

An Bord Pleanála



Inspector's Report

Appeal Reference No: PL10.246393

Development: Permission to retain unauthorised pedestrian gateway or access.
Permission for modification of the pedestrian gateway or access with the erection of two cut stone piers, painted metal gate and all other associated site works.
Works to Protected Structure Reference No C853.

Location: Castlecomer Demesne, Castlecomer, Co Kilkenny.

Planning Application

Planning Authority: Kilkenny County Council

Planning Authority Reg. Ref.: 15/540

Applicant: Castlecomer Demesne Co Ltd.

Planning Authority Decision: Grant Permission subject to conditions.

Planning Appeal

Appellant(s): Teresa Kelly

Type of Appeal: Third Party v Permission

Observers: None

Date of Site Inspection: 23rd June 2016

Inspector: Bríd Maxwell

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site which has a stated area of 0.045hectares is located at Castlecomer Demesne, Castlecomer, Co Kilkenny. The site comprises a small area of land incorporating the existing vehicular entrance gates, historic rubble stone boundary wall and adjacent area of land. The proposal involves works to the protected structure Reference C853 Gateway described as *“Gateway, c1850, comprising a pair of cut limestone ashlar piers with moulded stringcourses, cut-limestone capping, sections of curved wrought iron flanking railings, limestone ashlar terminating piers and random rubble stone boundary wall to perimeter of site. Road fronted at entrance to grounds of Castlecomer Wood.”*
- 1.2 The pedestrian gateway/access for retention is of recent insertion created by breaching the rubble stone wall and is adjacent to the western side of the historical gate which serves as the main vehicular access to the Castlecomer Demesne site. The pedestrian gateway connects to the established footpath by means of a gravel pathway lined with wooden bollards from the pedestrian entrance.
- 1.3 Photographs of appeal site are included in the appendices.

2.0 PROPOSED DEVELOPMENT

- 2.1 The proposed development involves permission to retain the unauthorised pedestrian access and permission for modification of the pedestrian access with the erection of 2 no cut stone piers, a metal gate and all associated site works. The entrance for retention comprises two monolithic granite vertical piers and permission is sought to modify the gateway by way of erection of two cut stone piers, a metal gate and all other site works. The detail of the proposed painted metal gate was redesigned in response to the Council’s request for additional information. Staggered railings are proposed along the pathway to prevent pedestrian and cyclists from accidentally directly accessing the N77.

3.0 PLANNING HISTORY

- ENF Enforcement file in relation to unauthorised pedestrian access.
- 13/117 Permission granted 13/5/2013 for new zipwire adventure course including entrance pavilion building and platform, a zipline of approximately 308m in length, adventure course at the exit to the Zipwire and all other associated site works. Permission was subject to 6 conditions.
- 11/523 Permission granted March 2013 for upgrades to existing carpark and access roadway including new entrance control barrier, 2 animal sanctuary and animal shelters, forest clearance to facilitate a new linear vista to existing cascade, hedge

maze and family activity centre, Treetop walkway (within SAC), signage, fishing huts and pontoons and all other associated site works.

- 10/599 Permission to retain existing sewerage treatment system and percolation area as constructed and associated works.
- 09/445 Retention permission granted for tuck shop and covered seating area and associated site works on attendant ground of protected structure at Castlecomer Demesne.
- 06/2265 Permission granted for retention and completion to construct two storey pavillion building. The works include at ground floor exhibition area, café shop, toilets at first floor level, 2 bed apartments to support accommodation for the yard workshops and associated car parking, lighting landscaping on-site sewage treatment plant and all associated site development works. The access to the site is adjacent to protected structures namely the former entrance gates piers and railings former stables, yard buildings and entrance to Castlecomer House.
- 00/2 Permission granted for change of use from existing store to craft retail outlet at Castlecomer Estate Yard.

4.0 PLANNING AUTHORITY DECISION

4.1.1 Planning and technical reports

4.1.1 Submission from third party appellant questions the validity of the application. Development is unnecessary and inappropriate. Works damage the protected structure and represent a vulgar and displeasing façade on the approach to the centuries old bridge.

4.1.2 Submission from Department of the Environment Heritage¹ and Local Government indicates no objection subject to conditions relating to protective measures in regard to the River Barrow River Nore cSAC.

4.1.3 Roads Design office report indicated no objection

4.1.3 Initial Planner's report refers to report of conservation officer which has not been provided on the appeal file. Additional information was requested seeking redesign based on the historic protected railings of the vehicular entrance or alternatively on other pedestrian gates / railings surviving within the estate. Proposals were also sought to prevent pedestrians / cyclists inadvertently exiting directly onto the N77. The applicant was also invited to address the issues raised in the third party submission including the matter of legal interest

¹ Copy of submission on 15/414 which was invalid and resubmitted in respect of 15/540.

4.2 Planning Authority Decision

4.3 Kilkenny County Council decided to grant permission subject to 3 conditions. Condition 2 required that no material enter the cSAC River Barrow River Nore. No planting of Cherry laurel (*prunus laurocerasus*) shall occur along the newly constructed path or any part of the SAC

5.0 GROUNDS OF APPEAL

5.1 The/e appeal is submitted by Teresa Kelly, Holly Cottage Castlecomer. The grounds of appeal are summarised as follows:

- Application is invalid as the property is not owned by the applicant.
- As the property is held in the names of trustees for the benefit of the community it would be necessary to have public consultation on this matter.
- Non-compliance with previous permissions and ongoing breaches of planning law.
- Site notices are invalid as they do not accurately describe the works as the destruction of part of a protected structure. Notice was displayed at only one entrance to the Castlecomer Demesne.
- Entrance is unnecessary as alternative access to the property can be facilitated via the entrance to the old farmyard. There was a stile near the bridge for access to the grounds which has been built up and should be reinstated.
- Danger of having access directly linked to playground.
- Castlecomer is a myriad of protected structures which complement each other. This section of wall forms a significant part of the heritage and uniformity and is not separate nor should it be treated separately.
- Development has savaged the aesthetic amenity of the area and is an eyesore not in keeping with the architecture of the area.
- The proposed remedial works represent a vulgar and displeasing façade on the approach to the centuries old bridge.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority response

6.1.1 The Planning Authority did not respond to the grounds of appeal.

6.2 First party response

6.2.1 The response by Reddy Architecture and Urbanism on behalf of the first party is summarised as follows:

- Appeal is vexatious and frivolous.
- Application was valid and consent obtained from owner as required.
- No issues of non-compliance or enforcement.

- Claims as to numerous breaches of planning regulations are vague and spurious and fall outside the application in any event.
- The application description is factually correct.
- Location of site notices is correct as it refers to specific works. The provision of a second notice would have been misleading.
- As regards need for the entrance the management of Castlecomer Discovery Park a charitable organisation that brings employment and tourists to the town came to the reasoned conclusion that a pedestrian access was required to bring pedestrians from the town safely into the park.
- Pedestrian entrance is most appropriate and safe location.
- Entrance is 50m from the playground and staggered railings are incorporated in the interest of safety,
- Remedial works have been proposed to the pedestrian gate which will address issues pertaining to style and workmanship.

7.0 POLICY CONTEXT

7.1 The National Guidance in respect of the protection of the architectural heritage is contained in the “Architectural Heritage Protection Guidelines for Planning Authorities”, issued by the Department of Arts Heritage and the Gaeltacht 2011.

7.2 The Kilkenny County Development Plan 2014-2020 refers.

8.0 ASSESSMENT

8.1 From my assessment of the file and inspection of the site, it is my view that the key planning issues for this appeal can be considered under the following broad headings.

- Procedural Matters
- Need for the proposed entrance and impact on the architectural heritage and the amenities of the area.
- Appropriate Assessment Screening.

8.2 Procedural Matters

8.2.1 The First Party has posed the question as to whether the appeal is vexatious and without substance and therefore whether it should therefore be dismissed in accordance with Section 138 of the Planning and Development Act 2000. The issue of validity of the appeal is a matter for the Board to determine. In my view the appellant has a right to appeal the decision and has clearly stated the grounds.

8.2.2 The Third Party appellant has questioned the validity of the application questioning the applicant’s legal interest in the site, adequacy of the description provided in the public

notices and location of site notice. Whilst the question of ownership is a legal issue, an applicant for permission is required under the legislation to demonstrate that they have a sufficient legal interest in the site or property to carry out the proposed development, or the written consent of the person who has that legal interest. I note that the first party has provided a letter from Castlecomer Development Association and from the Trustees to the Castlecomer Development Association indicating consent to the making of the planning application. In my view the applicant has demonstrated sufficient legal interest to make the application and has complied with the legislative requirements in this regard.

- 8.2.3 As regards the description of the development as *“The development which is to be retained consists of unauthorised pedestrian gateway or access. The development for permission consists of the modification of the pedestrian gateway or access with the erection of 2 cut stone piers, painted metal gate and all other siteworks.”* I consider that the description is accurate and it is unlikely in my view that anyone was misled or disadvantaged by the wording used in the public notices. I do not therefore consider that the public notices were inadequate.
- 8.2.4 As regards the placing of the site notice, I note that the Planning and Development Regulations are prescriptive in respect of the display of site notices as is necessary to ensure that the public are fully informed and involved in the decision making process. I am satisfied that the display of the site notice in the vicinity of the pedestrian gateway for retention and modification complies with the requirements of Article 19 of the Planning and Development Regulations and I would concur with the First Party that the placing of a second site notice at the other entrance would potentially have been misleading.
- 8.2.5 As regards questions raised by the third party appellant in respect of compliance with previous permissions, such matters are beyond the remit of the Board in terms of consideration of the planning merits of the appeal case in hand.

8.3 Need for the proposed entrance and impact on the architectural heritage and the amenities of the area.

- 8.3.1 The Third Party Appellant asserts that the development for retention is an eyesore represents destruction of the protected structure and is detrimental to the architectural heritage of the area. The need for the development is also questioned and it is asserted that there are alternative options via the existing farmyard circa 90m to the east or via reinstatement of style to the west adjacent to the Bridge.
- 8.3.2 As regards the question of justification for the development, I consider that the provision for a dedicated safe pedestrian access at this location is appropriate and in accordance with good practice. I consider that the proposal is preferable to the alternatives proposed by the third party in the context of pedestrian safety, impact on the River Barrow and River Nore cSAC, and pedestrian accessibility. I consider that the provision for staggered railings is appropriate in the interest of safety.

8.3.3 As regards impact on architectural heritage, and the adjudication as to whether the impact of the development proposed for retention and proposed works interferes with and diminishes the integrity and character of the structure to an undue degree. I consider that the proposals are acceptable and achieve the appropriate balance between form and function of the historic structure. I consider that the remedial works as set out are appropriate to the heritage context and the revised design detailing for the proposed metal gate which takes its reference from the existing wrought iron railing appropriately addresses the concern in terms of impact on architectural heritage.

8.4 Appropriate Assessment Screening

8.4.1 The site is within the River Barrow and River Nore SAC (Site Code 002162). The site synopsis lists the qualifying interests of the River Barrow and River Nore site in terms of Annex I habitats and Annex II species listed in the EU Habitats Directive. The habitats are alluvial wet woodlands and petrifying springs (both priority habitats), old oak woodlands, floating river vegetation, estuary, tidal mudflats, Salicornia mudflats, Atlantic salt meadows, Mediterranean salt meadows, dry heath and eutrophic tall herbs. The species are sea lamprey, river lamprey, brook lamprey, freshwater pearl mussel, Nore freshwater pearl mussel, freshwater crayfish, twaite shad, Atlantic salmon, otter, the snail *Vertigo moulinsiana* and the plant Killarney fern. The Conservation Objectives for the River Barrow and River Nore SAC, Version 1.0 19th July 2011 set out site specific objectives for the overall objective which is To maintain Annex I habitats for which the site has been selected at favourable conservation status and to maintain the Annex II species for which the site has been selected at favourable conservation status.

8.4.2 The works proposed for retention and completion relate to the existing entrance and boundary wall. Having regard to the limited nature and scale of the development proposed for retention and completion it is reasonable in my view to conclude that the proposed development individually or in combination with other plans and projects would not be likely to have a significant effect on the River Barrow and River Nore SAC or any other European Site in view of the site's conservation objectives and a stage 2 appropriate assessment is not therefore required.

9.0 CONCLUSIONS AND RECOMMENDATION

It is considered that the proposed development for retention and proposed development should be granted for the reasons and considerations hereunder.

REASONS AND CONSIDERATIONS

Having regard to the zoning objectives for the area and the pattern of land use in the vicinity it is considered that, subject to the conditions set out below, the development proposed for retention and proposed development will not

unduly impact on the amenities of the area or property in the vicinity and is therefore in accordance with the proper planning and sustainable development of the area.

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 lodged on the 10th day of February 2016, except as may otherwise be required in order to comply with the following conditions. Where conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the 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 modifications by way of erection of two cut stone piers metal gates and associated site works shall be completed within 6 months of the final grant of permission.

Reason: In the interest of visual amenity.

3. No material from the works shall enter the cSAC River Barrow River Nore (Site Code 002161).
No planting of Cherry Laurel (*Prunus Laurocerasus*) shall occur along the pathway

Reason: To ensure the protection of the natural heritage on the site.

4. A schedule of all materials to be used in the development shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: To ensure an appropriate standard of development /conservation.

Bríd Maxwell
Planning Inspector
24th June 2016