



An  
Bord  
Pleanála

## Inspector's Report ABP 304372-19

### Development

Change of use at ground floor level from commercial to residential.  
Refurbishment of existing building into 4 no. self-contained units. To include replacement of windows at ground and first floor level and new roof.

### Location

9 Kilkenny Street, Castlecomer, Co. Kilkenny.

### Planning Authority

Kilkenny County Council.

### Planning Authority Reg. Ref.

18851.

### Applicant(s)

The Good Shepherd Centre Kilkenny Ltd.

### Type of Application

Permission.

### Planning Authority Decision

Grant with conditions.

### Type of Appeal

Third Party.

### Appellant

Michael Leahy.

### Observer(s)

None.

**Date of Site Inspection**

30<sup>th</sup> August 2019.

**Inspector**

Dáire McDevitt.

## **1.0 Site Location and Description**

- 1.1 No. 9 Kilkenny Street is located on the western side of Kilkenny Street in Castlecomer, a district town in County Kilkenny, c. 20km northeast of Kilkenny city. Kilkenny Street is located within the Castlecomer Architectural Conservation Area.
- 1.2 The existing structure, a two story terrace, retains its shopfront 'Hennessys' and Numbers 8&9. The public notices refer to the site as No. 9. It is unclear if immediately adjoining premises are occupied. The terrace to the south has a for sale sign. To the north of the terrace is Market Square, the former Court House and a number of retail units. The eastern side of Kilkenny Street consists of a mixture of Public Houses, residential units and Community facilities.
- 1.3 The structure at present has a vacant retail unit (stated to be formerly a public house) at ground floor level with a residential unit at first floor level which is occupied. The interior of the structure is in a state of disrepair. There is a small yard to the rear which is enclosed by high block walls. The site has a stated area of c. 0.0235 hectares.
- 1.4 Double yellow lines and bollards run along the western side of Kilkenny Street in front of the site. Public parking bays are located along the eastern side.

## **2.0 Proposed Development**

Change of use of ground floor retail (c. 176sq.m) to 2 no. apartments and change first floor residential to 2 no. apartments on a site with a stated area of 0.0235 hectares.

Existing structure has a stated gfa of c. 298sq.m, the proposed development has a stated gfa of c. 238sq.m.

- 2.1. Proposed Ground Floor:

**Apt 1** c.50.5sq.m with 8.5sq.m rear outdoor area

**Apt 2** c.54.5sq.m with 8.5sq.m rear outdoor area

**2.2.** Proposed First Floor:

**Apt 3** c.50sq.m with 5sq.m balcony.

**Apt 4** c.50sq.m with 5sq.m balcony.

Communal Outdoor area: c.67sq.m

**3.0 Planning Authority Decision**

**3.1. Decision**

Grant permission subject to 5 conditions.

**3.2. Planning Authority Reports**

**3.2.1. Planning Reports (19<sup>th</sup> February & 2<sup>nd</sup> April 2019)**

No objection in principle to the proposed change of use of a former retail unit/public house and one residential unit to 4 apartments subject to compliance with all the requisite standards.

The proposal by a charitable organisation is for four social housing units to cater for people on the Council's housing list.

The absence of on-site parking is considered acceptable given the previous use of the structure and the associated carparking requirements, the required spaces associated with the proposed use (which is less than the previous use) and the availability of on street parking in the immediate vicinity

Outstanding issues were addressed to the satisfaction of the case officer by way of a further information submission and a recommendation to grant permission issued (report dated 2<sup>nd</sup> April 2019).

**Appropriate Assessment Screening Report** (18<sup>th</sup> February 2019).

Application for change of use to four apartments is not anticipated to have a potential impact on Natura 2000 site(s). An AA is not required.

### 3.2.2. Other Technical Reports

**Conservation Section** (12<sup>th</sup> February & 29<sup>th</sup> March 2019). Issues raised relate to the urban finish of the building's façade and the impact on the surrounding Castlecomer Architectural Conservation Area.

Further information recommended relating to 1) revised proposals for re-fenestration of the front façade of the building and 2) submission of an archaeological assessment of the proposed works on subsurface archaeology. Following the submission of Further Information, the Conservation Section (report dated 29<sup>th</sup> March 2019) noted no objection subject to the monitoring of all ground works by a qualified archaeologist.

**Environment Section** (18<sup>th</sup> February 2019). No objection subject to conditions.

**Housing** (17<sup>th</sup> January 2019). The Housing Section is fully supportive of the plans as they will address a social housing need in the Castlecomer area.

**CFO** (18<sup>th</sup> January 2019). Advise that the development will require a Fire Safety Certificate before works commence on site.

### 3.3 Prescribed Bodies

**Irish Water** (15<sup>th</sup> January 2019). No objection.

**DAU, Department of Culture, Heritage & the Gaeltacht** (1<sup>st</sup> February 2019). The Department has no objection in principle to the proposed development, which, if carried out to best conservation practice, will reverse material changes affecting the character of the property and restore the character of the Architectural Conservation Area. Concerns raised relating to windows and use of materials could be dealt with by condition.

### 3.4 Submissions

Two submissions were received at application stage, these included one from the current appellant. The issues raised are broadly in line with the grounds of appeal and shall be addressed in more detail in the relevant section of this report. Points of note included:

- Lack of carparking and traffic movements associated with the proposal would result in a traffic hazard and congestion.
- Impact on residential amenities of adjoining properties due to overlooking and noise.
- Over development of the site.
- Proposal is linked with the development of No. 10 Kilkenny Street.
- Detrimental Impact and Nuisance during construction phase.
- Unacceptable loss of a retail unit in the town.
- Balconies are unacceptable in a village setting.
- Overshadowing from the projecting balconies.

#### **4.0 Planning History**

None for the application site as per Planning Register.

On the adjoining site, Mr Michael Leahy was refused permission under **PA Ref. No. 98274** for construction of development of 4 dwelling houses, restaurant & take-away shop unit, car park. & courtyard area with associated site development works including of access from adjoining 11 Kilkenny Street St. Dev. via Unit 5 & alterations to existing site entrance from Market Square & demolition of existing buildings onsite.

Castlecomer Youth Café Project was granted permission under **PA Ref. No. 14250** for change of use of existing courthouse building to Youth Café within some internal alterations to building (protected structure).

## 5.0 Policy and Context

### 5.1 Project Ireland 2040 - National Planning Framework

The recently published National Planning Framework includes a specific Chapter, No. 6, entitled 'People Homes and Communities'. It includes 12 objectives (Objectives 26 to 37) among which Objective 27 seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages. Objective 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location. Objective 35 seeks to increase densities in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

### 5.2 Castlecomer Local Area Plan 2018-2024

Castlecomer is an important market and service centre for the agricultural hinterland, which is one of the most densely populated rural areas in the County.

The site on lands zoned under land Use Objective '**General Business**' *to allow a flexible approach to development that supports the vitality and viability of the town centre.*

The site located within **Castlecomer Architectural Conservation Area**.

**Core Strategy** set out that the Plan proposed to provide for the growth of 207 people over the plan period to the end of 2023.

#### **Section 2.6 Residential Capacity**

**Mixed Use/General Business:** 25% of area at maximum 20 units per Ha. These zoning allow for new residential development and other town centre uses such as commercial, offices, etc.

**Objective: 1C** To implement the Development Management Standards as set out in the County Development Plan 2014-2020 as appropriate, unless where varied by this plan.

**H6** to protect and preserve items of both architectural and archaeological heritage from inappropriate development that would adversely affect and/or detract from the interpretation and setting of these sites.

### 5.3 **Kilkenny County Development Plan 2014-2020**

Castlecomer is identified as a District Town in the Kilkenny County Development Plan. The CDP states that these District Towns perform an important role in driving development in the County and have much potential that can be capitalised upon. Indigenous industry and SME's are important to these areas. Their strengths lie in their capacity to accommodate employment, residential and other functions on the basis of their comparative advantage in terms of lower costs and a quality of life which is attractive to people.

**Table 11.2** sets out Car parking standards:

Pub/lounge: 1 car space per 10m<sup>2</sup> of bar/lounge floor area.

Shop: 1 space per 20sq.m floor area.

Residential: 1 space

Apartments: 1.25 spaces per unit and 0.25 spaces for visitors.

**Section 12.5** sets out general development management standards for apartment developments.

### 5.4 **Guidelines**

**Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities. (DHPLG 2018).** These provide recommended minimum standards for floor areas for different types of



apartments; storage spaces; sizes of apartment balconies/patios and room dimensions for certain rooms.

**Sustainable Urban Housing: Design Standards for New Apartments Guidelines. (DECLG 2015).** These provide recommend minimum standards for floor areas for different types of apartments; storage spaces; sizes of apartment balconies/patios and room dimensions for certain rooms.

**Sustainable Urban Residential Development Guidelines (DoEHLG 2009)** and its companion, the **Urban Design Manual - A Best Practice Guide (DoEHLG 2009).** These include detailed advice on the role of Urban Design and planning for new sustainable neighbourhoods. In cities and larger towns, appropriate locations for increased densities, are identified, including outer suburban greenfield sites and public transport corridors.

**Quality Housing for Sustainable Communities (DoEHLG 2007).** These are intended to assist with the implementation of initiatives for better homes, better neighbourhoods and better urban spaces. Detailed space requirements are set out and room sizes for different types of dwellings.

#### **Architectural Heritage Protection Guidelines 2011 (DAHG)**

These provide guidance on architectural heritage protection.

### **5.5 Natural Heritage Designations**

The nearest designated site is the River Barrow & River Nore SAC (site code 002162 located c. 200m to the east.

## **5.6 EIA Screening**

Having regard to the nature and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

## **6.0 The Appeal**

A third party appeal was lodged by Michael Leahy, 11 Kilkenny Street, Castlecomer, Co. Kilkenny.

### **6.1 Grounds of Appeal**

The grounds of appeal are summarised as follows:

- No. 9 Kilkenny Street is a key commercial property along Kilkenny Street. The loss of this trading unit is noticeable on the street trading and the loss of this commercial unit would be fatal to recovery of this commercial area of the town.
- The appellant has refused permission in the past for residential units and sees no change in circumstance to warrant granting permission for a residential development.
- The proposal for 4 units would constitute over development of this limited site.
- Use of balconies is unsuitable for the site and general area.
- Overlooking of No. 11 and loss of privacy, in particular relating to the stone building located to the rear of No. 11 which is intended to be used by the applicant on retirement.
- Nuisance and noise pollution. History of discontent.
- Plans indicated a Right of Way. There is no pedestrian right of way to the rear. The appellant is of the view that there was a commercial right of way. If the property loses its commercial entity it loses this right of way.
- Fire certificate would be required.
- No car parking provided

- Disruption and traffic hazard during construction/refurbishment phase.
- Reference to frosted windows in the applicant's property is incorrect, these are temporary and are to be replaced with real windows and doors with clear glass.

## **6.2 Applicant Response**

The applicant is of the view that issues raised in the grounds of appeal were addressed in the information lodged with the Planning Authority on the 20<sup>th</sup> December 2018 and subsequently on the 12<sup>th</sup> March 2019.

## **6.3 Planning Authority Response**

No further comment to make on the matter.

## **6.4 Observations**

None.

## **7.0 Assessment**

The main issues in this appeal are those raised in the grounds of appeal by the various third parties. The issue of appropriate assessment also needs to be addressed. I am satisfied that the principle of a change of use from commercial to residential is acceptable. The issues can be dealt with under the following headings:

- Design & Residential Amenities.
- Impact on adjoining properties.
- Design & Architectural Heritage.
- Other Issues.
- Appropriate Assessment

## **7.1 Design & Residential Amenities**

7.1.1 The Design Standards for New Apartments - Guidelines for Planning Authorities were issued in 2018. The guidelines note that aspects of the previous apartment guidance have been amended and new areas addressed in order to, among other things, make better provision for building refurbishment and small-scale urban infill schemes.

7.1.2 I note that the guidelines now allow for a relaxation of private and communal open space requirements on a case by case (subject to overall design quality) in building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha (see paragraphs 3.39 and 4.12). I also note that in paragraph 6.9 planning authorities are requested to practically and flexibly apply the general requirements of these guidelines in relation to refurbishment schemes, particularly in historic buildings, some urban townscapes and 'over the shop' type or other existing building conversion projects, where property owners must work with existing building fabric and dimensions. Ultimately, building standards provide a key reference point and planning authorities must prioritise the objective of more effective usage of existing underutilised accommodation, including empty buildings and vacant upper floors commensurate with these building standards requirements. I accept that the proposal involves the conversion of an existing structure and with this in mind I have considered a reduction in amenity area may be possible, subject to overall design quality.

7.1.3 A communal outdoor area is proposed area is approx. 67sqm in area. Private amenity space is proposed in the form of balconies for the first floor apartments and an 'outdoor area' for the ground floor ones. I note that 4 bins have been indicated on the site layout plan. I do not consider this a suitable bin store, furthermore it is standard practice that households are served by a minimum of 2, sometimes 3 bins. The application does not provide for an appropriate bin storage. I note that there is a pedestrian access on the hard surface yard to the rear and this access is the subject of dispute, this is addressed further in

section 7.4.1 of this report. Apartments 3&4 access the communal area via external stairs linking to the balconies serving each first floor apartment. Access for Apartments No. 1& 2 (ground floor) is via their 'outdoor area'. Furthermore I note that no privacy strip exists to the rear of the ground floor apartments. I note that a portion of the 'outdoor area' serving apartment 1 appears to run under the stairs serving Apartment 3's balcony. While the apartment guidelines allow for a reduction in standards subject to design quality, given the manner in which the building has been subdivided, I consider the overall layout and access arrangements to the communal area to be unsatisfactory.

7.1.4 Castlecomer is a district town and unlike many larger towns that are abundantly served by quality public parks and amenities. The nearest large amenity area is Castlecomer Discovery Park which is a private enterprise. Therefore a degree of communal open space is required on site. The quality of the communal open space being made available to all tenants would in my view serve no tenants interest and may in fact contribute to a substandard living environment for future occupiers.

7.1.5 While I acknowledged the need for social housing and sympathise with the needs of those requiring units in the area I have serious concerns that the proposed change of use of No. 9 Kilkenny Street would result in a poor residential environment for future residents. The proposal to provide balconies to the rear is not acceptable, not only would the provision of balconies at this location have a serious detrimental impact on the amenities of adjoining properties and potentially prejudice the development of adjoining lands. I consider the provision of balconies, notwithstanding their location on the rear façade to be unsuitable for this location.

7.1.6 Overall given the nature of the site and the structure which is the subject of this application I consider the provision of 4 apartments excessive resulting in poor residential environment for future occupiers and does not have adequate regard to the existing pattern of development in the area and the residential amenities of adjoining properties or those of potential occupiers, and, as such, would be contrary to the proper planning of the area. Furthermore, the lack of suitable private amenity space for the proposed units, in conjunction with the

lack of an appropriate shared public amenity area results in the overdevelopment of the site.

## **7.2 Impact on adjoining properties.**

7.2.1 The appellant has raised concerns that the proposal, in particular the use of balconies as private amenity space to the rear results in overlooking of his properties and has a negative impact on his residential amenities. I note that the structure in question is a stone building that appears to have undergone significant renovations. I have examined the Planning Authority's Planning Register and I note that there is no application for this structure. The appellant has outlined that he intends to use it upon his retirement, it is not clear if it is currently in use as a residential property.

7.2.2 I note that the balconies are set back 11.7 and 13m respectively from the front façade of this structure. The applicant has outlined that the windows in the appellant's building facing the site are obscured and privacy screening is proposed where required. The appellant has stated that this is only temporary and that clear glass is proposed. I reiterate that I found no record of a grant of permission for the residential use of the stone building on the Council's Planning Register. Notwithstanding the status of adjoining structure and use, I have concerns that the provision of balconies to the rear elevation could potentially prejudice the future development of adjoining sites.

## **7.3 Design and Architectural Heritage**

7.3.1 No. 9 Kilkenny Street, while currently containing a vacant ground floor retail unit, forms an integral part of the streetscape along Kilkenny Street and contributes the character of the streetscape and Castlecomer Architectural Conservation Area. Castlecomer has a rich tapestry of buildings of varying types and styles that as a whole contribute to the historical landscape of the town which should be protected from inappropriate interventions. The structure which is the subject of this application was originally a public house and then

changed its ground floor use to a retail unit which retains the original façade and shopfront. Internally the structure retains a number of features which contribute to its character notwithstanding its current condition.

7.3.2 As noted previously in Section 7.1.5 of this report, I do not consider that the provision of balconies is suitable given the context of the site. I acknowledged that the proposed changes to the front elevation would not have a detrimental impact on the character of the original structure and that of the Architectural Conservation Area within which it is located. No. 9, while not included in the Record of Protected Structures, is still an important building along Kilkenny Street and is an integral component of this streetscape, therefore any works or future applications should be cognisant of this.

## **7.4 Other**

### **7.4.1 Right of Way**

7.4.1.1 The appellants have raised concerns that the application relies on a right of way that is considered to be associated with the commercial use of No. 9 Kilkenny Street. The issue of right of way is disputed and the appellant has have raised concerns that the applicants have included it within the application site boundaries without demonstrating that there is a continuing right of way

7.4.1.2 The question of ownership of land is a legal matter and outside the scope of a planning permission. In this context, I would draw attention to Section 34 (13) of the Planning and Development Act 2000 (as amended) which reads '*A person shall not be entitled solely by reason of a permission under this section to carry out development*'.

### **7.4.2 Traffic & Parking**

7.4.2.1 With regard to the lack of carparking proposed with the scheme. I note that the proposed development is located along Kilkenny Street where there is ample public carparking spaces to cater for the required parking. Furthermore, the former use as a shop/public house with a residential unit had no designated

parking spaces within the curtilage of the site and relied on public parking provision. The change of use would result in a parking requirement of 6 spaces. Given the history of no parking provision on site I do not consider that a reason for refusal on parking provision is fair or warranted in this instance.

7.4.2.2 The appellant also highlighted concerns that the additional traffic associated with the construction phase would result in excessive traffic movements resulting in congestion and safety concerns for pedestrians and road users. I note that in the event of a grant of permission, this disruption would be temporary and traffic management would be addressed as part of a Construction Management Plan.

## **7.5 Appropriate Assessment**

7.5.1 The River Deen is c. 200m east of the site and is part of the River Barrow & River Nore SAC (site Code 002162). The site is separated from the SAC by urban development and there are no direct linkages to the SAC.

7.5.2 Having regard to the nature of the development, its location in a serviced urban area, and the separation distance to any 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.

## **8.0 Recommendation**

I recommend that planning permission should be refused for the following reasons and considerations.

## **9.0 Reasons and Considerations**

1. Having regard to the site configuration and to the pattern of development in the vicinity, it is considered that the proposed development, by reason of the lack of quality private or communal open space, would constitute



overdevelopment on a restricted site which would set a precedent for similar development in the area, would result in a substandard level of residential amenity for prospective occupants and would, therefore, seriously injure the residential amenities of future occupants. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Daire McDevitt

Planning Inspector

13<sup>th</sup> September 2019