



An
Coimisiún
Pleanála

Inspector's Report ACP-323020-25

Development	Alterations to site boundary with boundary treatment and provision of a vehicular entrance to my residential site including all associated site works.
Location	De Clare House, Gallowshill, Bennettsbridge Road, Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	2538
Applicant(s)	Sylvia Heffernan
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Same
Date of Site Inspection	7 th of January 2026
Inspector	Caryn Coogan

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1.0 Site Location and Description

- 1.1 The subject site is De Clare House, Gallows Hill, Bennettsbridge Road, Kilkenny, R95 Y82F. It is approximately 1.7km east of Kilkenny city centre and has a stated area of approximately 0.06ha.
- 1.2 It is located between an existing residential development, Gallows Hill, which is directly to the south on a higher ground level. The Canal Walk pedestrian pathway, which runs parallel to the site, is approximately 10 metres to the north of the dwelling, and just outside of the northern site boundary. The River Nore itself is located approximately 25 metres to the north.
- 1.3 There is an existing three storey dwelling on the site. It is largely obscured from view, due to the presence of mature tree stands, hedges and dense undergrowth situated around the periphery of the site. There is an open ditch running along alongside the northern site boundary, and there is temporary fencing located along the northern site boundary.
- 1.4 The site slopes downwards towards the river, which is from south to north, and there is a fall of approximately 5.5 metres. Access to the site is via an existing pedestrian laneway from the west, which leads to Bennettsbridge Road, and runs directly along the site's northern boundary. The wider area to the east, south and west is characterised mainly by a mix of detached and semi-detached housing.

2.0 Proposed Development

- 2.1 The planning application is for:
 - (i) Alterations of site boundaries, including boundary treatment
 - (ii) Alterations and provision of a vehicular entrance to residential site
 - (iii) The application includes an offer to enter into a legal agreement under section 47 of the Planning and Development Act, 2000, under which the applicant would cede land to the north of the northern boundary of the site and which is in her ownership to Kilkenny Co. Co. at no cost to the planning authority.

3.0 Planning Authority Decision

3.1 Decision

Kilkenny Co. Co. **REFUSED** the proposed development for two reasons:

1. Having regard to Condition No.s 1, 5,6 and 7 of Permission Reg. Ref 23/118, it is considered that the proposed development would materially contravene these conditions and conflicts materially with the requirements of permission 23/118. This proposed development would therefore conflict with the terms and conditions of the previous planning permission and would therefore be contrary to the proper planning and development of the area.
2. The proposed development which includes for alterations to the permitted boundary treatments under permission reg. 23/118 which extend residential activity into the open space zoning would materially contravene the zoning objective for the area which is to allow green links and biodiversity conservation and to preserve and provide for recreational open space. The proposed development would therefore materially contravene the zoning objective of the Kilkenny City and County Development Plan 2021-2027 and would therefore be contrary to the proper planning and sustainable development of the area.

3.2 Planning Authority Reports

3.2.1 Planning Reports

- Under Planning Reg. 23/118 Condition No. 7 states, '*Within 6 months of the issue of the final grant of permission a Section 47 agreement shall be entered into between the Council and the development ceding the transfer of lands outlined in blue on the attached map*' Reason: *To protect the open character and amenity value of the area and protect the Nore Valley walk from the potential impact of residential development propose dunder this retention.* This Section 47 agreement has not been provided and the permission is non-compliant. The required wall to the front of the house has not yet been constructed as per condition 4 and the garage has not been faced with stone as originally proposed under reference 20/129 (ABP 310257).

- The current application is to extend the area enclosed as part of the applicant's site and therefore shrink the area to be transferred to the Council by relocating the boundary closer to the River Nore.
- The area to be transferred under 23/118 is roughly the same area agreed under 01/1343.
- The applicant's concern about safety and privacy is noted.
- Refusal is recommended.

3.2.2 Other Technical Reports

- **Roads:** There is no objection to the layout of the proposed entrance. There are issues reagridng rights of way and access to adjoining lands. There are concerns regarding the potential impact on flooding arising from the position and sizing of the pipe proposed for the existing ditch/ watercourse in fill proposal.

3.3 Prescribed Bodies

There were no referrals or submissions received.

3.4 Third Party Observations

There were no third-party submissions.

4.0 Planning History

4.1 Planning Reference 23/118

The applicant Sylvia Heffernan applied to Kilkenny Co. Co. in May 2023 for planning permission for the retention of changes to and/or amendments of a development which was originally permitted under planning reference 11/299 (which was prolonged under planning refer: 16/533) :

- a) Retain two retaining walls;
- b) The conversion of an integral garage to a bedroom;
- c) Elevation and deisgn alterations;
- d) A basement home gym;
- e) A pumphouse/ plant room;

- f) A downstairs bedroom window;
- g) All associated site works.

The application includes an offer to enter into a legal agreement under section 47 of the Planning and Development Act, 2000, under which the applicant would cede land to the north of the northern boundary of the site and which is in her ownership to Kilkenny Co. Co. at no cost to the planning authority.

Kilkenny Co. Co. granted planning permission for the development on the 12th of April 2024, subject to 7No. conditions.

- 2. The financial contribution shall be a combination of the contribution outstanding under 11/299 and planning reference 23/118, which is €17,515 in total.
- 4. *A stonewall shall be constructed from the existing double garage to the eastern boundary of the site. The stone wall shall parallel the façade of the dwelling.*

Reason: *In the interests of visual amenity and to reduce the visual impact of the development on the Nore Valley Walk.*

5 (a) *The concrete post and timber fence along the eastern boundary of the land holding shall be removed. A section of this fence shall be retained to the south of the stone wall required under condition No. 4 above.*

(b) The existing rendered pier to the west of the house identified on the site layout plan P-101 submitted as part of the further information response shall be removed.

Reason: *To ensure access to the adjoining lands and to maintain the open aspect of the laneway and lands north of the house site in the interests of general amenity.*

- 6. *All temporary (Harris) fencing shall be removed from the lands north of the dwelling i.e. along the eastern, western boundaries and along the existing watercourse to the north of the dwelling. There shall be no fencing erected across or along the existing laneway parallel and to the north of the house except required by condition of this grant of permission.*

Reason: *To reduce the visual impact of the development and in the interest of visual amenity.*

7. *Within 6 months of the issue of the final grant of permission a Section 47 agreement shall be entered into between the council and the development ceding the transfer of lands outlined in blue on the attached map.*

Reason: *To protect the open character and amenity value of the area and protect the Nore Valley walk from potential impact of the residential development proposed under retention.*

4.2 **Planning Reference 20/129, An Bord Pleanala Reference 310257**

The applicant Ms Sylvia Heffernan applied for planning permission for a detached garage on the subject site in May 2020. The planning authority refused planning permission for the garage for 3No. reasons, stating the proposed development if granted would extend and consolidate an unauthorised development that is in contravention of planning ref. 11/299. The documentation submitted with the application is inadequate. The proposed development would physically restrict an identified right-of-way which is identified in Appendix D of the Kilkenny City and Environs Plan 2014. The Board overturned the planning authority decision and granted and garage subject to 6No. planning conditions.

4.3 **Planning Reference 11/299**

On the 29th of February 2012, Kilkenny Co. Co. granted planning permission Cormac and Garrett O'Carroll for a three-storey dwelling on the site which included the provisions of a pedestrian path and cycle to existing access road. The development contribution payable was €16,055.

There was a subsequent Extension of Duration of Planning permission reference 11/299 granted to the applicants on 30th of September 2016 under planning reference **16533**.

4.4 **Enforcement History**

ENF19/11 An Enforcement Notice was issued in respect of non-compliance with Conditions, 1,2,3,5,6,7(b) and (c) and 13 of P11/299 as extended by planning reference 16/533.

ENF21/007 An Enforcement Notice regarding an unauthorised wall to the rear of the property.

4.5 **Planning Reference 01/1343**

Planning permission granted for 18No. dwellings at Gallows Hill. Condition No. 12 required a section 47 agreement in respect of the transfer of land coloured orange to Kilkenny Co. Co. The registration was never executed but the agreement between the landowners was signed (*the planning authority has provided a copy of same in its response to the appeal*).

5.0 **Policy Context**

5.1 **Development Plan**

5.1.1 The site is zoned in the Kilkenny City and County Development Plan 2021-2027 as **Existing Residential**. This objective is to protect, provide and improve residential amenities. A small portion of the northern part of the site is zoned as **Amenity/ Greenlink /Biodiversity/ conservation, open space/ recreation**.

5.1.2 **8.2.1.2 River Nore Linear Park**

The Nore Linear Park provides a network of footpaths and cycleways along the river in the City and Environs combined with a sequence of high-quality public spaces, which is a significant recreational and biodiversity asset to the city. Within the City, a walk between Talbotsinch and Ossory Bridge has been developed and upgraded to make it accessible to all users, including cyclists, people with disabilities and people using buggies. Two pedestrian bridges provide access across the river: the Ossory Pedestrian Bridge under the Ossory Road Bridge to the west of the City, and The Lady Desart Bridge along Bateman Quay in the city centre. The provision of a third pedestrian bridge at Talbotsinch would connect the River Nore Linear Park to the Bleach Road and the northeastern area of the City.

The part of the Nore Linear Park that runs through the Abbey Quarter is being developed at present, known as the Riverside Park. A boardwalk will also be provided along Greensbridge, which will connect the southern Nore Linear Park, to the northern element, through the Abbey Quarter Riverside Linear Park. The Nore

Linear Park also connects with countryside riverside trails to the south, and this is the starting point of the Nore Valley Walk (See Section 8.3 Trails, Walkways).

5.2 Natural Heritage Designations

The site is partially located within the River Barrow and River Nore SAC (Site Code – 002162). It is also approximately 20 metres to the south of the River Nore SPA (Site Code – 004233) and 260 metres to the west of Archersgrove pNHA.

5.3 EIA Screening

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Appendix 1 of report

6.0 The Appeal

6.1 Grounds of Appeal

6.1.1 The following is a summary of the First Party grounds of appeal:

6.1.2 *Ownership Rights and Unauthorised Footpath Intrusion*

- The subject site is in her sole ownership under Folio No. KK38627F. Despite this, Kilkenny Co. Co. has constructed a public footpath across her land without consent, agreement, or any lawful transfer or CPO. The Council has refused to engage with her in any meaningful way to resolve these issues. The ongoing pattern of obstruction has caused significant stress and harm. It amounts to bullying and a serious abuse of power.

6.1.3 *Unfair Requirements to 'Donate' Land to Council*

- Under the previous grant Ref. 23/118, a Section 47 condition was imposed, compelling her to transfer part of her land to the Council with no compensation. The current refusal further suggests she may not protect the remainder of her private home without limitations. No citizen should be coerced into surrendering private land to a public body without agreement or fair process. If the Council wishes to retain this land, it should do so through proper purchase, and not through pressure or planning barriers.

6.1.4 *Precedent Established by the Council*

- The Council has recently undertaken major development works on the opposite side of the river also a designated Special Area of Conservation including the felling of over 70 mature trees and the disruption of a substantial area of habitat. In contrast, her proposal a visually sensitive and environmentally sensitive modest 60mtre natural stone wall and a single entrance gate involving only one tree removal. This is in keeping with surrounding developments including permission for a 125m wall. The Council's inconsistent approach is irrational and unfair.

6.1.5 *Planning Logic and Changed Circumstances*

- The refusal cites conflicts with Conditions 1, 5, 6 and 7 however, the current planning application represents a reasonable and proportionate response to a dramatically changed circumstance regarding the intrusion onto her land. The application is to regularise the situation and to safeguard her property.

6.1.6 *Prior Council Interest Confirms ownership*

- In 2009 Kilkenny Co. Co. attempted to purchase the piece of land now in dispute from the previous owners. This proves the Council do not hold title. The applicant purchased the property in good faith unaware of the Council's future action's

6.1.5 *Goodwill Efforts Ignored by the Council*

- The applicant has offered to transfer over 350sq.m. of the affected land to the Council contingent on planning permission been granted and planning fees offset. This reasonable proposal has been completely ignored. In addition, the Council also refused a road opening licence essential to connect to her property to the public sewer delaying access to public infrastructure for over two years. There is no valid justification for this.

6.1.6 *Historic Context must be Considered*

- The cover letter submitted with planning application 23/38 should be carefully considered and this outlines the broader history of the property and the persistent efforts made to resolve matters through constructive engagement.

6.1.7 *Conclusion*

The proposed boundary wall and gate is modest and respectful of the local environment and character. It is a necessary measure to secure safety, privacy and integrity of her home. The appeal is based on planning merits in addition to principles of fairness, ownership rights and reasonable treatment by public authorities.

6.2 Planning Authority Response

6.2.1 The Council does not dispute the registration documents. The footpath referred to is known locally as the Canal Walk and has been used by the public habitually for generations. It is a designated Right of Way in the Kilkenny City and County Development Plan.

Under planning ref: 01/1343 for 18No. dwellings there was a section 47 agreement pursuant of Condition 12 which required land edged in orange to be transferred to Kilkenny Co. Co. The registration was never executed but the agreement between the landowner was signed, copy attached.

6.2.2 This ground of appeal refers to Condition No. 7 condition No. 7 of 23/118 requiring entering into a Section 47 agreement. The requirement is based on the original agreement entered into with the original landowner and developer under planning reference 01/1343. It is not a new requirement and the applicant did not appeal that condition.

6.2.3 In the last two years a renewal of the Lacken boardwalk took place on the northern side of the river. This was a renewal and improvement of an existing walkway and the development subject to AA screening before the development commenced. That development was carried out in order to increase the level of enjoyment of a natural amenity by the general public. In this case it is a private individual extending their private space into the public realm and significantly detracting from the amenity enjoyment of the canal walk.

6.2.4 The contravening of Conditions 1, 5, 6 and 7 of Planning Ref. 23/118 is valid and it also contravenes 12 of Planning Ref 01/1343. It is the Council's view that a valid Section 47 agreement was agreed and signed by the owners and developers for 18 No. houses (now constructed). It is not a changed circumstance.

6.2.5 There is no record within the Council of attempting to purchase the land from the landowner in 2009.

- 6.2.6 It is the Council's view that a house at this location should not intrude onto the amenity and enjoyment of the public facility. The applicant was working to a permission under reference 11/299. However, significant departures were made from that permission without planning consent being obtained resulting in a significant larger overall development by extending to the rear. Double garage constructed on site outside of planning reference 20/129 (ABP 310257).
- 6.2.7 The full historic context must be considered. The original landholding included this site plus the land where 18 No. houses were permitted and constructed, Ref 01/1343. Under that permission a Section 47 agreement was entered into and signed limiting the use of the land from the extent of residential zoned area across the area zoned for amenity and recreational purposes.

Attached is a screenshot from the planning register which shows the outline of the two most recent planning applications 23/118 and 25/38. It should be noted that neither the decision or conditions attached to 23/118 were appealed by the applicant.

The context of site location is an area that is extensively used for recreation purposes and the amenity of an area needs to be protected in the interests of the common good. The development as proposed will result in a significant private residential development into the amenity area.

The site for the proposed boundary treatment walls and car parking area to be associated with the house is clearly located within the area zoned Amenity/ Greenlinks/ Biodiversity/ Open Space/ Recreation. This amenity objective has existed since the 1986 County Kilkenny Development Plan.

7.0 Assessment

7.1 I have considered the appeal file and inspected the site, and I will examine the appeal under the following headings:

- Background / Planning History
- Current Proposal
- Development Plan
- Filling of Drain

7.2 Background/ Planning History

7.2.1 Prior to examining the current planning application, there needs to be an understanding of the background to this development and the issues arising under appeal. The planning history relating to the subject dwelling and subject site is complex. The house was originally granted planning permission in 2012, **Planning Reference 11/299**, to Cormac and Garrett O'Carroll including the provision of a pedestrian path and cycle to existing access road. The development contribution payable at the time was €16,055. This permission was granted an extension of time under **Planning Reference 16533** in September 2016.

7.2.2 The current applicant, Ms Sylvia Heffernan, has made two planning applications on the subject site. The first was **Planning Reference 20/129** for a detached garage, and **Planning Reference 23118** for a number of development proposals listed under the **Section 4 Planning History** of this Report. The most relevant planning application to the current proposal is P23118, because it formed the basis for Kilkenny Co. Co's decision to refuse the current planning application.

7.2.3 The public notices described the development proposal applied for under **planning reference 23118** as the following:

- a) *Retain two retaining walls;*
- b) *The conversion of an integral garage to a bedroom;*
- c) *Elevation and design alterations;*
- d) *A basement home gym;*
- e) *A pumphouse/ plant room;*
- f) *A downstairs bedroom window;*
- g) *All associated site works.*

The application includes an offer to enter into a legal agreement under section 47 of the Planning and Development Act, 2000, under which the applicant would cede land to the north of the northern boundary of the site and which is in her ownership to Kilkenny Co. Co. at no cost to the planning authority.

There were 7No. conditions attached to the permission. Conditions, 1, 4, 5,6 and 7 relate to boundary treatment, and the Section 47 agreement to be put in place six

months following the decision relating to the transfer of lands as outlined on the attached map in blue. It should be noted the application, as with the current application states, *'to enter into a legal agreement under section 47 of the Planning and Development Act, 2000, under which the applicant would cede land to the north of the northern boundary of the site and which is in her ownership to Kilkenny Co. Co. at no cost to the planning authority'*. The decision and the conditions attached to planning reference P23/118 were not appealed by the applicant.

7.2.4 Enforcement issues have arisen previously in relation to the subject site relating to non-compliance with planning conditions and a boundary wall (see Section 4.0 of this Report). The relevant Enforcement file is ENF 19/11 in relation to non-compliance of Conditions 1,2,3,5,6,7 and 13 of Planning Reference P11/299. The most recent planning application (Ref. P23/118) included some proposals to resolve the outstanding enforcement issues arising from the enforcement notice, along with other changes to the dwellinghouse itself. The Planning Ref. P23/118 was granted by Kilkenny County Council. The decision was not appealed by the applicant.

7.2.5 There were a number of conditions attached to planning reference P23/118 relating to boundary treatment and the transfer of a plot of land to the county council. This current application also relates boundary treatment and the offer to transfer land to the county council. The planning authority's decision to refuse permission the current planning application has cited the proposed development materially contravenes planning conditions attached to P23/118 and the current development plan. In my opinion, in the event the Commission were to consider this planning application favourably, it would compound the outstanding planning enforcement issues associated with the planning history of the development, which effectively date back to the parent planning permission in 2012.

7.2.6 It would also appear, according to Condition No. 2 of P23/118, that there are alleged outstanding development contributions payable in respect of the development, and the planning authority attached another condition to redeem the outstanding amount (*this may have been paid in advance of the current planning application, it is not clear from the file*). In addition, Condition no. 3 of P23/118 states 'The façade of the double garage shall be faced in stone as was originally proposed under planning ref. 20/129, ABP Ref 310257-21. In my opinion, the outstanding enforcement issues associated with the development in terms of non-compliance with planning

conditions and the site, should be resolved prior to granting more planning permissions with planning conditions requiring compliance with previous planning conditions. In this current case, a further planning application has been made, which in my opinion, if permitted, will compound and legally confuse the previous planning permissions associated with the site, and enforcement of planning conditions. Therefore, I am recommending a refusal of permission until the unresolved enforcement issues are resolved between the parties.

7.3 Current Proposal

7.3.1 Under this current proposal lodged with Kilkenny Co. Co. in May 2025, the applicant proposes alterations to the site boundary, including boundary treatment, alterations and provision of a vehicular entrance. The public notices also stated the application includes an offer to enter into a legal agreement under Section 47 of the Planning and Development Act under which the applicant would cede land to the north of the northern boundary of the site which is in her ownership to Kilkenny Co. Co. at no cost to the planning authority.

7.3.2 The application documentation state, the applicant wishes to back fill the 1.3m ditch fronting the site (northern boundary) and to use it as a front garden to her dwellinghouse. The ditch caters for pluvial flooding associated upper ground and main road, where during the summer there is no water in the ditch and during the winter months it may reach 300mm in depth. A 1m sigot pipe and socket will be laid across 32m of the existing ditch and will be drained to a soakaway.

7.3.3 The application includes for the construction of a front boundary wall and an electric gate, to provide privacy and security to her home. The applicant claims Kilkenny Co. Co. constructed a public footpath across her property without her consent, agreement or any lawful transfer or CPO. She also claims under planning ref. 23/118, a section 47 agreement condition was imposed compelling her to transfer land to the Council with no compensation. The applicant makes no reference to the fact the transfer of the subject lands or the public right of way associated with the pathway were indicated in the drawings and the grant of permission associated with original planning reference 01/1343, which was planning permission granted for 18No. dwellings at Gallowhill. The Commission is advised, Condition No. 7 of P23/118 reflects the original agreement with the original landowners under

P01/1343. I note the agreement was addressed in the planning report associated with P11/299, however, it did not form a condition of the permission, perhaps because of the agreement was signed in 2006 between the parties. I refer the Commission to a copy of the agreement signed in 2006, which was submitted in the planning authority's response to the appeal. This particular issue is beyond the remit of the Commission. I would accept the planning authority's statement on appeal, that this is not a new issue, and the agreement has been in place since 2006 according to the appeal file.

7.3.4 Furthermore, I consider the appellants claims regarding the planning authority's unauthorised intrusion onto her landholding to be a civil matter between the parties. Furthermore, in respect of the appellant's claims, the planning authority attempted to purchase the land in dispute from the previous owner in 2009, the appellant has not provided no evidence to substantiate her claim.

7.3.5 In my opinion, the substantial portion of the First Party grounds of appeal are beyond the remit of the Commission, as they relate to planning enforcement issues and civil matters between the parties.

7.4 **Development Plan**

7.4.1 The relevant development plan is the ***Kilkenny City and County Development Plan 2021-2027***. According to Figure CS4 Kilkenny City Zoning Map, included with the photo plates, the bulk of the subject site is zoned as 'Existing Residential', with the northern site boundary zoned for Open Space/ Recreation. (Section Z13 on the zoning map.)

7.4.2 The proposal is to extend the garden area of the subject dwelling north of site, by infilling the ditch and providing a boundary wall, 1.8m in height along the full northern site boundary. This would bring the northern site boundary alongside the existing public pathway way/ riverwalk.

7.4.3 The second reason for refusal states the proposal extends residential activity into an open space zoning, the zoning objective for the area which is to allow for greenlinks and biodiversity conservation and to preserve and provide for and improve recreational open space. The planning authority considered the proposed development would therefore materially contravene the zoning objective of the Kilkenny City and County development Plan 2021-2027.

- 7.4.4 The area in question is a small strip of land along the northern site boundary which currently includes a ditch to be culverted under the proposed development, and trees. The planning authority's appeal submission states the amenity zoning associated with the strip of land has been in place since the Kilkenny County Development Plan 1986.
- 7.4.5 I examined the site boundaries associated with the history files, planning references 11/299, 16/533, 20129 (ABP 310257), and 23118 (two of which are in the same name as the current applicant) and the current site boundaries have been extended to the north. Effectively, the current application has different site boundaries to all previous planning applications associated with the subject dwelling/ curtilage. I also examined the site areas specified under the two previous planning applications submitted by the applicant, and there would appear to be an anomaly. Planning reference 20129 has a stated site area of 0.05Ha. Planning reference 23118 has a stated site area of 0.06ha, and yet they have the same site boundaries. It is further confusing as the current application states the site area is 0.06ha, and yet it has been extended from the previous application 23118 which is submitted as 0.06ha. This is a very serious material issue, and this anomaly would need to be clarified, because in my opinion, it may raise legal issues regarding compliance with previous permissions and conditions. Furthermore, the extension of the northern site boundary has encroached onto the open space/ greenlink/ biodiversity zoning. It appears it may encroach into the area that was the subject of the original Section 47 agreement to transfer lands to Kilkenny Co. Co. I do accept the site notices state the applicant is applying to alter the site boundary as part of this planning application. However, to permit the alternation of the northern site boundary would compromise previous permission and conditions, may compromise a previous Section 47 agreement, and encroach onto lands zoned for open space, which contravenes the objectives of the current development plan.
- 7.4.6 The development plan, under section 8.2.2.3 refers to the River Nore Linear Park. It has been an objective included in development plans for Kilkenny for many years. The path is not new as implied on appeal.
- 7.4.7 I do accept the proposed extension of the northern site boundary into the lands zoned for Open space/ greenlinks/ biodiversity, is to accommodate a larger front garden area within the curtilage of the dwelling house. Although the appellant has

not raised the material contravention of the development plan in her grounds of appeal, I consider this issue needs further examination. The site boundaries of the preceding planning applications were zoned 'Existing Residential'. It is stated in the appeal response from the planning authority, the planning objective to provide a linear park along the side of the River Nore in Kilkenny City predates the granting of planning permission for the subject dwelling. Therefore, to extend the residential use/ curtilage associated with the existing dwelling into lands zoned as open space, is a material contravention of the current Kilkenny City Development Plan 2021-2027. Pursuant to the provisions of section 37 (2)(b) of the Planning and Development Act, 2000, the proposed development is not of strategic or national importance, there are no conflicting objectives in the development plan associated with the site, there is no change to the pattern of development in the area since adoption of the development plan in 2021 and no regional planning policies are applicable to the case. The Commission is precluded from the granting of planning permission for the proposed development as none of the provisions of section 37 (2)(b) (i), (ii), (iii) or (iv) of the said Act apply in this case.

7.5 Filling the Drain

- 7.5.1 The proposed development includes the backfilling a 1.3m ditch fronting the site (northern boundary) and to incorporate the area into the front garden of the dwellinghouse. This ditch had not been included within the site boundaries of the previous planning applications associated with the site. As stated previously It should also be noted this ditch is located within the open space zoning objective. The ditch and the existing trees add to the amenity value of the linear pathway and are in compliance with open space/ greenlink objective governing the area of the ditch. According to the application documentation, the ditch caters for pluvial flooding associated upper ground and main road. According to the planning application, during the summer, there is no water in the ditch and during the winter months it may reach 300mm in depth. It is proposed to lay a 1m sigot pipe and socket across 32m of the existing ditch and it will be drained to a soakaway.
- 7.5.2 The Roads Report on the planning file commented that there are concerns raised in relation to the potential impact on flooding arising from the position and the sizing of the pipe. I am concerned about the lack of information regarding the infill of the ditch having regard to the difference in ground levels from south to north, and the fact the

submission documents state the ditch is associated with pluvial flooding of the upper ground during the winter months. I note the area has not been identified as a flood risk area. However, the River Nore is only 25m from the site, there are no calculations regarding the extent of pluvial flooding associated with the lands to the south. Furthermore, there are no calculations presented regarding the sizing and adequacy of the pipe, especially factoring in climate change calculations.

7.5.3 This issue regarding the ditch infilling is a new issue and it did not arise in the planning authority's decision. Therefore, I will not include it in my recommendation. However, there is insufficient evidence presented on the planning file regarding the potential impacts, if any, filling in and piping the existing ditch fronting the site.

8.0 AA Screening

- 8.1 The subject site is partially within the 'River Barrow and River Nore SAC (Site Code – 002162)'. The next closest European Site is the 'River Nore SPA (Site Code – 004233)', which is approximately 20 metres to the north of the site.
- 8.2 The previous planning application Planning Ref 23118 included An Appropriate Assessment Screening prepared by Flynn Furney Environmental Consultants on 19/12/2023. I note the findings of the report stated there is no significant deterioration of water quality to the River Nore anticipated as a result of this minor development. There is no anticipated impact on downstream receptors. The extension of the site boundary encroaches further into the River Nore SAC (site code SAC 002162, or the River Nore SPA (Site Code – 004233) designations. However given the scale and nature of the works, there is no known vector, pathway or conduit for impacts between the proposed works and the Natura 2000 sites.
- 8.3 In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on the River Nore SAC (site code SAC 002162, or the River Nore SPA (Site Code – 004233) in view of the conservation objectives of the site and is therefore excluded from further consideration. Appropriate Assessment is not required.
- 8.4 This determination is based on:
- The relatively minor scale of the development and lack of impact mechanisms that could significantly affect a European Site.
 - The Appropriate Assessment Screening Report submitted as Further Information on Planning registration No. 23-118.
 - Taking into account screening determination by the planning authority.

9.0 Water Framework Directive

- 9.1 The subject site is located south of Bennetbridge Road in Gallows Hill, Kilkenny City. The proposed development consists of a extending the original site boundaries

associated with an existing dwelling and the provision of a boundary wall along the new northern site boundary and security gates. No water deterioration concerns were raised in the planning appeal. The River Nore is only 25 metres from the subject site. The proposal involves the infilling of a ditch to the front of the site which caters for pluvial filling from higher lands to the south. I have assessed the proposed development and have considered the objectives as set out in Article 4 of the Water Framework Directive which seeks to protect and, where necessary, restore surface & ground water bodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration.

9.2 Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively. The reason for this conclusion is as follows:

- Nature of works regard the scale;

9.3 I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

10.0 Recommendation

I recommend the planning authority's decision to refuse the proposed development be upheld by the Commission.

11.0 Reasons and Considerations

1. Having regard to the planning history of the subject site, including planning enforcement issues from previous planning applications associated with the subject site, the proposed development would, by reason of alternating the site boundary materially contravene conditions attached to an existing permission for development namely, conditions number 1, 5, 6 and 7 under planning reference number 23/118

attached to the permission granted by Kilkenny County Council on the 12th day of April 2024. The proposed development would be contrary to the proper planning and sustainable development of the area.

2. On the basis of the planning history associated with the subject site, the submissions made in connection with the planning application and appeal, it appears to the Commission that the proposed development would facilitate the consolidation and intensification of non-compliance with previous planning permission permitted at the subject site. Accordingly, it is considered that it would be inappropriate for the Commission to consider the grant of a permission for the proposed development in such circumstances.
3. The northern portion of the site is located in an area zoned objective Amenity/ Greenlink/ Biodiversity conservation/ open space/ recreation in the current development plan for the area. The Board considers that the proposed development, of extending the residential boundary and curtilage into the lands zoned for Amenity/ Greenlink/ Biodiversity conservation/ open space/ recreation would materially contravene the zoning objective, as set out in this plan. The Board pursuant to the provisions of section 37 (2)(b) of the Planning and Development Act, 2000, is precluded from the granting of planning permission for the proposed development as none of the provisions of section 37 (2)(b) (i), (ii), (iii) or (iv) of the said Act apply in this case. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

Caryn Coogan
Planning Inspector

20/02/2026

Form 1 - EIA Pre-Screening

Case Reference	323020-25
Proposed Development Summary	Alterations of site boundary, alterations and provision of vehicular entrance
Development Address	De Clare House, Gallowhills, Kilkenny
In all cases check box /or leave blank	
1. Does the proposed development come within the definition of a ‘project’ for the purposes of EIA? (For the purposes of the Directive, “Project” means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a ‘Project’. Proceed to Q2.
	<input type="checkbox"/>
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	

<p>development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	<p>State the Class and state the relevant threshold</p>
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	<p>State the Class and state the relevant threshold</p>

<p>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</p>	
<p>Yes <input type="checkbox"/></p>	<p>Screening Determination required (Complete Form 3)</p>
<p>No <input checked="" type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p>

Inspector: _____ Date: _____