

# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2016

**Kilkenny County**

**Planning Register Reference Number: 16/75**

An Bord Pleanála Reference Number: PL 10.247676

**APPEAL** by Joe Connelly care of Peter Thomson of Suite 1, Burchall House, Parnell Street, Waterford against the decision made on the 7<sup>th</sup> day of November, 2016 by Kilkenny County Council to grant subject to conditions permission and outline permission to Kieran and Caroline Carey care of MK Architecture and Building Surveying of 22 Upper Patrick Street, Kilkenny in accordance with plans and particulars lodged with the said Council.

**PROPOSED DEVELOPMENT:** (a) Permission to construct stables, haybarn, horse walker building, and all associated site works and (b) outline permission to construct a dwelling, domestic garage, effluent treatment system and percolation area, all at Gowran Demesne, Gowran, County Kilkenny.

## **DECISION**

**GRANT permission for the construction of stables, haybarn, horse walker building and all associated site works in accordance with the said plans and particulars based on the reasons and considerations (1) under and subject to the conditions (1) set out below.**

**GRANT outline permission for the construction of a dwelling, domestic garage, effluent treatment system and percolation area in accordance with the said plans and particulars based on the reasons and considerations (2) under and subject to the conditions (2) set out below.**

### **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

### **REASONS AND CONSIDERATIONS (1)**

Having regard to the agricultural-based nature of the proposed development, to the pattern of development in the vicinity and to the provisions of the Kilkenny County Development Plan 2014 – 2020, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in compliance with the provisions of the Development Plan, would not be prejudicial to public health and would not seriously injure the residential amenities of property in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **CONDITIONS (1)**

1. The development hereby permitted shall be in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted on the 22<sup>nd</sup> day of June, 2016 and the 21<sup>st</sup> day of October, 2016, except as may otherwise be required 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. The internal road serving the development shall be strictly provided in accordance with the drawings submitted with the application on the 16<sup>th</sup> day of February, 2016. In this regard, the existing surfaced road shall be re-aligned to correspond accurately with these submitted drawings, and in particular shall be realigned where it is in proximity to the common boundary with the site of the adjoining dwellinghouse to correspond with the alignment indicated on the drawings submitted, that is, with a minimum separation distance between this common boundary and the nearside of the road of at least seven metres. The area between the boundary and the road thus provided for shall be laid out in grass, with any existing hardcore/surfacing removed, and shall then be landscaped as indicated in the landscaping details received by the planning authority on the 22<sup>nd</sup> day of June, 2016. This realignment shall be carried out prior to any construction works taking place in respect of the buildings hereby authorised. The landscaping works shall be carried out within the first planting season following the realignment works on the road.

**Reason:** In the interests of visual amenity and the residential amenities of adjoining property.

3. The only access (vehicular or pedestrian) to the site from the public road shall be from the public road as shown on the site layout plan submitted with the application on the 16<sup>th</sup> day of February, 2016. All the works to create the new entrance and to achieve minimum sight visibility lines, as shown on submitted drawings, shall be carried out and completed prior to the construction of the buildings hereby permitted. The entrance to the development from the public road shall be surfaced in accordance with the detailed requirements of the planning authority, in relation to the tie-in to the public road.

**Reason:** In the interest of traffic safety.

4. Details of the external finishes of the proposed stables, haybarn and horse walker building shall be submitted to, and agreed in writing with, the planning authority before development commences, and shall be such as to integrate the structures into the rural landscape.

**Reason:** In the interest of visual amenity.

5. The stables and associated buildings shall be used for private family purposes only, as indicated in the submitted documentation, and shall not be used for commercial purposes. No use of these buildings, and associated equine facilities, shall be made by, or advertised to, the public.

**Reason:** In the interest of clarity, and to delimit the extent of the use of the development hereby permitted to that for which permission was sought.

6. The equine element of the proposed development shall be undertaken in accordance with the requirements of the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2014 and/or any relevant regulations enacted subsequent to the 2014 Regulations but prior to the commencement of the proposed development. In particular, the development shall be designed and undertaken so as to minimise the generation of soiled water. In addition, the design, capacity and structural integrity of storage facilities shall prevent run-off or seepage therefrom.

**Reason:** To ensure that the development is in accordance with the recognised best agricultural practices and protects surface/ground waters.

7. All foul effluent and slurry generated by the proposed development shall be conveyed through properly constructed channels to the proposed storage facilities and no effluent or slurry shall discharge or be allowed to discharge to any stream, river or watercourse.

**Reason:** In the interest of public health and to prevent pollution.

8. All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to existing drains, streams or adequate soakpits and shall not discharge or be allowed to discharge to the foul effluent drains, foul effluent and slurry storage tanks.

**Reason:** In order to ensure that the capacity of effluent and storage tanks is reserved for their specific purposes.

9. 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 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.

## **REASONS AND CONSIDERATIONS (2)**

Having regard to the location of the proposed development and its association with a rural-based activity (that is, equine development as permitted), and having regard to the provisions of the Kilkenny County Development Plan 2014 – 2020, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in compliance with the provisions of the Development Plan, would not be prejudicial to public health and would not seriously injure the residential amenities of property in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## CONDITIONS (2)

1. The development hereby permitted shall be in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted on the 22<sup>nd</sup> day of June, 2016 and the 21<sup>st</sup> day of October, 2016, except as may otherwise be required to comply with the following conditions. No development of the dwelling, garage, effluent treatment system and percolation area shall take place until an application for permission consequent on this grant of outline permission shall have been granted.

**Reason:** In the interest of clarity.

2. The plans and particulars to be submitted in the application for permission consequent on this grant of outline permission shall include the following:-
  - (a) a site layout plan to a scale of not less than 1:500 showing the layout of the house, garage, driveways and effluent treatment system,
  - (b) the finished ground floor level of the house by reference to existing site levels and road level at the proposed entrance,
  - (c) proposals for the landscaping of the site (including planting),
  - (d) details of the proposed dwelling and garage, including full details of external finishes
  - (e) details of the effluent treatment and percolation area, which shall be in compliance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009

The design of the dwelling shall have regard to the guidance as set out in the County Kilkenny Rural Design Guide.

**Reason:** To enable the application for permission consequent to be fully assessed.

3. The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.

**Reason:** In the interest of visual amenity.

4. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.
- (b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

**Reason:** To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

5. 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 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

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**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

**Dated this            day of            2017.**