



Planning and Development Acts 2000 to 2020

Planning Authority: Kerry County Council

Planning Register Reference Number: 20/94

Appeal by Majella and Donal O’Sullivan care of Tadhg McMullen Architects of Tiernaboul, Killarney, County Kerry against the decision made on the 14th day of May, 2020 by Kerry County Council to grant subject to conditions a permission to Celtic Steps Entertainment Limited care of Malachy Walsh and Partners of Reen Point, Blennerville, Tralee, County Kerry in accordance with plans and particulars lodged with the said Council.

Proposed Development: Change of use of the Jim Culloty Bar and Event Area from a bar/dining use to a theatre use for the duration of the performance of an Irish traditional music, song and dance show nightly at the venue at Killarney Racecourse, Ross Road, Killarney, County Kerry.

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

In coming to its decision, the Board had regard to the following:

- (a) the zoning objective for the site,
- (b) the policies and objectives of the Kerry Development Plan 2015-2021,
- (c) the policies and objectives of the Killarney Town Development Plan 2009-2015 (extended and varied),
- (d) the site's planning history,
- (e) the nature and scale of the proposed development,
- (f) the submissions received,
- (g) the decision of the planning authority,
- (h) the conclusion of the planning authority's Ecologist, and
- (i) the report of the Planning Inspector.

Appropriate Assessment Screening

The Board carried out an Appropriate Assessment Screening relating to the proposed development, having regard to the Appropriate Assessment screening prepared by the applicant and that prepared by the planning authority's Biodiversity Officer. The Board is satisfied that the authors of these reports have adequate expertise to allow their findings and conclusions to be relied upon in the preparation of the Board's Appropriate Assessment.

Appropriate Assessment Introduction

This assessment has had regard to the submitted Appropriate Assessment Screening Report submitted by the applicant and that prepared by the planning authority. It is submitted that the reports contain sufficient information required for the Board to undertake a Stage 1 Screening for Appropriate Assessment (in light of comments made by previous An Bord Pleanála's Inspector under ABP-304968-19) and that a Stage 2 Appropriate Assessment is not considered necessary in respect of the development. This report was assessed by the planning authority's Biodiversity Officer and includes clarification of particular elements of the proposed development, in particular in respect of the operations associated with the proposed development. The Board has had regard to the contents of same. The reports conclude that the proposed development, individually or in combination with other plans/projects, would not be likely to have a significant effect on any European Sites and that an Appropriate Assessment under section 177V of the Planning and Development Act, 2000, (that is, a Natura impact statement) is not, therefore, required.

The Board is satisfied that adequate information is available in respect of the baseline conditions, potential impacts are clearly identified, and sound scientific information and knowledge was used.

The Project and Its Characteristics

The proposal is to change the use of the Jim Culloty Bar and Event Area from a bar/dining use to a theatre use for the duration of the performance of an Irish Traditional Music, Song and Dance Show nightly at the venue.

The Irish Traditional Music, Song and Dance Show that has been performed in the above cited function room is “Celtic Steps”. The current application was made in February at an out of season time for this Show and it is not being performed at present due to the present Covid-19 restrictions.

The Development Site and Receiving Environment

There are no designated sites within or immediately adjacent to the development. The development site lies within the development boundary of Killarney Town and is sited within an existing building on site.

It is noted that the site is close to the River Flesk, which runs to the south of this site and which flows into Lough Leane. This river lies within the Killarney National Park, Macgillycuddy’s Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365) and this lough lies within this Special Area of Conservation and the Killarney National Park Special Protection Area (Site Code: 004038).

There are no surface water features within the development site or hydrological connections, such as would constitute or result in a pathway-source-receptor route.

The initial portion of this access road is tree lined and a hedgerow runs along the adjacent boundary between the racecourse and the Castle Falls housing estate to the east. It should be noted that this route does not provide a continuous tree/hedgerow linear pathway. Its alignment is roughly parallel to an existing spine road to the housing estate, which is the subject of streetlighting.

One of the qualifying species for the said Special Area of Conservation, is the Lesser Horseshoe Bat. The conservation objective for this species is to maintain its favourable conservation. The accompanying Map 10: Killarney National Park, Macgillycuddy's Reeks and Caragh Reeks River Catchment SAC Conservation Objectives Lesser Horseshoe Bat issued by the Department of Culture, Heritage and the Gaeltacht, identifies two roosts, bat site codes 296 and 623, within 2.5 kilometres of the site, i.e. the distance within which foraging tends to occur. This Map also shows potential foraging grounds, some of which are close to the site. The commentary to the aforementioned conservation objective sets as targets no significant loss in linear features within the said radii, such as hedgerows and treelines, which provide connectivity to this species, and no significant increase in artificial light intensity, as "lighting along commuting routes may cause preferred foraging areas to be abandoned, thus increasing the energetic cost for bats."

The applicant's Stage 1 Screening for Appropriate Assessment notes the aforementioned bat sites and it notes, too, that the identified potential foraging grounds do not occur on the racecourse lands. The applicant's screening report does not explicitly address linear features that may provide connectivity between foraging grounds and it does not address the operational phase of the proposal. However, this issue is explicitly considered in the planning authority's screening report and the possibility that the above cited lines of trees and hedgerows to provide such connectivity is not considered to be significant as it is not a continuous linear feature and is already subject to light spillage. It is further noted that there will be further loss or disruption to this pathway/linear feature as a result of the development and its operation is for limited periods only and outside of night time hours, further limiting its potential impact on a nocturnal species. Furthermore, Lesser Horseshoe Bats are not unduly impacted upon by noise along commuting routes.

Stage 1 Appropriate Assessment

In determining the zone of influence, the Board has had regard to the nature and scale of the project, the distance from the development site to the European Sites, and any potential pathways which may exist from the development site to a European Site, aided in part by the Environmental Protection Agency Appropriate Assessment Tool (www.epa.ie), the Appropriate Assessment prepared by the applicant and separately that of the planning authority.

The following designated sites are located within 15 kilometres of the development:

Designated Site (Site Code)	Distance to Development	Impact Pathway
Killarney National Park, Macgillycuddy's Reeks, Caragh Catchment Special Area of Conservation (Site Code: 000365)	c. 900m	Yes – proposed development is adjacent and within the catchment
Sheheree (Ardagh) Bog Special Area of Conservation (Site Code: 000382)	c. 2.4km	No - proposed development is a considerable distance from the site and taking into account the qualifying interests of the site and absence of hydrological connectivity there's no likely effect
Castlemaine Harbour Special Area of Conservation (Site Code: 000343)	c. 6.3 km	No – proposed development is a considerable distance

		from the site and taking into account the qualifying interests of the site and absence of hydrological connectivity there's no likely effect
Old Domestic Building, Curraglass Wood Special Area of Conservation (Site Code: 002041)	c. 13 km	No – proposed development is a considerable distance from the site and taking into account the qualifying interests of the site and absence of hydrological connectivity there's no likely effect
Killarney National Park Special Protection Area (Site Code: 004038)	c. 500 m	No – while the proposed development is adjacent and within the catchment, there is no impact pathway – having regard to the specific habitats associated with the key species and that they are restricted to within the Special Protection Area boundary itself and that no impacts on surrounding habitats or alterations to key

		environmental conditions are identified such as would disturb these species.
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These sites and their qualifying features of conservation interest, are outlined in Table 2, pages 13-14, of the submitted Screening Report, prepared in January 2020 and Table 1 of the planning authority's Screening Report dated 18th March, 2020 and the Board is satisfied that this is an accurate record.

The Board does not consider that any other European Sites fall within the zone of influence of the project, having regard to the distance from the development site to same, and the lack of an obvious pathway to same from the development site.

As outlined in the Screening for Appropriate Assessment submitted, and as is further augmented in the planning authority's screening, the Board is satisfied that the functional zone of potential impact can be employed in order to eliminate a number of European sites from further consideration. The Board considers that there is no possibility of significant effects on the following designated sites within 15 kilometres, with regard to their conservation objectives, due to intervening distances, to the nature of the intervening land uses and to the absence of a hydrological or any other linkage between the development and the European Site:

- Sheheree (Ardagh) Bog Special Area of Conservation (Site Code: 000382),
- Castlemaine Harbour Special Area of Conservation (Site Code: 000343),
- Old Domestic Building, Curraglass Wood Special Area of Conservation (Site Code: 002041), and
- Killarney National Park Special Protection Area (Site Code: 004038).

The Board noted that the applicant's screening report screened out Killarney National Park Special Protection Area at an earlier stage than the planning authority by reason of the Special Conservation Interest's as the habitats surrounding the proposal site are unsuitable breeding habitats owing to the species make up, as well as the highly modified and recreational nature of the area (human disturbance). There is no spatial overlap between the application site and species habitat, no plausible impact and given the nature and scale of the development. While the planning authority's Biodiversity Officer included this site in her screening report, the conclusions are the same, i.e. 'the birds (Merlin and Greenland White fronted geese) of Special Conservation Interest for the Special Protection Area are linked to specific habitats with the Special Protection Area boundary. No impacts on surrounding habitats are identified from the development and no potential for the development to alter the key environmental conditions or disturb either species is identified".

The Board is satisfied that there is no plausible impact pathway connecting the above noted designated sites to the location of the proposed development, and no potential ecological receptors, that these sites are outside the functional zone of impact influence of the proposal. The Board there concluded in respect of these sites, that the proposal does not include any element (whether at construction or operational stage) that is likely to result in significant effects on the conservations objectives of these Natura 2000 sites (as listed in table 3, pages 17-18, of the applicant's screening report, dated January 2020).

Potential Effects on Designated Sites

As outlined in the submitted screening report (prepared by Malachy Walsh and Partners on behalf of the applicant), the Board accepts their assessment that the possible risks to any European Site relate to:

- habitat loss and alteration,
- disturbance and/or displacement of species,
- habitat or species fragmentation, and
- water quality.

This assessment is consistent with that of the planning authority, where potential significant impacts are noted as:

- reduction/erosion/fragmentation of key habitats,
- disturbance/mortality/harm of key species (e.g. noise, light pollution, trampling or general disturbance),
- alteration of key environmental conditions (e.g. water quality, water supply, air quality),
- interference with the movement of key species within, between or in the vicinity of European sites, and
- interactive/cumulative/in combination impacts including potential climate change impacts and those with other plans or projects.

The Board considers that those European sites where a relevant source-pathway-receptor link exists can be identified as follows:

- Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365).

In considering the above potential impacts, the Board has had regard to the applicant's screening report pages 19-25 and the planning authority's screening report and is satisfied that the potential impacts have been identified, and adequately considered. In noting the Inspector's concerns regarding the Lesser Horseshow Bat, in particular at operational stage, the Board considers that there is adequate information to assess the potential significant impacts on this species.

The Board is satisfied that the issue arising, i.e. disturbance of this key species due to noise/light pollution or general disturbance has been adequately considered (by the applicant and the planning authority), and in the documents and reports submitted), and that the impact itself does not arise, as the linear features on site are already fragmented and therefore would not provide an optimal commuting route for foraging bats. Additionally, the route in question is adjacent to a public road serving the residential estate adjacent and is already subject to light spillage and the proposal does not notably or significantly increase light spillage. Similarly, there would be no notable increase in noise/disturbance along commuting routes, as the Lesser Horseshoe bats would not be unduly disturbed by noise when foraging. Noise sensitivity is associated with roosting and breeding, and no such habitats are associated with the application site. Furthermore, it is noted that the proposed operation is seasonal and does not occur during night time hours, further limiting any potential impact on the activities of nocturnal species.

Appropriate Assessment Screening Conclusion

The Board completed an Appropriate Assessment Screening exercise in relation to the potential effects of the proposed development on designated sites, taking account the nature, scale and location of the proposed development within a zoned and serviced urban area, the Appropriate Assessment Screening Report submitted with the application, the Appropriate Assessment carried out by the planning authority's Biodiversity Officer, and the Inspector's report and submissions on file. In completing the screening exercise, the Board concluded that, individually or in combination with other plans or projects, the proposed development would not be likely to have a significant effect on any European site in view of the sites' conservation objectives and that a Stage 2 Appropriate Assessment is not, therefore, required.

Conclusion on Proper Planning and Sustainable Development

The Board considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board, considered,

- (a) the land-use zoning on the site, and the fact that the proposed development falls within a development class that is cited as being “open for consideration”. The Board had regard to the decision of the planning authority, and their consideration that the development did not contravene the land-use zoning objective, and the previous An Bord Pleanála Planning Inspector’s report and Board decision (ABP-304968-19), where consideration of this issue concluded that the proposed development was acceptable in principle under this zoning,
- (b) the Board is, therefore, satisfied that in principle the proposed development does not materially contravene the zoning objective relating to the site, and that the issue of potential impact on residential amenity is a separate and independent matter (as per previous An Bord Pleanála decision under ABP-304968-19,
- (c) the Noise Report submitted on behalf of the applicant by Malachy Walsh and Partners, the technical validity of which was accepted by the planning authority’s Environmental Officer (Senior Executive Engineer) responsible for noise management, and absence of any empirical evidence to contradict the findings of this report. The Board further noted the conditions attached in the notification of decision to grant by the planning authority, and is satisfied that compliance with these conditions limiting the noise to 45dbA at the nearest noise sensitive receptor and on-going monitoring of this would ensure that the protection of residential amenity. It is further noted that the activity does not generate any noise during night time hours (23.00 to 07.00), and as such there would be no disturbance to sleep as a result of the proposed development,

- (d) the Traffic Impact Assessment submitted, which indicates that the relatively low levels of traffic generated by the proposed development occur outside of peak traffic times and can be absorbed by the local road network serving the development. There is no traffic safety or road capacity issues associated with traffic generated by the proposed development. The Board is further satisfied that the level of traffic generated by the proposed development is not of a sufficient level or duration or time such as would result in an unacceptable and adverse impact on the local road network or neighbouring residential area, and
- (e) the Appropriate Assessment Stage 1 screening carried out by the applicant, and further expanded upon and independently assessed by the planning authority's Biodiversity Officer (a qualified ecologist). The Board noted the reporting inspector's view that there is no Natura impact statement submitted with the application and as such cannot conclude that the 'proposed development individually, or in combination with other plans or projects, would not be likely to have a significant effect on the European site: the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365). However, the Board notes that the Planning Inspector has not carried out a comprehensive Stage 1 Screening and does not appear to have considered the Appropriate Assessment Stage 1 carried out by the planning authority's Biodiversity Officer. The Board, therefore, carried out its own appropriate assessment (see above). Measures intended to avoid or reduce negative effects on the European sites have not been relied upon in reaching this conclusion:

- (f) in general, the Board do not consider that there should be an expectation of no additional development or new development on these lands, and that the proposed development results in a reasonable intensification of use (cited as being open for consideration within this zoning) and on an underutilised zoned brownfield site within the development boundary of Killarney, increasing the tourist offering, economic activity and employment in the area, and as such in accordance with the proposed planning and sustainable development of the area. The Board is satisfied that there is no undue impact on the residential amenity of the neighbouring area by reason of noise or traffic and that adequate information has been submitted to assess any potential environmental or ecological impact associated with the proposed development.

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 on the 7th day of April, 2020 and by the further particulars received by An Bord Pleanála on the 20th day of July, 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. This permission relates only to the use of the venue by the developer for the purpose of staging performances of an Irish Traditional Music, Song and Dance show.

Reason: To ensure effective planning control of the development.

3. Performances at the venue to which the permission relates shall only take place between the hours of 2030 and 2230 Sunday to Friday inclusive, and between the months of May to October inclusive. The performances shall commence no early than 2030 hours and finish no later than 2230 hours on the aforementioned days. No variations to these times, days or months shall be permitted except as may be otherwise agreed in advance with and approved by the planning authority.

Reason: To ensure effective planning control of the development

4. Noise emissions associated with the activity to which this permission relates shall not exceed 45 dB (LAeq 15 min) at the nearest sensitive receptor.

Reason: In the interest of protecting the residential amenities of adjoining properties.

5. (a) Prior to commencement of development, the noise control measures as sets out in section 4 of the Technical Note received by the planning authority on the 5th day of February, 2020 shall be fully implemented. Upon completion and implementation of all measures, a certificate shall be prepared and submitted to the planning authority by a suitably qualified person confirming that all measures have been fully implemented.

- (b) Once implemented, all noise control measures as set out in section 4 of the Technical Note received by the planning authority shall be fully maintained on an on-going basis thereafter.
- (c) Upon full implementation of all noise control measures, a programme of acoustic commissioning surveys shall be undertaken as per the proposal set out in Section 5 of the Technical Note received.

Reason: In the interest of protecting the residential amenities of adjoining properties.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting 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.

Michelle Fagan

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**

Dated this day of 2020.