



An  
Bord  
Pleanála

## Inspector's Report ABP-307396-20

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<b>Development</b>	Change of use of the Jim Culloty Bar and Event Area from a bar/dining use to a theatre use for the duration of the performance of an Irish Traditional Music, Song and Dance Show nightly at the venue.
<b>Location</b>	Killarney Race Course, Ross Road, Killarney, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	20/94
<b>Applicant(s)</b>	Celtic Steps Entertainment Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant, subject to 7 conditions
<b>Type of Appeal</b>	Third Party -v- Decision
<b>Appellant(s)</b>	Majella & Donal O'Sullivan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	5 <sup>th</sup> August 2020

**Inspector**

Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located 1.1 km to the SSW of Killarney town centre. This site lies within the grounds of Killarney Racecourse, which is accessed from the north off Ross Road, which runs SW from its junction with Flesk Road (N71). It comprises part of the stand, which is sited on the eastern side of the race-track. This stand is accompanied by a car park to the front and a yard with loose boxes to the rear and on its southern side, beyond which runs the River Flesk. This yard abuts the eastern boundary to the Racecourse on the far side of which is a residential cul-de-sac known as "The Priory" which is composed of detached two-storey dwelling houses.
- 1.2. The site coincides with the "Jim Culloty Bar and Event Area", a ground floor function room underneath and to the rear of the above cited stand. This room is of rectangular shape and it is accompanied by an entrance lobby to the west and toilets to the east. It is laid out to provide a stage and banked demountable seating. The total area of the function room and ancillary spaces is 543 sqm.

## 2.0 Proposed Development

- 2.1. The proposal is to change the use of the "Jim Culloty Bar and Event Area" from a bar/dining use to a theatre use for the duration of the performance of an Irish Traditional Music, Song and Dance Show nightly at the venue.
- 2.2. Hitherto, the Irish Traditional Music, Song and Dance Show that has been performed in the above cited function room is "Celtic Steps". The current application was made in February at an out of season time for this Show and it is not being performed at present due to the present Covid-19 restrictions.

## 3.0 Planning Authority Decision

### 3.1. Decision

Following receipt of further information, permission was granted subject to 7 conditions, which include the following:

3. The venue shall only be used by the applicant to perform the show stated in the description of the proposal.

4. Noise emissions shall not exceed 45 dB ( $L_{Aeq\ 15\ min}$ ) at the nearest noise sensitive receptor.
5. The show shall be performed between 20.30 and 22.30 on Sundays to Fridays (inclusive) during the period May to October (inclusive).
6. Noise mitigation measures set out in Section 4 of the Noise Specialist Report to be fully implemented and certified. Noise surveys set out in Section 5 of this Report to be commissioned Thereafter, noise mitigation measures shall be maintained.
7. Procedures set out in the event of a noise complaint.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

Under a request for further information the applicant was requested to clarify the exact duration of the proposal, i.e. how long does it run for?

The applicant responded by stating that it runs from 1<sup>st</sup> March to mid-November between 20.30 and 22.15. Patrons and staff exit the site by 22.30 and 23.00, respectively.

### 3.2.2. Other Technical Reports

- Irish Water: No objection + Standard observations.
- KCC:
  - Building Control: Standard advice concerning the need for Fire Safety and Disability Access Certificates.
  - Municipal District Engineer: Concurs with the applicant's TIA.
  - Biodiversity: Stage 1 Screening undertaken, and reasoned conclusion reached as to why AA is not required.
  - Environment: No objection, subject to 7 conditions, the majority of which relate directly to noise and all of which are incorporated in the PA's permission.

## 4.0 Planning History

Several planning applications were made in the 2000s for building works pertaining to the operation of the racecourse as such.

The current application was preceded by the following applications:

- U/085/15: Under Article 5 of the Planning and Development Regulations, 2001 (as amended), the PA asked ABP “Whether the change of use of a bar and dining room at a race course, to use as a theatre during the summer months, is or is not development or is or is not exempted development.” ABP concluded that this change of use is development, which is not exempted development (ABP-300787-18).
- 18/841: Killarney Race Company DAC applied to retain existing entertainment venue and change of use from racecourse ancillary structure to entertainment facility: Refused by the PA and then at appeal (ABP-304968-19) for the following reason:

*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 planning application and appeal documents, it is considered that the proposed development and the development proposed for retention, 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 and the development proposed for retention would, therefore, be contrary to the proper planning and sustainable development of the area.*

The Board noted the inspector’s concerns over the absence of a TIA and a Stage 1 Screening for AA, but, in the light of the above substantive reason for refusal, it chose not to make these matters the subject of reasons for refusal.

## 5.0 Policy and Context

### 5.1. Development Plan

Under a variation to the Killarney Town Development Plan 2009 – 2015 (extended and varied) (TDP), the original land use zoning objectives have been deleted in favour of myplan's general zone types. Thus, the site is zoned G4 within the Green/Recreation/Conservation general zone type, i.e. active open space. The accompanying land use matrix indicates that theatres are "open for consideration" in this general zone type.

### 5.2. Natural Heritage Designations

- Killarney National Park, MacGillycuddy's Reeks and Caragh River Catchment SAC (000365)
- Killarney National Park SPA (004038)

### 5.3. EIA Screening

The proposal is for a change of use only and so it is not a project for the purpose of EIA.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appellants have no issue with the Celtic Steps Show *per se*. However, they do have concerns over its location, its impacts upon local residents and the environment, and precedence. They set out their concerns as follows:

- Change of use
  - Notwithstanding the restriction imposed by condition No. 3, if the PA's draft permission is confirmed, then future proposals to change/expand the use of the premises as a late-night music venue would be difficult to resist, i.e. an adverse precedent would be established.

- Furthermore, doubt must attend the enforceability of condition No. 3, which seeks to restrict the authorised use to that of the applicant's Traditional Music Song and Dance Shows. If it is conceded that this condition would not be enforceable, then other music events must, likewise, be considered.
- Likewise, the enforceability of the duration period cited in condition No. 5 is open to doubt, i.e. on what basis could the said show or a similar one be denied during the other months of the year.
- Furthermore, in the light of the above, the submitted noise and traffic assessments are insufficient to cover all “theatre” type events that may transpire.
- The area is zoned active open space
  - The proposed daily late-night music venue is incompatible with the active open space zoning of the site.
  - Whereas one-off community events and actual theatre performances would not prompt objection, the late-night timing of the proposal and associated disturbance would be objectionable.
- Change in type of application request
  - Attention is drawn to the change of applicant and the omission of “retention” and yet the current applicant has conducted the use in question for several years on the premises and but for the Covid-19 interruption would be doing so now. Its willingness to abide by conditions must therefore be open to doubt.
- Sound
  - The submitted Noise Impact Assessment pertains only to the applicant's current show and so, in the light of the above discussion, may be too narrowly drawn.
  - No new noise surveys have been undertaken: The only difference from the previous application is that some additional specifications for sound proofing have been added and a firmer promise on the use of a sound



limiter offered. Thus, previous concerns encapsulated in the reason for refusal remain outstanding.

- Specifically, the details of the submitted noise surveys are lacking, i.e. where were they undertaken, what was the ambient noise level, was that representative, which is the nearest noise sensitive location?
- The ambient noise level is stated as being 42 dB, whereas the WHO recommends that 40 dB as a night time target. Given the adverse public health implications of exceeding this target, it should be met.
- The applicant should abide by 40 dB. If this entails further noise mitigation measures, then these should be undertaken, and it should give a written guarantee to the PA in this respect.
- Reliance upon a sound limiter is unsatisfactory. How would such a limiter work in practise? Noise from performances may be susceptible to control, but what about noise from audiences? Instead, the envelope of the building should be designed to ensure that the requisite noise attenuation can be achieved without resort to the vagaries of electronic devices.
- Reliance upon noise surveys to check upon and ameliorate any outstanding noise issue is unsatisfactory, too. Again, the envelope of the building should be designed to ensure that the requisite noise attenuation can be achieved.
- No where does the applicant state a maximum decibel level from the proposal.
- Lighting
  - The proposal is silent on existing lighting, which would be subject to greater use, and, possible, additional proposed lighting. Thus, an evaluation on how the same might affect local residents is not possible.
- Traffic Impact Statement
  - In the light of the above discussion, the TIA is too narrowly drawn.
  - The traffic count cited in the TIA is from 5 years ago: Is it still applicable? When was it taken and is it representative of “worst case scenarios”?

- Number of attendees
  - Under a standing only scenario, the venue could accommodate 800 people (the applicant states this in relation to the Fire Certificate) and yet the proposal has been assessed for a maximum of 400 seated patrons. Examples exist of standing concerts and so the submitted assessments should have been for the higher of these two figures, unless the applicant can guarantee that the lower one would always be applicable.
- Environment/ecological impact
  - Lighting could potentially affect qualifying interests in the nearby Natura 2000 sites. In the absence of details on the same, such effects cannot be assessed.
  - Likewise, in the absence of any maximum noise undertaking and an all to brief TIA, effects in these respects, too, cannot be fully assessed.

## 6.2. Applicant Response

- Noise
  - Attention is drawn to Conditions Nos. 4 and 6 of the draft permission: The former requires that noise emissions should not exceed 45 dB at the nearest noise sensitive receptor and the latter requires that noise attenuation measures be undertaken prior to the commencement of the use.

Attention is also drawn to the implementation of the noise attenuation measures. This has facilitated a further noise survey, which has confirmed that noise emissions are inaudible at the nearest noise sensitive receptor and indeed the site boundary. (The appellants were invited to oversee the said survey, but they were not in a position to do so).

- Traffic

The Board's inspector expressed several concerns over traffic, which are addressed as follows:

- The use would not coincide with race meetings.

- The evening peak between 17.00 and 19.00 on the local road network would be avoided, as arrival times for the show would be between 19.30 and 20.15 and departures times would be between 22.15 and 23.00.
- Traffic generated by the use typically comprises 6 – 8 buses and 4 – 5 mini-buses for the majority of patrons. Staff and a minority of patrons attend by car.
- AA Screening
  - Both the applicant and the PA concluded that AA is not needed. This conclusion is not surprising as the proposal relates to a use only, which has not resulted in the need to undertake any infrastructural works.
- Additional Points
  - The previous application was for the multi-purpose use of the site whereas the current one is for the Celtic Steps show only.
  - The Jim Culloty Bar/Restaurant is not a late-night music venue: It only has a licence to sell alcohol on race days.
  - The use has been the subject of on-going correspondence with the PA, which culminated in ABP-300787-18.
  - Precedent for this use exists insofar as permission was recently granted for a new Killarney Omniplex beside residential properties. Similar shows are performed in the Old School House in the National Park.
  - The conditions attached to the draft permission would be enforceable.
  - Since the use commenced in April 2015, it has not been the subject of complaint.
  - The use provides employment for at least 30 people.
  - While the previous application was the subject of objection by a number of objectors, the current one is only objected to by the appellants. Consistent support for this application exists among tourism interests in the town.
  - Allegedly the appellants purchased their residential property since the use commenced in April 2015.

- The show would end at 22.30: No late-night music is involved.
- Only existing external lighting would be utilised.
- Traffic generated by the use would not pass Priory Paddocks where the appellants reside.
- The use would operate in accordance with its fire certificate.
- In the absence of planning permission, the show would discontinue entailing thereby a reduced tourism offer and job losses.
- Whereas there are function rooms elsewhere in Killarney, these are not available on the consistent basis needed for the show.
- The show is instrumental in preserving Irish culture and in developing young musicians and dancers.

### **6.3. Planning Authority Response**

The PA draws attention to the comprehensive advice of Environmental Health and to the recommended conditions, which were incorporated in the draft permission. It expresses confidence in the appropriateness of these and the other conditions attached and in their enforceability.

### **6.4. Observations**

None

### **6.5. Further Responses**

None

## **7.0 Assessment**

- 7.1. I have reviewed the proposal in the light of the TDP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that the proposal should be assessed under the following headings:

- (i) Planning history and the nature of the proposal,
- (ii) Land use
- (iii) Amenity,
- (iv) Traffic, access, and parking,
- (v) Water, and
- (vi) Stage 1 Screening for AA.

**(i) Planning history and the nature of the proposal**

- 7.2. The applicant states that the show, known as “Celtic Steps”, began to be performed on the subject site in April 2015. It was the subject of a planning enforcement enquiry, which led to the PA making a referral to the Board (ABP-300787-18) on the use of the bar/restaurant concerned as a theatre during the summer months. The Board concluded that such use would entail a material change of the use of the bar/restaurant, for which there was no exemption under planning legislation, and so planning permission would be required.
- 7.3. Killarney Race Company DAC subsequently made a planning application (18/841) to retain the existing entertainment venue and to change its use from racecourse ancillary structure to an entertainment facility. The PA refused this application, as did the Board under the following appeal (ABP-304968-19).
- 7.4. Celtic Steps Entertainment Ltd has made the current application, which is now not for a generic entertainment venue/facility but for the “change of use of the Jim Culloty Bar and Event Area, from a bar/dining use to a theatre use for the duration of an Irish Traditional Music, Song and Dance Show nightly at the venue.” Thus, the applicant seeks permission to use this bar/dining area for a show fitting the description of “Celtic Steps” on a nightly basis.
- 7.5. The PA has permitted the current application subject to 7 conditions, the third of which ties the theatre use to “the use of the venue in question by the applicant for the purpose of staging performances of an Irish Traditional Music, Song and Dance Show”, while the fifth requires that performances begin no later than 20.30 and finish no later than 22.30 on Sundays and week nights between May to October, inclusive. The reason given for both these conditions is “To ensure effective planning control of the development.” The permission thus granted is effectively for the “Celtic Steps”

Show or a similar one and, as it is personal to the applicant, it goes beyond the wording of the description of the proposal.

- 7.6. The appellants contend that to grant permission would establish a precedent for a late-night music venue and so, notwithstanding the aforementioned conditions, subsequent applications to hold theatrical performances of a different character or at different times would be difficult to resist. They, therefore, insist that the proposal should be for a generic theatre use and it should entail whatever measures might be needed to ensure that the building concerned would be capable of staging ensuing performances in a manner compatible with the residential amenities of the area.
- 7.7. The applicant and the PA have responded to the appellants by stating that the said conditions would be enforceable.
- 7.8. I consider that compliance with the said conditions would be capable of being checked. However, the appellants are envisaging future scenarios within which departures from these conditions would be sought and they question whether there would be any defensible basis upon which such departures could be distinguished, on planning grounds, from that which is comprised in the current application. Essentially, the granting of what is effectively a personal permission to the applicant for its current show or something similar to it, may, in practise, open the door to a generic theatre use and so such use should be provided for from the outset. Or, to express the matter another way, as planning permissions normally “run with the land”, what justification exists for granting a personal permission?
- 7.9. I consider that personal permissions should only be granted where the applicant’s involvement in the use in question is critical to the use being acceptable from a planning perspective. In anticipation of the remainder of my assessment, I consider that the description of the proposal and the PA’s conditions pertaining to operating times and noise levels would *prima facie* be sufficient to ensure that the use would be capable of being undertaken in a manner compatible with the residential amenities of nearby residential area known as “The Priory”. I, therefore, do not consider that the applicant’s involvement in the operating of the use would be critical to the achievement of this objective and so a personal permission is not needed.
- 7.10. The appellants question why the current application like its predecessor is not for retention. The applicant has not responded to this question. However, I note that

while the use began in April 2015, as a seasonal one it was not operating when the current application was made in February 2020 and, due to restrictions stemming from the Corona Virous pandemic, it is not presently operating. Thus, in these circumstances, the use can be construed as a proposal, even if, as all the parties know, what is envisaged is its resumption.

- 7.11. I conclude that the nature of the proposal applied for is circumscribed to that of an Irish Traditional Music, Song and Dance Show, i.e. the applicant's "Celtic Steps" Show or one similar to it and that, in the light of the PA's noise and operating time conditions, the proposed personal condition would be superfluous.

**(ii) Land use**

- 7.12. Under the varied TDP, the original land use zoning objectives have been deleted in favour of myplan's general zone types. Thus, the site is zoned G4 within the Green/Recreation/Conservation general zone type, i.e. active open space. While no zoning objective accompanies this zone, the implication of the zoning is that active open space uses are acceptable. The accompanying land use matrix indicates that theatres are "open for consideration" in this general zone type. Such uses may be acceptable where they would be compatible with the overall policies and objectives of the zone, would not have undesirable effects on permitted uses and would otherwise be consistent with the proper planning and sustainable development of the area.
- 7.13. The site coincides with the Jim Culloty Bar and Event Area, a function room underneath and to the rear of the stand, which serves the racecourse. The lands comprised in the G4 zone, within which this site lies, are in use as a racecourse with a golf course inside the race-track and a driving test centre adjacent to the entrance from Ross Road. The said function room was originally designed for use as a restaurant and bar, which were open on race days. Its use was thus ancillary to the racecourse as an active open space use. This use would continue, as the proposed use would not be undertaken on race days and the seating required for it is demountable.
- 7.14. Under the proposal, a previously unauthorised theatre use would be allowed to resume in the Jim Culloty Bar and Event Area. This use would not be ancillary to the racecourse. It would be in that sense a "freestanding" use.

- 7.15. The appellant contends that, as the theatre use would not be an active open space use, it would be contrary to the site. I recognise, too, that it would not be ancillary to such a use.
- 7.16. As noted above, a theatre use is “open for consideration” under the relevant zoning of the site. There is thus no in principle land use objection to such a use, but, given the zoning of the site, there is a reasonable expectation that it should relate to an active open space use, typically on an ancillary basis. An examination of the above cited land use matrix indicates that uses deemed to be “open for consideration” would be capable of having such a relationship. I am, therefore, concerned that the proposal seeks the authorisation of a theatre use that would have no relationship with the racecourse.
- 7.17. I conclude that the proposed theatre use is neither an active open space use nor would it relate to the active open space use of the racecourse and so it would contravene the active open space zoning of the site.

### **(iii) Amenity**

- 7.18. The Board refused the previous proposal for the site on the grounds of noise and general disturbance to local residents.
- 7.19. The applicant has submitted a Noise Specialist Report. This Report, while based on the one submitted under the previous application, includes the findings of an additional noise survey, which was conducted on Friday 12<sup>th</sup> July 2019 during a performance. The  $L_{Aeq}$  thus recorded at a nearby noise sensitive receptor adjacent to “The Priory” was consistently above 40 dB and for the most part above 45 dB.
- 7.20. As before, the said Report identifies noise breakout points in the existing building, and it also includes more detailed specifications of the proposed noise attenuation measures designed to address these points. This Report concludes that “Whilst indicative improvements in sound insulation performance have been stated for the individual measures discussed...it is not practicable to definitively establish the resultant overall reduction in noise break-out from the venue. This is due to the complex nature of noise transfer and propagation from an existing building that has been subject to major enhancements.” The Report therefore undertakes to carry out acoustic commissioning surveys and, by means of a compressor limiter, to ensure that the pre-existing ambient noise of 42 dB  $L_{Aeq,T}$  is respect by the noise emitted by



performances. Condition No. 6 attached to the PA's draft permission requires that the proposed noise attenuation measures be implemented and the proposed acoustic commissioning surveys carried out.

7.21. At the appeal stage, the applicant has submitted a further Noise Report, which advises that the proposed noise attenuation measures have now been implemented. During my site visit, I observed that this was indeed the case, although the pair of doors in the glazed screen have been replaced by a larger roller shutter door rather than a proprietary acoustic door set. This Report also includes the findings of a further noise survey, which was undertaken since the said implementation.

7.22. The noise surveys undertaken to date can be summarised as follows:

- Recording of show played on 3<sup>rd</sup> December 2018 and noise readings taken at position No. 1 to the NW of the site beside the eastern boundary to the rear yard and adjacent to "The Priory".
- Live show performed on 12<sup>th</sup> July 2019 and noise readings taken at position No.1, too. Rationale for this noise survey was to see if there was any appreciable difference between recorded and live performances, i.e. resulting from patrons arriving/departing and audiences. No such difference was detected.
- Recording of show played on 14<sup>th</sup> July 2020 and noise readings taken at position No. 1 and position No. 2, to the E of the site beside the eastern boundary wall to the rear yard. On this evening there was a slight breeze and so windborne noise in nearby trees contributed to the ambient noise level.
- Recording of show played on 16<sup>th</sup> July 2020 and noise readings taken at position No. 1, position No. 2, and position No. 3, to the E of the site adjacent to the dwelling house in "The Priory", which is nearest to the site. On this evening conditions were calm.

7.23. The readings at position No. 1 afford the greatest scope for comparison. Table 1 in the applicant's Noise Report shows that under the earlier two surveys, when the show was on, 53 dB was recorded, variously 11 and 12 dB above the recorded ambient noise levels of 42 and 41 dB. Under the latter two surveys, when the show

was on, 44 and 40 dB was recorded, in each instance 1 dB above the recorded ambient noise levels of 43 and 39 dB.

- 7.24. The readings at positions Nos. 2 and 3 recorded either no differential or a differential of 1 dB when the show was on.
- 7.25. In the light of the above findings, the applicant concludes that the noise attenuation measures have been successful and that the show would be capable of being performed within the threshold of 45 dB  $L_{Aeq\ 15\ min}$  required by condition No. 4 of the PA's draft permission.
- 7.26. Some of the appellants critique, which is based on information available at the application stage, has been superseded by the applicant's latest Noise Report. Several points remain outstanding: Thus, they express concern that noise emission would depend on the efficacy of a sound limiter rather than upon the innate properties of the building housing the use and they draw attention to the WHO's night time target of 40 dB, if sleep disturbance is to be avoided.
- 7.27. The applicant has not responded to the first of these outstanding concerns. It has responded to the second by drawing attention to the relevant definition of night time, i.e. between 23.00 and 07.00 and thus out with the show times for "Celtic Steps".
- 7.28. I recognise that *prima facie* the noise attenuation measures have mitigated noise emission to a significant extent. Whether the latest noise surveys from 14<sup>th</sup> and 16<sup>th</sup> July 2020 are sufficient to allay all outstanding concerns over the applicant's stated show hinges on whether these surveys are fully representative of both ambient noise levels and noise emissions from the show itself. If the Board is minded to grant, then it may be prudent to permit the use on a temporary basis of say 2 years to allow time for more comprehensive noise survey work to be undertaken.
- 7.29. Other possible impacts upon amenity include light spillage. However, the applicant has stated that the proposal would not entail the installation of extra external lighting and so only existing lighting would be used and this would be to the front of the building concerned, i.e. on its western side and therefore on the far side of the building from "The Priory".
- 7.30. Traffic generated by the proposal would have environmental impacts in terms of noise, fumes, and light spillage. As the proposed parking area would be on the

western side of the stand and thus on the far side of the host building from “The Priory”, this stand would shield this residential area from these impacts.

- 7.31. The on-site access road from the site entrance to the parking area roughly parallels the spine road to the Castle Falls housing estate to the north of the site. The common boundary between this road and this estate is denoted by walling or chain-link fencing or chain-link fencing and hedgerows/lines of trees. Where the chain-link fencing occurs on its own, this boundary is exposed and so the said environmental impacts would be more evident.
- 7.32. The proposed use would be undertaken on 6 out of 7 nights a week between April and October (inclusive) and so traffic would pass along the on-site access road in advance of (19.45 – 20.30) and after (22.30 – 23.00) performances. Thus, while the environmental impacts may, in isolation, be considered to be relatively mild, their frequency and their occurrence especially at the later time would adversely affect the amenities of adjacent dwelling houses to a degree that would not normally arise from the use of land zoned active open space.
- 7.33. I conclude that the proposal may be capable of operating in a manner compatible with the residential amenities of the area, but that further noise survey work should be undertaken to confirm or otherwise the findings of the latest noise surveys undertaken. I conclude, too, that the environmental impact of traffic generated by the proposal on the residential amenities of the Castle Falls housing estate would go beyond that which would normally be associated with land zoned active open space.

#### **(iv) Traffic, access, and parking**

- 7.34. The applicant states that the majority of patrons travel to and from the site by either bus or mini-bus with only a minority travelling by car. It estimates that 6 – 10 buses and 4 – 5 mini-buses would typically be in attendance. When cars are allowed for too, these numbers aggregate to 30 vehicle movements over a 45-minute period, which would be equivalent to 40 vehicles per hour. The addition of these movements outside peak periods would not add significantly to traffic flows on Ross Road and so would be capable of being accommodated on this Road satisfactorily.
- 7.35. Access/egress to the site would be via the existing site entrance/exit off/onto Ross Road. The racecourse stand building within which the use would occur is served by an extensive parking area to the front/on its western side. Thus, there would be

scope for bus, mini-bus, car parking, along with standing and manoeuvring space, as shown on the drawing entitled "Traffic Management Layout". The applicant further undertakes to manage the parking area.

- 7.36. I conclude that traffic generated by the proposal would be capable of being accommodated on the public road network and that, likewise, access, parking, standing, and manoeuvring space would be capable of accommodating this traffic satisfactorily.

**(v) Water**

- 7.37. The proposal is for a change of use only. The proposed theatre use would utilise the existing toilet facilities of the Jim Culloty Bar and Event Area, which are connected to the public water mains and the public foul and surface water sewerage system.
- 7.38. Under the OPW's flood maps, the site is not shown as being at risk of any identified flood risk.

**(vi) Stage 1 Screening for AA**

- 7.39. The applicant has submitted a Stage 1 Screening for AA. I will draw upon this Screening and the NPWS's website in undertaking my own Stage 1 Screening for AA below.
- 7.40. The site is not in a Natura 2000 site. It is however close to the River Flesk, which runs to the south of this site and which flows into Lough Leane. This River lies within the Killarney National Park, MacGillycuddy's Reeks and Caragh River Catchment SAC (000365) and this Lough lies within this SAC and the Killarney National Park SPA (004038).
- 7.41. The proposal is essential for a change of use of an existing building, which is fully serviced by the public water mains and the public foul and surface water sewerage system. In this respect, I am not aware of any source/pathway/receptor route between this building and the above cited Natura 2000 sites.

The use itself would generate traffic to the site during the mid to late evening from May to October each year. Thus, the environmental impact of this traffic, in terms of noise, fumes, and light spillage, would affect the route to the site, which passes from Ross Road along an on-site access road to a parking area outside the host building. The initial portion of this access road is tree lined and a hedgerow runs along the

adjacent boundary between the racecourse and the Castle Falls housing estate to the east. Its alignment is roughly parallel to an existing spine road to the housing estate, which is the subject of streetlighting.

- 7.42. One of the qualifying species for the said SAC, is the Lesser Horseshoe Bat. The Conservation Objective for this species is to maintain its favourable conservation. The accompanying Map 10 identifies two roosts, bat site codes 296 and 623, within 2.5 km of the site, i.e. the distance within which foraging tends to occur. This Map also shows potential foraging grounds, some of which are close to the site. The commentary to the aforementioned Conservation Objective sets as targets no significant loss in linear features within the said radii, such as hedgerows and treelines, which provide connectivity to this species, and no significant increase in artificial light intensity, as “lighting along commuting routes may cause preferred foraging areas to be abandoned, thus increasing the energetic cost for bats.”
- 7.43. The applicant’s Stage 1 Screening for AA notes the aforementioned bat sites and it notes, too, that the identified potential foraging grounds do not occur on the racecourse lands. However, this Screening does not address linear features that may provide connectivity between foraging grounds and it does not address the operational phase of the proposal. Thus, the possibility that the above cited lines of trees and hedgerows may provide such connectivity and that the environmental impact of traffic generated by the proposal may affect their attractiveness in this respect has not been explored.
- 7.44. In the light of the foregoing discussion, I consider that the proposal should be the subject of a bat survey of that portion of the racecourse lands which would be affected by the environmental impact of traffic generated by it.
- 7.45. In the absence of a bat survey, I am not in a position to conclude that the proposal would not be likely to have significant effects upon one of the qualifying interests of the Killarney National Park, MacGillycuddy’s Reeks and Caragh River Catchment SAC (000365) and so, on the basis of the precautionary principle, the proposal must be the subject of an Appropriate Assessment.

## 8.0 Conclusion and Recommendation

- 8.1. I conclude that, whereas the site lies within lands that are zoned active open space, the proposed theatre use would be neither an active open space use nor would it be ancillary to such a use. Thus, while a theatre use is deemed to be open for consideration under the said zoning, in the absence of any relationship with an active open space, the proposed theatre use would not complement the existing active open space uses of these lands.
- 8.2. I conclude, too, that, whereas the proposed use would *prima facie* be capable of being undertaken by the applicant in a manner compatible with safeguarding the residential amenities of “The Priory” residential area, the environmental impact of traffic generated by this use would adversely affect the residential amenities of the Castle Falls housing estate and that this would be unreasonable in the context of the active open space zoning of the racecourse lands.
- 8.3. Finally, I conclude that the applicant has failed to address the possibility that the Lesser Horseshoe Bat, a qualifying species for the Killarney National Park, MacGillycuddy’s Reeks and Caragh River Catchment SAC (000365), might be significantly affected by the environmental impact of traffic generated by the proposal and so this proposal needs to be the subject of an Appropriate Assessment.
- 8.4. I, thus, recommend that permission be refused.

## 9.0 Reasons and Considerations

1. Having regard to the G4 zoning of the site and surrounding racecourse lands in the Killarney Town Development Plan 2009 – 2015 for active open space, the categorisation of the use of theatre as “open for consideration”, the frequency and duration through the year of the specific proposed theatre use, and the proximity of the Castle Falls housing estate to the access road to the site, the Board considers that the specific proposed theatre use would be neither an active open space use nor ancillary to any of the existing active open space uses on the racecourse lands and so it would fail to complement any of these uses.  
Furthermore, the environmental impact of traffic generated by this use would, in

terms of noise, fumes, and light spillage, adversely affect the residential amenities of the said housing estate at anti-social hours and so it would have undesirable effects upon this permitted development, which would be unreasonable, insofar as they would stem from a non-active open space use of the G4 zoned lands. Accordingly, the proposal would be contrary to the proper planning and sustainable development of the area.

2. 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 proposal individually, or in combination with other plans or projects, would not be likely to have a significant effect on European Site No. 000365, or any other European site, in view of the Site's Conservation Objectives. In such circumstances, the Board is precluded from granting approval/permission.

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Hugh D. Morrison  
Planning Inspector

31<sup>st</sup> August 2020