



An
Bord
Pleanála

Inspector's Report ABP-319792-24

Development	Construction of 64 new dwellings and all associated site works.
Location	Loughminane Green, Green Road, in the townlands of Loughminane, Knocksborough Glebe and Whitesland West, Kildare, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	191359
Applicant(s)	Keshmore Construction Limited
Type of Application	Planning Permission.
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party
Appellant(s)	Keshmore Construction.
Observer(s)	No Observers.
Date of Site Inspection	22 nd January 2025.
Inspector	Elaine Sullivan

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1.0 Introduction

- 1.1. This is a first-party appeal against the decision of Kildare County Council to issue notification to refuse permission for the construction of 64 residential units with associated development on a site of 2 hectares within the settlement boundary of Kildare town, County Kildare. The issues raised in the grounds of appeal are set out in Section 8 of this report.
- 1.2. The Board previously made a decision on this appeal under reference number **ABP-306825-20**. This decision was quashed by order of the High Court and the case was remitted back to the Board for a fresh determination. The appeal has been reactivated under **ABP-319792-24**. The following report represents a *de novo* assessment of the proposed scheme.
- 1.3. I note to the Board that in the intervening period between the first appeal and the subject appeal, the *Kildare County Development Plan 2023-2029* and the *Kildare Town Local Area Plan 2023-2029* have been adopted and have replaced the plans that the original application was assessed against.
- 1.4. I will set out the contents of the Section 131 responses below, before beginning the usual order for the Inspector's Report.

2.0 Section 131 Responses

- 2.1. Having regard to the High Court Order in this case, the quashing of the previous Board decision and the passage of time, the Board considered that it was appropriate in the interests of justice to request relevant parties under section 131 of the Planning and Development Act 2000 (as amended) to make any further general submissions in relation to the appeal.
- 2.2. All parties were invited to make a submission in relation to the matters raised above on or before the 2nd of July 2024. This report considers the submissions made on foot of the request and the proposed development in the context of the policy provisions of the *Kildare County Development Plan 2023 – 2029*. The submissions received are summarised in the report below.

2.3. Planning Authority Response

- 2.3.1. The subject site has been zoned 'Strategic Reserve – SR', in the *Kildare Town Local Area Plan (LAP) 2023-2029*. Lands zoned Strategic Reserve are to provide for the future strategic expansion of the town.
- 2.3.2. The objective of 'Strategic Reserve' is set out in table 11-4 of the LAP and is '*To protect the integrity of the lands to provide for the future strategic expansion of the town. To ensure any development that would prejudice the future orderly expansion of the town will be resisted*'. Uses 'Permitted in Principle' and 'Open to Consideration' within the 'Agriculture' land use zoning will be considered on these lands provided they do not jeopardise the overall objective for the strategic expansion of the town. The submission notes that dwellings are subject to Rural Housing Policy as outlined in the Kildare County Development Plan.
- 2.3.3. In conclusion, the PA considers that the proposed development for 64 residential units would materially contravene the SR zoning for the site as per the 2023-2029 LAP and would be contrary to the proper planning and sustainable development of the area.

2.4. First Party Response

- 2.4.1. The site is zoned SR under the Kildare LAP 2023-2029 and is the closest site in the SR lands to the train station in Kildare.
- 2.4.2. At the time of the original application to the PA, (6th of December 2019), the site was zoned 'C2 - New Residential'. The applicant states that delays in the planning system have led to a new LAP being adopted which has changed the zoning of the lands.
- 2.4.3. The applicant submits that the housing targets in the *Kildare County Development Plan (KCDP) 2023-2029* are out of date and have resulted in an underestimation of the housing demand in the county. Table 2.8 of the Development Plan – 'Core Strategy Table', projects a housing target of 430 residential units for Kildare town by Q4 2028. This is based on an estimated 2021 population of 9,314, which was calculated using the percentage of growth of population from 2011-2016. Although

detailed county profiles are not yet available from the 2022 Census, preliminary results show a higher than predicted population increase. Census 2022 has confirmed a population of 10,302 persons within the built-up area of Kildare town which is significantly above the 8,634 persons (Census 2016 results) that the housing targets are based on.

- 2.4.4. The submission notes that Kildare town benefits from high quality infrastructure in respect of drainage and transport and is well placed for additional housing. The applicant states that the only issue affecting the subject site is that of zoning, which is due to unprecedented delays in the planning process and are outside of the control of the applicant. All other planning issues raised have been addressed.
- 2.4.5. The applicant puts forward that the Board have the power to override the provisions of the *Kildare Town LAP 2023-2029* and the *Kildare County Development Plan 2023-2029*, under Section 37(2)(b) of the Planning and Development Act 2000 (as amended), and that this is the appropriate situation whereby these powers should be exercised.

3.0 Site Location and Description

- 3.1. The subject site has a stated area of 2 hectares and is located on the northwestern periphery of Kildare Town. It is approximately 500m from the town centre and approximately 1km from the train station. The eastern portion of the site is located within the townland of Knockshough Glebe, and the western portion of the site is in the townland of Whiteland West. It is triangular in shape and is currently an open greenfield site.
- 3.2. To the northeast the site is bounded by the existing Loughminane Green residential housing estate, to the west by an active farm and to the south by the Dublin Cork rail line and open fields. There is no direct vehicular or pedestrian access to the site. Pedestrian access to the site is available from Green Road via an active farm to the west of the appeal site.

4.0 Proposed Development

- 4.1. It is proposed to construct 64 no. residential units. The proposed scheme is located to the south of the existing Loughminane Green residential estate. It is proposed to remove an existing 2m high boundary wall at the end of an existing cul-de-sac within the estate to provide access to the development. The scheme is arranged around a circuitous estate road which results in the provision of 3 no. cul-de-sacs. An area of public open space (0.3ha) is provided along the southern portion of the site. The proposed 64 no. units comprise 8 no. 1 bed duplex units, 14 no. 2-bed mid-terrace houses, 38 no. 3-bed semi-detached and end of terrace houses and 4 no. 4-beds detached houses. The development comprises 4 no. different dwelling types. All units are 2-storeys with a maximum height of 9.6m. The duplex units have a gross floor area of approx. 53-59sqm, the 2- bed units have a gross floor area of approx. 85sqm, the 3-bed units have a gross floor area of approx. 107 sqm and the 4-bed houses have a gross floor area of approx. 130.5sqm.
- 4.2. The design of the scheme is a contemporary approach to a traditional style. External finishes include painted selected brick cladding and render. Private open space has been provided to the rear of each house with off-street car parking for 2 no. cars provided in a front driveway for each house. The 8 no. 1-bed units are provided in 2 no. 2 storey buildings, comprising 4 no. units each and are located at the eastern portion of the site. Communal car parking is proposed for these units and private open space is provided in the form of rear and side gardens.
- 4.3. Works proposed also include the provision of a pumping station and a temporary construction access through the adjoining agricultural lands. A Design Statement, a Planning Statement, a Traffic Impact Assessment, an Outdoor Lighting Report, a Landscaping Report and an Engineering Report were submitted with the application. A summary of correspondence with Irish Water regarding a pre-connection enquiry has also been provided.
- 4.4. The grounds of appeal contain an amended layout for the consideration of the Board and to address the issues raised in the reasons for refusal. Works proposed as part of the appeal include revisions to the layout of the eastern corner of the development. One of the multi-unit buildings would be omitted and the units in the adjacent terrace would be rearranged. This would result in a reduction of the

number of units from 64 to 62 and would provide a mix of 8 no. 1-bed units, 14 no. 2-beds, 36 no. 3-beds and 4 no 4-bed units.

5.0 Planning Authority Decision

5.1. Decision

Permission was refused for the following reasons: -

1. Section 7.2.1 of the Kildare Town Local Area Plan 2012-2018 sets out the Council's policy in relation to 'New Housing Unit Targets, Phasing and Density'. Specifically, Policy HP2 of the Kildare Town Local Area Plan 2012-2018 seeks to ensure that new residential development is prioritised on land zoned Phase 1 and that Phase 2 will not be eligible for development until such time as Phase 1 lands are developed appropriately. A significant quantum of Phase 1 lands is yet to be developed and as such the proposed development would contravene materially the provisions of the Kildare Local Area Plan 2012-2018 and would therefore be contrary to the proper planning and sustainable development of the area.
2. Having regard to the proximity and orientation of a number of proposed dwellings to the third-party dwellings at the northern boundary of the site, the proposed development would seriously injure the residential amenity of those dwellings, by reason of visual dominance and overshadowing. The dwellings to the eastern corner of the site are awkward in their siting and the juxtaposition of these units would have a negative impact on the residential amenity of each other as it is considered that this area of the site is overdeveloped. Furthermore, the design of the public space is ill conceived and not integral to the overall design as its interaction with the dwellings proposed is poorly considered. As such the quality of the residential layout and design is substandard and the proposed development is considered to be in conflict with the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas issued by the Department of the Environment Heritage and Local Government in May 2009, and with the Kildare County Development Plan 2017 – 2023, it is considered that the

proposed residential development would seriously injure the residential amenities of property in the vicinity and the residential amenities of future occupants and would, therefore, not be in accordance with the proper planning and sustainable development of the area.

3. In the absence of a flood risk assessment in accordance with the Planning System Flood Risk Management Guidelines for Planning Authorities 2009, the applicant has not demonstrated to the satisfaction of the Planning Authority that the proposed development is not subject to unacceptable levels of flood risk nor the potential flood risk to adjacent properties or roads. The proposed development, therefore, could lead to conditions which would be prejudicial to public health and be contrary to the proper planning and sustainable development of the area.

5.2. Planning Authority Reports

5.2.1. Planning Reports

- The area planners report raised a number of concerns regarding the proposed development and recommended that permission be refused for the reasons above.

5.2.2. Other Technical Reports

- **Heritage Officer:** recommended that an archaeological assessment of the site be requested by way of further information.
- **Roads and Transportation** recommended a traffic impact assessment, a road safety audit and details of the internal road layout, surface water arrangements, noise and public lighting be requested by way of further information.
- **Water Services:** recommended that a flood risk assessment and details of the surface water drainage and attenuation details be requested by way of further information.
- **Environment Section:** No objection subject to conditions.

- **Chief Fire Officer:** Recommended that details of compliance with fire safety guidance would be provided, including auto-track drawings.
- **Area Engineer:** No objection subject to conditions.
- **Housing Section:** Recommended that a revised site layout be considered and details of compliance with storage space for the proposed Part V units be requested by way of further information.

5.3. Prescribed Bodies

Iarnród Éireann noted that the existing road / rail interfaces are already under strain due to heavy usage and there are constraints on the surrounding road network, including a bridge at Green Road. Having regard to the site's proximity to the rail line it is recommended that conditions be attached to any grant of permission.

5.4. Third Party Observations

5 no. third party objections were received from residents of the existing Loughminane Green housing estate. The concerns raised included the following: -

- The area is subject to flooding,
- Sewerage system is at capacity in Kildare. There are on-going problems with the pumping station which serves the existing estate,
- Additional traffic generated by the development would result in a traffic hazard,
- Noise disturbance during the construction phase would have a negative impact on the existing residential amenities,
- Schools are at capacity, and
- The proposed design is not in keeping with the character of the existing estate.

6.0 Planning History

The following section sets out the most recent and relevant planning history for the site and the surrounding area.

On the Appeal Site -

PL09.232560, Reg. Ref. 07/2273: Permission was **refused** in 2009 for the construction of 54 no. houses. The reasons for refusal related to (1) a potential traffic hazard due to a substandard road network and (2) the development would be prejudicial to public health due to the capacity of the proposed private pumping station.

Reg. Ref. 05/1039: Outline permission was **refused** in 2005 for 44 no. houses. The reasons for refusal related to (1) the location of the site in an area where it was policy of the Kildare Town LAP, 2002 not to permit development; (2) a potential traffic hazard due to a substandard road network; and (3) premature pending the construction of a wastewater treatment plant in Kildare Town.

Surrounding Sites to the north of the railway line -

Sites to the north-east of the site - on Southgreen Road

ABP-318401-23, (PA Ref. 23/416) – Planning permission **granted** by the Board on the 26th of February 2024 for a Large Scale Residential Development (LRD) comprising 168 units and a childcare facility accessed from South Green Road.

Sites to the north-west of the site - on Old Road

Reg. Ref. 18/1026, Reg. Ref. 18/1027 and Reg. Ref. 18/1028 are located on one landholding located approx. 800m northeast of the appeal site. The applications were lodged concurrently with the planning authority and are summarised below.

Reg. Ref. 18/1026: Permission was **granted** in 2019 for 99 no. residential dwellings and included the provision of the Southern Internal Link Road between Southgreen Road and Dunmurray Road. –

Reg. Ref. 18/1027: Permission was **granted** in 2019 for 50 no. residential units and included the provision of the Southern Internal Link Road between Southgreen Road and Dunmurray Road.

Reg. Ref. 18/1028: Permission was **granted** in 2019 for 96 no. residential units and included the provision of the Southern Internal Link Road between Southgreen Road and Dunmurray Road.

Sites to the northwest - on Rathbride Road

PA Ref. 23/550 – Planning permission **refused** by the PA on the 3rd of April 2024 for the development of 78 homes and associated site works. The application was refused for 4 reasons which related to the following,

1. The Surface water management plan includes an attenuation tank underneath the public open space, which is contrary to the provisions of Objectives IN 024 and IN 026 as it would be prejudicial to the provision of a high-quality public space.
2. Surface water pathways through the site, as shown on Map 10.1 of the LAP, have not been considered or incorporated into the development, which would contravene Objective IO 2.4 of the LAP.
3. The design and layout of the development would be contrary to Objective UD 01 which seeks to ensure a high standard of urban design and with Policy and Objective 4.2 of the Compact Settlements Guidelines as it relates to good quality urban design and placemaking.
4. The application has not considered the location of the site within the Curragh Buffer Zone and has not provided appropriate planting, boundary treatments and public lighting as required in Objectives HCO 2.2, NHO 3.1 and NHO 3.2 of the Kildare LAP.

ABP-313008-22, (PA Ref. 21/1033) – Planning permission **granted** by the Board on the 9th of June 2023 for 87 houses and a creche.

Sites to the south of the railway line –

To the southeast of the site and on the southern side of the town –

ABP-318632-23 (PA Ref. 23/510) – Planning permission **refused** by the Board on the 26th of March 2024 for a LRD comprising 295 residential units and a creche. The reason for refusal is stated as,

Having regard to the ‘New Residential Phase 2’ zoning of the site as per the Kildare Town Local Area Plan 2023 - 2029, the objective of which is to protect future development lands from inappropriate forms of development which would impede the sequential expansion and consolidation of the town in terms of providing for new residential development, it is considered that the proposed development would contravene materially the said zoning objective and would undermine the housing and population targets for the town as outlined in the Core Strategy of the Kildare County Development Plan 2023 – 2029. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

ABP-318346-23, (PA Ref. 23/60110) - Planning permission refused by the Board for 96 houses for the elderly, a creche and a football pitch for five reasons. The reasons for refusal related to,

1. The lands are not zoned for development as they are located outside the boundary of the Kildare Town LAP 2023-2029,
2. The development is not in accordance with objectives HO021 and HO022 which require residential accommodation for the elderly to be in a central, accessible convenient location within communities,
3. The intensification of use on a heavily trafficked road would endanger public safety by reason of a traffic hazard,
4. The location of the development would represent a haphazard and unsustainable pattern of development and would compromise the carrying capacity of the road network,
5. The development is not in accordance with the Compact Settlements Guidelines.

7.0 Policy Context

7.1. Development Plan

- 7.1.1. The development proposal was initially assessed against the provisions of the Kildare County Development Plan 2017-2023, which was the operative Development Plan at that time. This Plan has been replaced with the Kildare County Development Plan 2023-2029 which was adopted on the 9th of December 2022 and is now the operative Development Plan for the site.
- 7.1.2. The development was also within the boundary of the Kildare Town Local Area Plan (LAP) 2012-2018, the provisions of which were also considered during its previous assessment. This LAP has been reviewed and replaced by the Kildare Town LAP 2029-2029.

Kildare Town Local Area Plan 2012-2018

The following provisions of the Kildare Town LAP 2012-2018 were referenced in the decision of the PA to refuse planning permission.

Zoning objective - The subject site was zoned 'C2 – New Residential – Phase 2'.

Policy HP 2 - To facilitate the phased sustainable development of lands in Kildare for residential use in accordance with Map 8.1, to ensure compliance with the core strategy and the settlement strategy set out in Kildare CDP 2011–2017. In the event that permissions expire on existing zoned residential lands designated as Phase 1 consideration may be given to development of Phase 2 lands which are sequentially close to the town centre and are adequately serviced by appropriate infrastructure. The remaining Phase 2 lands will not be eligible for development until such time as Phase 1 lands are developed appropriately or until the review of this plan through the statutory process and in the context of the core strategy set out in the County Development Plan (CDP), as may be amended. The inclusion of new residential Phase 2 lands within this plan will not in any way infer a prior commitment on the part of the Council regarding their future zoning for residential purposes with any future amendment or review of the Kildare LAP which would also be subject to Strategic Environmental Assessment (SEA), Appropriate assessment(s)(AA) and Flood Risk Assessment (FRA) as required under the relevant legislation.

Section 7.2.1 – New Housing Unit Targets, Phasing and Density – This section of the LAP identifies a list of sites for development at specified densities that would achieve the housing target set out in the LAP. A sequential approach was applied, and Phase 1 and Phase 2 lands were identified. The subject site was categorised as a Phase 2 site (C2).

Kildare County Development Plan 2023-2029

Chapter 2 – Core Strategy

Kildare town is categorised as a ‘Self-Sustaining Growth Town’ in the Settlement Strategy for the County, (Table 2.7). Self-Sustaining Growth Towns are described as having ‘high levels of population and a weak employment base’.

Table 2.8 – Core Strategy Table sets out the housing targets for each settlement type, including Kildare Town. A housing target of 430 additional units from 2023 to the end of Q4 in 2028 has been set for Kildare Town.

(**Note:** Table 2.8 is referenced in the applicant’s response to Section 131 notifications).

Core Strategy and Settlement Strategy Objectives -

CS O1 - Ensure that the future growth and spatial development of County Kildare is in accordance with the population and housing allocations contained in the Core Strategy which aligns with the regional growth strategy as set out in the National Planning Framework and Regional Spatial and Economic Strategy for the Eastern and Midland Region and further specified in the ‘Housing Supply Target Methodology for Development Planning’.

CS O13 - Require that the design of future development complies with the 10-minute settlement principle through the creation of a safe, attractive, permeable, and universally accessible environment for all, including permeability to existing estates to require public consultation which maximises the potential for active modes of travel along with accessibility to both present and planned public transport options and to advocate for increased public transport options to meet this goal where none are in place.

CS O19 - Align the Kildare County Development Plan 2023-2029, with the up-to-date population from Census 2022 where there are verified material population differentials at settlement level to those in Table 2.8 of the Plan, by way of a statutory variation/ review pursuant to Section 13 of the Planning and Development Act 2000 (as amended).

Chapter 3 – Housing

Objectives -

HO O6 - Ensure a balance between the protection of existing residential amenities, the established character of the area and the need to provide for sustainable residential development is achieved in all new developments.

HO P7 - Encourage the establishment of sustainable residential communities by ensuring a wide variety of housing typologies and tenures is provided throughout the county.

3.17 – Flood Risk Management –

HO P33 – It is the policy of the Council to - Require that site specific flood risk assessments are carried out where required, in accordance with the requirements of The Planning System and Flood Risk Management Guidelines for Planning Authorities.

Chapter 15 – Development Management Standards

15.2.2 – Overlooking / Separation Distances – sets out a minimum distance of 22m between opposing first floor windows.

15.2.4 – Soft Landscaping – sets out requirements for landscaping, tree and hedgerow retention and replacement.

15.4.6 – House Design – Table 15.2 sets out the minimum floor space and open space requirements for houses.

15.6.6 – Public Open Space for Residential Development – a minimum of 15% open space is required for greenfield sites. This section also sets out the design requirements for public open space.

Kildare Town Local Area Plan 2023-2029

A Strategic Principle of the LAP is to create compact and connected communities. Therefore, the LAP provides for c. 65% of all new homes to be developed within the defined built-up area of the town. This principle is applied through land use zoning.

Zoning Objective - The subject site is zoned 'SR - Strategic Reserve', the objective of which is, *'To protect the integrity of the lands to provide for the future strategic expansion of the town. To ensure any development that would prejudice the future orderly expansion of the town will be resisted'*.

Section 3.2 Future Population and Housing Targets – The housing targets in the LAP align with the Core Strategy of the Development Plan. As the LAP was adopted at a later date than the Development Plan an adjustment was made to the population and housing targets for the town. Table 3.2 of the LAP sets out a growth in residential units of 502 units to the end of 2029.

Section 3.8 – Future Development Priorities – The LAP was prepared in the context of extant planning permissions which are in excess of the target unit allocation for the lifetime of the plan. This is due to a legacy of surplus residential zoned land from previous local area plans.

Lands that scored well in the Settlement Capacity Audit have been identified as 'Strategic Reserve'. This designation seeks to protect the lands from inappropriate forms of development which would impede the future orderly and efficient expansion of the urban settlement post-2029. As noted above the subject site is zoned 'Strategic Reserve'.

It is an objective of the Council to:

CSO 1.1 - Accommodate housing growth in Kildare Town in accordance with the Core Strategy of the Kildare County Development Plan 2023- 2029 and any review, replacement or variation thereof.

CSO 1.3 - Support and facilitate the compact growth of Kildare Town through the sustainable and sequential land use development objectives which consolidate the town centre, commercial uses and established residential areas.

CSO 1.10 - Preserve the lands identified as 'Phase 2 New Residential' and 'Strategic Reserve' on Map 11.1 Land Use Zoning Objectives from inappropriate forms of development, thereby controlling the level of piecemeal and haphazard development

on these lands and safeguarding their strategic value in accommodating the orderly sequential expansion of the urban settlement beyond the current Plan period.

Section 6.3 – Residential Development: Capacity and Delivery

It is an objective of the Council to -

HCO 1.3 - Encourage the appropriate redevelopment of brownfield and infill sites for a mix of uses including residential within the footprint of the existing built-up area.

Section 10.3 – Surface Water and Groundwater

The Kildare Town Surface Water Study identified surface water pathways/natural drainage paths and Nature Based Management Areas (NBMA) along with opportunities to pursue increasing surface water drainage capacity in the town. The locations for Nature-Based Management Areas and indicative surface water pathways / natural drainage paths are shown on Map 10.1 Surface Water Management. The subject site has a Surface Water Pathway running through it.

Objective IO 2.4 - Ensure areas indicated as Nature-Based Management Areas (NBMAs) on Map 10.1 are reserved free from development and integrated into design proposals for nature-based surface water drainage purposes; whilst also ensuring a network of Surface Water Corridors (surface water pathway corridors) are provided in accordance with the indicative locations shown on Map 10.1.

10.4 – Flood Risk Management

A Strategic Flood Risk Assessment (SFRA) informed the LAP. It confirmed that there is not area of fluvial flood risk in the town. However, areas where pluvial flood risk exists (i.e., overland flow caused by high intensity rainfall) were identified within the Plan area and are identified on Map 10.2. The subject site is partially within a pluvial flood risk area.

Objective IO 3.1 - Require a site-specific Flood Risk Assessment, appropriate to the scale and nature of the development and the risks arising, to be carried out for developments located within the Pluvial Flood Risk Area as outlined on Map 10.2 Strategic Flood Risk Assessment Map.

7.2. National Planning Policy

7.2.1. Project Ireland 2040, National Planning Framework, (NPF).

The NPF provides a series of National Policy Objectives (NPOs) which seek to strengthen and consolidate existing settlements. Some of the NPO's relevant to the development are listed below.

- NPO 3a, b and c which seek the delivery of new homes within the footprint of existing settlements.
- NPO 3a, Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.
- NPO 3c Deliver at least 30% of all new homes that are targeted in settlements, within their existing built-up footprints.

7.2.2. Draft Revised National Planning Framework (2024)

At the time of writing the NPF is under review to incorporate new housing targets to 2030. The targets are based on research and modelling of population growth carried out by the Economic and Social Research Institute (ESRI) which forecasts substantial population growth over the coming decade. The 2018 NPF planned for population growth of 1.1 million people, and a total population of 5.85 million by 2040. The ESRI have updated its national and regional population projections to account for Census 2022. The updated projection is that the population of Ireland will increase to approximately 5.7 million by 2030 and to 6.1 million by 2040. Based on the projected increases the NPF sets a target to deliver approximately 50,000 additional homes per annum to 2040.

A draft schedule of amendments to the First Revision to the National Planning Framework (NPF) was published in November 2024. To finalise the Revision to the NPF, the Government will be required to conclude the environmental assessments, including a Strategic Environmental Assessment (SEA), Natura Impact Assessment (NIS) and a Strategic Flood Risk Assessment (SFRA).

National Policy Objectives of the Draft NPF include,

- NPO 9 - Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints and ensure compact and sequential patterns of growth.
- NPO 11 - Planned growth at a settlement level shall be determined at development plan-making stage and addressed within the objectives of the plan. The consideration of individual development proposals on zoned and serviced development land subject of consenting processes under the Planning and Development Act shall have regard to a broader set of considerations beyond the targets including, in particular, the receiving capacity of the environment.
- NPO 42 - To target the delivery of housing to accommodate approximately 50,000 additional households per annum to 2040.
- NPO 43 - Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- NPO 45 - Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration, increased building height and more compact forms of development.

7.2.3. **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.

The Guidelines were not in place when the planning application was initially assessed.

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 is 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.

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 3.3.3 – Key Towns and Large Towns (5,000+ population)

I consider the most applicable settlement category in Section 3.3.3 to be ‘Key Towns and Large Towns’ (5,000+ population).

The strategy for Key Towns and Large Towns is to support consolidation within and close to the existing built-up footprint. In order of priority the key principles for their development are,

- a. plan for an integrated and connected settlement overall
- b. strengthen town centres,
- c. protect, restore and enhance historic fabric, character, amenity, natural heritage, biodiversity and environmental quality,

- d. realise opportunities for adaptation and reuse of existing buildings and for incremental backland, brownfield and infill development, and
- e. deliver sequential and sustainable urban extension at locations that are closest to the urban core and are integrated into, or can be integrated into, the existing built up footprint of the settlement.

Density – Within the ‘Key Town’ settlement, the site would be further categorised as a Suburban/Urban Extension. It is an objective of the Guidelines that residential densities of 35-50 units per hectare (net) shall generally be applied at suburban and urban extension locations.

- 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; 1 bed – 20sqm, 2 bed – 30sqm, 3 bed – 40sqm and 4bed + - 50sqm.
- 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. The subject site is categorised as a ‘peripheral location’.
- SPPR 4 – relates to cycle parking and storage facilities.
- Policy and Objective 5.1 – Public Open Space - The requirement in the development plan shall be for public open space provision of not less than a minimum of 10% of net site area and not more than a minimum of 15% of net site area save in exceptional circumstances.

7.3. Natural Heritage Designations

- 7.3.1. No natural heritage designations apply to the subject site.

7.4. EIA Screening

- 7.4.1. 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, therefore, is not required.

8.0 The Appeal

8.1. Grounds of Appeal

- 8.1.1. The grounds of the appeal address the three reasons for refusal as well as issues raised by the PA in their assessment of the application. The reasons for refusal relate to the Phase 2 zoning objective of the lands, (as per the Kildare Town LAP 2012-2018), the layout of the development and a lack of detail regarding flood risk. When the appeal was lodged the subject lands were zoned objective 'C2 – New Residential Phase 2' with C1 - Phase 1 lands prioritised for development. Under the current Development Plan the lands are zoned SR – Strategic Reserve.

The issues raised are summarised under the headings below.

Zoning

- Refusal reason No. 1 related to Policy HP2 and the Phase 2 zoning objective of the site.
- The applicant argues that the wording of Policy HP2 in the Kildare LAP 2012-2018, allows for the consideration of Phase 2 lands for development within the lifetime of the plan based on three conditions – where planning permission on Phase 1/C1 lands has expired, where Phase 2/C2 lands are sequentially close to the town centre and adequately serviced and where Phase 1 lands are appropriately developed.
- A review of the planning status for C1 lands was carried out by the applicant and submitted with the appeal. They found that extant planning permissions on these lands (at the time of writing) were relatively recent and had not

expired. This was attributed to historic deficiencies in infrastructure which had restricted development.

- It was noted in the appeal that some C1 sites did not have extant permissions or were not subject to planning permissions at all. The applicant believed the historic absence of permissions on these sites could be attributed to larger underlying issues that may prevent development in the long term. Should this be the case, the applicant refers to *Department Circular PL9/2016 – Rebuilding Ireland*, whereby advice is given to Local Authorities to consider alternative sites where there are impediments to the development of zoned lands prioritised in the housing strategy or where such sites have not become available for development.
- The applicant submits that where C1 lands have been zoned in the LAP since 2012 and have not yet been developed, consideration should be given to C2 lands that are ready to go instead. A case for the subject site is made on the basis that it is sequentially close to the town centre and the train station (and is closer than some C1 sites), is adequately serviced by an existing road and has confirmation of feasibility from Uisce Eireann.
- In the first reason for refusal, the PA considered that the development materially contravened the LAP. The applicant argues that the development does not materially contravene the LAP as there is no definition of what the ‘appropriate development’ of Phase 1 lands. In the absence of a definition there is no measurement to categorically state that the development of Phase 2 lands constitutes a material contravention.
- Should the Board consider that the development represents a material contravention of the LAP, the appellant puts forward that the proposal could be considered under the provisions of Section 37 (2)(b) of the Planning and Development Act 2000 on the basis that the delivery of housing is of national importance.

Design and Layout

- The second reason for refusal relates to the design and layout of the development.

- In the first part of Reason 2, the PA considered that the proposed development would seriously injure the residential amenity of the existing dwellings along the northern site boundary. The applicant believes that the wording lacks clarity and assumes that it refers to proposed house No's 18, 41 and 42 which are orientated with their gables facing the houses on Loughminane Green.
- The applicant states that the length of the existing gardens (c. 13.6m) and the lower ground level of the subject site would combine to lessen the visual impact visual impact of the gable wall when viewed from the existing houses. Drawing 4301-4 was submitted with the appeal and contains a cross-section showing the relationship between the existing and proposed houses. This drawing also shows the impact of the development on the sun path to the existing dwellings in summer and winter. The applicant submits that there will be minimal impact during the summer with some impact during the winter, which is to be expected in a suburban setting.
- The grounds of appeal suggest that it is within the remit of the Board to omit the proposed units should they feel it is appropriate.
- In the second part of Reason 2 the PA considers that the proposed units in the eastern corner of the site are awkward and would have a negative impact on the amenity of each other.
- The applicant accepts that the design of this corner could be improved and an alternative layout was submitted with the appeal for the Boards consideration. The revised layout is shown on Drawing Ref. 4301-3 and would reduce the number of units in the development from 64 to 62. The revised layout also considers concerns raised by the PA regarding access for emergency vehicles.
- The final part of Reason 2 relates to the layout of the public open space, which the PA considered to be ill-conceived with poor interaction with the houses. The applicant argues that the open space was positioned at the southern end of the site to act as an additional buffer between the railway line and that most of the houses face onto the open space. It is put forward that the objective is to ensure that all dwellings are conveniently accessible to the

open space. The furthest dwelling from the open space is 94m away, which equates to a 1-minute walk.

Flood Risk

- In the third reason for refusal the PA were concerned about the absence of a flood risk assessment. The applicant notes that the site is not within an area where a site-specific flood risk assessment (SSFRA) is required in the 2012-2018 LAP. However, they have submitted a flood risk assessment with the appeal to address the concerns of the PA.
- The SSFRA notes that the site is associated with a small area of pluvial flooding in the south-west corner of the site, which is the lowest part of the site. The drainage system proposed will collect these waters rather than flowing directly to the lowest corner of the site. The SSFRA concludes that, *'In consideration of the assessment, analysis and recommendations...pluvial risk can be managed to an acceptable level'*.

Legal Issues

- A solicitor's letter has been submitted with the appeal which states that the applicant has a sufficient legal interest to avail of access through Loughminane Green.

Boundary Treatment

- The applicant has no objection to the provision of a 2.4 m high wall along the southern boundary of the site as requested by Iarnrod Éireann. It is suggested that the wall could easily be screened by the provision of a new hedgerow, which could help to compensate against the removal of a hedgerow on the site. The applicant does not consider that the provision of a 2.4m high wall would have a negative impact on the amenities of future occupants of the development.
- The applicant has stated that the removal of a hedgerow to accommodate a residential development is not uncommon. Drawings submitted with the appeal indicate that sections of the hedgerow could be retained adjacent to the proposed car parking areas.

Storage Space

- In response to the PA's comments regarding reliance on attics for storage space, the applicant refers to Section 17.4.5 of the Kildare County Development Plan 2017-2023. The applicant notes that no reference is made to attic storage in this section and is therefore not excluded. It is also considered likely that the residents would purchase sheds to provide any additional storage needs.

Private Open Space

- The revised layout submitted with the appeal ensures that all dwellings reach and exceed the private open space requirements.

Traffic

- The applicant considers that concerns raised by Iarnród Éireann regarding the increased potential for collisions or bridge strikes is unfounded. There is no evidence of the existing bridge being the subject of strikes from traffic. A moderate increase in traffic from the development is unlikely to change this situation.
- A Traffic and Transportation Review has been submitted which addresses concerns raised by the planning authority. It is considered that the proposed development would not result in a traffic hazard and all matters can be addressed during the detailed design stage in agreement with the local authority.

Archaeology

- An Archaeological Impact Assessment has been submitted with the appeal. There are no known items of archaeological heritage in the appeal site or in the surrounding area. However, the applicant is amenable to a planning condition which relates to archaeology.

Development Plan Variation

- The appeal refers to a proposed variation to the *Kildare County Development Plan 2017-2023*, which was the operative plan at the time of the appeal. This Development Plan has been superseded by the *Kildare County Development Plan 2023-2029*.

8.2. Planning Authority Response

- No further comments.

9.0 Assessment

9.1. Having examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal relate to the reasons for refusal and are listed as follows:

- Zoning Objectives
- Design and Layout
- Drainage and Flood Risk
- Traffic and Access
- Archaeology

9.2. Zoning Objectives

9.2.1. The first reason for refusal relates to the previous zoning C2 objective of the site and how the zoning complied with the housing targets, phasing and density as set out in Section 7.2.0 of the LAP. Under the 2012-2018 LAP the site was zoned 'C2 – New Residential Phase 2'. Lands which were zoned 'C1 – New Residential Phase 1' were prioritised for development, with C2 lands to be developed on a sequential basis when C1 lands had been developed appropriately. The PA considered that the development of the C2 zoned site in advance of the C1 lands would be contrary to the provisions of the LAP. Since the decision of the PA was issued, the 2012-2018 LAP has been replaced with the *Kildare Town LAP 2023-2029*. Under the current LAP the site is zoned 'SR – Strategic Reserve'. This zoning objective relates to lands that scored well in the Settlement Capacity Audit for the LAP but are not designated for development within the lifetime of the Plan. Lands zoned SR have been earmarked for future strategic residential requirements in the post-2029 period and following the building out of identified sites. It is a Strategic Development Objective of the LAP to create a compact and connected community. Therefore, the

focus of the plan is to consolidate development within the defined, 'Built-up urban area'. The subject site is located outside the defined built-up urban area.

- 9.2.2. Section 3 of the current LAP addresses compliance with the Core Strategy of the Development Plan and sets out the future population and housing targets for Kildare Town. Table 3-2 of the LAP, '*Population and Housing Targets for the Kildare Town Local Area Plan 2023-2029*', projects that a growth of 502 units is required to the end of 2029. The LAP states that it was prepared in the context of extant permissions which would yield a greater number of units than the target unit allocation provided for the lifetime of the LAP. Table 3-4 of the LAP lists the 'Significant Extant Planning Permissions' for the town which will be delivered during the period of 2023-2029. The permissions would yield 985 units, which is more than the 502 projected in Table 3-2. It is noted in the LAP that as of January 2023 an additional c. 551 units were at pre-planning / further information stage within the LAP boundary.
- 9.2.3. The SR – Strategic Reserve zoning objective relates to lands that are not designated for development within the lifetime of the Plan. These lands have earmarked for future strategic residential requirements in the post-2029 period and following the building out of identified sites within the defined town centre area. The LAP is clear that development of SR zoned lands does not form part of the settlement strategy for the town in the 2023-2029 LAP. The plan also notes that the number of extant permissions and units set to be delivered during the life of the plan is more than the targeted growth of 502 units to the end of 2029.
- 9.2.4. Since the adoption of the LAP, planning permission has been granted for an additional 168 residential units (**ABP-318401-23**) on 'C1 – New Residential' lands. It is a strategic policy of the LAP that residential development is facilitated within the designated boundary of the town and on appropriately zoned sites. The subject site has been zoned as a Strategic Reserve site for development post 2029 and is not earmarked for development within the current LAP period.
- 9.2.5. The grounds of appeal include a survey of the 'C1 – Phase1' lands to determine the planning and development status of the lands. Three sites were identified in the survey as having no previous planning history or extant applications. The applicant submits that the sites with no planning history may have fundamental barriers to development given the length of time they have been zoned for development and the

lack of any progress. As the remainder of the C1 sites have, or had, extant permissions or were subject to development, the appeal suggests that the C1 lands could be considered to be 'appropriately developed'. On this basis the applicant argues that it would be sequentially appropriate to consider the Phase 2 lands for development. The grounds of appeal also put forward that should the Board consider that the proposed development would materially contravene the zoning objectives of the LAP, that it is within their remit to consider the proposal under the provisions of Section 37(2)(b) of the Planning and Development Act 2000.

- 9.2.6. I note to the Board that two of the sites identified in the applicant's survey were rezoned objective 'C - Phase 2 – New Residential' in the 2023-2029 LAP. Planning permission for an LRD comprising 295 units was also refused on one of the sites under **ABP- 318623, PA Ref. 23/510**, as the Board considered that the proposal materially contravened the 'Phase 2' zoning of the site.
- 9.2.7. An argument is made by the applicant that the subject site can be considered separately to the other Phase 2 sites as it is a smaller site that could be easily serviced and would utilise an existing access onto the Green Road. I would agree with the applicant that the location of the site to the rear of an existing housing development would allow for easy access and servicing. The site could also be considered as an infill site given its positioning between the housing estate and the train line. However, based on the provisions of the *Kildare Town LAP 2023-2029*, I consider that the proposed development would materially contravene the SR zoning objective for the site which has been reserved for development post 2029. The proposed development would also be contrary to the Core Strategy as set out in Table 2.8 of the Development Plan and the settlement strategy and housing targets set out in Section 3.2 and Table 3-2 of the 2023-2029 LAP. By virtue of the SR zoning objective of the site and its location outside the designated built-up urban area, which is the focus for development, the proposed development would be contrary to the Kildare Town Development Strategy as set out in Figure 2-3 of the LAP.
- 9.2.8. Should the Board disagree with my conclusion, it is within their powers to consider the development under the provisions of Section 37(2)(b) of the Planning and Development Act 2000 which states that the Board may decide to grant permission

for a development even if the proposed development contravenes materially the development plan relating to the area, 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 development, and permissions granted, in the area since the making of the development plan*

I will consider each of the possibilities listed under Section 37(2)(b) and available to the Board in turn.

- i. the proposed development is of strategic or national importance,*

9.2.9. The provision of housing at appropriate locations and at appropriate densities is the focus of national planning policy and is of national importance. I note to the Board that, at the time of writing the NPF is under review to incorporate new housing targets to 2030. The revised targets are based on the research and modelling of population growth carried out by the Economic and Social Research Institute (ESRI) which were adjusted to take account of the results of Census 2022. Although the revised NPF has not yet been formally adopted, it contains an amended target to deliver approximately 50,000 additional homes per annum to 2040.

9.2.10. The Compact Settlement Guidelines were published in 2024, after the County Development Plan and the Kildare Town LAP were adopted. These Section 28 guidelines reinforce the overarching planning policy to align housing growth at sufficient densities with good public transport. I have carried out an assessment of the development against the provisions of the Compact Settlement Guidelines in Section 9.3 below.

9.2.11. Kildare town is designated as a Self-Sustaining Growth Town in the KCDP, which is the second level in the settlement hierarchy for the county. Self-Sustaining Growth Towns are categorised as level 4 settlements in the Regional Spatial and Economic Strategy (RSES) and are recognised as generally being ‘Self-sufficient and commuter settlements, with good public transport and regional transport links...’. Whilst the town is designated as a ‘second level’ settlement in the county, its position on the Dublin to Cork national train line is noted and the town is currently served with good commuter connections.

9.2.12. Although the housing targets for the LAP have been met through extant permissions, the Board may consider that the provision of housing along a high frequency commuter train line would contribute to the overall development of the county and to the national delivery of housing. Should the Board consider the development of Kildare Town is required for the strategic growth of the county which would contribute to the overall delivery of national housing targets then a grant of permission under Section 37(2)(b)(i) may be warranted.

ii. there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned,

9.2.13. The development strategy for the town is set out in Chapter 2 – Core Strategy of the Development Plan and is reflected in the Kildare Town LAP. Objective CS O1 of the Development Plan seeks to ensure that the future growth and spatial development of County Kildare is in accordance with the population and housing allocations contained in the Core Strategy. Therefore, the population and housing targets of the LAP must comply with the housing unit targets of the Development Plan.

9.2.14. I have reviewed the provisions of the Development Plan and the LAP for Kildare Town, and I am satisfied that there are no conflicting objectives that relate to the site or the proposed development. In this regard, I do not consider that a material contravention would be warranted on the basis of conflicting objectives under Section 37(2)(ii) of the Planning and Development Act.

- 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,*

9.2.15. Appendix 8 of the *Kildare County Development Plan 2023-2029* contains a Statement of Compliance with Section 28 Guidelines and sets out which guidelines have been incorporated into the relevant chapters. Guidelines that relate to the delivery of housing are of particular relevance to the proposed development. Since the Development Plan was adopted, the *Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009)* were replaced with the Compact Settlements Guidelines (2024). The overarching theme of the Guidelines is the consolidation of existing settlements and the delivery of high-quality housing at appropriate densities. I have assessed the proposed development against the provisions of the 2024 Guidelines in Section 9.3 below. I am satisfied that the proposed development is in accordance with the Compact Settlement Guidelines and given that the Guidelines were not in place at the time the Development Plan was adopted the Board may consider it relevant to consider the development against the provisions of the recently adopted Guidelines.

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

9.2.16. There have been no significant developments granted on the Phase 2 lands since the making of the 2023-2029 Development Plan. Indeed, the Board have refused planning permission for the development of housing on lands with this zoning under ABP-318623 since the adoption of the Development Plan. In this regard, I do not consider that the proposed development would be justified under section 37(2) (iv) of the Planning Act.

9.3. Design and Layout

- 9.3.1. The second reason for refusal relates to the design and layout of the development with reference to the impact on existing residential development, the layout of the south-eastern corner of the site and the location and design of the public open space. I note that the PA considered that the proposed development was not in accordance with the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas 2009*. These guidelines have since been replaced by the *Sustainable Residential Development and Compact Settlement Guidelines 2024* (Compact Settlement Guidelines Guidelines). Compliance with these guidelines will be assessed below where relevant.
- 9.3.2. The proposed development is generally in accordance with the density requirements for the site as set out in the County Development Plan and the Compact Settlement Guidelines. Although the 'mapped' distance from the site to the train station is approximately 1km, the actual distance by road is approximately 1.8km due to the physical constraints of the rail line and the circuitous road network. Therefore, the site is categorised in the Guidelines as a Suburban/Urban Extension in a Key Town / Large Town instead of an 'Accessible' location or a 'High-Capacity Public Transport Node or Interchange' (as per Table 3.8 of the Guidelines).
- 9.3.3. A density of 32 uph is proposed for the development as stated in the application. However, when the public open space is excluded, the development would yield a density of 36uph. A density range of 35-50 uph is recommended for the site (Suburban/Urban Extension in a Key Town / Large Town) in the Compact Settlement Guidelines. Table 3.1 of the County Development Plan 2023-2029 considers a density of 30-50 uph to be an appropriate density for 'Outer Suburban/Greenfield' sites in 'Larger Towns (Population >5000)'. I consider the density of the site to be acceptable for its location on the outskirts of the town centre.
- 9.3.4. To address the concerns of the PA the applicant submitted Drawing 4301-4 which contains a cross section of the proposed houses along the northern site boundary and the existing houses on Loughminane Green. The applicant contends that the wording of the refusal reason is unclear and does not specify which of the proposed houses would impact on existing residential amenity by virtue of visual dominance and overshadowing. In the absence of such specifications, I will consider the impacts of the proposed houses that would be closest to existing development.

- 9.3.5. In the north-eastern corner of the site House No's 41, 42 and 18 would have gable walls facing onto the rear gardens of the houses on Loughminane Green. Drawing 4301-4 illustrates a typical relationship between the proposed and existing houses. A separation distance of c. 13 - 14m would be provided by the existing rear gardens and the proposed gable walls. As the land slopes gently from north to south the proposed development would be at a lower level than the existing houses. The cross section drawing also shows how the existing houses would be impacted by the midday sun projection for the summer and winter solstice. There would be very little impact during the summer. Due to the lower level of the sun in the winter there would be some overshadowing during the winter months. However, the properties would experience some shadows from the existing 2m high garden walls already in place.
- 9.3.6. The arrangement proposed of gable walls facing onto existing housing is not unusual for infill or suburban housing developments and I consider the separation distances between the properties to be sufficient to counteract any overbearing impact on existing houses. Whilst the existing houses would experience some impact from the proposed development during the winter months, it would not result in an undue negative impact on the amenity of the existing dwelling as it would be restricted to the periods when the sun was low in the sky. As there are no windows proposed on the upper level of the proposed houses, overlooking would not be an issue. There is a window lighting the stairs, but this could be made opaque by condition should the Board decide to grant permission.
- 9.3.7. Concerns were raised by the PA regarding the layout of the eastern corner of the site and the proximity of the duplex units to each other. This has been addressed by the applicant and Drawing 4301-03 contains a revised layout which would reduce the number of units from 64 to 62. The amendments would involve the removal of one of the duplex blocks and the provision of turning area and communal parking in its place. The terrace of houses directly to the north of this area would also be revised. I consider this arrangement to be acceptable. The removal of the duplex units would provide a greater separation between the existing houses and the remaining duplex units would align with the gable of the existing houses. The revised unit mix would yield 8 no. 1-bed units, 14 no. 2-beds, 36 no. 3-beds and 4 no. 4 beds, which I consider to be a reasonable mix of unit types for a suburban development.

- 9.3.8. Refusal reason No. 2 also raised the issue of public open space. The PA considered that whilst the quantum of public open space was acceptable, the overall design and layout was ill-conceived. The Urban Design Statement submitted with the appeal states that pre-planning discussions with the PA included a layout with houses arranged around a central open space. Following consultation with the PA this arrangement was revised to the subject proposal which would provide a buffer between the railway line and would reduce the level of space left over after planning.
- 9.3.9. I acknowledge the constraints of the site, and I consider that the proposed arrangement would help to mitigate against noise from the railway and would provide a reasonable buffer between the houses and the track. Most of the houses would face onto the public open space and the remainder would be in close proximity the space. On balance, I consider the provision and layout of public open space to be acceptable within the context of the site.
- 9.3.10. The PA raised a concern that two of the units did not meet the minimum standards for private open space and that the houses were overly reliant on attics for storage space. Table 15.2 of the Development Plan sets out the Minimum Floor space and Open Space and Storage Requirements for Houses. All units proposed either meet or exceed the minimum floor area requirements and the open space requirements of the Development Plan. Regarding storage, the applicant argues that the use of attic space as storage was not excluded in the Development Plan and that it is not the dominant form of storage. I have reviewed the operative Development Plan, and I am satisfied that the use of attics for storage is not excluded and can therefore be included in the overall provision. I have reviewed the proposed development and the amended layout, and I am satisfied that the houses generally comply with the provisions of the Development Plan as they relate to floor areas and private open space. I am satisfied that the proposed development is in accordance with the provisions of the Compact Settlement Guidelines and the KCDP

9.4. Drainage and Flood Risk

- 9.5. A Strategic Flood Risk Assessment (SFRA) was prepared for the LAP and confirmed that the area within the LAP boundary is not at risk of fluvial flooding. However, as shown on Map 10.2 of the LAP the site is partially within a pluvial flood risk area. This issue was also raised in third party submissions to the PA. Objective IO 3.1 of

the LAP requires a site-specific Flood Risk Assessment, (SSFRA), appropriate to the scale and nature of the development and the risks arising, to be carried out for developments located within the Pluvial Flood Risk Area.

- 9.5.1. To address the third reason for refusal, the applicant submitted a SSFRA with the appeal. The SSFRA found that the subject site is not predicted to experience groundwater or pluvial flooding (flooding from rivers or seas) even in the most extreme (1 in 1000 year) flood event. Therefore the subject site is categorised as within Flood Zone C.
- 9.5.2. The primary potential flood risk to the proposed development site was determined to be from pluvial flooding from overland flow, generated from the surrounding lands to the north. Secondary flood risk can be attributed to a potential surcharge/failure of the urban drainage / water supply infrastructure in the vicinity of the site. OPW maps show an area of indicative pluvial flooding within the southwest corner of the site. This would accord with the results of the topographical survey and contour mapping which shows that this corner of the site is the lowest point of the site. Figure 10 of the SSFRA shows the overland flow paths across the site and indicates that surface waters from the higher areas to the north and east will pond in the lower lying areas of the site. Eventually these waters would flow along the southern boundary of the site adjacent to the railway embankment, and spill into the adjacent field to the west which is also low-lying. An existing farm underpass beneath the railway embankment allows any pluvial waters to spill to the southern side of the railway. Figure 11 illustrates where the low point of the site is in relation to existing housing and the railway line.
- 9.5.3. Section 7 of the SSFRA states that the assessment indicates a small area of pluvial flooding located within the southern area of the development site. The area of pluvial flooding is generally within the proposed open space areas, access roads and gardens with some flooding within the footprint of proposed houses in the southwest corner of the site. The SSFRA notes that surface water runoff that may generate pluvial flooding is generally confined to the lands within the development site and the drainage system proposed for the site will collect these waters rather than flowing directly to the lowest corner of the site. Therefore, the pluvial flood risk to the site is considered to the 'Low'.

- 9.5.4. Mitigation measures recommend that house No's 58-62 be constructed at a minimum of 0.5m above the existing ground level. The SSFRA also recommends that the proposed surface water management system be designed to take account any potential, additional surface water runoff that may enter the site because of a potential surcharge in the existing urban drainage/water supply infrastructure. The Engineering Report submitted with the appeal states that the surface water layout, which is shown on Drawing 4301-07, will be collected in two new soakaways on the site. The soakaways were designed in accordance with BRE Digest 365 and the runoff modelling and design approach from the Greater Dublin Sustainable Drainage Study was also adopted to inform the design. A climate change factor of +20% was included in all network components. The design calculations are fully detailed in the Engineering Report.
- 9.5.5. Having regard to the information contained in the SSFRA and the mitigation measures proposed, I am satisfied that the proposed development would not result in flooding of the appeal site or increase the risk of flooding to surrounding areas.
- 9.5.6. The Kildare Town Surface Water Study was carried out for the LAP and identified surface water pathways/natural drainage paths and Nature Based Management Areas (NBMA) within the LAP boundary. These areas are shown on Map 10.1 of the LAP. A surface water pathway is shown passing through the site and intersecting with the proposed housing layout. Objective IO 2.4 seeks to *'Ensure areas indicated as Nature-Based Management Areas (NBMAs) on Map 10.1 are reserved free from development and integrated into design proposals for nature-based surface water drainage purposes; whilst also ensuring a network of Surface Water Corridors (surface water pathway corridors) are provided in accordance with the indicative locations shown on Map 10.1.*
- 9.5.7. As the site is not serviced by a public storm drain it is proposed to dispose of the surface water from the site via a soakaway located in the public open space area. Two attenuation ponds are shown within the public open space. The *Kildare County Development Plan* seeks to ensure the sustainable management of surface water through Sustainable Urban Drainage Systems (SuDS) and other nature-based solutions. Objective IN 024 of the Development Plan states that underground retention solutions will only be considered when all other options have been

exhausted and that underground tanks and storage systems will not be accepted under public open space as part of a SuDS solution.

9.5.8. The application documentation does not specifically refer to any nature-based solutions or SuDS measures proposed as part of the surface water management plan. I note that the use of permeable paving is included in the Engineering Report submitted with the appeal, but no other SuDS measures are noted. I note that the PA had no objection to the location of the attenuation tanks but recommended that further information was requested regarding the enhancement of proposed SuDS measures. Based on the information submitted and in consideration of Objective IN 024 of the Development Plan and IO 2.4 of the LAP, I am not satisfied that adequate information on the proposed use of SuDS and nature-based solutions for drainage has been considered or provided. Furthermore, the location of the surface water pathway on the site was not considered in the initial design and has not been addressed in the application.

9.5.9. I note to the Board that the requirements of Objective IN 024 of the Development Plan and IO 2.4 of the LAP are new and were not included in the previous Development Plan or LAP. Therefore, the applicant was not required to address them. On this basis the Board may wish to seek the views of the parties on this matter. However, in consideration of the substantive reason for refusal set out in Section 9.1 of this report, it may not be considered necessary to pursue the matter. Furthermore, all parties to the appeal were offered an opportunity to provide comments on the new Development Plan and LAP under Section 131 of the Planning and Development Act 2000 (as amended) and neither party addressed this issue.

9.6. Traffic and Access

9.6.1. The issue of traffic did not form part of the reasons for refusal. However, the report from the Roads and Transportation Department of the PA recommended that further information was sought on a number of issues. Further information was recommended regarding the design of internal roads, the consideration of the capacity of the alternative one-way lights at the railway bridge on the Green Road and the preparation of a Stage 2 Road Safety Audit.

- 9.6.2. A submission received from Iarnród Éireann notes that the existing road/rail interfaces in the general location are under strain due to heavy use from existing traffic. The bridge over the railway at Green Road is the most likely route from the development to the town centre and the M7 motorway and is already subject to traffic control measures (traffic lights). The adjacent bridge at Southgreen Road does not have any footpaths. Iarnród Éireann are concerned that the increase in development would lead to undue strain on the existing road network and would impact on the safe operation of the bridges.
- 9.6.3. A Traffic Impact Assessment (TIA) was submitted with the application. In response to the issues raised by the PA, the applicant has submitted a Traffic and Transportation Review document with the appeal.
- 9.6.4. Access to the development would be from the Green Road and through the Loughminane Green housing estate. Traffic surveys carried out for the TIA found that the Green Road was not heavily trafficked and peak traffic periods were between 0800 hrs - 0900 hrs in the AM and 1700 hrs – 1800 hrs in the PM. Most traffic movements were to and from the Loughminane Green development. The TRICS database was used to estimate the potential number of trips generated by the proposed development. The results are contained in Table 1.0 of the TIA and estimate that there would be an additional 35 traffic movements (9 arrivals and 26 departures) in the AM peak and 35 additional movements (23 arrivals and 12 departures) in the PM peak. To assess the capacity of the junction at the Green Road and the Loughminane Green estate the PICADY computer model was used. Future conditions and traffic growth were also considered. The TIA projected the levels of traffic on the surrounding road network by applying the relevant growth level (as per National Road Authority guidance) to the years 2022, 2027 and 2037. Results from the PICADY analysis indicate that the proposed site access can accommodate the traffic growth conditions to 2037 and 100% of the projected traffic from the development. The PICADY analysis also indicated that the junction will experience free flow conditions during the AM and PM peak, with no material queueing predicted and with reserve capacity of over 85% during the peak traffic period in 2037.
- 9.6.5. I am satisfied that the additional traffic levels generated by the proposed development would be low and would not have any significant impact on the traffic

levels on the surrounding road network or on the access junction onto the Green Road at peak times.

- 9.6.6. Whilst the concerns of Iarnród Éireann are acknowledged, I am satisfied that the TIA demonstrates that the predicted traffic levels from the development will be low and that the Green Road has capacity to accommodate the levels of traffic. The constraints of the railway crossing were also noted by the PA who recommended that the TIA should be revised to consider the capacity of the one-way traffic signal shuttle system in operation on the Green Road bridge structure of the railway line. The applicant's response notes the low level of traffic predicted from the development and submits that the existing traffic signal operating on the bridge should be replaced by a more responsive traffic signal programme. The system suggested is the Microprocessor Operated Vehicle Actuated (MOVA) system which could increase the operational future capacity by over 25%. The PA has not commented on the viability of this proposal. However, I note that the constraints of the railway crossings on the road network are not new issues and are unlikely to be resolved soon. In the meantime, I am satisfied that the proposed traffic levels from the development would be sufficiently low to be accommodated on the existing road network without causing a significant negative impact on traffic flows.
- 9.6.7. The report of the Transportation Department also raised concerns regarding the design of the internal road network and how they comply with the Design Manual Urban Roads and Streets (DMURS). In response the applicant confirmed that the internal roads can be designed to the specifications of the PA and that the TIA indicates that the development can comply with DMURS. The requirements of the PA will form part of the detailed design process should permission be granted. In addition, the applicant states that the development can be designed to accommodate Home Zones. A Swept Path Analysis was not submitted with the appeal, but the applicant notes that this can also be provided to ensure sufficient access for emergency vehicles. The ground of appeal submits that these issues can be addressed through planning condition.
- 9.6.8. The applicant agrees with the opinion of the PA that a Stage 3 Road Safety Audit, which is a post-construction audit, would be required should permission be granted, and they are amenable to a planning condition of this nature should the Board grant permission.

- 9.6.9. Section 6.0 of the TIA addresses compliance with DMURS and states that the layout of the development has been designed to reflect the standards of DMURS in terms of road width and alignment, which is shown on Drawing No. 4301-03. I am satisfied that detailed design issues or compliance with PA requirements can be addressed by condition should the Board grant permission.

Legal Interest

- 9.6.10. The report of the PO noted that the ownership of the access road through Loughminane Green was not addressed in the application and as such it was unclear of the applicant had sufficient legal interest to avail of this access road. In response, the applicant submitted a letter from their solicitors enclosing a Deed of Grant of Right of Way and Easement between the owners of the common areas and the applicant. I am satisfied that this correspondence demonstrates that the applicant has sufficient legal right to lodge the application.

9.7. Archeaology

- 9.7.1. The report of the Heritage Officer in the PA recommended that an Archaeological Assessment should be carried out in accordance with the submission received from the Department of Culture, Heritage and the Gaeltacht. In response the grounds of appeal have included an Archaeological Assessment for the site. The report found that there are no recorded monuments within the application area and no upstanding monuments within a 400m radius of the site. The closest recorded monuments are approximately 350m to the south and would not be directly or indirectly impacted by the proposal. No licenced archaeological excavations have been carried out in the application area or in the vicinity. A review of historical maps and aerial photography was carried out as well as a site walkover. The assessment found there are no known items of archaeological heritage in the application area or in the vicinity of the site. It was concluded that, externally the proposed development would have no impacts on any items of archaeological heritage. As the application area is a greenfield site the assessment notes that the development has the potential to impact previously unknown sub-surface archaeological remains. Therefore, it is recommended that all topsoil stripping works should be monitored by a professional

archaeologist. A planning condition of this nature could be attached should permission be granted by the Board.

10.0 AA Screening

Appropriate Assessment Screening Determination

(Stage 1, Article 6(3) of Habitats Directive)

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

A Screening exercise was carried out for the development and concluded that, *‘Taking into consideration the nature of the proposed development (residential), the lack of any direct pathway, the proposed connection to foul mains and the distance from a Natura 2000 site, and the proposed connections to public mains, it is submitted that there is no need for a Stage II AA’.*

Description of the proposed development

The proposed development comprises,

- The construction of a housing development comprising 64 residential units, a pumping station and all associated works including internal roads, landscaping and a surface water drainage system.
- The development would be connected to the mains water system and the public wastewater system.

The site has a stated area of 2 ha and is a greenfield site to the south-west of Loughminane Green, an existing housing estate on the north-western outskirts of Kildare Town Centre. There is a mature hedgerow along the northern site boundary and a mature tree to the north-west and south-east corners. A railway line runs along the southern site boundary.

The proposed development will be connected to a public water, surface water and foul sewer network. Attenuated water from the site will be discharged to the ground. There are no streams or watercourses traversing or bounding the site.

Consultations and submissions

There were no submissions from third parties that relate to European sites.

European Sites

The proposed development site is not located within or immediately adjacent to any site designated as a European Site, comprising a Special Area of Conservation or Special Protection Area (SPA).

The closest European sites to the application site are,

- Pollardstown Fen SAC (Site Code 000396), the boundary of which is c. 5.25km from the application site, and the
- River Barrow and River Nore SAC (Site Code 002162), the boundary of which is c. 9.5km from the site.

The application site is not directly connected to any of the closest European sites.

There are no hydrological or ecological pathways between the sites and the closest sites.

The Tully Stream flows to the east of Kildare Town Centre and eventually discharges to the River Barrow. However, given the 2km distance between the stream and the site, its location on the other side of the town and the hydrological distance between the stream and its outflow to the River Barrow, this would not represent a viable hydrological connection to a European site.

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

- The nature of the development works to be carried out on the greenfield site.
- The separation distance between the subject site and the closest European sites.
- The lack of connections identified between the application site and the nearest European sites using the source-pathway-receptor model, and,
- Taking into account the screening determination by the PA.

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

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

11.0 Recommendation

I recommend that planning permission be refused for the following reasons.

12.0 Reasons and Considerations

Having regard to the location of the site on lands zoned, 'SR – Strategic Reserve' in the Kildare Town Local Area Plan 2023 - 2029, the objective of which is to protect the integrity of the lands to provide for the future strategic expansion of the town, post the current plan time frame, it is considered that the proposed development would contravene materially the said zoning objective and would undermine the housing and population targets for the town as outlined in the Core Strategy of the Kildare County Development Plan 2023 – 2029 for which planning permission for housing already significantly exceeds the population targets. 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.

Elaine Sullivan
Planning Inspector

27th January 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-319792-24		
Proposed Development Summary	Construction of a housing development comprising 64 residential units, a pumping station, internal roads and landscaping and all ancillary works.		
Development Address	Lands to the rear of Loughminane Green, Green Road, in the townlands of Loughminane, Knocksborough Glebe and Whitesland West, Kildare, Co. Kildare		
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	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes	X	Class 10(b)(i) – Threshold 500 units	
No			
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required

No	X	Class 10(b)(i) – Threshold 500 units	Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes		Class 10(b)(i) – Threshold 500 units – the subject development comprises 64 units.	Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	X	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____

Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP- 319792-24
Proposed Development Summary	Construction of a housing development comprising 64 residential units, a pumping station, internal roads and landscaping and all ancillary works.
Development Address	Lands to the rear of Loughminane Green, Green Road, in the townlands of Loughminane, Knocksborough Glebe and Whitesland West, Kildare, Co. Kildare
<p>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	<p>The proposed development would involve the construction of 64 residential units that would be provided in a standard two-storey built form.</p> <p>The development would include all ancillary drainage works, including two attenuation tanks, and connections to the public foul water system. Domestic waste generated from the development will be collected by a contractor.</p> <p>Car parking would be provided at surface level, and no deep excavations would be required.</p>
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European	<p>The development site is located to the rear of a housing development on the outskirts of Kildare Town. It is currently an open greenfield site which is bounded by a hedgerow and housing development to the north and a railway line to the south. Agricultural lands lie to the west of the site.</p>

sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	The site is not designated as a Natural Heritage Area (NHA) or a Proposed NHA. It is not designated as a European site and contains no protected structures or national monuments.	
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	Potential impacts would be limited to impacts from construction such as noise, nuisance and dust. These would be short term, and any potential impacts would be unlikely to have significant effects on environmental parameters. Any impacts would be local and would have limited magnitude and spatial extent. There is no potential for significant effects on the environmental factors listed in section 171A of the Act.	
Conclusion		
Likelihood of Significant Effects	Conclusion in respect of EIA	Yes or No
There is no real likelihood of significant effects on the environment.	EIA is not required.	Yes
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	No
There is a real likelihood of significant effects on the environment.	EIAR required.	No

Inspector:

Date:

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

(only where Schedule 7A information or EIAR required)