



An  
Bord  
Pleanála

## Inspector's Report ABP-303140-18

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|-------------------------------------|--|
| <b>Development</b>                  | Retain extract ducting to the Barry's Lane side. |
| <b>Location</b>                     | No 65/66 High Street, Killarney, Co. Kerry.      |
| <b>Planning Authority</b>           | Kerry County Council.                            |
| <b>Planning Authority Reg. Ref.</b> | 18/297   |
| <b>Applicant(s)</b>                 | Mary Corkey                                      |
| <b>Type of Application</b>          | Retention.                                       |
| <b>Planning Authority Decision</b>  | Grant Retention                                  |
| <b>Type of Appeal</b>               | Third party.                                     |
| <b>Appellant(s)</b>                 | Patrick J Carmody                                |
| <b>Observers</b>                    | None   |
| <b>Date of Site Inspection</b>      | 02.03.2019.                                      |
| <b>Inspector</b>                    | Fiona Fair.                                      |

## 1.0 **Site Location and Description**

- 1.1. The subject site (c.0.031ha) is located to the Barry's Lane side of Corkery's Bar, number 65/66 High Street, Killarney, Co. Kerry.
- 1.2. The existing 3 storey building has a bar and restaurant at ground floor and residential accommodation above. It faces onto High Street with the northern side elevation abutting Barry's Lane. Barry's Lane is a residential lane for the most part with residential dwellings and apartments on both sides.
- 1.3. The aluminum extract duct to be retained is relatively large, it is attached to the side of Corkery's bar and has been painted blue and yellow to match the façade / color of the building. The duct rises from the ground floor and terminates at first floor, it does not extend up to the second floor and therefore does not exceed the roofline. The outflow faces west down the laneway.
- 1.4. At the time of my site visit the cobble lock laneway albeit narrow had cars parked along its length and refuse bins.

## 2.0 **Proposed Development**

- 2.1. The development comprises the Retention of the following:
  - Extract ducting to the Barry's Lane side of No. 65/66 High Street (Corkery's bar & Restaurant) Killarney.

## 3.0 **Planning Authority Decision**

### 3.1. **Decision**

- 3.1.1. Following a request for further information with respect to (i) noise, the setting of the fan system, noise assessment carried out to be revisited and (ii) further assessment carried out and analysis of treatment of Odours. Planning Permission was Granted subject to 4 number conditions.
- 3.1.2. Conditions of note include:  
Condition 1: Standard Condition

Condition 2: 'within 2 months of the date of grant of permission the applicant shall arrange installation of the silencer system, details of which were received by the planning authority on 04/04/2018. This shall be confirmed in writing to the p.a.'

Condition 3: 'In the event of complains being received regarding alleged noise nuisance from the development to which this permission relates and, upon investigation by Kerry County Council, such complaints are found to be justifiable the applicant shall, upon written receipt of notification from the p.a., retain services of an acoustic specialist to establish the cause of the noise or nuisance and the remediation measures required in order to abate said nuisance. The applicant shall ensure that all such measures are fully implemented and shall be liable for all costs incurred therein.'

Condition 4: 'In the event of complaints being received regarding alleged odour nuisance from the development to which this permission relates and upon investigation by Kerry County Council, such complaints are found to be justifiable the applicant shall, upon written receipt of notification from the p.a. retain the services of an odour specialist to establish the cause of the odour nuisance and the remediation measures required in order to abate said nuisance. The applicant shall ensure that all such measures are fully implemented and shall be liable for all costs incurred therein.'

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

- 3.3. The planners report subsequent to further information being assessed considers that subject to condition the proposed retention of the development would not be visually obtrusive or out of character with the surrounding area and would not seriously damage the amenities of the adjoining residential properties.

### **Technical Reports**

- 3.4. Environment Department: Report subsequent to F.I. states no objection subject to condition.

### **Third Party Observations**

- 3.5. There is one observation on file in response to the application for retention. The issues raised are similar in nature to those raised in the third-party appeal summarised in detail below.

### **4.0 Planning History**

- 4.1. Reg Ref 17/297 Permission Refused for Retention of a ventilation duct similar to the existing duct. Reason for refusal considered that the extract duct by reason of its location on the side of the building onto Barry's Lane, gave rise to noise nuisance and would therefore seriously injure the amenities or depreciate the value of those properties on the laneway. It would set an undesirable precedent.

### **5.0 Policy Context**

#### **5.1. Development Plan**

- 5.1.1. The appeal site lies within the administrative area of the Killarney Town Council Development Plan 2009-2015. The site is zoned 'Town centre facilities' in the Town Council Development Plan 2009 – 2015.

#### **5.2. Natural Heritage Designations**

- 5.2.1. There are no Natural Heritage Designations pertaining to the appeal site. Killarney National Park SPA is located approx. 100 m to the south.

#### **5.3. Environmental Impact Assessment (EIA)**

- 5.3.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 **The Appeal**

### **Grounds of Appeal**

6.1. The Third-party appeal makes the following arguments.

- There are two separate buildings apart from one doorway connecting both buildings upstairs.
- No 65 Formerly Courtney's Bar is now Khao Asian Street Food Restaurant with separate seating downstairs and upstairs, part of the upstairs seating is over Corkery's Bar.
- Corkery's Bar operates as a bar and has recently been leased to tenants.
- It appears that the fan will be catering to both of these buildings.
- The extraction fan erected in summer 2006 was extremely noisy.
- Objection relates to noise emissions, unsightliness and expulsion of foul air into a residential area.
- Regard being had to UK Guidelines, fan height should terminate above the eaves of the building.
- Residential gardens and residences are located within 3.5m of the fan
- While the noise profile in the evening has been deemed to be similar to that recorded previously at lunch time, the sound quality of a droning fan is vastly different and more intrusive to that of ambient background noise.
- Concern that an over-riding operating switch which has been installed so that the strength of the fan cannot be increased could be overridden by a code.

6.2. **Planning Authority Response**

6.3. No response.

#### 6.4. First Part Response

The First party response makes the following arguments.

- The applicants parents operated a catering business with an existing extractor fan directly into Barry's laneway for over 40 years.
- The ventilation system has been in existence since the 1970's and was subsequently improved in 2016. It is fit for purpose and in compliance with CIBSE Guidance Document CIBSE Guide B2: Ventilation and Ductwork.
- There are numerous other restaurants adjacent to the appellant which have extracting ducts similar to the applicants.
- The initial planning application Reg. Reg. 17/297 was refused planning permission as the relevant Noise Assessment Report was not submitted to the p.a. within the period allowed.
- The application was not refused on visual grounds.
- The subject application was an attempt to address the issues raised in the initial application which was submitted without a noise report.
- All concerns raised by the objector were taken into account.
- Dispersion falls into the third category of 'poor' in the DEFRA table as the pipe is discharging below the first floor eaves level but above the ground floor eaves level as shown in photographs 1 & 2 in the DBA Noise Report (Doc 1)
- As part of the draft grant of planning permission a condition requires that the developer install a silencer to the system. It is submitted that this will be installed once planning permission has been granted.
- The applicant has been fully compliant with all requirements and regulation down through the years and has voluntarily removed the original ducting which was in place for 35 years and replaced it with this much improved extract system.
- The system can adequately remove the extracted air from the premises and is fit for purpose with low noise levels.

**Response Accompanied with:**

- A Letter from Mary Corkery which notes:
  - There is no connection at all between the two properties and there hasn't been since 2013, they are both separately rented and separate entities.
  - The fan will not serve both properties. Khao and Corkery's have two separate kitchens.
  - Khao have a separate extraction system from the rooftop of that building.
  - The area is not only a residential area and businesses have operated in the laneway for the past 72 years.
  - Precedent for extraction fan at this location and to adjoining premises is established.
  - The visual condition of the laneway is poor. However, there are plans to improve this.
  - The pipe was extended in 2016, food is served from May – Sept only and the maximum number of covers is correctly stated as 30 people in Corkery's Bar.
  - The silencer can be installed in a single day.
- dBA Report - Noise Assessment Response to F.I. dated 25.07.2018

## 7.0 Assessment

I consider the key issues in determining this appeal are as follows:

- **Principle of the Proposed Development**
- **Visual Impact**
- **Impact Upon Residential Amenity**
- **Appropriate Assessment (AA)**

### 7.1. Principle of the development/policy context.

- 7.1.1. The existing three storey building Corkery's Bar is located on High Street within Killarney Town Centre. The proposal relates to the retention of an extract duct to the Barry's Lane side of the building. It is submitted that the extract duct replaces an original extract duct, which was in place for 35 years, and that the new extraction duct incorporates an improved extraction system.
- 7.1.2. The site is zoned 'Town centre facilities' in the Town Council Development Plan 2009 – 2015. The Development Plan sets out that the role of Killarney as a vibrant tourist and cultural location is witnessed by the considerable number of licensed premises, hotels, bed and breakfasts and restaurants located within the town.
- 7.1.3. Barry's Lane way comprises a residential and commercial laneway with mixed town centre uses present. There is a clear precedent for commercial uses on the site, Corkery's Bar and Restaurant has operated from this premises for decades.
- 7.1.4. An extraction duct is deemed appropriate to serve the commercial nature of the use, subject to acceptable noise and odour management. These concerns raised by the third party to the appeal are considered in further detail below.
- 7.1.5. Overall I consider, that retention of the extraction duct, subject to condition, would be acceptable in principle on the appeal site.



## **7.2. Visual Impact**

- 7.2.1. The building is not a protected structure and is not located within an ACA. The extraction duct to be retained is not visible from High Street and has been painted blue and yellow to match the façade of the building when viewed from Barry's Lane.
- 7.2.2. I note that Kerry County Council has no objection to the proposed development on visual grounds.
- 7.2.3. The extraction duct does not detract visually from the building and I see no valid reason to refuse planning permission on such grounds.

## **7.3. Impact Upon Residential Amenity**

- 7.3.1. Third party concern is raised with respect to noise and odour nuisance. There are residential dwellings located within 5 m of the extraction duct. I visited the site on the 2<sup>nd</sup> March 2019 at approx. 12 noon and again in the evening at approx. 9.00pm. There was no noise or smell coming from the extraction duct at the time of my site visits. Regard is had to the response by the first party that food is served in Corkery's Bar from May – Sept, only.
- 7.3.2. A report (on file) carried out by RCE Reeks Consulting Engineers submits that the grease and smoke emissions from the kitchen ventilation extract at Corkery's bar are treated with carbon canopy grease filters and maintained regularly, that there have been no complaints about this system from any neighbours since it was originally installed over 25 years ago, only one complaint exists from a house which is not within the curtilage of the restaurant. The gaseous or odour phase emissions are filtered with E11 filters.
- 7.3.3. The report further submits that dispersion is at a level below first floor eaves level, there are no receptors within 100m of the ventilation pipe and the footfall is less than 30 at maximum capacity for food / dinners. The cooking type for grease and odour loading would be in the category of most pubs. From the Department of Environment, Food and Rural Affairs (DEFRA) Risk Assessment Guide, Corkery's Bar scores a total of 18 which has an impact risk of Low to Medium and the odour control requirement is Low Level Odour Control. It is submitted that the existing carbon canopy grease filters and the height and location of the existing extract

ducting are fit for purpose and in compliance with the DEFRA Assessment Guidelines.

- 7.3.4. The first party have carried out a noise assessment report (a repeat noise survey was carried out on the 17.07.18 during the period 17:30-21:30). Measurements were recorded 1m from an upper floor window at the rear of the applicant's property. The upper floor windows constitute the nearest noise sensitive receptors. The noise levels recorded are identical to those presented in the dBA report 158.1.3 submitted originally with the application. It is considered that the conclusions set out in the original report are valid and no changes to the assessment are warranted.
- 7.3.5. The kitchen extraction system is controlled from a panel which incorporates five settings. The highest settings (4 and 5) are no longer used. During a noise inspection undertaken 10.11.17, emissions were measured at setting 3 and 5. The survey results suggest that setting 5 is likely to give rise to noise emissions which create significant adverse impacts at surrounding receptors. In contrast, setting 3 emissions are satisfactory. It is recommended that an advisory notice be placed adjacent to the panel to prohibit use at settings 4 or 5. In addition, the applicant proposes to install a silencer on the extraction system which will reduce emissions by 11 dB. I note the concern by the third party that an over-riding operating switch which has been installed so that the strength of the fan cannot be increased could be overridden by a code.
- 7.3.6. The data in the noise report indicates that where the fan is operated at setting 3, with the proposed silencer, emissions will be 47 dB at 1 m and thus approx. 9 dB below background levels. Installation of the silencer is therefore considered to represent a particularly effective mitigation measure.
- 7.3.7. The Environment Department of Kerry County Council have no objection to the proposal subject to conditions which require strict monitoring and remediation measures should nuisance arise.
- 7.3.8. I recommend that conditions 2, 3 and 4 of the notification of decision to grant planning permission Reg. Ref. 18/297, as recommended by the Environment Department, should be attached to any decision to grant forthcoming from the Board.

C2. Requires that within 2 months of the date of grant of permission the applicant shall arrange installation of the silencer system, details of which were received by the planning authority on 04/04/2018.

C3. Requires that in the event of complains being received regarding alleged noise nuisance from the development to which this permission relates and, upon investigation by Kerry County Council, such complaints are found to be justifiable the applicant shall, upon written receipt of notification from the p.a., retain services of an acoustic specialist to establish the cause of the noise or nuisance and the remediation measures required in order to abate said nuisance.

C4. Requires that in the event of complaints being received regarding alleged odour nuisance from the development to which this permission relates and upon investigation by Kerry County Council, such complaints are found to be justifiable the applicant shall, upon written receipt of notification from the p.a. retain the services of an odour specialist to establish the cause of the odour nuisance and the remediation measures required in order to abate said nuisance.

7.3.9. At the time of my site inspection the extraction duct was not in use. However, based upon the information before me, in particular, established use and location of the appeal site within a mixed-use town centre location, nature of the proposal, the noise and odour assessments carried out and measures proposed to mitigate impacts, I consider it would be unreasonable to refuse planning permission on grounds of odour or noise nuisance. From the first party response it is clear that the extraction duct serves Corkery's Bar solely and I recommend that it shall be a condition of any permission that installation of the silencer system as proposed shall be put in place and monitored accordingly.

7.3.10. I consider it would be good practice to put in place measures to ensure on-going monitoring of noise and odour and remediation measures in order to abate any nuisance / impact upon residential amenity of the area. Subject to condition and good management practices being put in place I consider that the retention of the extraction duct is acceptable from a residential amenity perspective.

#### **7.4. Appropriate Assessment (AA)**

- 7.4.1. Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature of the proposed development, urban location and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

#### **8.0 Recommendation**

- 8.1.1. I recommend that the decision of the planning authority be upheld and Retention planning permission be Granted to the proposed development.

#### **9.0 Reasons and Considerations**

- 9.1.1. Having regard to the land-use zoning of the site 'Town Centre Facilities', the existing pattern of development on the site and in the vicinity it is considered that subject to compliance with the conditions set out below, the development, would be acceptable in terms of visual and residential amenity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted on the 4<sup>th</sup> October 2018, 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. Within 2 months of the date of grant of permission the applicant shall install the silencer system, details of which were received by the planning authority on 04/04/2018. Confirmation of installation shall be received in writing from the planning authority.

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

3. In the event of complains being received regarding alleged noise nuisance from the development to which this permission relates and, upon investigation by Kerry County Council, such complaints are found to be justifiable the applicant shall, upon written receipt of notification from the planning authority, retain services of an acoustic specialist to establish the cause of the noise or nuisance and the remediation measures required in order to abate said nuisance. The applicant shall ensure that all such measures are fully implemented and shall be liable for all costs incurred therein.

**Reason:** In the interest of residential amenity

4. In the event of complaints being received regarding alleged odour nuisance from the development to which this permission relates and upon investigation by Kerry County Council, such complaints are found to be justifiable the applicant shall, upon written receipt of notification from the p.a. retain the services of an odour specialist to establish the cause of the odour nuisance and the remediation measures required in order to abate said nuisance. The applicant shall ensure that all such measures are fully implemented and shall be liable for all costs incurred therein.

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

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Fiona Fair

Planning Inspector

11.03.2019