



An  
Bord  
Pleanála

## Inspector's Report PL10.249067.

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<b>Development</b>	New vehicular residential entrance and a set of residential gates.
<b>Location</b>	15 Bishop's Hill Kilkenny City, Co Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority Reg. Ref.</b>	17/93.
<b>Applicant</b>	Shane Dalton
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant of planning permission with conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	<ol style="list-style-type: none"><li>1. Charles and Anne Phelan</li><li>2. Loreto Park Residents Association.</li></ol>
<b>Observer</b>	<ol style="list-style-type: none"><li>1. Margaret O'Brien.</li><li>2. Fred and Helen Tuite.</li></ol>
<b>Date of Site Inspection</b>	3 <sup>rd</sup> November 2017.
<b>Inspector</b>	Derek Daly.

## 1.0 Site Location and Description

- 1.1. The site is located in the Kilkenny City on the northwestern fringe of the centre area. The site has a frontage onto a small cul de sac area serving 3 houses, which in turn leads into a larger residential development consisting of detached houses Loretto Park. Loretto Park is a development of 13 dwellings which is located off Troy's Lane a narrow roadway which is off Bishop's Hill one of the main arterial routes leading out of the centre of Kilkenny in this case the Freshford Road.
- 1.2. The appeal site is irregular in configuration and as indicated has frontage onto a paved cul de sac area which is an extension of the Loretto Park development. There is an entrance to a dwelling immediately to the north of the appeal site. It is noted that a large area of paved roadway/cul de sac serving two houses to the north and northwest are included in the appeal site. There is an out building within the demarcated site to the south of the proposed location of the new entrance and there is also a dwelling to the east of the appeal site but this dwelling is not of the appeal site though it and the appeal site forms part of the land ownership extending eastwards to Bishop's Hill.
- 1.3. The site has a stated area of 0.0496 hectares.

## 2.0 Proposed Development

- 2.1. The proposed development as submitted to the planning authority on the 17<sup>th</sup> of February 2017 was for a new vehicular entrance three metres in width and a new entrance gates. The proposed development was to remove part of an existing wall and construct an entrance and new wing walls. The proposal provided for the removal of existing parking spaces and the relocation and provision of a parking space; revisions to drains involving the relocation of a gulley and landscaping.
- 2.2. Accompanying documentation included a traffic entrance and design appraisal and tree report
- 2.3. Further information was submitted on the 29<sup>th</sup> of June 2017 which included:
  - Details relating to ceasing to use existing parking and access onto Bishop's Hill pending a positive outcome of the application.

- Retention of the existing boundary wall with 16 Loretto Park and not to reduce the height.
- Revised proposals for the piers and gates including using stone from the existing wall.
- The provision of two parking spaces.
- Revised landscaping and a report in relation to protecting trees.
- The removal of unauthorised development.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. The planning authority granted planning permission subject to 7 conditions.

Condition 5(c) is of note in requiring the parking spaces and vehicular entrance at Bishop's Hill cease once the new access is operational.

#### 3.2. Planning Reports

3.2.1. The planning report dated the 12<sup>th</sup> of April 2017 refers to

- The planning history of the site.
- Submissions received.
- Existing problems of access of the site from Bishop's Hill and an alternative access from Loretto Park is agreeable in principle.
- Further information was recommended in relation to a number of matters.

The planning report dated the 25<sup>th</sup> of July 2017 in relation to the further information considers the proposal as submitted acceptable. The report recommends permission.

3.2.2. Other Technical Reports

The architectural conservation report dated the 5<sup>th</sup> of April 2017 refers to the 19<sup>th</sup> century wall and that any entrance should be inserted into this wall with the height of the wall retained. Further information was recommended.

The area engineer report dated the 10<sup>th</sup> of April 2017 recommended further information and revised layout including provision of 2 parking spaces.

The architectural conservation report dated the 10<sup>th</sup> of July 2017 refers to the further information submitted and considers it acceptable and indicates no objections.

### 3.3. Other submissions

Submissions were received by the residents of the area referring to original permission for Loretto Park; restriction of access currently enjoyed; the removal of a rockery; land ownership issues; traffic hazard; loss lime tree; disorderly development and heritage.

## 4.0 Planning History

4.1. The site has a long planning history which includes refusals of a dwelling with a vehicular access onto Loretto Park including a refusal by the Board under ABP Ref No 62.209570

4.2. ABP Ref No 62.239603

4.2.1. Permission refused by the Board on the 5<sup>th</sup> of July 2012 refusing a first party appeal against a refusal by the planning authority for the provision of a new vehicular residential access and a set of residential entrance gates from Loreto Park, Kilkenny City to property at No. 15 Bishop's Hill, Kilkenny City consisting of the realignment of two car parking spaces, realignment of grassed verges, provision of a new 4 metre wide entrance through a rubble stone wall, and the reduction in height of part of the stone wall to 1.1 metres.

4.2.2. One reason was stated which indicated that "*Having regard to the planning history of the landholding, in particular, planning register reference number 10/66 where permission has been granted for an extension to the existing house thereon, with access from Bishop's Hill and the current proposed development, where the same house is not included within the land ownership boundary, it is considered that the proposed development, which constitutes the provision of an access, would be piecemeal development, would constitute disorderly development and would, therefore, be contrary to the proper planning and sustainable development of the area*".

- 4.3. There is also subsequent history of planning enforcement and refusals on the site of 15 Bishop's Hill.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The current operative plan is the Kilkenny City and Environs Plan 2014-2020.
- 5.1.2. The site is zoned existing residential with the objective: "to protect, provide and improve residential amenities".
- 5.1.3. Section 7.4 of the plan relates to Architectural Heritage. The National Inventory of Architectural Heritage is specifically referred to in section 7.4.5. Objective 7J of the plan is to "ensure the protection of the architectural heritage of Kilkenny City & Environs by including all structures considered to be of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest in the Record of Protected Structures".
- 5.1.4. Section 7.4.6 of the plan relates to Architectural Conservation Areas (ACAs) and an objective for all ACAs in Kilkenny City and Environs 7M is "*to ensure the preservation of the special character of each ACA particularly with regard to building scale, proportions, historical plot sizes, building lines, height, general land use, building materials, historic street furniture and paving*".
- 5.1.5. The site is within the St Canice's ACA with reference to figure 7.8 of the plan and in section 7.4.7.3 which specifically refers to the St. Canice's ACA there is a Development Management Standard SCACA 1: *To protect the historic and architectural character of St. Canice's Cathedral and its unique setting and to protect the grouping of the Cathedral, Library, Deanery, and other buildings associated with the administration of the Cathedral.*
- 5.1.6. Chapter 11 of the plan relates to Requirements for Developments and section and in particular 11.8.8 refers to infill development where it is indicated that "*within the city infill development and refurbishment schemes will be required to pay particular attention to the local scale and plot size and the requirements of any Architectural Conservation Area within which the site is located.*"

*Development will only be considered if it:*

- *Will not detract from the character of the area,*
- *Will not be detrimental to the residential amenities of the area,*
- *Will not be prejudicial to the proper planning and development of the area.”*

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.2. The appellants Charles and Anne M Phelan c/o Peter Thomson Planning Solutions in a submission refers to:

#### 6.2.1. Validity of application.

The validity of the application is raised as there is no letter of consent from the owner of the site; Kilkenny County Council who in 2016 took charge of the Loretto Park estate and the applicant has insufficient interest.

The council however took charge to maintain the roads and services but do not maintain the open areas which are maintained by the residents.

The county council has no authority to remove house owner's rights.

The area over which it is proposed to run the access is open space and not a roadside verge.

The application to provide access for the existing dwelling is not referred to as other in the covering letter. The site does not extend to the applicant's dwelling.

#### 6.2.2. Traffic

The proposed development represents a traffic hazard as the proposed entrance does not have visibility of the appellants' entrance and vehicles entering and existing that entrance and vice versa.

The parking spaces provided are substandard in dimension and manoeuvrability and this also represents a traffic hazard.

Reference is made to the current access on Bishop's Hill and that removing his access on Bishop's Hill does remove the perceived traffic hazard on Bishop's Hill as other residents will use that section of road.

There was no alternative of alternative means of access other than the proposal submitted.

#### 6.2.3. Planning history

Reference is made to previous applications and the concern that the entrance is to provide an access for a possible separate dwelling.

#### 6.3. Loretto Park Residents Association c/o New Ground in a submission refer to;

##### 6.3.1. Planning history

Reference is made to a history of unauthorised works at the subject site and to the planning history. Little has changed since previous refusals of permission on the site and matters raised in previous refusals remain unresolved.

##### 6.3.2. Validity of application and insufficient interest.

The applicant has insufficient interest to carry out the works.

Land ownership of common areas of Loretto Park remains with the resident's association through adverse possession who have carried out, maintained and funded all necessary work in the common areas for 25 years.

##### 6.3.3. The development is piecemeal development.

##### 6.3.4. The full extent of the works is unclear as the site severs a backland portion of the site from the overall site of 15 Bishop's Hill.

##### 6.3.5. There is an unexplained area between the blue land ownership boundary and the stone boundary wall between Loretto Park and 15 Bishop's Hill.

##### 6.3.6. The development is haphazard development.

##### 6.3.7. Reference is made to inaccuracies in the drawings.

##### 6.3.8. Traffic

The proposal is a traffic hazard with reference to road width and an absence of sightlines. Reference is made to the planning authority's request of further information.

The revised details have no traffic safety assessment and there is blind exit and potential for collisions. The applicant cannot lower the party wall to provide improved sightlines as highlighted in previous applications.

The parking area is in the only feasible location to accommodate the positioning of the LP Gas delivery vehicle.

The entrance road is not a safe width standard.

There is provision of substandard car parking spaces.

The current application would result in the loss of two parking spaces requires as part of the Loretto Park development and conditioned as part of the planning permission.

The development would intensify the use of Troy's Lane which should be stringently resisted given the nature, width and alignment of the lane.

The works have indicated no removal of the existing entrance onto Bishop's Hill or closure of the garage and most of the site in the applicant's ownership does not form part of the current application. It is unclear what the proposed access is to serve and may facilitate a sub-division of the site.

#### 6.3.9. Heritage and ACA

There is intrusion into a historic stone wall and the site is within the St. Canice's ACA.

The limestone wall is listed in the NIAH inventory and it is proposed to part demolish this wall. The obligation is to protect the integrity of this wall as a historic wall.

The proposal would be detrimental to the health and longevity of a lime tree, impacts on other trees and loss of green space. This is referred to in previous applications/appeals relating to the appeal site.

There would be inevitable damage to trees arising from the proposed development.

Reference is made to provisions of the current development plan in relation to the zoning, ACA, views and vistas.



#### 6.4. **Planning Authority Response**

The planning authority in a submission dated the 1<sup>st</sup> of September 2017 indicate that they have no further comments.

#### 6.5. **First Party Response**

The applicant c/o Kiaran O'Malley and Co. Ltd. in a response dated the 15<sup>th</sup> of September 2017 refers to the grounds of appeal under a number of headings:

#### 6.6. In relation to the planning history

- Reference is made to P.A. Ref 88/71 which approved the Loreto Park residential development and to condition no.11 requiring 6 public parking spaces be provided but no parking spaces were indicated on the site layout. This condition appears to be a repeat of a similar condition no.5 in the grant of outline planning permission under 87/64.
- There is an area in front of houses 3 and 4 Loreto Park providing 6 spaces as indicated in a photograph with the submission.
- The question then arises as to what is the purpose of the two parking spaces at the end of the cul de sac and within the appeal site.
- It appears to be a turning bay in compliance with the standard of the time RT181 and the area too small to provide two parking spaces without encroaching onto the road.
- It is therefore the applicant's contention that there are no approved parking spaces in the cul de sac.

#### 6.6.1. The proposed development.

- It is proposed to simplify the proposal to three elements which are outlined in drawing 111046/c/001 Rev. PL1. Firstly, it is proposed to remove a short area of kerbing; secondly construct a short length of new roadway and thirdly to construct the gate opening and erect the gates as provided for in the decision to grant planning permission.
- This amendment would eliminate the proposed parking beside no 10; works in relation to kerbing close to the lime tree and retaining the turning area. In effect there is no change to the roadway and turning area other than to a

small area of open space / verge between Loreto Park and the applicant's property.

#### 6.6.2. Planning history

- There was a proposal for a new dwelling and entrance onto Bishop's Hill ref 05/02 where the junction of the road was considered critically substandard and the applicant considers that view correct.
- In relation to 49/03 the issue was not that it was safer to construct an access onto Loreto Park but there were other issues.
- In relation to PL 62.209570 the issues were similar to 49/03 but the Board did not identify any issue in relation to the ACA.
- In relation to PL 62.239603 the piecemeal concern related to the then two separate parcels of land which is now resolved as the applicant is the sole owner but the Board raised no issues in relation traffic generation, traffic hazard, impact on trees and ACA.
- The Board is requested to consider the current proposal on its merits but the current proposal will not impact on trees, the ACA or traffic hazard.

#### 6.6.3. Validity of planning application

- It is the function of the planning authority to validate a planning application and did so.
- As the planning authority having in charge the estate a letter of consent was not required to be submitted.
- The estate was taken in charge in 2016 and the roads and open spaces were part of the taken in charge area and is public land.
- The boundary wall disputed is also within the taken in charge area which implies that the residents of no 16 do not own that part of the wall forward of their access gate.

#### 6.6.4. Alternatives

- The applicant does not own land with frontage onto Troy's Lane.

- An application for a widening of an access onto Troy's Lane was refused and a similar refusal would be expected if the applicant had frontage onto Troy's Lane.
- It is also impossible to provide a right of way.
- The only alternative is Bishop's Hill which is substandard and hazardous.

#### 6.6.5. Impact on trees

- The proposed development will not impact on mature trees at Loreto Park.
- The trees predate Loreto Park and have survived the development of Loreto Park.
- The simplified proposal will minimise any potential impact.

#### 6.6.6. St Canice's ACA and the NIAH

- It is not accepted that the proposal will affect the character of the ACA or that the wall is identified in the NIAH.
- The conservation officer has reviewed the application and these issues were not considered in previous applications.
- The site is not within the city walls.
- The NIAH listing refers to the burial ground and not the wall.
- For avoidance of doubt there is no works proposed to the wall of the graveyard and the wall within the appeal site is not shown on the Rocque map of Kilkenny 1758.

#### 6.6.7. Traffic

- There will be no traffic hazard arising from the proposed development and will be an improvement to the current access onto Bishop's Hill.
- There is sufficient visibility for traffic exiting 15 and 16 Loreto Park.
- There is no realistic potential of a traffic hazard given the speed and also the frequency of traffic.
- With the removal of the parking spaces the road width remains unaltered.

- The existing access onto Bishop's Hill is unsustainable in relation to traffic and its cessation is covered by the applicant's response to further information and condition 5 c of the decision to grant planning permission.

## 6.7. **Third Party Response**

6.7.1. Loreto Park Residents Association c/o New Ground Ltd in a response to the grounds of the third party appeal of Charles and Anne M Phelan dated the 21<sup>st</sup> of September 2017 refers to

- The appellant restates its position in relation rights over the common areas.
- There is no drawing provided in relation to the current access ceasing and any intention put forward and it is not clear how its closing by condition could be enforced.
- The application site does not extend to Bishop's Hill.
- Issues in relation to the appropriateness of opening an access onto Loreto Park remain.

## 7.0 **Observer Submissions.**

7.1. Margaret O'Brien 10 Loreto Park in a submission refers to;

- Reference is made to nature of the Loreto Park development which is low density.
- The development as proposed would restrict access to her rear garden and the delivery of gas to her property.
- The development would create a traffic hazard.
- Two car parking spaces are eliminated by this proposal.
- A beautiful rockery will be removed.
- The applicant is claiming ownership of a wall running at the rear of properties 10 and 12 Loreto Park and interfering with a wall dating back to the 19<sup>th</sup> century.
- The development is piecemeal development.

7.2. Fred and Helen Tuite 1 Loreto Park in a submission refers to;

- The applicant has insufficient legal interest to make the application.
- The resident's association assert rights in relation to the open spaces and green areas and reference is made to past planning decisions in this regard.
- There will be a loss of estate amenities and in this regard reference is made to the loss of the turning circle making turning of vehicles impossible; reduction in the quality of parking spaces and loss of green areas.
- There are issues of safety in relation to sightlines at the new entrance, the width of the road and conflict between vehicular, cycle and pedestrian movements; increased traffic; congestion in the immediate area increasing the number of entrances from 3 to 4 and issues of parking.
- Reference is made to the impact on mature trees.
- Reference is made to the planning history and the history of the use of the site and the potential increased use of the proposed entrance for further development on the applicant's lands.

## 8.0 Assessment

8.1. The application as submitted is for the construction of a new vehicular residential entrance and a set of residential gates.

8.2. Within the third part submissions received reference is made to issues of ownership and rights in relation to property in particular the party wall in which the access is proposed will be constructed and consequently the validity of the application is questioned. Issues are also raised in relation the maintenance of open areas.

8.2.1. 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”.*

8.3. 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. I would note that the housing estate onto which it is proposed to open the proposed access has been taken in charge by the local authority and the issue of specific consent do not arise as the planning authority has considered and assessed the current proposal. 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.

8.4. Specifically, in relation to the matters applied for in this application / appeal there are a number of issues which arise. I wish to initially state for the purpose of this appeal I will refer to the details submitted by way of further information submitted on the 29<sup>th</sup> of June 2017 and the revised details submitted by the applicant c/o Kiaran O’Malley and Co. Ltd. in a response to the appeal dated the 15<sup>th</sup> of September 2017. The further information and revisions in the response submission dated the 15<sup>th</sup> of September 2017 both refer to drawing 111046/c/001 Rev. PL1 initially submitted by way of further information to the planning authority on the 29<sup>th</sup> of June 2017.

The response submission is of particular relevance in my assessment as it simplifies and minimises the nature and extent of the development in the context of what currently exists to three elements which are outlined in the submission and referred to in drawing 111046/c/001 Rev. PL1. Firstly, it is proposed to remove a short area of kerbing; secondly construct a short length of new roadway and thirdly to construct the gate opening and erect the gates as provided for in the decision to grant planning permission.

In doing so issues relating to the loss of parking affecting the turning area, impacts on trees and intervention of what currently exists on the ground is kept to a minimum. The response amendment to the drawing in effect pared down and reduces the actual footprint of intervention proposed in the initial drawing submitted by way of further information to the planning authority on the 29<sup>th</sup> of June 2017.

## 8.5. Traffic.

- 8.5.1. Issues are raised in relation to two matters, the impact on Loretto Park itself and the wider matter of the applicant's current access on Bishop's Hill. For clarity the access currently used by the applicant in relation to his dwelling and site is from Bishop's Hill. The planning authority has commented on the Bishop's Hill access and that the entrance is hazardous. The access requires travelling along a narrow road running in parallel to the main carriageway with a shared pedestrian area and is enclosed between a wall and the front elevations of properties on the western side of Bishop's Hill and entering the main carriageway at the junction with Troy's Lane.
- 8.5.2. I would totally agree that the means of access/egress is totally substandard, hazardous and dangerous to pedestrians and road users. It would appear to predate back to a period of low usage of roads and is totally unsatisfactory to a more modern period. I note that appellants have referred to the fact that the arrangement of the road layout will remain irrespective of what happens in this appeal and that the planning authority approved the current access arrangement onto Bishop's Hill but it is equally important to state that any improvement in the current traffic arrangement is very desirable and as a consequence a proposal which eliminates a source of serious traffic hazard is equally desirable.
- 8.5.3. In relation to the current application it is proposed to open onto an existing housing development, Loretto Park, which in turn has an established access onto Troy's Lane. Troy's Lane is relatively narrow and itself would not be an optimum traffic arrangement but there is a defined access from Loretto Park onto Troy's Lane. Additional traffic generated by an additional dwelling would not, I consider, give rise to a traffic hazard in the wider context.
- 8.5.4. In relation to the actual access itself onto Loretto Park, the area onto which it is proposed to access is or appears to be a turning area serving three houses and is located at the end of a cul de sac serving an additional two houses. Reference is made to the proposal affecting two parking spaces but it is very unclear that there is a defined parking area or parking spaces in the area immediately adjoining the access point. That is not to say vehicles do not park in this area but the parking area is not very defined. The area onto which the access is proposed is clearly to provide

access to properties and for vehicles to turn. Any parking would therefore I consider appear to be incidental in the current layout of the area.

- 8.5.5. In relation to the actual access it is proposed to break through/ demolish part of an existing boundary wall to gain access to the turning area and to extend the road pavement to the existing road surface. This depending on the level of intervention will result in a loss of a rockery with some planting immediately adjoining the wall. It will also result in alterations to the kerbing in the turning area and if the details outlined in the response to further information were to be considered also require greater alterations to kerbing to accommodate a revised area to permit parking than currently exists. I, however, consider that the revision proposed in the grounds of appeal response which minimises and scales down the level of intervention would be the preferable layout to consider if permission is to be granted as it largely retains the current position on the ground, minimises interference with areas used to park vehicles and reduces potential impact on mature vegetation in particular trees the potential loss of is also raised in grounds of appeal.
- 8.5.6. In relation to issues of traffic hazard arising to existing occupants of dwellings in particular dwelling no 16 arising from the proposed access it is important to consider that the proposal will result in two access points adjoining one another and some level of blindness may arise from the presence of a wall in excess of 1.2 metres dividing the entrance points but this is a built up area. It is also acknowledged that any additional access onto a carriageway does increase risk of traffic hazard.
- 8.5.7. Traffic exiting and entering via the proposed entrance will be utilising a carriageway space shared by another three dwellings. Traffic speed will be extremely low and traffic volumes will be very low. The nature of the cul de sac and turning area requires low speed to negotiate. It is also not uncommon to have to entrances side by side in residential areas separated by party walls of varying heights. In this context I do not consider that the creation of an additional entrance will result in a traffic hazard.
- 8.5.8. I do however consider that the creation and approval of this access onto Loretto Park should be at the expense of closing the vehicular arrangements on Bishop's Hill. I note concerns raised by the appellants to this but I would support the planning authority's decision and condition to require this. I note that the red line site does not



extend to the applicant's dwelling or the Bishop's Hill boundary and is confined to the immediate area of the actual entrance but the blue line area included as part of the application does extend to these areas and section 34(4)(a) provides for regulating the development or use of any land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant.

- 8.6. There is reference to alternatives in relation to the location of the access but there is a valid application made in relation to the current proposal and based on the information submitted no details are evident that there is an alternative onto Troy's Lane and nothing to suggest that an individual entrance point onto Troy's Lane offers a more beneficial traffic solution to what is proposed.
- 8.7. Heritage is in the grounds of appeal with particular reference to the St. Canice's ACA and interference with the wall and the NIAH Kilkenny record 12003021 which refers to a nun's cemetery.
  - 8.7.1. The site is within the St. Canice's ACA and forms part of the boundary of the extent of the ACA. There is a Development Management Standard SCACA 1: *"To protect the historic and architectural character of St. Canice's Cathedral and its unique setting and to protect the grouping of the Cathedral, Library, Deanery, and other buildings associated with the administration of the Cathedral"*.
  - 8.7.2. In relation to the ACA the matter to be considered is whether the proposal as submitted is whether it contravenes the development management standard stated and I would note that the conservation officer of the planning authority has reviewed the application and does not consider that this issue arises. I also do not consider that the current proposal will affect the character of the ACA.
  - 8.7.3. In relation to the NIAH record the listing a copy of which is included as an appendix refers to the nun's burial ground with group of cast-iron markers, post-1870-present, having one cut-limestone marker, and random rubble stone boundary wall to perimeter of site. It is, I consider, related to the nun's cemetery and the perimeter boundary wall of the cemetery which is located to the south of 12 Loretto Park. There is nothing to indicate that it extends to another section of wall or the wall running north of the cemetery and the rear of numbers 10 and 12 Loretto Park. I would, however, acknowledge the importance of retaining historical walls and features and the proposal should be considered in that context.

- 8.7.4. The architectural conservation officer of the local authority had no objections to the development and the insertion of an entrance in the wall provided the works were of a minimum intrusion, the height of the wall was retained and specified requirements were to be carried out and I would agree with this view and overall recommendation.
- 8.8. Impact on trees and open space planting is also raised in submissions by appellants.
- 8.8.1. I would note that there is a mature tree located to the south of the proposed entrance and that documentation was submitted by the applicant in relation to the impact of the proposed development on this particular tree and others in the area with recommendations outlined in relation to any ground works carried out.
- 8.8.2. Any works have the potential to affect the root system and in this regard the minimal the groundwork intervention the more the level of potential impact can be reduced. I would note that walls in particular new boundary walls for the houses have been constructed, the provision of a road and also underground drainage have occurred, in recent years which posed an equally potential impact to the tree in question and other trees in the immediate area.
- 8.8.3. I consider that in the context of the scale of the works if carried out in accordance with the recommendations outlined in the tree specialists report will not adversely impact on the tree and vegetation generally other than the area specifically within the band of the actual works.
- 8.9. Reference is made to the planning history and concerns that the provision of an access would lead to additional dwelling units using the proposed access. I note the matters raised but these are matters to be addressed should a proposal for any future development arise.

## 9.0 **Recommendation**

- 9.1. In view of the above assessment permission for the proposed development is recommended. I would recommend that intervention works are kept to a minimum and that the area be confined as indicated in the response by the applicant to the grounds of appeal. 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.

## 10.0 Reasons and Considerations

Having regard to the provisions of the provisions of the current Kilkenny City and Environs Development Plan 2014-2020; the zoning of the site as “Existing Residential”; the nature and pattern of uses in the vicinity; the nature, scale and design of the proposed development, it is considered that subject to it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would be acceptable in terms of traffic and pedestrian safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The grant of permission is for a retention of permission and to carry out works submitted accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 17<sup>th</sup> of February 2017 and the 29<sup>th</sup> of June 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 nature and extent of works shall be limited to the area and details as outlined in the response to the grounds of appeal received by the Board dated the 15<sup>th</sup> of September 2017, which restricts the level and scale of the intervention to the existing turning area and is restricted to the area outlined in yellow on drawing 111046/c/001 Rev. PL1.

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

- 3 Works relating to the entrance on the current wall shall be confined to the

creation of the entrance and associated piers. All details relating to the piers, the height of the adjoining wall and any repairs to the wall associated with the construction of the entrance and piers and of the materials used shall be submitted shall be submitted to and agreed with the planning authority prior to the commencement of any development works.

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

- 4 The works relating to alteration to the internal road network serving the proposed development shall comply with the detailed standards of the planning authority for such road works.

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

- .5 Drainage arrangements, shall comply with the requirements of the planning authority for such works and services. Only clean, uncontaminated storm water shall be discharged to the surface water drainage system.

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

- .6 Upon the opening of the new entrance from Loretto Park becoming operational the parking spaces and entrance to the site from Bishop's Hill shall cease.

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

- .7 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.

- .8 Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance

with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management

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. Derek Daly  
Planning Inspector

14<sup>th</sup> November 2017