



An
Bord
Pleanála

Inspector's Report

ABP-321323-24

Development

Alterations to previously approved development on a site at Ogenty, Kilkenny Road, Gowran, Co. Kilkenny, under planning reg no. 19/56 which approved 40 no. houses and associated works of which 17 no. units have been constructed. These proposed alterations to that permission consist of: 1) Change in house type of remaining unconstructed 23 no. units from previously permitted 10 no. 4 bed units and 13 no. 3 bed units to now provide 11 no. 4 bed units and 12 no. 3 bed units (removing 1 no. 3 bed unit and replacing it with an additional 1 no. 4 bed unit); 2) Minor retraction of the northern boundary of the previously permitted play area to the south east and reduction of car parking immediately to the west of that public open space with the as approved access to area; 3) Removal of a single permitted parking space and provision of additional footpath at

the shared surface area to incorporate minor site layout changes and improve use and safety of that shared surface area; 4) Reductions to the previously permitted 54 no. car parking spaces to now provide 53 no. car parking spaces predominantly within curtilage and associated amendments to vehicular access; 5) Alterations to the previously permitted road layout to incorporate minor road widening and realignment; 6) Changes to approved landscaping; 7) and all necessary associated site development works above and below ground to accommodate these amendments. This application is accompanied by a Natura Impact Statement (NIS).

Location	Ogenty, Kilkenny Road, Gowran, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	2460234
Applicant(s)	Minson Property Limited
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party v. Decision
Appellant(s)	Michael, Brendan & Etain Dowling

Observer(s)

None.

Date of Site Inspection

14th February, 2025

Inspector

Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located within the settlement boundary for the well-established small rural village of Gowran, Co. Kilkenny, where it occupies a position along the south-eastern side of Local Road No. L6697 (Clover Road), approximately 240m northeast of the junction of the R702 Regional Road with Main Street (the R448 Regional Road) in the village centre. The immediate site surrounds can be described as comprising a developing residential area with the new (and yet to be occupied) housing recently completed to the south forming an extension of the Ogenty estate off the Kilkenny Road (R702). On the adjacent lands to the northeast is a newly constructed playground (part of the 'Gowran Outdoor Hub'), beyond which is a playing pitch and more established housing (the Rock Field View & Green View estates). The public road (Local Road No. L6697) extending along the north-western site boundary serves to define the settlement boundary at this location with the result that the lands opposite remain in agricultural use. On travelling west along the Kilkenny Road from its junction with Local Road No. L6697, the broader pattern of development is characterised by individually developed housing set in a linear format along both sides of the roadway.
- 1.2. The site itself has a stated site area of 0.909 hectares, is irregularly shaped and comprises an area of undeveloped land previously disturbed during construction of the neighbouring housing scheme (noting that development of the subject site and adjacent lands were permitted as a whole under PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19). It is bounded by post and panel hoarding to the south and by mature trees and hedgerow to the east while the remaining roadside (north-western) boundary is defined by metal security fencing alongside a newly constructed public footpath.

2.0 Proposed Development

- 2.1. The subject proposal involves the amendment of the development previously permitted on site under PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19 and includes for the following:
 - A change of house type for the remaining unconstructed 23 No. units from the previously permitted 10 No. four-bed units & 13 No. three-bed units in order to

provide 11 No. four-bed units & 12 No. three-bed units (omitting 1 No. three-bed unit and replacing it with an additional 1 No. four-bed unit);

- The minor retraction of the northern boundary of the previously permitted play area to the southeast and a reduction in the car parking immediately to the west of that public open space with the 'as approved access' to the area;
- The removal of a single permitted parking space and the provision of additional footpath at the shared surface area to incorporate minor site layout changes and to improve the use and safety of that shared surface area;
- A reduction from the previously permitted 54 No. car parking spaces to provide 53 No. car parking spaces (thereby providing for predominantly in-curtilage parking for each dwelling house) and associated amendments to the vehicular access arrangements;
- Alterations to the previously permitted road layout to incorporate minor road widening and realignment;
- Changes to the approved landscaping; and
- Associated site development works.

2.2. Amended proposals were subsequently submitted in response to a request for further information which provide for minor revisions to the overall site layout, including the repositioning of the footpath to the front of Unit Nos. 43-47, the provision of a pedestrian crossing point with tactile paving between Units Nos. 51 and 57, the inclusion of tactile paving at the main site entrance, cycle parking for the play area in the southeastern corner of the scheme, the provision of a conventional turning head and segregated play area (forward of Unit Nos. 52 & 53), the siting of landscaping north of the development access behind the visibility splay, and sufficient roadway space to be provided where required (to accommodate larger vehicles).

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Following the receipt of a response to a request for further information, on 7th November, 2024 the Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to 19 No. conditions. These conditions are generally of a standardised format and relate to issues including infrastructural services, landscaping, construction management, Part V, and development contributions, however, the following conditions are of note:

- Condition No. 4 – Details a series of requirements with respect to traffic safety (including the submission of a Road Safety Audit), car parking, public lighting, and traffic management during the construction phase.
- Condition No. 5 – Requires the appointment of an Ecological Clerk of Works and the implementation of the best practice construction methods and environmental mitigation measures set out in the Natura Impact Statement (along with those measures set out in Condition No. 5 of the grant of permission issued for PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19).
- Condition No. 6 – Requires the water supply and drainage arrangements to comply with the requirements of the Planning Authority in addition to those required in relation to PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19, unless otherwise agreed with the Planning Authority.
- Condition No. 7 – Specifies the requirements for connection to water and wastewater infrastructure.
- Condition No. 8 – Requires the proposed development to be completed on a phased basis in accordance with the agreed terms of PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19 as the parent permission.

Condition No. 9 – Refers to the preservation, recording and protection of features of archaeological interest.

Condition No. 18 – Requires an appropriately qualified environmental consultant with expertise in the field of land contamination to carry out site investigations, risk assessment, and prepare a report recommending remedial measures where appropriate.

3.2. Planning Authority Reports

3.2.1. Planning Reports

An initial report details the site context, planning history, and the relevant policy considerations before stating that the overall principle of the proposed development (including the number of houses proposed) has already been deemed acceptable under ABP Ref. No. ABP-305914-19 and that the subject application involves an amendment of that parent permission. It further states that notwithstanding the adoption of the Kilkenny City and County Development Plan, 2021-2027, the only issue requiring assessment is whether the changes proposed are such as to render the proposal inconsistent with ABP Ref. No. ABP-305914-19. In this regard, it is considered that the proposed changes to the overall design and layout of the permitted development are acceptable. The assessment thus concludes by recommending that further information be sought in respect of those items identified in the report of the Road Design Section of the Local Authority.

Following the receipt of a response to a request for additional information, a further report was prepared which recommended a grant of permission, subject to conditions.

3.2.2. Other Technical Reports

Senior Assistant Chief Fire Officer: States that the development will not require the benefit of a Fire Safety Certificate before works commence on site.

Road Design: An initial report recommended that further information be sought in relation to a number of issues, including the adequacy of the available sightlines, a swept-path analysis of the internal estate roads for refuse vehicles, an updated public lighting plan, details and locations of pedestrian crossing points, a DMURS

Quality Audit, and the omission of a tactile pavement detail shown at the end of the footpath to the north of the site (alongside the public road).

Following the receipt of a response to a request for additional information, a further report was prepared which indicated that there was no objection to the proposal, subject to conditions.

3.3. Prescribed Bodies

- 3.3.1. *Uisce Éireann*: No objection, subject conditions, including a requirement that the conditions imposed on the grant of permission for PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19 in respect of water and wastewater are complied with. It is further stated that the terms of the connection agreement for the development of the site under CDS2100410101 will remain applicable and must be complied with, in particular, the requirement to connect to the sewer on the R448 Regional Road and not the existing sewer on the R702 Regional Road.

3.4. Third Party Observations

- 3.4.1. A total of 5 No. submissions / observations were received from interested third parties and the principal areas of concern / grounds of objection raised therein can be summarised as follows:
- Concerns as regards the wider road safety impact of the increased traffic volumes consequent on the proposed development, with particular reference to traffic movements along Rockfield Lane given its limited carriageway width.
 - The loss of amenity (and adverse impact on the quality of life & health of local residents) attributable to the proposed construction works by reason of increased noise, dust, traffic, and general disturbance / nuisance etc.
 - The detrimental impact on the residential amenity of neighbouring property due to overlooking / loss of privacy, the obstruction of views, intrusive lighting / light pollution, damage to property, inadequate security / boundary treatment, and general disturbance.
 - The site notice was not erected in a position visible to the wider public.
 - The potential for features of archaeological interest along Rockfield Lane.
 - A need to clarify the applicant's identity.

- The inadequacy of the existing car parking provision within the Ogenty Estate and the need for additional spaces (including electric vehicle charging points).
- The need to ensure an adequate road width etc. for access by emergency services.
- It is unclear whether the revised green space provision will accord with proper planning and development considerations.
- Concerns as regards the broader mix of social and private housing provision across the wider Ogenty estate development.
- The failure to provide a detailed report as regards possible gas / leachate migration as required by the grant of permission issued for PA Ref. No. 19/56.
- The potential for groundwater contamination on site.
- The need for clarity as regards the proposed foul and surface water drainage arrangements and the potential to infringe on private property / services in the ownership of third parties.
- No consent has been given for any alterations or connections to the privately owned foul and surface water sewers along the R702 Regional Road.
- The existing 17 No. houses constructed to date do not comply with the terms and conditions of the grant of permission issued in respect of PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19.

4.0 Planning History

4.1. On Site:

- 4.1.1. PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19. Was granted on appeal on 3rd June, 2020 permitting Bellerin 2 Limited permission for (1) The construction of 40 No. two-storey residential dwellings consisting of 10 No. four-bed dwellings, 17 No. three-bed dwellings and 13 No. two-bed dwellings; (2) Provision of public open space; (3) 87 No. car parking spaces and vehicular access; (4) Landscaping and boundary treatments; (5) Road widening alignment and provision of a public footpath along the western boundary of the application site; (6) Underground water storage tank and all associated site development works, all at Ogenty, Kilkenny Road,

Gowran, Co. Kilkenny, as revised by the further public notice received by the planning authority on the 27th day of September, 2019

4.1.2. PA Ref. No. 06/1387. Was granted on 8th November, 2006 permitting Michael, Brendan & Etain Dowling permission for construction of 15 no. two-storey dwellings, 12 with detached garages, new site entrance onto the minor road at the north west side of the site and road improvements with the junction at the R702 Kilkenny Road, connection to services through the existing development granted under planning ref. no. 05/1279, and all associated site works. All at Kilkenny Road, Gowran, Co.

Kilkenny.

- PA Ref. No. 10/592. Was granted on 26th November, 2010 permitting Michael, Brendan & Etain Dowling an 'Extension of Duration' of PA Ref. No. 06/1387 until 8th November, 2016.

4.1.3. PA Ref. No. 06/1386. Was granted on 8th November, 2006 permitting Michael, Brendan & Etain Dowling permission or construction of 8 no. terraced two-storey houses in place of 4 no. terraced two-storey and 1 no. detached two-storey houses that were granted under planning permission reference number 05/1279. All at Kilkenny Road, Gowran, Co. Kilkenny.

4.1.4. PA Ref. No. 05/1279. Was granted on 24th February, 2006 permitting Michael, Brendan & Etain Dowling permission for construction of a housing development of 46 no. housing units, 2 no. shops and 1 no. creche. The development will consist of: (a) Demolish existing agricultural building and construct 2 no. 4-bed., 4 no. 3 bed., 2 no. 2-bed units, all 2-storey and all with garden sheds, and 2 no. shops with associated office/staff facilities over shop, all in the form of 2 no. terraced 2-storey blocks forming a streetscape onto the Kilkenny road; (b) New site entrance off the Kilkenny road to serve c, d, e and f below; (c) A 2-storey terraced courtyard block consisting of 2 no. 4-bed. units, 5 no. 3-bed units and 4 no. 2-bed units all with garden sheds; (d) 10 no. 3-bed. semi-detached 2-storey units; (e) 2 no. 4-bed detached 2-storey units with detached garages; (f) A single storey creche; (g) A new site entrance off the minor road to the rear of the site serving h and j below; (h) 9 no. 5-bed. detached 2-storey units with detached garages; (j) 6 no. 4-bed. detached 2-storey units, 3 with detached garages; (k) connection to existing foul and storm drains on the Carlow

Road; (l) new drilled well for water supply; (m) associated site works. All at Kilkenny Road, Gowran, Co. Kilkenny.

- PA Ref. No. 10/591. Was granted on 26th November, 2010 permitting Michael, Brendan & Etain Dowling an 'Extension of Duration' of PA Ref. No. 05/1279 until 24th February, 2016.

5.0 Policy and Context

5.1. National Policy

5.1.1. Project Ireland 2040: National Planning Framework, 2018:

The National Planning Framework (NPF) is a long-term strategic planning framework intended to shape the future growth and development of Ireland out to the year 2040, a key objective of which is the move away from unsustainable "business as usual" development patterns and towards a more compact and sustainable model of urban development. It provides for a major new policy emphasis on renewing and developing existing settlements, rather than the continual expansion and sprawl of cities and towns out into the countryside at the expense of town centres and smaller villages. In this regard, it seeks to achieve compact urban growth by setting a target for at least 40% of all new housing to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites.

A number of key 'National Policy Objectives' are as follows:

- NPO 1(b): Southern Region: 340,000 - 380,000 additional people, i.e. a population of almost 2 million.
- NPO 3(a): Deliver at least 40% of all new homes nationally within the built-up footprint of existing settlements.
- NPO 3(c): 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.
- NPO 4: Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.

- NPO 6: Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.
- NPO 11: In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.

5.1.2. The ‘*Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities*’ published by the Department of Housing, Local Government and Heritage in 2024 set out national planning policy and guidance in relation to the planning and development of urban and rural settlements, with a focus on sustainable residential development and the creation of compact settlements. They are accompanied by a companion non-statutory Design Manual that illustrates best practice examples of how the policies and objectives of the Guidelines can be applied. The Guidelines replace the ‘*Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities, 2009*’ and build on and update previous guidance to take account of current Government policy and economic, social and environmental considerations. There is a renewed focus in the Guidelines on the renewal of existing settlements and on the interaction between residential density, housing standards and quality urban design and placemaking to support sustainable and compact growth.

5.2. Regional Policy

5.2.1. Regional Spatial and Economic Strategy (RSES) for the Southern Region, 2020:

The following Regional Policy Objectives (in part) are of note:

RPO 26: Towns and Villages:

- a) To strongly support strengthening the viability of our towns and rural settlements, as a key objective of the RSES, including the

protection of essential rural services such as post offices, shops, and medical facilities;

- b) To seek investment and initiatives that deliver smart technologies, revitalisation of mixed-use town and village centre streets, and pilot initiatives for regional good practice in renewal and re-use of buildings;
- c) To seek investment, the timely delivery and the sustainable delivery of holistic infrastructures in towns and villages to support their service role along the Region's tourism corridors consistent with the settlement hierarchies as set out in relevant development plans;
- d) To ensure that development plans tailor the appropriate planning response by reference to the scale, nature and location of the settlement. Local authorities will identify settlements which can play an enhanced role at sub-regional level to drive the development of their area;
- e) To support the development of guidelines for cluster housing development within the existing footprint of our rural settlements;
- f) To support co-ordination between local authorities, Irish Water and other stakeholders to deliver investment in the sustainable development of water and wastewater and other infrastructure for towns and villages, prioritising retrofitting and improvement in the quality of existing services;
- g) To seek investment in the sustainable development of a "New Homes in Small Towns and Villages" initiative in the Region and the delivery of actions by local authorities, Irish Water, communities and other stakeholders in the provision of services and serviced sites to create "build your own home" opportunities within the existing footprint of rural settlements. Local authorities should identify and prioritise the provision and implementation of serviced sites within towns and villages as an objective of development plans. These programmes shall ensure a sustainable and appropriate spread of development between towns and villages within their areas

RPO 27: Rural:

To support rural economies and rural communities through implementing a sustainable rural housing policy in the Region which provides a distinction between areas under urban influence and other rural areas through the implementation of National Policy Objective 19 regarding Local Authority County Development Plan Core Strategies.

Local authorities shall:

- a) Include policies for the protection of the viability of smaller towns and rural settlements as key priority within Development plans;
- b) Have regard for the viability of smaller towns and rural settlements. Core Strategies shall identify areas under urban influence and set the appropriate sustainable rural housing policy response which facilitates the provision of single housing in the countryside based on the core consideration of demonstrable economic, social or local exceptional need to live in a rural area and siting, environmental and design criteria for rural housing in statutory guidelines and plans;
- c) Having regard for the viability of smaller towns and rural settlements, in rural areas elsewhere, facilitate the sustainable provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans;
- d) Provide for flexibility in zoning and density requirements to ensure that rural villages provide attractive easily developed options for housing.

RPO 32: Rebuilding Ireland:

To support Government policy and targets of the Housing Agency under “Rebuilding Ireland: Action Plan for Housing and Homelessness” and local authority actions that contribute to progress under the key pillars of addressing homelessness, accelerating social housing, building more homes, improving the rental sector and utilizing the existing building stock within our Region.

RPO 35: Support for Compact Growth:

- a) Local Authorities, through Development Plan and Local Area Plan policies, shall identify rejuvenation priorities within our Region's settlements which demonstrate achievement of National Strategic Outcome: Compact Growth;
- c) Development Plans shall set out a transitional minimum requirement to deliver at least 30% of all new homes that are targeted in settlements other than the cities and suburbs, within their existing built-up footprints in accordance with NPF National Policy Objective 3c. This will be evidence based on availability and deliverability of lands within the existing built-up footprints.

5.3. Development Plan

5.3.1. Kilkenny City and County Development Plan, 2021-2027:

N.B. The proposed development site is located within the settlement boundary of Gowran as identified in Figure 4.11: 'Settlement boundary for Gowran' of the Plan.

Chapter 4: Core Strategy:

Section 4.2: Development Strategy

Section 4.3: Settlement Hierarchy:

Table 4.3: 'County Settlement Hierarchy in accordance with NPF and RSES': Rural Towns and Villages: Gowran

Section 4.6: Smaller Towns and Villages:

The smaller towns and villages within the County need to be developed in a way that strengthens their role as local service centres whilst respecting their existing character. Achieving the right balance between encouraging development in smaller towns and villages and the scale and nature of such development is critical. It is important to ensure that new residential development in smaller towns and villages is of a design, layout, character and scale which fits well with the town or village involved and presents a high-quality living environment.

For this current Plan a total of 22 smaller settlements have been identified. To promote the vitality and viability of these smaller settlements as rural service centres, it is an objective of the National Planning Framework (NPO 18b) to *“develop a programme of new homes in small towns and small villages with local authorities and agencies such as Irish Water and local communities to provide serviced sites with the appropriate infrastructure to attract people to build their own homes and live in small towns and villages”*.

In order to offer an effective alternative to the provision of single houses in surrounding un-serviced rural areas, proposals for developments with densities of up to 10 dwellings per hectare will be considered in smaller towns and villages where social services such as a school, church, pub etc. are available and engineering services are either available or can be provided by the relevant agencies within the lifetime of the plan. Individual houses are promoted and where a housing scheme is proposed, these will be proportionate to the scale of the settlement. Housing development within the development boundary of the small towns included in Table 4.3 County Settlement Hierarchy will not be subject to the rural housing policy as outlined in Section 7.8 Rural Settlement Strategy.

The scale and density of development in these settlements will depend on a number of factors including:

- Availability of infrastructure including appropriate social, waste water treatment facilities and water supply,
- Contribution to the enhancement of the village form by reinforcing the street pattern or assisting in the redevelopment of backlands,
- Contribution to the protection of the architectural and environmental qualities of the village,
- Capacity of the existing services in the village to accommodate the proposed development.

Future growth in these smaller towns and villages will be incremental, small in scale and appropriate to the size, scale and character of the village.

The Council will encourage development of economic activity, services and infrastructure provision in the smaller towns and villages of the county and allow for

town renewal and serviced site housing provision in smaller towns and villages where services are available and/or planned, at a scale and character which is proportionate, in order to sustain and renew population and services in these areas.

Proposed development in these settlements will however have to have regard to the availability of infrastructure capacity of each respective settlement over the lifetime of the Plan. Accordingly, development proposals within the boundary will be considered on their merits against the policies and objectives contained in this core strategy and the Development Plan generally.

Chapter 6: Housing and Community:

Section 6.1: Housing

Section 6.2: The Making of Place:

Strategic Objectives:

6A: To ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high *quality of life and well-being*.

6B: To secure, through the application of Development Management Requirements within the Plan, the making of quality urban spaces embodying inclusive and universal access design principles for our building stock, public *realm, amenities and transport services*.

6Ba: To ensure that people are at the centre of all placemaking activities. To ensure that co-design and participatory processes are used to engage people in shaping their built environment, with a particular focus on supporting harder to reach communities to take part in public engagement processes

Section 6.7: Residential Development:

In general, new residential development in smaller towns and villages will be required to take cognisance of the prevailing scale and pattern of development in the area and be of a design, layout, character and scale which fits well with the town or village involved and presents a high-quality living environment.

Further details of the standards and requirements for residential developments are set out in Chapter 13, Requirements for Development. This means that it is

necessary to tailor the scale, design and layout of housing in rural towns to ensure that a suburban or high density urban approach is not applied to a rural setting and that development responds to the character, scale and density of the town (NPF 18(a))

Section 6.9: *Housing Objectives*

Chapter 13: *Requirements for Developments*

5.4. Natural Heritage Designations

5.4.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- Red Bog Proposed Natural Heritage Area (Site Code: 000846), approximately 3.7km south of the site.
- River Barrow and River Nore Special Area of Conservation (Site Code: 002162), approximately 4.5km northeast of the site.
- River Nore Special Protection Area (Site Code: 004233), approximately 8.0km southwest of the site.
- Whitehall Quarries Proposed Natural Heritage Area (Site Code: 000855), approximately 7.8km north of the site.

5.5. EIA Screening

5.5.1. Having regard to the nature, scale and location of the development, which comprises the construction of 23 No. dwelling houses and associated works within the settlement boundary of an established village where infrastructural services are available, the separation between the site and sensitive receptors, and to the criteria set out in Schedule 7 of the Regulations, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. Please refer to the completed Forms 1 and 2 appended to this report.

6.0 The Appeal

6.1. Grounds of Appeal

- No details have been provided of how the proposed development (along with the 17 No. existing units already constructed) will connect to the Uisce Éireann network on the R448 Regional Road.
- The applicant has not obtained the necessary consent to discharge foul water from the existing or proposed housing units on site to the private pipework located on the R702 Regional Road.
- The applicant has not complied with the Uisce Éireann requirement to obtain the written consent of the owners of any pipework should it wish to discharge into same.
- The submission received from Uisce Éireann clearly states that the applicant must comply with the terms of the connection agreement already entered into as regards the existing 17 No. units.
- No details have been provided of how the proposed development will connect to the public stormwater drainage network located c. 120m away on the R448 Regional Road.
- The applicant has not obtained the necessary consent to discharge surface water from the existing or proposed housing units on site to the private pipework located on the R702 Regional Road.
- The proposal does not comply with published guidance (Irish Water's *'Drainage Requirements for Planning Applications'*) which states that if an applicant intends to use a private drain / pipework connection then the written consent of its owners will be required. No such connection agreement has been provided by the applicant.
- Section 35 of the Planning and Development Act, 2000, as amended, states that where a previous grant of permission has not been complied with then any new application should be refused. In this regard, it should be noted that Uisce Éireann has identified that the existing housing units are non-compliant with previous planning conditions.

- Kilkenny County Council has validated the planning compliance certificate for the existing 17 No. units (please refer to the accompanying Building Control Management System (BCMS) data).
- A request for enforcement action has been lodged with Kilkenny County Council which has not sought to enforce compliance as regards the storm and foul water connections.
- Kilkenny County Council has purchased the 17 No. units already constructed despite the development not complying with the terms and conditions of previous grants of planning permission.

6.2. Applicant Response

- The alterations proposed to the permitted scheme are not substantial and the principle of development on site is well established.
- The Planning Authority's assessment of the application has determined that the proposal comprises relatively small amendments to a previous grant of permission with the fundamentals of the approved scheme remaining the same.
- The request for further information issued by the Planning Authority did not seek any additional details as regards connection to Uisce Éireann services or water or drainage related matters in order to determine the application. A Uisce Éireann connection is not a pre-requisite for reaffirming the Council's decision to grant permission.
- The observation received from Uisce Éireann on the initial planning application indicated that it had no objection to the proposed development, subject to conditions.
- Condition Nos. 6 & 7 as imposed by the Planning Authority refer to the connection of the proposed development to water services. Compliance with these conditions is a matter for the Council as the relevant enforcement authority.
- In relation to the connection of the existing and proposed developments to the mains water services on the R448 Regional Road:

- The plans and particulars submitted with the application clearly outline the connection points to water services and a connection agreement is already in place with Uisce Éireann.
 - The existing 17 No. units already constructed do not form part of the subject application, however, for the purposes of clarity, a formal connection agreement with Uisce Éireann has been executed by the owner of those units.
 - A connection to Manhole No. F05 is shown on Drg. No. 18106/10/05: *'Proposed Site Plan: Foul and Storm Water Sewer Layout'* which obviates the need for any connection over third-party lands.
- No connection to any private pipework on the R702 Regional Road is required or proposed as part of the proposal. The applicant has an agreed and executed connection agreement in place with Uisce Éireann for discharge to the main foul sewer network as per the submitted drainage layout.
 - With respect to the suggestion that the applicant has not complied with the Uisce Éireann requirement to obtain the written consent of the owner in the event of a connection to privately held services, it can be confirmed that the proposed development only requires the consent of Uisce Éireann and that there is no requirement for any connection to a private network. The older pipe network referenced by the appellant is not proposed to be used by either the applicant or Uisce Éireann as part of the subject application. The appellant appears confused as regards the route and pipe network agreed between the applicant, Uisce Éireann and the Local Authority.
 - The recommendations of Uisce Éireann (as per its submission) will be complied with in full.
 - Details of the proposed connection to the public stormwater network have been outlined and the route agreed with the Local Authority.
 - An acceptable route for the discharge of stormwater has been agreed with the Local Authority which does not involve the use of older, legacy pipework. No private or third-party connection is required.

- Given that the proposed development does not involve the use of any privately owned water services, there is no need for the applicant to obtain the written consent of any private third-party. In this regard, it is submitted that the appeal is of a vexatious nature.
- No enforcement action has been taken by the Council in this instance. Accordingly, there is no basis (in any historic or active file) that would warrant a refusal of permission on the basis of non-compliance or enforcement action by reference to Section 35(b)(ii) of the Planning and Development Act, 2000, as amended.
- Despite the appellants' request that enforcement be action be taken against the applicant, the Council has not seen fit to issue either a warning letter or enforcement proceedings. There is no justification for taking enforcement action.
- No enforcement action has been taken by the Council as regards the 17 No. units already constructed.
- The commentary in the grounds of appeal as regards the Council's alleged purchase of the existing 17 No. units is inaccurate and of no relevance to the subject application. Furthermore, the 17 No. units referred to form part of a completely different scheme in the ownership of another party.
- The applicant is obliged to adhere to the applicable legislation and is facilitating the necessary water services discharge without infringing on the rights of any third party (including those of the appellants). The applicant does not require any consent from the appellants.

6.3. Planning Authority Response

- Connection of the proposed development to the Uisce Éireann network is a matter for resolution between the developer and Uisce Éireann and the appropriate connection agreement.
- Agreement between landowners is a legal issue and not a planning matter.
- Compliance with Uisce Éireann standards is a matter for Uisce Éireann.

- Compliance with the terms of any connection agreement is a matter for Uisce Éireann.
- Condition No. 6 of the grant of permission requires agreement of the drainage details.
- Agreement between 2 No. third parties is a legal matter and beyond the scope of the planning application.
- Condition No. 6 requires the developer to provide details of the surface water disposal arrangements (the manner by which this is to be effected is a matter for the developer).
- The Planning Authority has not formed a view that there is a real and substantial risk that the proposed development would not be completed.
- BCMS is a separate building control code and validation of a commencement notice is a separate legal process.
- In March, 2024 an enforcement file was opened (Ref. No. 24/040) in relation to the site under PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19). A Warning Letter was issued in September, 2024 and the file remains open and under investigation.
- Kilkenny County Council has entered into negotiations with the current developer of the site to purchase the 17 No. units. These units have not yet been purchased and no contract has been signed.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 Assessment

- 7.1. From my reading of the file, inspection of the site, and assessment of the relevant policy provisions, I conclude that the key issues raised by the appeal are:

- The merits of the third-party appeal
- The principle of the proposed development
- The nature of the proposed amendments / overall design and layout
- Infrastructural works / services
- Other issues
- Appropriate assessment

These are assessed as follows:

7.2. The Merits of the Third-Party Appeal:

- 7.2.1. With regard to the applicant's commentary that the third-party appeal is 'vexatious', which would appear to imply that it should be dismissed pursuant to the provisions of Section 138(1) of the Planning and Development Act, 2000, as amended, having considered the grounds of appeal, I am satisfied that they raise legitimate material planning considerations and thus I propose to assess same accordingly.

7.3. The Principle of the Proposed Development:

- 7.3.1. The proposed development is simultaneously described in the public notices as comprising alterations to the development previously approved on site under PA Ref. No. 19/56 (with that decision having been subsequently upheld on appeal under ABP Ref. No. ABP-305914-19) and as '*alterations to that permission*'. The accompanying 'Planning Statement' further states that it has been prepared '*in support of proposed amendments to planning permission Kilkenny County Council reg. ref 19/56 and ABP ref. ABP-305914-19*'. Accordingly, it is my opinion that the subject application can be reasonably described as amending an extant grant of permission and, therefore, there is no need to revisit the wider merits and overall principle of the development already approved on site. In this regard, I am satisfied that the subject proposal is intrinsically linked to the grant of permission issued in respect of PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19 and that the amendments detailed in the subject proposal are reliant on the implementation of that extant grant of permission and cannot be carried out in isolation of same (as further evidenced by several of the conditions attached to the notification of the decision to grant permission).

- 7.3.2. By way of further comment, I note that the conclusion of the final 'Planning Report' prepared by the Planning Authority (wherein reference is made to the application as seeking permission for a 'change of house type' from that previously permitted) mistakenly refers to the grant of permission issued for PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19 as having expired and thus '*a new five-year permission applies*'. For the purposes of clarity, I would advise the Board that the grant of permission issued on appeal under ABP Ref. No. ABP-305914-19 (dated 3rd June, 2020) is extant and due to expire 2nd June, 2025 (as stated on the Local Authority website) (although account should also perhaps be given to any calculation of the appropriate period pursuant to Section 251A of the Planning and Development Act, 2000, as amended).
- 7.3.3. Therefore, as the overall principle of the development of this site has already been established under PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19, and as the subject application concerns an amendment of that permission, it would be inappropriate to revisit any issues of principle (including the servicing arrangements) which have already been considered in the assessment of PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19.
- 7.3.4. In the event the Board does not concur with the foregoing and is of the view that the subject application amounts to a 'standalone' application for planning permission it will be necessary to reassess the proposal accordingly.

7.4. The Nature of the Proposed Amendments / Overall Design and Layout:

- 7.4.1. The amendments proposed (as revised further in response to the request for additional information) are of a comparatively minor nature and primarily involve a change of house type as well as revisions to the site layout that will include for the alteration of the play area / public open space to the southeast of the housing, a reduction from 54 No. to 53 No. car parking spaces (thereby providing predominantly in-curtilage parking for each dwelling house) with amendments to the associated access arrangements, and alterations to the permitted road layout to incorporate minor road widening and realignment. In my opinion, the changes proposed are generally of a relatively cosmetic nature (with a moderate increase in overall floor area), do not give rise to any additional impact on residential amenity or traffic considerations, and are consistent with the broader design of the permitted scheme.

7.5. Infrastructural Works / Services:

- 7.5.1. The primary concern raised in the grounds of appeal relates to the means by which foul and storm water drainage from the proposed development will be discharged to the public mains sewerage network. More specifically, it is apparent from a review of Drg. No. 100 Rev. 05: *'Proposed Site Plan: Foul and Storm Water Sewer Layout'* that the subject proposal will be reliant on connection to the existing sewerage infrastructure serving the adjoining first phase of housing constructed pursuant to PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19 as well as the Ogenty estate, which subsequently discharges to foul and surface water sewers laid along the R702 Regional Road that ultimately connect to the public mains network. It would appear that the existing foul and surface water sewers laid along the R702 Regional Road (which seemingly serve the aforementioned developments) are the subject of an ongoing dispute with the appellants who claim private ownership over them (thereby implying that the sewers are not in the charge of the local authority or Uisce Éireann) and that the applicants do not have consent to drain the proposed development through same. Notably, similar issues arose during the Board's previous determination of ABP Ref. No. ABP-305914-19.
- 7.5.2. In response to the grounds of appeal, the applicant has asserted that the connection points to foul and surface water infrastructure are clearly shown on Drg. No. 100 Rev. 05: *'Proposed Site Plan: Foul and Storm Water Sewer Layout'* and that no connection to any private pipework on the R702 Regional Road is required or proposed as part of the proposal. Furthermore, it has been submitted that a formal connection agreement with Uisce Éireann has already been executed in respect of the 17 No. existing units constructed pursuant to PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19 and that the applicant has an agreed and executed connection agreement in place with Uisce Éireann for discharge of the proposed development to the main foul sewer network.
- 7.5.3. At this point, I would draw the Board's attention to the observation received from Uisce Éireann wherein it has been confirmed that the applicant has already entered into a connection agreement for the development of the site and that the terms of this agreement remain applicable and must be complied with, in particular, a requirement to connect to the sewer on the R448 Regional Road and not into the existing sewer on the R702 Regional Road. It has been further indicated that the

proposal must abide by the conditions set out in the previous grant of planning permission issued under PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19 in respect to water and wastewater and that all development must be carried out in compliance with Uisce Éireann's Standard Details and Codes of Practice.

- 7.5.4. From a review of the drainage proposals shown on Drg. No. 100 Rev. 05: *'Proposed Site Plan: Foul and Storm Water Sewer Layout'*, I am inclined to suggest that an element of confusion arises. The proposed development would appear to drain to Manhole No. F13 on R702 Regional Road, and although the legend attached to this drawing shows the foul sewer extending south from this manhole as 'existing', the textual description refers to this pipework as comprising a 'new' 225mm diameter foul sewer to be laid in the public road which will connect into an existing manhole located at the junction of the R448 & R702 roads.
- 7.5.5. Similarly, with respect to the surface water drainage management, although the proposed development will drain through a section of 'existing' surface water infrastructure within the Ogenty estate (including an attenuation system), it will seemingly connect to a 'proposed' surface water manhole (Manhole No. S14) on the R702 (which will involve the relocation of an existing storm manhole) with a 'proposed' 225mm diameter surface water sewer to be laid in the public road onwards to the R448 Regional Road.
- 7.5.6. Accordingly, on the basis that the proposed development will drain to 'new' foul and surface water sewers to be laid along the R702 in order to connect into the public mains network on the R448, this would seem to obviate any requirement for connection to the disputed drainage infrastructure at this location.
- 7.5.7. Notwithstanding the foregoing, the case has also been put forward in Section 9.7 of the 'Planning Statement' submitted with the initial application documentation that the wastewater and drainage arrangements are not proposed to be altered in the subject application from those previously approved under PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19. In this regard, I note that there was much discussion in the assessment of ABP Ref. No. ABP-305914-19 as regards conflicting information provided in relation to the ownership of certain water services infrastructure and whether it had been taken in charge by the local authority. In that instance, the reporting inspector referred the Board to Section 34(13) of the Planning and

Development Act, 2000, as amended, which states that ‘*A person shall not be entitled solely by reason of a permission under this section to carry out any development*’ and concluded that they were generally satisfied that the principle of the development in terms of water services was acceptable and that the matters raised in the third-party appeal as regards the foul and surface water drains located on the R702 Regional Road were civil issues outside the remit of the Board. This would appear to have been accepted by the Board which proceeded to grant ABP Ref. No. ABP-305914-19 on appeal.

- 7.5.8. Therefore, in the event the proposed development will drain to ‘new’ foul and surface water sewers to be laid along the R702 to connect into the public mains network, this would avoid any impact on the disputed drainage infrastructure and accord with the requirements of the connection agreement entered into with Uisce Éireann. Alternatively, should the proposed development not involve any change to the drainage infrastructure previously approved under ABP Ref. No. ABP-305914-19, it would seem unnecessary to revisit the servicing arrangements while also reverting to the provisions of Section 34(13) of Act.

7.6. Other Issues:

7.6.1. *Allegations of Unauthorised Development / Non-Compliance:*

With respect to the appellant’s assertions as regards alleged non-compliance with the terms and conditions of the grant of permission issued for ABP Ref. No. ABP-305914-19, in my opinion, it would be inappropriate for the Board to speculate on such matters. Moreover, the Board has no function in respect of issues pertaining to enforcement, including any breach of condition, and the pursuit of such matters is generally the responsibility of the Planning Authority in the first instance.

7.7. Appropriate Assessment:

7.7.1. Compliance with Article 6(3) of the Habitats Directive:

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under Part XAB, Section 177U of the Planning and Development Act, 2000 (as amended) are considered fully in this section.

7.7.2. Background on the Application:

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given.

7.7.3. The planning application has been accompanied by a '*Screening Report for Appropriate Assessment (AA) for proposed amendments to a permitted (pl. ref.: P19/56) residential development at Ogenty, Gowran, Co. Kilkenny*' and a '*Natura Impact Statement for proposed amendments to a permitted (pl. ref.: P19/56) residential development at Ogenty, Gowran, Co. Kilkenny*' prepared by OPENFIELD Ecological Services and dated May, 2024.

7.7.4. The screening exercise has been prepared in line with current best practice guidance and provides a description of the proposed development and identifies the potential for significant effects on European Sites within a possible zone of influence of the development and whether the proposed development is likely to have any significant effects upon any Natura 2000 sites found to have connectivity with the proposed development. It has been informed by a combination of desk-top research and field surveys. The subject site is located outside any Natura 2000 site, however, by employing the source-pathway-receptor model of assessment, connectivity pathways for potential impacts within the Zone of Influence of the proposed development have been found in respect of the following:

- *The River Barrow and River Nore Special Area of Conservation (Site Code: 002162):*

The Gowran River passes approximately 270m (420m as stated elsewhere in my assessment) south of the proposed development site and flows east to join the River Barrow at Goresbridge, approximately 5.2km downstream, at which point the river forms part of the River Barrow and River Nore SAC. During the construction phase there will be extensive

ground works including the use of concrete (which is highly toxic to aquatic life) and disturbance of soil. There is consequently a risk that pollutants will enter the River Gowran and travel on to the River Barrow. Accordingly, there is potential hydrological connectivity via surface water pathways between the proposed development site and the SAC.

7.7.5. No further pathways to any European Sites have been identified.

7.7.6. The applicant's screening exercise has thus concluded as follows:

'In light of their conservation objectives, it can be seen that the likelihood of significant effects to the River Barrow and River Nore SAC cannot be ruled out.

Conservation objectives for 'good status' water quality are set for both Atlantic Salmon and Floating River Vegetation. Given the potential effects to water quality (particularly sediment pollution) during the construction phase, significant effects to these qualifying interests cannot be ruled out'.

7.7.7. Having reviewed the documentation submitted with the application, and the submissions received, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

7.7.8. **Screening for Appropriate Assessment - Test of likely significant effects:**

The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

7.7.9. The proposed development is examined in relation to any possible interaction with European sites, i.e. designated Special Conservation Areas (SAC) and Special Protection Areas (SPA), to assess whether it may give rise to significant effects on any European Site.

7.7.10. **Brief description of the development:**

The applicant provides a description of the project on Page No. 7 of the Screening Report and elsewhere in the application documentation (including the 'Planning Statement' compiled by Cunnane Stratton Reynolds and the 'Design Statement'

prepared by Tēgos Architects). In summary, the subject proposal comprises the amendment of the development previously permitted on site under PA Ref. No. 19/56 / ABP Ref. No. ABP-305914-19 and includes for the change of house type of the remaining unconstructed 23 No. units as well as revisions to the site layout such as the alteration of the play area / public open space to the southeast of the housing, a reduction from 54 No. to 53 No. car parking spaces (thereby providing predominantly in-curtilage parking for each dwelling house) with amendments to the associated access arrangements, and alterations to the permitted road layout to incorporate minor road widening and realignment.

- 7.7.11. The application has been accompanied by a Planning Statement, Design Statement, Traffic and Roads Statement, Part L Specifications, Dwelling Details Report, Screening Report for Appropriate Assessment, Natura Impact Statement, plans and drawings, and the relevant statutory particulars.
- 7.7.12. An overview of the baseline environment is provided on Page Nos. 8-10 of the Screening Report.
- 7.7.13. The proposed development site is not located within or directly adjacent to any Natura 2000 site. The closest Natura 2000 site is the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) which is located approximately 4.5km northeast of the site while the River Nore Special Protection Area (Site Code: 004233) is approximately 8.0km to the southwest.
- 7.7.14. The Gowran River passes approximately 420m south of the proposed development site and flows east to join the River Barrow at Goresbridge, approximately 5.2km downstream, at which point the river forms part of the River Barrow and River Nore SAC (for the purposes of clarity, it should be noted that the applicant's reference to a separation distance of 270m between the development site and the River Gowran would seem to relate to the original wider development site as approved under ABP Ref. No. ABP-305914-19).
- 7.7.15. The River Nore SPA (designated for Kingfisher *Alcedo atthis*, Code: A229) is located at a distance upstream of the proposed development site. In this regard, the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effect on the SPA in view of that sites' Conservation Objectives.

- 7.7.16. The proposed development site located in the small rural village of Gowran, Co. Kilkenny, along the south-eastern side of Local Road No. L6697 (Clover Road), on serviceable lands in a developing residential area proximate to the village centre. It comprises a vacant plot of undeveloped land previously disturbed during construction of a neighbouring housing scheme. Although the site is described as originally comprising a 'Dry Meadow – GS2' (Fossitt) that included areas of grassland which had not recently been grazed, as well as areas previously disturbed that had largely revegetated, due to the disturbance attributable to the construction of housing on adjacent lands pursuant to ABP Ref. No. ABP-305914-19, it has been largely cleared and is presently dominated by a combination of buildings and artificial surfaces (BL3) and spoil and bare ground (ED2) with only ruderal and opportunistic vegetation. It is bounded by post and panel hoarding to the south and trees & hedgerow to the east while the remaining roadside (north-western) boundary is defined by metal security fencing alongside a newly constructed public footpath (the boundary hedgerow (WL1) previously found along this roadway has been removed as part of the permitted development). There are no records of invasive plant species (as listed in Part (1) of the Third Schedule of the European Communities (Birds and Natural Habitats) Regulations, 2011, as amended) on site nor are there any habitats listed under Annex I of the Habitat Directive. In addition, there are no watercourses, bodies of open water, wet drainage ditches or habitats which could be classified as wetlands.
- 7.7.17. The site is serviceable by mains water services with a connection available through existing infrastructure sited within adjoining lands. Wastewater will be discharged to the public mains sewerage network and onwards to the Gowran Wastewater Treatment Plant which is operated by Uisce Éireann and licenced by the Environmental Protection Agency to discharge treated effluent to the River Gowran. The Annual Environmental Report (AER) for 2023 shows the plant is operating within the applicable emission limit values set in its wastewater discharge licence and that the discharge from the plant is not having an observable impact on water quality or the relevant Water Framework Directive status. The plant has a treatment capacity of 1,600 Population Equivalent (PE) and would appear to have sufficient capacity remaining to accommodate the additional loadings consequent on the proposed development.

7.7.18. Connection to an existing surface water drainage network is available through adjacent development (ABP Ref. No. ABP-305914-19). This includes surface water attenuation with controlled discharge to the mains surface water sewer. Run-off from hard standing areas will divert to this system which ultimately enters the River Gowran.

7.7.19. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- Construction related – uncontrolled surface water / silt / construction related pollution.

7.7.20. Submissions and Observations:

All submissions and observations received from interested parties are set out in Section 3.0 of this report.

7.7.21. European Sites:

The proposed development site is located approximately 420m north of the Gowran River which flows east to join the River Barrow at Goresbridge, approximately 5.2km downstream, whereupon it enters the River Barrow and River Nore SAC. The River Nore Special Protection Area is approximately 8.0km to the southwest.

7.7.22. Page Nos.12 - 20 of the applicant's screening exercise consider the potential interactions of the proposed development with those Natura 2000 sites within a possible zone of influence of the proposed development. These are presented in the table below. In addition, consideration has been given to the River Nore SPA. Where a possible connection between the development and a European site has been identified, these sites are examined in more detail.

European Site	Qualifying Interest / Special Conservation Interest	Distance from the proposed development	Connections (source-pathway-receptor)	Considered Further in Screening
River Barrow and River Nore Special Area of Conservation	Estuaries [1130]	Approximately 5.2km to the	Hydrological	Yes.

(Site Code: 002162)	Mudflats and sandflats not covered by seawater at low tide [1140] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glauco-Puccinellietalia maritima) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260] European dry heaths [4030] Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430] Petrifying springs with tufa formation (Cratoneurion) [7220] Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion,	northeast of the site.		
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	<i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0] <i>Vertigo moulinsiana</i> (Desmoulin's Whorl Snail) [1016] <i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029] Nore freshwater pearl mussel <i>Margaritifera durrovensis</i> [1990] <i>Austropotamobius pallipes</i> (White-clawed Crayfish) [1092] <i>Petromyzon marinus</i> (Sea Lamprey) [1095] <i>Lampetra planeri</i> (Brook Lamprey) [1096] <i>Lampetra fluviatilis</i> (River Lamprey) [1099] <i>Alosa fallax fallax</i> (Twaite Shad) [1103] <i>Salmo salar</i> (Salmon) [1106] <i>Lutra lutra</i> (Otter) [1355] <i>Trichomanes speciosum</i> (Killarney Fern) [1421]			
River Nore Special Protection Area	Kingfisher <i>Alcedo atthis</i> [A229]	Approximately 8km southwest of the site.	Given the location of the development site downstream of the SPA and	No.

(Site Code: 004233)			the separation distances involved, no connectivity pathways are likely.	
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7.7.23. Identification of Likely Effects:

The construction phase of the proposed development will involve excavations and the disturbance of soil etc. which gives rise to the possibility of indirect negative impacts on downstream water quality through the accidental release of suspended solids / sediment etc. or the discharge of hydrocarbons and / or other pollutants by way of contaminated surface water runoff. In this regard, drains or watercourses can act as a hydrological conduit for contaminated surface waters between development sites and any downstream Natura 2000 sites with any associated deterioration in water quality having a potentially negative impact on downstream aquatic habitats and / or species identified as qualifying interests / special conservation interests. Given that the proposed development site is potentially hydrologically linked to the River Barrow and River Nore SAC via surface water pathways, including the Gowran River, the potential arises for any contaminated waters released during the construction phase to enter the aquatic environment thereby resulting in a deterioration in downstream water quality.

7.7.24. The applicant's Screening Report states that none of the habitats designated as qualifying interests of the River Barrow and River Nore SAC are to be found along the River Gowran, which is outside the SAC boundary. It further states that there are no records of the Killarney Fern, Desmoulin's Whorl Snail or Freshwater Pearl Mussel along the River Barrow in this location (with Freshwater Pearl Mussel not found in waters downstream of the development site). In addition, the Twaite shad is stated to be only found in estuarine waters. It is accepted however that the River Barrow does provide habitat for the White-clawed Crayfish, all Lamprey species, Atlantic salmon and Otter while it also holds the 'floating river vegetation' habitat (with the result that conservation objectives which aim to restore or maintain the

favourable conservation condition of these qualifying interests are considered relevant).

7.7.25. No impacts on water quality are anticipated during the operational phase of the development as foul sewerage will be discharged to the public mains system while stormwater will be managed by way of soakaways and existing surface water infrastructure, including attenuation and controlled discharge to the mains network.

7.7.26. Cumulative / In-combination Effects:

It is noted that the addition of sediment-laden water during the construction phase could act in combination with other diffuse sources of sediment throughout the entire the river system, such as bank erosion, which could result in negative effects to features of interest of the SAC

7.7.27. It is not envisaged that the proposed development will give rise to any further in-combination / cumulative effects (noting the Stage 2 Appropriate Assessment undertaken for ABP Ref. No. ABP-305914-19).

7.7.28. Mitigation Measures:

No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

7.7.29. Screening Determination:

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act, 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) could have a significant effect on European Site Ns. 002162 in view of the site's Conservation Objectives and Appropriate Assessment (and submission of a NIS) is therefore required.

7.7.30. Stage 2: Appropriate Assessment:

The subject application has been accompanied by a Natura Impact Statement (May, 2024) prepared by OPENFIELD Ecological Services which examines and assesses the potential adverse effects of the proposed development on the River Barrow and River Nore Special Area of Conservation.

- 7.7.31. This NIS has been informed by a desk-top analysis of various source material, including details of the qualifying interests and conservation objectives for the European Sites, along with the updated ecological / habitats survey conducted for the site on 10th May, 2024.
- 7.7.32. The NIS includes a description of the project and the receiving environment and is stated to be based on standard methods and current best practice guidance, including *'Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities'* (DoEHLG, 2009) and *'Assessment of plans and projects significantly affecting Natura 2000 sites 'Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC'*. In conjunction with the earlier Screening Report, it outlines the characteristics of the relevant designated sites before subsequently setting out the potential impacts arising from the construction and operation of the development on those European Sites. Details are also provided of those mitigation measures necessary to ensure that any direct or indirect impacts on the Natura 2000 sites are abated. Other than the potential (pre-mitigation) for the discharge of sediment-laden water during the construction phase to act in combination with other diffuse sources of sediment throughout the entire river system, no further in-combination / cumulative effects have been identified.
- 7.7.33. The NIS thus concludes as follows:

'This report contains an analysis of the proposed amendments to the permitted project and their relationship with areas designated under the Habitats and Birds Directives. Pathways exist between the development site and the River Barrow and River Nore SAC these have been described in detail in the Screening Report for AA.

The AA Screening Report is concluded that significant effects to the River Barrow and River Nore SAC cannot be ruled out. Specifically, effects may arise from the impact to the habitat of Atlantic Salmon from pollution during the construction phase. Arising from this assessment, mitigation has been proposed. With the implementation of these measures adverse effects to the integrity of the SAC will not occur. This conclusion is based on best scientific knowledge.

In the light of the conclusions of the assessment of the implications for the site, in view of the conservation objectives of the site and in view of best scientific knowledge the project, alone or in combination with other projects, will not adversely affect the integrity of the River Barrow and River Nore SAC’.

7.7.34. Having reviewed the documentation available to me, I am satisfied that the information allows for a complete assessment of any adverse effects of the development on the conservation objectives of the European sites listed above, alone, or in combination with other plans and projects

7.7.35. Appropriate Assessment of Implications of Proposed Development:

The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

7.7.36. I have relied on the following guidance as part of this assessment:

- Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, National Parks and Wildlife Service (2009).
- EC (2002) Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC.
- Managing Natura 2000 sites, The provisions of Article 6 of the Habitats Directive 92/43/EEC, EC (2018).

7.7.37. The relevant European sites subject to Stage 2 Appropriate Assessment are as follows:

- The River Barrow and River Nore Special Area of Conservation (Site Code: 002162)

7.7.38. A description of the site and its Conservation Objectives and Qualifying Interests is set out in the NIS in conjunction with the screening assessment set out above. I have also examined the Natura 2000 data forms where relevant and the Conservation

Objectives supporting documents for these sites available through the NPWS website (www.npws.ie).

7.8. The main aspects of the proposed development that could adversely affect the conservation objectives of European sites are:

- Surface water-related pollution during the construction phase giving rise to a change in water quality as a result of sediment-laden run-off and pollutants (hydrocarbons and other contaminants) entering the River Barrow and River Nore Special Area of Conservation.

7.8.1. Evaluation of Likely Effects:

Details of the River Barrow and River Nore Special Area of Conservation and its qualifying interests are set out above and in the applicant's NIS and Screening Report with the pertinent conservation objectives aiming to maintain or restore the favourable conservation condition of the Annex I habitat(s) and / or Annex II species for which the SAC has been selected.

(The status of the freshwater pearl mussel (*Margaritifera margaritifera*) as a qualifying Annex II species for the River Barrow and River Nore SAC is currently under review. The outcome of this review will determine whether a site-specific conservation objective is set for this species).

7.8.2. The proposed development site is located c. 5.2km from the nearest boundary of the River Barrow and River Nore Special Area of Conservation and, therefore, the proposal will not directly impact on the SAC through the loss or fragmentation of habitats either listed as qualifying interests (noting the absence of any such habitats on site) or otherwise supportive of qualifying species.

7.8.3. The potential for hydrological connectivity via surface water pathways between the proposed development site and onwards to the SAC gives rise to the possibility of indirect adverse effects on qualifying interests (including aquatic habitats and species designated as qualifying interests of the SAC as well as on prey species for Otter which is a qualifying interest of the SAC) due to changes in water quality as a result of sediment-laden run-off and / or pollution incidents (such as the release of hydrocarbons and other contaminants) during the construction phase of the proposed development entering the River Barrow and River Nore Special Area of Conservation. This is referenced on Page No. 13 of the NIS which acknowledges

sediment as among the most important pollutants in river ecosystems (due to multiple factors, including reducing light penetration, fouling the gills of animal life (such as Atlantic Salmon), fouling fish spawning beds (particularly for Atlantic Salmon) or deposition on the leaves of aquatic vegetation, in turn impairing respiration and photosynthesis).

7.8.4. In response to the foregoing, the NIS sets out a series of mitigation measures intended to avoid impacts on the SAC during the construction of the proposed development by preventing sediments and other pollutants from reaching the River Gowran and the SAC. These are all standard pollution control measures regularly used on construction sites (e.g. the installation of a silt trap or settlement pond so that only clean, silt-free runoff leaves the site; the storage of oil, fuels etc. within bunded areas; the appropriate training of site personnel in the importance of preventing pollution and adhering to mitigation measures; and the appointment of a site manager with responsibility for the implementation of the mitigation measures) along with adherence to the '*Guidelines on protection of fisheries during construction works in and adjacent to waters*' (Inland Fisheries Ireland, 2016).

7.8.5. It has also been submitted that the foregoing measures are already in place as part of the permitted development (ABP Ref. No. ABP-305914-19).

7.8.6. **Proposed Mitigation Measures:**

On balance, I would accept that the implementation of best practice and adherence to the mitigation measures set out in the NIS will serve to avoid any impacts on down-gradient water quality as well as any associated disturbance of habitats and / or species of qualifying interest thereby ensuring that there are no significant adverse effects on protected sites or species within Natura 2000 sites.

7.8.7. **Cumulative and In-Combination Effects:**

I have considered cumulative / in-combination effects with regard to the National Planning Framework, the Regional Spatial and Economic Strategy for the Eastern and Midland Region, the Kilkenny City & County Development Plan, other diffuse sources of sediment throughout the entire the river system, and surrounding developments. No likely significant cumulative effects on any Natura 2000 sites are expected as a result of the proposed development post mitigation.

7.8.8. In this regard, having considered the planning history of the surrounding area, I am satisfied that the proposed development, subject to suitable mitigation, would not be likely to give rise to any in-combination / cumulative impacts with other plans or projects which would adversely affect the integrity of any Natura 2000 site and would not undermine or conflict with the Conservation Objectives applicable to same.

7.8.9. Integrity Test:

Following the Appropriate Assessment and the consideration of mitigation measures, I can ascertain with confidence that the project would not adversely affect the integrity of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) in view of the Conservation Objectives of this site. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

7.8.10. Appropriate Assessment Conclusion:

The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act, 2000, as amended.

7.8.11. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on 1 No. European Site, the River Barrow and River Nore Special Area of Conservation. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of that European site in light of its conservation objectives.

7.8.12. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects, would not adversely affect the integrity of the River Barrow and River Nore Special Area of Conservation, or any other European site, in view of the site's Conservation Objectives.

This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures in relation to the Conservation Objectives of the aforementioned designated site.

- Detailed assessment of in-combination effects with other plans and projects including historical projects, current proposals, and future plans.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the River Barrow and River Nore SAC.

8.0 Recommendation

- 8.1.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations, and subject to the conditions, set out below:

9.0 Reasons and Considerations

- 9.1. Having regard to the planning history of the site, with particular reference to planning register reference number 19/56 (An Bord Pleanála reference number ABP-305914-19), the pattern of development in the area, the site location within the settlement boundary of Gowran, the scale, form and design of the proposed development, and the provisions of the Kilkenny City and County Development Plan, 2021-2027, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, and would constitute an acceptable form of development at this location. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 11th day of October, 2024 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning

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

Reason: In the interest of clarity.

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on the 3rd day of June, 2020, under planning register reference number 19/56 (An Bord Pleanála reference number ABP-305914-19), and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission

3. The mitigation measures contained in the submitted Natura Impact Statement shall be implemented in full.

Reason: To protect the integrity of European Sites.

4. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

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.

Robert Speer
Senior Planning Inspector

6th March, 2025

Appendix 1 - Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-321323-24		
Proposed Development Summary	Alterations to previously approved development on a site at Ogenty, Kilkenny Road, Gowran, Co. Kilkenny, under planning reg no 19/56 which approved 40 no. houses and associated works of which 17 no. units have been constructed. These proposed alterations to that permission consist of: 1) Change in house type of remaining unconstructed 23 no. units from previously permitted 10 no. 4 bed units and 13 no. 3 bed units to now provide 11 no. 4 bed units and 12 no. 3 bed units (removing 1 no. 3 bed unit and replacing it with an additional 1 no. 4 bed unit); 2) Minor retraction of the northern boundary of the previously permitted play area to the south east and reduction of car parking immediately to the west of that public open space with the as approved access to area; 3) Removal of a single permitted parking space and provision of additional footpath at the shared surface area to incorporate minor site layout changes and improve use and safety of that shared surface area; 4) Reductions to the previously permitted 54 no. car parking spaces to now provide 53 no. car parking spaces predominantly within curtilage and associated amendments to vehicular access; 5) Alterations to the previously permitted road layout to incorporate minor road widening and realignment; 6) Changes to approved landscaping; 7) and all necessary associated site development works above and below ground to accommodate these amendments.		
Development Address	Ogenty, Kilkenny Road, Gowran, Co. Kilkenny.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	
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	✓	Class 10(b)(i) – Part 2 of Schedule 5 Class 10(b)(iv) – Part 2 of Schedule 5	Proceed to Q3.
No			
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			

No	✓	Class 10(b)(i) - Part 2, Schedule 5: Construction of more than 500 dwelling units Class 10(b)(iv) – Part 2, Schedule 5: 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.	Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	✓	<u>Class 10(b)(i):</u> Threshold: 500 No. dwelling units Proposal: 23 No. dwelling houses <u>Class 10(b)(iv):</u> Threshold: 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. Proposal: 0.909 hectares	Preliminary examination required (Form 2)

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

Inspector: _____

Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-321323-24
Proposed Development Summary	Alterations to previously approved development on a site at Ogenty, Kilkenny Road, Gowran, Co. Kilkenny, under planning reg no 19/56 which approved 40 no. houses and associated works of which 17 no. units have been constructed. These proposed alterations to that permission consist of: 1) Change in house type of remaining unconstructed 23 no. units from previously permitted 10 no. 4 bed units and 13 no. 3 bed units to now provide 11 no. 4 bed units and 12 no. 3 bed units (removing 1 no. 3 bed unit and replacing it with an additional 1 no. 4 bed unit); 2) Minor retraction of the northern boundary of the previously permitted play area to the south east and reduction of car parking immediately to the west of that public open space with the as approved access to area; 3) Removal of a single permitted parking space and provision of additional footpath at the shared surface area to incorporate minor site layout changes and improve use and safety of that shared surface area; 4) Reductions to the previously permitted 54 no. car parking spaces to now provide 53 no. car parking spaces predominantly within curtilage and associated amendments to vehicular access; 5) Alterations to the previously permitted road layout to incorporate minor road widening and realignment; 6) Changes to approved landscaping; 7) and all necessary associated site development works above and below ground to accommodate these amendments.
Development Address	Ogenty, Kilkenny Road, Gowran, Co. Kilkenny.
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. 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 proposed development consists of the amendment of the development previously approved on site under ABP Ref. No. ABP-305914-19 (which will involve the change of house type of the remaining 23 No. unconstructed dwelling houses as well as revisions to the site layout) on serviceable infill lands within a developing residential area situated within the settlement boundary of the village of Gowran.

	Given the surrounding pattern of development, the proposal is not considered exceptional in the context of neighbouring housing and the receiving environment. The development (both standalone and in combination with the first phase of the scheme permitted under ABP Ref. No. ABP-3059124-19) is comparatively modest and does not require the use of substantial natural resources or give rise to any significant waste, emissions or pollutants. By virtue of the design, nature and scale of the development proposed, it does not pose a risk of major accident and/or disaster nor is it vulnerable to climate change (noting that finished floor levels will be raised over predicted flood levels). It presents no overt risk 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 is located on an infill site in a developing residential area within the settlement boundary of the village of Gowran. Water and sewerage services are available via connection to the public mains. Access is available directly from the adjoining public road. The River Barrow and River Nore Special Area of Conservation (Site Code: 002162) is located c. 4.5km northeast of the site. The River Nore Special Protection Area (Site Code: 004233) is located c. 8.0km southwest of the site. Potential impacts on European Sites are addressed in the accompanying Natura Impact Statement. Owing to the serviced village location of the site and the infill character of the development, I consider that there is no real likelihood of significant cumulative impacts having regard to other existing and/or permitted projects in the adjoining area.
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).	Having regard to the modest nature and scale of the proposed development, the site location on serviced lands in a developing village location, the availability of mains water and foul sewerage services, the likely limited magnitude and spatial extent of effects, and the absence of in combination effects, 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
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)