



COMHAIRLE CHONTAE CHILL CHAINNIGH

KILKENNY COUNTY COUNCIL

CHIEF EXECUTIVE'S REPORT

Ref: P.17/606

9th March, 2018.

Re: Material Contravention
of Kilkenny City and Environs Development Plan 2014-2020
Planning Reference No. in Planning Register : P.17/606

Applicant: Sean Maher
C/O Brendan Moore, 53 The Fairways, Old Golf Links Road, Kilkenny

A Chara,

Planning Application P.17/606 relates to development which would comprise of a two storey dwelling detached garage, vehicular entrance and access driveway, bore well, wastewater treatment system and soil polishing filter and all associated site works at Tullamaine (Ashbrook), Callan, Co. Kilkenny.

This proposal involves permission for a two storey dwelling, detached garage, vehicular entrance and access driveway, bore well, wastewater treatment system and soil polishing filter and all associated site works and if granted, would MATERIALLY CONTRAVENE the Kilkenny County Development Plan 2014-2020.

The development, as set out on plans and particulars, is considered acceptable (as recommended in the attached Planner's Report of 5th March 2018) and is consistent with the principles of the proper planning and sustainable development of the area.

It is therefore recommended that the proposed development should be granted as a MATERIAL CONTRAVENTION of the Kilkenny City and Environs Development Plan 2014-2020.

This report is for the consideration of the Elected Members of Kilkenny County Council at its meeting to be held on 12th March, 2018. Section 34(6) of the Planning and Development Act (as amended) provides for a Resolution requiring that a decision to grant permission be made. Such Resolution is achievable whereby at least 18 Members of the 24 Member Council vote in favour of the Resolution.

SIGNED:

Tim Butler,
Deputy Chief Executive



Ref: P.17/606

9th March, 2018

To: The Cathaoirleach, and
Each Member of Kilkenny County Council

Re: Material Contravention
of Kilkenny City and Environs Development Plan 2014-2020
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A Chara,

I enclose copy of Chief Executive's report in relation to proposed Material Contravention of Kilkenny City and Environs Development Plan 2014-2020 for consideration by the Members of Kilkenny County Council. The matter will be listed for consideration at the March meeting of the Council to be held on Monday 12th March, 2018.

Should the Council decide to pass a Resolution it shall be necessary that the number of the members of the Planning Authority voting in favour of the Resolution is not less than three quarters of the total number of the Members of the Planning Authority or where the number so obtained is not a whole number, the whole number next below the number so obtained shall be sufficient.

Mise, le meas

Sean McKeown,
Director of Services
Planning

**Comhairle Chontae Chill Chainnigh
Kilkenny County Council
Planning Report**



**Planning & Development Act, 2000 - 2017
Planning & Development Regulations, 2001 - 2017**

Planning Ref: P17/606

Applicant: Sean Maher

Subject: Permission for a two storey dwelling, detached garage, vehicular entrance and access driveway, bore well, wastewater treatment system and soil polishing filter and all associated site works at Tullamaine (Ashbrook), Callan, Co. Kilkenny.

Description of Proposed Development

The site is located in the rural townland of Tullamaine, north of Callan town. The site is outside of any settlement nodes as defined in the current Kilkenny County Development Plan, 2014-2020. The site has a stated area of 0.295H and rises very gradually away from the public road, with a rise of 0.5m over the extent of the site. Access to the site is off the National Secondary Road N76. The site forms part of a larger agricultural field and the boundaries are therefore undefined and quite exposed from the south western (Callan) direction. The family farm and associated farm buildings form the back drop to the site.

The applicant is the son of the farmer and a letter of consent to apply for planning permission on the subject site has been submitted from his father, William Maher, with the application documents.

Public Notice

The site notice was erected & legible during the site inspection on 25th October 2017.

Referrals

- Area Engineer – No objection subject to specific conditions as the applicant has put forward a proposal which is considered to yield a significant overall safety benefit along this section of road that includes the closure of existing access points onto the N76.
- Environment Section - No objection subject to condition.
- TII – Recommends refusal
- Road Design – notwithstanding the Council's policy permission recommended subject to conditions.

Site History

- P16/855 Permission refused to Sean Maher for this development - refused on road/traffic safety grounds
- P16/23 Permission granted to William & Sean Maher for a cubicle shed, slatted tank, concrete apron & associated site works in the adjoining farm yard.
- P13/02 Permission granted to William Maher for an agricultural shed and underground effluent storage tank in the adjoining farm yard.

Third Party Submissions

None received.

Development Contributions

Residential Class 1 – Roads & Recreation

Services proposed

- Water Proposed private well
- Wastewater Proposed wastewater treatment system
- Surface water Soakpit

Impact on Natura 2000 site (SAC or SPA):

A Screening exercise was completed, which showed that no significant impact is likely having regard to the distance of the subject site from any Natura 2000 site.

Kilkenny County Development Plan 2014-2020

Settlement Policy

The site is located in an area designated as An Area Under Urban Influence the current Kilkenny County Development Plan 2014-2020. Section 3.5.2.1 of the County Development Plan describes such areas as:-

Areas classified as under Urban Pressure are located close to the immediate environs or commuting catchment of cities and towns or to major transport corridors with ready access to urban areas. They are characterised by rapidly rising populations and/or considerable pressure for housing development. It is the Council's objective for areas of urban influence to facilitate the rural generated housing requirements of the local rural community (as identified in this section) while on the other hand directing urban generated rural housing to areas zoned for new housing development in the city, towns and villages.

Areas under urban influence display the greatest pressures for development due to:

- *Close commuting catchments of larger cities and towns,*
- *Population increases well above the average for the aggregate rural areas of the county.*
- *Ready access to a good road network with ready access to the larger urban areas.*

Occupancy Condition

All permissions granted for rural housing within the Areas of Urban Influence shall be subject to an occupancy condition restricting the use of the dwelling to the applicant or members of his/her immediate family as a place of permanent residence for a period of seven years from the date of first occupancy.

Section 3.5.2.3 details that in Areas Under Urban Influence the Council will permit (subject to other planning criteria) single houses for persons where the following stipulations are met:

1. *Persons who are employed full-time in rural-based activity such as farming, horticulture, forestry, bloodstock or other rural-based activity in the area in which they wish to build or whose employment is intrinsically linked to the rural area in which they wish to build such teachers in rural schools or other persons by the nature of their work have a functional need to reside permanently in the rural area close to their place of work.*
2. *A fulltime farm owner or an immediate family member (son, daughter, mother, father, sister, brother, heir) wishing to build a permanent home for their own use on family lands.*
3. *Persons who have no family lands but who wish to build their first home, on a site within a 10 km radius of their original family home, (the local rural area) in which they have spent a substantial and continuous part of their lives (minimum 5 years)*
4. *Persons who were born and lived for substantial parts of their lives (minimum 3 year) in the local area and wish to return to live in the local area (returning migrants).*
5. *A landowner who owned property prior to 14th June 2013 wishing to build a permanent home for his/her own use or a son or daughter. (This provision is to deal with historical land issues which might arise close to existing settlements where families could be excluded from building a home for their own lands for their own occupation due to emerging development trends over previous plan periods. This cut off date is a definitive time frame which will not be revised in subsequent Development Plans.)*

The applicant is the son of the landowner and was born and raised in the family home of which the subject site forms part. He works on the family farm at Tullamaine (Ashbrook) and is also an Agricultural Contractor. He wishes to construct a dwelling on family lands to remain close to his parents and to his place of work. He is currently in rented accommodation in Callan town. The applicant therefore has demonstrated compliance with the rural settlement policy for this area.

Access to National Roads

Section 11.7.3 Access to National Roads of the Kilkenny County Development Plan 2014-2020 states that it is policy of Kilkenny County Council, and as set out in the Department of the Environment, Community and Local Government's Spatial Planning and National Roads Guidelines, to avoid the creation of any additional access points from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kph apply. This provision applies to all categories of development including houses in rural areas, regardless of housing circumstances of the applicant.

Assessment

Design, Siting & Landscaping

The proposed dwelling is 2 storey in design with a stated floor area of 225sq.m and a ridge height of 9.3m. The proposed design comprises a central double height projecting feature which would consist of natural stone whilst the remainder of the dwelling consists of a plaster finish. The window sizes and proportions are symmetrical as is the overall front elevation. The proposed garage would be located to the side of the dwelling with a stated area of 24sq.m.

The site rises gently away from the adjoining public road and the proposed finished floor level is 0.6m above the road level. The site is currently quite exposed from the south western approach (Callan side) and extensive landscaping would be required along this boundary in order to enfold the structure into the surrounding landscape. The site is screened by existing farm buildings from the opposite approach which also act as a backdrop from the Callan approach. The site layout plan indicates the erection of a new post & wire boundary fence and a double staggered row of semi-mature trees at 500mm centre to centre, mixed planting, *Crataegus Monogyna* (50%), *Fraxinus*

Excelsior (10%) Ilex Aquifolium (20%) & Prunus Spinosa along all currently undefined boundaries. A condition should be attached to any grant of planning permission regarding the implementation of the landscaping as proposed which should be planted in the first planting season following commencement of the development. .

Wastewater Disposal:

The applicants propose to install a wastewater treatment system and polishing filter to accord with the EPA 2009 standards. A T value of 31.22 and a P-test value of 9.00 was recorded on the site characterisation form submitted. The file was referred to the Environment Officer who has no objection subject to condition.

Access

Access to the site of the dwelling was proposed directly off the National Secondary Road, N76. The proposal also included for the rationalisation of existing entrances onto the N76 from the overall landholding which involved reducing the total number from seven(7) to four (4). The sightlines drawing submitted for the proposed house entrance with the application documents indicate the achievement of 240m sightlines in both directions. In order to achieve 240m sightlines in a south westerly (Callan) direction, 110m of existing roadside hedgerow was to be removed and replaced behind the sightline with a sod and stone wall/earth mound planted with new hedgerow. This extent of hedgerow removal was considered excessive at this location.

The Roads Design Section stated that although the proposed access onto a national road is contrary to the policy in the County Development Plan, the applicant has put forward a proposal which is considered to yield a significant overall safety benefit along this section of road, that includes the closure of existing access points onto the N76 and therefore the Roads Design Section expressed no objection subject to specific conditions.

The file was referred to Transport Infrastructure Ireland (TII) who consider the development to be at variance with national policy in relation to control of development on/affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012), as the proposed development by itself, or by the precedent which a grant of permission for it would set, would adversely affect the operation and safety of the national road network. The proposal would create an adverse impact on the national road where the maximum permitted speed limit applies and would be at variance with the national policy outlined above in relation to control of frontage development on national roads.

At planning report stage it was considered that although significant effort had been made to improve safety and rationalise the number of access points to the overall landholding that further design modifications could be made.

On that basis the following further information was requested:

“The Council is of the opinion that the proposed development notwithstanding the proposal to rationalise the number of access points to the farm might be contrary to the policy of the Council as set out in Section 11.7.3 of the Kilkenny County Development Plan 2014 – 2020 and as set out in the National Guidance “Spatial Planning and National Roads Guidelines for Planning Authorities” and could adversely affect the operation of the national road network.

The Council is of the view that in order to minimise the impact of the proposed development on the national road network that further rationalisation of the entrances is possible particularly in the area of combining the proposed house entrance with the farmyard entrance and existing farm house entrance.

You are required therefore to examine the possibility of combining the proposed entrance for the dwelling with the farmyard entrance and to submit a revised site layout plan and revised traffic report to address a further rationalisation of entrances to the overall farm and proposed house.

It should be noted that this request for further information is not an indication that the Planning Authority are favourably disposed to granting permission for the proposed development but is required to enable a full examination of the proposal.

Your application will be held in abeyance pending receipt of the above.”

In reply to the further information the applicant further rationalised the proposal by omitting the proposed direct access to the N76 for the house and serving the house through the existing farmyard access.

Material Contravention.

Following the response to the further information it was considered that due to the significant overall safety benefit resulting and all other material matters such design location and environmental issues a material contravention could be recommended.

In accordance with Section 34(6) of the Planning and Development Act notice was published of the proposed material contravention and allowing for submissions to be made within a 4 week period up to the 8th March, 2018.

Two submissions were received as follows:

Name
Transport Infrastructure Ireland (TII)
Mr. Fred Fitzimons

Transport Infrastructure Ireland reiterated its objection to the proposal and indicated that the proposal contravenes the objectives of the Kilkenny County Development Plan and the policy outlined in the DoECLG Spatial Planning and National Roads Guidelines.. The TII consider that no exceptional reason has been put forward to justify the departure from established road safety reasons.

Mr. Fitzimons queried the following:

- (a) What prompted the Council to propose the material contravention ?
- (b) What is the difference between this application and ref 16/855 which was refused at the same location and
- (c) What is the cost to the Council.

In response

- (a) The rationalisation of the existing access arrangements reducing the access points from 7 to 3 and the resulting significant overall safety benefit along this section of road

- (b) Under planning ref 16/855 there were no proposals to rationalise the existing access arrangements and a direct access to the N76 was proposed from the proposed dwelling.
- (c) The Council incurred the cost of placing a public notice in the newspaper.

Summary of proposal following further information

The landowner currently has seven (7) entrances onto the N76 within the landholding. Three of these are associated with the existing farmyard and the existing farmhouse and four field gates.

The proposal if implemented will result in the closing of entrances numbered 1,3,6,7, on the attached map with the proposed house being served off the retained farmyard entrance (number 4 on the attached map). This will result in three (3) entrances remaining from the current seven (7).


The Roads Design section of the Council is fully supportive of the application on the basis that the proposal put forward "will yield a significant overall safety benefit along this section of road" and that the reduction in the number of access points outside the speed limit along the National route is an objective of both the Road Safety Authority's Road Safety Strategy 2013 -2020 and the Council's Road Safety Plan 2015 – 2020.

Recommendation

Notwithstanding the Department of the Environment, Community and Local Government's Spatial Planning and National Roads Guidelines, and the provisions of the Kilkenny County Development Plan 2014 – 2020 I consider that due to :

- a) the resultant significant overall safety benefit along this section of National road,
- b) the closing of 4 access points out of a total of seven currently in operation,
- c) the proposal to serve the proposed dwelling from an existing entrance,
- d) the objectives on the Council's Road Safety Plan and that of the Road Safety Authority's in relation to the closing of entrances on National Routes
- e) the analysis put forward in relation to the submission documents from Road Plan Consulting,

there is sufficient justification in this case to recommend a grant of permission subject to conditions as attached and the requirements of the Material Contravention procedure.



Denis Malone,
Senior Planner

Date 09/03/2018.

First Schedule

Reasons & Considerations for Decision on Planning Ref. P.17/606

Having regard to the policies and objectives of the Kilkenny County Development Plan 2014-2020, to the location and design of the proposed development, landscaping proposed and referral reports on file, it is considered that the proposed development would not seriously injure the amenities of the area and if constructed in accordance with the attached conditions the proposed development would accord with the proper planning and sustainable development of the area.

Second Schedule

9 No. Conditions attached to Planning Ref. P.17/606

1. The development shall be carried out and completed strictly in accordance with:
 - a) the conditions of this permission.
 - b) the documents lodged with this application on 15th Sept 2017 and the further information on the 18th January 2018 except as otherwise required by the conditions of this permission.

Reason: To ensure that the development strictly accords with the permission and to ensure that effective control is maintained.

2. The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in Kilkenny County Council's administrative area that is provided or intended to be provided by or on behalf of the Local Authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Acts 2000-2017

The amount of the financial contribution shall be paid upon commencement of development, with the amount of the contribution being the rate of contribution in existence on commencement of development. In accordance with the current scheme the amount of the contribution is calculated at € 4,560 (four thousand five hundred and sixty) , however this amount may be recalculated in accordance with any newly adopted Development Contribution Scheme that may supercede the current scheme prior to commencement of development. Any applicable amount is subject to revision with reference to the Wholesale Price Index and to penalty interest in accordance with the terms of Kilkenny County Council's Development Contribution Scheme.

Reason: It is a requirement of the Planning and Development Acts 2000-2017 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under Section 48 of the Act be applied to the permission.

3. The four (4) number. existing access points shall be permanently closed up prior to the commencement of works on the dwelling house. The boundary treatment used to close / remove these access points shall match the existing. The applicant shall inform

the Planning Authority when this work is complete so as same can be inspected by the Roads Office.

Reason : To ensure that the existing access points are closed in the interests of traffic safety.

4. Prior to the occupation of the dwelling house, the applicant shall undertake a Road Safety Audit Stage 3. The scope of the Audit shall focus on the access point servicing the proposed dwelling house and the N76 National Primary Road including the N76 centreline road markings on both approaches to the access. The recommendations of same shall be submitted for the agreement of the Planning Authority. The cost to implement any such agreed recommendations shall be borne by the applicant.

Reason : In the interests of traffic safety.

5. Prior to the commencement of development, the applicant is required to submit to the Planning Authority for it's written agreement a Construction Management Plan to include details regarding a Works Schedule for the phasing of the development, construction working hours, storage of construction materials, construction traffic and traffic management, access, a Roads Maintenance Programme for the construction phase of the works, including road sweeping/cleaning etc. Construction on Sundays and Bank Holidays is not permitted, without prior written consent from the Planning Authority.

Reason : In the interests of traffic safety.

6. The on-site wastewater treatment system proposed shall be constructed in accordance with the recommendations in the Environmental Protection Agency's Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (EPA, 2009). Prior to installation, the Planning Authority may, in the interest of public health and to facilitate best practice, agree in writing certain EPA compliant variations to the waste water treatment system approved under this application. Such agreement shall be placed on file and deemed to officially substitute/vary the original granted system. Certification that the complete wastewater treatment unit and the associated disposal system has been satisfactorily installed to accord with the Environmental Protection Agency's, Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (EPA, 2009) shall be submitted to the Planning Authority prior to occupation of the house. The certificate shall be completed by a suitably qualified and indemnified person and shall include a site specific 'as constructed' plan detailing the length of percolation trench/pipe and cross sectional drawing through the effluent treatment system and associated percolation area. A generic cross-section is not acceptable. Proof of indemnification insurance shall be submitted with the certificate.

The complete on-site wastewater treatment system shall be installed and maintained in accordance with the manufacturer's instructions.

Reason: In the interests of public health and to provide for the protection of the environment.

Footnote: The certificate to be completed will accompany the Final Grant of Permission and submitted by suitably qualified persons.

7. The proposed dwelling when completed shall be first occupied as a place of permanent residence by Sean Maher and shall remain so occupied for a period of at least seven years thereafter, unless consent is granted by the Planning Authority for its occupation by other persons who meet the criteria on local affiliation/links contained in the Kilkenny County Development Plan 2014-2020.

Within two months of the occupation of the proposed dwelling, the applicant shall submit to the Planning Authority a written statement of confirmation of the first occupation of the dwelling in accordance with this condition and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or by any person deriving title from such a sale.

Reason: To meet the housing needs of the applicant(s) and in the interest of the proper planning and sustainable development of the area.

8. Prior to commencement of development a landscaping plan for the house site prepared by a suitably qualified person shall be submitted to and agreed with the planning authority addressing inter alia the following:
- All new site boundaries
 - The number and types of plant species
 - The time of planting relative to the construction of the dwelling.

Reason : In the interest of visual amenity.

9. The roof of the proposed dwelling shall be blue/black in colour.

Reason : In the interests of visual amenity

FOOTNOTES

Section 34 (13) of the Planning & Development Acts, 2000-2017 states:

“ A person shall not be entitled solely by reason of a Permission under this section to carry out any development.”

Developers are obliged to comply with other legislation and to avoid infringement of third party rights

Kilkenny County Council Road Authority are to be consulted in respect of a Road Opening Licence for the opening of public road/footpath arising from works associated with the development, such a licence is necessary prior to the opening of a public road.

Applicants are advised to consult with the Chief Fire Officer with regard to the fire safety of this development. It should be clearly noted that Kilkenny Fire Service strongly recommends that there should be at least one working smoke detector in every domestic premises.

“With certain exceptions it is an offence, under the Forestry Act 2014, to fell trees without a felling licence having been granted by the Forest Service. Failure to obtain felling a licence when necessary may result in a criminal prosecution. Developers are advised to contact the Felling Section, Forest Service, Department of Agriculture and Food, Johnstown Castle Estate, Co. Wexford Tel: (053)9163400 before felling any tree. See <https://www.agriculture.gov.ie/media/migration/forestry/trefelling/NewTreeFellingRequirementsInformationNote090617.pdf>

If there is no appeal against this decision, a Final Grant of Permission in accordance with the Decision will be issued after the expiration of the period within which an appeal may be made to An Bord Pleanala. (See attached).

It should be noted that until a Final Grant of Permission has been issued, the development in question is NOT AUTHORISED and works cannot be carried out.

The Applicant is advised that unless the development described above is carried out within five (5) years from the date of Final Grant of Permission, Planning Permission will cease to have effect. (See Section 40 of the Planning and Development Acts 2000-2017)

Please note that the Site Notice shall be removed by the applicant following the notification of the Planning Authority decision under Article 31.

Material Contravention
Planning application ref. 17/606
Date: March 2018

2 Retain existing farm
house access

1 Close existing field
gate access

3 Close existing farm
yard access


4 Retain existing farm yard
access. Access upgraded to
provide access to residential site.

6 Close existing field
gate access

7 Close existing field
gate access

8 Retain existing field
gate access

Legend

 Site of planning ref. 17/606

Based on OSI Map License No. Kilkenny CCMAN08/12

