



An
Bord
Pleanála

Inspector's Report

ABP-304748-19

Development	Demolish buildings on site. Construct 3-storey apartment building to contain 12 apartments.
Location	Blackmill Street, Kilkenny,
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	19/37
Applicant	The Good Shepherd Centre Kilkenny Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party v Grant
Appellant	Eleanor Cleere
Date of Site Inspection	2 nd , March 2020
Inspector	Paddy Keogh

1.0 Site Location and Description

- 1.1.1. The site of the proposed development which has a stated area of 0.0497 hectares is located on the western side of the northern end of Blackmill Street, Kilkenny. The bulk of the site is occupied by a disused single storey building that was most recently in use as a Snooker Hall. The building is of no particular architectural merit and from a visual inspection (external only) appears to be in poor condition. Buildings either side of the site are two storey or part two storey.
- 1.1.2. The contiguous buildings to the south-east of the site are in residential use. The adjoining site which wraps around the north-western and south-western boundaries of the site contains a public house ('The Black Cat'), a house, a shop and a petrol station and forecourt. The house is two-storey. The public house and other buildings are single storey.
- 1.1.3. Levels across the appeal site are flat and match the level of the public road at Blackmill Street. However, levels at the rear (North-western and south western boundaries) rise sharply onto the adjoining (appellant's site). There south-eastern boundary of the site is separated from the adjacent two storey dwelling by a narrow pedestrian route that provides public access from Blackmill Street through to the DeLoughry housing estate which is located to the south of the site.
- 1.1.4. The River Breagagh runs roughly parallel with Blackmill Street on the opposite side to the public carriageway to the appeal site.

2.0 Proposed Development

- 2.1.1. The proposed development involves
 - The demolition of the existing (vacant) single storey Snooker Hall (stated area 497 sq. m.).
 - The construction of a replacement 3 storey apartment block containing 12 apartments (stated area 644 sq. m.).
 - Bin storage
 - All associated site works, ancillary accommodation, drainage works, development entrance and road works.

- 2.1.2. Documentation on file, submitted by the applicant's agent, states that the Good Shepherd Centre Kilkenny (GSCK) is an approved housing body in Kilkenny which provides social residential accommodation supported by the Capital Assistance Scheme – a scheme which supports housing provision for the elderly; people with disabilities; people experiencing homelessness and families. The GSCK provide full time support and management services with the aim of providing high quality housing to long term tenants.
- 2.1.3. The proposed development is designed to provide targeted residential accommodation to meet an identified need in the Kilkenny area. The internal layout of the units as proposed reflects a need specific accommodation requirement as it is proposed to provide much needed accommodation for single men in need of social housing and accommodation (including one unit for a mobility impaired resident).
- 2.1.4. The submitted application is accompanied by an Archaeological Assessment.
- 2.1.5. The submitted application is accompanied by a Stage 1 Site Specific Flood Risk Assessment.
- 2.1.6. A Visual Impact Assessment of the proposed development (prepared by Frederick O'Dwyer RIAI Grade 1 Conservation Architect) was submitted in response to a request for further information issued by the planning authority.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of a decision to grant planning permission for the proposed development, subject to 11 conditions, was issued by the planning authority per Order dated 25th, May 2019.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports
- 3.2.2. A report from the planning authority Senior Executive Planner dated 28th, May 2019, following the receipt of further information, includes:

- The site is zoned residential in the current Kilkenny City and Environs Development Plan 2014-2020. An apartment block is acceptable in principle within this zone.
- The replacement of a single storey Snooker Hall with a three-storey apartment block on the site is looked upon favourably by the planning authority.
- A three-storey apartment block containing 12 one-bedroom units is deemed to be acceptable given the profile and requirements of the future occupants who will be clients of the GSCK.
- Existing poles, wires, parking signs etc. on the public footpath in front of the site will have to be addressed.
- The proposed development complies with standards in relation to minimum floor area, minimum aggregate floor area for living/dining rooms/kitchens, minimum storage areas and minimum private open space as set out in the Apartment Guidelines 2017.
- The conclusions of the Visual Impact Report (submitted in response to a request for further information issued by the planning authority) with respect to the surrounding Architectural Conservation Area and St. Mary's Cathedral are accepted by the planning authority. In this regard, it is accepted that the proposed development will not have not impact upon vistas of St. Mary's Cathedral from Dean Street and the elevated St. Canice's site.
- The relocation of the proposed disability car parking space, as indicate in the further information submitted to the planning authority, is considered to be acceptable.
- Clarification has been provided in the further information submitted to the planning authority that (i) the access from the site to the pedestrian laneway linking Blackmill Street and DeLoughry Place is to be closed, (ii) Disposal of rubbish and recycling materials from the proposed bin store will be managed in a responsible manner.
- The planning authority notes comments included in the further information submission that the Applicant hopes that the contents of the further information

submission will satisfactorily address the concerns of objectors to the proposed development.

The recommendation of the Senior Executive Planner is reflected in the planning authority notification of decision to grant planning permission.

3.2.3. Other Technical Reports-

- **Roads Department** – Report dated 28th, May 2019, following the receipt of further information, indicates no objection to the proposed development subject to conditions.
- **Conservation Officer** – Report dated 10th, May 2019, following the receipt of further information, indicates no objection to the proposed development subject to conditions.
- **Environment Section** – Report dated 21st, March 2019 indicates no objection to the proposed development.

3.3. Prescribed Bodies

Irish Water – Report dated 13th, February 2019 indicates no objection to the proposed development subject to standard conditions.

3.4. Third Party Observations

3.4.1. Observations from 5 parties objecting to the proposed development were received by the planning authority. A number of the grounds of objection are reflected in the submitted grounds of appeal. Other grounds of objection include:

- Excessive density development.
- Negative impact on the visual amenities of the area.
- Concerns in relation to refuse management and the proposed location of bin storage.
- Concerns regarding anti-social behaviour.
- Roads and footpaths in the vicinity of the site in poor condition.
- Additional traffic generated by the proposed development.

4.0 Planning History

There is no record of recent planning history on the appeal site (other than planning permission for the attachment of a satellite dish to the property granted under Reg. Ref. 99/990063)

5.0 Policy Context

5.1. Kilkenny City & Environs Development Plan 2014 – 2020 ('the Development Plan)

5.1.1. The site of the proposed development is zoned 'Existing Residential'. The stated objective of this zoning is 'protect, provide and improve residential amenity'.

5.1.2. Section 11.4 'Urban Design' includes:

'Kilkenny local authorities will ensure that all new development enriches the urban quality of the city which means encouraging a distinctive response which complements the setting. A high standard of design is considered to be essential to this process....'

'It is not intended to prescribe maximum residential standards. The emphasis will be on providing quality-housing environments based on innovation and a design led approach. A high standard of architectural design and layout will be required.....'

'The appropriate residential density in any particular area will be determined by' [6 general criteria plus 12 criteria for new residential development listed in the Development Plan].

'A site specific Design Statement will be required in the case of all large scale or sensitively located developments. A Design Statement is a short document which enables the applicant to explain why a particular design solution is considered to be the most appropriate to a particular site and it shall demonstrate how design policy and issues of accessibility have been taken into account.'

- 5.1.3. Section 11.4.4 stipulates that there should be adequate separation distances between houses with a minimum of 2.3 m. provided between the side walls of detached, semi-detached and end of terrace dwellings. Furthermore, it is stated that the position of windows and balconies is imperative to prevent overlooking and ensure protection of privacy.
- 5.1.4. Section 11.4.5 stipulates that boundary treatment of house sites where the flank of rear boundaries of house sites abuts roads, pedestrian ways or public open space, suitably designed screen walls 1.8 m. in height shall be provided.
- 5.1.5. Table 10.5 'Car Parking Standards' stipulates an off-street car parking requirement of 2 car parking spaces and 0.25 visitor car parking spaces per residential unit.
- 5.1.6. Section 10.4.8 stipulates that where car parking provision on site is not possible, or desirable for other valid reasons, the Council may consider the payment of a financial contribution in lieu. It is further stated that in cases where complete on site car parking provision is not possible, the planning authority will insist on a Mobility Management Plan submitted as part of the application in weighing up the total requirements and possible financial contributions.

5.2. Sustainable Urban Housing : Design Standards for New Apartments.

- 5.2.1. These Guidelines issued in December 2015 and March 2018 (Revised) specify minimum standards in terms of a range of parameters for new apartment developments (floor areas, private open space provision, storage provision etc.).

5.3. Natural Heritage Designations

- The River Barrow and River Nore Special Area of Conservation (SAC) (Site Code 2162) is located c. 520 m to the east of the appeal site.
- The River Nore Special Protection Area (SPA) (Site Code 4233) is located c. 520 m. to the east of the appeal site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment 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

6.1. Grounds of Appeal

6.1.1. The submitted grounds of appeal include:

- The appellant is the owner of the neighbouring property which wraps around the appeal site along its north-western and south-western boundaries.
- The appellant's property has primary frontage onto Blackmill Street with secondary frontage onto Dominic Street and DeLoughry Place.
- The appellant's site comprises a single storey public house which rises to a two-storey dwelling to the rear, a single storey shop and a forecourt along Blackmill Street.
- The appellant's property is located at an optimum location within an existing residential zone with significant development potential. It is the appellant's intention to enter into pre-application consultation with the planning authority to discuss the development potential for the appellant's site.
- The Development Plan emphasises the importance of a high quality design and layout that takes account of both the natural and built environment of the existing. The applicant has had no regard for the appellant's property or the future development potential of the appellant's site. The proposed built form and layout have neglected to protect the amenity and character of the appellant's property. This is contrary to Development Plan policy (Chapter 11).
- The appellant suggested to the planning authority that the applicant should provide a conceptual masterplan for the future development of the appeal site and the appellant's site. The applicant and planning authority failed to respond to this suggestion.
- The scale and mass of the proposed development is excessive in the context of the existing.

- The proposed plot ratio (1.3) is excessive in the context of the non-city centre location of the appeal site.
- The proposed density of development is significantly higher than that of the appellant's property and the surrounding neighbourhood. The amenity of the appellant's property would not be protected and any future development would be at risk due to overlooking.
- Section 11.4 of the Development Plan list 12 design criteria against which new residential developments will be assessed. Section 11.4 also requires a site specific design statement in the case of large scale sensitively designed developments. Despite the appellant's observations lodged with the planning authority, no submission in respect of Section 11.4 requirements were submitted by the applicant in response to the further information request made by the planning authority.
- The proposed development will impact negatively on the character of the appellant's property and have a detrimental impact on its future development potential. The layout does not respect the scale and form of the appellant's property and the proposed height of 10.74 m is significantly different from the existing height of 4 m.
- Section 11.8.7 references a number of criteria to be taken into consideration in considering building height including overlooking and consequent loss of privacy of surrounding premises.
- The design of the proposed apartment block includes a number of balconies. The design incorporates aluminium clad privacy screened. However, these have been designed to protect the amenities of future residents and not the amenities of the appellant's property.
- The applicant should consider the layout and design of the proposed development to create a more coordinated and harmonious relationship with any existing or future development on the appellant's site.
- The proposed development incorporates a new wall (capped and plastered) along the shared boundary with the appellant's property. The proposed wall is

excessively high and does not comply with the recommended height of 1.8m for rear boundary walls as set out in Section 11.4.5 of the Development Plan.

- 18 car parking spaces are required to serve the proposed development in compliance with site development standards as set out in the Development Plan. The proposed development includes provision for one car parking space (for mobility impaired) and a bicycle parking area. Thus, the proposed development is deficient in 17 car parking spaces. The Development Plan allows for consideration of the payment of a financial contribution in lieu of car parking provision. However, such an arrangement is subject to the provision of a Mobility Management Plan. No such plan has been prepared by the applicant.
- The appellant acknowledged the measures to be taken by the applicant (as outlined in further information submitted to the planning authority) to prevent anti-social behaviour in the immediate vicinity of the site. However, the applicant has failed to indicate measures that will be taken to protect the development potential of the appellant's site.

6.2. Applicant Response

6.2.1. A submission from the applicant's agent dated 17th, July, in response to the submitted grounds of appeal, includes:

- The appeal site lies in close proximity to Kilkenny City Centre. It can be considered a fringe site (fringe of the central area) and not a suburban site.
- The design of the proposed development meets the internal requirements for qualitative living of future occupants as well as taking account of the streetscape and its context with St. Mary's Architectural Area and its proximity to Protected Structures.
- An appraisal of the existing building (Snooker Hall) indicated a requirement for demolition.
- The appellant does not object to the principle of the redevelopment of the site.
- The applicant shares the appellant's concern in respect of the importance of high quality design. The application, as submitted, is considered to represent an appropriate design response in the context of the site and the streetscape.

The design is modern and contemporary, respects traditional design and proportions and provides for a sustainable residential development in an established community in close proximity to the city centre. The proposed scheme will replace a visually obtrusive flat roofed structure and will enhance the visual amenity of the area.

- The proposed three storey building height is appropriate given the context of the site and range of building heights (including other three storey buildings) in the vicinity of the appeal site.
- A Conservation Report that accompanied the application to the planning authority (at further information stage) supports the appropriateness of the proposed design in the context of the built heritage of the area.
- The applicant has no objection in principle to an approach incorporating the preparation of a masterplan in respect of the appeal site and adjoining lands. However, there is no statutory requirement to prepare a masterplan. In the current instance, there has been minimal engagement between the applicant (who is the intended purchaser of the site – subject to planning permission) and the appellant. This has arisen in circumstances where there is an urgency on the part of the applicant to progress the current proposal, there is a lack of a clear position in relation to the appellant's proposal for her site and uncertainty in relation to any identified timeframe for the development of the appellant's site and possible issues in relation to the ownership of the appellant's site (there may be other parties with an interest in the appellant's site).
- The proposed development does not prohibit the making of a valid planning application on the appellant's site in accordance with the provisions of the Development Plan and other statutory codes. The proposed development will not impact on the potential to develop the site.
- The appeal site is located on the fringe of the city centre. A plot ratio of 1.3 is appropriate at this location. Policies contained in the Development Plan and in the Kilkenny City Centre Local Area Plan 2005 support the contention that the site contains more characteristics of the city centre than suburban Kilkenny. The location of the site within an Architectural Area further supports this contention.

- The proposed development is generally in compliance with the 12 criteria relating to design in the assessment of planning applications as set out in Section 11.4 of the Development Plan.
- Any redevelopment of the site would result in a building height increase. It is submitted that the proposed 10.74 m height is acceptable.
- The design of the proposed development has taken account of national guidance contained within the 'Urban Design Manual Best Practice Guidance' published by the Department of the Environment, Heritage and Local Government in 2009. The proposed development complies with the recommended standards.
- Section 10 of the Guidelines stipulate that '*in order that rigid application of rules on overlooking and distances do not preclude appropriate densities, where distances may not be sufficient to achieve privacy between dwellings, alternative design solutions may be considered*'.
- The appellant is concerned with overlooking of her property. Appropriate screens have been incorporated into the design of proposed balconies in order to address potential overlooking of adjoining property and provide privacy for future occupants of the proposed residential units.
- The privacy screens proposed for Unit No. 7 and Unit No. 11 are provided in order to address any issue of overlooking property to the north of the appeal site. An alternative screening design incorporating an oblique configuration arrangement as provided for other balconies can be redesigned and reconfigured if deemed necessary by the Board in order to address potential overlooking of lands to the west of the appeal site. However, the balconies, as currently proposed, do not directly overlook windows of adjoining properties and provide a sense of amenity for the future occupants of these units while avoiding the creation of a claustrophobic impact. In order to prevent any potential overlooking from the proposed external communal walkway providing access to the upper floors on the rear elevation a louvred screen panel can be provided, if deemed necessary by the Board.

- The appeal site and the appellant's property are currently co-joined at street level. The proposed development will achieve a separation distance of 2.3 m (as recommended in Section 11.4.4 of the Development Plan) with the exception of balconies on the northern elevation – where privacy screens will be fitted.
- There is a distinct variation in levels between the appellant's property and the applicant's property (appeal site) along the southern boundary. The submitted documents clearly indicate that the retaining wall will be needed on the appeal site along this boundary. The boundary wall will not exceed 1.8m when viewed from the appellant's property (thus, in compliance with the requirement of Section 11.4.5 of the Development Plan).
- The need to provide for on site car parking in compliance with site development standards as set out in the Development Plan was never considered to be necessary in the context of the proposed development given that the accommodation is intended to serve elderly males. The planning authority accepted from the outset that car parking provision to serve the proposed development was not required. The single car parking space originally proposed to be provided was removed at the request of the planning authority.
- Any proposal to provide car parking opening to the streetscape with adequate turning geometry at the entrance would impact adversely on the streetscape.

6.3. Planning Authority Response

- 6.3.1. The planning authority, per letter dated 1st, July 2019, have indicated that they have no further comments to make in relation to this application in response to the submitted grounds of appeal.

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment

also needs to be addressed. The issues can be dealt with under the following headings:

(1) Impact on Development Potential of Appellant's Property

(2) Site Development Standards

(3) Appropriate Assessment Screening

(1) Impact on Development Potential of Appellant's Property

7.1.1. The grounds of appeal point out that the appellant's site (which adjoins the appeal site) occupies a prime site within an existing residential zone with significant development potential. It is submitted that the proposed development will compromise the development potential of the appellant's property. The appellant intends to enter into pre-application discussions with the planning authority in order to explore the development potential of the appellant's site. In these circumstances, it is suggested that the applicant should have been required (in accordance with Development Plan policy) to produce a masterplan for the lands at this location taking account of the development potential of the appellant's property before making an application for planning permission on the appeal site. It is further submitted that the height of the proposed building is excessive and does not comply with Development Plan requirements in relation to high quality design.

7.1.2. It has been submitted on behalf of the applicant, in response, that there is an urgent need for the proposed housing development and that in this context the preparation of a non-essential masterplan for the appeal site and adjoining lands would have resulted in unnecessary and unwarranted delay in progressing the project. It is further submitted that the design of the proposed development is appropriate to the locational context of the appeal site.

7.1.3. The existing building on the appeal site consists of a vacant flat-roofed, single storey Snooker Hall. The building is of no particular architectural merit and makes no particular contribution to the streetscape or to the visual or architectural amenities of

the area. The site is located within St. Mary's Architectural Conservation Area. The general context of the area is defined by a mix of uses, a range of architectural styles and a mix of building heights including a number of Protected Structures. These together with the nearby River Breaghagh combine to provide for an attractive urban setting on the fringe of the city centre.

7.1.4. I consider that the proposed three-storey building provides for an appropriate design response at this location. The appearance and architectural quality of the design will significantly upgrade the appearance of the streetscape. The proposed building will scale to a maximum height in excess of 10m which is significantly higher than the height of the existing single storey Snooker Hall (c. 4m.). However, the area in which the appeal site is located is characterised by a range of building heights including three storey buildings in close proximity to the site. In my opinion, the proposed development helps optimise the use of scarce urban lands and the proposed scale and height of development is acceptable. I consider that the proposed development provides for a high quality contemporary design in accordance with Development Plan requirements.

7.1.5. It has been submitted on behalf of the appellant that the appellant is not opposed to the proposed development. It appears that the appellant is primarily concerned to ensure that any development on the appeal site does not compromise the optimal development of the appellant's property. In this context, I consider that there is merit in the appellant's suggestion that a masterplan be prepared to co-ordinated development between the appeal site and possible future development of the appellant's site. However, while the provision of a site specific Design Statement in the case of large scale or sensitively located developments is a requirement of the Development Plan, as has been highlighted on behalf of the applicant, the preparation of a masterplan to guide the redevelopment of contiguous site is not mandatory under the terms of the Development Plan. In my opinion, the applicant has provided adequate justification of the need for the development currently being proposed and has highlighted the urgent need for the development at this time. In these circumstances, I consider that the applicant has an entitlement to have the proposed development assessed on its own merits. I consider that a refusal of planning permission on the basis that it would compromise the development of the appellant's property would be unwarranted unless it can be shown that the current proposal would

significantly preclude the development and beneficial use of the appellant's site in a reasonable manner. I do not believe this to be the case in the current instance. The grounds of appeal refer to plans for the future development of the appellant's site. However, no details of the scope and nature of any future development envisaged for the appellant's site have been submitted.

- 7.1.6. On balance, I consider that the quantum, height, nature and scale of development is appropriate and acceptable for the appeal site. The grounds of appeal refer to potential injury to the amenities of the appellant's property by reason of overlooking and overshadowing. However, these concerns appear to centre more on the development potential of the appellant's property rather than concerns deriving from the existing configuration of development and impact on the existing buildings and uses on the appellant's site. In the context of the redevelopment of a tight urban site, I consider that the measures taken in the design of the proposed development, including the provision of adequate setback distance from adjoining property and the incorporation of screens to restrict overlooking from proposed balconies are adequate to protect the amenities of adjoining property from overlooking. I consider that a grant of planning permission for the proposed development would not preclude an appropriate design response in the design of any future development on the appellant's property in order to protect the amenities of any future development from overlooking. In my opinion, the proposed development which will be located to the south east of the appellant's property will not result in undue injury to the amenities of the appellant's property in light of the location and context of the site at an existing fringe of city centre area.

(2) Site Development Standards

- 7.1.7. The submitted grounds of appeal argue that the proposed development does not comply with site development standards as set out in the Development Plan in respect of a number of factors, including:

Car Parking

- 7.1.8. The grounds of appeal argue that a car parking requirement of 18 spaces is needed in order to comply with Development Plan standards as set out in the Development Plan.

- 7.1.9. Table 10.5 stipulates a general car parking requirement of 1.25 spaces per unit for new residential developments plus 0.25 visitor car parking spaces per unit. Thus, the normal car parking requirement for a new residential development consisting of 12 units equals 18 spaces (12 X 1.25 plus 12X 0.25). However, Section 10.4.8 of the Development Plan recognises that there may be valid reasons why car parking provision (at the quantum specified in Table 10.5 or at all) may not be possible or desirable.
- 7.1.10. It has been submitted on behalf of the applicant, in response, that in light of the nature of the proposed apartment development and the intended users (single units to meet the accommodation requirements of elderly single men) normal car parking provision is not required. It has been submitted further that the geometry of the turning arrangements required to provide on site car parking would be detrimental to the architectural treatment of any building being proposed and to the streetscape.
- 7.1.11. The existing structure on site is not served by dedicated on site parking provision. On balance, I share the approach advocated on the part of the applicant. In this regard, I consider that the provision of on site car parking to serve the proposed development is neither necessary nor desirable. The site is located close to the city centre and within easy walking distance of a range of facilities viz. shops, pubs, restaurants, churches etc. that could adequately cater for the requirements of intended future occupants. In any event, it seems reasonable to conclude that most occupants of the proposed units are unlikely to have cars. Furthermore, I agree that any requirement to provide a vehicular entrance to the site would be detrimental to the architectural treatment of the streetscape (and would result in the loss of an on street car parking space).
- 7.1.12. Section 10.4.8 of the Development Plan suggests that in circumstances where the provision on site car parking is undesirable the planning authority will consider levying a financial contribution in lieu of car parking provision. However, the applicant in this instance is a registered charity and is thus entitled to avail of exemptions from the payment of any financial levies under the terms of the current Kilkenny City and Environs Development Contribution Scheme. In these circumstances, I consider that the requirement for the preparation of a Mobility Management Plan that might otherwise arise (in order to inform the appropriate quantum of financial levy) does not arise.

Plot Ratio

7.1.13. The submitted grounds of appeal argue that the plot ratio (1.3) of the proposed development which exceeds the normal indicative plot ratio (1.0) specified in the Development Plan for developments at this location is excessive.

7.1.14. As has been pointed out by the applicant, in response, the appeal site occupies a transitional site on the edge of the city centre where a higher plot ratio (2.0) is permitted. The plot ratios specified in the Development Plan for the city centre and suburban areas are indicative only. Having regard to the location and context of the site, I consider that it is capable of accommodating higher density development and a higher plot ratio. Indeed I consider that limiting the plot ratio of development as suggested by the appellant would result in the under-utilisation of a valuable urban site.

Separation Distance

7.1.15. Section 11.4.4 of the Development Plan stipulates that there should be adequate separation distances between houses with a minimum of 2.3 m. provided between the side walls of detached, semi-detached and end of terrace dwellings.

7.1.16. The submitted grounds of appeal highlight the fact that this separation distance will not be provided between the proposed development and the appellant's property in the proposed development. However, I consider that this requirement primarily relates new development in the context of residential layouts in residential areas. The appeal site relates to a mixed use areas. The existing development on the appeal site (Snooker Hall), albeit single storey only, abuts the development on the appellant's site. Having regard to the context of the appeal site and the established pattern of development and character of the streetscape in the immediate vicinity of the site I consider that a requirement to provide a separation distance of 2.3m between the proposed development and existing development on the appellant's site would be unwarranted.

Height of Boundary Wall

7.1.17. The submitted grounds of appeal argue that the proposed development does not comply with Development Plan requirements as set out in Section 11.4.5 of the Development Plan which stipulates that boundary treatment of house sites where the

flank of rear boundaries of house sites abuts roads, pedestrian ways or public open space, shall consist of screen walls 1.8 m. in height. It has been submitted by the applicant, in response, that this requirement will be complied in terms of the proposed boundary wall when viewed from the appellant's property. It will be necessary to provide a retaining wall along the appellants side of the shared boundary which will result in a higher boundary when measured from within the appellant's site. However, having regard to the contours of the lands at this location and the steep gradient of ground levels, I consider that the proposed boundary treatment is acceptable. The differences in height on either side of the wall will not result in injury to the amenities of the appellant's property.

(3) Appropriate Assessment Screening

- 7.1.18. An Appropriate Assessment Screening Report (prepared by Roger Goodwillie & Associates) was submitted on behalf of the applicant in response to a request for such screening contained in a request for further information issued by the planning authority.
- 7.1.19. The appeal site is located within 15 km of two European sites – The River Barrow and River Nore SAC (Site Code 2162) and the River Nore SPA (Site Code 4233).
- 7.1.20. Blackmill Street is linked to these designated sites via the River Breagagh (which is 12m from the appeal site). This river is not included within either of these designated sites.
- 7.1.21. The Screening Report highlights the fact that the proposed development is outside the SAC and SPA boundaries and does not have a role in supporting any of the listed habitats or species and, thus, there can be no direct impacts from the project.
- 7.1.22. The submitted Screening Report highlights the fact that surface water from Blackmill Street discharges directly to the main River Nore channel and does not enter the River Breagagh. The works will be organised so as to prevent any deposition of mud, waste or construction materials on the adjoining road surface. Sediment loss from the project will be contained. Thus, the project will not affect the existing conditions in the River Nore and will not, therefore, have indirect impacts on either the SAC or SPA.
- 7.1.23. I consider that the findings of the submitted Appropriate assessment Screening Report are reasonable and concur with the conclusions of the Report. Accordingly, having

regard to the nature and scale of development proposed and to the nature of the receiving environment and separation distance from the nearest designated site, no appropriate assessment issues arise and it is considered that the proposed development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European site.

8.0 Recommendation

8.1. I recommend that planning permission for the proposed development be granted for the reasons and considerations and subject to the conditions as set out below.

9.0 Reasons and Considerations

Having regard to its design, scale and height and to the established character and pattern of development in the vicinity of the site which is located on the fringe of Kilkenny City Centre in an area incorporating a range of building heights, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of adjoining property by reason of overlooking or overshadowing, would not seriously injure the amenities of the area, would be acceptable in terms of its visual impact on the streetscape, would be acceptable in terms of its impact on the architecture and heritage of the area, would not seriously prejudice the future development of adjoining sites and would 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 the further plans and particulars submitted on the 3rd day of May 2019, 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) Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

- (3) Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1500 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

- (4) Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

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

Reason: In the interest of visual amenity.

- (6) Construction and demolition waste shall be managed in accordance with a construction and demolition waste management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006

Reason: In the interest of sustainable waste management.

- (7) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each apartment unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: In the interest of residential amenity and to ensure the provision of adequate waste management to serve the development.

- (8) The developer shall facilitate the protection of archaeological materials or features which may exist within the site. In this regard, the developer shall -

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation relating to the proposed development,

(b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works,

(c) fully adhere to all mitigation measures and conclusions identified in Section 4 and 5 respectively of the Archaeological Assessment submitted to the planning authority with the planning application, and

(d) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

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

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

- (9) 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 interests of visual and residential amenity.

- (10) (a) Management measures to ensure that during the course of construction no traffic or material associated with the proposed development shall be stored on in a manner that would block the public footpath or public roadway or access to adjoining properties,
(b) details of the extent and finishes of all footpath modifications and services trench reinstatement works over the full extent of the development frontage, and
(c) details of the setting out of kerb-lines and proposed mobility impaired car parking space layout,
shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of pedestrian and traffic safety.

Paddy Keogh
Planning Inspector

20th, March 2020