



An  
Bord  
Pleanála

## Inspector's Report ABP.304968-19

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<b>Development</b>	Retain existing entertainment venue and change of use from racecourse ancillary structure to entertainment facility
<b>Location</b>	Killarney Race course, Ross Road, Killarney
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	18/841
<b>Applicant(s)</b>	Killarney Race Company DAC
<b>Type of Application</b>	Planning permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First party
<b>Appellant(s)</b>	Killarney Race Company DAC
<b>Observer(s)</b>	Frank & Eileen Shaw Majella & Donal O'Sullivan Mark Culloty Liam Lynch & Others
<b>Date of Site Inspection</b>	23 <sup>rd</sup> October 2019

## **1.0 Site Location and Description**

- 1.1.** Killarney Racecourse is located on Ross Road in Killarney Town, approx.1.2km to the southwest of the Town Centre. Ross Road branches off Flesk Road/Muckcross Road and provides access to several small housing estates, the racecourse and the National Park, including Ross Castle and the associated demesne. The site forms part of the Racecourse grounds (stated to be c.90acres) and is located at its eastern periphery. The racecourse site also has a driving test centre, a 9-hole golf course and a bar and restaurant associated with the golf club, and a number of other activities and events such as yoga classes, music classes, exhibitions and conferences. A short cul-de-sac, Castle Falls, branches off Ross Road at the northern tip of the racecourse site and the appeal site is accessed from this cul-de-sac. The western frontage of Castle Falls is with the racecourse grounds and the eastern frontage is with 'Scrahane' at the northern end and 'The Priory' at the southern end. There is a further housing estate, 'Cahernane Meadows' located further to the east, which together with 'The Priory' and other residential development, are accessed from Muckcross Road to the east.
- 1.2.** The site/building, the subject of the appeal, is one of a complex of buildings adjoining the north-eastern boundary of the racecourse site. These include the bar/venue facility, a function room, viewing stands, stables and yards, changing facilities for jockeys, offices and meeting rooms. The building in question is an enclosed structure which is used for entertainment during race meetings. It comprises an entertainment venue at the base of one of the viewing stands for the racecourse. Outside of race meetings, it has been used for other entertainment purposes such as a theatre operating nightly from April to October, for the show "Celtic Steps".
- 1.3.** The bar/venue facility is located at ground floor level and a function room (for race meetings) is at first floor level. The bar/venue area includes a licensed bar which is used during race meetings and is opened for 15 minutes during the interval for the show, Celtic Steps. The stage and seating area used for the theatre element are removable. Parking is provided for on site for cars and buses.

## **2.0 Proposed Development**

- 2.1.** Permission is sought to retain the use of the building as an existing entertainment venue associated with the racecourse and to retain the change of use from racecourse ancillary structure to entertainment venue.
- 2.2.** The floor space of the existing building the subject of the application is given as 469sq.m. The submissions on file indicate that race meetings are held on 12 days annually and that these events attract a large crowd of between 2000 and 3000 generally, but crowds of up to 5000-7000 can attend during the peak tourist season (July). The 9-hole golf course was opened in 1992 and has 140 members. The use includes a licensed bar and restaurant for members and for various functions.
- 2.3.** It is stated in the submissions that Celtic Steps commenced at the venue in 2015 and operates from May to October, from Sunday to Friday night. The shows attract between 250 and 400 patrons. The doors open at 7.15 and the show starts at 8.30. all patrons have left the site by 11pm. The majority of patrons arrive by bus.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to **refuse** permission for one reason.

Based on the information submitted, the planning authority is not satisfied that the proposed retention of the existing entertainment venue and change of use from racecourse ancillary structure to entertainment facility would not cause noise pollution. Therefore, it is considered that the proposed development would seriously injure the amenities and depreciate the value of residential properties in the area. Accordingly, the proposed retention of the development would be contrary to the proper planning and sustainable development of the area.

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

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

It was noted that the site is zoned "Active Open Space" in the Killarney Town Development Plan. It was stated that the applicant seeks to retain both the use as a

bar and dining facility during race meetings and also as an entertainment facility during periods when it would otherwise lie empty for the majority of the year. It was noted that Celtic Steps runs 7 nights a week during the tourist season (April to October) and that the venue is also used during the winter months for events such as fashion shows, shows such as “Scor” etc. The seats are removed during race meetings. It was noted that the venue has a seating capacity of 395 patrons, which was considered to be easily accommodated within the site and considerably less than the numbers attending a race meeting.

Further information was requested in respect of the types of events held, the hours of opening for such events, and a noise impact assessment on the 17<sup>th</sup> October 2018. It was requested that the proposed solutions should incorporate consideration of the impact of noise and hours of operation on the adjoining residential properties.

### **3.2.2. Other Technical Reports**

**Biodiversity Officer** – no issues raised.

**Building Control** – no issues raised.

### **3.3. Prescribed Bodies**

None

### **3.4. Third Party Observations**

Frank & Eileen Shaw, Majella & Donal O’Sullivan, Mark Culloty and Liam Lynch & Others – Objections raised as follows:

- Type of events need to be clarified – Any events that would cause unacceptable noise levels should be prohibited.
- Hours of operation – The hours of operation are critical to the level of nuisance. The Celtic Steps show finishes at 10.45, which is appropriate but other events such as summer parties etc. have not finished until 1.45am.
- Noise nuisance – the venue generates high levels of noise.
- Traffic and access – access is limited to one road, Ross Road, and the junction is already heavily trafficked. A traffic plan is required.

- The National Park and wildlife – the facility will have an adverse impact on wildlife and the National Park

### 3.5. Response to Further Information

The applicant had sought an extension of time which was granted. The Response to the FI Request was submitted on 31<sup>st</sup> May 2019. It responded to the numbered items as follows:

1. **Types of events** – it is intended to use the facility as a multi-purpose entertainment facility that would host events such as Celtic Steps, cultural, religious, exhibitions, dance, musical shows, films and recreational events, community events, school concerts as well as racing related social events.
2. **Finishing times** – Events will finish no later than 12 midnight during the week and at weekends.
3. **Noise assessment and hours of operation** – Two reports have been compiled. Enovi conducted a baseline survey and AWN completed an assessment of the structure and identified locations where noise escape from the building could occur. The Enovi study identified that noise levels measured at nearest sensitive receptors were higher than desirable (7-9dB  $L_{Aeq,5min}$  higher than background levels at the Priory Paddocks housing development).

Remedial works were proposed as part of a 3-phase noise control programme. The measures proposed included omission of a glazed screen on the eastern façade and its replacement with a block wall; The lightweight roof and glazed door set on the eastern elevation would also be replaced with appropriate acoustic controls. The smaller windows on this façade would be retained but blocked up. The external lobby doors on this façade would be treated with acoustic measures to seal them and prevent noise break-out. A suspended ceiling would be provided over the concert venue. Building Services installation will be reviewed, and any further measures required will be identified and mitigation provided. A compressor limiter was also proposed to prevent internal noise levels becoming problematic externally.

### **3.6. P.A. response to FI submitted 31/05/19**

The Environment Section (24/06/19) raised concerns regarding the FI submitted. It was noted that the noise assessment had been carried out with no performers or audience present, and that it had identified that noise levels would be excessive and that mitigation measures were identified. The Environment Section expressed reservations regarding the effectiveness of the proposed noise reduction measures and to the likelihood of auxiliary noise from traffic and parking associated with patrons attending the venue. It was not in a position to recommend permission. The Area Planner had regard to this report and recommended that permission be refused.

## **4.0 Planning History**

**ABP.300787-18** – The Board determined that the change of use of a bar and dining room at a race course to use as a theatre during the summer months was development and was not exempted development.

**08/4987** – Permission granted in 2009 for development on site including stable block.

**04/4212** – permission was granted in 2004 to extend the existing clubhouse on both ground and first floors, make changes to front elevation of stands, demolish and build new toilet block.

**03/4016** – permission refused for helipad on site.

**01/3800** – permission granted in 2002 for demolition of existing tote betting shop and construction of new tote shop and new viewing stand.

**92/2312** – permission granted in 1992 for lounge extension at existing stand.

**1884** – permission granted for alterations and extensions to existing buildings including new concourse area in 1989. This included reference to use of the structure as bar and dining room facilities.

**914** – permission granted for a Lounge Bar and Grand Stand Alterations in 1979

## **5.0 Policy Context**

### **5.1. Development Plan**

#### **Killarney Town Development Plan 2009-2015 (as extended and varied)**

The site is located in an area zoned as Active Open Space. The objective for this zone is to preserve, provide and improve recreational open space amenity and facilities. Uses that are open for consideration include community centres and halls, theatres and recreational halls.

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

The Killarney National Park, McGillicuddy Reeks and Caragh River Catchment SAC (000365) lies approx. 70m to the south (and c.400m to the west), and the Killarney National Park SPA (004038) is located approx. 500m to the west of the site.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The first-party appeal was submitted by Malachy Walsh & Partners Consultants on behalf of the appellants. The main points raised may be summarised as follows:

- Noise nuisance – This issue is the sole basis for the reason for refusal, yet it was not raised in pre-application discussions nor did the P.A. give the applicant the opportunity to respond to the specific concerns raised by the Environment Section following the submission of FI. The applicant had addressed all of the concerns in the AWN report and was fully committed to implementing the measures proposed.
- Effectiveness of mitigation proposed – the measures proposed by AWN are to upgrade the building structure to eliminate noise break out. This can be achieved by sealing outlets, closing up the large glass screen and redundant windows with block work and then upgrading the roof structure and ceilings internally in order to contain noise. The applicant is happy to accept a condition requiring the specifications to be agreed with the planning authority.

- Noise reports based on controlled conditions – in response to this criticism by the P.A., a further report has been included with the grounds of appeal, which was based on monitoring of noise during a live show on Friday 12<sup>th</sup> July 2019. This includes monitoring of associated noise arising from activities such as the arrival and departures of buses, cars and traffic prior to the show and after the show. The monitoring results for the live show are the same as those provided previously (controlled conditions). The noise from the auxiliary sources is not an issue as good management practices at the venue will ensure that no noise nuisance will arise.
- Residential Amenity and depreciation of property values – The P.A. made the assumption that the proposed development would result in noise nuisance which would cause a loss of amenity to local residents and in a depreciation of their property values. However, it is not clear on what basis these conclusions were formed.
- Objectors fall into two groups – The first group is located to the west of the race course, on the western side of Ross Road (c.250-300m away). This group is located at a significant distance from the venue and there is no direct line of sight due to the presence of buildings in the intervening space. The second group is located at Priory Paddocks, which is immediately to the east of the site and to the noise source. Monitoring has taken place here and the mitigation measures proposed will eliminate noise breakout at this location.
- Traffic generation – The volume of traffic is low in the context of existing traffic on Ross Road and at the junction with Muckcross Road. The event would be held at off-peak times and there is established precedent of large traffic volumes associated with the race meetings, which also include evening meetings.
- Traffic hazard – Ross Road is defined as a Town Distributor Route in the Killarney T.C. Traffic Management Study, with a recorded peak hour (summer) volume of 703 vehicles. This is consistent with other similar TDRs in the town. The T-Junction is signal controlled. The Inspector (300787) considered that the venue would not give rise to a traffic hazard.



## 6.2. Planning Authority Response to grounds of appeal

The P.A. responded to the grounds of appeal as follows:

The planning authority does not have any further comment to make on the first party appeal other than to state that the delayed submission of the further information by the applicant meant that there was no opportunity to seek clarification in relation to noise issues at the site.

## 6.3. Observations on the grounds of appeal

Four submissions from observers have been received by the Board, the main points of which are as follows:

- **Principle of use** – Contrary to ‘Active Open Space’ zoning. Killarney has enough entertainment venues including the INEC and a great many hotels and bars with facilities to accommodate such events. Another ‘out-of-town’ venue is unnecessary. There is a conflict with the entertainment value and status of the Race course. It is proposed to construct a walkway/cycleway between the racecourse and Priory Paddocks, (to link currently separated parts of the National Park) and an entertainment venue immediately adjacent would conflict with the tranquillity of such a facility.
- **Nature/extent of use unknown** – ‘Entertainment Facility’ too vague. The nature and type of events not clarified and could have multiple events simultaneously. No information stipulating frequency of events, number of patrons, hours of operation, availability of alcohol. These matters must be restricted/controlled in order to protect the residential amenities of neighbouring properties. There have been occasions in the last year where there was an outdoor party which went on until 1.45am and one evening, Celtic Steps was performed out doors
- **Noise and disturbance** – The Noise Surveys and Monitoring do not include information regarding best practice/BAT, methodology, location of receptors, technology used etc. The Noise Assessment did not include an assessment of events other than Celtic Steps, nor did it include the ancillary rooms associated with the use. A detailed specification on how the noise levels

would be reduced and maximum decibel range for impulse/tonal noise were not included in the assessment report.

- **Traffic impact** – Traffic generated by the development will reduce the carrying capacity of Ross Road, which is already congested, and this will result in a traffic hazard. No TIA was carried out. The information provided did not relate the likely traffic generation to the number of patrons attending, the hours of operation or the potential for multiple events to be carried out at the same time.
- **Light pollution** – the proposed development would increase the amount of light and the duration/frequency/extent of time that emissions from lighting will be evident. Thus, the levels of light pollution are likely to be a nuisance.
- **Ecology** – no Appropriate Assessment Screening undertaken despite proximity to Natura 2000 sites. This is contrary to European law.

## **7.0 Assessment**

7.1. It is considered that the main issues arising from the appeal are as follows:-

- Principle of development
- Nature and extent of use
- Residential amenity – noise and light pollution
- Traffic Impact
- Public notices - FI submission.
- Environmental Impact Assessment
- Appropriate Assessment

### **7.2. Principle of development**

7.2.1. The Racecourse site is zoned 'Active Open Space', the objective for which is to preserve, provide and improve recreational open space amenity and facilities. Uses that are 'Open to Consideration' include Community centres, Theatres and Recreational Halls. It is considered that the proposed use as an entertainment facility would come within the categories of use that are open for consideration. However,

the proposed use has two distinct elements. Firstly, it includes the retention of the established entertainment venue (bar/restaurant) associated with the race course, which is operated during race meetings. This is a venue of considerable scale which attracts 2000-3000 patrons, with crowds of up to 7,000 on some occasions. The race-goers would not all necessarily use the ground floor of the building which comprises the current site, but the potential to accommodate a significant number of patrons on the 12 days of race meetings is considerable. Secondly, the developer wishes to retain the change of use of the ground floor of the building to an 'Entertainment Facility', which is generally a theatre use. To date, this has mainly consisted of use by Celtic Steps, (since 2015), but the venue has also been used for other shows, including school concerts etc.

- 7.2.2.** The race course site is expansive (90 acres) and incorporates a variety of uses, including a golf course with a clubhouse, a driving test centre, and hosts various community facilities/events such as training for rowing clubs, yoga classes etc. The site is located within the settlement boundary for Killarney but is at the edge of the settlement. Ross Road is a cul-de-sac road, which is mainly used to access the National Park and Ross Castle, but there has also been some residential development in recent years. It is not proximate to the town centre and other entertainment type venues, of which there are many in the town. The race course is a significant tourist attraction for the town and would be an important feature in the local economy.
- 7.2.3.** The building within which the proposed uses are to be retained was constructed as a spectator stand and has been extended and added to over the years. The rear (east) elevation of the stand has a large multi-paned aluminium glazed window/door, a corrugated iron roof (with cladding extending down to the roof over the proposed theatre), a lean-to extension and several elements of plant attached to the wall. The area within which the theatre normally operates is called the 'Jim Culloty Bar/Venue' which is available for use as a bar/restaurant for the race meeting and is located under the stand, and when not used for race meetings, is used as a theatre, during the tourist season. There is also a function room on the first floor associated with the race course. There is a building attached to the immediate south which is occupied by the golf club, with a separate bar and restaurant.

**7.2.4.** It is unlikely that the building was designed or constructed to function as a live venue/theatre for shows. It is acknowledged, however, that it is feasible that the building could be upgraded and adapted to fulfil this function. Given the proximity of the site/building to residential properties, particularly to the east, it is considered that the upgrade would have to be comprehensive and it would have to be demonstrated that it would not give rise to an unacceptable level of nuisance. On the basis of the location of the site, (relatively remote from similar entertainment venues, but proximate to established housing), the mix of uses already present on the site, the design and layout of the building and the availability of a wide range of venues and sites within the town to accommodate the proposed theatre type use, I am not convinced that the site is the most suitable location for the proposed use. Notwithstanding this, it is considered that the nature and extent of the use should be explored further and the issues of impact on residential amenities and on the surrounding road network should be assessed before reaching a final conclusion on the matter.

### **7.3. Nature and extent of use**

**7.3.1.** The information provided with the application and appeal is a little vague on matters such as the type of shows, the frequency of these events and whether they would be operated simultaneously with other events during the year. The information regarding the Celtic Steps show is reasonably clear, but it is indicated that the intended use of the appeal site is as a multi-purpose entertainment facility, with additional events taking place over the winter months. The FI submitted to the P.A. (30/05/19) also stated that the intended use would include “Cultural, Religious, Exhibitions, Dance and Musical shows, Films and Recreational Events, Community events, School Concerts/plays”. However, no schedule has been provided regarding the frequency of such events.

**7.3.2.** It is not clear whether it is intended to operate the Celtic Steps show on Race Meeting days. Killarney Race Course website indicated that there were 12 meetings in 2019, which were spread out over May, July and August. Some of these were listed as day meetings and others as evening meetings. Given that it would be necessary to clear the space occupied by the theatre for the use of the premises as a restaurant/bar on Race Meeting days, it is unlikely that the uses would be operated

concurrently. However, this matter should be addressed by means of a condition, should the Board be minded to grant permission.

- 7.3.3.** There is also a lack of clarity regarding the upper limit of patrons to be accommodated, the precise hours of commencement and cessation of the use, the availability of alcohol, etc. Celtic Steps attracts 250-400 patrons and the doors open from approx. 7pm and the site is cleared by 11pm. The information regarding the other uses is less clear, but the appellant has sought to use the premises until midnight on week nights and at weekends. This would further increase the hours of operation beyond that associated with the Celtic Steps show. It is stated that the premises are certified/licensed to take up to 800 people standing and that no alcohol is served during the Celtic Steps show. However, the premises are licensed to sell alcohol and there is no indication of any such restrictions during other events.
- 7.3.4.** It is considered that the intensity of the use would be increased to a significant degree if the venue was to be used continuously over the summer and winter months for a variety of events. Prior to the commencement of the current unauthorised use, the local residents would have expected noise and disturbance for a limited number of days during the summer from the crowds attending race meetings. It is also likely that the bar and restaurant at the golf club is used throughout the year and that it may generate some noise and disturbance, as there is an open terrace on the western side. However, the operation of a theatre from the premises with nightly live shows, and an unknown number of further live shows throughout the year, undoubtedly represents a considerable escalation of the use.
- 7.3.5.** The grounds of appeal state that there have been no complaints regarding the operation of Celtic Steps from the premises. It is considered that should the Board be minded to grant permission for the theatre use, a restriction on the hours and months of operation should be applied by means of a condition attached to any such permission. It is considered that the hours and months operated by the Celtic Steps show would be the least disruptive to adjoining residents, and should be restricted accordingly. Further restrictions should be applied to prevent over-intensification of the use such as a limit on the number of patrons in attendance, a prohibition on shows simultaneously with race meetings and on outdoor entertainment events associated with the theatre use.

#### 7.4. Residential Amenity - noise and light pollution

- 7.4.1. The appellants had provided two reports to the P.A. as further information (30/05/19). These consisted of a baseline noise monitoring report by Envoi and a Noise Impact Assessment report by AWN, which included proposed mitigation measures to address unacceptable noise levels. The developer had advised the P.A. that it was intended to complete the improvement measures in a staged fashion over 12 months, but no schedule of the timing of such works was included.
- 7.4.2. It is stated (submission of 30/05/19) that the noise levels were measured at the nearest noise sensitive receptors at Priory Paddocks. However, no details have been provided of the monitoring stations or the prevailing conditions during measurement. It is stated that the measured noise levels during both the simulated performance and the actual performance was 6-9dB<sub>LAeq 5 min</sub> above background noise levels. This was deemed to be 'excessive', but no details of the background noise levels or the measured noise levels at the noise sensitive locations/monitoring stations have been provided.
- 7.4.3. It is acknowledged that the building design has a number of weaknesses that contribute to the noise emissions. Specific measures were proposed in the AWN report in respect of each of these items as follows:

Item	Mitigation measure
Glazed door-set – east elevation	Replace with block wall and proprietary acoustic door-set
Light-weight roof	Erect a suspended ceiling internally
2no. external double doors	Adapt with MDF panels, acoustic door seals etc. to make sound proof
Row of small windows – east elevation	Retain and seal airtight. Construct new shaft wall behind to control noise egress
Building services plant	Inspect and assess services to identify redundant plant and remove, seal up opes. Provide additional noise control measures to ventilation routes

Main entrance	Provide an acoustic lobby to be kept closed during performances
General	Consideration will be given to installation of a compression noise limiter if deemed necessary after implementation of the above measures

**7.4.4.** The predicted noise levels that would be achieved after mitigation have not been provided. The phasing of the proposed mitigation measures is not stated, except that it would be provided over a 12-month period, and the noise limiter is optional. It is, therefore, difficult to assess whether the proposed measures would be effective, as the existing background levels are unclear and the level of improvement that would be achieved by the measures is also unknown. It is considered that the additional report submitted with the grounds of appeal have addressed the issues raised by the P.A. regarding the controlled conditions and the auxiliary noise and disturbance from vehicles and patrons. However, in the absence of specific information on existing background levels and predicted noise levels from the entertainment venue at the nearest NSLs, it is not possible to come to a conclusion of what the appropriate noise limits should be and whether these can reasonably be achieved by upgrading the building as proposed. In light of the above, I would agree with the planning authority's reason for refusal on the grounds of noise pollution.

**7.4.5.** The observers also raised the issue of light pollution. However, there is very little information on the file to enable an assessment of the level of light that would be emitted and whether it would be reasonable.

**7.5. Traffic impact**

**7.5.1.** The proposed theatre use is likely to attract 350-400 patrons (seated) and up to 800 patrons (standing). It is implied in the submissions that the Celtic Steps show tends to be attended by groups who would arrive in coaches/buses. However, this is not specifically stated, and the proposal seeks to allow other theatre uses throughout the winter months which may be less organised, with a high number of individual car journeys. There is adequate provision on site for car parking and bus parking and access to the site is reasonable. However, the observers have raised the issue of the carrying capacity and hence safety of the road network serving the site and have

pointed out that a Traffic Impact Assessment has not been carried out in respect of the proposed development.

**7.5.2.** The appellants have pointed out that Ross Road is a 'Town Distributor Route' in the Killarney Town Centre Traffic Management Study and that the peak hour was assessed as 703 vehicles per hour. However, there is no information regarding the capacity of the road or baseline, including the traffic generated by other development/events (e.g. races). Neither is there any indication as to whether the existing peak traffic volume results in any queues at the junction with Muckcross Road or how that junction performs under different scenarios. It was also pointed out that the road caters for the traffic associated with race meetings which can attract up to 5000-7000 people. The relevance of this is questionable as the road is likely to experience considerable congestion on race days, but it is for a limited number of specified days and would be tolerated as being part of the race calendar.

**7.5.3.** The proposed development (Celtic Steps) would generate additional traffic, which has not been quantified, and would be generated on up to 7 nights a week, over 7 months. Additional unspecified events could extend this over 12 months. It is possible that some performances could overlap with race meetings, which could exacerbate the situation. Although the Celtic Steps show is scheduled to commence at 7pm, which would be outside of the normal rush hour for the town, it is not clear how the additional traffic generated would impact the signal-controlled junction with Muckcross Road. In the absence of information regarding the existing situation and predicted scenarios, it is not possible to come to any conclusions on the likely impact of the proposed development on the carrying capacity and safety of the road network in the vicinity of the site.

## **7.6. Public notices**

**7.6.1.** The observers raised concerns that the further information submitted to the P.A. was significant and should have been re-advertised to allow third parties to comment. However, I would point out that the P.A. considered the further information to be inadequate and it was on this basis that the decision to refuse permission was made. As such, the third parties were entitled to make observations to any first party appeal, and four third party observations (one of which included multiple signatures) have been submitted to the Board.



## **7.7. Environmental Impact Assessment**

- 7.7.1.** Having regard to the nature and scale of the development, 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.

## **7.8. Appropriate Assessment**

- 7.8.1.** The site is located within 70m of the Killarney National Park, MacGillicuddy Reeks and Caragh River Catchment SAC (Site code 000365), - River Flesk to the south, and within 400m of the Killarney National Park SPA (Site code 004038) which is located to the west and south. Third party observations expressed concern that no Appropriate Assessment Screening was carried out and that noise from the entertainment facility could cause disturbance to wildlife in the national park. The appellants have dismissed this on the basis that noise from the venue would be at the rear (east) of the building and that it would be screened by the stand, and that there is no evidence to support the objections.
- 7.8.2.** The proposed development involves a change of use from a bar/restaurant used on a limited number of days throughout the year (up to 12 days) to a theatre use with live musical performances on a nightly basis over seven continuous months of the year, and may be used up to 12 months p.a. The only physical works relate to acoustic elements. However, it was established that noise levels generated by the use would exceed existing background noise levels. The project is not directly connected with or necessary for the management of the European sites and as such, it is necessary to come to a view on whether the project is likely to have a significant effect, either by itself or in combination with other plans or projects, on the European sites in view of the sites' conservation objectives.
- 7.8.3.** Killarney National Park, MacGillicuddy Reeks and Caragh River Catchment SAC (Site code 000365) is designated for a wide range of habitats and species which are set out in the Site Synopsis (attached). The species include Marsh Fritillary, Lesser Horseshoe Bat and Otter. The overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. Killarney National Park SPA (Site code 004038) is designated for a number of species including Greenland White-fronted Goose, Merlin, Peregrine, Ring Ouzel

and Red Grouse (Site Synopsis and Conservation Objectives attached). The objective is to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

- 7.8.4.** As discussed in the planning assessment of noise above, insufficient information has been provided to come to a conclusion on the noise levels that would emanate from the proposed use. However, the applicant has provided information that the noise levels would be deemed to be excessive for neighbouring residential properties in the absence of mitigation. No such assessment was carried out in respect of the potential impacts on habitats and species within the Natura 2000 sites in the vicinity of the appeal site. Significant effects could occur due to the level of noise emanating from the use on a nightly basis over seven months of the year. The development as proposed also includes additional events over the winter months and the noise levels for these events have not been quantified. The activities that are currently carried on from the premises include a variety of uses, some of which might also give rise to noise levels which would be above the background noise levels in the area. Such an increase in the level of noise and the frequency with which it would occur could give rise to continued increase disturbance to wildlife, such as Otter, Lesser Horseshoe Bat, Peregrine Falcon and Greenland White-fronted Goose. Similarly, increased artificial light intensity in the vicinity of bat roosts, bird nesting areas or commuting/foraging routes could cause abandonment of such roosts or nests.
- 7.8.5.** It is considered that insufficient information is available in the submissions made to the planning authority and the Board to rule out any significant effects that may affect the Conservation Objectives of the features for which these sites were designated. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other projects would not be likely to have a significant effect on European Site Nos 000365 and 004038 or any other European Site, in view of the site's Conservation Objectives. In such circumstances, the Board is precluded from granting permission.

## **8.0 Recommendation**

- 8.1.** It is recommended that planning permission be refused for the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

1. Having regard to the location of the proposed multi-use entertainment facility in close proximity to residential dwellings, to the frequency and hours of operation of the use, and to the lack of adequate baseline information or predicted noise levels in respect of these sensitive receptors in the application and appeal documents, it is considered that the proposed development, notwithstanding the mitigation measures proposed in the noise assessment reports, would seriously injure the amenities of properties in the vicinity by reason of noise and general disturbance and would depreciate the value of properties in the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development would generate a significant volume of traffic. The Board is not satisfied, on the basis of the information provided with the application and the appeal, that the proposed development would not give rise to serious traffic congestion which would endanger public safety by reason of a traffic hazard.
3. Having regard to the location of the site within 70m of Killarney National Park, MacGillicuddy Reeks and Caragh River Catchment cSAC (000365) and within 400m of the Killarney National Park SPA (004038), it is considered that the proposed multi-use entertainment facility would be likely to give rise to continued increased disturbance to wildlife from human activity in what was formerly a relatively undisturbed area, apart from a limited number of events per annum. On the basis of the information provided with the application and appeal, and in the absence of a Natura Impact Statement, the Board is not satisfied that adequate information has been provided on the impact of the

proposed development on the habitats and wildlife for which the sites have been designated, and that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 000365 or European site No. 004038, in view of the sites' Conservation Objectives. In such circumstances, the Board is precluded from granting permission.

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Mary Kennelly  
Senior Planning Inspector

25<sup>th</sup> November 2019