



An  
Bord  
Pleanála

## Inspector's Report PL08.249268

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<b>Development</b>	Regional entertainment facility with premium large format cinema, four other screens and restaurant with modified access and all ancillary works.
<b>Location</b>	Former Torc Great Southern Hotel, Park Road, Killarney, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	17/607
<b>Applicant</b>	Torcbridge Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	1 <sup>st</sup> Party v. refusal
<b>Appellant</b>	Torcbridge Ltd.
<b>Observer</b>	Sean Culloty
<b>Date of Site Inspection</b>	22/11/17
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

The appeal site is located on the site of the former Torc Great Southern Hotel. It is on the southern side of Park Road (R876) which is a busy arterial route (50kph speed zone) connecting the town centre with the N22 Killarney – Cork national primary road. It is on the eastern side of the town approximately 500 metres from the area defined as the Retail Core in the Killarney Development Plan.

The site is roughly rectangular with a stated area of 0.987hectares. It forms part of the larger site of the previous hotel. The cleared site is fenced off from the road and is overgrown. Trees delineate its northern boundary. To the south and west the site is bounded by a railway line, whilst to the north there is Park Road and to the east the remaining part of the larger site beyond which there is a line of two-storey detached houses, the last six of which front onto a slip road. Immediately in front of the eastern part of the site there is a triangular piece of public open space.

In the vicinity of the site, Park Road is straight, with footpaths on either side. It dips to the west going under the railway line on the far side of which is a large surface car park serving Killarney Railway/bus station and the Killarney Retail Centre. Opposite the appeal site there is a vehicular access to Friary Downs residential development and McDonalds restaurant and drive through. There is a dwelling to the west of same set back from the road with a filling station, some industrial/office units followed by a long-established housing estate, Ard Shanavooley. Approximately 275 metres to the east of the site there is a roundabout on the south-western side of which is a shopping/commercial scheme, whilst a few hundred metres to the north of this roundabout there is an Aldi supermarket and a Tesco supermarket.

## 2.0 Proposed Development

- 2.1. The proposal entails a two storey building with a stated gross floor area of 2454 sq.m. located roughly in the centre of the site providing for 5 cinema screens. The largest facilitating Premium Large Format (PLF) will have 301 seats, with three of the other four screens providing for 95 seats each, with the 5<sup>th</sup> providing 119 seats. A 2 storey restaurant is proposed along the western elevation. It is to be operated independently but would be ancillary to the cinema.

The height of the building will be 12 metres and is to be finished in coated aluminium cladding with glazing to the north and western elevations.

200 surface parking spaces are to be provided.

Operating hours of the cinema would be Monday to Friday 1300 to 0030 and Saturday and Sunday 1100 to 0030.

The application is accompanied by:

- Traffic and Transport Assessment - concludes that the new signal controlled access junction immediately opposite the access to the Friary Downs residential scheme and McDonalds restaurant with controlled pedestrian crossings, would operate within practical capacity during the predicted weekend afternoon peak hours both during the opening and plan years of 2018 and 2023. It is estimated that the proposed car parking provision of 200 spaces would exceed peak demand of 135.
- Flood Risk Assessment - the site is within Flood Zone C as defined in the Flood Risk Management Guidelines and is appropriate for the leisure development. The topography ensures that the building elevation at 36.85mOD will be positioned over 10.0m above the highest recorded flooding events 1.2km to the south of the site. It will not affect flooding upstream or downstream of the site and will not adversely affect the local storm water regime.
- Cinema Impact Assessment - the current cinema offering in the town is adequate to serve the immediate local catchment but does not have sufficient screens of the cinematic experience to attract the larger rural area. It is considered that the primary catchment is likely to be within 50-60km with customers from the further extent of the catchment travelling on an occasional basis (less than 4 times per annum). Tralee has the largest cinema operating in the catchment with 8 screens including a PLF screen.

Cinema Killarney is a 5 screen cinema constructed and opened in 1995. The other cinema within the catchment is in Bantry consisting of 3 screens.

Thus, there is a total of 8 screens currently serving a population of 78,859.

This falls well below the distribution figures of 28 per 100,000 for 'Towns'

detailed in The Culture and Economic Trends of Cinemas in Ireland and Wales undertaken by the Arts Council in partnership with Sgrin Cymru Wales in 2002. It will add to the cinema offering in Killarney's town centre and attract cinemagoers from a larger area to the town where they can avail of shops and services. The proposal complies with the policies and objectives of the Town Development Plan and will add to the vitality of the town centre.

- Design Report

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Refuse permission for one reason on the grounds that the proposed development, in an edge of town centre location, would give rise to unsustainable single trip/destination car journeys, would damage the evening economy within the town core, would take greatly from the tourism product available within the town core and would be detrimental to its vitality and vibrancy. The proposal would, therefore, be contrary to objective 12.3.5 of the Town Development Plan, the aim of which is to improve the development of the town centre.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Executive Planner's report dated 22/08/17 (countersigned) includes EIA and AA screening assessments. It notes that an application for a visitor and conference centre on the larger site ref. 16/335 was withdrawn. There is no objection to the design. The cinema is located outside of the town core. The car park will encourage single destination car journeys. The Cinema Impact Assessment appears to be extremely biased in its approach and based on either out of date or inaccurate data. The town centre zoning relates not to the town centre but to areas outside of the town core as set out in Map 5 of the Retail Strategy. The zoning has been diluted by a series of rezonings and now relates to an area that is a lot larger than the actual town centre. The use of the sequential approach advocated in the retail planning guidelines is appropriate given the location of the site and its potential impact on the

town centre. The Cinema Impact Assessment has not outlined the sequential site selection process or justified the edge of centre development which contravenes the policies and objectives of the Town Development Plan. The planning authority is concerned that the large 5 screen cinema would have a detrimental impact on the evening economy of the town centre. The existing cinema does not have any associated parking spaces and shows that a cinema can be viable within the town centre, can add greatly to the evening and weekend economy and adds greatly to the tourism product. It adds to the vitality and viability of the town centre. A refusal of permission is recommended.

### 3.2.2. Other Technical Reports

The County Archaeologist in a report dated 11/07/17 notes there are no recorded monuments in the vicinity and no mitigation is required.

The Area Engineer in a report dated 15/08/17 recommends a further information request seeking a Stage 1/ 2 Safety Audit in addition to details of development proposals for the remainder of site and their traffic implications. The report also sets out a schedule of conditions.

Environment Section in a report dated 17/08/17 has no objection subject to conditions.

### 3.3. Prescribed Bodies

Irish Water in a report dated 19/07/17 requires further information on infrastructure on the site.

Inland Fisheries Ireland in a report dated 13/07/17 details conditions should permission be granted.

Senior Environmental Health Officer, HSE, in a report dated 18/07/17 has no objection in principle.

### 3.4. Third Party Observations

Submissions received raise issues with respect to inadequate cinema impact assessment, impact on viability and vitality of existing facilities within the centre, traffic, parking and potential project splitting.

## 4.0 Planning History

PL63.218884 (06/4543) permission granted in 2007 on appeal for a 35,079 sq.m. retail development and 563 parking spaces on the overall site.

08/4887 – modifications granted to previous permission providing for revised, submerged open surface car parking.

## 5.0 Policy Context

### 5.1. Killarney Town Development Plan 2005

The site is within an area zoned town centre facilities. In same cinema is a permitted use.

The site is outside the area designated primary retail frontage.

### 5.2. Natural Heritage Designations

None in the vicinity.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The 1<sup>st</sup> Party appeal against the planning authority's notification of decision to refuse permission, which is accompanied by supporting maps and details, can be summarised as follows:

- It is the intention of the Omniplex Group to introduce 'PLF Cinema' where film presentation will be on a giant screen of up to 2000 sq.ft. Film companies require a minimum 2 to 4 weeks exhibition of their product. Films will play for 1 to 2 weeks in the PLF cinema and then move to the follow-on screens in order to fulfil contract obligations. Hence the need for 4 follow-on screens.
- One restaurant, only, is proposed as there are adequate restaurant and pub facilities within a short walk in the town centre core.

- The existing Killarney Cinema is not within the core retail area of the town. Both the application site and Killarney Cinema are on the edge of the town centre. The statement that the proposal would damage the vibrant evening economy within the town core could, therefore, be applied to both. The statement is incorrect. The application site sits in the middle of the Opportunity Corridor of the Town Centre (Map No.5 of the Town Development Plan).
- The existing Killarney Cinema does not enhance the town's tourist product. It effectively operates part-time. Normal weekday operating hours are from 6pm.
- The proposed development would add to the tourism product. Located on the periphery of the core retail area it would enhance the viability and vitality of the town centre.
- 14.79% average occupancy for Killarney Cinema is above the national average. Omniplex Tralee achieved 13.13% average occupancy in 2016.
- The Fehily Timoney report is selective in the counties picked for comparison. Kerry with 16 screens is under screened. Killarney can support a PLF Cinema.
- Surveys have shown that 64% of people visiting the cinema combined the activity with a second activity such as eating, drinking or shopping. There is no justification for the view that the proposal will encourage single destination car journeys.
- The Retail Planning Guidelines state that cultural facilities within and adjoining prime shopping areas will contribute to the vibrancy and vitality. The proposal, due to its size, is not suitable for core centre and should be located at the edge of town centre.
- The provision of 200 parking spaces would be in line with the County Council document 'Provision of Car Parking in Killarney Town' (Traffic Management Study) which states there is a need for additional car parking on the periphery of the town and on the incoming radial roads to reduce the traffic circulation in the centre.

- Permission was granted on the site for a shopping centre and car parking with no apparent concern for the devastating effect it would have had on the vitality and viability of the core retail area.

## 6.2. Planning Authority Response

None received

## 6.3. Observations

The submission from Fehily Timoney & Company on behalf of Mr. Sean Culloty can be summarised as follows:

- The town centre zoning relates not only to the town centre but also to areas outside the town core. The town core is set out in Map 5 of the Retail Strategy.
- The Board has drawn on the retail planning guidelines. The sequential approach is considered appropriate given the site location and the potential for synergies between cinema use and existing core town centre uses. The applicant has not demonstrated the suitability of the site in sequential terms.
- The site is c.500 metres to the east of the core retail area as set out in Map 3 of the Town Development Plan.
- The site is not identified as one of the 5 key gateway sites listed in the development plan (map 4).
- There are a number of precedents of the Board refusing permission for new or larger cinema development outside of the town centre (PL25M.230907, PL09.237463, PL09.225516, PL07.235225, PL32.239969).
- The previous retail development granted permission on appeal by the Board should not be a material consideration.
- The restaurant will become a destination in its own right which will impact on similar existing businesses in the town centre.
- The applicant has not sought to defend or clarify details provided in the Cinema Impact Assessment. The assessment fails to present a reasonable



catchment, provides an inadequate survey effort in presenting a review of existing cinemas and does not demonstrate satisfactorily that there is capacity to support additional cinema screens.

- Typical opening hours of Cinema Killarney in winter is 6pm -11pm weekdays and from 12pm weekends. During school holidays etc. it is from 2pm weekdays.
- Cinema Killarney is operating at between 13.75% and 14.79% of capacity. There is sufficient spare capacity for increase in attendance. Therefore, the needs and requirements of the catchment are met.
- The proposed development will, most likely, result in the demise of the existing facility. In the manner that planning authorities are obliged to protect existing retail operators and the vibrancy of town centres, similar consideration should be given to the protection of established cinemas where these serve an important role in sustaining the vitality of town centres.
- The assessment ignores the strategic spatial relationship of Killarney and Tralee. Any perceived shortfall in cinema services can be met within Tralee where there are 8 no. screens including a PLF screen. The introduction of a 3<sup>rd</sup> cinema may compromise the spatial relationship between the centres and their respective provision of services and thus compromise an objective of the Town Development Plan to promote the sustainable development of the town in fulfilling its role as part of the Tralee/Killarney hub.
- It is queried whether there is demand for the provision of further cultural live events in Kerry (live event screenings).
- Between Tralee, Killarney, Listowel and Dingle there are a total of 16 no. screens. This compares favourably to peer Counties such as Tipperary which has 16 no. screens and Wexford which has 18 screens.
- The proposal would cater predominately for a car based patronage that would detract from the vibrancy and vitality of the town centre, would have a low level of synergy with the existing uses and would, therefore, generate low levels of dual purpose trips.

- The Traffic Management Study prepared by Kerry County Council relates to the provision of car parking to serve the town and not to serve private, edge of centre development. Therefore, the principle of applying this study to the application site is invalid.
- The volume of the proposed car parking will militate against synergies between the development and the town centre and the encouragement of linked trips.
- Such parking provision would have a significant impact on the town centre. Notwithstanding the provision falls short of the development plan requirements of 245 spaces.
- The traffic survey does not take account of the peak summer period which is important as Killarney attracts high volumes of tourist trade. The Inspector on the previous appeal considered it prudent to have regard to the peak tourism season in the assessment of background traffic.
- There is the potential for piecemeal development of the overall site and project splitting with respect to EIA. There should be a detailed masterplan for the lands.

#### **6.4. Section 131 Response**

The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs was invited to make a submission/observation. No response received.

## 7.0 Assessment

I consider that the issues arising in the case can be assessed under the following headings:

1. Principle of development and compatibility with Development Plan Provisions
2. Traffic and Parking
3. Project Splitting
4. Appropriate Assessment

### 7.1. Principle of Development and Compatibility with Development Plan Provisions

As per the current Killarney Town Development Plan 2009 (as extended) the site is within an area zoned Town Centre facilities in which a cinema and restaurant are permitted uses.

The Local Authority planner considers that the town centre zoning has been diluted by a series of re-zonings and that it now relates to an area that is a lot larger than the actual town centre. Whilst this may be the case the fact remains that the site is zoned accordingly in the current Development Plan and, indeed, I note that the site has been zoned for such purposes since the previous plan dating back to 2003. I also note that the site is within an identified opportunity corridor in the Killarney Retail Strategy as delineated in Map No. 5 connecting the retail core with the Deerpark retail park to the north-east of the site.

I would concur with the Inspector in his assessment on the previous appeal under ref. PL63.218884 for a large retail development that the site is not within the exact town centre of Killarney, but neither can it be described as on the urban periphery of Killarney. There are mix of uses in the immediate vicinity including McDonalds restaurant, a filling station, office/industrial units with the Killarney Retail Outlet Centre to the west and Deerpark Retail Park to the north-west. The site, which was previously used as a hotel, is effectively a brownfield site beside a major roadway into Killarney and is suitable for redevelopment. It is c.500 m from the Retail Core as delineated on Map No.3 of the development plan.

The existing Cinema Killarney, which has 5 screens and no on-site parking, is located c. 500 metres to the west of the appeal site, also on lands zoned town centre

facilities. As with the appeal site it is not within what is considered to be the retail core around High Street/Main Street and New Street as delineated on Map 3 referenced above, although I acknowledge that it is closer to same.

Both the planning authority and the observer consider that the proposed development would undermine the town centre, impacting on its vitality and vibrancy. However, I submit that as there is no disaggregation within the respective town centre zoning between its traditional core and its more modern extension (which encompasses the appeal site) in the development plan, such concerns are not accepted. The proposal, itself, which is a permitted use within the said zoning would advance the objectives for the town centre providing for an increased range in entertainment facilities which would complement existing town centre uses and boost the evening and weekend economy.

I consider that the substantive concern both for the Planning Authority and the observer is premised on the assumption that were the proposed development to be realised it would result in a detrimental impact on the existing cinema offering in the town. I would suggest that the impact of the proposal on the existing cinema would simply be that of competing businesses. It is not the role of the planning process to inhibit commercial competitiveness.

There are conflicting views as to the need for cinema development with the conclusions presented in the Cinema Impact Assessment accompanying the application considered to be biased and selective in approach by both the observer and planning authority. The site is on appropriately zoned lands within walking distance of what is considered to be the retail core area and immediately adjoining both the train and bus station. Pedestrian linkage with the retail core is reasonable. I would therefore submit that in view of the site location a sequential analysis to justify the location is not a reasonable request, notwithstanding that such a provision more appropriately applies to retail development in the context of the Retail Planning Guidelines.

I have reviewed the precedent cases referred to in the observation where the Board refused permission for cinema development proposals on the basis of negative impact on the vitality and viability of the town centre. I consider that the stated cases (Mullingar, Navan, Celbridge, Newbridge, Tuam) are not directly comparable to the

appeal site in that the sites in question were suburban. The Board refused permission on grounds that such cinemas can have an adverse impact upon the vitality and viability of town centre. So conversely the most appropriate location for cinemas is in town centres as is the case in this instance.

Accordingly, the proposed cinema use as a result of it adding to the mix of land uses within the town centre, would not be inconsistent with the zoning objective for this area and there is no merit to refuse planning permission on the basis of principle of development.

## **7.2. Traffic and Parking**

The proposal entails the provision of 200 parking spaces with a relocated entrance and a new signal controlled junction with Friary Downs onto Park Road. The application is accompanied by a Traffic Impact Assessment.

Appendix 2 of the Town Development Plan sets out the parking requirements for various landuses. Cinema is not specifically referenced with that detailed for theatres at 1 space per 3 seats applied. With a seating capacity of approx. 705 a parking provision of in the region of 235 spaces is required. The proposed restaurant would, of itself, require 10 parking spaces. As suggested by the applicant I consider that the restaurant is not mutually exclusive and would be largely ancillary to the cinema use. I would also accept that by reason of the site's location relative to the town core that a certain level of synergy will arise allowing for multi-purpose trips and, as such, I would not wholly subscribe to the view that the proposal would give rise to single destination trips. I therefore consider the parking provision to be reasonable.

The Killarney Town Traffic Model/Traffic Management Study Strategic Recommendations Report, October 2016 recommends the improvement of pedestrian facilities along radial routes. Park Road is identified as such. Whilst it recommends the provision of additional out of town parking I would concur with the observer that such a provision in support of a private development is not what is reasonably envisaged in the study. I note that the report considers the existing Bus Eireann car park that adjoins the site to the west to be accessible to the town centre by foot.

In relation to the access arrangements I consider that the proposed signal controlled junction with Friary Downs opposite is an appropriate design solution having regard to the traffic that will be generated and the volume of traffic along Park Road.

Whilst I note the reference to lack of peak summer period traffic surveys I do not consider that their absence in the context of this application to be fatal due to the significantly lower vehicular movements anticipated from the proposed development relative to the retail development previously permitted on site and the peak hours identified.

### 7.3. **Project Splitting**

In terms of EIA I consider that the relevant provisions of Schedule 5 – Development for the Purposes of Part 11 of the Planning and Development Regulations 2001, as amended, with respect to the proposed development are:

Class 10. Infrastructure projects:

- (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built up area and 20 hectares elsewhere.

The proposal for a 5 screen cinema on a site with a stated area of 0.987 hectares within the town centre is below the 2 hectare threshold set for urban development in the case of a business district. Therefore, an EIAR is not mandatory. In terms of sub-threshold development and the criteria as outlined in Schedule 7 of the Planning and Development Regulations, 2001, as amended, I submit that the proposal would not have significant effects on the environment having regard to the characteristics of the development, its location within the town centre zoned and serviced lands and the characteristics of the potential impacts which I have assessed above.

Whilst the site forms part of a larger site which was originally in hotel use and which was previously the subject of an application (withdrawn), any future development of the remaining lands would be required to be assessed in terms of cumulative impacts and the legislative requirements in terms of EIA and the provisions of Schedule 5. At this juncture there are no applications or proposals before either the planning authority or the Board for the remainder of the lands.

## **8.0 Appropriate Assessment**

Having regard to the nature and scale of the proposed development on zoned and serviced lands within Killarney town centre and the distance from the nearest European Site no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **9.0 Recommendation**

I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

## **10.0 Reasons and Considerations**

Having regard to the town centre land use zoning of the site in the current Killarney Town Development Plan, its location in relation to the retail core, the pattern of development in the vicinity and the nature, scale and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not have an adverse impact on the vitality or viability of the town centre, would not give rise to a traffic hazard or to traffic congestion and would be in accordance with the proper planning and sustainable development of the area.

## **11.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application 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. Water supply and 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.

3. Prior to the occupation of the restaurant unit, a grease trap sized correctly and which complies with relevant standards/guidelines shall be put in place.

**Reason:** In the interest of orderly development.

4. The Park Road and Friary Downs Road junction upgrade as detailed on drawing no. 17302-5110 Rev.A received by the planning authority on the 28th day of June 2017 shall be completed in accordance with the requirements of the planning authority prior to the opening of the proposed development.

**Reason:** In the interest of traffic safety

5. 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.

6. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following: -

- (a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
- (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;



(c) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

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

7. 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

8. All service cables associated with the proposed development (such as electrical, telecommunications and communal 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 interest of visual amenity and orderly development

9. 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 the 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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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**January, 2018**