

The Draft Kildare County Development Plan
C/O The Administrative Officer
Forward Planning
Áras Chill Sara
Devoy Park
Naas
Co. Kildare

Tuesday, 24 May 2022

Re: Submission in relation to the Draft Kildare County Development Plan 2023 - 2029

Dear Sir/Madam,

1.0 INTRODUCTION / EXECUTIVE SUMMARY

O'Flynn Group¹ has retained Tom Phillips + Associates (Town Planning Consultants)², in conjunction with Independent Tree Surveys³ and Brady Shipman Martin⁴ to prepare this Submission in relation to the *Draft Kildare County Development Plan 2023 – 2029*, currently out for public consultation. The submission relates to lands in Caragh (please see Figure 1.1).



Figure 1.1: Location of Subject Lands in Caragh Village. Source: Google Earth. Cropped and annotated by TPA, May 2022.

¹ Killorglin House, 41-43 Shelbourne Road, Ballsbridge, Dublin 4.

² 80 Harcourt Street, Dublin 2, D02 F449.

³ Our Lady's Cottage, Drummond, Rosenails, Co. Laois.

⁴ Mountpleasant Business Centre, Mountpleasant Avenue Upper, Rathmines, Dublin 6, D06 X7P8.

The current submission relates to proposed policy addressing a number of trees, generally forming the north and eastern boundary of a site in Caragh village centre which is zoned for both village centre uses and new residential communities. The site is otherwise bound to the west by R409 (Caragh Main Street) and to the south by agricultural land, and is located across from the Church of Our Lady and St. Joseph.

Following detailed review, our client considers that the policies proposed within the *Draft Kildare County Development Plan 2023-29* – relating to a Proposed Tree Preservation Order (KCC PTPO No. 1 of 2021) and the associated protection of the stand of trees – is both: premature, given that the Planning Authority has not produced a tree survey relating to the trees that would support the inclusion of a statutory policy preserving these trees within the new *Development Plan*; and misconceived, given the results of an independent tree survey, submitted as part of this *Development Plan Submission*, which shows that the trees subject to proposed protection are actively decaying and at risk of collapse, posing a significant danger.

The purpose of this submission is to highlight what we consider to be a discrepancy in the application of planning policy as it relates to Tree Preservation Orders, and subsequent representation in the *Draft Kildare County Development Plan 2023-29*.

At the outset of this submission, we note subsection 11 of Section 205 in the *Planning and Development Act 2000* (as amended) which states that, notwithstanding the making of a Tree Preservation Order in relation to a tree or a stand of trees, should the trees in question be dying, dead or have become dangerous:

“(11) Without prejudice to any other exemption for which provision may be made by an order under this section, no such order shall apply to the cutting down, topping or lopping of trees which are dying or dead or have become dangerous, or the cutting down, topping or lopping of any trees in compliance with any obligation imposed by or under any enactment or so far as may be necessary for the prevention or abatement of a nuisance or hazard.”

As such, we highlight to the Planning Authority that, given their current state – which is various states of dying, already dead, and dangerous / hazardous – the protection of the trees at Caragh is not facilitated by legislation.

The removal of the PTPO and associated policies from the *Draft Development Plan*, as proposed by this *Development Plan Submission*, will overtly enable the proper management of these trees to ensure that the sustainable future development of the adjacent ‘Village Centre’ and ‘New Residential’ zoned lands, and Caragh overall.

Those lands were recently subject to 2 No. Pre-Planning Meetings between our Client, a wider Design Team (including, amongst others, both Independent Tree Surveys, Brady Shipman Martin (BSM) and Tom Phillips + Associates (TPA)). We note that a Planning Application is currently being prepared on foot of these discussions.

1.1 Context to Development Plan Submission – KCC PTPO No. 1 of 2021

We wish to highlight to the Planning Authority that PTPO No. 1 of 2021 was issued without the support of a tree survey completed by a competent independent arboricultural consultant.

Instead, a visual assessment was conducted by the Planning Authority. This inspection would appear to have been undertaken at some distance away from the trees in question given that a number of individual trees' species were incorrectly identified.

The 'Amenity Assessment Matrix' completed as part of the TPO Proposal (see Appendix A of this *Development Plan Submission*) considers both that the trees are 'early mature' and that they exert no negative influence. We wish to assert that that assessment is incorrect.

We include a comprehensive *Preliminary Tree Survey Report*, prepared by Independent Tree Surveys and dated 12 April 2021 (updated on 18 November 2021), as part of this submission. That report labels the trees as full or late maturity ('over-mature'), and serious signs of decay and deterioration within the standing trees, as well as 3 No. previous tree collapses were recorded. (See Figure 1.2.) The trees are subject to 'structural decline', 'significant structural weaknesses', 'major structural failures' and colonisation by fungi known to cause decay.

Written in accordance with *BS5837:2012 Trees in Relation to Design, Demolition and Construction to Construction – Recommendations*, the *Tree Survey Report* states that the poor health and condition of the trees in question would typically render them unfit for inclusion in a TPO.

The *Tree Survey Report* was previously included in a submission to Kildare County Council in response to the *Notification of Proposed Tree Preservation Order* for the aforementioned KCC PTPO No. 1 of 2021.

We consider that the current policy approach to TPOs, which has been largely replicated in the *Draft Development Plan*, is contradictory to the policy objective to develop the adjacent zoned lands for homes, commercial uses, and even for public open space uses. The preservation of these trees would clearly present a hazard to members of the community.

Given this assessment, and as noted above, the protection of such trees is not facilitated by legislation.

Our client agrees that the trees in question currently possess a significant amount of visual amenity value given the location of the residentially zoned lands and the trees in question, straddling the village core, transitional residential lands and agricultural fields.

However, we note that any future development permitted on the Subject Site, in accordance with the objectives of the *Development Plan* and *Draft Development Plan*, would necessarily include appropriate mitigation measures in the form of high-quality landscaping and replacement semi-mature tree-planting.

Our client is requesting that the Local Authority rescind the Tree Preservation Order in its entirety, and remove reference to the protection of these particular trees within the final *Kildare County Development Plan 2023-29*, on the basis of the submitted *Tree Survey Report* – or any subsequent survey which the Planning Authority might wish to undertake – which describes in no uncertain terms their unsuitability for preservation status due to extant structural failures, weaknesses and decay.

We note in particular that the submitted *Tree Survey Report* concludes that:

“Given the poor physiological and structural condition of the trees, they should not be considered for coverage by a tree preservation order on the basis that a TPO should not be applied to a tree that is dead, dying or dangerous.”



Figure 1.2: Pictures showing the deterioration of trees subject to KCC PTPO No. 1 of 2021. Source: *Independent Tree Surveys, 2021. Cropped and annotated by TPA, May 2022.*

We are proposing that the following amendments be included in the upcoming *Kildare County Development Plan 2023-29*:

1. Removal of reference to Tree Preservation Order on Map V2 3.5.
2. Removal of reference to Tree Preservation Order in Section V2 3.6.1.
3. Removal of Policy V CA4 in Section V2 3.6.4.

2.0 SITE LOCATION AND DESCRIPTION

The trees and the adjacent zoned lands are located on the northern edge of Caragh, a designated 'Village' within Kildare's urban structure, situated c. 4 km from both Naas and Sallins. Caragh is located close to the M7 and the Dublin-Cork train line.

The River Liffey runs to the south of Caragh, perpendicular to the main road through the village, the R409. The approach to Caragh from the south is characterised by views crossing the Liffey, hedgerows around the railway bridge, and a number of large housing estates (including The Streams and Old Chapel Wood / Gingerstown Park) on either side of the road.

The village centre is focussed on an area of green public open space and the adjoining two-storey primary school, and includes the housing estates of Churchview Estate and Caragh Lawns, positioned around the open space.

A mixed-use duplex / apartment development at Old Chapel Court, (including a childcare facility, a hairdresser and a butcher), another mixed-use apartment development (including a Centra supermarket, a fast-food outlet and a hairdresser) run parallel along the R409, giving definition to the street, which is relatively wide through the village with significant verge areas.

The building which includes Cooke's Pub and The Fox and Hare restaurant extends the village centre northwards towards newer housing developments and the Church of Our Lady and St. Joseph. A number of single, one-off houses also run along the Main Street.

Housing estates Caragh View and Caragh Heights sit perpendicular to the R409, with the village culminating at the Church of Our Lady and St. Joseph on substantial, leafy grounds. An old farmyard also sits along the Main Street at this section.

The Church sites within an existing Y-junction, with the road to the left leading to an extension of the Caragh View housing estate and Fr. Kinsella Park, Caragh's public playing field. Another GAA pitch is located some 1 km from Caragh.

The trees are located on the boundary of lands zoned 'Village Centre' and 'New Residential'. That site, extending c. 1.35 ha, is L-shaped, with relatively narrow street frontage on the eastern side of the Main Street, across the road from the Church. We note that there is a hedgerow where the site is bounded by the road, as well as a number of trees (described in detail in the *Tree Survey Report* submitted) at the northern and eastern boundaries of the site.

2.2 Planned Development

That 1.35 h site is currently subject to Planning Application preparations, which have thus far included 2 No. pre-planning meetings, and a significant amount of detailed design, including extensive discussions pertaining to potential junction design and water systems (incl. drainage, wastewater and watermain systems).

A Planning Application is expected to be lodged in early Summer 2022. The planned development will include a range of housing typologies, commercial uses, and public open space.

3.0 NATIONAL AND REGIONAL PLANNING POLICY

3.1 Project Ireland 2040 - National Planning Framework

The National Planning Framework (NPF) is the Government's high-level strategic plan for shaping the future growth and development of our country out to the year 2040. It envisages growth of between 490,000 and 540,000 additional people in the Eastern and Midland Region over the next 20 years.

The plan includes numerous National Policy Objectives (NPOs), among them NPO 4 which seeks the creation of:

“attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being”

and NPO 6 which seeks to:

*“Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, **increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.**”*

The NPF promotes a compact growth strategy that aims to maximise the potential of the country's existing urban assets.

4.0 LOCAL PLANNING POLICY

4.1 Existing Kildare County Council Development Plan 2017 - 2023

The subject lands are zoned as both ‘A: Village Centre’ and ‘C: New Residential’ in the current *Kildare County Council Development Plan 2017 – 2023* with the stated objectives, respectively, to:

“A: Village Centre: To provide for the development and improvement of appropriate village centre uses, including residential, commercial, office and civic use.

C: New Residential: To provide for new residential development.”

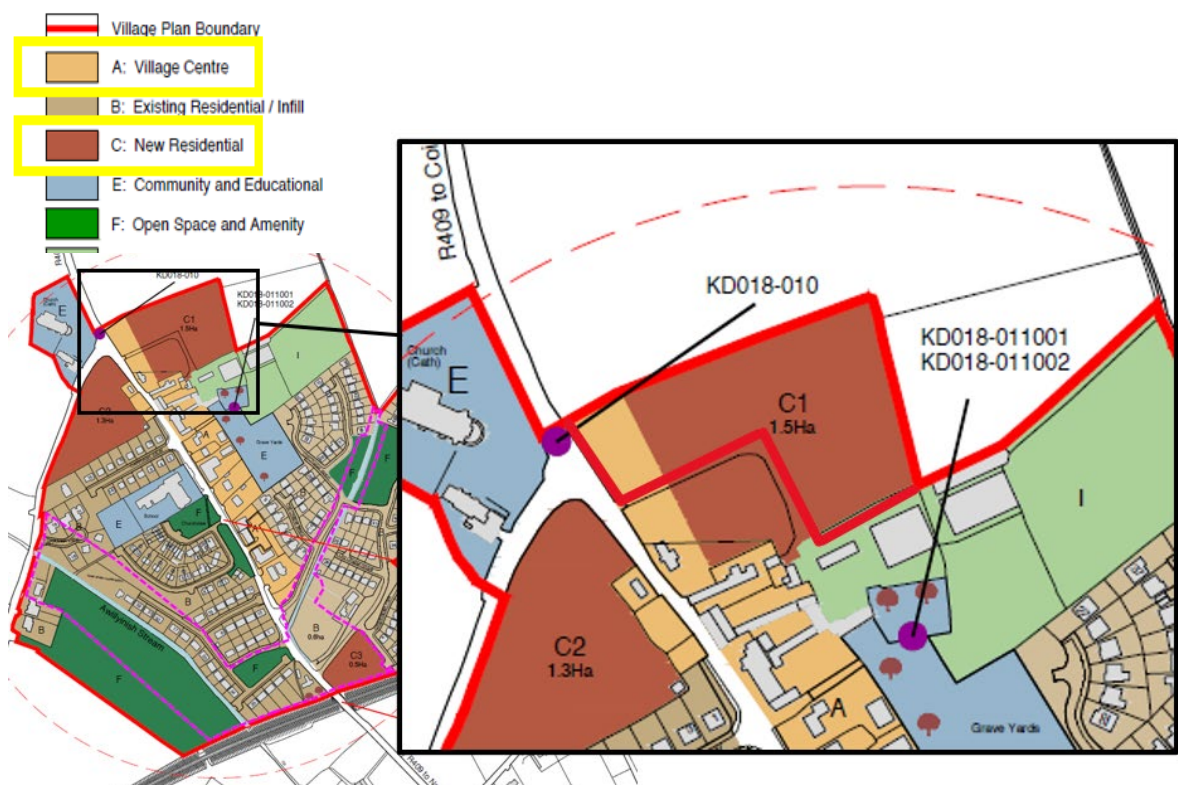


Figure 4.1: Location of Subject Lands in Caragh Village. Source: *Caragh Village Zoning Map (Map No. V2-2.5)*, *Kildare County Development Plan 2017-2023*. Cropped and annotated by TPA, May 2022.

The current *Development Plan* notes that lands zoned ‘A: Village Centre’ will “provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the centre of a developing village”. Lands zoned ‘C: New Residential’ should “provide for new residential development and associated ancillary services”.

We highlight objective NH1 of the Caragh Village Plan, which states that it is an objective of the Planning Authority to:

“Survey the trees illustrated by the appropriate symbol on Map V2-2.5 and to seek to protect trees deemed to be of sufficient amenity value.”

As illustrated in Figure 4.1, the tree symbols referred to are located within Caragh’s historic graveyard to the south of the Subject Site and associated trees in question. The stand of beech trees and associated ash trees currently nominated for preservation were not mentioned.

Section 13.10.1 of the *Development Plan* considers current planning policy relating to trees, woodlands and hedgerows, as well as Tree Preservation Orders. The trees in question in Caragh are not noted.

The *Development Plan* asserts that, where merited, local characteristics and existing ecological features should inform the overall design of any development.

In Chapter 17 of the *Development Plan*, we note various Development Management policies including:

- Landscaping plans should include the planting of semi-mature trees in certain circumstances.
- Replacement trees and hedgerows shall have regard to the ecological function of these green assets.

These policies all ensure that there are adequate mitigation measures in place for the protection of amenity and ecological value afforded by mature trees if they are required to be removed on the grounds of safety.

4.2 Draft Kildare County Council Development Plan 2023 – 2029

The subject lands remain zoned as ‘A: Village Centre’ and ‘C: New Residential’ in the draft *Kildare County Council Development Plan 2023 – 2029* with the stated objectives, respectively, to:

“A: Village Centre: *To provide for the development and improvement of appropriate village centre uses, including residential, commercial, office and civic use.*

C: New Residential: *To provide for new residential development.”*

Additionally, a Proposed Tree Preservation Order indicates that the trees in question, located along the northern and eastern boundaries of the subject lands, along with 2 No. individual additional trees, are nominated for protection. (See Figure 4.2.) This is also noted in Section V2 3.6.1 Caragh:

“A proposed Tree Protection [SIC] Order is located within the village.”

Section V2 3.6.4 'Natural Heritage' contains the following policies:

- **"V CA4: Protect trees identified as part of a Tree Preservation Order (See Map V2-3.5).**
- **V CA5: Survey the trees illustrated on Map Ref V2-3.5 and to protect trees deemed to be of amenity value."**

As shown in Figure 4.2, the 'trees identified as part of a Tree Preservation Order' and under Policy V CA4, and the 'trees illustrated on Map Ref. V2-3.5' subject to protection if deemed to be of amenity value under Policy V CA5 now include – in addition to the previously highlighted graveyard trees – the stand of beech trees and associated ash trees located on the Subject Site.

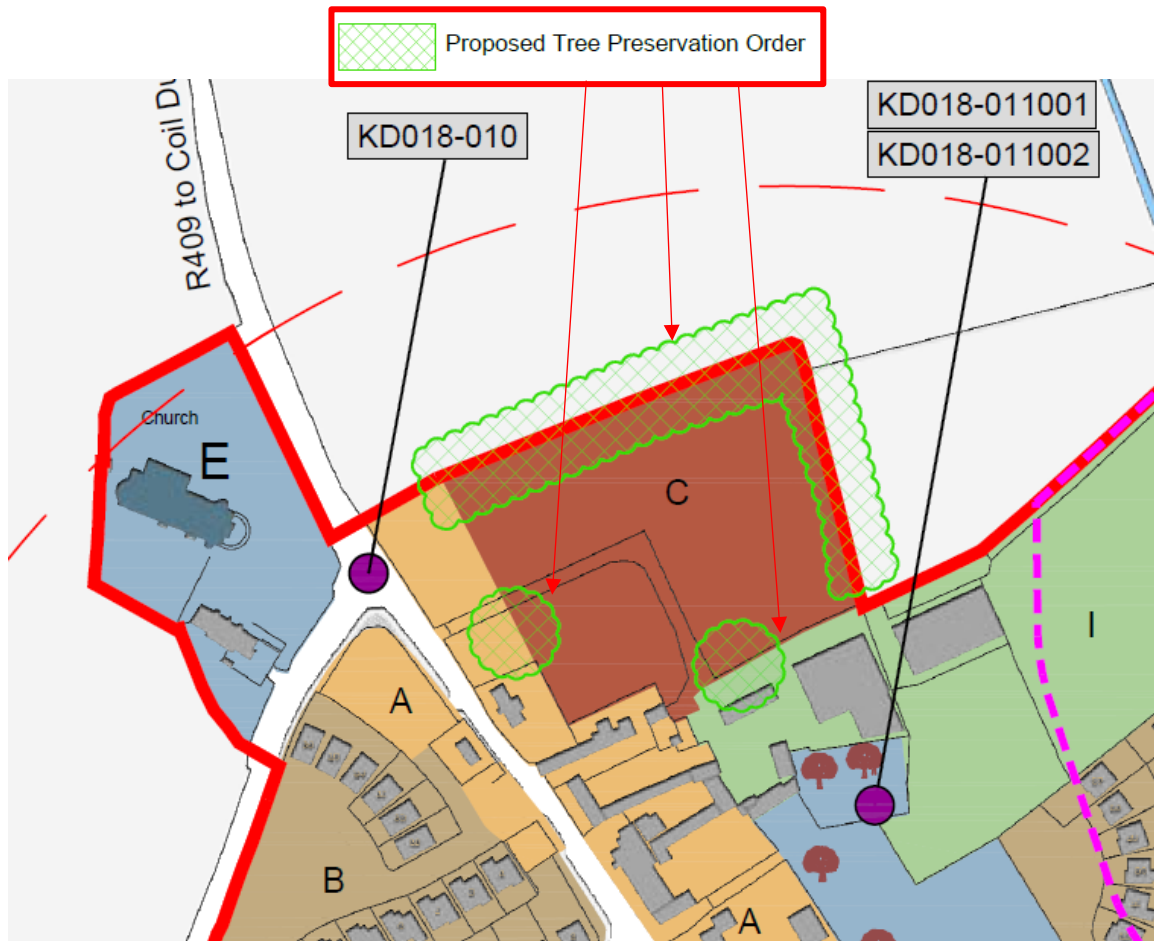


Figure 4.2: Location of Subject Lands in Caragh Village. Source: Caragh Village Zoning Map (Map No. V2-3.5), Kildare County Development Plan 2023-2029. Cropped and annotated by TPA, May 2022.

As noted above, Kildare County Council have been furnished with a comprehensive assessment of those trees, and they are deemed to be unfit for protection given the serious structural defects recorded.

Further, we wish to highlight that the graveyard trees – which were to be surveyed and protected under the current *Development Plan*, as well as the *Draft Development Plan (2023-2029)* – were also subject to the same policy under the previous *Development Plan (2011-2017)* and have evidently not yet been surveyed.

We argue that the imposition of a TPO on the trees without the support of a survey conducted by an independent professional surveyor would set a precedent whereby poor-quality trees are habitually placed under protection unnecessarily, causing inefficiencies in planning and inaccuracies in resource distribution and strategy.

As noted above, notwithstanding a TPO, poor quality trees are not protected under law.

Section 12.9.2 of the *Draft Development Plan* also considers Tree Preservation Orders (TPOs).

The proposed Tree Preservation Order in Caragh (KCC TPO No. 1 of 2021) is not referenced in that Section. However, we do note BI A12 which seeks to identify additional trees and stands of trees to add to the TPO register.

Further, we consider the PTPO – particularly given the submitted arboricultural assessment labelling them dangerous – is contrary to the zoning of the adjoining lands as per the *Draft Development Plan*, which is to provide for new residential and village centre development.

It is clear that, even without the TPO applied to the trees in question on the Subject Site, there is a significant level of protection afforded by the *Draft Development Plan* to mature, and even decaying, ‘over-mature’ trees.

BI O17 states that it is an objective of the Council to:

“Require the undertaking of a comprehensive tree survey carried out by a suitably qualified arborist where development proposals require the felling of mature trees; the survey shall assess the condition, ecological and amenity value of the tree stock proposed for removal as well as mitigation planting and a management scheme.”

Objective BI O17 continues:

“It should be noted that rotting and decaying trees are an integral part of the woodland ecosystem and can host a range of fungi and invertebrates, important for biodiversity. While single or avenue trees that are decaying may be removed, others that are part of a group or cluster may be subject to retention.”

We do not consider that the preservation of potentially dangerous, decaying trees is appropriate in the context of the Subject Site’s location and zoning, though we submit that such options will be explored in any future Planning Application.

Elsewhere in the *Draft Development Plan*, we note various policies, similar to those contained within the current *Development Plan*, including:

- Landscaping plans should include the planting of semi-mature trees in certain circumstances.
- Where removal of hedges and trees is proposed, a detailed replanting proposal shall be submitted including for the replacement of an equal amount of hedgerow removed and a minimum of 5 No. trees per mature tree felled.
- Replacement trees and hedgerows shall have regard to the ecological function of green assets.

These policies all ensure that there are adequate mitigation measures in place for the protection of amenity and ecological value afforded by mature trees.

5.0 DEVELOPMENT PLAN SUBMISSION REQUEST

This Development Plan Submission seeks the removal of references within the *Draft Kildare County Development Plan 2023-29* to proposed KCC Tree Preservation Order No. 1 of 2021, relating to the stand of beech trees and 2 No. individual trees on lands in Caragh village.

We consider the Tree Preservation Order to be both: premature, given that the Planning Authority has not conducted a tree survey relating to the trees that would support the inclusion of a policy preserving these trees within the new *Development Plan*; and misconceived, given the results of an independent tree survey which shows that the trees subject to proposed protection are actively decaying and at risk of collapse, posing a hazard to members of the public.

We are proposing that the following amendments be included in the upcoming *Kildare County Development Plan 2023-29*:

1. Removal of reference to Tree Preservation Order on Map V2 3.5.
2. Removal of reference to Tree Preservation Order in Section V2 3.6.1.
3. Removal of Policy V CA4 in Section V2 3.6.4.

6.0 CONCLUSION

We are requesting that Kildare County Council remove all references within the draft *Kildare County Development Plan 2023-29* to the proposed KCC Tree Preservation Order No. 1 of 2021, and to the protection of the trees in question.

As demonstrated in this *Development Plan Submission* and accompanying documents, the preservation of the trees in question is not compatible with the zoning objectives of the site, which is to provide for 'Village Centre' and 'New Residential' uses. These trees represent a safety hazard, and have been shown to be actively decaying and collapsing.

We submit that there are plenty of strong policies within the Draft Development Plan that will ensure that the amenity and ecological value of any trees removed in the course of development will be appropriately

We are happy to discuss this issue further at your convenience.

Yours sincerely



Gavin Lawlor
Director
Tom Phillips + Associates

Encl



Appendix A – Kildare County Council Report on Proposed Tree Preservation Order

