



An  
Bord  
Pleanála

## Inspector's Report

**ABP-318935-24**

<b>Development</b>	Construction of house permitted by Ref. 20925 and ancillary site works
<b>Location</b>	Site No. 03, Crann Arda, Newpark Lower, Castlecomber Road, Co. Kilkenny
<b>Planning Authority</b>	Kilkenny Co. Co.
<b>Planning Authority Reg. Ref.</b>	2360493
<b>Applicant(s)</b>	Cognito Developments Kilkenny Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to 11 no. conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Seamus Dunne
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	15 <sup>th</sup> April 2024
<b>Inspector</b>	Bernard Dee

## **1.0 Site Location and Description**

- 1.1. The appeal site is located off the Castlecomer Road south of the Newpark Hotel which is located in the northern suburbs of Kilkenny city. The area is suburban in character and there are several residential estates in the vicinity of the appeal site that are accessed from Castlecomer Road.
- 1.2. The appeal site itself is one of 9 no. plots granted permission for infrastructure works under Ref. 20/295 with an overall site area of 1.0647ha. The area of Site/ No. 3, the appeal site, is stated to be 0.141ha.

## **2.0 Proposed Development**

- 2.1. The proposed development is comprised of the erection of a two storey house with a GFS of 380m<sup>2</sup> on foot of a previously permitted development Ref. 20925. Plot No. 3 is located on the south side of the central shared access road and the Third Party appellant in this case lives in the house south of and abutting the appeal site called 'Lisadell'.
- 2.2. The overall footprint dimensions of the proposed house are 14.3m x 20m with a maximum ridge height of 10.5m.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission for the proposed development was granted on 2<sup>nd</sup> January 2024 subject to 11 no. standard conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planner's Report on file, in summary, had regard to the following planning issues:

- The application site is one of 9 no. sites where infrastructural works were granted by Ref. 20925 and each plot is subject to a detailed planning application for the individual houses.

- An Arborist is yet to carry out an audit of the retained trees on site and make recommendations in relation to any required tree management as required by Condition 19 of the parent permission. A similar condition will be carried over to this application if permission is granted.
- The site is located in an area zoned 'Existing Residential', and partially 'General Business' in the Kilkenny City and Environs Development Plan 2021 – 2027 and both objectives allow for the provision of housing.
- Neither AA nor EIA is required in relation to the proposed development.
- Recommend a grant of permission subject to conditions.

### 3.2.2. Other Technical Reports

- Roads Section – *“It is noted that, as these are separate and concurrent applications, it is considered appropriate that the access road, entrance, services and associated development works under P20/925 are substantially completed prior to occupation of the dwellings to ensure that the access road is completed to a satisfactory standard to allow access to all development sites, particularly in the event that there are significant periods between the commencement and completion of individual permissions/houses. Construction of the final surfacing course and minor finishing items under P20/925 could be held in abeyance pending completion of the overall development, with such works subject to the provision of a bond. It is further noted that under P20/925 that entrances to individual sites were to be constructed with wet-mix granular fill. The drawings for the individual houses indicate that a tarmac finish is to be provided between the access road and the individual entrance gates. Whilst this area lies outside of the extent of the redline boundary for the individual sites, it will be a requirement that this surfacing to be provided as part of the development.”*

### 3.2.3. Prescribed Bodies

- No correspondence on file.

### 3.2.4. Observations

- Observations were received by the Planning Authority by the current Third Party appellant and also from Eoin O'Reilly and Marc & Barbera Mullen.

## 4.0 Planning History

### 4.1. On the Appeal Site

- Ref. 20/925 - permission was granted 25<sup>th</sup> June 2021 on the current appeal site subject to 19 no. conditions, to carry out site infrastructure works for the provision of 9 no. individual residential sites, new access road with entrance off Castlecomer Road with all associated road site works, to connect to existing foul sewer, water mains and all underground services, for demolition of existing outhouses / structures on site and for all other ancillary site works.

Condition No.19 of 20/925 stated - *Prior to commencement of development the developer shall submit to the Planning Authority for agreement full details of a tree conservation covenant to be applied to each individual site requiring the management and maintenance of any or all trees on the site (which was identified within the arborist report for retention) requiring written consent of the Planning Authority before works are carried out on any tree. The maintenance shall also include for replacement planting in the event of tree removal.*

- Ref. 08/1544 – Permission granted for infrastructural works to serve 9 no. residential sites on the appeal site and an Extension of Duration of this 2008 file was then permitted under P.14/424, but no works commenced on site under either of these applications.

### 4.2. In the Vicinity of the Appeal Site

- The Board should note that the current appeal relates to one of ten separate and concurrent planning applications (23/60493, 23/60494, 23/60495, 23/60496, 23/60498, 23/60499, 23/60500, 23/60501, 23/60502, and 23/60503) related to the nine new dwellings and accommodation works for an adjoining property to the south, Lissadell, which is in the ownership of the Third Party appellant in this case.
- Ref. 2360499 – relates to the green area in Crann Arda fronting Castlecomer Road where permission was granted on 2<sup>nd</sup> February 2024 subject to 1 no. condition for an alteration to the previously granted Planning Permission, Ref No. 20/925, for the construction of a 1.8m high concrete post and concrete

infill decorative panel fence to the site boundary between the development ('Crann Arda') and 'Lissadell', Castlecomer Road.

- Ref. 2360494 – relates to Site No. 1 of Crann Arda where permission was granted on 7<sup>th</sup> March 2024 subject to 11 no. conditions for the construction of a two-storey dwelling house along with all site and ancillary boundary works. The planning application was received by the Planning Authority on the 3<sup>rd</sup> November 2023 and Further Information was requested from the applicant on 2<sup>nd</sup> January 2024 in relation to the siting of the house on Site No. 1 relative to 'Lisadell' to achieve a 22m setback between opposing windows at first floor level. The response received by the Planning Authority on 12<sup>th</sup> February 2024 and was deemed to be satisfactory and the Planning Authority issued a Notification of Decision to Grant Permission on 7<sup>th</sup> March 2024 subject to 11 no. conditions. The appellant in the current appeal has also appealed this decision, Ref. ABP-319416-24, which is due for decision on 31<sup>st</sup> July 2024. Drawings on file indicated a 2.1m high fence which is the same mutual boundary treatment as proposed for Site No. 3 which is the subject of the current appeal.
- Ref. 2360495 – relates to Site No. 2 of Crann Arda where permission was granted on 2<sup>nd</sup> January 2024 subject to 11 no. conditions for the construction of a two-storey dwelling house along with all site and ancillary boundary works. The appellant in the current appeal has also appealed this decision, Ref. ABP-318933-24, which is due for decision on 30<sup>th</sup> May 2024. Drawings on file indicated a 2.1m high fence which is the same mutual boundary treatment as proposed for Site No. 3 which is the subject of the current appeal.

## Policy and Context

### 4.3. Development Plan

The site is located in an area zoned 'Existing Residential' in the Kilkenny City and Environs Development Plan 2021 – 2027.

#### 13.30.7 Existing Residential

- Objective: To protect and improve residential amenities and to provide for new residential development appropriate to the scale and character of the settlement.
- Permissible Uses: Dwellings, open spaces, places of worship, community centres, halting sites, public service installations, playgroup or crèche, Nursing home.
- Open for Consideration: Bed and breakfast establishments and guesthouses, lock up garages, retail shop of local convenience not more than 100 sqm in gross area, hotel, restaurant, and use by owner or occupier of part of a private residence as a studio, for a light industrial activity, a clinic or surgery, professional office, gymnasium or as a playgroup or crèche.

#### 13.10 Boundary Treatment of House Sites

Where the flank or rear boundaries of house sites abut roads, pedestrian ways or public open space, suitably designed screen walls 1.8 metres in height shall be provided. Where concrete screen walls are proposed they shall be suitably rendered and capped in an acceptable manner.

### 4.4. Natural Heritage Designations

The following natural Heritage designations are located in the vicinity of the appeal site:

- River Barrow and River Nore SAC (002162) is located approximately 300m to the west of the appeal site.
- Newpark Marsh pNHA (000845) is located approximately 150m to the east of the appeal site

#### 4.5. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, 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.

### 5.0 The Appeal

#### 5.1. Grounds of Appeal

Having regard to the above, the relevant planning issues raised by the Third Party are, in summary, as follows:

- The proposed dwelling is one of three current applications and an open space area (fronting Castlecomber Road) that border the northern boundary of my property and the site was previously a heavily wooded area which has since been thinned to facilitate the construction of 9 no. houses.
- Verbal agreement was reached with the applicant's architect to remove the Leylandii hedge on the application site which formed a boundary between the two sites and to construct a replacement 2.1m wall to protect the privacy of the of my family home.
- This 2.1m high concrete wall is planned to run the length of the mutual property boundary, Sites 1, 2 and 3 and the green area, and as planning permission has not yet been granted for Site No. 1 due to a Further Information request being issued by the Planning Authority, the Board should stipulate that the boundary between Site No. 3 and my property should be temporary in nature, laurel or similar screen planting, until Site No. 1 receives planning permission which would include the 2.1m high mutual boundary wall.
- It would not be appropriate for the wall to be constructed in Sites 2 and 3 and the green area and not in Site No. 1 as this would leave a gap in the proposed boundary wall with consequent negative impacts on my residential amenity.

- In the case of a refusal of permission for the house on Site No. 1, the Board should not permit the concrete wall to be constructed on the other plots either in the interests of privacy and the exist trees on these plots should be retained.

**Inspector's Note:** This appellant has also appealed grants of permission for houses on Sites 1 and 2 Crann Arda, Refs ABP-319416-24 (due for decision on 31<sup>st</sup> July 2024) and ABP-318933-24 (due for decision on 30<sup>th</sup> May 2024), and all three files should be assessed by the Board together.

#### 5.2. Planning Authority Response

- The Planning Authority has not responded to this appeal.

#### 5.3. Applicant Response

- The First Party has not responded to this Third Party appeal.

#### 5.4. Observations

- None received.

### 6.0 **Assessment**

6.1. Having examined all the application and appeal documentation on file, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise.

6.2. The assessment issue therefore relates to the potential impact of the proposed boundary treatment on the amenity of the Third Party's property.

6.2.1. The issue of AA Screening is also addressed in this assessment.

#### 6.3. Impact on Amenity

6.3.1. The Third Party contends that the boundary treatment as permitted by the Planning Authority for the appeal site should not proceed in the absence of planning permission for Site No. 1 as the appellant states that the other 8 no. applications for houses within the Crann Arda development have been granted planning permission *"except House No. 1 on site 1 which has a designated planning number of 23/60494 and is sitting directly adjacent to our house which was not granted permission but further information has been sought"*.



- 6.3.2. Planning application Ref. 2360494 for Site No. 1 was received by the Planning Authority on the 3<sup>rd</sup> November 2023 and the Planning Authority requested Further Information from the applicant on 2<sup>nd</sup> January 2024 in relation to the siting of the house on Site No. 1 relative to 'Lisadell' to achieve a 22m setback between opposing windows at first floor level. A response was received by the Planning Authority on 12<sup>th</sup> February 2024 and was deemed to be satisfactory and thereafter the Planning Authority issued a Notification of Decision to Grant Permission on 7<sup>th</sup> March 2024 subject to 11 no. conditions.
- 6.3.3. The appeal by Seamus Dunne in relation to Site No. 3 is dated 24<sup>th</sup> January 2024 and was received by the Board on 26<sup>th</sup> January 2024 and was therefore lodged with the Board before the Planning Authority issued a Notification of Decision to Grant Permission for a dwelling on Site No. 1 on 7<sup>th</sup> March 2024 following receipt of Further Information.
- 6.3.4. Having regard to this fact, the grounds of appeal put forward by the appellant, i.e. that a decision had not at the time of the appeal been made by the Planning Authority on Site No. 1, have been rendered moot by the subsequent permission issued by the Planning Authority for Site No. 1 including the requirements for the 2.1m boundary wall with the appellant's property.
- 6.3.5. The Board may wish to consider the dismissal of this appeal under the provisions of subsections (1)(a)(i) of section 138 of the Planning and Development Act, 2000 (as amended) as, in my opinion, the issues raised in the Third Party appeal are without substance or foundation and represent an abuse of the planning appeals process.
- 6.3.6. With respect to the potential impact associated with the proposed development, including the proposed boundary treatment (a 2.1m high concrete wall), would not have an adverse impact on the amenity of the appellant's property. The only impediment to this boundary treatment being progressed is the appellant himself.
- 6.3.7. Having regard to the above, I would advise the Board that there is no obstacle with respect to the impact associated with the proposed development on the amenity currently enjoyed by adjoining properties. I have examined other aspects of the proposed development such as layout, design, access arrangement, overlooking potential, overshadowing, standard of amenity and potential impacts on the

residential amenity of the area and I find that all planning aspects of the proposed development are satisfactory.

#### 6.4. AA Screening

6.4.1. Having regard to the relatively minor proposed development being constructed on foot of a previously permitted development within an urban area and the distance from 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.

### 7.0 Recommendation

I recommend that planning permission be granted for the proposed dwelling for the reasons and considerations set out below and subject to the conditions set down hereunder.

### 8.0 Reasons and Considerations

Having regard to the provisions of the Kilkenny City and Environs Development Plan 2021-2027, and to the previously permitted residential infrastructure works on the site (Ref. 20925), it is considered that the proposed development would not seriously injure the visual or residential amenity of the area or have an adverse impact on the receiving environment. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### 9.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 3 <sup>rd</sup> November 2023 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
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	<p>with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on the 25<sup>th</sup> day of June 2021 under planning register reference number 20925, and any agreements entered into thereunder.</p> <p>Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.</p>
3.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise, dust and vibration management measures, rock breaking/excavation methodologies and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
4.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
5.	<p>Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
6.	<p>Water supply and drainage arrangements, including the attenuation and</p>

	<p>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>Prior to commencement of development, the developer shall enter into a water and sewage connection agreement with Irish Water.</p> <p>Reason: In the interest of public health.</p>
	<p>(a) An accurate tree survey of the site, which shall be carried out by an arborist or landscape architect, shall be submitted to the planning authority prior to commencement of development. The survey shall show the location of each tree on the site, together with the species, height, girth, crown spread and condition of each tree, distinguishing between those which it is proposed to be felled and those which it is proposed to be retained.</p> <p>(b) Measures for the protection of those trees which it is proposed to be retained shall be submitted to, and agreed in writing with, the planning authority before any trees are felled.</p> <p>Reason: To facilitate the identification and subsequent protection of trees to be retained on the site, in the interest of visual amenity.</p>
8.	<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. This scheme shall include the following:</p> <p>(a) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment</p> <p>(b) Proposals for the protection of all existing and new planting for the duration of construction works on site, together with proposals for adequate protection of new planting from damage until established</p> <p>(c) A timescale for implementation, including details of phasing, which shall provide for the planting to be completed before the dwelling is first made available for occupation.</p> <p>Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.</p>
9.	<p>The developer shall pay to the planning authority a financial contribution in</p>

	<p>respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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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.

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**Bernard Dee**  
**Planning Inspector**

**17<sup>th</sup> April 2024**