



An
Bord
Pleanála

Inspector's Report ABP-312589-22

Development	Construction of a Playground, public amenity space.
Location	Moat, Freshford, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	21652
Applicant(s)	Freshford Playground Group
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Selina Fullam
Observer(s)	None
Date of Site Inspection	6 th March 2022
Inspector	Mary Crowley

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1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.33ha is located on the eastern side of Freshford opposite the Medical Centre. The rear of the site opens to the adjoining GAA grounds with the primary school located further to the south-west. The roadside boundary comprises a high block wall. The site is accessed by means of a pedestrian entrance that also provides access to the GAA grounds to the rear. The immediate area is characterised by ribbon development which is typical of an approach road to a rural town / village such as Freshford. A set of photographs of the site and its environs taken during the course of my site inspection is attached. These serve to describe the site and location in further detail.

2.0 Proposed Development

2.1. Planning Permission was sought on the 28th July 2021 for the construction of a playground, public amenity space, access road, 13 no parking spaces, fencing, lighting, landscaping, removal of the existing shed and all associated works.

2.2. The application was accompanied by the following:

- Letter from Kilkenny County Council (landowner) giving consent to Freshford Playground Group to make a planning application
- Letter from St Lachtains National School (only primary school in Co Kilkenny with an early intervention unit for children of preschool age with autism) supporting the application stating *the positive impact a local playground would have on the children of [the] school.*
- Letter from Freshford.ie supporting the application
- Letter from St Lachtains GAA Club supporting the development together with consent to make a planning application on lands in their ownership

2.3. Further information was submitted on the 19th November 2021 together with revised public notices submitted on 8th December 2021 and summarised as follows:

- Stormwater design calculations and associated details prepared by Byrne & McCabe Design Ltd

- Letter from Kilkenny County Council stating that it will take the playground in charge, will arrange to insure the playground for public liability cover and carry out weekly, quarterly and annual independent inspections. The playground will be jointly maintained with the local community. The proposed trimming back of hedgerow to facilitate erection of a fence to neighbouring property will be overseen by the Parks Department. A 2.5m high acoustic style barrier fence will be erected to the base of the hedgerow, raised approx. 100mm from the ground level to allow movement of small mammals. Ongoing maintenance will be by Kilkenny County Council Parks Department once taken in charge.
- Letter from St Lachtains GAA Club confirming agreement and consent to reroute the permitted pathway (Reg Ref 21/238) to facilitate the proposed development together with agreement to repair and maintain existing ball stop net.
- Letter of support from Freshford Tidy Towns

3.0 **Planning Authority Decision**

3.1. **Decision**

- 3.1.1. Kilkenny County Council issued a notification of decision to grant planning permission subject to 9 no generally standard conditions.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

- The **Case Planner** in their first report requested that the following further information be sought. Further information was requested on the 20th September 2021. Revised site notices were requested on the 29th November 2021.
 - 1) Stormwater design calculations for paved area and soakaway
 - 2) Proposed opening hours and management of the amenity
 - 3) Address the overlap with the permitted walking track at the southern portion of the site

4) Certification from a qualified horticulturist or landscape architect that the proposed extent of cutting back along the east boundary will not impact adversely on the existing hedge and trees

- The **Case Planner** in their second report and having considered the further information submitted recommended that permission be granted subject to conditions. The notification of decision to grant permission issued by Kilkenny County Council reflects this recommendation.

3.2.2. Other Technical Reports

- **Environment Section** – Further information required in relation to stormwater design calculations, revised site layout confirming red line boundary is in the ownership of the applicant or have approval from the registered owner, details of boundary treatment addressing third party concerns, proposed opening hours and management of the amenity. In a second report and having considered the further information there are no stated objections subject to conditions relating to stormwater, waste, taking in charge and installation of an acoustic barrier.
- **Road Design** – No objection subject to conditions set out in their report relating to entrance details and layout and lighting. Also stated that a road opening license shall be required in respect of all works affecting the public road and footpath. In a second report and having considered the further information there are no stated objections subject to conditions relating to the entrance layout, lighting and dished kerbing.
- **Parks Section** – No objection subject to conditions set out in their report requiring compliance with relevant European Standards, EN1177 (safety surfacing) and EN1176 (playground equipment).

3.3. Prescribed Bodies

3.3.1. None

3.4. Third Party Observations

3.4.1. There are 3 no observations recorded on the planning file from (1) John Connery, (2) Marie Fullam and (3) Selina Fullam. The issues raised relate to anti-social behaviour,

traffic safety, inadequate sightlines, legal interest, inadequate boundary treatment, playground to be locked at night and inadequate public consultation.

- 3.4.2. Following the submission of further information there were 3 no further observations recorded on the appeal file from (1) John Connery, (2) Selina Fullam and (3) Marie Fullam. The issues raised relate to traffic hazard, round the clock access, future degradation of the facility, management of playground, conflict of interest, boundary treatment, inadequate public consultation, concrete block / brick wall to be erected along the eastern boundary and no easement permitted.

4.0 Planning History

- 4.1. There are two previous appeals on this site summarised as follows:

- **ABP 210564** – The Board refused permission for the demolition of existing workshop and sheds and the construction of a new Childcare Centre to include administrative and ancillary facilities, landscaping and associated site works.

- 4.2. The following history pertaining to the adjoining GAA development has been submitted with the appeal file:

- **PL21/238** – Planning permission granted to St Lachtains Hurling Club for the construction of a new 2m walkway around the perimeter of the existing sports grounds, together with a 6m high lamp posts at 30m intervals and associated site works at St Lachtains GAA Field subject to 5 no generally standard conditions. A section of the permitted walkway adjoins the southern boundary of the appeal site and it is noted that a pedestrian gate is to be provided from the appeal site to the GAA grounds.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative plan for the area is the **Kilkenny City and County Development Plan 2021-2027**.

5.2. Natural Heritage Designations

5.2.1. The site is not located within a designated Natura 2000 site.

5.3. EIA Screening

5.3.1. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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

6.1.1. The third-party appeal was prepared and submitted by Selina Fullam, Belfast and may be summarised as follows. The appeal was accompanied by folio details and land registry maps.

- **Pre-Planning Consultation Adjoining Landowner** - The works will impact on Marie Fullam's property should access be required to her property which is denied. There is also a question of easement in respect of the sightline over Marie Fullam's property which is also denied.
- **Boundaries** - The site boundary is incorrect and appears to encroach onto Marie Fullam's property.
- **Sightlines & Easement** - Sightlines fall far short. The correct sightlines would extend not only over Marie Fullam's property but also Marie and Aodan Fullam's property which is located beside Marie Fullam's property. An easement would not be granted over either property. Further she is not willing to any modification to her boundary wall or have any trees removed. The Law Society of Ireland advice the need to address the issues of formally obtaining an easement and the need for the planning authority to refrain from granting permission until the agreement for the easement is formalised.
- **Planning History** - Reference is made to a previous appeal on this site (PL/10/210564) where the appeal was upheld stating that "sightlines are restricted

in an easterly direction". Reference is also made withdrawn planning application Reg Ref P15/382 for the removal of the existing gate and hedge and its replacement with a new entrance and comments in relation to modifications Marie Fullam front boundary. Submitted that lands were transferred to the Council in order to create a footpath for pedestrians' safety. The works were carried out by the Council. Land Registry confirm that no formal transfers have taken place. The appellant is following up on the matter with Kilkenny County Council.

- **Devaluation of Property** - An easement registered as a burden on Marie Fullams property would likely lack as a deterrent to any potential purchaser and lead to a reduction in price.
- **Road Opening License** – It is unclear if the road opening license is needed in order to either (1) connect the soakaway proposed to the public storm / combined sewer or (2) to allow run off to the stream across the road
- **Conflict of Interest** – The Council owns the site, has a clear interest in the site, intends to have a heavy involvement in the playground and is the authority awarding planning permission. Further Kilkenny County Council also provided a response to the further information without certification of qualifications as required.
- **Fence at Eastern Boundary** – The proposal for fencing has at no stage been discussed with Marie Fullam and the acoustic fence proposed appears to be a cheap option. Marie Fullam requested that a wall be built. Further no proposal has been made to indemnify Marie Fullam against any damage to property or individuals that might arise. There may be damage to tree roots as a result.
- **Anti-Social Behaviour** – The establishment of an unsecured unfenced playground will only be an invitation to anti social behaviour.
- **Road Safety** – Apart from the issue of the defective sightlines, it seems no investigations were carried out relating to traffic and road safety despite this being a very busy regional road.
- **Trees** - Marie Fullam has not been consulted as to what works might affect the trees on her property. The boundary is long established and should have been delineated correctly on all maps. Marie Fullam's boundary hedge and trees should remain untouched until the party boundary between the respective properties is identified and physically marked.

6.2. Applicant Response

6.2.1. The following response to the third party appeal has been prepared and submitted by the applicant, Freshford Playground as summarised:

- Project has been ongoing for the past 9 years with numerous meetings and events taking place. The appellants did not share their views or concerns during this time.
- Freshford community has been highlighted by Kilkenny County Council as an area that needs “upgrading”.
- This amenity is planned to coincide with the walkway the GAA are currently developing and have received planning for. It is also adjacent to the national school that has an ASD Unit and will be very beneficial to them.

6.3. Planning Authority Response

6.3.1. Kilkenny Co Co in their response to the appeal submitted the following comments:

- The site is within the 50kph speed limit, and the Roads Section advised that sight lines comply with DMURS. Development do not appear to require works or access to the appellants property to achieve sightlines.
- An Acoustic barrier fence was proposed by way of further information
- Freshford Playground Group having secured funding under the Town & Village Renewal Scheme submitted a planning application with the technical assistance form the Parks Section as ultimately it will taken in charge by the Council.
- Regarding the setting back of the roadside boundary to accommodate a footpath and registration of same it would appear that this may require a land dedication agreement rather than a change to the folio.

6.4. Observations

6.4.1. None

6.5. Further Responses

6.5.1. None

7.0 **Assessment**

7.1. This assessment is based on the plans and particulars submitted with the Planning Application on 28th day of July 2021 as amended by further information submitted on the 19th day of November 2021 together with revised public notices submitted on 8th December 2021.

7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings.

- Principle
- Traffic Safety
- Residential Amenity
- Legal Interest
- Appropriate Assessment
- Other Issues

7.3. **Principle**

7.3.1. The appeal site is located within the village envelop (50 kph) of Freshford and to the east of the village centre. While the site fronts onto the R693 it also adjoins the local GAA grounds to the rear with the village primary school in close proximity further southwest.

7.3.2. It is evident from the information on the appeal file together with my site inspection that the proposed scheme has been well considered and is an appropriate use of this green field site. Further I consider the collaborative approach with the adjoining GAA grounds whereby the previously permitted walking route is to be amended to accommodate the proposed playground together with the wider permeability that this development will facilitate will contribute positively to both the adjoining uses (sports and education) and to the wider village. The overall design and its wider contribution to the connectivity within the village is to be complemented. Accordingly, I am satisfied that the principle of this multi-stakeholder development to be acceptable at this location.

7.4. Traffic Safety

- 7.4.1. Concern is raised that there are inadequate sightlines available at the proposed access / egress to this site. It is further submitted that the appellant is not willing to allow any modification to their property in order to facilitate sightlines.
- 7.4.2. As observed on day of site inspection the appeal site is within the 50kph speed limit. I refer to the technical reports on the file and I agree that the proposed development in terms of sight lines comply with the requirements of DMURS and therefore the development does appear to require works or access to the appellants property to achieve sightlines.
- 7.4.3. Given the location of the appeal site together with the layout and nature of the proposed scheme I am satisfied that the vehicular movements generated by the scheme would not have a significant material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in the immediate area. Overall, I consider the proposal to be acceptable and I am satisfied that the proposed development will not result in the creation of a traffic hazard.

7.5. Residential Amenity

- 7.5.1. I note the concerns raised with regard to the adequacy of the proposed acoustic barrier along the eastern boundary of the site. In this regard I refer to the further information submission and the letter from Kilkenny County Council together with Drg P-02A for details pertaining to the proposed 2m high acoustic timber post and solid panel fence. This is instead of the original proposal to erect a steel paladin fence.
- 7.5.2. While the amended proposal will afford the adjoining residential property greater privacy, security and reduced noise levels I am concerned with its long term maintenance and effectiveness. However, I note from correspondence from Kilkenny County Council that they will carry out regular inspections and ongoing maintenance once the playground is taken in charge. I am therefore satisfied that the proposed acoustic barrier is acceptable.

7.6. Legal Interest

- 7.6.1. I note the concerns raised regarding the red line boundary. Having considered the information available on file I am not satisfied that the objectors in this case have demonstrated that the applicant does not have sufficient interest to carry out the works pertaining to proposed development. However, I would point out 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, Section 34(13) of the Planning Act (as amended) states that a person is not be entitled solely by reason of a permission to carry out any development. Should planning permission be granted and should the appellants or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 (as amended) is relevant.

7.7. Appropriate Assessment

- 7.7.1. Having regard to the nature and scale of the development and its distance to the nearest European site, 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.

7.8. Other Issues

- 7.8.1. **Anti-Social Behaviour** – I note the concerns raised by the appellant. I refer to the further information submission where it states that the completed playground will not be lit at night and that it is not intended to close same.
- 7.8.2. There is nothing on the appeal file to suggest that anti-social behaviour is a significant problem in Freshford. However, given the nature of the proposed scheme it is my view that it should be designed to reduce any potential for any negative social impact. Therefore, given the location of the scheme fronting onto a public road it is recommended that the existing 1.8m roadside blockwork wall be reduced to 1.2m. Subject to this amendment I am satisfied that it would be unlikely that the development would lead to any significant levels of anti-social behaviour, if any.

- 7.8.3. **Pre-planning Consultation** – I note the concerns raised that there was inadequate consultation with the appellant prior to the submission of a planning application. While pre planning consultation is not mandatory it is always to be encouraged particularly where a proposed scheme may impact on adjoining landowners or other interested parties. However, in this instance I am satisfied that the appellant was aware of the development, submitted their observations to the Planning Authority and also appealed the decision to the Board.
- 7.8.4. **Conflict of Interest** – It is submitted that as the Council owns the site there is a conflict of interest in making submissions by way of further information and also granting planning permission. It is not unusual for a Local Authority to work with a local community in bringing forward an amenity development for the wider public benefit of an area. There is nothing on the appeal file to suggest that the Local Authority has not been forthright in declaring its interest or support for the scheme.
- 7.8.5. **Devaluation of Property Values** - I note the concerns raised in the grounds of appeal in respect of the devaluation of neighbouring property. However, having regard to the assessment and conclusion set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.
- 7.8.6. **Development Contributions** – I refer to the Case Planners report together with the Kilkenny Development Contribution Scheme. A development contribution is not applicable in this case.

8.0 Recommendation

- 8.1. It is recommended that permission be **GRANTED** subject to conditions for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the Kilkenny City and County Development Plan 2021-2027, to the location of the site in an established residential area and to the nature, form, scale and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development

not seriously injure the residential or visual amenities of the area and would be acceptable in terms of traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

10.0 Conditions

1.	<p>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 19th day of November 2021 and 8th day of December 2021, 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.</p> <p>Reason: In the interest of clarity</p>
2.	<p>The existing 1.8m roadside blockwork roadside wall shall be reduced to 1.2m. Details shall be agreed in writing with the Planning Authority prior to commencement of work on site.</p> <p>Reason: In the interest of proper planning and sustainable development.</p>
3.	<p>a) Prior to commencement of development, the developer shall submit and agree in writing with the Planning Authority an alternative entrance detail and layout maintaining the existing footpath and giving priority to pedestrians and cyclists.</p> <p>b) The developer shall agree in writing with the Municipal District Office the finishes, construction make up and detailing of the proposed access and to ensure that the access is clearly defined with contrasting material types.</p> <p>c) The existing kerbing shall be dropped for vehicular access and the footpath / entrance reconstructed to cater for traffic loading.</p> <p>d) The applicant shall provide dished barbing and tactile paving at all crossing points along pedestrian desire lines within the development.</p>

	Reason: In the interest of traffic safety.
4.	<p>The playground shall be in compliance with relevant European Standards, EN1177 (safety surfacing) and EN1176 (playground equipment) and shall be certified as being fit for play by a suitably qualified independent play inspector prior to use.</p> <p>Reason: In the interest of clarity, public safety and proper planning and sustainable development.</p>
5.	<p>Comprehensive details of the proposed public lighting system to serve the development shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. The agreed lighting system shall be fully implemented and operational, before the proposed development is made open to the public.</p> <p>Reason: In the interest of public safety and visual amenity</p>
6.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health</p>
7.	<p>All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.</p> <p>Reason: In the interest of visual amenity</p>
8.	<p>The development shall be taken in charge by the Parks Department of Kilkenny County Council upon completion of works, which includes for the maintenance and upkeep of the park.</p> <p>Reason: In the interests of proper maintenance and to provide for the protection of the environment.</p>
9.	<p>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</p>

	<p>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.</p> <p>Reason: In the interest of sustainable waste management.</p>
10.	<p>The site and building works required to implement the development shall be carried out only between the hours of 0800 to 1800 Monday to Fridays, 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.</p> <p>Reason: In order to safeguard the residential amenities of adjoining property in the vicinity</p>

Mary Crowley

Senior Planning Inspector

31st March 2022