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**Planning and Development Acts 2000 to 2020**

**Planning Authority: Kilkenny County Council**

**Planning Register Reference Number: 19/618**

**Appeal** by Daniel Lenihan care of Paul C. Mealy Architects Limited of 11 The Courtyard, Friar's Hill, Wicklow, County Wicklow against the decision made on the 14<sup>th</sup> day of April, 2020 by Kilkenny County Council to grant subject to conditions a permission to High Street Social Limited care of Larkin Associates of 62 Lower John Street, Wexford in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** Change of use of the ground floor of numbers 20/21 High Street, Kilkenny (a protected structure NIAH Register Number 12000055), from an existing 185 square metres restaurant to a licensed restaurant to include the established ancillary takeaway/home delivery service, extension of the restaurant to include the existing 108 square metres forecourt to the High Street with a canopy covering part of the forecourt, extension of the licensed restaurant to the rear of the building covering an area of 81 square metres with a structure with retractable roof and construction of a new licensed restaurant covering an area of 127.24 square metres to include male and female toilets with external smoking areas. The application will also include a 89.8 square metres storage area to the rear of the site to contain dry and cold storage and food preparation

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and ancillary site works all on lands at Gardens, Kilkenny, County Kilkenny.

## **Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## **Matters Considered**

In making its decision, the Board 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. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## **Reasons and Considerations**

Having regard to the provisions of the Kilkenny City and Environs Development Plan 2014-2020, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the provisions of the Plan in terms of land use, would be acceptable in terms of the character of the protected structure and its curtilage within an Architectural Conservation Area and would not adversely affect the architectural heritage or seriously injure the visual amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

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## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the planning authority on the 19<sup>th</sup> day of March, 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

3.
  - (a) Details of all signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
  - (b) Details of all new windows, from a suitably qualified professional, shall be submitted to, and agreed in writing

with, the planning authority prior to commencement of development.

- (c) Details of the front railing, from a suitably qualified professional, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the amenities of the area and the protection of the protected structure.

- 4. Section 4 of the Archaeological Assessment received by the planning authority on 19<sup>th</sup> day of March, 2020 states a surviving thirteenth century cross-beam derives from a substantial structure with walls 1.3 metres thick and having a room at least 5.45 metres wide. Prior to commencement of development, the developer shall clarify whether this is a new uncovered element of activity on site or what this specifically relates to.

**Reason:** In the interest of the protection of the protected structure.

- 5. (a) All works to the protected structure shall be carried out in line with best conservation practice as set out in the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Arts, Heritage and the Gaeltacht in October, 2011 and the relevant volumes of the Department's Advice Series publications.
- (b) All works to the protected structure, shall be carried out under the supervision of a qualified professional with specialised conservation expertise.

(c) All works shall be undertaken by skilled and experienced conservation contractors and specialists with relevant experience of historic materials and techniques.

(d) The conservation professional in (b) shall sign off on completion that the works have been carried out in accordance with best conservation practice and shall prepare a report recording the works carried out and submit this to the planning authority and the Department of Culture, Heritage and the Gaeltacht.

**Reason:** In the interest of the protection of built heritage.

6. The yard area between the rear of the proposed extension and the store building shall not be used as an outdoor space for patrons of the development and the access from William Street shall not be used as an entrance way to the development by patrons.

**Reason:** In the interest of the amenities of the area.

7. The hours of operation of the restaurant shall be restricted to between 0700 hours and 2330 hours, Monday to Sunday, unless otherwise authorised in a subsequent planning permission.

**Reason:** In the interest of orderly development and the amenity of adjoining properties.

8. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

9. The developer shall enter into a water and/or waste water connection agreement(s) with Irish Water prior to commencement of development.

**Reason:** In the interest of public health.

10. (a) Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

- (b) The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development including traffic management, noise management measures and off-site disposal of construction waste.

**Reason:** In order to safeguard the amenities of property in the vicinity.

11. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

12. All service cables associated with the proposed development (such as electrical, telecommunications and television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interests of visual and residential amenity.

13. A plan containing details for the management of waste, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.



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

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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**Chris McGarry**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board.**

**Dated this            day of            2020.**