

From

Martin & Deirdre Freyne
16 The Village Slieverue
Co Kilkenny
X91 YW22

To

The Secretary, An Bord Pleanála,
64 Marlborough Street,
Dublin 1
D01 V902

| | |
|-------------------------|--------|
| AN BORD PLEANÁLA | |
| LDG- | _____ |
| ABP- | _____ |
| 15 DEC 2021 | |
| Fee: € | 220.00 |
| Type: | Cash |
| Time: | 1.45 |
| By: | hanc |

We wish to apply for a referral for **DEC 648**, issued on 19th November 2019 by Kilkenny County Council, to An Bord Pleanála as we believe that the decisions reached by Kilkenny Planning Authority in relation to DEC 648 is flawed.

We sought a Section 5 Declaration from Kilkenny Planning Authority asking

"Is the building, and its current use, that was granted permission as a Garage/Store Class-4 for P.478/84 which was built 30% larger than the plans submitted, and is now used as a wholesale / distribution business, development? and if so, is it exempt development?"

We also added the following additional information.

"The building in question, and its permitted use was granted permission as a Garage/Store from application P.478/84. The building that was applied for had a floor space of 35.68sqm, the actual building that was constructed has a floor space of 47.82sqm, which is in excess of 30% bigger than what was applied for. The building also differs from the plans and the roof orientation relative to the plans is opposite to what was applied for. Planning was given for Class-4, the buildings current use is that of a wholesale / distribution which we understand requires a Class-5 type permission. Conditions were attached to P.478/84, condition No4 is as follows, "The development shall be carried out and completed strictly in accordance with the conditions of this permission and with the plans and specifications lodged with this application. Reasons: To ensure that the development shall be in strict accordance with the permission and that effective control is maintained""

The following points are where Kilkenny Planning Authority has concluded that:

- The building that was granted planning permission as a garage/store Class-4 under planning reference P478/84 and used as a wholesale / distribution business is development and is exempt development.
- The area of the building built approximately 30% larger than the plans submitted under planning reference P478/84 is development and is not exempted development.

The council in its consideration of this referral had regard to the following (although not in alphabetical order on their document)

- Section 4(1)(h) of the Planning and Development Acts 2000-2021
- Article 9 of the Planning and Development Acts 2000-2021
- Planning / Enforcement History on the site including recent reference P21/203 / APB-310441-21
- Parent Planning reference P478/84
- The plans and particulars submitted on the 5th August 2021 and response received by the owner dated 8th October 2021.

We wish to point out the following as grounds for our referral.

In P478/84 condition No.4 is clear, reasonable, relevant, precise and is worded as follows

"The development shall be carried out and completed strictly in accordance with the conditions of this permission and with the plans and specifications lodged with this application. Reasons: To ensure that the development shall be in strict accordance with the permission and that effective control is maintained"

The Planning Authority have not given regard to this condition and have split the building and its use into two separate entities giving two separate findings. For the planning to do so it must be able to physically define where the 70/30% is on plans. The developer, when in the construction phase didn't work from the plans submitted and built an entirely different building, the building was done in its entirety at a onetime construction, an office was later added to the building. This office was refused retention for planning application 11/638.

The Planning Authority are applying exemptions to a building that contravenes a condition of a planning condition and is an unauthorised development. The Planning Authority refers to Section 4(1)(h) of the Planning and Development Acts 2000-2021 for a reason to apply exemptions to the undefined and unidentifiable 70% of the building which suggests that the only impact is internal to the building. We wish to point out that the building is the only building in the area that has its main roof ridge running at 90° to the road frontage this is directly opposed to the plans submitted. The gable end of the building that faces the road sports a large illuminated advertising sign that does not have planning permission. The commercial wholesale business that is run from the building have brought in HGV's which block rights of way, block us from entering and exiting our home, has forklift operating in close proximity to our home and is a danger to us as residents and us as road users. We are disturbed by the constant drone noise from a forklift used on the site 24 hours a day, the HGV that deliver to the development are damaging to the amenity and cause noise, nuisance and disturbance to us as residents in a residential area. We believe that these issues mentioned and the issues shown in the following photos would not occur if the development was carried out to the plans and specifications submitted for P478/84 and that what is happening to us and our property is in breach of conditions attached to P478/84. Up to 20 entries and exits can occur between 05:00 and 07:00 and can continue throughout the day and night. We are disturbed by the noise from these vans, the loading and unloading of these vans.

We have inserted the following photos in relation to our referral:



Figure 1 Gable end with large illuminated advertisement sign. This sign does not have planning permission. This sign is of a size, type and position that is not exempted development and would not be there if the development was carried out to plans submitted. Cars and HGV's also park up as shown which is on a junction This is in breach of 1997 Road Traffic Regulations by parking on a junction and by HGV's blocking the visibility of a road safety sign for the village.



Figure 2 Photo taken circa 1991, no wholesale sign in place

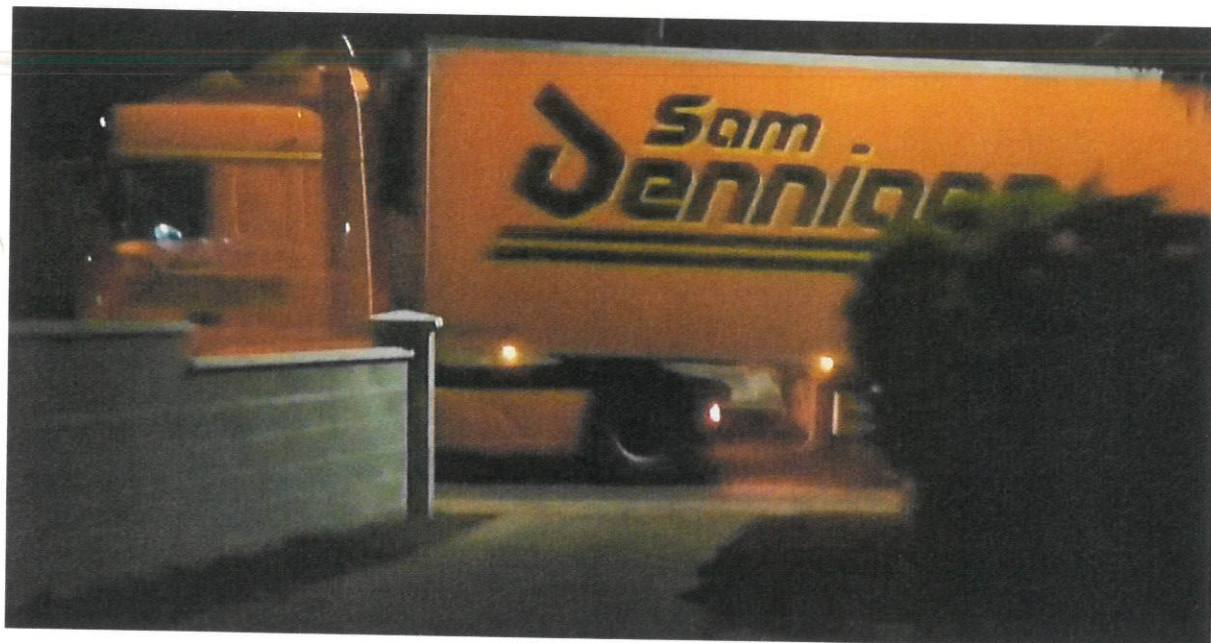


Figure 3 Truck parked up and blocking entrance to our home



Figure 4 Loading / Unloading on the street with a forklift



Figure 5 Pallets out on the road, Truck blocking road traffic sign for local school.



Figure 6 Night time parking of trucks in the local National School car park



Figure 7 Doors let swing open over pedestrian walk



Figure 8 Truck unloading right up on our property while blocking the access route to private homes



Figure 9 Truck parked right up to our entrance late at night



Figure 10 Load fallen from forklift blocking the footpath



Figure 11 Loading right up beside our property. Footpath blocked by pallet and door swinging



Figure 12 Unloading beside unsuspecting road users

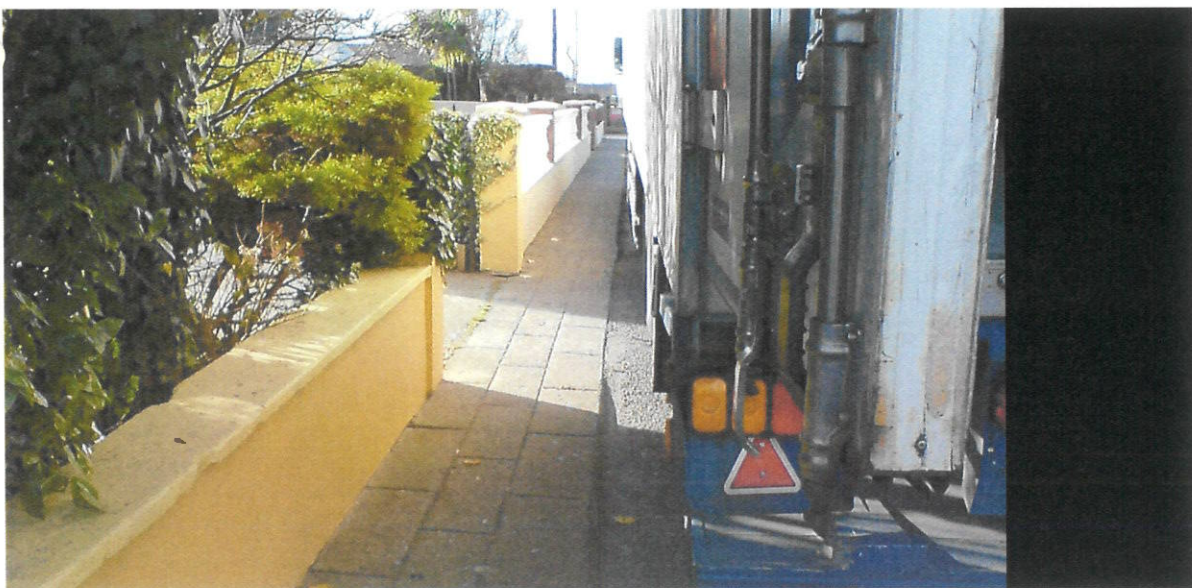


Figure 13 Completely blocking the entrance to our home



Figure 14 Truck unloading right up on the entrance to our home making it extremely dangerous for us to enter and exit our home.

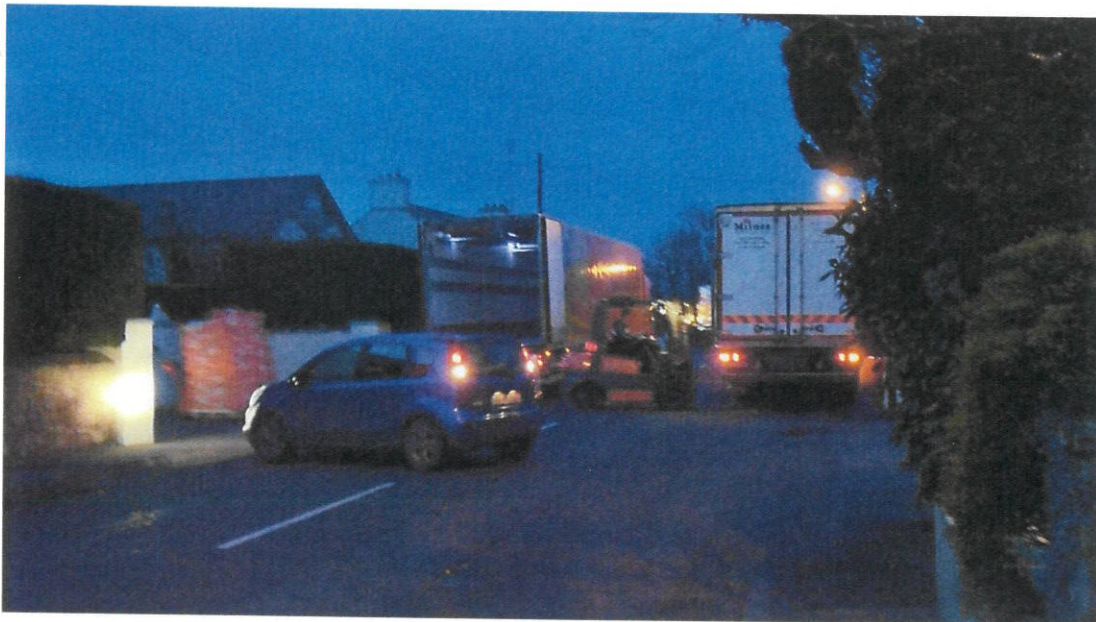


Figure 15 Trucks & forklift completely blocking road on a junction outside our property

For P478/84 Planning Application Form, in a section termed 'Particulars of Development' The first section states the following:

1. *Description of proposed developments*
(if workshop, garage, etc., state whether it will be used for commercial purposes)

There is no suggestion in the answer that the development will be used for commercial purposes. The application was approved for a Garage/Store. The description given in the form for Planning Permission Application 478/84, Particulars of Development section of the application was answered and is very clear, where it was indicated by omission that the use will not for commercial purposes.

The 'The Submission of Fee Report' states that the development is for Class-4 The Planning and Development Acts 2000-2021 states the following:

- CLASS 4...Use as a light industrial building.
- CLASS 5...Use as a wholesale warehouse or as a repository.

Change of use occurred at some stage between the approval of application P478/84 for an industrial building, to a commercial wholesale business which is now active. We believe that this is a change of use, to commercial wholesale business, and is in breach of conditions for P478/84. The building built is much bigger than what was applied for and is not what was submitted in plans which is also in breach of conditions attached to the permission.

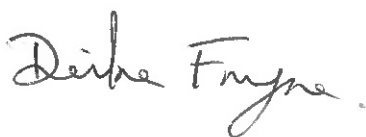
We have included the following documents

- Copy of DEC 648
- All the files given to us from Kilkenny Planning authority in relation to planning application 478/84
- Submission of fee report, (this was not given to us by Kilkenny planning in our recent request for copies of 478/84)
- Drawings detailing the building in question and other buildings that are not planning compliant
- An Bord Pleanála Inspectors report for 11/638, we feel the need to share this report for historical and other relevant information.

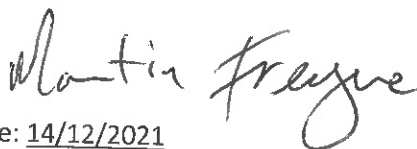
Thank you

Regards

Deirdre Freyne



Martin Freyne



Date: 14/12/2021



Comhairle Chontae Chill Chainnigh

Halla an Chontae Sraid Eoin Cill Chainnigh

Pobail agus Áiteanna Inbhuanaíthe a Chruthú

Kilkenny County Council

County Hall John Street Kilkenny

Creating Sustainable Communities and Places

Kilkenny

Our Ref: DEC 648

19th November 2021

Registered Post

Martin & Deirdre Freyne,
16 The Village,
Slieverue,
Kilkenny.

Re: Application for Declaration under Section 5 of the Planning & Development Acts 2000-2019
Development location: Brendan Walsh, Fruit & Vegetable Wholesale, Slieverue Co. Kilkenny.

A Chara,

I refer to the above application and now attach Declaration relating to same.

Mise le meas,

Úna Kealy
Administrative Officer
Planning Section



**Declaration and Referral on Development and Exempted Development under
Section 5 of the Planning & Development Acts 2000-2021**

Kilkenny County Council Reference: Dec648

WHEREAS a question has arisen as to “Is the building, and its current use, that was granted planning permission as a Garage/store Class-4 for P478/84 which was built 30% larger than the plans submitted, and is now used a wholesale / distribution business, development and if so, is it exempted development’

AND WHEREAS the said question was referred to Kilkenny County Council by Martin Freyne, 16 Slieverue, Co. Kilkenny on the 5th August 2021

AND WHEREAS Kilkenny County Council, in considering this referral, had regard to:

- (a) Section 4(1)(h) of the Planning and Development Acts 2000-2021.
- (b) Article 9 of the Planning and Development Regulations 2001 as amended
- (d) Planning / Enforcement History on site including recent reference P21/203 / ABP-310441-21
- (e) Parent Planning reference P478/84
- (c) The plans and particulars submitted on the 5th August 2021 and response received by the owner dated 8th October 2021

AND WHEREAS Kilkenny County Council has concluded that:

- (a) The building that was granted planning permission as a garage/store Class-4 under planning reference P478/84 and used as a wholesale / distribution business is development and is exempted development
- (b) The area of building built approximately 30% larger than the plans submitted under planning reference P478/84 is development and is not exempted development,


NOW THEREFORE Kilkenny County Council, in exercise of the powers conferred on it by Section 5 of the 2000-2021 Act, hereby decides that the

The building that was granted planning permission as a garage/store Class-4 under planning reference P478/84 and used as a wholesale / distribution business is development and is exempted development

(b) The area of building built approximately 30% larger than the plans submitted under planning reference P478/84 is development and is not exempted development,

MATTERS CONSIDERED

In making its decision, the Planning Authority had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard.


Una Kealy,
Administrative Officer

Date: 19.11.2021

Footnote:

Section 5 (3)(a) of the Planning & Development Acts 2000-2021 states: *'Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.'*

An Bord Pleanála, 64 Marlborough Street, Dublin 1, Tel 01 8588100 or LoCall 1890 275175,
www.pleanala.ie

SUBMISSION OF FEE REPORT

Applicant: Borden Hall
 Development: All
 Nature of development: House - 8000
 Planning Ref. No.: Class of development: 4
 Date received:

CLASS 1. No. of dwellings @ £30 each.
 Fee payable: £

CLASS 2. (a) Fee payable: £
 (b) Fee payable: £
 (c) Fee payable: £

CLASS 3. Gross floor space: m²
 Fee payable: £ (Min. £400)

CLASS 4. Gross floor space: 35 m²
 Fee payable: 62.45 (Min. £400)

CLASS 5. No. of hectares: $\frac{.....}{0.1} \times 25 =$
 Fee payable: £ (Min. £250)

CLASS 6. No. of hectares: $\frac{.....}{0.1} \times 25 =$
 Fee payable: £ (Min. £400)

CLASS 7. No. of hectares: $\frac{.....}{0.1} \times 25 =$
 Fee payable: £ (Min. £100)

CLASS 8. Fee payable: £

CLASS 9. Area of sign = m² \times £10/m²
 Fee payable: £ (Min. £40)

CLASS 10. Length of line in meters: @ £15/1000 m.
 Fee payable: £ (Min. £40)

CLASS 11. No. of hectares: $\frac{.....}{0.1} \times 5 =$
 Fee payable: £ (Min. £40)

Structures for which one or more classes may apply

| | |
|-------|----------|
| Class | Amount £ |
| | Amount £ |
| | Amount £ |
| | TOTAL £ |

TOTAL FEE: £ 62.45

At the County Photo
 taken in 2011 for PA 478/84
 Plot - Freyne



KILKENNY COUNCIL COUNCIL

APPLICATION FORM FOR PLANNING PERMISSION

Please read carefully notes on back of form as incomplete applications will be returned.

17 JUL 1984

For Office Use Only

Reg. No. ..478184.

Ack. sent ..31.12.184.

Fee Paid £62.45..27.1.84

I/We Fewer McGinley & Tritschler Planning Section of 14 O'Connell Street, Waterford..... hereby apply to Kilkenny County Council on behalf of Mr. Brendan Walsh..... for (see notes 1 and 2 on back of form ..Permission..... in respect of the development, details of which are given hereunder and the necessary drawings attached hereto.

Signed date 16.7.84.

PARTICULARS OF DEVELOPMENT

1. Description of proposed development: ..Garage/Store.....
(if workshop, garage, etc., state whether it will be used for commercial purposes)
2. Location of development: Slieverue, Co. Kilkenny.....
3. Nature of applicants interest in site: Owner.....
(e.g. Owner, Trustee, Lessee, Tenant, etc.)
- Name and Address of Former Owner
4. (i) State the amount of Fee submitted with the application: ..£62.45.....
(ii) and where appropriate, the basis on which this amount has been calculated
.....
(iii) If the amount submitted is a reduced Fee, please state the basis on which it is calculated and full details of the relevant previous permission or approval
.....35.685m² @ £1.75. per m² = £62.45.....
5. Name and address of person who prepared drawings: Fewer McGinley & Tritschler.....
6. Full postal address to which correspondence and notices should be sent:
14 O'Connell Street, Waterford,.....
7. To what extent have the requirements of the Draft Building Regulations as amended by the Department of the Environment been taken into account in the preparation of your proposals:
..... In accordance with Draft Building Regulations.....
8. A statement of the area of the land to which the application relates. (Please state area in hectares or square metres)
Applicants House & Garden - .838 of an acre.....
9. Where the application relates to a building or buildings:
(i) state the number of dwellings (if any) to be provided:
One.....
(ii) state the gross floor space in square metres (except in the case of an outline application for houses) 37m².....
10. If proposal is to erect dwellinghouse the following information is required:
(a) Name and address of person who will occupy house as normal place of residence on completion:
(b) Details of applicant's present accommodation
(If proposed house is for applicants own use)

11. General description of structure (e.g. walls, roof, etc.) indicating if prefabricated or traditional design
Traditional Construction with cavity walls and Pre-fab roof trusses/slate roof.....
12. Proposals for water supply - (a) Public Main (b) Group Scheme (c) Existing Private Supply (d) New Bore (delete whichever does not apply).
13. Proposals for sewage disposal (a) Public Sewer (b) Private Septic tank (c) Communal Septic tank (delete whichever does not apply).
14. Date on which public notice was given: ...22nd June, 1984.....
15. If Outline Permission has already been granted in respect of this development, please state:-
(a) Reference No. (b) Date
(c) To whom granted



Local Government (Planning and Development) Acts, 1963 to 1983

NOTIFICATION OF DECISION TO GRANT PERMISSION/OUTLINE PERMISSION/APPROVAL
(SUBJECT TO CONDITIONS)

COUNCIL OF THE COUNTY OF KILKENNY

To Mr. Brendan Walsh,
c/o, Fewer, McGinley & Tritschler,
14, O'Connell Street,
Waterford.
Reference No. in
Planning Register P. 478/84

Application by or on behalf of Brandon Walsh Of (address) c/o, Fewer, McGinley &
Tritschler, 14, O'Connell St., Waterford. Received on 27th July, 1984
for: Garage/Store at Slieverue.

In pursuance of the powers conferred upon them by the above-mentioned Acts, the COUNCIL OF
THE COUNTY OF KILKENNY have by order dated 21st September, 1984
decided to grant A PERMISSION/AN OUTLINE PERMISSION/AN APPROVAL SUBJECT TO the
conditions set out in the attached Schedule and the reasons therefor.

Signed on behalf of the said Council

date 21st September, 1984

See notes on back of this form



NOTIFICATION OF A GRANT OF PERMISSION/OUTLINE PERMISSION/APPROVAL

(SUBJECT TO CONDITIONS)

COUNCIL OF THE COUNTY OF KILKENNY

To Mr. Brendan Walsh,
c/o, Fawcett, McGinley & Fritschler,
14, O'Connell Street,
Waterford.

Reference No. in

Planning Register

P. 477/34

Application by or on behalf of Brendan Walsh
Fritschler, 14, O'Connell St., Waterford. Of (address) c/o, Fawcett, McGinley &
27th July, 1984
Received on
Garage/Shop at Slieveria.
for:

FURTHER to the order dated

21st September, 1984

A PERMISSION/AN OUTLINE PERMISSION/ AN APPROVAL has been granted
SUBJECT TO the conditions set out in the Schedule hereto.

Signed on behalf of the said Council

Date

SCHEDULE

The Conditions referred to above are contained in the Schedule which accompanied the Notification
of the Council's decision dated 21st September, 1984

See notes on back of this form

fee paid.

REG. NO. P. 478/84

LOCAL GOVERNMENT (PLANNING & DEVELOPMENT) Acts, 1963 to 1983,

Application for Planning Permission

Applicant: Brendan Walsh c/o Fawer McGinley & Tritschler

Subject: Garage/Store at Slieverue

722

ORDER:

It is hereby decided to grant

Permission

~~Outline Permission~~

~~Approval~~

subject to conditions referred to in Planning Officer's report and reasons therefor.

I further order that a Grant of

Permission

~~Outline Permission~~

~~Approval~~

issue after the appropriate period unless a valid appeal against the decision is made to An Bord Pleanala and not subsequently withdrawn.

Signed: P. J. Donnelly
Co. Manager.

Date: 21/9/84

Conditions attached to Planning Permission. P.478/84.

(4 No.)

- 1 Condition: Surface water from this development shall be disposed of within the curtilage of the development.
Reason: To avoid interference with other properties and to prevent damage to the public road and consequent traffic hazard.
- 2 Condition: The existing hedge along the eastern boundary of the site shall be maintained and renewed as necessary.
- 3 Condition: The existing trees along the road boundary shall be maintained and renewed as necessary. The existing evergreen reinforcing behind these trees shall be extended as far as the eastern boundary.
- 2-3 Reason: In the interests of visual amenity.
- 4 Condition: The development shall be carried out and completed strictly in accordance with the conditions of this permission and with the plans and specifications lodged with this application.
Reason: To ensure that the development shall be in strict accordance with the permission and that effective control is maintained.

RE NO. 478/84

DATE: 12/9/84

Dear Mr. Barry,

This application is for

Permission to erect a garage/store

~~on the lands of~~ at Shieverne

adjoining the public road leading from Waterford

to New Ross, National ~~road~~ Primary Route N° 25

~~and to service same by septic tank installation~~

~~and~~

~~water supply.~~

A somewhat similar ~~the~~ application was granted Outline
Permission (P 263/82) in June 82, followed by Approval
(P 261/83) which was granted in April '83. The
present application differs in the following respects

- (a) Revised layout for garage
- (b) New location within the same site

I recommend that
subject to the attached Conditions.

Mise, le meas,

Permission be granted

Joe Wall
J. Wall, ,
Executive Engineer.

O. Mannion, S.E.E.

Conditions.

4 A of Single House

The existing hedge along the E boundary shall be maintained and renewed as necessary. R. visual amenity

The existing trees along the road boundary shall be maintained, and renewed as necessary. The existing evergreen reinf. behind these trees shall be extended as far as the E. boundary. R. visual amenity

10 A

Planning and Environment Section

Roinn Pleanála agus Comhshaoil

P. 478/84

Date 13th September 1984

Mr. M. A. Barry, B.E.,
County Engineer,
Courthouse,
KILKENNY.

Local Government (Planning & Development) Acts, 1963 & 1976.
(Permission) Regulations, 1977.

Applicant: Brendan Walsh, c/o Fewer McGinley & Tritschler,
Subject: Garage/store at Slieverue

Dear Mr. Barry,

This application is for permission to erect a garage/store at Slieverue adjoining the public road leading from Waterford to New Ross, National Primary Route N.25.

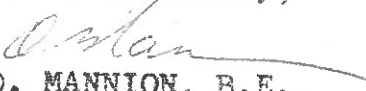
A somewhat similar application was granted Outline Permission (P.263/82) in June 1982, followed by Approval (P.261/83) which was granted in April 1983. The present application differs in the following respects:-

- (a) Revised layout for garage
- (b) New location within the same site.

I recommend that Permission
attached conditions.

be granted subject to the

Yours Sincerely,


O. MANNION, B.E.,
Senior Executive Engineer,
(Planning & Environment).

I agree with the above recommendation.
COUNTY ENGINEER.

Our Ref: W/PO'N/MK.

18th July, 1984.

Mr. Brendan Walsh,
c/o Fewer McGinley & Tritschler,
14 O'Connell St.,
Waterford.

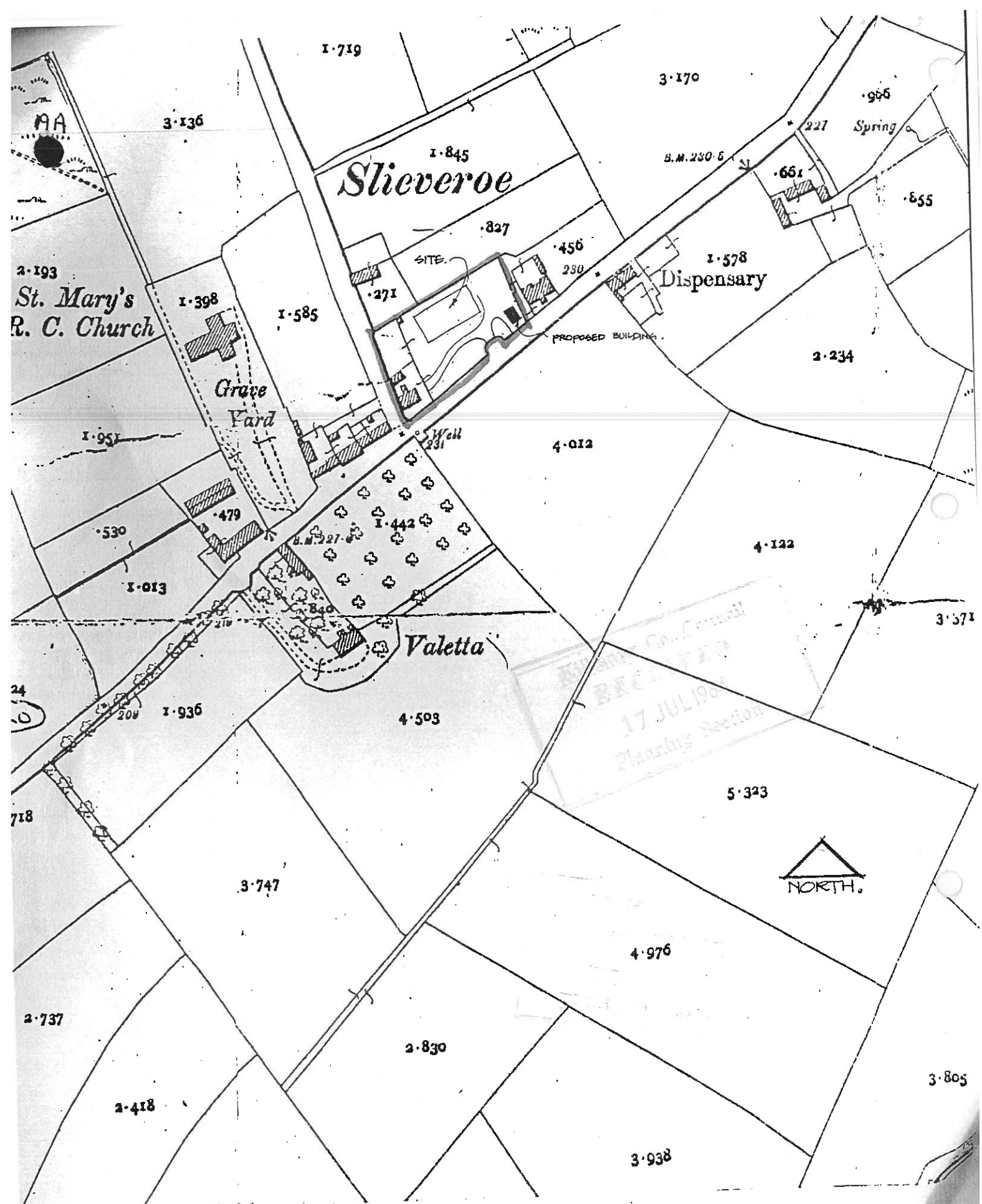
Re: Application for Garage/store at Slieverue, Co. Kilkenny.

A Chara,

I return herewith application forms, cheque for £62.45, public notice together with site location maps and relevant drawings etc. This application is invalid as the public notice submitted is out of date. A newspaper notice accompanying an application should be submitted ~~within~~ 2 weeks of the date of publication of the notice. Alternatively a public notice should be placed on the site in the prescribed manner and a copy of same submitted to the Planning Authority with the planning application. In this respect I enclose herewith two copies of public notice. This application should be resubmitted with proper public notice.

Mise, le meas,

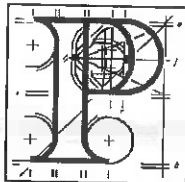
P. O'Neill,
a.s. Bunai.



PROPOSED GARAGE + WORKSHOP at SLIEVEROE CO. KILKENNY.
 SITE LOCATION MAP. TAKEN FROM O.S. 43-16. SCALE 1/2,500.
 FEWER McGINLEY TRITSCHLER, ARCHITECTS, 14 O'CONNELL ST. WATERFORD.

An Bord Pleanála Ref.: PL.10.240884

An Bord Pleanála



Inspector's Report

Development: Permission for new entrance and boundary wall to commercial premises

Site Address: Slieverue, Kilmurray, Co. Kilkenny

Planning Application

Planning Authority: Kilkenny County Council

Planning Authority Reg. Ref.: 11/638

Applicants: Brendan Walsh

Type of Application: Permission

Planning Authority Decision: Grant Permission

Planning Appeal

Appellant: Martin and Deirdre Freyne

Type of Appeal: Third Party V Grant

Observers: None

Date of Site Inspection: 25th September 2012

Inspector: Joanna Kelly

Appendices:

Appendix 1 Site Location Map

Appendix 2 Photographs and Site key Plan

Appendix 3 Extracts from Kilkenny City & Environs development plan 2008-2014

PL.10.240884

1.0 SITE DESCRIPTION

- 1.1** The appeal site is located on the Main Street along Slieverue Village on lands identified as "village centre" in the Local Area Plan 2006. Slieverue is c. 5 kilometres north-east of Waterford City. There is a national school located less than 150 metres east of the appeal site. It was noted that there were bollards erected in the vicinity of the school to control parking.
- 1.2** The appeal site itself comprises of the commercial section where the storage and distribution of fruit and vegetables takes place. The other part of the site is in residential use. There is one existing vehicular entrance to the site which serves both the residential unit and the commercial part of the site. There is a footpath along the site frontage. Visibility from the existing entrance is limited and drivers would have to move out across the footpath to see oncoming traffic.
- 1.3** There is a small housing development located on the opposite side of the road to the appeal site. It was noted that there are other community uses such as Church, post office all within very close proximity to the appeal site.

2.0 DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1** The initial description of the application was for a new entrance and boundary wall to commercial premises. However following a request for further information the applicant submitted revised public notices where the nature of the application changed. The applicant sought retention of the cold room store and office extension and for permission to build a canteen and toilet extension to existing store on the site.

The correct description as is now being sought by the applicant is as follows:

"Permission for new entrance and boundary wall to commercial premises (re. no. 11/638) which will include retention of cold room store and office extension and for permission to build canteen and toilet extension to existing store."

3.0 TECHNICAL REPORTS

3.1 Planning report:

The first planner's report recommended that the application was considered invalid as substantial information was omitted in the application in relation to an existing site survey and retention of the unauthorised commercial premises on site. The Board should note pages from this report are missing on file and whilst they have been requested from the Planning Authority they remain outstanding to date.

The Senior Executive Planner noted that the applicant should be given the opportunity to regularise the existing unauthorised uses on within its boundary and requested that further information be sought in this regard. A further information request issued which sought information and revised public notices in relation to the existing unauthorised commercial development. Details were also requested in relation to the visibility envelope for the proposed entrance.

The subsequent planner's report dealt with the response to the further information request. It noted that there was one submission to the application. The report set out that the roads section was satisfied with proposed revised access/traffic arrangement and submitted sightlines. It was considered that the proposed new entrance will improve traffic safety from existing commercial operations and allay concerns expressed in the third party submission. It was recommended that permission be granted subject to 18 conditions.

4.0 PLANNING AUTHORITIES DECISION

Kilkenny County Council issued notification of a grant of permission subject to 18 conditions:-

| | |
|----------------|--|
| Condition 1 | Compliance with plans and particulars |
| Condition 2-4 | Section 48 contribution |
| Condition 5 | External finishes |
| Condition 6 | Portable toilet to be removed permanently |
| Condition 7-10 | Services, access and boundary arrangements |
| Condition 11 | Separation of wastes |
| Condition 12 | Noise and air emissions |
| Condition 13 | No accumulation of waste |
| Condition 14 | No parking along public road |
| Condition 15 | Hours of deliveries |
| Condition 16 | Advertising |
| Condition 17 | Trees and hedges to be retained |
| Condition 18 | Landscaping plan |
| Condition 19 | Parking requirements |

5.0 APPEAL GROUNDS

5.1 Martin and Deirdre Freyne

The grounds of appeal are summarised as follows:-

- Reference is made to the 'swept path analysis' that was supplied as part of the application and that the analysis refers to trucks being 13m in length as opposed to 17m which is reflective of the actual trucks on the ground.
- Reference is made to the type of trucks accessing this site within a village and that any compromise on safety needs careful consideration.
- The delivery times to and from the site are considered too generous given that this is a residential area where people live and like to enjoy the amenity a small village has to offer. Condition 15 needs to be clarified particularly the interpretation of 'exceptional circumstances'.
- The plans submitted do not show an oil tank. It is set out that this tank is for commercial use and is used to supply fuel to vans and trucks owned by the applicant.
- It is contended that the only way that a truck of 17m can enter the gate is to travel c. 70 metres on the wrong side of the road and a further 23 metres in reverse covering both sides of the road to successfully enter the site with a gate width of 6.021 metres.
- It is set out that if there is a car parked anywhere along the route of the truck it will prevent access to the site.

6.0 RESPONSES

6.2 First Party response to Third Party appeal

The relevant planning considerations in this response are summarised as follows:

- The existing wholesale use is a permissible use on the site. The applicant has ran a successful business from these premises since 1973. Receiving fresh produce from suppliers, the applicant supplies a number of local businesses including local/corner retail stores and restaurants.
- At present, the commercial business and applicant's residence are accessed by a shared entrance measuring 3.1 metres. This entrance has been in use as such since 1980/1981. The continued use of the entrance is unacceptable due to absence of sightlines allowing for safe egress of vehicles; the narrow width of the entrance restricting access by some of the suppliers' trucks.
- The purpose of the application is to improve the existing traffic arrangements for the application site providing a safe access and egress for both commercial and residential users, including deliveries.
- A response to the appellant's grounds of appeal are set out in the following headings: swept path analysis; sightlines; hours of operation; and fuel tank.
- The swept path analysis that was submitted was based upon a truck and trailer of 13 metres as it was the applicant's intention that all suppliers would supply goods in vehicles of 13 metres or less in length. There are only two suppliers who deliver goods to the premises in vehicles of greater than 17m in length. As a result a revised site layout plan has been submitted to the Board for consideration.
- It is set out that sightlines are not available at the existing entrance. The revisions proposed will increase sightlines to 50m in both directions. The existing stone wall

will have to be removed and re-built behind the sightlines. The applicant is keen to replace this as it is a strong part of the local streetscape. Deliveries from these larger vehicles is 1 per day 4 days a weeks with 2 per day 2 days a weeks. It is set out that it is rare that both suppliers arrive at the same time. It is set out that with implementation of the revised proposals that one vehicle will be unloaded within the site with the second waiting at the most 20 minutes for access to the site. It is set out that the appeal site is zoned 'village centre' where a wholesale outlet is a permissible use.

- It is set out that permission was sought from Kilkenny County Council for hours of operation from 6.30am to 9.30pm. These hours are the standard delivery hours of the business as currently operating and are necessary to facilitate delivery of fresh vegetables prepared produce to restaurants and catering industry. The First Party set out that it will be difficult for the Planning Authority to manage deviations from the permissible delivery hours due to the nature of unforeseen circumstances that can arise.
- The fuel tank referenced by the appellant is considered by the first party to be exempted development. The tank is a 1100 litre storage tank and measures approx. 2 sq.m. providing for fuel in connection with the process carried out within the building adjacent. It is set out that its omission from the application drawings was an oversight and has now been included in the revised site layout plan to the Board.
- In conclusion, it is set out that the purpose of the application is to improve the existing traffic arrangements and consequently traffic safety at the shared entrance. It is requested that the Board uphold the Planning Authority's decision and allow the applicant to undertake these works and significantly improve the existing traffic arrangements.

7.2 Planning Authority response to First Party Response

The main details of this submission are summarised as follows:

- The Planning Authority has no objections to the revised site layout plan and the entrance details.
- In relation to hours of operation the Planning Authority acknowledges that allowing deviation of delivery times outside the hours of 6.30 am and 8.30 pm may not be practical because of the nature of the business and would ask the Board to omit accordingly and to allow no deviations.

7.3 Third Party's response to First Party submission

The pertinent planning issues are summarised as follows:

- It is set out that the business has increased steadily in activity to a 7 day week 24 hour operation.
- Reference is made to residential policies and objective in the Slieverue Local Area Plan. Transitional areas are also referred to. (These policies are dealt with in more detail in the assessment).
- Reference is made to the unsocial hours of operation and the delivery times permissible by way of condition.

- The fuel tank exemption referred to by the First Party is for domestic tanks and not commercial tank. The tank in question is used to provide fuel for fleet of vans.
- The appellant has raised questions in diagrammatical format. The main question appears to be why was the swept path analysis not done in a continuous entry and exit movement to demonstrate that manoeuvring is possible.
- Comparisons are made to the proposed new entrance and the existing entrance. It is set out that the new entrance is of an industrial proportion and would be out of balance with any other entrance in the village. It is also set out that applicant is seeking to screen the end of his site from his dwelling whilst the entrance will have the opposite effect on the wider amenity by exposing its activities to the village.
- Reference is made to where the business and entrance were originally located in the 1970s.
- Photographs are submitted of lorries loading and unloading early in the morning.
- Reference is made to the lorries having to reverse on the opposite side of the road to enter the site.
- Reference is made in the conclusion to point already raised and it is requested that the Board refuse permission.

8.0 PLANNING HISTORY

The Planner's report notes a number of application where permission was sought for retention in relation to various structures on the site. However all of these applications were deemed invalid or withdrawn following a further information request.

There is no parent permission which authorises the actual use of the site for commercial purposes i.e. fruit and vegetable business currently operational on the site.

9.0 PLANNING POLICY

9.1 Kilkenny County Development Plan 2008-2014

ED14 To provide an adequate range of locations for both large and small scale new industrial development throughout the County. This development will be encouraged to locate on appropriately zoned lands within the development boundaries of established settlements to facilitate more sustainable commuting patterns and to contribute to the economic development of towns and villages.

9.2 Slieverue Local Area Plan 2006-2012

The appeal site is zoned village centre.

The development strategy for Slieverue will provide for consolidation of development around the existing village settlement which is intended to be socially cohesive and will support appropriate service expansion. There is an objective within the LAP to ensure the

maintenance and protection of housing within the village centre and to encourage continued residential use of upper floors. There is also an objective to protect the residential amenity of existing dwellings.

It is noted that the LAP sets out that "speeding was identified as a problem, particularly on approach roads and through the village".

The Church appears to be the only protected structure in the village.

10.0 ASSESSMENT

Having examined the file, considered local and national policies, inspected the site and immediate environs, assessed the proposal and all of the submissions on file, I consider the key issues in this case to be:

- Nature of development and public notices
- Principle of development
- Access and traffic considerations
- Appropriate Assessment
- Other

10.1 Nature of development and public notices

10.1.1 Firstly, it is important to establish the actual nature and extent of the development proposed in this application. The applicant originally submitted plans to widen the existing entrance, however pursuant to further information request submitted details seeking *"permission for new entrance and boundary wall to commercial premises which will include retention of cold room store and office extension and for permission to build canteen and toilet extension to existing store"*. It is noted that the further information request specifically made reference to *"existing unauthorised commercial uses within this boundary"*. Given that there does not appear to be any parent permission for the existing commercial use it is reasonable to conclude that the Planning Authority were seeking that the applicant regularise the existing commercial 'use' of the appeal site. In that regard, it is considered that the public notices do not actually seek to retain the commercial use on site but rather only seek to retain existing structures associated with the unauthorised commercial use. The Board may wish to seek revised public notices that accurately reflect the use and nature of the proposed development on site.

10.2.0 Principle of development

10.2.1 Slieverue is designated as a smaller town/village in the settlement hierarchy in the county development plan. The appeal site is located on lands which are zoned "village centre" and as such it is considered that commercial/retail uses would be considered acceptable. The use at the moment is effectively fruit and vegetable distribution i.e. bringing in produce and re-distributing to local shops/restaurants etc. It would appear from the documentation on file

that the use on the site has been long in existence without ever having the benefit of planning permission. The Third Party are also contending that the nature of the business, mainly due to the increased traffic movements to and from the site has increased significantly.

- 10.2.2 Slieverue is a location with strong village characteristics with a core village centre. There are dwellings along the main street with traditional design features such as two storey dwellings with windows of vertical emphasis. The streetscape is such that is quite traditional and new buildings or developments should be cognisant of potential impact on the amenity of the area.
- 10.2.3 Whilst the description of the proposed development is to retain structures on site and also to construct new extension etc., it is considered that the principle of the use of the site as a distribution warehouse for fruit and vegetables needs to be established. There are two uses on the appeal site, the main or principle use would appear to be residential and the commercial use now has been established. There is a residential dwelling immediately adjacent (east) to the site also. The predominant uses on the opposite side of the road in the immediate vicinity of the site are also residential houses. There is a school and church located further away from the site although they are within c. 150 metres of the site.
- 10.2.4 Having carefully considered the characteristics of the village and having regard to zoning objective of the site "village centre" it is considered that the proposal for a fruit and vegetable distribution use at this location, located between two residential units along this village streetscape would be a use that is at odds with the existing character and setting of the village. The use would generate traffic movements, mainly trucks and heavier vehicles that would not otherwise be travelling through this village. Therefore, it is considered that the use of this site, within the village core is not considered to be an appropriate use of the site or a use that is compatible with the village setting.

10.3.0 Traffic and Entrance

- 10.3.1 The applicant is seeking to widen the entrance to allow for better sightlines to and from the existing entrance. The Board should note that a revised site layout plan has been submitted with the appeal which provides for a wider entrance than originally proposed so as to accommodate the larger vehicles that the third party appellant refers to. The widening of the entrance will certainly facilitate the movements of vehicles to and from the site with more ease. However, it is considered that the site is of a limited size and does not lend itself easily to the manoeuvring of vehicles particularly larger vehicles. It would appear that larger vehicles tend to park along the streetscape and load/unload (as appears to be the case in the photographs submitted). Parking within the village is mainly along the roads.
- 10.3.2 At present, there is a serious deficiency in sightlines, a fact which the First Party also concede. The widening of the entrance will assist somewhat in increasing the visibility from the entrance. There are no yellow lines to either side of the entrance in question and a car was parked immediately adjacent to the entrance at time of inspection, greatly reducing visibility. Whilst the First Party have submitted a swept path analysis, pursuant to site

inspection and in particular having regard to the width of the road, the width of existing footpaths and current parking that occurs to the front of the site, on balance it is considered that the movement of larger vehicles associated with the business in question would create a serious traffic hazard.

- 10.3.3 Additionally, it is considered that the movement of larger vehicles to and from the site which is located in the village core would impact negatively on the existing residential amenities of the area. It is noted that documentation on file indicates that there are typically 20 movements a day in and out of the site. These movements start from 6.00 am and 9.30 pm was the last recorded movement on a typical day. On the whole, it is considered that the use in question is not compatible with the character of the village and gives rise to traffic movements in particular trucks and lorries along the main street that would otherwise not travel through this village.

10.4.0 Appropriate Assessment

- 10.4.1 Appropriate assessment (AA) considers whether the plan or project alone or in combination with other projects or plans will adversely affect the integrity of a European site in view of the site's conservation objectives and includes consideration of any mitigation measures necessary to avoid, reduce or offset negative effects. The requirements for AA stems directly from Articles 6 (3) and 6 (4) of the Habitats Directive 92/43/EEC. The River Suir is a cSAC however given the distance of the site from these Natura 2000 site, c. 2.5 kilometres and the nature of the business in question it is considered that appropriate assessment is not a requirement in this instance.

10.5.0 Other

- 10.5.1 The third party have made reference to the use of an existing fuel tank which the first party consider to be exempted development. The tank in question, as noted at time of inspection, was being used to fill vehicles associated with the commercial business on site. The tank therefore is not one that could be considered to be in use for domestic purposes. The existing use of the lands for commercial purposes does not have the benefit of planning permission and therefore it is considered that retention of this tank should also be required.
- 10.5.2 It is noted that there was cardboard and other waste material such as pallets associated with the business stored outside. The storage of such materials should be inside so as to ensure that the site is maintained in clean and orderly manner and to ensure adequate protection from heavy rain/winds.
- 10.5.3 It is considered that the layout of the appeal site could be improved upon so as to allow for better accessibility and parking of vehicles within the site. The cold room could be relocated to maximise circulation areas. The current arrangement of a portaloo on site is unacceptable.

10.0 CONCLUSION

10.1 In conclusion, it is considered that the public notices are misleading in that it implies that retention is being sought for various components on site associated with the commercial business. However there does not appear to be planning permission for the use of the site as a commercial business i.e. fruit and vegetable distribution.

10.2 Slieverue is a small village with strong traditional characteristics and the use of the site within the village centre would result in the movement of larger vehicles along the Main Street which would not otherwise travel through this village. It is considered that the residential amenities of the area should be protected and that the movement of larger vehicles early in the morning, during the day and late in the evening would be at odds with the amenity of the area. Additionally, there would be a conflict in traffic movements particularly during school drop off and collection times. On balance it is considered that the proposed use of the site for the distribution of fruit and vegetables is unsuitable due to the nature and frequency of traffic movements associated with such.

11.0 RECOMMENDATION

I recommend that permission for the proposed development be **refused** for the following reasons and considerations:

12.0 REASONS AND CONSIDERATIONS

1. It is considered that the proposed development would effectively authorize the use of the appeal site as a fruit and vegetable distribution centre, thereby giving rise to vehicular movements through the village core of Slieverue that would not otherwise normally travel through the village. The vehicular movements are such that would unduly impact on the existing traditional character and setting of Slieverue and would be detrimental to the existing residential amenities of the area, where there is an objective in the Local Area Plan to protect the amenity of existing dwellings. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The nature of the development would give rise to increased traffic movements, particularly larger vehicles along the Main Street in the village where parking is currently limited. The proposal if permitted would give rise to a conflict in traffic and pedestrian movements which would cause an obstruction to other road users notwithstanding the increase in the width of the entrance and therefore would compromise public safety. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Joanna Kelly
Planning Inspector
28th September 2012

