

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

16 November 2018

Re: Strategic Housing Development Application to An Bord Pleanála for 125 dwelling units at Kilcullen Road, in the townland of Bluebell, Naas, Co Kildare.

ABP Reference: 302130-18

Dear Sir,

This application is made to An Bord Pleanála under the Planning and Development (Housing) and Residential Tenancies Act, 2016. The application is made pursuant to a Notice of Pre-Application Consultation Opinion issued by the Board dated 20 September 2018.

This correspondence identifies the following documentation and information submitted with this application:

1. The documentation submitted in compliance with articles 297 and 298 of the Planning and Development Regulations 2001 to 2017, as amended; and,
2. The information is made pursuant to the Board's Notice of Pre-Application Consultation Opinion dated 20 September 2018, as required under article 297(3) of the Planning and Development Regulations 2001, as amended.

1. Article 297 and 298 Requirements

The documentation required under article 297 is identified below:

- 297(1) – The planning application form is submitted herewith
- 297(2)(a) – Letters of consent from Ardstone Residential Partners Fund ICAV, Arrow Finance Ltd and Liam Queally accompany this application.
- 297(2)(b) – A copy of the newspaper Notice published in the Irish Daily Star on 16 November 2018 accompanies this application.

- 297(2)(c) – John Fleming Architects Drg. No. P-OS-00 at a scale of 1:2500 and incorporating the requirements of parts (i) to (iv) is submitted herewith.
- 297(2)(d) – Evidence from Irish Water is included in the Infrastructure Design Report as Appendix E.
- 297(2)(e) – It is proposed to connect to a public sewer. Details of the proposed pumping station and associated drainage infrastructure are provided in the DBFL Infrastructure Design Report and associated drawings.
- 297(2)(f) – A full Schedule of Drawings and documents required under sub-article (4) and submitted with the application is provided on a separate sheet.
- 297(2)(g) – Details of compliance with Section 96 of the Planning and Development Act 2000 have been detailed in Section 4.4 of the Planning Report and Statement of Consistency submitted with the application. Correspondence from Kildare County Council attached at Appendix A of the Planning Report and Statement of Consistency confirms that proposals, including location of units, layouts calculations and methodology for calculating costs, have been subject to ongoing consultation with the Housing Department.
- 297(2)(h) – Units to be transferred to the Planning Authority have been identified on John Fleming Architects Drg No. P-S-R-501 submitted herewith.
- 297(2)(i) – Letters of consent from Ardstone Residential Partners Fund ICAV, Arrow Finance Ltd and Liam Queally accompany this application.
- 297(2)(j) – The appropriate statutory fee is attached herewith.
- 297(3) – Section 2 below provides a statement of proposals to address the matters set out in the Board’s Notice of Pre-Application Consultation Opinion dated 20 September 2018.
- 297(4) and 298(1) – A full Schedule of Drawings and documents required under sub-article (4) and submitted with the application is provided on a separate sheet.
- 298(2) – This application does not proposed any works to a Protected Structure or Proposed Protected Structure or to the exterior of a structure within an Architectural Conservation Area.

2. **Statement of Proposals to Address Issues Raised in the Board’s Notice of Pre-Application Consultation Opinion**

The Board’s Opinion of 20 September 2018 identified the following:

1. **Issues to be addressed in the documents submitted with the application.** The Board’s Notice stated that the documents submitted require further consideration and amendment to constitute a reasonable basis for an application for strategic housing development, and identified those matters in its Notice. These issues have been comprehensively addressed in the drawings and

documents submitted with the application. Section 3 below provides a statement of the manner in which these matters have been addressed in the documentation submitted.

2. **Specific Additional Information to be submitted with the Application.** The documentation submitted with this application is listed in Section 1 above and on the separate Schedule of Documents. This information includes all of the specific items identified in the Opinion.
3. **Authorities to be notified of the making of the application.** Copies of the letters sent to these authorities notifying them of the application under section 8(1)(b) of the Act are submitted with this application.

3. The Board's Opinion – Issues Addressed in the Documentation Submitted

The Board's Opinion identifies matters to be addressed in the documents submitted with the application. These matters have been addressed in the drawings and documents submitted with the application. To assist the Board and any interested parties in assessing the application the following sections provide a summary of the matters raised in the Board's Opinion, a summary of the manner in which the matters have been addressed in detail and incorporated into the drawings and documents submitted, and where the issues have been addressed in detail.

3.1 The Status of the Naas Local Area Plan and the Zoning of the Development Site

Item 1 states: *'Further consideration of the documents as they relate to the land use zoning objective pertaining to the site. The prospective applicant should satisfy himself/herself that the subject site is zoned for residential use and thus meets the requirements of section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016. Should an application be made to An Bord Pleanála pursuant to section 4 of said 2016 Act, the application documentation should seek to demonstrate to An Bord Pleanála that the site is zoned for residential use or for a mixture of residential and other uses.'*

Response:

The applicant has obtained Counsel Opinion from Suzanne Murray BL, attached at Appendix A.

Section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 defines *'strategic housing development'* as *"the development of 100 or more houses on land zoned for residential use or for a mixture of residential and other uses....."*. As such, to comply with the requirements of the Act, the Board must make a determination as to whether the land on which the development is proposed is zoned for residential use, or a mixture of residential and other uses.

The lands are within the administrative area of the Naas Town Development Plan 2011-2017 (NTDP). The NTDP was adopted by the Members of Naas Town Council on the 09 May 2011 and became effective on the 06 June 2011. The site is zoned Objective C, 'New Residential', in the NTDP, *"to provide new residential development and other services incidental to residential development"*.

Naas Town Council was dissolved on 1 June 2014 pursuant to Section 24 of the Local Government Reform Act 2014. Section 11 C of the Planning and Development Act 2000, as amended, was inserted by Section

28 of the Electoral, Local Government and Planning and Development Act 2013. This section provides that a Development Plan prepared by a dissolved town council shall continue to have effect to the extent provided by that plan, to be read together with the County Development Plan and shall be reviewed in accordance with Section 9 as that applies to the County Development Plan.

It is noted that no public consultation has taken place to date on the new Draft Naas Local Area Plan which will replace the NTDP.

On the basis of the foregoing, Counsel's Opinion concludes:

'I am of the Opinion that the Naas Town Development Plan 2011 to 2017 continues to have effect in respect of the zoning of land in the functional area of the dissolved Naas Town Council and will continue to do so until the Kildare County Development Plan is reviewed 2017-2023. Accordingly, the lands are still zoned residential.'

The Opinion also notes that this position is consistent with the approach adopted by the Board in determining appeals in respect of developments located within other dissolved town councils (as defined in section 11A of the Planning and Development Act 2000, as amended).

Accordingly, it is submitted that the proposed development of 125 dwellings, on lands zoned for residential use, comes within the definition and requirements of the strategic housing development provisions provided in Section 3 of Planning and Development (Housing) and Residential Tenancies Act, 2016.

3.2 Residential Density and Housing Mix

Item 2 states: *'Further consideration/justification of the documents as they relate to the proposed residential density and housing mix. This consideration should have regard to, inter alia, the 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas', the draft 'Urban Development and Building Heights Guidelines for Planning Authorities', the settlement strategy of the Kildare County Development Plan 2017-2023 and the Naas Local Area Plan (with regard to item 1 above). The further consideration of this issue may require an amendment to the documents and/or design proposals submitted relating to density and layout of the proposed development.'*

Response:

3.2.1 Residential Density

For the purposes of the assessment of the proposed density under the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009), The Draft Urban Development and Building Heights Guidelines for Planning Authorities (2018) and the Kildare County Development Plan 2017-2023, the site is characterised as an outer suburban greenfield site.

The Draft Urban Development and Building Heights Guidelines for Planning Authorities sets out the national planning policy guidance on building heights in relation to urban areas, building on the strategic policy framework established in the National Planning Framework (NPF). National Planning Guidance

provided in the NPF emphasises the need for urban consolidation through increased density and more compact forms of urban development. Regarding outer suburban sites, the Draft Guidelines state the following:

'Newer housing developments outside city and town centres and inner suburbs, i.e. the suburban edges of towns and cities, typically now include town-houses (2-3 storeys), duplexes (3-4 storeys) and apartments (4 storeys upwards). Such developments deliver medium densities, in the range of 35-50 dwellings per hectare net.' [Emphasis Added]

In addition, Specific Planning Policy Requirement 4 (SPPR 4) of the Draft Guidelines states the following:

'It is a specific planning policy requirement that in planning the future development of greenfield or edge of city/town location for housing purposes, planning authorities must secure:

- 1. The minimum densities for such locations set out in the Guidelines issued by the Minister under Section 28 of the Planning and Development Act 2000 (as amended), titled "Residential Development in Urban Areas (2007)" or any amending or replacement Guidelines;*
- 2. A greater mix of building heights and typologies in planning for the future development of suburban locations; and*
- 3. Avoid mono-type building typologies (eg. two storey or own door house only), particularly, but not exclusively so in any one development of 100 units or more.'* [Emphasis Added]

Consistent with the above, the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (May 2009) states the following in relation outer suburban greenfield sites:

'...the greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally. Development at net densities less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5 hectares' [emphasis added].

Furthermore, Naas is identified as a Large Growth Town within the Hinterland in the Kildare County Development Plan 2017-2023. The Settlement Strategy of the County Development Plan seeks to '*direct growth into the Large Growth Towns, followed by Moderate Sustainable Growth Towns and Small Towns, whilst also recognising the settlement requirements of rural communities*'. (Policy SS2). The Development Plan also provides that the appropriate density target for Outer Suburban/'Greenfield' sites in Large Towns (Pop >5,000), should generally be in the order of 30-50 units per hectare. The Development Plan notes that development must ensure a balance between reasonable protection of existing residential amenities and the established character of the area.

The proposed development consists of the provision of 125 no. dwelling units, an increase of 3 no. units from the 122 no. dwellings proposed at the pre-planning consultation stage. Following the pre-planning consultation, the proposed apartment block has been increased in height from 3 to 4 storeys, providing 4 no. additional apartment units.

It is noted that a 3 bed house unit in the north-eastern corner of the site has been omitted to facilitate the retention of high and medium quality trees along that boundary.

All of the proposed dwellings are situated on 3.51 ha of the overall site area, being the area zoned Objective C, 'New Residential'. The balance of the site area (0.25ha) is located on lands zoned Objective I, Agricultural 'to retain and protect agricultural uses' and contains associated drainage infrastructure, including an attenuation tank and pumping station to serve the proposed dwellings. In accordance with Appendix A of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, the net area of the development site is 3.51 ha and provides a net density of 36 units per hectare.

It is submitted that the density proposed is consistent with the Draft Urban Development and Building Heights Guidelines for Planning Authorities, the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas and County Development Plan.

3.2.2 Housing Mix

With regard to housing mix on outer suburban sites, the Draft Urban Development and Building Heights Guidelines for Planning Authorities (2018) states the following:

'Newer housing developments outside city and town centres and inner suburbs, i.e. the suburban edges of towns and cities, typically now include town-houses (2-3 storeys), duplexes (3-4 storeys) and apartments (4 storeys upwards). Such developments deliver medium densities, in the range of 35-50 dwellings per hectare net. Such developments also address the need for more 1 and 2 bedroom units in line with wider demographic and household formation trends, while at the same time providing for the larger 3, 4 or more bedroom homes across a variety of building typology and tenure options, enabling households to meet changing accommodation requirements over longer periods of time without necessitating relocation. These forms of developments set out above also benefit from using traditional construction methods, which can enhance viability as compared to larger apartment-only type projects.'

'Development should include an effective mix of 2, 3 and 4-storey development which integrates well into existing and historical neighbourhoods and 4 storeys or more can be accommodated alongside existing larger buildings, trees and parkland, river/sea frontage or along wider streets.'

'Such development patterns are generally appropriate outside city centres and inner suburbs, i.e. the suburban edges of towns and cities, for both infill and greenfield development and should not be subject to specific height restrictions.' [Emphasis Added]

Objective MDO3 and Section 17.4.3 of the Kildare County Development Plan requires that a Statement of Housing Mix is submitted with planning applications for 50 units or more within a Large Growth Town or a Moderate Sustainable Growth Town. The Statement should demonstrate a need for such accommodation, based on local demand and the demographic profile of the area.

Declan Brassil & Co. and Douglas Newman Good Real Estate Agents have prepared a Statement on Housing Mix Report, submitted with the application. The report demonstrates that the proposed development provides a wide choice of dwelling types of varying tenure and sizes that is consistent with the demand and demographic profile of the area.

The proposed development includes 12 no. 1 bed dwellings, 64 no. 2 bed dwellings, 24 no. 3 bed dwellings and 25 no. 4 bed dwellings. The proposed development provides for a range of dwelling types including terraced, semi-detached and detached two storey houses. In addition, the proposed development includes 4 no. maisonette units in the north-eastern corner of the site, dormer style houses along the eastern boundary with Broadfield View and apartment units in a four storey complex along the western boundary. A breakdown of the proposed unit mix is provided in the table below:

Type	Description	No. of Units	Beds	Area (sqm)	Mix (%)
A1	Maisonette	2	1	52	3.2%
A2	Maisonette	2	1	62	
B1	Detached Dormer	5	3	105.4	4.8%
B1A	Detached Dormer	1	3	110.5	
B2	Two storey, End of Terrace	26	2	86.2	35.2%
B3	Two Storey, Mid-Terrace	18	2	86.2	
C1	Two storey, Semi-Detached	16	3	112.2	14.4%
C2	Two Storey, Semi-Detached	2	3	114.2	
D1	Two Storey, Semi-Detached	16	4	132.4	17.6%
D2	Two Storey, Semi-Detached	1	4	134.2	
D3	Two Storey, Semi-Detached	5	4	143.6	
D4	Two Storey, Detached	3	4	143.6	2.4%
Apt	1 bed apartment unit	8	1	52	6.4%
Apt	2 bed (3 person) apartment unit	6	2	67	16%
Apt	2 bed apartment (4 person) unit	14	2	74-76	

Over 50% of the proposed units are 2 bedroom units, the majority of which consist of terraced houses (35.2%). The remaining 2 bedroom dwellings are apartments (16%) capable of accommodating three and four persons. The proposed mix of dwellings provides for a smaller number of one bed units (9.6%) in the form of Maisonette and apartments. The balance of the proposed dwellings are primarily 3 and 4 bed semi-detached houses (32%), along with a small number of detached units (7.2%). The detached units primarily comprise of 6 no. 3 bed dormer units located along the eastern boundary, ensuring that the residential amenities of adjoining residences are protected and 3 no. dual fronted corner units onto open space areas.

The proposed dwelling mix reflects the market demand for smaller starter family dwellings, the relatively young age profile of Kildare and Naas and wider household formation trends. The smaller proportion of

one bed units reflects the lower percentage of one person households in Kildare and Naas in comparison with the State, GDA and Dublin. The higher proportion of 2 bed house units, followed by 3 and 4 bed house units reflects the need to provide units that cater to families at various stages and different demands. In this regard, the 2016 census results indicate that Naas had a higher percentage of its population in the 20-39 age cohort than Kildare and the State, in addition to a higher number of households comprised of couples with children than the State, the GDA and Dublin. Furthermore, anecdotal evidence from DNG suggests that there is a strong demand in Kildare and Naas for smaller, more affordable units such as 2 bed dwellings from first time buyers. Recently completed developments in Naas saw in excess of 200 first time buyers register an interest in such properties.

Given the relatively young profile of the town, it is considered that demand for family homes is likely to continue over the medium term. The proposed development will ensure the delivery of a large proportion of family type housing which reflects the current household composition, will reinforce Naas's attractiveness for families and will respond to current local market demands.

3.3 Design and Layout of Residential Development

Item 3 states: *'Further consideration/justification of the documents as they relate to the design and layout of residential development, in particular connections to adjoining lands. The further consideration of this issue may require an amendment to the documents and/or design proposals submitted relating to the design and layout of the proposed development.'*

Response:

The residential development site is bounded to the north and east by the Broadfield View residential estate and by lands in agricultural use to the south and west.

Vehicular, cycle and pedestrian access to the development area will be provided via an extension of the permitted and under construction access road (KCC Reg. Ref. 15/848 / ABP Reg. Ref. PL09.246859) from the Kilcullen Road (R448) to the south-east of the site. The proposed development connects with the permitted and under construction access road, which incorporates pedestrian footpaths and cycle paths from the recently upgraded Kilcullen Road (R448). The recently completed upgrades to the Kilcullen Road (R448) included the provision of improved pedestrian infrastructure and segregated cycle lanes.

Future potential pedestrian and vehicular connections to the adjoining agricultural lands are provided at the north-western and south-western boundaries of the site, noting that these lands are not currently zoned for development. In the event that the lands are zoned and prioritised for residential development in a future development plan, the proposed development has been futureproofed to provide for permeability and connectivity.

The development has also been designed to facilitate a pedestrian and cycle connection to Broadfield View to the northeast of the site, via an adjoining area of public open space within Broadfield Estate. An indicative location for the pedestrian pathway from the subject site through the open space area of Broadfield View has been provided with this application. Broadfield View Estate, including its access road, has been taken in charge by KCC. However, the open space remains under third party ownership. The

delivery of the pedestrian connection is being progressed with Kildare County Council but there is no certainty at the time of making the application that the connection can be delivered. The Applicant acknowledges the benefit of this connection to the future residents of the proposed development, and the opportunity for the wider community to access the proposed development on foot or bicycle, and will continue to endeavour to deliver the connection. In this regard, given that the area is in third party ownership, it is submitted to the Board that it would not be appropriate to link delivery of the access to the occupation of units in the proposed development.

4. Specific Information to be submitted with the Application

The Board's Opinion detailed specific information to be submitted with any application. The Table below details the information requested and where the information can be located:

	Specific Information	Location
1	Detailed statement of housing mix	Please refer to the Statement on Housing Mix Report prepared by Declan Brassil & Co. and Douglas Newman Good Real Estate Agents.
2	Rationale for proposed childcare provision (or lack of same) with regard to, inter alia, the 'Childcare Facilities Guidelines for Planning Authorities', circular letter PL 3/2016, and the 'Sustainable Urban Housing Design Standards for New Apartments – Guidelines for Planning Authorities (2018)', to provide details of existing childcare facilities in the area and demand for childcare provision in the proposed scheme. The applicant is advised to consult with the relevant Childcare Committee in relation to this matter prior to any submission of the application.	Please refer to Section 3.4.1 of the Social Infrastructure Assessment Report prepared by Declan Brassil & Co.
3	Detailed Landscaping Proposals	Please refer to the Landscape Architects Design Report and associated landscape drawings prepared by Mitchells + Associates.
4	Cross sections to indicate proposed ground levels, roads, public open spaces and building heights.	Please refer to Drg. No. P-S-R-201, prepared by John Fleming Architects.

5	Visual Impact Assessment with photomontages and 3D modelling, to include consideration of impacts on distant views of the development from areas to the west of the development site.	Please refer to the Landscape and Visual Impact Assessment Report prepared by Mitchell + Associates and the Photomontages and CGI's Booklet prepared by 3D Design Bureau.
6	Drainage details to include (i) details of the design, operation and maintenance of the proposed pumping station with regard to potential impacts on residential amenities due to noise and odours; (ii) assessment of the foul sewer outfall to demonstrate that it can cater for the proposed development; (iii) legal agreement regarding the surface water outfall through land outside the site boundary.	Regarding items 6 (i) and (ii), please refer to Section 7 of the Infrastructure Design Report and associated drawings prepared by DBFL Consulting Engineers. Regarding item 6 (iii), please refer to the letters of consent from Liam Queally and Arrow Finance Ltd, the owners of adjoining lands. Both landowners have consented to the inclusion of their lands in the planning application and the provision of drainage infrastructure to serve the proposed development. The letters confirm that all relevant legal documentation is currently being drafted.
7	Archaeological Impact Assessment which responds to the comments outlined in the report received by the Board from the Department of Culture, Heritage and the Gaeltacht which is attached.	Please find enclosed an Archaeological Assessment Report and a letter from Archer Heritage. The letter from Archer Heritage confirms that the test excavations and archaeological assessment has been undertaken in accordance with the recommendations of the Department of Culture, Heritage and the Gaeltacht, as outlined in the letter to An Bord Pleanála.
8	AA Screening Report	Please find enclosed an AA Screening Stage 1 Report prepared by O'Callaghan Moran & Associates.

I trust that the application documentation is in order and I look forward to a favourable decision from the Board.

Yours sincerely,



Declan Brassil
Declan Brassil & Co.

APPENDIX A

COUNSEL OPINION:

OPINION

QUERIST: Ardstone Homes Ltd
MATTER: Land Use Zoning Status of lands at Kilcullen Road, Bluebell, Naas, County Kildare
AGENT: Declan Brassil & Company Ltd, Chartered Planning Consultants
DATE: 12 October 2018

BACKGROUND

1. Querist is the owner of land located at Bluebell, Kilcullen Road, Naas, County Kildare (the “**subject lands**”). The subject lands to which this Opinion relates is some 3.5ha in extent and forms part of a larger landholding.
2. The subject lands are located in what used to be the functional area of Naas Town Council, which was dissolved on the 1 June 2014 pursuant to section 24 of the Local Government Reform Act 2014. Naas Town Council were responsible for the preparation of the Naas Town Development Plan 2011-2017, which was adopted by the elected members of 9 May 2011 and became effective on 6 June 2011, and which zoned the subject lands “C – New residential” with a stated objective “To provide for new residential development”.
3. Querist seeks to develop the subject lands for housing and entered into the pre-application consultation process for strategic housing development with An Bord Pleanála (the “**Board**”) provided for under the Planning and Development (Housing) and Residential Tenancies Act 2016 (the “**Act of 2016**”). Under section 3 of the Act of 2016, strategic housing development is defined as, *inter alia*, “the development of 100 or more houses on land zoned for residential use or for a mixture of residential and other uses”.
4. The Report prepared by the Council, which is now the relevant planning authority in respect of the subject lands, for the purpose of section 6(4)(b) of the Act of 2016 refers to the Naas Town Development Plan 2011 – 2017 and states at page 6:

“Naas Town Development Plan 2011 – 2017 (expired and currently under review)

The subject site was zoned C – New Residential in the 2011 – 2017 Development Plan for Naas, where the stated objective was ‘To provide for new residential development’

Note: the subject site was zoned for low density residential development in the Naas Town Development Plan 2005 – 2011”

5. The Board's "Pre-Application Consultation Opinion", dated 18 September 2018, sets out the issues to be addressed so as the documents could constitute a reasonable basis for an application for strategic housing development. One of the issues identified by the Board relates to the zoning of the subject lands:

*"1. The Status of the Naas Local Area Plan and the Zoning of the Development Site
Further consideration of the documents as they relate to the land use zoning objective pertaining to the site. The prospective applicant should satisfy himself/herself that the subject site is zoned for residential use and thus meets the requirements of section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016. Should an application be made to An Bord Pleanála pursuant to section 4 of the said 2016 Act, the application documentation should seek to demonstrate to An Bord Pleanála that the site is zoned for residential use or for a mixture of residential and other uses."*

6. Agent seeks advise as to whether the subject lands are zoned for residential use for the purpose of making a valid strategic housing development application to the Board.

ELECTORAL, LOCAL GOVERNMENT AND PLANNING AND DEVELOPMENT ACT 2013

7. Section 28 of the Electoral, Local Government and Planning and Development Act 2013 (the "Act of 2013") inserted sections 11A to 11C into the Planning and Development Act 2000, as amended (the "Act of 2000").
8. Section 11 of the Act of 2000 relates to the preparation of a draft development plan and provides at subsection (1) that "*not later than 4 years after the making of a development plan, a planning authority shall give notice of its intention to review its existing development plan and to prepare a new development plan for its area.*"
9. Section 11C of the Act of 2000, as inserted by section 28 of the Act of 2013, makes provision for what is to happen to the development plans of Town Council's after their dissolution. "Town Council" is defined in section 11A of the Act of 2000 in the following terms:

"'town council' means the town council of a town set out in Part 1 of Schedule 6 to the Local Government Act 2001 and to which section 11(4) of that Act relates"

10. Naas is included in Part 1 of Schedule 6 to the Local Government Act 2001 and is a town council for the purpose of section 11C of the Act of 2000.

11. Section 11C provides as follows:

“Where after the passing of the Electoral, Local Government and Planning and Development Act 2013 provision is made by law for the dissolution of town councils (being town councils within the meaning of section 11A(1)) then, irrespective of whether or not any relevant decision was made pursuant to section 11A(2) –

- the development plan for the administrative area of such a town council (in this section referred to as the ‘dissolved administrative area’) shall continue to have effect to the extent provided for by that plan and be read together with the development plan for the administrative area within which the dissolved administrative area is situated, and*
- a development plan so read in accordance with paragraph (a) shall, except where section 11B(2) applies, be reviewed in accordance with the requirements of section 9 as that section applies to the development plan for the administrative area within which the dissolved administrative area is situated.”*

12. Section 11C cross refers to a number of other sections which provide as follows:

- Section 11A(1) contains the definition of “town council” which is set out at paragraph 9 above;
- Section 11A(2) refers to a decision made by a town council or specified county councils not to review the development plan or not to continue with an already started review of its development plan. If such a decision is made the development plan of the town council / specified county council continues to have effect until a development plan is made for the administrative area that includes either the town council or the specified county council. Section 11A(2) does not arise for consideration on the facts of the instant case
- Section 11B deals with those county councils that were amalgamated *i.e.* North Tipperary County Council and South Tipperary County Council; Limerick County Council and Limerick City Council and Waterford County Council and Waterford City Council. This section does not arise for consideration on the facts of the instant case.
- Section 9 confers an obligation on every planning authority to make a development plan every 6 years (section 9(1)).

13. The purpose behind section 11C is to allow a development plan prepared by a town council, which is subsequently dissolved under the Local Government Reform Act 2014, continue to have effect to the extent provided by the town development plan and be read with the County Development Plan until the town development plan can be reviewed and that review takes place as part of the review of the County Development Plan.

14. This interpretation is evident when section 11C is “stripped back” and references to other statutory provisions are removed. When “*Naas Town Development Plan*” and “*Kildare County Plan*” are inserted into a “stripped back” section 11C it would read as follows

*Where after 1 June 2014 and the dissolution of Naas Town Council,
The Naas Town Development Plan 2011 -2017 shall continue to have effect to the extent provided for by the Naas Town Development Plan 2011 -2017 and be read together with the Kildare County Development Plan 2017 - 2023, and
The Naas Town Development Plan 2011-2017 shall, be reviewed in accordance with the requirements of section 9, as that section applies to the Kildare County Development Plan 2017-2023*

15. The question that arises is whether the Naas Town Development Plan 2011 - 2017, which would have expired in 2017 if Naas Town Council had not been dissolved, still continues to have effect by virtue of section 11C.

16. Section 11C(a) states that the plan of the dissolved Town Council “*shall continue to have effect to the extent provided for by that plan*” and be read together with the County Development Plan. The phrase to “*the extent provided for by that plan*” has two possible meanings. The first is that it is a reference to the temporal extent of the plan *i.e.* the life of the plan. The second is that it is a reference to the geographical extent of the plan.

17. If it is a reference to the life of the plan then the development plan of the dissolved Town Council only has effect for the life of that development plan as originally adopted. If it is a reference to a geographical extent, then the plan of the dissolved Town Council has effect for the geographical area until it is reviewed as part of the County Development Plan as provided for in section 11C(b).

18. On balance, I am of the Opinion that the appropriate interpretation of section 11C, and that which is more likely to be accepted by the Courts, is that the development plan of the dissolved

Town Council continues to have effect until it is reviewed as part of the County Development Plan. The life of the development plan is therefore extended to mirror that of the County Development Plan. The phrase “*to the extent provided for by that plan*” is a reference to the geographical extent of the plan.

19. I am of the Opinion that this interpretation is evident from the literal meaning of the section. Furthermore, pursuant to section 5(1)(b) of the Interpretation Act 2005, in construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction) that is obscure or ambiguous, “*the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole.*” While I do not believe that section 11C is in fact ambiguous, if the phrase “*to the extent provided for by that plan*” is considered to be ambiguous, then the interpretation that the development plan of the dissolved Town Council continues to have effect until it is reviewed as part of the County Development Plan also best reflects the intention of the Oireachtas.
20. I am of the Opinion that under section 11C of the Act of 2000, the Naas Town Development Plan 2011 to 2017 continues to have effect and is to be read together with the Kildare County Development Plan 2017 to 2023 until the Kildare County Development Plan is reviewed. This is for the following reasons.
21. Firstly, if the development plan of the dissolved Town Council only continues to have effect until it would have normally expired absent its dissolution then the land which had been zoned in the town plan would be effectively de-zoned. This is because, the County Plan would not have contained land use zonings for the land within the functional area of a Town Council. It cannot have been the intention of the legislature that large tracts of land within town council areas would be un-zoned upon the dissolution of the town council and the expiration of the town development plan.
22. Secondly, section 11C(b) refers to the development plan of the dissolved town council being reviewed in accordance with the requirements of section 9 “*as that section applies to the development plan*” for the county within which the dissolved town council is situated. This clearly envisages that the dissolved town plan would be reviewed at the same time as the county development plan. In order for the dissolved town plan to “*be reviewed in accordance with the requirements of section 9*” it must still be in force so as it can be reviewed.

23. I am of the Opinion that land zoned in the Naas Town Development Plan 2011 to 2017, continues to be so zoned and will remain so zoned until the Kildare County Development Plan 2017 to 2023 is reviewed.
24. I would note that this position is consistent with the approach adopted by the Board in determining appeals in respect of developments located within other dissolved town council's (as defined in section 11A of the Act of 2000).
25. For example, Drogheda Borough Council were responsible for the preparation of the Drogheda Borough Council Development Plan 2011 to 2017. The relevant county Development Plan is the Louth County Development Plan 2015 to 2021. The Board by Order dated 2 October 2018, refused planning permission for a development located at 17 Pearse Park, Drogheda (Reg. Ref. ABP-301746-18) and expressly referred to the provisions of the Drogheda Borough Council Development Plan 2011 to 2017, which clearly shows that the Board considered, in the context of a decision made in October 2018, that the Drogheda Borough Council Development Plan 2011 to 2017 still continued to have effect. The first reason for refusal states as follows:

“Having regard to the location of the proposed development to be retained in an area that is zoned ‘Residential Existing’ in the Drogheda Development Plan, 2011 – 2017 with a development objective to protect and enhance the amenity of the developed residential communities, the Board considered that the proposed development to be retained, by reason of its height and scale at this site, would seriously injure the amenities of the area and of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”

26. In the case of Athy, Athy Town Council were responsible for the preparation of the Athy Town Development Plan 2012 to 2018, which expired on 26 April 2018. The relevant county Development Plan is the Kildare County Development Plan 2017 to 2023. The Board by Order dated 11 September 2018 granted planning permission for a residential development at Geraldine Road, Athy, County Kildare. The reasons and considerations expressly refer to the zoning as per the Athy Town Plan which clearly shows that the Board considered, in the context of a decision made in September 2018, that the Athy Town Development Plan 2012 to 2018 still continued to have effect. The reasons and considerations stated as follows:

“Having regard to the residential zoning of the site under the Athy Town Plan 2012 – 2018, the development standards as set out in the Kildare County Development Plan 2017 – 2023 and

the planning history of the site, it is considered that the proposed development, subject to compliance with the conditions set out below, would not detract from the character of the area, would not seriously injure the residential or visual amenities of the area, and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.”

CONCLUSION

27. Naas Town Council was dissolved on the 1 June 2014 pursuant to section 24 of the Local Government Reform Act 2014. Naas Town Council were responsible for the preparation of the Naas Town Development Plan 2011-2017, which came into force on the 6 June 2011, and which zoned the subject lands “C – New residential” with a stated objective “To provide for new residential development”.
28. Section 11C of the Act of 2000 was inserted by section 28 of the Electoral, Local Government and Planning and Development Act 2013. The purpose of the section is to provide for what is to happen to development plans prepared by Town Council’s upon their dissolution.
29. The section provides that a development plan prepared by a dissolved Town Council shall continue to have effect to the extent provided for by that plan and is to be read together with the County Development Plan and shall be reviewed in accordance with section 9 as that applies to the County Development Plan.
30. I am of the Opinion that the Naas Town Development Plan 2011 to 2017 continues to have effect in respect of the zoning of land in the functional area of the dissolved Naas Town Council and will continue to do so until the Kildare County Development Plan is reviewed 2017-2023. Accordingly, the subject lands are still zoned residential.

Nothing further occurs.

Suzanne Murray BL
12 October 2018