



An
Bord
Pleanála

Inspector's Report

ABP-314341-22

Development	Construction of an enclosed bin store in the existing rear yard area.
Location	Ballinakill Shopping Centre, Dunmore Road, Waterford.
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	211004
Applicant(s)	Laois Sawmills Ltd
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Kieran Kennedy
Observer(s)	None
Date of Site Inspection	7 th of June 2023
Inspector	Angela Brereton

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1.0 Site Location and Description

- 1.1. The site (stated site area 0.022ha) is within Ballinakill Shopping Centre which is located to the east of the Dunmore Road (R683 Regional Road) approx. 4km to the south of Waterford City Centre. There is an access to the Centre from the Dunmore Road and separately via a gated entrance to the delivery and bin storage area to the rear of the Ballinakill Centre.
- 1.2. The bin storage area is to the northeast of the shopping centre buildings. This is currently an ad hoc uncovered area with a number of wheelie bins. There is a vehicular entrance from the Dunmore Road to the circular gated service route. The appellant's dwelling is accessed via the Dunmore Road (R683) to the west. The service route is to the north of their property boundary. They have erected a high wall and fence and it is noted that there is also an unmade vehicular access from their property to the internal access route.
- 1.3. There is a green area to the east of the site, that is currently undeveloped (subject of planning permission Ref. ABP-312634-22) and is shown outside the subject site but within the landholding shown blue. This one-way service route at the rear of the Ballinakill site, has gated access to the cul de sac road that also serves the nursing home site to the southeast.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of an enclosed bin store in the existing rear yard area to serve the existing neighbourhood centre, namely Ballinakill Shopping Centre, Dunmore Road, Waterford, and all with associated site works.

3.0 Planning Authority Decision

3.1. Decision

On the 21st of July 2022, Waterford City & County Council granted permission for the proposed development subject to 4no. conditions. These concern the following: Compliance with plans and particulars submitted including as amended by the further details submitted, management and maintenance of the bin storage area,

boundary treatment to the bin storage area, details of the bin washdown area to be submitted and agreed in writing with the planning authority.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The Planner had regard to the locational context of the site, planning history and policy and the submissions made. Their Assessment included the following:

- They noted the extensive planning history of the neighbourhood centre.
- They had regard to the details submitted and recommended further information be submitted.

Further Information request

The applicants were invited to submit the following:

- Further details demonstrating that the proposed bin storage area is suitably sized to cater for the Ballinakill Centre.
- To confirm that the proposed bin storage area does not impact upon the existing right of way.
- To provide further details of onsite traffic management to demonstrate that there is not conflict between deliveries and waste collection.

Further Information response

This includes the following:

- They provide details of the revised bin area. A Table is included showing the number of bins in usage by Oskars and the Centre.
- They confirm that the revised bin storage area does not impact on the right of way. The right of way can be seen on their enclosed Site Plan.
- The service road/right of way (shaded yellow) on the Revised Site Plan) serving the rear yard is a one-way system and they provide details of this.
- Revised Public Notices were submitted.

Planner's Response

They have regard to the F.I submitted and their response includes the following:

- A revised site layout has been submitted indicating a bin storage area immediately to the rear of the building and right of way.
- The revised plans have increased the dedicated area to provide a suitably sized area to serve the centre and a condition can be attached in relation to the management of the area.
- They note slight restrictions relative to the right of way as indicated on the revised layout. The existing gate to the adjoining property is located to the SW of the bin storage area.
- The development is considered in accordance with the Waterford City & County Development Plan 2022-2028.
- Having regard to the location and nature of the development they recommend that permission be granted subject to conditions.

3.3. Other Technical Reports

None noted on file.

3.4. Prescribed Bodies

None noted.

3.5. Third Party Observations

A Submission has been made by a local resident expressing concerns about the impact of the bin storage area. As they are the subsequent Third Party Appellant their concerns are considered further in the context of their Grounds of Appeal.

4.0 Planning History

The Planner's Report notes that there is an extensive planning history relevant to the greater Ballinakill Shopping Centre and provides a list of such. This includes relevant

to mixed use, residential and commercial development. They include a Table showing these.

The following permissions and enforcement are referenced by the Third and First Parties as part of the Appeal:

Enforcement: UD90-02 + 03-177 – Bin Store

Within the Ballinakill Centre

- Reg.Ref. 21/624 – Permission granted to Laois Sawmills Ltd, subject to conditions for a change of use from dry cleaners to offices and development of additional mezzanine floor area for office use at Unit 3 Ballinakill Shopping Centre.

Condition no.5 is referenced by the Appellant i.e:

Adequate refuse facilities shall be provided to cater for all wastes arising from the proposed development.

- Reg.Ref.21/1174 – Permission granted subject to conditions to Sarah Kennedy for the change of use from shop (dry cleaners) to medical services (occupational therapist) at Unit 3, Ballinakill Shopping Centre.

The First Party noted that this referred to the same unit and does not include a condition regarding the management of waste.

- Reg.Ref.21/785 – Permission granted subject to conditions to Des Kennedy for a change from office use to dental surgery together with planning permission for extension of existing dental practice, connection to on site services and all associated site works at Units 23/24 Ballinakill Shopping Centre.

Condition no.4 concerns waste management and the provision of facilities for the separation and the collection of the waste.

Adjoining site to the east

- Ref. ABP- 312634-22 (Reg.Ref. 21/792) – In summary:- Permission granted subject to conditions for the Construction of two four-storey apartment buildings (Blocks A and B) with setbacks at third floor level, with a total number of 60no. apartments, car and bicycle spaces and dedicated bin

storage area all located at basement level. This is along with minor modification of existing car park layout associated with Ballinakill Shopping Centre to provide for 22no. replacement surface car parking spaces for the sole use of the shopping centre and its patrons, all with associated private open space, internal roads, footpaths, ancillary infrastructure including public open space, boundary treatment and all associated engineering works necessary to facilitate the development, all on a site of 0.69ha at Ballinakill Shopping Centre, Dunmore Road, Waterford.

This is a recent permission, within the greater landholding and the site is as yet undeveloped. It is noted that Condition no.2(a) of the Board's permission provides relative to that application on the adjoining site:

The bin store area as indicated on the Proposed Site Plan with Ground Floor (drawing reference number 3.1.005 Revision B submitted as clarification of further information to the planning authority on the 20th day of December 2021), shall be relocated such that it abuts the boundary wall with the vehicle access ramp to the basement. A copy of the Board's decision is included in the History Appendix.

5.0 Policy Context

5.1. Waterford City and County Development Plan -2022-2028

This Plan was adopted on the 7th of June 2022 and came into effect on the 19th of July 2022 and replaces the previous City and County Development Plans.

Volume 2 – Development Management Standards

Section 5 – Non-Residential Development. Section 5.1 Retail and Section 5.2 with District and Neighbourhood Centres.

Policy DM 14 refers to Assessment of Development Proposals in Waterford City, other towns and rural settlements. This includes regard to the design and layout of buildings and includes: *All unsightly areas, for example service cores, should be screened from surrounding residential areas and from pedestrian corridors within the scheme.*

Volume 4 – Maps

Map 2 – Zoning and Flooding Map - As shown on the Land Use Zoning the site is within the 'GB' – 'General Business' use where the objective is: *To provide for and improve General Business uses; this includes suburban district retail and local neighbourhood centres.*

The land to the south – 'RS'- 'Existing Residential' - where the objective seeks to: *Provide for residential development and protect and improve residential amenity.*

The land to the southeast – 'CI' – 'Community Infrastructure' where the objective seeks to: *Provide for and protect civic, educational, religious, community, health care and social infrastructure.*

5.2. Natural Heritage Designations

The site is c.0.4kms from the Lower River Suir SAC.

5.3. EIA Screening

Having regard to the modest scale of the development, and the separation from any environmentally sensitive sites, there is no real likelihood of significant effects on the environment arising from the 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

A Third Party Appeal has been submitted by local resident Kieran Kennedy. His Grounds of Appeal include the following:

- They have lived as an adjoining neighbour in the area since 1995, adjacent to the Ballinakill Shopping Centre (formerly Brasscock Centre).
- They refer to planning permissions Reg.Refs. 21/624 and 21/785 (which refer to change of use for separate premises within the Ballinakill Centre) that included conditions concerning bin storage/refuge facilities. They note that

these conditions were not complied with and that no legal bin/refuse facility currently exists.

- As the landowner's and applicants failed to comply with this regulatory condition/instruction, they query how it is possible for the Council to allow any further development to grant approvals for any further applications on the property in respect of the landowners/applicants.
- They have regard to the issue of unauthorised development identified around the Ballinakill Shopping Centre, noting that they have submitted a very detailed 'Complaint of unauthorised development' in April 2022. Details are given of U.D references and their concerns.
- While they received a letter of acknowledgement from Waterford City Council Planning Department, they have had no further correspondence regarding the same. The gates and fencing remain in situ and still exceed the maximum height for exempted development.
- These gates interfere with the appellants right of way as per legal easement documentation and mapping. This UD matter should be dealt with by the Council.
- Concern that the distance between Oskar's bar and restaurant is lengthy and their bin storage/recycling area should be closer to their premises.
- Noise and disturbance from the bin storage area for local residents. They ask that a set time be applied for use of such facilities in the interest of public nuisance and peace and quiet.
- Not only are the gates and fencing unauthorised development, the change of use of that part of the legal right of way road from service road to service yard is also UD.
- They attach copies of correspondence from Waterford City and Council Planning Authority that refer to the area as a 'service road' and not 'service yard'.
- In 1999 (circa.) the former owners of Oskars bar & restaurant illegally erected a bin store immediately behind and connected to their rear boundary. They

submit that this illegal/unauthorised is still in situ and use to this day. Despite enforcement by the Council no action has been taken to the Council to ensure its removal.

- Under the Planning and Development Act 2000, as amended any persons who install a bin facility within 50m of a private residential dwelling must make a separate planning application for the said development. This has not happened and there has been a disregard for the planning laws.
- They refer to their solicitor's letter to the landowners regarding issues with the said right of way. They reference previous correspondence relative to Ref. ABP/312634/22 for development of apartment blocks adjacent to their dwelling.
- They note that there are several unauthorised developments and disregard for the planning laws upon and around the site of the application. They submit that the planning system is the appropriate for resolving such matters.
- Laois Sawmills (the landowners) have no legal rights through planning or otherwise to erect and close gates or to fence to any extent of a legal right of way, when the said gates and fencing are completely unauthorised with regard to planning laws (they refer to Doc 14).
- They refer to (Doc 17) where the landowners Laois Sawmills requested that the appellant apply for planning permission for a vehicular access that was installed the same year in order to proceed and use the said entrance as agreed under the 'Right of Way' agreement. The landowners said they had no objection provided it had the required planning permission.
- The said landowners have changed the use of a road/right of way into a yard. They have erected illegal bin stores, gates and fencing. They ask that the Board act on these matters when the Planning Authority have failed to do so.
- The current bin storage conditions are a health hazard, with rubbish overflowing and serious 'vermin' activity in the area and in their own private garden space on an almost daily basis. Photos are included of the mis-use of the bin storage area and rat burrow holes within and around their property.

- This is unacceptable and poses a health and safety threat to the appellant's family and their grandchildren who frequently visit their rear garden to play. Vermin have entered their home and out buildings on several occasions.
- Without proper management, mis-use of the bins will be worsened and 'out of sight, out of mind' on a daily basis, giving vermin the opportunity to congregate en-masse.
- The boundary wall between his property and the site is very high c.3m with 100mm concrete block on edge. Concern that in view of the height it will be susceptible to collisions from work vehicles including HGVs and forklift trucks.
- Consultation with Consulting Civil & Environmental Engineers advised that in order to ensure the continual stability of the wall, that a steel barrier (impact barrier), independent of the wall be installed on the Shopping Centre side of the wall. This barrier should run along the full length of the boundary wall in the vicinity of the proposed bin stores.
- No such works inclusive of safety provisions for the boundary wall can be carried out without their consent regardless of any planning grant of approval, as any such planning permission does not override their legal entitlements under the deed of easement.
- The revised Site Layout Plan shows no 'regulatory' turning bay for trucks. As the bin store is within 7.5m of his boundary wall, there is not enough space for trucks to manoeuvre. This would be a serious problem in relation to the bins and their collection from Oskar's bar and restaurant.
- The existing bin store to the rear of their boundary coupled with the 90 degree bend and narrow gated exit would potentially be extremely dangerous to oncoming motorists, cyclists and pedestrians upon completion of the apartment development ABP-312634-22.
- This would become more of a danger when considered that the entrance to the underground carpark facility will lie just outside the unauthorised gates to the rear of the unauthorised (change of use) service yard. This overdevelopment will be dangerous for users.

- On several weekends the illegally enclosed portion of the service road/right of way is being used to park extremely heavy vehicles. Many of these have nothing to do with the shopping centre or any nearby business premises. They refer to their photographs and it is their opinion that the area is being leased out at weekends for the parking of such vehicles.
- They note that despite representations nothing has been done to regularise this UD including relative to bin storage. They include a letter from a Councillor that was forwarded to the Ballinakill Centre owners regarding the refuse issue.
- They ask the Board to refuse permission for this bin storage facility on the grounds that it is inadequately located and improperly used in the design proposals. They advise that the applicants be advised to submit a new application rectifying these issues.
- They consider that a property management company should be requested to enter into a contract with a refuse company who will take responsibility for an adequate frequency of bin collects, rubbish and recycling sorting and the cleanliness of the area. That a new application should demonstrate a more adequate and safe location for the bin facility.
- The appellant includes a number of photographs and documents in support of their grounds of appeal.

6.2. Applicant Response.

Laois Sawmills Ltd has responded to each of the Third Party Grounds of Appeal. As summarised, this refers to the points made and includes, the following:

- Reference is had to Planning Permission 21624 for Unit 3. Subsequent, to this a new planning application was made to Waterford City and County Council – Reg.Ref. 211174. There were no conditions attached to the new application for Unit 3 that refer to waste disposal hence the concerns raised by the Appellant are no longer relevant to this unit.

- They note that there are 22 no. individual businesses located at Ballinakill Shopping Centre. Each business is responsible for their own waste under the terms of their lease and individual planning permissions.
- Laois Sawmills have made it clear to their tenants that bins cannot be overfilled both from a Health & Safety and a local neighbourhood perspective.
- They have contacted the various waste contractors and advised them not to empty any bins from the yard area until after 7am.
- Those businesses that generate a small quantity of waste bring it home with them and put it in their own domestic bins.
- Unit 23/24 which was referred to by the appellant is a dental practice. They provide details of waste disposal relative to this premises.
- They have not received any further noise complaints since they spoke to the waste companies.
- Laois Sawmills Lt bought the premises in April 2013, and the gates front and back were already in-situ. They were not erected by Laois Sawmills Ltd.
- Their understanding was that the gates were erected by the previous owners to secure the premises at nighttime.
- Issues relative to another planning application have already been adjudicated by the Board.
- They note that the Council have written to the Third Party relative to 'Bin Store' issues.
- In terms of vermin, the management company for the centre, Ballinakill Administration Ltd, employs a pest control company which undertakes regular inspections of the centre and uses various pest control measures to minimise vermin in the area.
- The 'Bin Store' area was modified and resubmitted to the planning department and the new location was approved by the Council as it didn't impact on the 'Right of Way'.

- Since Laois Sawmills Ltd took over the centre in April 2013, there have been no collisions with the boundary wall as the yard area and associated traffic runs parallel to the wall.
- The structural integrity of the wall may have been weakened by the Third Party when he proceeded to install a vehicular entrance on his land without the necessary planning permission.
- There is no requirement for a turning bay for trucks in the yard and they provide details of the one way system.
- The yard area is not being leased out at weekends for parking and Laois Sawmills Ltd have not been made aware of any unauthorised vehicles parking overnight.
- They note that on the few occasions in the past 3 years a car-transporter has parked in the back yard area overnight for security reasons and on these occasions the Centre Manager has provided approval.

Summation

- They note the Third Party complaints over the state of the existing waste bin area. At no point has Laois Sawmills Ltd been taken to court over the perceived state of the bins.
- They sought permission for the new 'Bin Store' to improve the existing situation on the ground and to provide a secure area.
- There is sufficient space in this area to allow the 'Bin Store' and maintain safe access for delivery trucks and waste lorries.
- There is no other area available within the centre to locate the proposed 'Bin Store'. The back yard is the only available area to locate the 'Bin Store' that is not impacted by the 'Right of Way'.
- They note that the appellant has full unhindered access to his house and land from the Dunmore Road and therefore, the 'Right of Way' is secondary to his requirements.

6.3. **Planning Authority Response**

There is no response on file from the Planning Authority to the Grounds of Appeal.

6.4. **Observations**

None noted.

7.0 **Assessment**

Having inspected the site and considered the contents of the appeal, I consider the main planning issues in the assessment of the proposed development are as follows:

- Rationale and Usage
- Access and Right of Way
- Impact on the Character and Amenities of the Area
- Other issues
- Appropriate Assessment

7.1. **Rationale and Usage**

- 7.1.1. As per the description of development, the purpose of this application is to provide for the construction of an enclosed bin store in the existing rear yard area to serve the existing neighbourhood centre i.e Ballinakill Shopping Centre. The area is shown to the northeast and rear of the Centre. It is to be located on the northern side of the internal service road through the site. The plans originally submitted show two adjoining areas 'Yard 1' and 'Yard 2'. These are shown to contain 28no. individual wheelie bins, within a fenced off area. The proposed boundary fence is shown to be c.1.8m in height. In this respect, I note that while it is proposed to fence off these areas, so that the wheelie bins will be fenced off, a covered bin storage area is not being provided.
- 7.1.2. The Council were concerned that provisions be made for adequate bin storage to serve the units and requested that the area be suitably sized for the centre. The Further Information response provides that revised bin storage areas have ample

room to serve the required number of bins used in the Centre. The revised Site Plan shows 44no. bins, 16no. of which serve Oskars Bar and restaurant (area shaded blue) and 28 bins which serve the rest of the Shopping Centre (area shaded pink). They provide a table which gives a breakdown of the size of bins proposed.

- 7.1.3. It is noted that as shown on the Site Plan, 3no. bins for the Shopping Centre are shown in a separate grouping at the northern end of the gated site entrance. It is provided, that bin storage has been removed from the southern side of the access road, which represents an improvement for the appellant's residential property. That this also means that the 'Right of Way' shown in yellow on the revised plans will now be unobstructed.
- 7.1.4. Having regard to the need to provide a dedicated bin storage area for the various premises, the rationale of this proposal is to provide clarification and an improvement to the existing more haphazard situation. It appears that when the Ballinakill Shopping Centre was originally constructed that a dedicated covered bin storage area for use of the units in the overall Centre was not provided for and that this has left an undesirable legacy. The First Party response notes that there are 22no. individual businesses located at Ballinakill Shopping Centre and that each business is responsible for their own waste under the terms of their lease and individual planning permissions. They refer to previous permissions granted to various tenants in this regard.
- 7.1.5. The concern is whether in view of the issues raised that the proposed development would be adequate and would result in an improvement that would not have an adverse impact on residential amenity and the proper planning and sustainable development of the area.

7.2. Access and Right of Way

- 7.2.1. As shown on the plans and noted on my site visit, the service road/right of way serving the rear yard and is via a one-way system. It is noted that the entrance and exit to this internal service road is gated. Service vehicles enter from the Dunmore Road entrance and exit at the roundabout adjacent to Mowlam Nursing Home. From there vehicles can reconnect with the Dunmore Road (R683) at the Grantstown Park roundabout.

- 7.2.2. The Planner's Report notes the right of way as indicated on the site layout and the requirement to maintain same free from development the area to the NE of the right of way is slightly restricted. That the existing gate to the adjoining property is located to the SW of the bin storage area.
- 7.2.3. The Third Party is concerned that the description of development as shown on the plans as a 'yard area' is inaccurate. That this is a service road that operates as a one way system and that the area shown for bin storage would impact on this right of way and reduce the functional width of the road the detriment of the service road users. Photo 8 of their Appeal Statement refers to 'Illegal and Unauthorised Rear Gates – enclosing and narrowing the right of way, against the details of his legal easement'. They refer to the service road and provide that it should not be labelled as a service yard. That the reason it is referred to as a service yard is because of the unauthorised gates and fencing that were erected by the landowner's which closed off a sizable section of the road.
- 7.2.4. As part of the F.I request the applicants were requested to provide further details of onsite traffic management for deliveries and waste collection demonstrating that the proposed bin storage area will not give rise to a traffic hazard or result in vehicles reversing onto the car park area or the Dunmore Road to the west of the site. The First Party provides that the F.I response confirms that the revised bin storage area is not within a service yard area and does not now impact on the right of way. The right of way is shown shaded in yellow on the Revised Site Plan submitted. They provide that there is no requirement for a turning bay for trucks in the yard area. There is a one-way system from the Dunmore Road gate to the back gate of the yard. There is a two-way system from the back gate to the Mowlan roundabout (adjacent to Mowlan nursing home).
- 7.2.5. I would consider the configuration of the proposed bin storage areas as shown on the revised Site Layout Plan to be preferable to that originally submitted, which was a more concentrated area close to the exit. As an option, it could be suggested that that part of the bin store located close to the access be relocated to the south of the bin storage area shown blue. That would result in leaving a wider unobstructed area at the northern access. However, that area while within the greater landholding, appears to be outside of the redline boundary as shown on the plans originally

submitted and would also be opposite the appellant's property, which is screened by a high boundary wall.

- 7.2.6. The Third Party have also raised issues relative to the impact of the proposed development on the apartment development recently granted by the Board on the adjoining site (Ref. ABP-312634-22 refers). Regard is had to condition no.2(a) of that permission relative to bin storage for that site. Reference is also made to avoid any impact on the 'Right of Way' through the site that links up with the adjoining site. As shown on the revised plans it appears that the proposal will not result in an encroachment onto the right of way relevant to the service road. It must be noted that this is a relatively recent permission which has not yet commenced.
- 7.2.7. However, having regard to issues raised including relative to access, boundary, and use of the service road, it must be noted that any issue of encroachment, or alterations to the site boundaries is a civil matter, and the applicant is advised that in the event of encroachment or any dispute regarding easements concerning the adjoining property, the consent of the adjoining property owner is required. I note here the provisions of s.34(13) of the Planning and Development Act: "*A person shall not be entitled solely by reason of a permission under this section to carry out any development*".
- 7.2.8. Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "*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 other words, the developer must be certain under civil law that he/she has all the rights in the land to execute the grant of permission.

7.3. **Impact on the Character and Amenity of the Area**

- 7.3.1. The Third Party submit that the proposed bin storage facility for the centre will be inadequate, visually damaging to the area and poses a risk to health and safety. They are concerned about vermin and reference is made to photographs they have submitted relative to this issue, showing bins overflowing etc. In response the First Party submit pest control measures are in operation on the site and provide details.

While the concerns raised are significant, it is of note that such health measures are more appropriately dealt with under separate remit.

- 7.3.2. In addition, they are concerned that as shown on the plans the distance between Oskar's bar and restaurant to the proposed bin storage area is lengthy. That there should be a dedicated bin store nearer to the premises to ensure good practice of waste disposal and recycling (particularly glass recycling and waste food refuse). They are concerned about noise and use of the bins during anti-social hours.
- 7.3.3. The First Party response notes that the bin currently used by Oskars Pub is being relocated across the yard under the proposed 'Bin Store' so that it will no longer adjoin the appellant's property. They submit that they have contacted the various waste contractors and advised them not to empty any bins from the yard area until after 7am.
- 7.3.4. I would consider that in general the proposal as shown on the revised plans, represents an improvement on the existing haphazard situation. It is important that the bins be placed within the fenced off area so that they will be more contained and will have less of a visual impact. I note that the Council has included condition no. 2 as regards management and maintenance of the bin storage area. I would recommend that if the Board decides to permit that such a condition be included. In addition, that a condition similar to condition no.4 be included relative to washdown of the bin storage area.

7.4. Other issues

- 7.4.1. The Third Party note a number of Council references to Unauthorised Development complaints. This includes that the landowners have erected unauthorised bin stores, gates and fencing, unauthorised truck parking within the service road area etc. They attach a copy of 'Complaint of Unauthorised Development' (dated April 2022) submitted to Waterford City and County Council and notice to Laois Sawmills (Landowner's) on behalf of the subsequent appellant Kieran Kennedy. Also, a letter from a local Councillor noting their concerns.
- 7.4.2. The First Party detailed response to the issues raised in the Grounds of Appeal are noted. While they provide an explanation it is not denied that unauthorised development over time, has not taken place. It is noted that they bought the property

in April 2013, and they provide that many of the issues that occurred may have taken place prior to this date. However, the issue of UD and the state of the existing bins has been noted.

7.4.3. Regard is had to the 'Development Management Guidelines for Local Authorities' 2007. These are Section 28 Guidelines and Chapter 10 refers to 'Enforcement of Planning Control'. Section 10.1 includes: *Enforcement of planning control is the responsibility of the planning authority and this is the case, of course, whether the planning decision, including conditions, was made by the planning authority or the Board.*

7.4.4. Therefore, while the Third Party concerns relative to unauthorised development within the site and relative to the bin storage area, the access and right of way, etc have been noted, the issue of enforcement is within the remit of the Council and is not within the remit of the Board. It is of note that the subject application seeks to regularise the bin storage area, and it is the application as applied for in the description of development that is now under consideration by the Board.

7.5. **Appropriate Assessment**

7.5.1. Having regard to the nature and scale of the development and to the nature of the receiving environment and separation distance from the nearest designated site, no appropriate assessment issues arise, and it is considered that the development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European sites.

8.0 **Recommendation**

8.1.1. I recommend that permission be granted subject to the conditions below.

9.0 **Reasons and Considerations**

9.1.1. Having regard to the zoning objective for the site, the design and layout of the proposed development, the planning history pertaining to the site, and the policies and objectives of the Waterford City and County Development Plan 2022-2028, it is considered, subject to the conditions set out below, that the proposed development

would not seriously injure the residential amenities of the area, would not be prejudicial to public health 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. 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 15th day of June 2022 and by the further plans and particulars received by An Bord Pleanála on the 6th day of September, 2022, 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 interest of clarity.

2. A plan containing details for the management of waste (and, in particular, recyclable waste) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular, recyclable materials in the interest of protecting the environment.

3. (a) The bin storage areas shall be contained within the site boundary and as shown on the revised Site Plan submitted on the 15th of June 2022. These areas shall be fenced off in accordance with the details submitted, within two months of the grant of this permission.

(b) Bin storage shall not be permitted on the opposite (eastern) side of the road, adjacent to the third party property.

Reason: In the interest of residential and visual amenities of the area

4. Prior to the commencement of development details of the bin washdown area and associated surface water drainage measures to serve the bin storage areas shall be submitted to and agreed in writing with the Planning Authority.

Reason: In the interests of public health.

5. Litter in the vicinity of the bin storage areas shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Angela Brereton
Planning Inspector

13th of September 2023