



An
Bord
Pleanála

Inspector's Report

ABP-306023-19

Development	The development and change of use of a former creamery building to a community pharmacy (Protected Structure Ref: D150) which forms part of the existing Aldi site.
Location	Upper Main Street, Graiguenamanagh, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	19/327
Applicant	Memsante Ltd.
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party v Grant of Permission
Appellant	Joseph Haire
Observer(s)	None
Date of Site Inspection	19.02.2020

Inspector

Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located north of the town centre of Graiguenamanagh in east Co. Kilkenny.
- 1.2. The site is occupied by a vacant and disused former creamery building which has been boarded up. The building dates to 1916, with subsequent extensions and alterations, and was constructed by the Brandonvale Co-Operative Creamery Ltd. It has been vacant since c.1998. The site is adjacent to the Harristown roundabout but is accessed by way of the vehicular access road into Aldi. It is a relatively prominent building with a brick chimney. It is an 'island' site as it bounded to the south by the access road to Aldi, to the east by Main Street Upper, to the north by the roundabout/Graiguenamanagh Relief Road and to the west by the Duiske River which flows in a southerly direction and is culverted under the Aldi access road. The site is surfaced in both a resin bound gravel and tarmac. Despite being vacant, the property is in a relatively well-maintained condition.
- 1.3. The site has an area of 0.08 hectares.

2.0 Proposed Development

- 2.1. The application is for permission for:
 - Change of use of the former creamery building to a community pharmacy.
 - Demolition of the single storey flat roof structure to the south east elevation.
 - Removal of loading bays, alterations to internal layout and external elevations, signage, car parking, landscaping etc.
- 2.2. In addition to standard planning application plans and particulars the application was accompanied by an Architectural Heritage Impact Assessment.
- 2.3. Further information was submitted in relation to, inter alia, car parking, a Screening Report for Appropriate Assessment and a Natura Impact Statement (NIS).
- 2.4. Clarification of further information was submitted in relation to a revised site layout plan showing a footpath linking the main front door to the car parking area to the rear.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to nine conditions, including a financial contribution, submission of a Roads Maintenance & Traffic Management Plan, a Waste Management Plan and a Construction Management Plan, conservation methodologies and retention of internal features, an Irish Water connection agreement, signage for agreement, the carrying out of a bat survey and ensuring compliance with the mitigation measures set out in the NIS.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports dated 09.07.2019, 03.10.2019 and 31.10.2019 form the basis of the planning authority's decision. The report concludes that, having regard to the policies and objectives of the Kilkenny County Development Plan, the development of a pharmacy within a vacant existing protected structure is acceptable, would not be prejudicial to public health, would not impact on the existing amenities of the area and is acceptable in terms of traffic safety and convenience.

3.2.2. Other Technical Reports

Road Design – No objection, on foot of the clarification of further information response, subject to a condition relating to submission of a Roads Maintenance & Traffic Management Plan.

Architectural Conservation Section – No objection subject to conditions including a methodology for the removal of the external platforms to be submitted for agreement, new signage to be submitted for agreement, a methodology and design details for original repairs and new windows and doors to be submitted for agreement, the retention of internal tiles, pulley and ceiling panelling and erection of an interpretive sign demonstrating the importance of the Brandonvale Co-Operative Creamery.

Environment – No objection subject to the preparation of a Waste Management Plan and a Construction Management Plan.

3.3. Prescribed Bodies

Irish Water – No objection subject to conditions.

Department of Culture, Heritage and the Gaeltacht – The first report received indicated no objection subject to conditions including an assessment of the condition of original windows, specifications for new external doors, a detailed M&E report, works to be carried out in line with best conservation practice, engagement of appropriate professionals and that a bat survey is carried out prior to demolition.

A second report was received based on the further information response which noted that no bat survey had been requested.

3.4. Third Party Observations

One submission was received from Joseph Haire, Upper Main Street, Graiguenamanagh. Mr. Haire owns both the existing pharmacies in the town and has also submitted the grounds of appeal, in which the issues raised in the submission are largely covered.

4.0 Planning History

P.A. Reg. Ref. 16/369 / ABP. Reg. Ref. PL 10.248151 – Permission was granted in 2017 for the demolition of existing buildings at the former Cullen Steel site and construction of a 1,608sqm discount food store and associated works to the south of the site subject of the current planning application. Item 7 of the planning authority's further information request noted that the application did not indicate the effect of the proposed development on the character of the protected structure and further information was required to adequately describe and mitigate adverse impacts on the creamery building. Ultimately, Condition 11 of the ABP grant of permission relates to the subject protected structure as follows.

11. (a) All works to the protected structure shall be carried out under the supervision of a qualified professional with specialised conservation expertise.

(b) The works to secure and weather proof the protected structure shall be undertaken immediately following the grant of permission and shall be completed to the written satisfaction of the planning authority prior to the opening of the retail unit.

Reason: To secure the authentic preservation of this protected structure and to ensure that the proposed works are carried out in accordance with best conservation practice.

5.0 Policy Context

5.1. Kilkenny County Development Plan 2014-2020

- 5.1.1. The Plan took effect from 20.05.2014. On 01.05.2020 the Council announced its intention to, on 11.05.2020, re-commence the review process of both the County Development Plan 2014-2020 and the Kilkenny City and Environs Development Plan 2014-2020 and to prepare a single, consolidated County Development Plan for the 2021-2027 period.
- 5.1.2. Graiguenamanagh is designated as a district town in the Plan. It had a population of 1,543 in 2011, including the Tinnahinch area which is located within Co. Carlow.
- 5.1.3. Objective 3E aims to ensure district towns will be, in so far as practical, self-sufficient incorporating employment activities and sufficient retail services. Objective 3F is to promote enterprise and economic development in Graiguenamanagh in line with the Graiguenamanagh-Tinnahinch Development and Economic Study, 2006.
- 5.1.4. Chapter 4 (Economic Development), Chapter 8 (Heritage; and in particular Section 8.3 (Built Heritage)) and Chapter 12 (Requirements for Development) are relevant to this application.

5.2. Graiguenamanagh Local Area Plan 2009-2015 (extended to 15.02.2020)

- 5.2.1. It appears that a Graiguenamanagh-Tinnahinch Joint Local Area Plan 2020-2026 is currently at pre-draft stage.
- 5.2.2. Under the 2009 Local Area Plan the site is in an area zoned 'Mixed Use'. This zoning is similar to the central area of the town and the adjacent Aldi site as well as some other areas. The zoning objective is to provide for the development and improvement

of appropriate mixed uses that allow for the development of Graiguenamanagh as a focus for local services, sustaining and strengthening the function of the town centre as the principal location for retail and commercial uses. There is no specific list of 'permissible uses'. Instead, the Plan states a wide range of uses may be accommodated subject to other policies of the Plan that would complement as opposed to unduly compete with the vitality and viability of the town centre. The Council will seek to encourage the economic and environmental development of the town by focusing new retail/commercial uses in the town centre within the Mixed Use zoning, and by restricting developments in out-of-town locations to those which would not affect the viability of the town centre. In the list of uses 'open for consideration', retailing and medical and related consultants are included.

5.2.3. The site was adjacent to 'Opportunity Site 5: Duiske River Valley' which included a guiding principle to promote the redevelopment of the Creamery building as an integral part of a redevelopment scheme with a suitable compatible use.

5.2.4. The structure is identified as Protected Structure No. 27 on the Built Heritage Map (with an RPS Ref. D150) and as No. 50 on the National Inventory of Architectural Heritage Map (with NIAH Ref. 12318050).

5.3. **Retail Planning Guidelines for Planning Authorities, 2012**

5.3.1. These guidelines are relevant to the application.

5.4. **Architectural Heritage Protection Guidelines for Planning Authorities, 2011**

5.4.1. These guidelines are relevant to the application.

5.5. **Natural Heritage Designations**

5.5.1. The site is immediately adjacent to the Duiske River which forms part of the River Barrow and River Nore SAC. The Duiske discharges into the River Barrow approx. 550 metres south of the site.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted by Joseph Haire, Upper Main Street, Graiguenamanagh. The main issues raised can be synthesised as follows:

- Concern is expressed about the planning authority Planning Report description of the site as just outside the town centre. It is considered to be a wholly edge of centre site well outside the retail core and, in the context of a small town, is for out of town shopping. This would set a precedent encouraging retailers to locate to where they can have larger premises and car parking which over time will erode the town centre. The National Planning Framework seeks consolidation of towns, not dispersal and sprawl of retail functions.
- The planning authority Planning Report effectively refers to a retail use being the cost that must be paid for the redevelopment of the protected structure at the expense of allowing an out of centre retail development. A retail use is not an appropriate mixed use at this location as it would detract from the function of the town centre. An office space would be more appropriate which would not divert a considerable number of trips from the town centre where there are two existing pharmacies.
- The planning authority assessment clearly favours this proposal as being an opportunity to redevelop the building. There are multiple vacant buildings in the town centre and should, according to the sequential test, be developed first. By refusing the application, the applicant would be required to consider a town centre property. Both existing pharmacies are also located in protected structures. There is no scope for them to be converted into contemporary large footprint pharmacies.
- The planning authority assessment fails to recognise the impact the development would have on the vitality and viability of the town centre and the precedent it would set. (These general points, of the importance of the town centre, are repeatedly stressed throughout the grounds of appeal under various different headings in different sections).

- Permitting this pharmacy would cause the closure of one or both of the existing pharmacies in the town centre. The appellant's Lower Main St. pharmacy was established in 1921 and is only open four days a week. The proposed pharmacy is substantially larger than both existing pharmacies. Parking provision ensures a substantial competitive advantage against the town centre where people have to find parking and then walk. Both pharmacies exist despite poor economic conditions and a low retail spend and they continue to provide a stable retail presence in the town centre contributing to its vitality and sustainability.
- It is not clear what is meant by a 'community pharmacy' other than an attempt to influence the planning authority to consider the edge of town site as proposing to provide some public service. It is a retail pharmacy business.
- The site location provides an unfair competitive advantage as it is at the primarily residential upper end of Main St., is adjacent to the roundabout connecting to Borris, New Ross and Thomastown and is close to Aldi.
- The site is inaccessible by public transport.
- The site is vulnerable to being used for one-off vehicular trips instead of multi-use trips to the town centre. It has no relationship with other retail functions on Main St. and would reduce footfall in the town centre.
- The appellant's existing pharmacies are both located in close proximity to the town's health centre. The subject site is isolated from the health centre and the GP practice in the town centre. The pharmacies are also close to GP practices, proving a synergy in services.
- The development would weaken rather than strengthen the town centre contrary to the zoning objective. Retail use is only open for consideration on mixed use land. It is clear the mixed use zoning was because the site formed part of the Aldi site and it is not clear that, following that development, it should remain so zoned. Smaller town centres, such as Graiguenamanagh, are vulnerable to pressure for edge of centre and out of town shopping. The town centre consists of a mixture of land uses and it enhances quality of life, stimulates economic investment and supports a range of activity. The town centre is largely underpinned by retail and it makes a major contribution to its

vitality and viability. It should be the first choice for new retail developments. The application provides a direct challenge to protecting the historic town centre.

- Rural pharmacies, such as the existing two, are completely dependent on HSE contract revenue. An extra pharmacy will create an extra cost burden to the state. Cuts have had a significant impact and revenues are substantially down in the appellant's pharmacies, but he wants to remain in business. Given income reductions the town cannot support two pharmacies. If permission is granted, employment in the town centre pharmacies will drop as one will close and the other will have reduced employment. The town does not have a sufficient population.
- The County Development Plan's Retail Strategy suggests expenditure growth does not justify an additional pharmacy or that there will be a sudden increase in retail expenditure to sustain a third pharmacy.
- The development would be contrary to the National Spatial Strategy 2002-2020 and Regional Planning Guidelines 2010-2022 generally in terms of promoting town centres. It would also be contrary to the National Climate Policy, Smarter Travel: A Sustainable Transport Future (2012), the Planning Policy Statement 2015 and the Kilkenny Retail Strategy 2014-2020.
- The development would be contrary to the Retail Planning Guidelines 2012 as it would impact negatively on the vitality and viability of the existing town centre pharmacies. The development is an unsustainable car-based development outside the town centre contrary to the sequential approach.
- A Retail Impact Assessment is required and the grounds of appeal set out criteria that must be included.
- No large edge of centre pharmacy should be permitted in the absence of a Retail Health Check undertaken by the planning authority. A brief Town Centre Health Check is contained within the grounds of appeal which concludes the development may contribute to a decline in the existing town centre.
- The Aldi decision does not set a precedent as the town needed a new food store, its development was encouraged in 'Opportunity Site 5' and it maintained

pedestrian links to the town. The cumulative effect of Aldi and the proposed pharmacy would create a satellite retail centre.

- A road safety audit, to include pedestrian access to the site, should be carried out at the Aldi junction with the main road because of an issue with the entrance design.
- Concern is expressed at the changes proposed to the protected structure.
- Concern is expressed about surface water run-off directly into the Duiske River.
- The simplistic approach to the submitted construction methodology is insufficient.
- No Appropriate Assessment has been submitted despite the site bounding an SAC.
- A suggested reason for refusal is set out.
- Insufficient detail has been submitted to allow the application to be properly assessed.

6.2. Applicant's Response

The main points made can be synthesised as follows:

- A director of the applicant company is a pharmacist who was born and raised in Graiguenamanagh and whose family business is Cushendale Woollen Mill.
- The appellant operates the only two pharmacies in the town. The appellant did not object to either the Aldi development or the Daybreak filling station/shop/café development, both in the same general location of the site. It is suggested the appeal is based on commercial competition grounds which is not a material planning consideration.
- The Pharmaceutical Society of Ireland regularly refers to the retail pharmacy business sector as 'community pharmacy', as opposed to hospital and industry.
- The 'Mixed Use' zoning objective is to provide for the development and improvement of appropriate mixed uses that allow for the development of the town. Local doctors' patients are travelling out of town to have their medication

dispensed as evidenced by HSE figures. Retaining these patients supports existing town centre retailing. The planning authority considered the proposal would support the town centre having regard to the limited floor space involved, the easy walking distance to the town and benefits of the building on the approach to the town centre being restored and brought back to use. The site is the same distance to public transport from Fair Green as the appellant's Upper Main St. unit.

- The ABP Inspector, in the Aldi application, expressed the view that the best use of the building in the future would be some type of retail, café or office use. The site is well within the town development boundary.
- A pharmacy adjacent to the supermarket, while not integral, is compatible.
- Well Lane and Back Lane were redeveloped as part of the Aldi development and users of the pharmacy could use these lanes.
- The applicant would not disagree with the grounds of appeal relating to car parking and pedestrians walking from the health centre to the existing pharmacies adding to the vitality and viability of the town centre. However, the reuse of the former creamery as a retail unit as part of the town centre use development promoted under 'Opportunity Site 5', and the use of upgraded pedestrian lanes which have improved access to town centre parking provision, improved permeability and encouraged shoppers to remain in town, will also add to the vitality and vibrancy of the town centre.
- The economic arguments put forward are irrelevant planning considerations. It is not the role of the planning system to protect individual businesses or inhibit competition. There is currently no competition in Graiguenamanagh. The applicant is satisfied her venture is viable. Graiguenamanagh has fewer pharmacies than Callan, Castlecomer or Thomastown, where the appellant has a pharmacy.
- It is considered that the planning authority was correct in not requiring a retail impact assessment for a 137sqm retail space. A significant portion of this will be used for staff, storage and office purposes.

- Vacant sites closer to the existing pharmacies are unsuitable due to flood risk and lack of accessibility.
- The County Development Plan does identify considerable leakage of retailing generally from the town. The Aldi store has gone some way to arresting this and the proposal can add to it in a small way.
- The Development and Economic Study for Graiguenamanagh/Tinnahinch which indicated limited growth is now largely out of date. The Aldi development, improved pedestrian access to the town centre, a new car park associated with SuperValu and streetscape and urban renewal works in and around the town centre makes the proposal an attractive venture.
- The planning authority report assesses the development in the context of relevant plans and concludes that it is in keeping with relevant policy objectives. The site is permitted to deliver town centre retail and its location adjacent to the main supermarket allows for dual trips. Those using public transport can conveniently access the supermarket and pharmacy.
- A health check is not required. However, if it was, it would likely refer to Aldi and the benefit of redeveloping the former creamery building as a retail unit. Three long standing vacant town centre premises have recently been acquired and there are other current proposals in the town which reflects commercial confidence and point to a town centre improving in health.
- The zoning supports the proposal and ABP was of the view that it was unfortunate that it could not form part of the Aldi redevelopment.
- No flood prevention works are needed by the local authority.
- No new buildings or hard surfacing warrants surface water attenuation.
- An Appropriate Assessment Screening Report and a Natura Impact Statement (NIS) was submitted to the planning authority. The planning authority did not require the fact a NIS had been submitted to be subject of a public notice. Public notices will be provided if directed by ABP.

6.3. Planning Authority Response

6.3.1. The planning authority has no further comment to make.

6.4. Observations

None received.

6.5. Re-advertised Public Notices

6.5.1. As part of the applicant's further information response a NIS was submitted. However, the planning authority did not require the application to be re-advertised. On receipt of the grounds of appeal it was considered that re-advertised public notices were required. Relevant public notices were published on 04.03.2020. No submissions or observations were received on foot of the re-advertised notices.

7.0 Assessment

The main issues are those raised in the grounds of appeal and the Planning Report 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:

- Zoning/Acceptability of the Site Location
- Retail Planning Guidelines for Planning Authorities (2012)
- Protected Structure
- Appropriate Assessment

7.1. Zoning/Acceptability of the Site Location

7.1.1. The location of the site, and its acceptability or otherwise, is essentially the basis of the grounds of appeal.

7.1.2. The site is located to the north of the town centre, adjacent to the Harristown Roundabout and at the vehicular access to a recently constructed Aldi store. The site

is in an area zoned 'Mixed Use' under the 2009 Graiguenamanagh Local Area Plan. This zoning is, effectively, the town centre zoning, given that it is the zoning that covers the historic, traditional town centre area south of the site. It also covers the Aldi site, a small area on the opposite side of the access road immediately south of the site which is currently in residential use, and an area on the opposite side of the roundabout to the north east. The Plan, rather than specifying individual uses, states that a wide range of uses may be accommodated that would complement, as opposed to compete with, the vitality and viability of the town centre. The Council will seek to focus new retail/commercial uses in the town centre within the Mixed Use zoning. I note that, in the Inspector's Report for the Aldi development (ABP Reg. Ref. PL 10.248151), the former creamery building was described as an interesting and attractive gateway building to the historic core. It was considered in the Inspector's Report that some type of small-scale retail, café or office use could make productive account of its visual importance to the town.

- 7.1.3. The grounds of appeal claim that the site is not a town centre site and providing a pharmacy at this location would be detrimental to the vitality and viability of the town centre. The site is approx. 300 metres from the more northerly of the two existing pharmacies. The Aldi development has opened up additional pedestrian links to the site from Well Lane in addition to the main access by way of Upper Main St.
- 7.1.4. The site is zoned for mixed use development where uses including retail and medical and related consultants are open for consideration. The site is near the Aldi store and is closer to the historic town centre than some other commercial areas, residential areas and sporting facilities. I consider that the site location, which was previously used for commercial purposes, would consolidate the commercial area of the town rather than create further sprawl. Having regard to the foregoing, I consider that the site location is acceptable, would not have any undue effect on the vitality and viability of the existing town centre and would be in accordance with the proper planning and sustainable development of the area.

7.2. **Retail Planning Guidelines for Planning Authorities (2012)**

- 7.2.1. The aim of the guidelines is to ensure the planning system continues to play its role in supporting competitiveness and choice in the retail sector commensurate with

promoting the vitality and viability of city and town centres. The grounds of appeal refer to, among other issues, compliance with the sequential approach, the requirement for both a retail impact assessment and a town centre health check and the impact on the existing pharmacies in the town.

- 7.2.2. The sequential approach, in the context of this application, means that only where an applicant can demonstrate that there are no sites or potential sites within a town centre should an edge of centre site be considered. The guidelines state that where proposed new retail developments have the potential to significantly undermine and compromise the goal of maintaining the vitality and viability of established town centres, or where there is an application for a new retail development particularly large in scale compared to the existing town centre a retail impact assessment may be requested. Thresholds for requiring such an assessment would be determined in the context of the development plan policies or objectives. Section 4.4 (Sequential Approach to the Location of Retail Development) states that where the location of a proposed retail development has demonstrated that it complies with the policies and objectives of a development plan additional supporting background studies or a retail impact assessment are not required. Notwithstanding that the proposed development is not of a scale that would warrant the preparation of a retail impact assessment, as the development site is zoned for mixed-use development, it is relatively close to the historic town centre, has multiple pedestrian links and the most recent use of the subject structure was commercial, I consider that the sequential approach is satisfied.
- 7.2.3. The grounds of appeal also consider that no large pharmacy be permitted in the absence of a Retail Health Check undertaken by the planning authority. I do not consider such a health check is warranted for a development of the size proposed. In terms of the impact of the proposed development on the two existing pharmacies in the town, both under the same ownership, I note the guidelines state that strong competition is essential to reduce retail costs and that the planning system should not be used to inhibit competition or to preserve existing commercial interests.
- 7.2.4. Having regard to the foregoing I do not consider the proposed development would be contrary to the Retail Planning Guidelines for Planning Authorities (2012).

7.3. Protected Structure

- 7.3.1. The former creamery building is a protected structure (RPS. Ref. D150) and is included in the National Inventory of Architectural Heritage (NIAH Ref. 12318050). Works are proposed to the structure to accommodate the proposed change of use.
- 7.3.2. As part of the planning application an Architectural Heritage Impact Assessment was submitted setting out the background to the structure and the works proposed. It is proposed to remove both loading platforms and the existing single storey extension to the side. The original platform was raised in 1958 to accommodate the replacement of horse carts with lorries. The second platform was constructed in 1967 just after the extension was constructed in 1966. While the original platform may be underneath the raised platform the applicant is concerned about a possible security risk by giving access to a window. Internal works are also proposed. Two openings in an existing wall are proposed; one to provide a door access to an office and the second, a partial opening, to provide a serving and oversight window between the dispensary and shop area which is required by law. The raised concrete internal platform is also to be removed, which was also raised to accommodate lorries, as, to use this as a retail area, it must be wheelchair accessible. The loading bay doors and a side door are to be reinstated as windows and rear doors are to be replaced.
- 7.3.3. The submitted Assessment considers that the proposal minimises impacts and retains its character as a prominent industrial building. Certain existing features of its original use such as pulleys attached to the wall and tiles on the wall can be preserved. The planning authority Architectural Conservation Officer indicated no objection to the development subject to conditions. The ABP grant of permission for the Aldi development included a condition to secure and weatherproof the building. The Architectural Heritage Protection Guidelines (2011), acknowledge that the best way to prolong the life of a protected structure is to keep it in active use. Where it is not possible to keep it in its original use an appropriate, alternative use should be carefully considered. While some alterations are proposed to the structure, they mainly affect non-original parts of the building or are relatively minor. I consider that the essential character of the building would be retained, and the change of use would not have an undue adverse effect on the special interest of the structure. External signage

proposals are restrained and includes a sign on the side fascia at high level reflecting the original use.

- 7.3.4. I consider that the proposed change of use is acceptable, and the refurbishment and reuse of this attractive industrial heritage building would be a positive development for the town.

7.4. Appropriate Assessment

- 7.4.1. The Duiske River, immediately adjacent to the site, forms part of the River Barrow and River Nore SAC (site code 002162). It is considered that this is the only Natura 2000 site of relevance. As part of the further information response, an AA screening report and a NIS were submitted. The NIS was required because, as set out in the AA screening report, significant effects on the Natura 2000 site could not be ruled out, specifically having regard to the potential effects on water quality during the construction process.
- 7.4.2. The site is effectively covered in hard surfacing, both tarmac and resin bound gravel. There is no additional floor area proposed. The development is, effectively, for a change of use of the existing building and the removal of limited existing floor area and some small external features.
- 7.4.3. The qualifying interests for the SAC, as set out in the NPWS website are estuaries, mudflats and sandflats not covered by seawater at low tide, reefs, Salicornia and other annuals colonising mud and sand, Atlantic salt meadows, Mediterranean salt meadows, watercourses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation, European dry heaths, hydrophilous tall herb fringe communities of plains and of the montane to alpine levels, petrifying springs with tufa formation, old sessile oak woods with ilex and blechnum in the British Isles, alluvial forests with alnus glutinosa and fraxinus excelsior, Desmoulin's whorl snail, freshwater pearl mussel, white-clawed crayfish, sea lamprey, brook lamprey, river lamprey, twaite shad, salmon, otter, Killarney fern and Nore pearl mussel. (Reefs are excluded in other NPWS documentation regarding this SAC). In addition, the submitted AA screening report includes an allis shad (Code 1102) which is not included in the NPWS list.
- 7.4.4. The AA screening report states that a number of qualifying interests are not considered to be relevant to the current application such as the habitats. There are also no records

of certain species such as the Killarney fern, Desmoulins whorl snail or the pearl mussels downstream of Graiguenamanagh. The species that are likely to be relevant to the application are the crayfish, lampreys, salmon and otter. Floating river vegetation (water courses of plain to montane levels) may also be present though the report states that there is currently no satisfactory definition of this habitat type and it encompasses all rivers.

- 7.4.5. The public treatment plant in the town is operating well within its limit and no habitat loss will occur from the development. The screening report considers that there will be no change to surface water run off during operation, as there is no change to the area of hard surfacing, but pollution from surface water during construction, typically sediment and small quantities of hydrocarbon residues, is a potential concern and negative effects on the SAC cannot be ruled out. It was concluded that a NIS was required.
- 7.4.6. The NIS includes suggested mitigation measures which would avoid effects on the integrity of the SAC. The mitigation measures suggested are following guidance from Inland Fisheries Ireland, storing dangerous substances in a bunded zone, notification of relevant agencies in the event of a pollution incident, training of site personnel, daily inspection of the measures and installation of a silt barrier along the river bank. The NIS concludes that, with the implementation of these measures, adverse effects on the integrity of the SAC will not occur, and the conclusion is based on the best scientific knowledge. On foot of a site inspection and taking into consideration the nature of the proposed development I consider that the documentation submitted in terms of appropriate assessment is adequate.
- 7.4.7. Subject to the mitigation measures set out being implemented I consider it reasonable to conclude that, individually or in combination with any other plan or project, there would be no significant impact on the integrity of the River Barrow and River Nore SAC, or any other European site, as a result of the proposed development.

8.0 Recommendation

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

9.0 Reasons and Considerations

9.1. Having regard to the provisions of the Kilkenny County Development Plan 2014-2020, the Graiguenamanagh Local Area Plan 2009, the Retail Planning Guidelines for Planning Authorities (2012), and the Architectural Heritage Protection Guidelines (2011), and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of the zoning objective and its location within the town, would not be inconsistent with the Retail Planning Guidelines (2012), would comprise the appropriate refurbishment and reuse of a protected structure and would have no significant adverse impact on the River Barrow and River Nore SAC. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on 11.09.2019 and 09.10.2019, 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 works, the developer shall make a record of the existing protected structure. This record shall include:
 - (a) a full set of survey drawings to include elevations, plans and sections of the structure, and

(b) a detailed, labelled photographic survey of all internal rooms (including all important fixtures and fittings), the exterior and the curtilage of the building.

This record shall be submitted to the planning authority prior to commencement of development and one copy of this record and a full set of drawings of the proposed works to the protected structure shall be submitted to the Irish Architectural Archive.

Reason: In order to establish a record of this protected structure.

3. Prior to commencement of development, the developer shall provide for the following:-

(a) The appointment of a conservation expert, who shall manage, monitor and implement works on the site and ensure adequate protection of the historic fabric during those works.

(b) The submission of details of all finishes and of all existing original features to be retained and reused where possible, including interior and exterior fittings/features, joinery, fenestration, plasterwork, features and roofs.

All repair/restoration works shall be carried out in accordance with best conservation practice as detailed in the application and the “Architectural Heritage Protection Guidelines for Planning Authorities” (Department of Arts, Heritage and the Gaeltacht, 2011). The repair/restoration works shall retain the maximum amount possible of surviving historic fabric in-situ including structural elements, plasterwork and joinery and shall be designed to cause minimum interference to the building structure and/or fabric.

Reason: To ensure that the integrity of the historic structures is maintained and that the structures are protected from unnecessary damage or loss of fabric.

4. (a) Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 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.

(b) The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development including traffic management, noise management measures and off-site disposal of construction waste.

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

5. Construction and demolition waste shall be managed in accordance with a construction waste and demolition 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.

6. Mitigation measures contained within the Natura Impact Statement received by the planning authority on 11.09.2019 shall be implemented in full.

Reason: In the interest of the protection of the River Barrow and River Nore SAC (Site Code 002162).

7. Prior to commencement of development a bat survey shall be carried out for the written approval of the planning authority. Should bats be present,

appropriate mitigation measures to the written approval of the planning authority, shall be implemented.

Reason: In the interest of wildlife protection.

8. Details of all signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the amenities of the area and visual amenity.

9. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

10. Prior to commencement of development, the applicant or developer shall enter into a water and/or waste water connection agreement(s) with Irish Water.

Reason: In the interest of public health.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the

matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Anthony Kelly

Planning Inspector

19.06.2020