



An
Bord
Pleanála

Inspector's Report PL10.248651.

Development	Construction of a special needs unit extension to the front, side and rear of an existing building, a new entrance and traffic management layout and all associated works.
Location	Colaiste Mhuire, Warrenstown, Johnstown, Co Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority Reg. Ref.	17/39.
Applicant	Kilkenny and Carlow Education and Training Board
Type of Application	Permission.
Planning Authority Decision	Grant of planning permission with conditions.
Type of Appeal	Third Party
Appellants	John and Maureen King.
Observer(s)	None.
Date of Site Inspection	13 th September 2017.
Inspector	Derek Daly.

1.0 Site Location and Description

- 1.1. The site is located in the village of Johnstown in County Kilkenny to the south of the main crossroads in the village. The site fronts onto the R636 and former N8 which defines the site's western boundary within the 50 kph speed limit area. The site is irregular in configuration with the width of site widening in the rear area of the site.
- 1.2. The section of the road fronting the site is part of a traffic calming zone. There is a traffic island in the centre of carriageway and lane width precludes parking at the edge of the carriageway. There is a verge and footpath on both sides of the carriageway.
- 1.3. On the appeal site is a secondary school which is located in the western area of the site in proximity to the public road. There are also prefabricated buildings located on the site. To the rear of the existing school buildings are playing pitches including all weather pitches and a grass pitch. There is a vehicular access to the site located at the northwestern corner of the site with provision for parking adjoining the northern boundary. There is also another entrance in close proximity to the southern boundary.
- 1.4. To the north of the site are agricultural lands. The northern and southern boundaries are defined by hedgerows.
- 1.5. Immediately to the south of the appeal site frontage there is a gateway providing access to lands to the east. To the south of the gateway and access there is a single storied dwelling and to the south of this dwelling is a cemetery.
- 1.6. The site has a stated area of 5.663 hectares.

2.0 Proposed Development

- 2.1. The proposed development as submitted to the planning authority on the 27th of January 2017 was for
 - The construction of a special needs unit extension to the front of the building.
 - The construction of an extension to the side and rear to include a new construction studies room and associated preparation room and four new

classrooms. The works will involve the removal of two existing prefabricated buildings one located in the northeastern area of the school and the other immediately to the south of the extent of the front elevation of the existing building. The works also necessitate demolition of part of the existing school at the front (west).

- Essentially two extended areas are proposed, one located in the southwestern corner of the existing building envelope. This will necessitate demolition as indicated but will also project a proportion of the building forward by approximately 10 metres and which will be adjoining and very proximate to the western boundary of the site. The second extension is at the northeastern section of the existing building envelope and will project forward of the existing northern and eastern (rear) boundaries. The extensions are single storied with high set windows.
- The construction of a new one way traffic system with new vehicular exit from the site and for amendments to the existing entrance. This proposal is to address issues at the school and to provide for management of pedestrian and vehicular movements at and within the school. The development will use the existing access at the northwestern corner as an access only. Additional parking is provided with parking on both sides of the internal roadway. The roadway will continue to the rear of the school turning south along the rear of the school with provision for set down for buses at the rear of the school and a lane for cars.

The roadway will continue along the southern boundary with an exit at the southwestern corner of the site. This section will incorporate the provision of a new roadway and will access the public road at the point where there is an existing agricultural gateway. As part of the proposal the existing vehicular access towards the southern end of the site frontage will close and be replaced by the new entrance where there is a current farm gate.

A traffic assessment in relation to flows and circulation was submitted.

- Permission for associated works which includes demolition work, elevational changes internal modifications to existing layout.

- The gross floor area of existing buildings on the site is stated as 3,077m² and the gross floor area of proposed works is stated as 894m². The gross floor area of work to be retained is stated as 2,830m² and buildings to be demolished is stated as 317m².
- Existing piped services in relation water and drainage will be used.

2.2. Further information was submitted on the 13th of April 2017 which included:

- Revised details of the internal road layout which includes a set down area on the southern leg of the road, traffic calming measures, the removal of a hedge to facilitate this, and a new gate arrangement at the egress point.
- It is also proposed to provide for the reinforcement of the hedgerow with planting of trees along the boundary with the property to the south. A letter in relation to this and the demolishing of part of the shed is submitted as part of the additional information.

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted planning permission subject to 10 conditions.

Conditions of note;

- Condition no. 9 refers to landscaping with particular reference to the hedgerow on the southern boundary.

3.2. Planning Reports

3.2.1. The planning report dated the 21st of March 2017 refers to:

- Submissions received.
- The planning history.
- An assessment of the proposal in the context of residential amenity, impact on adjoining lands and traffic.

- Further information was recommended in relation to the southern boundary, a lighting plan and traffic related matters.

3.2.2. The planning report dated the 5th of May 2017 in relation to the further information recommends permission.

3.2.3. Other Technical Reports

The environment reports dated the 20th of March 2017 and 3rd of May 2017 indicated no objections to the development and included recommended conditions.

The road design report dated the 15th of March 2017 indicated no objections and recommended conditions.

The road design report dated the 3rd of May 2017 indicated no objections.

3.3. Other submissions

Submission was received by the residents of the adjoining dwelling in relation to the proposed development referring to issues relating to land rights, visual intrusion, traffic, matters relating to the new road and proposed egress route.

4.0 Planning History

4.1. The site has a history of planning permissions largely relating to additions and extensions to the school on the site.

5.0 Policy Context

5.1. Development Plan

5.1.1. The current operative plan is the Kilkenny County Development Plan 2014-2020.

5.1.2. Chapter 12 of the plan sets out requirements for development in relation to site standards, roads parking etc.

The Appeal

5.2. Grounds of Appeal

The appellants in a submission dated the 2nd of June 2017 refers to:

- The appellants contend that the planned development encroaches on their land and plans to demolish a shed on their land and use a hedge line as a boundary which is incorrect. A copy of a map and folio as submitted in support of this as appendix 1.
- It also proposes to use land which the appellant is required to retain to provide a right of way to another landowner as access to her lands.
- The issue of the landownership only came to light as the plans were reviewed and when the appellants sought evidence in this regard.
- Submissions made in the course of the consideration of the application are also submitted and clarifications made in relation to the matter of landownership and that these lands are in the absolute ownership of the appellants and not the school authorities as previous submissions would have led the planning authority to be the case.
- As part of the transfer of land a right of way was retained to provide access to lands to the rear of the appellant's dwelling. Details relating to this right way are referred to in a number of attachments to the grounds of appeal and is a 5.5 metres wide strip of land extending eastwards from the road.
- The lands to the rear was subsequently sold to Kilkenny VEC and as the school has acquired lands to the rear of the appellants' property and have alternative access to this land from within the school property the appellant believes that the right of way is no longer a necessity and ceases to be a right of way.
- The appellants understand that these ownership issues are significant and once these ownership and boundary matters are resolved and a sale agreement reached in respect of the lands the appellant would withdraw their appeal.
- The appellants still retain concerns in relation to the access arrangements and the impact on their dwelling owing to the proximity of the access of their dwelling and the school's proposed exit.

5.3. Planning Authority Response

The planning authority in a submission dated the 21st of June 2017 indicate;

- The planning authority had regard to the submissions received. No further third party submission was made to the revised proposals submitted.
- A letter was submitted from the school principal in relation to the boundary treatment.
- Issues raised now by the third party are different to those originally raised in the course of the application.
- At the time of the application the applicant was the stated owner of the 5.663ha site.

5.4. First Party Response

Brian Dunlop architects in a response dated the 6th of July 2017 refers to:

- In relation to ownership the applicant's solicitor is reviewing the maps submitted along with those presented at the time of purchase / sale.
- It is a legal matter which it is expected will be resolved through legal parties rather than the planning process.
- The matters thus raised do not diminish legal rights and positions of either party.
- The application and land purchase was made in good faith and discussions were held with adjoining landowners and details of the boundary treatment agreed. There was no reference to the right of way of the issue of the boundary.
- The applicant wishes to point out that the road can be accommodated north of the strip of land in dispute and without building redesign should be determined that this strip is in fact not in the ownership of the applicant.
- A drawing demonstrating this is included in the submission.
- There is no requirement to partially demolish the shed to achieve the construction of the road.

- No right of way is indicated on the Property Registration Authority maps or folio maps.
- In relation to road safety the proposal as submitted is to address issues in relation to traffic on the site and issues of set down on the public carriageway of footpath can be addressed by bollards as requested by the appellants and agreed to by the applicant.

5.5. **Third Party Response to the First Party Response.**

The third party appellants in a response dated the 11th of September 2017 refers to,

- The first party response does not address the land ownership and traffic concerns.
- The physical boundaries of the school, the right of way and the property defined in folio map KK17485F have not been properly defined.
- The right of way laneway is still in dispute and the school should not be permitted to build on land where land ownership is disputed.
- The appellants are open to an agreement which addresses their concerns and does not compromise their road safety.
- Reference is made to the history of land ownership and that the right of way was not part of any discussions for the school accessing lands to the rear of their site.
- The issue in relation to rights in relation to the right of way and land boundaries only came to the attention of the appellants when the decision to grant planning permission was made.
- Issues of ownership and the actual definition of boundaries remain to be addressed and there are concerns in relation to encroachment on their property and land.
- Reference is made to correspondence in the transfer of lands and the right of way is particularly referred to in this regard.
- The appellants consider that the revised proposals still encroach on their land and boundaries remain unclear and not defined.

- Issues of traffic safety still remain arising from the revised proposal.
- The opening and only access to the shed will be directly onto the proposed coach and car road giving rise to a potential safety hazard.
- There are safety concerns at the entrance on the regional road and in relation to positioning of bollards which affect their entrance.
- The concerns arise from the proximity of the entrance to their site and the proposed new exit from the school.
- Issues of obstruction of views at the entrance and obstruction to pedestrians and cyclists.
- The location of the new internal road will impact on their privacy and will also result an increased level of noise arising from the additional traffic near their boundary.
- There is an absence of clarity in relation to boundary treatments.
- The appellants wish to have a mutually beneficial agreement on the issues raised.
- The submission also includes a number of appendices in support of the matters raised in the response.

6.0 Assessment

- 6.1. The application as submitted is for the construction of a special needs unit extension to the front, side and rear of an existing school building, for the provision of a new entrance and traffic management layout within the school essentially providing for a one way flow with on entrance for access and a separate new entrance for egress and for the rearrangement of parking and associated works.
- 6.2. Much of the content received in the appeal submissions relate to issues of ownership and rights in relation to property in particular rights of way and history of ownership. I do not propose to address many of the issues raised and I would in this regard refer to section 5.13 of the department guidance on development management which refers to issues relating to title to land where it is indicated that *“the planning system is not designed as a mechanism for resolving disputes about title to land or premises*

or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision”.

- 6.3. In relation to making a planning application there is nothing definitively to cast doubt on the bona fides of any assertion by the applicant to make a planning application or that the applicant does not have sufficient legal interest or that the Board may if satisfied with matters relating to proper planning and development decide to grant permission. However, such a grant of permission would be subject to the provisions of section 34(13) of the Act, referred to above and would not negate any party rights in relation to civil law.
- 6.4. Specifically, in relation to the matters applied for in this application / appeal, the principle of extending the school is not in dispute and I would have no objections to the proposal to provide additional facilities and floor space to an established school. The extension to the school provides for two extended areas are proposed, one located in the southwestern corner of the existing building envelope. but will also project a proportion of the building forward by approximately 10 metres and which will be adjoining and will extend the building footprint closer to the western and northern boundaries and will necessitate demolition/removal of a pre-fabricated building. The second extension is at the northeastern section of the existing building envelope and will project forward of the existing northern and eastern (rear) boundaries. The extensions are single storied with high set windows to avoid overlooking. I would have no objections to the proposed extensions.
- 6.5. The second aspect of the proposal relates to a reorganisation of the traffic management of the site. Currently there is a single access to the site located at the northwestern corner of the site. Vehicles enter and exit through a single entrance. When I inspected the site, at what would not be considered a peak period, vehicles were entering and existing the site and internally within the site vehicles were attempting to park and turn without clearly defined areas to do so. The current situation is very unsatisfactory with conflicting vehicular and pedestrian movement.

- 6.6. In this context a traffic management system which provides for a one way flow, set down locations, separate lanes for buses and cars/other vehicles with provision for pedestrian movement and crossing and also for defined parking is very desirable in relation to pedestrian and traffic safety.
- 6.7. The proposal will also involve alterations on the regional road serving the school to accommodate the new entrance with revisions to the traffic island. Currently traffic does not park on the carriageway outside of the school due to the lane restrictions on the carriageway resulting in some parking on the pavement or a distance from the school.
- 6.8. I would have no objections to the proposed traffic arrangements as proposed in principle. The provision of this new road will result in additional traffic in close proximity to the southern boundary and this will impact on the adjoining property to the south which is the residence of the third parties by generating additional levels of noise and disturbance closer to their property.
- 6.9. The issue arises as to whether the proposal as submitted can be accommodated within the applicant's land ownership and this is a matter of dispute and as already indicated this is a civil matter.
- 6.10. I however wish to also comment that in the response to the grounds of appeal the applicant submitted a drawing 15083(1)/SK/17 indicating that the proposal can be revised to permit the proposed development to be located on lands outside of the disputed ownership, in effect outside of the boundaries indicated on the folio map KK17485F, which was submitted in relation to ownership by the appellants in the grounds of appeal. The revised proposal pushes the road northwards away from the third party dwelling and also avoids demolition of the shed under dispute notwithstanding issues of access to the shed in question.
- 6.11. The appellants in response have disputed the clarity of this proposal and that the matter of the right of way is not resolved by this revision. I do not wish to address matters of ownership and rights of way which are more pertinent to civil matters but the Board have in effect two road arrangements to consider the original and the revised.
- 6.12. I would consider that the revised proposal would move the road further away from the appellants' dwelling. It would also move the new entrance away from their

current entrance. The issues of noise would I accept remain but would largely be limited to peak periods during the school day calendar and one way flows would also regulate the flow of movement to minimise the noise and disturbance. If there are issues to resolve in relation to the tracking of the exit onto the public road without encroachment there is room to achieve this and matters relating to location of the bollards, kerbing and the traffic island can be addressed by condition.

- 6.13. In this regard where the Board to consider a permission I would consider that the revised proposal should be considered.

7.0 Recommendation

- 7.1. In view of the above assessment permission for the proposed development is recommended. An advisory note stating the provisions of section 34(13) of the Planning Act should be added at the end of a decision to grant permission.

8.0 Reasons and Considerations

- 9.0 Having regard to the nature of the proposed development and the existing use on the site, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of property in the vicinity, would be acceptable in terms of traffic safety and convenience and 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 27th of January, and the 13th of April 2017, 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 interests of clarity

- 2 The overall layout of the development and in particular the internal road network shall be carried out in accordance with the site layout submitted to the Board on the 6th of July 2017 on drawing 15083(1)/SK/17. Details relating to the precise location of the exit point onto the public road, and any revisions in relation to traffic management on the regional road, location of kerbs and bollards and other traffic calming measures shall be submitted to and agreed with the planning authority prior to the commencement of any development works.

Reason: in the interest of clarity and in the interests of traffic safety.

- 3 The site shall be landscaped in accordance with the scheme of landscaping submitted to the planning authority on the 13th of April 2017. Precise details in relation to site boundaries in particular the southern boundary of the site shall be submitted to and agreed with the planning authority prior to the commencement of any development works on the site. A timescale of the implementation of the scheme shall also be submitted. The applicant shall be responsible for the replacement of any failures of species should they occur.

Reason: In the interest of visual and residential amenity.

- 4 All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

- 5 Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity

. **Reason:** In the interest of public health.

- .6 Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

. **Reason:** In the interest of the visual amenities of the area.

- .7 The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

. **Reason:** In the interests of public safety and residential amenity

- .8 Public lighting relating to the proposed development shall be provided in accordance with the details submitted by the applicant on the 13th of April 2017. All lighting shall be installed in a manner to avoid overspill of lighting onto adjoining properties.

Reason: In the interests of the protection of the amenity of adjoining properties and in the interests of public safety.

.Derek Daly
Planning Inspector

18th September 2017