



An  
Bord  
Pleanála

## Inspector's Report ABP-308590-20

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<b>Development</b>	Retention Permission of the 'as-constructed' dwelling base and modifications to dwelling to include roof plane windows.
<b>Location</b>	The Dormers , Waterford Road , Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	20436
<b>Applicant(s)</b>	Kate and Noel Sugrue
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Jane and Stephen Gillman
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	25 <sup>th</sup> of February 2021.
<b>Inspector</b>	Caryn Coogan

## 1.0 Site Location and Description

- 1.1 The subject site is located on the western side of the Waterford road exiting Kilkenny City. It is positioned inside (north) of the outer ring road and roundabout, within a built up residential area of Kilkenny city.
- 1.2 There was a dwelling on the site previously that has been demolished, and there is a new dwelling currently under construction. To the north and south are two existing dwellings. The dwelling to the south (the appellant's dwelling house) is a dormer bungalow accessed from Springmount housing estate to the west which consists mainly of dormer bungalow houses.
- 1.3 To the north there is a bungalow.
- 1.4 Access to the site is directly off the Waterford Road (R910) which forms the eastern site boundary. The eastern site boundary has a low boundary wall and is fronted by the public footpath.
- 1.5 The western site boundary is a boundary wall, and the southern site boundary is a 2metres block boundary wall.
- 1.5 The Waterford Road falls from south to north resulting in the appellant's dwelling being at a higher elevation than the applicant's dwelling. The building lines are fairly ad hoc on the western side of the Waterford Road, with no prevailing pattern.

## 2.0 Development

- 2.1. Permission has been sought for modifications to a permitted dwelling house which was granted under Planning Reference P18/739 (ABP 304312) comprising of the following:-
  - Removal of two permitted windows in the southern elevation;
  - New velux type roof-plane window to rear elevation;
  - New window at ground floor level on northern elevation;
  - Reduction in roof pitch from the previous permission, with no increase in the proposed ridge height;
  - To complete the modified dwelling on the 'as constructed' dwelling base.

## 3.0 Planning Authority Decision

### 3.1. Decision

Kilkenny Co. Co. granted planning permission for the proposed development subject to 2No. conditions.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports*

- The principle of the demolition has already been considered in the previous application.
- The lines of sight from the front of each dwelling is more important than maintaining colinear building lines.
- The base to be retained is higher than the 65.85m approved by ABP, which would potentially raise the entire house. However it is proposed to reduce the roof height to maintain the permitted ridge height of 74.1m OD reducing the height of the dwelling to 8metre as opposed to the permitted 8.35m. The revised eaves hight are not excessive for a two storey dwelling.
- Superficial measures are required to reduce the stark nature of the height and massing of the gable end when viewed form the neighbouring property. By way of further information, limestone cladding was included, and a new velux light
- Further information received 15<sup>th</sup> of September 2020

#### 3.2.2. *Other Technical Reports*

None

### 3.3. Prescribed Bodies

None

### 3.4. **Third Party Observations**

The adjoining neighbours to the south objected on the following grounds:

- The floor levels are incorrect
- Overshadowing
- Overlooking
- Eaves height
- Discrepancies in original planning application
- No space for landscaping
- Contrary to previous planning

## 4.0 **Planning History**

### **Planning Reg. No. 18/739 (ABP 304312-19)**

Planning permission granted by the planning authority and An Bord Pleanála for the demolition of existing habitable dwelling and the construction of a new two storey dwelling and storage shed.

Two other planning applications relating to the subject site are:

**Reg. Ref. P96/552:** Permission for a dwelling house on the site was granted in September 1996.

**Reg. Ref. P08/547:** Permission for a change of use from a dwelling to a clinic/surgery was granted in December 2012.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

The site is located within the Kilkenny City and Environs 2014 – 2020 administrative area. It is zoned 'existing residential' in the Plan.

Chapter 3 of the Plan addresses Core Strategy & Zoning, chapter 5 addresses Housing and Community, and chapter 11 addresses Requirements for Developments.

Chapter 3 notes that the objective for lands zoned Existing Residential is '*To protect, provide and improve residential amenities*'. Chapter 11 refers to residential standards including Scale of Development, Building Height Control, and Building Lines.

## 5.2. **Natural Heritage Designations**

The River Nore SPA (Site Code 004233) is c. 1.5km to the north-east

The River Barrow and River Nore SAC (Site Code 002162) is c. 1.5km to the north-east

## 5.3. **EIA Screening**

Having regard to the nature and scale of the proposed development comprising the demolition of a dwelling and the construction of a replacement dwelling in a serviced urban area there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 **The Appeal**

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

The appeal submission includes a lot of detail relating to the previous appeal on the site, reference 304312-19. I will summarise the relevant grounds of the appeal to the current planning application, because the previous appeal has been assessed and decided up and not open for consideration, as follows:

- The appellants are immediate neighbours to the subject development and adjoin the site to the south on the Waterford Road.

- **Planning History:** The applicant commenced work on the site following grant of permission under P18/739. The foundations were not laid in accordance with the permitted drawings, the rear wall was 2.3metres west of the permitted location, and the finished floor level was 420mm above the finished floor level permitted. The appellant took 160 proceedings when the applicant and the Council ignored his concerns.

In the assessment of 18/739 and subsequent appeal, it is clear the distance between opposing gables, and the colinear arrangement of the two buildings were key considerations in the inspectors determining that the scale, size and massing of the proposal were acceptable, and the inspector was misled by the application drawings which have been determined as part of the Section 160 proceedings to be grossly inaccurate.

The drawings associated with Ref 18/739 and the current proposal are grossly inaccurate. The building shown on the site layout does not match the building on the floor plans. The depth of the building from east to west is shown as being substantially bigger on the floor plans, with the difference being 2.3metre. It is now claimed the finished floor level was detailed at 65.85metres when it was in fact 66.3metres a difference of 0.456m which given the proximity of the appellant's house, is very significant. The application as permitted is unimplementable.

The site location plan grossly exaggerates the extent and location of the existing planting and landscaping on the appellants property particularly the front garden area. This gives the impression the third-party property is well screened when it is not. This was a major consideration in the assessment of the previous appeal.

Given that 18/739 is unimplementable from first principles, the permission granted by the Board was invalid, therefore no permission exists for the demolition of the previous house, therefore the current application should have included retention for the demolition of the original house as well as the works to date, consequently the current application is invalid.

The applicant and the architect chose to ignore the concerns of the third party and continued to build on site until they were stopped by the courts. The

applicants clear and reckless disregard for the proper planning of the area and the current appeal should be refused on this basis.

**Inaccuracies in the current planning application (Reg. No. 20/436):** The applicant is attempting to hoodwink the Board. The key inaccuracies relate to;

Changes to finished floor levels from those permitted under Reg Ref 18/739;

Alteration to the location of the proposed house further south on the site;

No drawings of works as constructed;

Referencing to landscaping proposals in 18/739 and non-existent planting

- **Changes in floor levels:** The applicants stated on the previous appeal that the floor levels were accurate when in fact they were incorrect. The attached affidavit points out the finished floor level of the floor slab as constructed is 420mm above the permitted level. There is no footpath remaining on site, another inaccuracy of the drawings. Figure 6 shows the side by side comparison of an extract of contiguous elevations of reg.no. 18/739 and 20/436. If the finished floor level of the original house were incorrect then the relative height of the ridgeline to the top of the boundary wall and the ground level on the appellants side would be the same. They are not. This demonstrates the current application drawings are inaccurate and misleading.
- **Alteration to the location of the proposed house.**

The proposed dwelling has moved 600mm closer to the appellants house that was permitted under 18739, and this is not highlighted in the notices or the current planning application. The result is both closer and higher in terms of the perceived effect.
- **No Drawings of Works as Constructed**

The public notices would suggest that all has been developed on the site to date are the foundations and floor of the dwelling. A significant quantum of the block has been erected and it has not been constructed in accordance with the permission. In addition, work has commenced on the garage in the south west corner of the site. There is no reference to the garage in the public notices and it would only be exempt if the house was complete. There are no

contiguous elevation drawings to show how it will appear relative to its surroundings.

- **Landscaping Proposals**

These cannot be provided as there is insufficient space between the southern boundary of the property and the building line of the southern elevation to accommodate the semi mature hornbeam trees.

- **Effects of Inaccuracies**

Some errors cannot be legally remedied, and the Board should simply refuse permission.

- **Design and Scale of dwelling and impact on Residential Amenity**

It is an improper legal basis to assess only the changes to the parent permission proposed under the current planning application. There are two elements to the planning application, the retention and its effects and consequential changes required to allow the retention to progress towards the completion of the house. The retention cannot be an excuse for why the development is being amended.

The original application is unimplementable as permitted. It needs to be amended to be implemented. Any amendment should be considered and assessed on the basis on which it was originally permitted. In the planning officer's report appears to find a compromise solution to allow the development to progress. The conduct of the applicant was not taken into consideration either, the application would have been declared invalid if a more forensic examination of drawings were given.

The reporting officer had little regard to the inspector's report on 18/739. The alignment of the rear boundary lines of 18/739 was a significant consideration in the inspector's assessment.

The planning report should not refer to itself as the planning authority, and the report is trying to reset the context of the circumstances of the case and the report would appear to be assessing the impact of the development on the appellant's property as opposed to the reverse. The report's reference to exempted development to the rear and side of the proposed dwelling are



inappropriate. In the report there would appear to be confusion regarding the visual impact and the overbearing impact, and not the fact the unauthorised development has increased the perception of overlooking.

The increased finished floor levels by c400mm effectively negates the level difference between the two sites and lessens the effect of the boundary wall between the properties. A significant part of the upper level of the ground floor windows are visible above the dividing wall on the front and rear elevations.

In the event the relative height of the top of the boundary wall to the proposed ridgeline is correct in the permitted drawings, then the proposed drawings are substantially flawed and misrepresent the potential for overlooking. Figure 6 illustrates the green lines drawn from the top of the ground floor windows on the 2018 permission align with the top of the boundary wall. When compared with the 2020 application it would mean a significant part of the upper level of the ground floor windows are visible above the wall both on the front and rear elevations. If drawn correctly the level of the appellant's house should be reduced in the contiguous elevation which would give a much better impression of the overbearing nature of the house both to the front and rear of the neighbouring house. The planning authority and the reporting officer ignored the inspector's assessment. The mitigating factors in terms of the difference in ground levels, the co-linear nature of the building lines and the perception effect of planting on the appellant's property have been ignored by the applicants, and they have proceeded with the house as built, at a location that will have full impact on the neighbouring property. This should not have been ignored in the assessment of the application, and there was every attempt to facilitate the development.

## 6.2. Applicant Response

The applicant's response to the appeal is detailed. The following is a summary of the relevant points:

- The applicants, the Sugrues, did everything possible to address the neighbouring Gillman's concerns in April 2020, including getting a friend to

make a complaint against the development so that the matter could be investigated by the planning authority, and Warning Letter was issued on 26<sup>th</sup> of May 2020. This led to the current planning application. The Board is asked to disregard the appellants selective and misleading depiction of the response of the applicants.

- In terms of constructing the permitted 18/739 (ABP 304312) The applicants complied with Conditions No.s 2 (Construction Management Plan) and 4 (Landscaping) in February 2020.
- Front Building Line: - The building line under construction is in line with the established building line at the Waterford Road. It is acknowledged the position is 850mm west of the position shown on the permitted drawings granted under planning Reg. 18/739.
- Finished Ground Level :- The finished ground floor level of the house under construction matches the 'as existing floor level of the demolished dwelling'. The benchmark was carefully set out using a laser level. It does not transpire that the level 65.85m OD as indicated on the approved drawings on Reg. No. 18/739 was incorrect, with the true level being 66.296m, which is some 446mm higher than indicated.
- Current application :The application consists of two parts whereby modifications to the permitted house are sought, and to complete the modified house on the 'as built' base, with retention for the 'as built' base.

Two permitted windows are omitted from the south elevation facing into the appellant's residence, with a new roof plane window inserted into the rear elevation and a new window into the northern elevation. The proposed dwelling maintains the permitted ridge height at 74.1m AOD. Following a further information request and consideration of the objections, the proposed south and north elevations were modified with amendments indicated on drawing No. 101F1 with the roof plane window now located in the southern roof-plane slope which does not result in overlooking.

- Assessment of proposed development with respect to appellant's property:

The main planning issues relate to building height, floor levels, the position of the proposed dwelling on the site and the relationship to the appellant's dwelling.

- Building Height/ Levels

The previous dwelling on the site had a ridge height of 72.6m OD and a finished ground level of 65.85m OD (now established to be 66.3m OD and not 65.85m). the approved ridge level of the permitted house is 74.1m OD with an overall height of 8.35m above ground level of 65.75m OD. In the cover letter of 20/436, the applicant confirmed the finished floor level of the house under construction to be 66.29m OD and not 65.85m OD. This matches the ground level of the dwelling demolished on site. There is no increase in the ridge height, and the ridge height is identical at 74.1m OD, and this has been achieved by a shallower roof pitch as seen in section AA Drawing No. 104PL, which shows a reduced attic height.

- Position of the House on the Site

Drawing No. 101 ABP shows the existing as constructed dwelling footprint with the outline of the demolished dwelling in green. The front facades align with the building in line at the Waterford Road and the rear building line extends beyond the building line of the nearest section of the appellants house to the south. The drone images clearly show the 'as constructed' footprint currently on site and the subject of retention.

The south elevation will be 1.3metres from the boundary wall and the separation distance between the south elevation and the gable end of the appellant's house measures approximately 4metres.

Drawing No. 101 FI outlines the approved south elevation superimposed in broken blue lines onto the previously permitted elevation in the context of the current proposal.

- Relationship between proposed dwelling and Gillman residence

The relationship between the proposed house and the appellants house was assessed under Section 7.1 of the Inspectors Report on the previous planning application. Most of the content is relevant to the current proposal.

## **Overlooking**

There are no windows in the proposed elevation facing the appellants property except the roof-place window. As regards the ground floor window in the family/ TV room it is more than 12metres form the communal site boundary, and having regard to the height of the boundary, there is no overlooking. The appellants complain about the 'perception of overlooking'. From first and ground floor windows, all of which are 446mm higher than the approved windows because of the higher finished floor levels. They largely enjoy the same relationship with the adjoining houses as the permitted dwelling. The windows face west and are at right angles to the appellant's property.

## **Overshadowing**

The proposed house is located to the north of the appellants property so there is no overshadowing.

## **Overbearing**

The overbearing issue was addressed in the Inspector's Report section 7.1.7. This assessment is still valid for the current development. There is no increase in height. The southern elevation has been erected in the same position relative to the appellants southern gable end. There is no change in site size. The relationship between the footprint of the houses is clear, the majority of the south elevation is contained between the front and rear boundary building lines of the dwelling to the south which is at it's narrowest on it's southern elevation. The rear building line is located further west so its position relative to the Gillman house is altered from the permitted layout.

Drawing 101 APB shows the location of the demolished dwelling and the as constructed dwelling base. There are also photos from the previous file illustrating the demolished house when viewed from the front of the appellants house. The rear building line of the demolished house extended much more west than the current dwelling.

The proposed south elevation now incorporates a hipped roof element reducing its mass and height and its potential to overbear upon the appellants

property. Stone cladding will break up the visual appearance. The maintenance of 4m separation distance between the gable walls of both houses and the architectural treatment of the façade ensures the south elevation is not overbearing. The difference between the proposed elevation and the permitted elevation under Planning Ref. 18/739 does not warrant a different planning outcome.

- Response to Appeal

A significant portion of the appeal is based upon criticisms of the previous planning application.

It is accepted the construction works carried out on the site do not accord with the grant of permission under Planning Reg. 18/739. It is not agreed that the permission is unimplementable.

Every effort was made by the applicants to involve the council in the dispute when it arose between the parties in April 2020. It was the appellant's own choice to take Section 160 proceedings.

The front garden and key amenity space of the neighbouring house to the south. Figure 4 illustrates the external area at the south west corner of the adjoining property that includes a seating area and barbeque. This area is remote from the appeal site, and is completely screened from the proposed development. There will be no material impact to this area.

The setting forward of the building line was to align with the Waterford Road streetscape, and it was never represented as being aligned with the building line at Gillman's house as shown on Figure 4 of the appeal. The rear building line on the site layout plan is not colinear.

It is rejected the inspector on the previous case was misled regarding landscaping as it would have been obvious during a site inspection.

The appeal is incorrect in stating the depth of the building is 2.3metres larger on the floor plans than on the site layout. The difference is approximately 1metre and is easily verified on relevant drawings of planning reference 18/739. The approved 1:100 scale floor plans and elevations on DRWG. No. 1021 show a house width of 11.7m and site layout plan on Drawing 101FI

shows the house width of 10.7metre. Therefore, the discrepancy is 1m, and not 2.3mestres as alleged.

The 'as constructed' floor level is 0.446m higher than the permitted level of 65.85 OD and this element of the works has not been implemented to date as per the plans but that does not imply it is unimplementable.

The approved house differs from the dwelling under construction in its finished floor level and position on the site. The planning authority assessed this, and approved it, and now this is before the Board.

There is an area of planting immediately inside the driveway at the northwest corner of the appellant's front garden. The site layout does not illustrate a large tree on the driveway of the appellant's house. The layout illustrates the driveway and access to the appellant's house immediately to the south of the planting and there is no tree.

The planning authority was satisfied the house was demolished in accordance with the permitted development, and a further application for retention of demolition works is not required.

In short the building was located further west on the site than shown on the approved site layout. The floor level is increased by 446mm, but the approved ridge height is unchanged at 74.1mOD, which is similar in height to a section of the Gillman residence. The south elevation provides the same 4metre separation distance between opposing elevations.

The modifications to the dwelling do not give rise to any material planning considerations to warrant a refusal.

This is an application for a house and not a portion of a house, and it would serve no practical purpose to provide drawings of the foundation slab and lower portion of the walls.

In respect of the garage in the southwest corner of the garden, permission Ref. 18/739 authorised a garage in the northwest corner of the garden. The garage is exempt under the planning regulations.

### 6.3. **Planning Authority Response.**

The planning authority had nothing further to add on appeal.

## 7.0 **Assessment**

- 8.1 This appeal relates to amendments to a permitted development that has been previously assessed and granted by the Board under appeal reference **ABP-304312** for a replacement dwelling on a serviced site inside of the outer ring road in Kilkenny City. Therefore, the principle of the development is not under further consideration. Under the previous planning application, permission was granted for the demolition of the dormer bungalow on the subject site. The demolition works have been executed to date, and base of the new two storey dwelling has been constructed and some side walls.
- 8.2 The contiguous neighbour to the south objected to the original proposal and brought a third-party appeal to the Board regarding the replacement dwelling (**ABP 304312-19**). The same third-party appellant is not satisfied with issues relating to compliance and construction of the permitted dwelling house and taken third party civil proceedings against the development under construction. The same appellants have taken this third party appeal against the planning authority's decision to grant permission for retention of the 'as constructed base' and other proposed works.
- 8.3 In my opinion a large volume of the appeal content relates to non-compliance of the permitted development, to the validation of the planning application, and other issues which are all beyond the remit of the Board. I will focus my assessment of the appeal on matters relating to the development as presented in the public notices.
- 8.4 The third party's ridiculing of the planning authority's assessment of the case and lengthy criticism of the assessment of the previous planning application are not matters for this assessment. I consider the previous planning application and appeal were both robustly assessed by the planning authority and An Bord Pleanala. Furthermore, Kilkenny's Co. Co's assessment of the current planning application was comprehensive and reasonable given the brownfield nature of the site and the planning history of the site. The focus of this assessment will solely relate to planning considerations associated with the planning application **P20/436**.

- 8.5 From the outset the Board should examine the accompanying site layout *Drawing No. 102PL* to understand the basis of the appeal. The subject site addresses the Waterford Road, with the front elevation of the subject dwelling facing east towards the Waterford Road. The third-party appellant's house is immediately to the south, and the access to same is from a housing estate to the west (Springmount), and the front elevation of the appellants' house is the western elevation. This is an unusual configuration, whereby the rear of the dwelling on the subject site, is orientated west like the front elevation of the appellant's dwelling. There is no vehicular access to the appellants house from the Waterford Road. There is block boundary wall between the two properties running the full length of the southern site boundary.
- 8.6 There are five components to the planning permission applied for by the applicants. I wish to examine the positioning of the 'as constructed' base in the context of the permitted development on site, and its implications for the adjoining dwelling to the south. I revert to the original planning application applied for under planning reference 18/739. The original proposal set the proposed dwelling back deep into the subject site and following a request for further information, the footprint of the dwelling was brought forward (eastwards) on the site to be in line with the rear building line of the dwelling to the south. The dwelling permitted by the planning authority and subsequently the Board, under planning reference 18/739, had front and rear building lines that were practically flush with the appellants dwelling to the south. Unfortunately, when the applicants commenced construction works on the site, (the foundation base and the commencement of the walls), the footprint of the subject dwelling was repositioned westwards on the site bringing the rear building line of the subject dwelling forward of the front building line of the appellant's house. Given the robust assessment of the planning Reg. No. 18739, the explanation of the applicant's agent by way of further information for the revision to a colinear building line to protect the amenities of the appellant's property to the south, it is disappointing to now find the applicants reverted to a new building line set beyond the front building line of the dwelling to the south. From my reading of the inspector's report on ABP 304312, the recommendation to grant permission for the proposed replacement dwelling was based on the western building line being flush on both houses, as stated in the report '*The drawings indicate that there will be a c.4m between gable walls. Having regard to the large sites belonging to the*



*appellant and the applicant, the c.4m distance between gable walls, the alignment of the building lines, I am satisfied that the size, scale and massing of the proposal is acceptable and will not have an overbearing impact*'. This issue needs to be re-examined in its entirety because it is unacceptable given the planning history of the site and the nature of the appellant's concerns. The full implications of same need to be reconsidered to determine whether or not, the existing residential amenities of the dwelling to the south will be negatively impacted upon by the repositioned dwelling, which is also been constructed at a higher finished floor level than previously permitted.

- 8.7 The ground levels between both curtilages (subject dwelling and appellant's house) are different, the subject site is slightly lower than the appellant's curtilage as seen in the section drawings of the planning application. According to the appellant the incorrect finished floor levels were provided under the previous planning application. Presently the 'as constructed' base is at 66.29m above datum which is 0.44m higher than the floor level permitted under the previous planning application. This has implications for the overall height of the dwelling. To mitigate the increase in the finished floor level, the applicant has reduced the roof pitch of the proposed dwelling creating an overall reduction in height of the dwelling, to 8metres. In addition, the permitted windows in the southern elevation have been removed. The proposed eaves are at 5 metre. On balance, this represents a normal and modest height for a two-storey dwelling. In terms of the appellant's property there is a hard surfaced area adjacent to the communal wall in close proximity to the proposed dwelling. There is a small coppice of trees and shrubs to the west of the hard surface area, which forms the north west extremity of the appellants curtilage.
- 8.8 Having regard to the orientation of both dwellings, there will be no issue with overshadowing associated with the relocated footprint due to the elevation been positioned north of the third party's property. The removal of the window openings from the southern elevation ensures there will be no overlooking issues (although, there were no overlooking issues associated with the permitted openings). Angled overlooking from first floor windows is anticipated in urban settings. I note there are no opposing windows proposed. The ground floor window to the rear of the proposed dwelling and facing south, is located a significant distance from the adjoining property at ground floor level, and is screened by the communal wall. I am

satisfied there will be no undue loss of privacy or overlooking associated with the proposed development.

- 8.9 The only concern is the perceived **overbearing** issue when viewed from the appellants property. In this context, it must be established if the impact of the proposed development will impact negatively in terms of scale, massing and dominating effect when viewed from the appellant's property. The appellants dwelling has a variety of building lines and roof heights spread across the width of the site from north to south. At the northern boundary, contiguous to the subject site, the legibility of the appellants house is low in profile and narrow compared to the substantial bulk of the residual house. Therefore, it is understandable the perceived visual impact of the proposed two storey projection beyond their front building line might appear to be significant to the appellants. However, the projection is considerably less than the building line of the dwelling that previously existed on the site (having examined aerial photographs and the planning history file). When one examines the overhead aerial view of the as constructed dwelling base relative to the existing building line to the dwelling to the south, I do not consider the subject relocation of the permitted footprint westwards on the site to be significant.
- 8.10 Therefore, the issue is not the projecting building line but the height and massing of the subject dwelling when viewed from the neighbouring curtilage. The ridge height of the proposed dwelling is 1.24metre higher than the adjoining ridge height to the south which steps up to a similar height of 74.02 OD across the appellant's house. This is not a significant increase in height from the prevailing neighbouring ridge heights in the general vicinity of the site. I do not consider the proposal will be overbearing when viewed from the neighbouring property to the south, as I refer to the south elevation drawings and contextual south elevation drawings (Drawing No. 101 F.I.). There is a 4metre separation distance between the opposing elevations, and a circa 2metres block boundary wall between the properties. The claim that the proposed development is overbearing when viewed from the adjoining property to the south cannot be materially justified to result in serious injury to existing amenities, when it cannot be established that there will be any adverse of existing amenities given the layouts of both dwellings, their heights and separation distance. This is a suburban residential setting, the context and legibility of the proposed

dwelling within the existing built environment is normal in urban design terms and in my opinion, will not create an overbearing impact. The use of the limestone cladding is a welcome design feature that will break up the visual appearance of the nap plaster finish of the southern elevation.

- 8.11 The third party has submitted the depth of the proposed dwelling has been inaccurately depicted and therefore misleading on the previous planning application on site. The drawings accompanying the current planning application and appeal (*Planning Reference P20436*), are to regularise the elements of the previous permission that were not implemented correctly on site because of the positioning of the dwelling and the level of the base (increased by 446mm). In my opinion, the current set of drawings are acceptable. Furthermore, it is not a requirement under the planning laws to provide drawings of the foundation slab as constructed on the site. In my opinion, the submitted documentation relate to the full nature and extent of the development as per the public notices.
- 8.9 As regards the garage/ shed under construction, it has been relocated from the north-west corner to the south west corner of the site, and this revision did not form part of the public notices. The applicant's agent is claiming it is exempt under the Planning Regulations, however as it formed part of the development description under P 18739, I am not convinced the construction of same is exempted development. However, this does not form part of this appeal, and should be omitted by condition from any favourable decision.
- 8.10 In relation to the applicant's disregard to the third party's concerns on site during the construction period of the dwelling house, which notably occurred during April and May 2020, leading to the planning authority issuing a Warning Letter on the 22<sup>nd</sup> of May 2020, and a civil Circuit Court injunction on 22<sup>nd</sup> of May 2020. I have examined both parties' submissions on this issue. The works ceased on the site in May 2020, and a new planning application, the subject of this appeal, was submitted early July 2020. The Board cannot adjudicate on these issues. However, I wish to state the applicants acted expeditiously in applying for permission to retain the works carried out to date.

**8.11 Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, no appropriate assessment issues arise and it is not

considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 9.0 Recommendation

Having regard to the documentation on file, the appeal, the site inspection and the assessment above, I recommend that permission for the above described development be granted for the following reasons and considerations, subject to conditions.

## 10.0 Reasons and Considerations

Having regard to:

- (a) the provisions of the Kilkenny City & Environs Development Plan 2014 - 2020,
- (b) the nature, scale, building line and orientation of the development proposed,
- (c) the proposed height, separation distances and design specification, and
- (c) the mixed pattern of development in the area,

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. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 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 8 <sup>th</sup> of July 2020, as amended by the further information particulars received on the 15 <sup>th</sup> of September 2020, 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.
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	<b>Reason:</b> In the interest of clarity.
2.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In order to screen the development and in the interest of visual amenity.</p>
3.	<p>This grant of permission does not include for the garage/ shed structure as indicated on the site layout plans.</p> <p><b>Reason:</b> In the interests of clarity.</p>

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Caryn Coogan  
 Planning Inspector

18<sup>th</sup> of March 2021