. The proposed development, therefore, is highly dependent on the use of private cars.

- 7.6.8. Policy TM P1 seeks to promote sustainable development by prioritises walking, cycling and public transport. Policy TM P2 seeks to 'prioritise and promote the development of high-quality, suitable, safe and sustainable walking and cycling pathways and facilities... that will encourage a shift to active travel that is accessible for all, regardless of age, physical mobility.'

I would have to concur with the PA that in the absence of any proposed infrastructure element to support a modal shift from the private car the proposed development would be contrary to Policy TM P1 and Policy TM P2.

- 7.6.9. I am also of the opinion that the proposed development which is car dependent would be contrary to National Strategic Outcome 4 - Sustainable Mobility and National Strategic Outcome 8 - Transition to a Low Carbon and Climate Resilient Society of the NPF, and as reiterated in section 2.2.1 of the Kildare Town LAP 2023-2029.
- 7.6.10. I am satisfied that this reason for refusal has not been addressed by the appellant in the appeal.

7.7. Traffic Safety

- 7.7.1. Reason for Refusal No. 5 refers to *'the rural location of the site where there are no measures to segregate Vulnerable Road Users (VRUs), limit speed and collision severity along the regional road the R415 and due to the lack of footpath and cycle path infrastructure proposed as part of the development, the proposed development would endanger public safety by reason of a traffic hazard'*.
- 7.7.2. The TII raised concerns in relation to the adverse impact of the proposed development on the national roads and associated junction which would be at variance with the national policy. The TII also noted that insufficient data has been submitted with the planning application to demonstrate that the proposed development will not have a detrimental impact on the capacity, safety or operational efficiency of the national road network.
- 7.7.3. The National Roads Office raised concern in relation to the lack of information in respect of Traffic and sought a Traffic Impact Assessment by way of further information.

- 7.7.4. The Transport section of the PA raise concern also in relation to the traffic impact of the development on the surrounding road network including the National Road Network and the impact on Junction 13. In this regard a Traffic Impact Assessment was recommended to be submitted.
- 7.7.5. The application as lodged does not provide for a pedestrian link along the public road R415 linking the footpath at the entrance to the development and existing footpaths at Newtown Crossroads to the north.
- 7.7.6. The drawings submitted with the application do not detail the dimensions of a proposed footpath in terms of width, and do not provide any details in terms of surface finishes or kerb details. Given that these footpaths would ultimately be taken in charge by the PA, the PA would require a greater level of detail to ensure their suitability and standard of finish. It is also telling that the no letter of consent from the Transportation section of the PA accompanied the application.
- 7.7.7. I note the report of the Municipal District Engineer of the PA which sought further information, in relation to the 'section of road approximately 480m out of Kildare Town (From the proposed development northwards towards Kildare Town, as far as the junction with the L7024 adjacent to Walker Hall)'. The report recommends that this section of road should be design to DMURS Standards and include 'off road cycle tracks (2m wide) and footpaths (2m wide), grass verges where possible on both sides of the road with public lighting and the re-alignment of the road, new pavement overlay with markings where required to meet the proper standards. It was also recommended the applicant submit for assessment a drawing of the above at 1:500 scale. Given the nature and mix of uses proposed at the subject site I consider these requirements to be reasonable.
- 7.7.8. I note the first party appeal does not include a Traffic Impact Assessment or detailed proposals as per the recommendation of the PA MD Engineer and instead has indicated that the developer is willing to pay a financial contribution towards the provision of a footpath from Grey Abbey housing estate to the site.
- 7.7.9. I have had regard to Drawing no. C1351 Road Layout prepared by Garland which indicates the extent of the application site which runs north along the R415 and observations to the Planning Authority from residents along this route.

- 7.7.10. Firstly, I would note that no detailed dimensions are shown on this drawing. The red line boundary of the application site extends northwards from the entrance to Lourdsville Nursing Home which includes the existing footpath on the east side of the R145. Then after the bend in the road the red line boundary appears to traverse the R145 and continue along the western side of the road to as far as the crossroads.
- 7.7.11. The Planners report of the PA notes that it appears that ‘this part of the site is included as a connection to the existing watermain at the crossroads with the Nurney / Athy Road and the Kildangan Road is required and a connection to the foul sewer is also proposed to the northwest of the site’. I am satisfied that the inclusion of the road actually refers to the foul sewer water and drainage connections and not to the construction of a footpath etc.
- 7.7.12. Notwithstanding, the introduction of a footpath which would traverse existing vehicular entrances to a number of existing residential properties along the existing road is problematic. There is no specific local objective objective in the Kildare LAP to provide a potential connection between the appeal site and existing footpaths at Newtown Crossroads. I have had regard to the 45 no. permeability measures proposed under Table 7.1 in the Kildare LAP and none refer to the location of or are located in the vicinity of the subject site. Nor is this a legacy issue from the now expired Kildare LAP 2012-2018 as there was no specific objective to provide same.
- 7.7.13. I am not satisfied that the proposed development has allowed for adequate pedestrian and cycle access/connectivity/permeability with existing footpaths whilst enabling universal access from the subject site/proposed road network. Given the vertical and horizontal alignment of the existing R415, and distance from existing pedestrian and cycle routes, I am not convinced there is sufficient room to provide for a properly planned and integrated road/pedestrian/cycle network to the south of Newtown Cross Roads.
- 7.7.14. This is of particular concern given the nature of the proposed uses which will generate traffic movements including elderly persons who may require assistance walking/the use of mobility aids, parents with young children and buggies and from sports club members and visiting teams using the playing pitch.
- 7.7.15. I am not satisfied that that the proposed development will not give rise to a traffic hazard.

7.8. Design and Layout

- 7.8.1. Reason for Refusal No. 6 refers to *'Policy UD01 ...and Section 15.4.5 of the Kildare County Development Plan 2023-2029. The proposed development particularly in relation to the poor layout dominated by the internal road network with a multiplicity of cul de sacs and the poor location of the 5 a-side pitch and crèche, the poor design and material choice for residential units and other structures on site, the lack of any landscape plan and the lack of any distinctiveness does not meet the requirements of the 12 Criteria for sustainable residential development as outlined in the Urban Design Manual – A Best Practice Guide (DoEHLG, 2009). The proposed development would set an undesirable precedent for similar poor-quality developments in the County.'*
- 7.8.2. Policy UD O1 of the KCDP 2023-2029 specifically *'requires a high standard of urban design to be integrated into the design and layout all new development and ensure compliance with the principles of healthy placemaking by providing increased opportunities for physical activities, social interaction and active travel, through the development of compact, permeable neighbourhoods which feature high-quality pedestrian and cyclist connectivity, accessible to a range of local services and amenities'.*
- 7.8.3. Section 15.4.5 of the Kildare County Development Plan 2023-2029 refers to 'Design, Layout.'. It states that *'The design and layout of new residential development offers the opportunity to establish exceptional standards in terms of placemaking and urban design through the integration of high-quality connectivity, open space and sustainable mobility features from the outset. While the Kildare Rural House Design Guide (Appendix 4) outlines the requirements for layout and boundary treatment for rural dwellings, proposals for residential development in towns and villages will be required to fully address the 12 Criteria for sustainable residential development as outlined in the Urban Design Manual – A Best Practice Guide (DoEHLG, 2009), as well as the guidance set out in Section 14.6 of this Plan.'*
- 7.8.4. The Sustainable Residential Development and Compact Settlement Guidelines 2024 supersede the Urban Design Manual – A Best Practice Guide (DoEHLG, 2009). These guidelines came into effect post adoption of the Kildare Local Area Plan 2023-2029 and lodgement of the First Party Appeal.

- 7.8.5. The Architectural Design Statement prepared by Fewer Harrington and Partners dated August 2023 is noted by this inspector. This sets out how the proposal addresses each of the 12 Urban Design Rationale/Design criteria.
- 7.8.6. The proposed development consists of 96 no. houses, a childcare facility and five a side playing pitch which are arranged around four main areas of open space.
- 7.8.7. The proposed five a side playing pitch flood lighting, and associated administration building, along with the proposed childcare facility and associated surface car parking are located centrally within the scheme along the northern boundary. The proposed pumping station is located in the south eastern corner of the overall site.
- 7.8.8. The proposed internal road layout provides for a total of 7 no. cul de sacs and I would consider that the internal access road is dominant in terms of the overall layout. Given the no. of cul de sacs I would be of the view that the layout proposed fails to create a level of permeability, and results in a missed opportunity in creating a connecting series of routes within the scheme.
- 7.8.9. As already outlined in section 7.6. and 7.7 of my report above the proposed development does not provide for any pedestrian or cycle connections to or from the site, which would provide any connections to communities nearby. Access to the site will therefore be by private car and an irregular bus service.

Housing units for the Elderly

- 7.8.10. The proposed houses consist of 96 no. semi-detached single storey bungalows. There is no variety of unit type or mix of house type within the development. The PA note that the dwellings are of limited architectural merit and include a pitched roof single storey structure with a ridge height of 6.2m in height. The material choice is very standard (render, concrete roof slates, UPVC windows and doors). I have examined the elevation drawings submitted and would concur with the PA in their assessment of the overall design and finishes proposed.
- 7.8.11. The dwellings and structures appear to be suburban and do not express the vernacular architecture of the rural location of the site. I am not satisfied that the proposed layout and design result in a development which provides distinctiveness or sense of place which relates to its rural location.

7.8.12. I would concur with the PA in that the proposed development does not respond positively to the rural site context; and that it appears to be visually incongruous in this rural setting. The density proposed is not reflective of the rural location. It is also worth noting that the applicant has not made any attempt to address these concerns in the First Party appeal.

Access for Emergency Vehicles

7.8.13. I note the CFO of the PA highlighted the need to provide turning facilities for fire appliances in dead-end access routes more than 20m long in accordance with Building Regulations 2017. Concern was raised in relation to how this would be provided particularly in the areas of Units 30/31 and Units 48/49. In addition, the CFO recommended that an auto-track analysis be carried out to verify all proposed road layouts.

7.8.14. I have examined the internal road layout and would have similar concerns regarding adequate turning areas for emergency vehicles given the length and number of cul de sacs within the overall development.

7.8.15. Each house is provided with private open space as rear gardens and the majority include in curtilage car parking. I would concur with the PA in that the layout at some locations creates a poor outlook for some units and some grouped parking areas are poorly overlooked.

7.8.16. In terms of orientation the PA note that there could be a much higher degree of solar gain by way of revised layout/orientation of units and by way of revised fenestration. In this regard I would also agree.

Public Open space

7.8.17. The applicant has indicated that a total of area of 7,777.7sqm or 16% of the site area is to provide for open space not including the five a side playing pitch. The development plan requirement for public open space for new residential development is 15%, so sufficient open space has been provided.

7.8.18. The open spaces include within them a proposed wheelchair accessible ecology garden (249sq.m), butterfly garden (329sq.m), sensory garden (329sq.m), and proposed outdoor seating area (134sq.m).

- 7.8.19. From the submitted site layout plans it is evident that within each of the four areas of open space there will be different themed spaces, however as noted by the PA the application was not accompanied by a landscape plan. Having regard to the rural context of the site, this is considered to be highly inappropriate. There is also no report on file from the Parks section or the Strategic Projects and Public Realm (SPPR) section of the PA.
- 7.8.20. The Planning Authority noted the provision and location of public open space relative to the proposed residential cells of housing. I would agree that car parking is dominant in certain locations and degrades areas of open space.
- 7.8.21. The PA note that 3 no. attenuation tanks are proposed on three of the four open spaces area, which is not the preferred location for SuDS. The PA also note that there are limited nature-based solutions that would add to biodiversity of the site.
- 7.8.22. I am satisfied that the development will provide for an adequate quantum of public open space to serve the residents of the proposed development, but that proposals lack detail and could be revised to accommodate SuDS proposals.

Childcare Facility, Playing Pitch and Administration Building

- 7.8.23. I would share the concerns of the PA in that the location of the crèche and the five a-side pitch within the centre of the site creates a conflict between these uses and the type of residential use proposed.
- 7.8.24. The Planning Authority note that the proposed crèche is a basic single storey structure with limited architectural merit with a hipped pitched roof, with a ridge height of 6.5m. The structure comprises of 4 no. classrooms, office, reception, welfare facilities and a sleep room. The structure is 468sqm. I would share these concerns.
- 7.8.25. The proposed childcare facility includes an associated outside play area with a stated area of 1,030sq.m. which includes a wheelchair accessible sensory play area (304.6sq.m.). This area is provided to the rear of the childcare facility. As already noted, the application was not accompanied by a landscape plan and there was no report from the Parks section of the PA.

- 7.8.26. The Planning Authority also note that the Five a-side pitch is poorly overlooked and that the proposed administration building is a similarly basic design with a pitched roof ridge height of 5.6m. This structure has a floor area of 63.8sqm.
- 7.8.27. I note the location of the proposed playing pitch and proposed floodlights with 6 no. 18m high training lights and poles adjacent to the would concur with the observer to the appeal that the use of the proposed floodlights with 6 no. 18m high training lights and poles,

Impact on third party residential amenity

- 7.8.28. The observer to the appeal raises issues of concern in relation to impact from the development on existing amenity. In particular the proximity of the proposed floodlights with 6 no. 18m high training lights and poles to their residential property to the north is highlighted. I have had regard to the proximity of the adjacent dwelling and nature of the proposed use which I consider will have an impact on the residential amenity of this property. I am satisfied this valid and a reasonable concern. I note the application was not accompanied by any details in relation to light spill on adjoining areas.
- 7.8.29. In conclusion I am not satisfied that the proposed development complies with Policy UD01.and Section 15.4.5 of the Kildare County Development Plan 2023-2029 or accords with the requirements of the Sustainable Residential Development and Compact Settlement Guidelines 2024. I am not satisfied therefore that this reason for refusal has been addressed by the appellant.

7.9. Land Ownership/ Letters of Consent

- 7.9.1. The observer to the appeal raises concern in relation to the accuracy of the site boundary shown as a red line boundary on Rural Map D-01. It is submitted by the observer that the red line boundary which encroaches on the entrance to their adjoining property to the NW and then extends northwards to the R415 to Newtown Cross Roads, has not been accompanied by the requisite letters of consent.
- 7.9.2. It is clear that the applicant has not obtained the consent of the landowner of the adjoining house to either make the planning application or carry out the proposed works on third party lands.

- 7.9.3. Article 22 of the Planning and Development Regulations 2001 as amended sets out requirements for the content of planning applications generally. Article 22(2)(g) states that where the applicant for permission is not the legal owner of the land or structure concerned, the application shall be accompanied by the written consent of the owner to make the application.
- 7.9.4. In this regard I note that a letter of consent was submitted with the application by the landowner of the site, and of the western section/wayleave required to facilitate access to the proposed development.
- 7.9.5. The Board is not an arbiter of title and the extent to which it is required to interrogate these issues is limited. There is nothing in this case to suggest that the applicant for permission is not the legal owner of the subject site, the Board are entitled to rely on this without further interrogation of the matter. This is supported by section 5.13 the Development Management Guidelines for Planning Authorities (June 2007). Section 34(13) of the Planning and Development Act further provides that if the applicant lacks title or owner's consent to do works permitted by a planning permission, the permission does not give rise to an entitlement to carry out the development.
- 7.9.6. The ownership of lands or consent of the landowner is disputed in submissions on the application, in so far as the extent of the lands and works relate to the areas of the development which have already been taken in charge by the local authority such as the public road.
- 7.9.7. The determination of title is not a matter for the Board. The Board is entitled to accept the evidence of title provided (e.g. folio details) and is not required to go behind the registered title and to make enquiries as to who might be the beneficial owner. Where a dispute regarding sufficient interest goes to issues that the Board is not competent to resolve, then the Board can grant planning permission, knowing that it is subject to s.34(13).
- 7.9.8. I have considered the submissions of all parties relating to title and am satisfied that fair procedures have been followed, e.g. that the applicant for permission has been given an opportunity to rebut any submission that it does not have a sufficient legal interest to make the application. Notwithstanding that the planning application was validated by the planning authority and that the matter was raised at application stage, I am not satisfied that the applicant has addressed the issues raised by the

observer in the first party appeal. I am not satisfied that the applicant has demonstrated sufficient legal interest.

- 7.9.9. I am satisfied that as the Road and Drainage have been taken in charge by the PA, and that they have objected to the proposed works along the public road. I am also satisfied that the provision of services along the public road is a matter for the PA and Uisce Éireann.
- 7.9.10. The Board may wish to seek further information or submissions from relevant parties under S.131, on the question over landownership and the adequacy of the consents provided, however in my view the matter is a civil matter between both parties, and beyond the jurisdiction of the Board.
- 7.9.11. I also note that the Board is entitled to grant planning permission even where a question of legal title remains outstanding and would suggest to the Board that express reference to section 34(13) should be provided to the parties in any cover letter enclosing the Board's decision.

8.0 AA Screening

- 8.1.1. It is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effect on any designated European sites, in view of the sites' conservation Objectives and that a Stage 2 Appropriate Assessment is not required.

9.0 Recommendation

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

10.0 Reasons and Considerations

1. Having regard to the current Kildare County Development Plan 2023-2029, and Kildare Town Local Area Plan 2023-2029, the boundary of which does not extend to include the subject site, the nature of the proposed residential

units, childcare facility and playing pitch, and that no statutory zoning currently applies to the subject site, the proposed development would, therefore, materially contravene the Kildare County Development Plan 2023-2029 and be contrary to the proper planning and sustainable development of the area.

2. It is considered that the nature of the proposed development which would result in the significant intensification of use of an access onto the heavily trafficked Regional Road R147, at a point where a speed limit of 60 km/h applies, and in the absence of footpaths, and or cycleways would endanger public safety by reason of traffic hazard, and the additional and conflicting traffic turning movements generated by traffic, pedestrians and cyclists would interfere with the safety and free flow of traffic on the public road.
3. The proposed residential units, childcare facility and playing pitch on unzoned land outside the boundaries of the defined built-up area of Kildare town, in proximity to a junction on the M7 motorway, would represent a haphazard and unsustainable pattern of development that would prejudice the orderly development of the area, and the policies and objectives to promote compact and sustainable development on appropriately zoned and serviced land within it. Furthermore, it is considered that the additional traffic movements which would be generated would interfere with the free flow of traffic on and would compromise the level of service and carrying capacity of, the road at this location and would fail to protect public investment in the national road network. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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

Susan McHugh
Senior Planning Inspector

7th November 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-318346-23		
Proposed Development Summary			
Development Address			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	X		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	X	Class 10(b)(i) – Threshold 500 units	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____