



An
Coimisiún
Pleanála

Inspector's Report ACP-323507-25

Development	Two houses with ancillary and associated site development works.
Location	Millstream Court, New Abbey Road, Kilcullenbridge (ED Kilcullen), Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	2560657
Applicant(s)	Scotpark Limited
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Scotpark Limited
Observer(s)	Eoin Tabb
Date of Site Inspection	19 th December 2025
Inspector	Frank O'Donnell

1.0 Site Location and Description

- 1.1. The subject appeal site is located in the centre of an existing 15 no. unit housing development (Millstream Court) accessed off New Abbey Road, Kilcullenbridge (ED Kilcullen), County Kildare. The site has a stated area of 0.045 hectares (450 sqm) and is currently in use as the primary area of public open space serving the existing housing development. The existing residential estate comprises a mix of 2 storey terrace, semi-detached and detached dwellings. The adjacent lands to the south comprise single storey dwellings.
- 1.2. There is an existing Protected Structure (Catholic Church of the Sacred Heart & Saint Brigid) (Ref. B28-28) located on the adjacent site to the immediate north. The said Protected Structure is also listed on the National Inventory of Architectural Heritage (NIAH) as being of National Importance (Ref. 11819031). A separate School building (Ref. 11819032) and Presbytery/ Parochial/ Curate's House (Ref. 11819033) are also listed on the NIAH as being of Regional Importance.

2.0 Proposed Development

- 2.1. The Proposed Development comprises the following:
 - The erection of 2 no. 3 bedroom dwelling houses. Each dwelling measures 123 sqm in area, 8 metres in height, a maximum width of 6.85 metres and an overall length of 13.2 metres.
 - The proposals also include the provision of a raised table pedestrian crossing across the existing internal estate road connecting to an existing internal footpath to the north.
 - The provision of boundary walls on the subject appeal site.
 - The provision of hard and soft landscaping.
 - All associated site works.

3.0 Planning Authority Decision

3.1. Decision

The Local Authority issued a decision to REFUSE permission on 31st July 2025 for 2 no. reasons, as follows:

1. *The development would, if permitted, contravene materially Condition no.4 attached to a permission previously granted under planning reference 16/689 which stipulates ‘The open spaces shall be developed for and devoted to public use. They shall be kept free of any development and shall not be enclosed by any means, except where otherwise agreed...’ The development would, therefore, be contrary to the planning and sustainable development of the area and would be seriously injurious to the residential amenities of the area.*
2. *The proposed dwelling by reason of its siting, design, form and overbearing effect would seriously injure the residential amenities of properties in the area and would lead to an undesirable precedent for similar developments in the area and would therefore be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Local Authority Planner** considered that although the proposed development of 2 no. dwellings, as presented, is located on lands zoned existing/ infill residential, the proposal would contravene materially Condition no. 4 of planning reg. ref. no. 16/869.
- The Local Authority Planner further noted that although details of the works set out under Condition no. 3 of planning reg. ref. no. 16/869 which specifically relate to ‘*details of the proposed play equipment to be provided in the identified play area in the landscaping plan submission on the 06/04/17*’ have been submitted and agreed, such works have not taken place.

- The Local Authority Planner considered the proposed dwelling designs to be generally complimentary to the character and language of the existing dwellings in the area existing residential development.
- Regarding public open space, the Local Authority Planner considers the proposals reduce the area of public open space to 6.6% of the entire residential development and that this would seriously injure residential amenities, specifically access to open space for the existing and proposed residents.
- The proposals were considered by the Local Authority Planner to satisfy minimum private open space standards as per SPPR 2 of the Compact Settlement Guidelines, 2024 and minimum car parking standards as per SPPR3 of same guidelines.
- Owing to the proposed 2 metres separation distance between the shared boundary, the Local Authority Planner considers this would result in a significant negative impact in terms of overbearance on the existing dwellings to the south.
- The Local Area Planner considered there were no significant Overlooking impacts.
- No traffic safety concerns are raised by the Local Authority Planner.
- The concerns of the Environment Section in relation to wastewater and the associated recommendation to seek Further Information are noted by the Local Authority Planner. No other Water Services concerns are raised.
- The concerns of the Building Control Section are referenced, specifically the unfinished nature of the estate road serving the subject development.
- The concerns of the Parks Department are also noted by the Local Authority Planner, in particular, contravention of Condition no. 4 of planning reg. ref. no. 16/689 and the associated reduction in the amount of open space available within or in close proximity to the site. The Local Authority Planner agrees with the assessment of the Parks Department.

- In conclusion, the Local Authority Planner considers the proposed development would materially contravene condition no. 4 of planning reg. ref. no. 16/869, would seriously injure the residential amenity of the existing and proposed residents owing to the loss of limited shared open space. In addition, the Local Authority Planner noted that other aspects of the parent permission (16/869) are not in compliance, including the approved play area and road wearing course. The overbearing impact of the proposed development upon the private residential amenities of the existing dwellings to the south of the proposed dwellings by reason of the proposed proximity to the shared boundary wall was also noted. The Local Authority Planner recommended that permission be refused.

3.2.2. Other Technical Reports

- The **Environment Section** recommends that due to a lack of sufficient information that further information be requested relating to the exact details of the capacity and integrity of the private wastewater infrastructure. This, it is advised, should take the form of a detailed report prepared by a competent agent that the additional effluent loading generated by the proposed development can be catered for in the existing private wastewater infrastructure. Design details and calculations shall be included as part of the report.
- The **Kildare County Council Heritage and Nature Unit** raise no objection to the proposed development.
- The **Parks and Landscape Section** recommend that permission be refused as

i) The site was previously designated as open space under an earlier application (16-869, Condition 4), and this designation remains a material consideration and

ii) The proposed development would result in a significant reduction in the amount of open space available within or in close proximity to the site, thereby undermining the intended spatial quality and amenity value of the area.

- The **Transportation, Mobility and Open Space Department** raise no objection to the proposed development subject to 8 no. conditions.
- The **Municipal District Engineer** raised no objection to the proposed development subject to 4 no. standard conditions.
- The **Water Services Department** raised no objection to the proposed development subject to 1 no. standard condition.
- The **Building and Development Control Department** submits that
 1. *The Millstream Court development granted permission under 16/869 remains unfinished as the road wearing course has not been completed. The applicant shall be required to complete all incomplete site development works conditioned under 16/869 as part of this permission unless where otherwise altered by this permission.*
 2. *Full compliance with Building Control Act and Building Regulations is required. A regular inspection plan is to be agreed with the Kildare County Council Building Control Section prior to the commencement of any development or site enabling works.*

3.3. Prescribed Bodies

- None

3.4. Third Party Observations

- 3.4.1. A total of 9 no. Third Party Observations/ Submissions were received by the Local Authority from surrounding residents in opposition to the proposed development. The main topics raised are as summarised and appraised by the Local Authority and include the issues of Visual Impact/ Overbearance, Massing and Loss of Outlook.

4.0 Planning History

- 4.1.1. Planning History pertaining to the Subject Appeal site

- **16/869:** Applicant: Scotpark Ltd. Permission for Demolition of derelict structure, erection of 16 no. two and three storey houses accessed from New Abbey Road, and ancillary services and site works. Permission was GRANTED in June 2017 subject to 40 no. conditions.

Condition no. 3 of planning reg. ref. no. 16/869 read as follows:

3. *Prior to the commencement of any site development works, the applicant shall submit the following for the written agreement of the Planning Authority:*
 - *Revised plans for house types A and A2 which provide for a floor area measuring a minimum of 85 sqm.*
 - *A reconfigured private open space area to the rear of house no. 1 providing for a minimum of 55 sqm in accordance with the provisions of the Kildare County Development Plan 2017 – 2023. Such revisions will require revisions to the adjoining unit house type B on site 2 which requires a minimum of 60 sqm private open space. A revised layout plan and corresponding schedule of compliance shall be submitted prior to the commencement of any development on the subject lands.*
 - *A revised house design/ layout for unit type C on site no. 15 which provides a first floor building line in keeping with the adjoining dwellings on sites numbered 13 and 14.*
 - *Details of the proposed stub wall for meter boxes for terraced units on sites 5, 10 and in particular 11, meter boxes shall be screened from public view.*
 - *Brochure samples of all external finishes to the external elevations (including all brick types)*
 - *Details of the proposed play equipment to be provided in the identified play area in the landscaping plan submitted on the 06/04/17.*

Reason: *In the interest of orderly development.*

Condition no. 4 of planning reg. reg. no. 16/869 read as follows:

4. *The open spaces shall be developed for and devoted to public use. They shall be kept free of any development and shall not be enclosed by any means, except where otherwise agreed. When the development is being taken in charge, the open spaces shall be vested in the Planning Authority, at no cost to the Planning Authority, as public open spaces.*

Reason: *In the interest of residential amenity and of proper planning and sustainable development.*

- **12/835:** Applicant: Health Service Executive and Andrew Nolan. Permission for the construction of a new two storey Primary Healthcare Centre with a Care of the Aged facility and all associated site services, siteworks, car parking and boundary treatments. Permission was GRANTED in August 2013 subject to 35 no. conditions.
- **09/300:** Applicant: Andrew Nolan. Permission for a 2 Storey over basement part basement development, consisting of 3 no. ground floor retail units, service yard to the rear, basement storage area, medical centre, new vehicular entrance, all associated landscaping, drainage, plant rooms, boundary wall treatment, rooflights and surface car parking. Demolition of existing outbuildings. Permission was GRANTED in October 2009 subject to 54 no. Conditions.
- **03/296:** Applicant: Des Byrne. Permission for 10 no. 3 bed dwellings, 2 no. commercial buildings to include 2 no. retail units & 2 no. office units, Change of Use of existing School House into Offices & Change of Use of existing Cottage into Offices. 12 no. car parking spaces. Permission was GRANTED in May 2024 subject to 54 no. conditions.

4.1.2. Nearby site located c. 25 metres to the southeast

- **25/79 (Appeal Ref. No. ACP-322950-25):** Permission for a house and associated site works. Permission was REFUSED by the Local Authority on 11th June 2026 for 2 no. reasons relating to i) Contrary to F – Amenity and Open Space Zoning of the Lands in the Kilcullen Settlement Plan (Variation no. 1 of the Kildare County Development Plan 2023-2029 and ii) the proposed massing, scale and height of the proposed dwelling being out of character

with adjoining properties, the resultant serious injury to the residential amenity of surrounding properties by reason of visual impact, the shortfall in private open space, the resultant substandard residential amenity for the occupants of the dwelling and the undesirable precedent for similar development.

Appeal Ref. No. **ACP-322950-25** was due to be decided on 6th November 2025.

4.1.3. Nearby site located c. 43 metres to the southeast

- **2461327 (Appeal Ref. No. ACP-322772-25):** Large-scale Residential Development (LRD): 152 houses and 28 duplex/apartments, creche, healthcare units and offices. Ancillary and associated development works. Permission was GRANTED on 18th September 2025 subject to 31 no. conditions.

5.0 Policy Context

- ***Kildare County Development Plan, 2023 to 2029***

5.1. Development Plan

5.1.1. I have reviewed the Kildare County Development Plan, 2023 to 2029 and I have set out below what I consider to be the most relevant Chapters, Sections and Objectives.

5.1.2. **Chapter 3** of **Volume 1** of the Development Plan relates to **Housing**. Section 3.8 relates to Protecting Existing Residential Amenity and includes the following Objective:

Objective

- ***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.***

5.1.3. Section 3.9 relates to Regeneration, Compact Growth and Densification and includes the following Policy and Objectives:

Policy

- **HO P6** *Promote and support residential consolidation and sustainable intensification and regeneration through the consideration of applications for infill development, backland development, re- use/adaptation of existing housing stock and the use of upper floors, subject to the provision of good quality accommodation.*

Objectives

- **HO 07** *Promote, where appropriate and sensitive to the characteristics of the receiving environment, increased residential density as part of the Council's development management function and in accordance with the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities and the accompanying Urban Design Manual, DEHLG, May 2009.*
- **HO 08** *Support new housing provision over the Plan period to deliver compact and sustainable growth in the towns and villages in the County, and supporting urban renewal, infill and brownfield site development and regeneration, to strengthen the roles and viability of the towns and villages, including the requirement that at least 30% of all new homes in settlements be delivered within the existing built- up footprint.*
- **HO 014** *Continue to work with developers and residents of private residential developments, where possible, to address public safety and environmental/infrastructural issues within unfinished housing estates.*

5.1.4. **Chapter 13** relates to **Landscape, Recreation and Amenity** and include the following Objectives:

Objectives

- **LR 082** *Require the provision of good quality, well located and functional open space in new residential developments, including landscaping with native species and scale appropriate natural play areas to cater for all age groups.*
- **LR 088** *Avoid the loss of an existing amenity or recreational facility through any development proposal, unless:*

- (i) *The facility or amenity was established as an interim use pending the completion of an improved or satisfactory replacement facility; or*
- (ii) *The applicant can demonstrate, to the satisfaction of the Planning Authority that there is an insufficient local demand for the existing facility; or*
- (iii) *Satisfactory alternative provision can be made by the applicant that will be fully operational either prior to the commencement of development or prior to the occupation of any residential units directly associated with the subject recreational facility.*

- **LR 093** *Prevent the development of areas zoned open space/amenity or areas which have been indicated in a previous planning application as being open space for uses other than open space and recreation related.*

5.1.5. **Chapter 15** relates to **Development Management Standards**. Section 15.6 relates to Open Space. **Section 15.6.6** relates to **Public Open Space for Residential Development**.

5.2. **Settlement Plan**

- ***Kilcullen Settlement Plan (Adopted under Variation 1 of the Kildare County Development Plan, 2023 to 2029)***

5.2.1. Under Volume 2A – Kilcullen Settlement Plan, the subject appeal site, as shown on the Kilcullen Land Use Zoning Map, is zoned ‘Town Centre’. A total of 10 no. Town Centre Objectives are set out in Section 3.0 - Development Objectives of the Settlement Plan, the following of which are considered to be of relevance to the subject proposal:

V2 2.7.1 Town Centre - Objectives

- ***ST KL1*** *Ensure that new development compliments the form and scale of existing older/traditional buildings in the town.*
- ***ST KL2*** *Encourage and promote development within the town centre, which is of a high standard of architectural design, and where appropriate is of*

contemporary architectural design, has an appropriate mix of uses, enhances the built environment, and delivers a high-quality public realm.

V2 2.7.13 Natural Heritage - Objectives

- **ST KL59** *Require all new developments to contribute to the protection and enhancement of existing green infrastructure assets, as identified on Map (Green Infrastructure), through the protection of existing green infrastructure and through the provision of new green infrastructure as part of any planning application.*
- **ST KL60** *Seek the provision of linkages between larger areas of green infrastructure (particularly areas of public open space) where appropriate.*
- **ST KL61** *Ensure key green infrastructure, identified on Map (Green Infrastructure), and the linkages they provide to larger areas of green infrastructure and the wider countryside, are retained where appropriate and integrated into the design of new developments.*
- **ST KL62** *Work with the local biodiversity group(s) to protect and maintain the key areas of green infrastructure as identified in the Kilcullen Local Biodiversity Action Plan 2021 – 2025 or any successor to same.*

5.3. National Guidelines

5.3.1. The following National Guidance is considered to be of relevance:

- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024).
- Design Manual for Urban Roads and Streets, (DMURS) (2019)
- Quality Housing for Sustainable Communities: Design Guidelines (2007).

5.4. Natural Heritage Designations

5.4.1. The site is not located within or adjacent to any designated sites. The closest European Sites are as follows:

- Pollardstown Fen SAC (Site Code SAC000396) c. 7.7km to the northwest;
- Mouds Beg SAC (Site Code 002331) 9.1km to the northwest.

- 5.4.2. The Curragh (Kildare) pNHA (Site Code: 000627) is located c. 2.5 km to the west of the subject appeal site. The Poulaphouca Reservoir pNHA (Site Code: 000731) is located c. 10 km to the east of the subject appeal site.

5.5. EIA Screening

- 5.5.1. The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The decision of the Local Authority to Refuse planning permission is the subject of 1 no. First Party Appeal. The main Grounds of Appeal can be summarised as follows:
- Appropriate Infill Development:
 - The proposed development represents an appropriate infill development on serviced residentially zoned lands. The development is fully consistent with national and local planning policy, would not materially injure residential amenity or contravene applicable conditions of previous grants of permission. The refusal of permission is therefore unjustified.
 - Reason for Refusal no. 1:
 - Condition no. 4 of planning reg. ref. no. 16/869 allows flexibility for future agreement. This appeal explicitly seeks such agreement.
 - As the lands have not been taken in charge, the requirement to vesting the public open spaces to the Planning Authority has not been triggered. As the open space still remains in private ownership, its future use remains a planning matter and is not a settled legal status.

- The conditions attached to planning reg. ref. no. 16/869 do not specify a quantum of public open space. The Local Authority Planners Report attached to planning reg. ref. no. 16/869 does not define the minimum open space or restrict all areas from potential development. The current plot is not sterilised on any map or schedule from appropriate infill.
- The open space to be retained, which equates to c. 0.036 hectares, is functional, overlooked and accessible. This equates to c. 6.6% of the overall site. Although this is below the general 10% guideline, it is not fixed by condition, is offset by exceptional proximity to public open space and community facilities (playgrounds, GAA, soccer, pitch & putt, library, schools etc.) and is supported by planting, passive surveillance, and future delivery of a dedicated play area (pending outcome of the appeal). Appendix A09 of the Appeal provides an audit of surrounding recreational and community amenities within a 15 minute walking distance of the subject appeal site.
- The proposed development does not encroach on the area reserved for the playground but has been conspicuously positioned to abut same, details of which were submitted and agreed under planning reg. ref. no. 16/869. As per Appendix A10 of the Appeal, the Applicant has provided a commitment, in a signed statement, to deliver a play area, with equipment and layout as agreed with the Planning Authority, or an alternative design to be agreed with the Local Authority/ An Coimisiún Pleanála prior to commencement.
- The proposed development increases the functionality and safety of the remaining open space by enhancing passive surveillance. The proposal represents a modest intensification of a well serviced and underutilised area and serves to preserve the core amenity function of the space. The needs of existing and future residents will be addressed by means of the proposed multi-functional amenity space.
- The proposals comply with the intent of Condition no. 4 and does not materially contravene the previous grant of permission.

- Policy supports compact infill development, including NPO 3c and NPO 11 of the National Planning Framework, SPPRs 1 & 2 of the compact Settlement Guidelines (2024), Objective HCO 9.1 of the Development Plan (Promote a compact urban form and sustainable residential densities in towns and villages) and Section 15.6.6 of the Development Plan which allows relaxation of the 10% open space requirement where high quality public open space is available nearby and where residential amenity is not compromised. Section 4.2 and Objective KIL3 of the Kilcullen Settlement Plan promote and support infill development.
- In conclusion, there is no material contravention of Condition no. 4 of planning reg. ref. no. 16/869. The proposed development respects the original layout, provides high-quality design and aligns with current planning policy.
- Reason for Refusal no. 2:
 - The proposed development represents an appropriate form, scale and massing of development. Each dwelling is of modest height and scale. Hipped roofs have been utilised to reduce visual massing. The dwellings are visually recessive behind boundary treatment.
 - As per Section A-A and the site plan, the proposals comply with BRE 209 (2022) 25⁰ daylight guideline. Dwellings at Sunbury Close to the south are not overshadowed.
 - There are no rear facing habitable rooms. All first floor rear windows serve bathrooms/ ensembles and shall be of obscure-glazing.
 - Side/ front facing windows improve passive surveillance.
 - The proposals do not present an adverse precedent. The site is serviced and the proposal development is a site specific response. The proposals do not alter any zoning or policy framework. Future separate proposals would be assessed on their own merits.
 - The proposals cannot reasonably be considered to be overbearing and serve to protect residential amenity and improve natural surveillance.

- Engineering and Services:
 - Under planning reg. ref. no. 16/869 existing services (wastewater, stormwater, water and electricity) exist which are privately owned by the Applicant.
 - There is sufficient spare capacity in the Stormwater attenuation tank to cater for the proposed development.
 - Confirmation of Feasibility (COF) from Uisce Eireann confirms wastewater and water capacity.
- Conclusion:
 - The proposal represents a carefully considered, policy aligned response to a specific housing opportunity.

6.2. Planning Authority Response

- The Local Authority refer to the decision to refuse permission issued and notes the First Party Appeal submitted. The Local Authority confirms its decision and requests that the Commission refers to the Planner Report, reports of the various technical departments and prescribed bodies in relation to the assessment of this planning application.

6.3. Observations

6.3.1. 2 no. Third Party Observation Submission were received from the following

- Eoin Tabb
- Brid & John Nash

6.3.2. The main issues raised in the submissions can be summarised as follows:

Eoin Tabb

- The proposals materially contravene Condition no. 4 of planning reg. ref. no. 16/869 which is intended for minor adjustments, not the wholesale removal of open space. The developer has demonstrated a pattern of non-compliance.

- The provision of 6.6% of the overall site area as public open space is substandard. The Applicants solution in highlighting alternative sites is unworkable. The open space provision is inadequate, will serve to impact on existing and future residential amenities and is a significant cause for concern for surrounding residents as evidenced by the extent of submissions received.
- The proposals will present an overbearing impact and injury upon established and future residential amenities.
- The developer has not delivered upon previous commitments made, particularly in relation to the provision of a playground as per condition. 3 of planning reg. ref. no. 16/869. The development appears to be seeking to use their stated commitment to provide a playground as a bargaining tool to secure planning permission.
- The proposed development, if permitted, would set an undesirable precedent for similar proposals into the future.
- The decision of the Local Authority to Refuse Permission should be upheld.

Brid & John Nash

- There is no basis that the demand for additional housing should somehow ignore the parent permission (condition no. 4), the Development Plan and the Sustainable Compact Settlement Guidelines, 2024 in relation to the provision of public open space. Permission should be refused.
- The Appeal fails to consider or address the second reason for refusal. The proposals present an Overbearing impact on surrounding properties. There is no basis for the Commission to disregard reason no. 2 of the refusal of permission.

6.4. Further Responses

- None

7.0 Assessment

7.1. Introduction

7.1.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal and the reports of the planning authority and having inspected the site, and having regard to relevant local/ regional and national policies and guidance, I consider the main issues in this appeal are as follows:

- Zoning
- Reason for Refusal no. 1
- Reason for Refusal no. 2
- Other Matters
 - *Engineering and Services*

7.2. Zoning

7.2.1. The subject appeal site is zoned Town Centre as per the Land Use Zoning Map attached as part of the Kilcullen Settlement Plan. The relevant zoning objective for Town Centre lands is *'to provide for the development and improvement of appropriate town centre uses including residential, commercial, office and civic use.'* As per Table 2.4 of Volume 2 of the Kildare County Development Plan, 2023 to 2029, a dwelling is identified as a use which is Permitted in Principle on the lands zoned Town Centre.

7.2.2. Although the proposed development of 2 no. dwellings represents a use which is Permitted in Principle on lands zoned Town Centre, this is subject to further assessment against normal planning and environmental considerations, as discussed further below.

7.3. Reason for Refusal no.1

7.3.1. I note Reason for Refusal no. 1 as issued by the Local Authority, where the proposed development would, if permitted, contravene materially Condition no. 4 of planning reg. ref. no. 16/689. The relevant parent permission pertaining to the development of Millstream Court is planning reg. ref. no. 16/869 and not 16/689 as

quoted by in the reason for refusal issued. Reference to planning reg. ref. no. 16/689 would appear to have been a typographical error.

- 7.3.2. I note the approved Site Plan (Drg. No. PL01) and Landscaping Plan Layout (Drg. No. 06 16 002) attached to planning reg. ref. no. 16/869 which were received by the Local Authority on 6th April 2017 (available to view on the online planning register). Both said drawings show the existing area of public open space, upon which the 2 no. dwellings are currently proposed and also indicate a proposed 'Play Area' to the immediate west of the subject appeal site. Condition no. 4 of planning reg. ref. no. 16/869 applies to all areas of public open space within the overall site, including the subject appeal site.
- 7.3.3. I note the wording of Condition no. 4 of planning reg. ref. no. 16/869 (See Section 4.0 Planning History above). The clear intention and purpose of Condition no. 4 of planning reg. ref. no. 16/869, in my opinion, is to ensure the dedicated open spaces are '*developed for and devoted to public use*' and that they '*shall be kept free of any development..*'. In my opinion, the proposed development, as presented, contravenes Condition no. 4 of planning reg. ref. no. 16/869, as it represents development on dedicated open space which is not for public use.
- 7.3.4. I note the description of the proposed development, as presented in the public notices, does not include any reference to Condition no. 4 of planning reg. ref. no. 16/869 and does not, for example, seek to alter, amend or remove said condition.
- 7.3.5. Condition no. 4 of planning reg. ref. no. 16/869 does not, in my opinion, offer flexibility in terms of a wholesale deviation from the use of the open spaces for public use. The reference to 'except otherwise agreed', in my opinion, refers to the issue of enclosure and not the proposed development of 2 no. dwellings.
- 7.3.6. It is accepted that the lands have not been taken in charge, that the subject open space is in private ownership and that its future use may not be a settled legal matter. However, the use of the subject open space, as stipulated under condition no. 4, is to be for public use. The proposed development, as presented, clearly deviates from the permitted public use.

- **Objective ST KL59 of the Kilcullen Settlement Plan (New Issue)**

7.3.7. I note, as per the Kilcullen Settlement Plan, that the subject lands and indeed the overall subject residential development (Millstream Court) are identified on the Green Infrastructure Map as ‘*Recreation and Amenity Spaces*’. Objective ST KL59 of the Kilcullen Settlement Plan is concerned with the protection and enhancement of such existing green infrastructure assets and reads as follows:

- **ST KL59** *Require all new developments to contribute to the protection and enhancement of existing green infrastructure assets, as identified on Map (Green Infrastructure), through the protection of existing green infrastructure and through the provision of new green infrastructure as part of any planning application.*

7.3.8. In my opinion, the proposed development, as presented, contravenes Objective ST KL59 as it is a new development which would result in the removal of a significant area of existing public open space (stated site area measures 0.045 hectares (450 sqm)) as opposed to contributing to the protection and enhancement of existing green infrastructure assets, as expressly identified on the Green Infrastructure Map. Under the parent planning permission, reg. ref. no. 16/869, see Condition no. 3, the Applicant/ Developer was, amongst other issues, obliged to provide details of the proposed play equipment to be provided in the identified play area in the landscaping plan submitted on the 06/04/17. Although proposals for the provision of such infrastructure were submitted to and approved by the Local Authority under said Condition no. 3, such play equipment infrastructure has not been provided to date. The Applicants’ commitment to introduce such play equipment infrastructure on the adjacent lands to the immediate west of the subject appeal site does not, in my opinion, represent the provision of ‘new green infrastructure’ as part of the subject planning application as such play equipment infrastructure is already required under the previous permission, reg. ref. no. 16/869 and is, in any case, outside the defined red line boundary of the subject appeal site.

7.3.9. Compliance with Objective ST KL59 of the Kilcullen Settlement Plan is a New Issue and the Commission may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal presented, it may not be necessary to pursue the matter.

- **Objective LR 093 of the Kildare County Development Plan, 2023 to 2029**
(New Issue)

7.3.10. I note Objective LR 093 of Kildare County Development Plan, 2023 to 2029 which is concerned with the protection of dedicated areas of open space/amenity and reads as follows:

- **LR 093** *Prevent the development of areas zoned open space/amenity or areas which have been indicated in a previous planning application as being open space for uses other than open space and recreation related.*

7.3.11. In my opinion, the proposed development, as presented, would allow, as opposed to prevent, the development of an area of open space/ amenity space which has been indicated in a previous planning application (reg. ref. no. 16/869) as being open space for uses other than open space and recreation related, i.e. for residential development (see Condition no. 4 of planning reg. ref. no. 16/869).

7.3.12. The Applicant submits that the open space to be retained equates to c. 0.036 hectares and that this equates to c. 6.6% of the overall site. The overall site, as per planning reg. ref. no. 16/869, has a stated site area of 0.5358 hectares. I note as per the submitted site layout drawing that the public amenity space is located to the immediate west of dwelling P.02. A public amenity space of 6.6% of the overall site area is below the minimum recommended standards set out in Section 15.6.6 of the Kildare County Council Development Plan, 2023 to 2029 and is below the recommended minimum standard of 10% of the net site area as set out in Section 5.3.3 and Policy and Objective 5.1 – Public Open Space of the Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities (2024). In my opinion therefore, the quantum of public open space provided on the overall site is substandard and is therefore not acceptable in this instance.

7.3.13. I note the Applicant has referenced a number of existing recreational facilities in the wider area, see Appendix A09 of the Appeal submission. The Applicant submits that such facilities offset the below standard provision of public open space on the overall site at Millstream Court. I do not consider such a proposal to be acceptable in the subject case as the minimum standard of 10% of the overall site area would not be achieved.

7.3.14. It is my opinion that the proposed development materially contravenes Objective LR 093 of the Kildare County Development Plan, 2023 to 2029.

7.3.15. Compliance with Objective LR 093 of the Kildare County Development Plan, 2023 to 2029, is a New Issue and the Commission may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal presented, it may not be necessary to pursue the matter.

- *Conclusion re Reason for Refusal No. 1*

7.3.16. In summary, it is my opinion that the proposed development contravenes condition no. 4 of planning reg. ref. no. 16/869, Objective ST KL59 of the Kilcullen Settlement Plan and materially contravenes Objective LR 093 of the Kildare County Development Plan, 2023 to 2029. Having regard to the foregoing, I concur with the decision of the Local Authority to refuse permission.

7.3.17. As it is my opinion that a Grant of permission is not warranted in this instance and that the proposal materially contravenes Objective LR 093 of the Development Plan and as the Local Authority did not refuse permission on the basis of a material contravention of the development plan it is, in my view, not necessary to set out a planning rationale under the provisions of Section 37(2) (b) of the Planning and Development Act, 2000, as amended, for the consideration of the Commission.

7.4. Reason for Refusal no.2

7.4.1. I note Reason for Refusal no. 2 as issued by the Local Authority, where the siting, design, form and overbearing effect of the proposed development is considered to seriously injure the residential amenities of properties in the area and would lead to an undesirable precedent for similar developments.

- *Residential Amenity*

7.4.2. I note the proposed site layout and the relationship of the proposed 2 no. 2 storey dwellings to the existing dwellings within Millstream Court, the single storey dwellings to the rear (south) at Sunbury Close and the general pattern of established surrounding development in the area.

7.4.3. Notwithstanding the inappropriate siting of the proposed 2 no. dwellings on the established amenity space within the overall development as discussed further above, I note the established surrounding dwellings within Millstream Court are all 2

storey. I therefore consider that the general design principle for 2 storey dwellings at the subject location to be acceptable. I note the proposed pallet of materials as set out on drawing no. PP-2.01 which, in my opinion, would be consistent with the established material types within the subject residential development and the general locality.

- 7.4.4. I note the separation distance proposed to be observed from the dwellings to the rear (south) at Sunbury Close and the proposed dwellings. I note there are no first floor rear (south) facing habitable rooms proposed on the rear (southwest) elevation and that the sole first floor window serves an en-suite bathroom, the glazing for which would typically be obscured. I would therefore have no concerns that the proposed development would result in any undue overlooking of the existing dwelling to the rear (south) at Sunbury Close.
- 7.4.5. The proposed first floor side facing bedroom window serving bedroom no. 1 in dwelling P.02 would directly overlook the amenity space to the west. The recommended minimum separation distance of 16 metres set out in SPPR1 of the Sustainable Residential Development and Compact Settlement Guidelines, 2024, is concerned with opposing windows serving habitable rooms above ground floor level. Such a scenario does not arise in the case of the proposed development. Some overlooking of the rear private amenity spaces of dwellings to the west within Sunbury Close is likely to occur from the said first floor window serving bedroom no. 1 in dwelling P.02 and a similar scenario arises from the proposed first floor bedroom windows serving bedroom no. 1 in dwellings P.01 looking southeast. Such overlooking however is not direct overlooking and would be relatively standard in the case of semi-detached or terraced housing scenarios and is therefore, in my opinion, acceptable in this instance as no direct overlooking would occur and appropriate separation distances from opposing first floor windows serving habitable rooms are observed.
- 7.4.6. Owing to the separation distances proposed to be observed, I would similarly have no concerns in relation to a loss of daylight for the north facing rear (ground floor) windows of the existing dwellings at Sunbury Close. The proposed dwellings are positioned to the north of the said dwellings. Any overshadowing arising as a result of the proposed development would therefore not be directed towards the dwellings at Sunbury Close which lie to the south/ southwest. I therefore consider the

proposed development, as presented, to be acceptable in terms of loss of daylight and overshadowing of the adjacent dwellings to the rear.

- 7.4.7. The proposed separation distance of 9.8 metres is below the minimum separation distance of 16 metres as set out in SPPR1 – Separation Distances of the Compact Settlement Guidelines, 2024. It is stated in SPPR1 that *‘Separation distances below 16 metres may be considered acceptable in circumstances where there are no opposing windows serving habitable rooms and where suitable privacy measures have been designed into the scheme to prevent undue overlooking of habitable rooms and private amenity spaces.’* I consider the subject case to represent a scenario where a reduced separation distance below 16 metres can be considered. Owing to the separation distance of 9.8 metres, I do not consider the proposed 2 storey dwellings would have an overbearing effect upon the existing dwellings at Sunbury Close.

- *Outlook*

- 7.4.8. I note the established proximity of the existing dwellings within Millstream Court (see house no. 12) to existing dwellings in Sunbury Close (see houses 1 and 2). I note the proposed development presents a similar arrangement and that a minimum separation distance of c. 2 metres is proposed to be observed from the rear of the 2 no. dwellings to the rear party wall. The impact of the proposed development upon the existing Outlook for one of the existing residents of Sunbury Close is raised in the submission received to the planning application. The said dwelling is positioned to the rear southwest of the subject appeal site and is directly due south/ southwest of the proposed main amenity space. I note as per available historic online aerial photography that the rear party boundary of the dwellings within Sunbury Close, prior to the development of the overall subject residential development permitted under planning reg. ref. no. 16/869, comprised dense screen hedging. Following the site development works, including the construction of the party boundary wall and owing to existing onsite levels, some views across the subject housing development, including views of the rear of the nearby protected structure (Ref. B28-28) and associated heritage buildings would appear to now be available from the rear ground floor windows of the dwellings within Sunbury Close. Such views would be somewhat restricted by the existing party boundary wall. In my opinion, views across the adjacent housing development site are, for the most part, retained. Having

regard to the foregoing, it is my opinion that the proposed development, as presented, is acceptable in terms of its impact upon the established outlook from the dwellings within Sunbury Close.

- *Precedent*

7.4.9. A concern that the proposed development, if permitted, would set an undesirable precedent is raised in Reason for refusal no. 2. In my opinion, the proposed development, if permitted, would not be consistent with other similar development in the wider area where an appropriate area of public open space has been maintained. As set out further below, the absence of sufficient public open space, as proposed, would serve to impact negatively upon the established residential amenities of existing residents within the Millstream Court. As such, it is considered that the proposed development, as presented, would serve to create an undesirable precedent.

- *Conclusion re Reason for Refusal no. 2*

7.4.10. In general terms, the design and layout of the proposed 2 no. dwellings is, in my opinion, acceptable within the context of an urban setting. Appropriate separation distances are observed, and it is not considered that the proposals would result in any undue overshadowing, loss of daylight or overlooking.

7.4.11. However, the siting of the 2 no. dwellings on an area of public open space which would result in a reduced area of public open space of c. 6.6% of the overall site area would serve to result in a substandard quantum of public open space for both existing and future residents. This, in my opinion, would in turn serve to impact negatively upon the existing and future residential amenity for both existing and future residents.

7.4.12. Having regard to the foregoing, I concur with the decision of the Local Authority to refuse permission in relation to the impact on residential amenities and undesirable precedent.

7.5. Other Matters

- *Engineering and Services*

7.5.1. The overall housing development, Millstream Court, is yet to be taken in charge by the Local Authority. It is accepted that as the existing services on site are not in charge, that they still, by default, remain in private ownership.

7.5.2. I note the concerns of the Local Authority Environment Section, as raised in the Internal Report dated 02/07/2025.

- *Capacity and Integrity of the private wastewater infrastructure*

7.5.3. The Environment Department, as per the Report dated 02/07/2025 recommended that a Detailed Report from a Competent Agent be provided that *'the additional effluent loading generated by the proposed development can be catered for in the existing private wastewater infrastructure. Design details and calculations shall be included as part of the report.'*

7.5.4. I note the Applicants' Appeal Submission, under Section 5, refers to existing services (wastewater, stormwater, water, electricity) installed under planning reg. ref. no. 16/869 and states same are privately owned. In addition, the Applicant refers to the Confirmation of Feasibility (COF) Letter from Uisce Eireann (See Appendix C of the Applicants Cover Letter). The said COF Letter confirms that both a Water Connection and Wastewater Connection are feasible without infrastructure upgrade by Uisce Eireann. No capacity constraints are referenced in said COF letter.

7.5.5. I note the submitted Site Layout Plan, Ref. PP-1.01, attached to the appeal file. The layout shows the internal wastewater pipework and there is no other existing private wastewater infrastructure shown. In the event of a Grant of permission being issued, final design details and calculations of the existing private wastewater infrastructure could be agreed by way of condition.

8.0 AA Screening

8.1. I have considered the proposal in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located in the urban area of Kilcullenbridge (ED Kilcullen), at a distance of approximately 7.7 km from

Pollardstown Fen SCA (Site Code SAC000396) and 9.1 km from Mounds Beg SAC (Site Code 002331), which are the closest European Sites.

8.2. The proposed development is for the construction of 2 no. dwellings and associated site works. No appropriate assessment issues were raised as part of the appeal. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European site. The reason for this conclusion is as follows:

- The nature and scale of the works and the availability of wastewater services.
- The separation distance from the nearest European site and lack of meaningful connections.
- The screening determination of the Planning Authority.

8.3. I conclude, on the basis of objective information, that the 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 (under Section 177V of the Planning and development Act 2000) is not required.

9.0 Water Framework Directive

9.1. The Liffey_060 (IE_EA_09L010700) lies within c. 148 metres to the southwest of the subject appeal site (Waterbody Status: Moderate). The site lies above the Kilcullen Groundwater body ((EU Code: IE_EA_G_003) (Waterbody Status: Good). The proposed development is detailed in section 2.0 of my report. No specific water deterioration concerns were raised in the planning appeal or observations.

9.2. I have assessed the proposed development and associated works and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration.

9.3. 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 surface and/or groundwater water bodies either qualitatively or quantitatively.

9.4. The reason for this conclusion is as follows:

- Nature of works e.g. small scale and nature of the development;
- Location-distance from nearest water bodies and/or lack of hydrological connections;

9.5. I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

10.0 Recommendation

10.1.1. I recommend that permission be refused as per the reasons and considerations set out below.

11.0 Reasons and Considerations

11.1.1. Having regard to the location of the subject appeal site within an existing residential development on an area which is in use as public open space and has been proposed as public open space under approved under planning reg. ref. no. 16/869, condition no. 4 of which stipulates, inter alia, that *'the open spaces shall be developed for and devoted to public use. They shall be kept free of any development and shall not be enclosed by any means, except where otherwise agreed...'*, Objective ST KL59 of the Kilcullen Settlement Plan and Objective LR 093 of the Kildare County Development Plan, 2023 to 2029, and notwithstanding the Town Centre zoning of the subject appeal site, it is considered that:

- the proposed would result in a significantly reduced area of public open space which would equate to c. 6.6% of the overall site area. This is below the recommended minimum public open space standards and recommendations set out in Section 15.6.6 of the Kildare County Development Plan, 2023 to 2029 and Section 5.3.3 and Policy and Objective 5.1 – Public Open Space of the Compact Settlement Guidelines, 2024,

- the lack of sufficient public open space would serve to negatively impact upon the residential amenity of both existing and future residents, and
- the proposed development materially contravenes Objective LR 093 of the Kildare County Development Plan, 2023 to 2029.

The proposed development is therefore considered to represent an inappropriately sited form of residential development and, if permitted, would set an undesirable precedent for similar proposals into the future and as such, is not therefore considered to be in accordance with 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.

Frank O'Donnell
Planning Inspector

25th June 2026

Form 1 - EIA Pre-Screening

Case Reference	ACP-323507-25
Proposed Development Summary	Two houses with ancillary and associated site development works.
Development Address	Millstream Court, New Abbey Road, Kilcullenbridge (ED Kilcullen), Kildare.
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?	☒ Yes, it is a 'Project'. Proceed to Q2.
	☐ No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1.	
☒ No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
☐ No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	

☐ Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	<u>Class 10 Infrastructure Projects</u> Class 10 b) i) Construction of more than 500 dwelling units. Class 19 b) iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)
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4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes ☒	Screening Determination required (Complete Form 3)
No ☐	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____ Date: _____

Form 2 - EIA Preliminary Examination

Case Reference	ACP-323507-25
Proposed Development Summary	Two houses with ancillary and associated site development works.
Development Address	Millstream Court, New Abbey Road, Kilcullenbridge (ED Kilcullen), Kildare.
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
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).	The development has a modest footprint, comes forward as a standalone project, does not require demolition works, does not require the use of substantial natural resources, or give rise to significant risk of pollution or nuisance. The development, by virtue of its type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change. It presents no risks to human health.
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 sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	The proposed development site is an infill site located in an urban area. The site is removed from sensitive natural habitats and designated sites and landscapes of identified significance in the County Development Plan. The site is not located within an Architectural Conservation Area (ACA) or an area of archaeological significance. There are no Protected Structures on the subject site or within the general immediate vicinity of same.
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration,	Having regard to the modest nature of the proposed development, its location removed from sensitive habitats/features, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.

cumulative effects and opportunities for mitigation).	
Conclusion	
Likelihood of Significant Effects	Conclusion in respect of EIA
There is no real likelihood of significant effects on the environment.	EIA is not required.

Inspector: _____ **Date:** _____

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

(only where Schedule 7A information or EIAR required)