



Planning and Development Acts 2000 to 2022

Planning Authority: Kilkenny County Council

Planning Register Reference Number: 2360314

Appeal by Donie Brophy of Byrnesgrove, Ballyragget, County Kilkenny against the decision made on the 15th day of February 2024 by Kilkenny County Council in relation to the application by the Trustees of Kilkenny Golf Club care of Aine Ryan Consulting of 29 Chestnut Crescent, Rath Ullord, Bonnettsrath, Kilkenny for permission for development comprising: (a) retention of works to include demolition of residence and ancillary structures (331.4 square metres) and construction of hardcore temporary car park area (1,280 square metres); and the use of land (625 square metres) for the deposit of waste construction materials; (b) Permission for a temporary 12 number space car park (350 square metres) for a period of up to seven years, minor alterations to the existing vehicular entrance to the Bonnettsrath Road, provision of signage and all associated and ancillary works, at Lands known as 'Kehoes Cottage', Bonnettsrath Road; and, land located at Kilkenny Golf Club, Glendine, Kilkenny in accordance with the plans and particulars lodged with the said Council (which decision was to grant, subject to conditions, a permission for Retention of works to include demolition of residence and ancillary structures (331.4 square metres) and construction of hardcore temporary car park area (1,280 square metres), (b) Permission for a temporary 12 number space car park (350 square metres) for a period of up to seven years, minor alterations to the existing vehicular entrance to the

Bonnettsrath Road, provision of signage and all associated and ancillary works, subject to compliance with conditions and to refuse permission for the use of land (625 square metres) for the deposit of waste construction materials).

Decision

GRANT permission permission for for the retention permission for the demolition of the dwelling and outbuilding, the construction of the hardcore temporary car park and permission for a temporary 12 number car park for a period of up to seven years, minor alterations at the existing vehicular entrance in accordance with the said plans and particulars based on the reasons and considerations marked (1) under and subject to the conditions set out below.

REFUSE permission for use of land for deposit of waste construction materials based on the reasons and considerations marked (2) under.

Reasons and Considerations (1)

Having regard to the nature and scale of the proposed development and development proposed for retention at site one, in an area zoned Amenity/Green Links/Biodiversity Conservation/Open Space/Recreation as per Kilkenny City and County Development Plan 2021-2028, Volume 2 City, and the temporary nature of the car park which will allow for future development of the site for integration to the overall Kilkenny Golf Course and achieve the objectives of the zoning the site, it is considered that the proposed development and development proposed for retention would not be prejudicial to public or environmental health, and would be acceptable in terms of location, visual and residential amenity. The proposed development and the development proposed for retention would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The proposed development and the development proposed for retention shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 22nd day of January 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. The proposed development is granted for as follows:
 - (a) Retention demolition of the dwelling and ancillary structures, construction of hardcore temporary car park area.
 - (b) Permission for temporary 12 number car parking spaces for a period of up to seven years, minor alterations to the existing vehicular entrance to the Bonnettsrath Road, provision of signage and all associated and ancillary works at lands known as "Kehoe's Cottage".

Reason: In the interest of clarity.

3. This permission is for seven years from the date of this Order.
- (a) The applicant shall, within three months of the date of this Order, carry out the alterations permitted by this order to the vehicular entrance, unless a revised date is agreed with the planning authority.
 - (b) The applicant shall submit, for the written agreement of the planning authority at least three months prior to the cessation of this permission, plans for the landscaping of the area the subject of this permission.

Reason: In the interest of proper planning.

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 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)

1. This element of the proposed development is for the retention of waste disposal on a site where construction and demolition waste associated with the demolition of a dwelling and outbuildings has been deposited. The deposition of the waste has not been approved by the Environmental Protection Agency (EPA) or Kilkenny County Council and the information on file indicates that it contains hazardous waste material which requires a Certificate of Registration under the Waste Management Act. The retention of the waste which includes hazardous waste will be injurious to public health and the amenity of the area and contrary to Section 10.2.9.1 and Objective 10G to implement the Southern Region Waste Management Plan of the Kilkenny City and County Development Plan 2021-2027. The proposed retention would therefore be contrary to the proper planning and development of the area.
2. Having regard to the location of the site, located approximately 600 metres east of the River Barrow and River Nore Special Area of Conservation (Site code 002162) and River Nore Special Protection Area (Site code 004233) it is considered that there is a potential possibility of leachate from the waste material on site to groundwater which in turn could potentially harm the protected species and habitats of these European Sites. The Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that adequate information has been provided on the impact of the development on hydrological conditions within the Annexed habitat and the resulting implications for wildlife and flora.

It is, therefore, considered that the Board is unable to ascertain, as required by Regulation 27(3) of the European Communities (Natural Habitats) Regulations, 1997, that the development will not adversely affect the integrity of any European Site identified and that this element of the proposed development would be contrary to the proper planning and sustainable development of the area.

3. Having regard to the type of development in regard to the disposal of construction and demolition waste which contains hazardous material, and to the thresholds set down in Class 11(b) installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this schedule. And Class 15 Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development, but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7 of Part 2 of Schedule 5 to the Planning and Development Regulations 2001 (as amended), to the criteria set out in Schedule 7 of those Regulations, to the advice in paragraphs 5.8 to 5.12 of the Guidance for Consent Authorities regarding Sub-threshold Development issued by the Department of the Environment, Heritage and Local Government in August, 2003, it is considered that the development would be likely to have significant effects on the environment and should be subject to an Environmental Impact Assessment within the meaning of Part X of the Planning and Development Act, 2000 (as amended). The development would, therefore, require an Environmental Impact Statement which should contain the information set out in Schedule 6 of the said Regulations.

In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.



Mary Henchy

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**

Dated this 18th day of December, 2024.