



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308868-20

<b>Development</b>	Extension to the Kilkenny Inn Hotel providing a four-storey plus penthouse building, café, outdoor covered terrace and all associated site works.
<b>Location</b>	The Kilkenny Inn Hotel, Vicar Street, (& St. Canice's Place)
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	19/724
<b>Applicant(s)</b>	Auburn Ventures Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Parties vs Grant Permission
<b>Appellant(s)</b>	<ol style="list-style-type: none"><li>1. Angela Foran</li><li>2. JJ Byrne</li><li>3. Bryan O'Dwyer and Sorcha Dalton</li><li>4. Con and Maura O'Shea</li></ol>
<b>Observer(s)</b>	<ol style="list-style-type: none"><li>1. Cllr Maria Dollard</li></ol>

**Date of Site Inspection**

13<sup>th</sup> May 2021

**Inspector**

Phillippa Joyce

## 1.0 Site Location and Description

- 1.1. The appeal site is located in Kilkenny city centre, on the eastern side of Vicar Street, the northern side of St. Canice's Place, and c.100m to the west of St. Francis' Bridge over the River Nore. St. Canice's Place was extended and merges into St. Francis' Bridge, which was constructed from 2018 as part of the city's Central Access Scheme (CAS).
- 1.2. The appeal site, 'T' shaped in configuration (for descriptive purposes in this report I will refer to the 'northern' and 'southern' portions of the 'T'), is stated as measuring 0.229 ha. The northern portion of the site comprises the Kilkenny Inn Hotel and associated surface car park area. The existing hotel premises is stated as having 30 rooms, with a floor area of 1,575 sqm. The building is three storeys in height, fronting onto Vicar Street, increasing to four storeys (with a lower ground floor level) to the rear of the premises due to a decrease in ground level in an easterly direction.
- 1.3. The southern portion of the site is a hard-surfaced undeveloped area with vegetation growing along existing boundary walls. This southern portion of the site is part of a larger undeveloped landbank which is under the control of Kilkenny County Council. The Council has provided a letter of consent to include this portion of the site in the application.
- 1.4. Adjacent to the north of the site and the existing hotel boundary wall are residential properties (directly adjacent is 14 Vicar Street and the rear garden of 13 Vicar Street, an appellant's property). To the west of the site are a mix of residential and commercial properties that directly address Vicar Street (including 17, 18 and 19 Vicar Street, two of which are appellants' properties) and a property (Chancellor's House, an appellant's property) located to the rear of these plots in a backland configuration. These properties have vehicular access from Vicar Street and have aspects towards the rear elevations of the existing hotel.

## 2.0 Proposed Development

- 2.1. The proposed development comprises an extension to the Kilkenny Inn Hotel of five storeys with 75 rooms, a rooftop bar and terrace, a ground floor café with terrace

area, central courtyard, a reconfigured car park, and all site works. The stated floor area of the extension is 2,412 sqm.

- 2.2. The proposed development extends the existing hotel building further to the east (rear) and south, to form an inverted 'L' shaped building. The proposed extension creates a new southern façade onto St. Canice's Place, reorienting the main entrance of the hotel operation to this street frontage with a new vehicular set down area. The principal dimensions of the extension include a width of c.21.2m and a building height of c.13.93m (on the southern elevation onto St. Canice's Place), and a depth of c.44.4m on the eastern elevation (adjacent to the Council's undeveloped landbank).
- 2.3. On foot of a Further Information (FI) request, the proposed extension was revised in design to four storeys in building height with 66 rooms (the FI response was deemed to be Significant FI (SFI)). The penthouse (with nine rooms), rooftop bar and terrace were omitted from the proposal. The central courtyard area and ground floor café with terrace remained. The front building line of the extension along St. Canice's Place was slightly recessed providing additional set down/ delivery area and public space at street level. The revised floor area of the extension is c. 2,171 sqm.
- 2.4. The proposed development is to be served through new connections into the public water services infrastructure in Vicar Street and/ or St. Canice's Place (also referred to as Wolfe Tone Street in the application documentation).
- 2.5. In the application plans and particulars, the 'T' shaped configuration of the site is referred to in parts as 'A', 'B', and 'C' (see Dwg No. P19-123K-RAU-00-00-DR-A-31001). Area A and Area B coincide with the existing Kilkenny Inn Hotel premises and surface car park area (which I refer to as the northern portion of the site), while Area C coincides with lands under the control of Kilkenny County Council (I refer to same as the southern portion).
- 2.6. As is outlined in the application and appeal documentation, a land transfer of Area B and Area C has been agreed between the applicant and the Council. The proposed hotel extension is sited on part of Area A, all of Area C but does not extend to Area B. Works in Area B include the decommissioning and clearance of the existing ESB substation and refuse store.

2.7. In addition to the standard application plans and particulars, the application was accompanied by:

- Planning Report;
- Design Intent Statement with photomontages;
- Engineering Report; and
- Archaeological Desk Study Assessment.

At SFI response stage, the following revised reports were submitted:

- Design Intent Statement with photomontages;
- Traffic and Transport Assessment; and
- Archaeological Assessment Report.

## **3.0 Planning Authority Decision**

### **3.1. Summary of the Decision**

3.1.1. On the 18<sup>th</sup> November 2020, the planning authority issued a notification to grant permission for the proposed development, as revised through SFI, subject to 12 conditions. The conditions include, inter alia, payment of a development contribution; agreement on details of signage, lighting and external finishes; construction related including provision of a Waste Management Plan; traffic related including details on car parking, loading/ delivery, a Traffic Management Plan, and a Mobility Management Plan; archaeological mitigation measures; and a revised design of the elevation onto St. Canice's Place.

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

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

The planner's reports are the basis for the planning authority decision. The key items from the planner's initial report and the subsequent SFI report can be summarised as follows:

- Proposal is acceptable in principle due to the existing hotel use at the site, and being in compliance with the two zonings on the lands (identified as 'Existing Residential' on the existing hotel and 'General Business' on the proposed extension);

- Heritage designations are applicable to the proposal due to the site's location within the St. Canice's Architectural Conservation Area (ACA), and a Zone of Archaeological Potential, including reference to specific monuments;
- Screening for Appropriate Assessment undertaken, with conclusion that Stage 2 AA is not required due to the distance between the site and the (as referenced) River Nore SAC;
- FI requested on 12 items including redesign of the extension due to impacts on adjacent residential properties; St. Canice's Place redesign due to impact on ACA; proposals for car parking, deliveries, servicing and set down area; require additional photomontages; undertake archaeological investigations and assessment; and provide a rationale for the divergence from the Abbey Quarter Masterplan.
- FI response deemed to be SFI, and on assessment it is concluded that the proposal is not injurious to the amenities of the ACA, or to the amenities of adjacent properties, and would commence the evolution of a new streetscape along St. Canice's Place whilst not detracting from the Abbey Quarter Masterplan Area.

### 3.2.2. Other Technical Reports

Conservation Officer – FI required on archaeological assessment, redesign of the elevation on St. Canice's Place having regard to the ACA context and due to negative impact on views towards St. Canice's Cathedral and the Bishop's Palace, and inclusion of photomontages of the revised design. Subsequent report positively notes the removal of the upper floor of the extension, and alterations to the roof profile and façade treatment with vertical emphasis fenestration, and notes the archaeological investigations indicate the presence of archaeological features; no objection is stated subject to conditions including submission of external building samples (basis of Condition 3) and archaeological mitigation measures to be undertaken (Condition 11).

Road Design Section – FI required on proposals for car parking, deliveries and set down area. Subsequent report raises the issues of firstly, prematurity until the Kilkenny City's Transport Plan is finalised and secondly, payment of a development contribution in lieu of car parking in the absence of dedicated parking facilities. Otherwise, no objection subject to conditions (basis of Condition 10(a) to (f)).

Environmental Health Officer – no objection subject to conditions relating to food safety and hygiene.

### 3.3. **Prescribed Bodies**

An Taisce – concern expressed over design of southern façade and archaeological impact. Subsequent report notes the alterations made, but concludes the extension does not complement the traditional buildings of St. Canice’s ACA. Specific concern is expressed in relation to type of brick finish for the façade, preference for a simple pitch roof with mansard windows not the proposed window boxes protruding above the eaves line, and the poor architectural treatment of the eastern party wall which may be a permanent unattractive backdrop.

Department of Culture, Heritage, and the Gaeltacht (DoCHG) – proposal does not align with the requirements of the Urban Design Framework Masterplan for the Abbey Creative Quarter at the site due to excessive height (5 storeys instead of 3 to 4 storeys) and land use (hotel instead of social housing). The proposed extension will have a significant visual impact on St. Canice’s ecclesiastical complex, and archaeological test trenching required to allow for a full assessment of the archaeological impact. These items formed the basis of elements of the FI request. There is no subsequent report on file received from the DoCHG.

Irish Water – no objection subject to conditions, including requirement for a 35m extension of a public watermain in Vicar Street to serve the proposal at the developer’s expense.

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

- 3.4.1. Submissions from 10 third party observers were received by the planning authority during the processing of the application. These include eight at the initial assessment stage, and eight at the SFI stage (including two submissions from new third parties). The submissions from the 10 third parties are all in objection to the proposed development. Each of the four appellants of this appeal case made submissions at both the initial and SFI stages of assessment.
- 3.4.2. Many of the issues raised in the third party submissions form the basis of the grounds of appeal, outlined in detail in Section 6.0 below. Additional issues not cited in the appeal grounds include criticisms of the initial design of the proposed

extension which was five storeys in height including a penthouse with terrace area at roof level, and concerns relating to the residential and visual impact associated with same. The requirement for Appropriate Assessment Screening Reports and/ or Natura Impact Statements are raised, as does the observer in the observation on the appeal.

## 4.0 Planning History

### Appeal Site

*PA Ref. 02990146* (implemented parent permission for the Kilkenny Inn Hotel)

Permission granted on 24<sup>th</sup> August 2003 for the demolition of the existing public house, dwelling house, retail unit and warehouse, and the construction of a 3 to 4 storey hotel with excavated rear car park and semi basement public bar, restaurant, set down area and revised vehicle access to Vicar St and all associated site development works at 15 and 16 Vicar Street.

### Lands to South of the Site (within the Abbey Quarter Masterplan)

*PA Ref. 20762, ABP 309377-21*

Permission granted on 2<sup>nd</sup> June 2021 to Kilkenny Abbey Quarter Partnership for a temporary car and coach park (120 car and 7 coach parking spaces) and associated development works, for a period of 7 years.

*ABP 307796-20*

Approval granted on 22<sup>nd</sup> February 2021 to Kilkenny County Council for a proposed urban park and urban street – a pedestrian and cyclist dominated street, including ancillary site works.

## 5.0 Policy Context

### 5.1. National Policy

- 5.1.1. The Project Ireland 2040: National Planning Framework (NPF) includes objectives supporting appropriate forms of growth in the country's urban structure, and objectives encouraging the tourism sector and offer. Of relevance to the proposed



development, due to the proposed building height, car parking provision and city centre location, include:

*National Policy Objective 13:*

*In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.*

## **5.2. Regional Policy**

- 5.2.1. The Regional Spatial and Economic Strategy (RSES) for the Southern Region, 2020-2032 identifies Kilkenny City as one of six significantly scaled and higher functioning Key Towns in the region. Specific to the city and of relevance for the proposed development include:

*Regional Policy Objective 12:*

*... e. To support urban generation through investment in the Abbey Quarter & other initiatives to improve the Public Realm and regenerate underused land in the City and to support implementation of mitigation from Abbey Quarter Masterplan SEA and AA processes;*

*f. To seek investment in sustainable transport measures through a Local Transport Plan including development of Town Bus Services in support of the Compact '10-minute city' concept...*

*...h. Support for the City as a 'Hero site' within the Failte Ireland's branding of Ireland's Ancient East. The 'Medieval Mile' package which brings together public realm improvements linking Kilkenny Castle to St Canice's Cathedral and other significant attractions in between, such as the Medieval Mile Museum, the new Butler Gallery, the Smithwick's Experience and Rothe House...*

## **5.3. Local Policy**

- 5.3.1. The appeal site is located in Kilkenny city centre, within the city's Zone of Archaeological Potential (additionally, there are three recorded archaeological monuments within the site) and St. Canice's Architectural Conservation Area (ACA).

The southern portion of the site is included within the development boundary of the Abbey Quarter, an area in the city for which a master plan and urban design code have been prepared, identified for significant public investment, and subject of recent planning applications for an urban quarter with a park and street, and a temporary commercial car park. Additionally, the site is located within an area of the city, which is subject to road objectives, including the provision of the Central Access Scheme (CAS), and to studies for traffic management/ car parking options.

- 5.3.2. As such, applicable local policy for the appeal case includes the Kilkenny City and Environs Development Plan 2014-2020 (CEDP), as varied by Variation 1, 2015, and Variation 5, 2018; the Abbey Creative Quarter Masterplan, 2015 (retitled to Abbey Quarter Masterplan through Variation 5 in 2018); and the Abbey Quarter Urban Design Code, 2018.

Kilkenny City and Environs Development Plan 2014-2020

- 5.3.3. The proposed development comprises an extension to a hotel operation in a visually and historically sensitive urban location, with limited on-site car parking provision, adjacent to residential properties, and proximate to the Rivers Nore and Breaghagh and associated European Site designations. As such, there is a range of relevant CEDP policy referred to in bullet points below and, as appropriate, specific policies and objectives are considered within the Section 7.0 Planning Assessment of this report:

- Chapter 3 contains the Development Strategy for the city centre, zonings and use classes;
  - Section 3.4.3 includes Objective 3C relating to master planning and designing for the Abbey Quarter, the boundary of which is indicated on the Zoning Map (excludes the northern portion of the site but includes the southern portion);
  - Incorporates Variation 1 of the CEDP, which has nine Objectives 3H to 3P, including Objective 3O which seeks: ‘*To provide for housing within the masterplan in the area north of the Central Access Scheme as identified in fig 3.4*’. The corresponding shaded area on Figure 3.4 includes the eastern part of the northern portion of the site (this coincides with Area B that is being transferred by the applicant to the Council, as outlined above

in Section 2.5 of this report). The southern portion of the site, on which the extension is proposed, is excluded from this shaded area;

- Incorporates Objective 3Q of Variation 5 of the CEDP which, following the completion of a parking options report, seeks: *'To provide for temporary car parking...within the Masterplan area'* on lands on the southern side of St. Canice's Place, opposite the appeal site;
- Northern portion of the site, comprising the existing hotel building, surface car park area, and the upper part of the southern portion of the site are zoned as 'Existing Residential' which seeks: *'To protect, provide and improve residential amenities'*. Hotel use is open for consideration;
- Remainder of the southern portion of the site is zoned as 'General Business' which seeks: *'To provide for general development'*. Hotel use is permissible;
- Section 3.4.5.14 requires that for developments in transitional zones abutting established residential areas that regard be had to uses, scale, density and appearance of development and landscaping proposals to safeguard the amenities of the existing areas;
- Chapter 7 contains the policy context for built heritage;
  - Archaeological heritage (7.3.1) – the appeal site is located within the city's zone of archaeological potential, with development management standards outlined to endeavour to preserve archaeology in situ, and in instances where there will be an impact, to assess, test excavate and monitor same;
  - Views and prospects (7.4.3) – in proximity to the appeal site, St. Canice's Cathedral is designated as a landmark building, and there are protected views located to the north of the site towards the River Nore and south towards Kilkenny Castle, but not to/ from/ across the site;
  - St. Canice's architectural conservation area (7.4.7.3) – the ACA contains the 13th Century St. Canice's Cathedral with remnants of its close, including the 11<sup>th</sup> Century round tower, the Bishop's Palace, the Deanery, St. Canice's library, alms houses and St. Canice's steps. It is identified as

a complex of buildings of enormous significance architecturally, historically, and culturally to the city. The appeal site is within the ACA, and of relevance to the appeal are the following development management standards:

*SCACA 1: To protect the historic and architectural character of St. Canice's Cathedral and its unique setting and to protect the grouping of the Cathedral, Library, Deanery, and other buildings associated with the administration of the Cathedral.*

*SCACA 4: To ensure the buildings proposed following the completion of the Central Access Scheme proposal are designed in such a manner so as not to detract from the special character of the area and are sensitive to the existing scale of development within the area.*

- Chapter 10 outlines transportation policy including on road proposals (10.4.2), and parking (10.4.8);
  - Section 10.4.2 contains specific road policy relevant to the appeal site which is the Central Access Scheme (CAS).
  - This route is indicated in Figure 10.2 Street Hierarchy and as '10K' on the Zoning Map of the CEDP.
  - The CAS has three phases, Phase 1 of which is indicated to the south of the appeal site. This has been completed, incorporates an extended St. Canice's Place and St. Francis' Bridge, and the proposed development is the first building along the new street.
  - Bicycle parking standards for hotel use are indicated as 1 space per 10 bedrooms and 1 space per 5 staff members.
  - Car parking standards for hotel use are indicated as 1 space per bedroom.
  - Section 10.4.8 states that where full on-site provision of parking is not possible a mobility management plan will be required to allow an assessment on the total car parking requirements and a possible financial contribution in lieu.

- Chapter 11 includes the qualitative and quantitative requirements for developments including plot ratio (11.8.1) where for city centre locations a maximum of 2.0 is permissible; site coverage (11.8.2) where for city centre locations up to 85%, and in excess in certain circumstances, is permissible; and building height control (11.8.7) where a number of qualitative considerations are listed, and where it is decided that: *'... a location for a high building is acceptable, the building itself should be of outstanding architectural quality, creating a building which is elegant, contemporary, stylish, and in terms of form and profile, makes a positive contribution to the existing skyline.'* Section 11.8.7 does not specify a quantitative standard for building height in the city.

#### Abbey Quarter Masterplan, 2015

- 5.3.4. The 'Urban Design Framework Masterplan for the Abbey Creative Quarter' July 2015, encompasses an area of 8.29 ha in the city's medieval core including the former Smithwick's Brewery site. The appeal site is both located in and adjacent to the northernmost character area of the Masterplan lands referred to as Sweeney's Orchard (this character area largely corresponds with the wider undeveloped landbank under the Council ownership).
- 5.3.5. The northern portion of the appeal site, which corresponds with the existing hotel premises and surface car parking area, is not included in the Masterplan area while the southern portion of the site is included. The development of Sweeney's Orchard, inclusive of the southern portion of the site, is identified as Stage 3 (of 9) of the Masterplan. This area is indicated as accommodating 'community housing' fronting onto St. Canice's Place with rear back gardens extending to the boundary with the existing hotel and car park.
- 5.3.6. In Section 3.17 Site Analysis, the Masterplan reiterates CEDP policy and development management standards, and additionally proposes the erection of 3 to 4 storey buildings along the Central Access Scheme to create an appropriate streetscape.

#### Abbey Quarter Urban Design Code, 2018

- 5.3.7. The 'Abbey Quarter Urban Design Code' January 2018, designated three areas within the Masterplan lands and prioritised focus on the central Brewery area for

development potential in the short to medium term. The Sweeney Orchard area is considered to have a medium to long term development potential, and development standards are not specified.

- 5.3.8. Of note for the appeal determination is the guidance given for building heights of the blocks along the northern edge of the Brewery area, directly opposite the appeal site, which are proposed as being between 3 and 4 storeys. This building height parameter is for the most part, the general guide for all new blocks within the Masterplan lands.

#### **5.4. Natural Heritage Designations**

- 5.4.1. The appeal site is not located in or immediately adjacent to a European Site, a Natural Heritage Area (NHA) or a proposed NHA (pNHA). The River Nore is located c.120m to the east of the site, flowing in a southerly direction. The Breagagh River, a tributary of the River Nore, is located c.61m to the south of the site.

- 5.4.2. The European Site designations in proximity to the appeal site include (measured at closest proximity):

- River Nore SPA (004233) is c.118m to the east; and
- River Barrow and River Nore SAC (002162) is c.140m to the east.

#### **5.5. Preliminary Examination Screening for Environmental Impact Assessment**

- 5.5.1. Having regard to:

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10(b)(iv) *Infrastructure Projects* and Class 13(a)(i) and (ii) *Changes, Extensions, Development and Testing* of the Planning and Development Regulations 2001 (as amended);
- The location of the site on lands that are zoned for 'Existing Residential' and 'General Business' under the provisions of the Kilkenny City and Environs Development Plan 2014-2020, and the results of the strategic environmental assessment of the Kilkenny City and Environs Development Plan, undertaken in accordance with the SEA Directive (2001/42/EC);
- The location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of development in the vicinity;

- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended), and the mitigation measures proposed to ensure no connectivity to any sensitive location;
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003); and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended):

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. Grounds of appeal have been received from four third party appellants: Angela Foran, 13 Vicar Street; JJ Byrne, 18 Vicar Street; Bryan O’Dwyer and Sorcha Dalton, 19 Vicar Street; and Con and Maura O’Shea, Chancellor’s House, Vicar Street. Due to the similarity of items raised in the appeals, I propose to organise the issues under distinct headings.
- 6.1.2. The following is a summary of the main issues raised in the third party grounds of appeal under five headings:

#### Principle of Development

- Planner’s report incorrectly identifies zonings on the site, whereby part of the extension is located on lands zoned as ‘Existing Residential’ and therefore the proposal is not consistent with the zoning objective;
- Proposal contravenes the City Development Plan in relation to heritage, tourism, transport, housing, sustainable development, and building height;
- Proposal does not align with the Masterplan for the Abbey Quarter which zones the area for housing;

- A major disappointment that the proposal is a departure from the well-considered framework plan;
- More suitable sites for hotel developments are identified in the St. Francis Abbey area having the benefit of car parking and no residential properties;
- Site is considered to be in a transitional zone and the proposed development does not comply with Section 3.4.5.14 of the Development Plan;
- No rationale from the Council for facilitating a mono block hotel in contravention of its design guidelines; and
- Queries why the Council has sold land to the applicant for the hotel development when it should be providing housing in accordance with the Masterplan.

#### Residential Amenity

- Negative impact on appellant's property (A. Foran of 13 Vicar Street, adjacent property to the north due) to overlooking and overshadowing associated with the proposal's scale and height;
- Omission of penthouse at FI response of no beneficial consequence as this was to the front of the extension;
- Proposal and assessment by planning authority have not shown sufficient regard to the existing residents in this predominantly residential area;
- Planning authority decision fails to give adequate weight or consideration to impact on residential amenity and to acknowledge that the area is largely residential;
- No doubt that the proposal will negatively impact on the residential amenity and monetary value of the existing adjacent family homes through overshadowing and overlooking;
- Appellants (O'Sheas of Chancellor's House) dispute applicant's claims regarding ownership of the boundary wall, stating this wall has served their family lands since the 1970s, proposed changes are objected to and will result in a loss of privacy;
- Existing noise and disturbance are associated with the hotel use and operation;
- No restrictions by way of conditions on operation of proposal and protection of residences against noise and disturbance; and



- Two proposed terrace areas will be in very close proximity to the appellants' properties (distances cited vary as 5m and 7m (O'Sheas), 22m, and 30m (O'Dwyer & Dalton)) and, along with the St. Canice's loading bay, will result in 24hr noise disturbance.

#### Urban Design and Streetscape

- Proposal will constitute an overbearing and monolithic starting point to a new streetscape;
- All other buildings on the street will be imagined and designed alongside the proposed development, which has the character of a commercial warehouse;
- Starkness of the gable should not be allowed;
- The proposed hotel extension being a 16m high and 59m long building will have an overbearing presence on any future housing;
- The proposal is of a large-scale monolithic block style design which is out of character of the area; and
- This is not the way to approach the development of such a key site and an opportunity is being missed.

#### Archaeological and Architectural Heritage

- Proposal, including the revisions made in the FI response, will impact on views of St. Canice's Cathedral (obscure) and Bishop's Palace (obliterate);
- Focus has been on the front of the proposed development, no consideration has been given to the visual effects of the large bulky and blocky rear section on the historic character of the area;
- Adverse effect on the archaeological remains at the site, including the Vicar's Choral and the Chancellor's Manse (House);
- No test trenching undertaken and archaeological supervision at construction stage will not provide sufficient safeguards;
- The Council should facilitate the opening up to public display and interpretation of the medieval remains of the site within the ACA;

- The setting of St. Canice's Cathedral and Bishop's Palace will be quite compromised, which will impact the look and understanding of historic Kilkenny; and
- Hotel is unsympathetic to the fine urban grain of the medieval street pattern in the ACA.

#### Traffic, Access and Car Parking

- Car parking provision seriously deficient;
- Cannot rely on bus services, public transport, and adjacent public car parks to meet the proposed development requirements;
- The number of guests arriving by public transport is far-fetched;
- Guests more likely to try to park as close as possible thereby causing significant difficulties for residents others using the narrow streets;
- The proposal is a quadrupling of rooms (stated as 25 to 95 rooms), with a corresponding decrease in on-site spaces and will cause congestion;
- Proposal premature until overall parking strategy for the City is undertaken (Council stated as presently undertaking same);
- No development contribution has been levied in lieu of the provision of car parking spaces;
- No restrictions by way of conditions to address illegal parking or traffic congestion; and
- Only a vague condition relating to submission of any formal agreement to accommodate off-site parking.

## 6.2. Applicant Response

6.2.1. A response has been received from the applicant, the main issues raised can be summarised as follows:

- Abbey Creative Quarter Masterplan (ACQM) is a non-statutory guidance document that does not have legal planning status;
- The ACQM indicated how 'two separate beneficial schemes' could be achieved through a land-swap between the applicant and the Council;

- The land-swap has been agreed in principle, approved by the Council Members, and has facilitated the making of the current application;
- Appellants have been misled by the Department of Culture (DAC) that there is a need for a formal mechanism to depart from the ACQM;
- Proposal achieves national, regional and local policy on supporting Kilkenny's tourism function and offer;
- Proposal is an extension to a permitted use, not 'an established non conforming use';
- Proposal transitions from the hotel already in the residential zone to an extension located in the business zone;
- Proposal creates an active frontage on the new streetscape in an area that will shortly see significant investment in the public realm;
- While the site is in the ACA, it is the elevated lands and ecclesiastical centre on the western side of Vicar Street that are of most conservation value;
- The impact on the residential amenity of the adjacent property to the north, 13 Vicar Street, is minimal as there is no development proposed for a distance of 27.8m along the boundary wall;
- There will be a transitory shadow at the foot of the garden, but the main usable garden area remains within acceptable standards for daylight/ sunlight in rear gardens (cites BRE Guidance 2011 standard of at least 2 hours of sunlight on 21<sup>st</sup> March);
- The other residential properties to the west are unaffected by the proposed development, due to its being carefully designed;
- Archaeological investigations were undertaken in preparation for the FI response and management of the site's archaeological heritage is appropriately conditioned;
- Kilkenny is well served by public transport and there is capacity in the city's car parks to serve the demand from the proposal;

- Strategy as proposed reducing on-site car parking and undertaking servicing from the street is used in other hotels in Kilkenny, most Dublin City centre hotels, and is established demand management policy for private car use;
- Disputes degree of impact on the view from St. Francis' Bridge towards St. Canice's Church as the ecclesiastical complex of buildings are grouped on a hill and will not be significantly impacted on by development of a new street at bridge level;
- There will be change in the area, but it will not fundamentally alter residential amenities within the central urban area; and
- Expanded hotel will bring economic activity, vitalisation, amenity enhancement to the public realm at this new street.

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

- 6.3.1. A response has been received from the planning authority which states that the planner's report stands, and it has no further comments.

### 6.4. **Observations**

- 6.4.1. One observation has been received on the appeal case from Cllr Maria Dollard, Greenhills, Kilkenny. The main issues raised can be summarised as follows:

- Proposal premature due to lack of traffic management plan for the area;
- Term 'extension' is misleading as 300% increase in bed capacity;
- No urgent need for hotel rooms;
- Questions the land transfer as the Council's lands were designated for social housing provision;
- Permission given for proposal without clarity on parking arrangement;
- Refers to Abbey Quarter Development Company Ltd (stated as being 50% owned by the Council) who have permission to operate a car park across the road;
- Results in four new entrances/ roads/ drop off points within 50m radius of each other onto St. Canice's Place, a location with severe traffic problems;
- Site is close to the Rivers Nore and Breagagh; and

- Concern expressed over cumulative impact on the SAC habitat and water quality from a number of proposals (attaches submission made by the observer on ABP 309377-21).

## 6.5. Further Responses

6.5.1. None.

## 7.0 Assessment

7.1. Following a review of the application and appeal documentation, I consider the main issues in this appeal are as follows:

- Principle of Development;
- Design, Streetscape and Visual Amenity;
- Architectural and Archaeological Heritage;
- Residential Amenity;
- Services: Access, Parking and Utilities; and
- Appropriate Assessment Screening.

## 7.2. Principle of Development

7.2.1. The grounds of appeal include items that are within the scope of the principle of development. These include the description of development; the zoning objectives on the site and permissible use class therein; and the content of, divergence from, and status of the Abbey Quarter Masterplan. Related, I identify Objective 3O in Variation 1 of the Kilkenny City and Environs Development Plan 2014-2020 (CEDP) as being of relevance for the proposed development. Additionally, grounds of appeal related to the land transfer between the applicant and Council, the need for the hotel extension, and the appropriate location for hotels. I propose to address each in turn below.

### Description of Development

7.2.2. The proposed development is an extension to an existing hotel operation. The existing hotel is stated as having 30 rooms, and the proposal, as revised at Significant Further Information (SFI) stage, provides for 66 additional rooms. While

the observer states that the reference to 'extension' in the description of development is misleading due to the excessive increase in scale, I do not concur. The planning history indicates that the hotel use is a permitted established use, and the plans indicate the existing hotel and proposed extension as being interconnected with shared operational facilities.

#### Zoning Objectives and Use Class

- 7.2.3. The site is subject to two zoning objectives, 'Existing Residential' and 'General Business', the objectives for which I have cited in Section 5.0 of this report. The appellants state that the planner's report incorrectly references the extension as being on the General Business zoning only. I have reviewed the zonings, note the applicant's response on the matter, and confirm that the Existing Residential zoning corresponds with the existing hotel, surface car park area and the northernmost part of the southern portion ((including the proposed courtyard area of the extension), and the General Business zoning corresponds with the remainder of the southern portion (including the majority of the proposed extension).
- 7.2.4. Notwithstanding the identification of the zonings with respect to the extension's building footprint as stated by the planning authority, importantly, in respect of zonings and use class, hotel use is open for consideration in the Existing Residential zoning and permitted in principle in the General Business zoning. As such, I consider that the proposed development is acceptable in principle, subject to other planning considerations, and would not constitute a material contravention as submitted by the appellants.

#### Abbey Quarter Masterplan

- 7.2.5. In the Masterplan, the southern portion of the site, on which the proposed hotel extension is sited, is indicated for residential development fronting onto St. Canice's Place with rear back gardens extending to the boundary of the existing hotel premises.
- 7.2.6. The fact that the proposed development diverges from the Abbey Masterplan is one of the main grounds of appeal, features in the observation and was raised by third parties and the Department of Culture, Heritage, and the Gaeltacht (DoCHG) during the assessment of the application.

- 7.2.7. The DoCHG submission stated the proposed development did not align with the Abbey Quarter Masterplan due to its excessive height and land use. In the subsequent SFI response, the extension is revised through a reduction of a building storey and the different land use proposed is justified with reference to the land transfer and improving the configuration of the Council's wider landbank ensuring greater efficiency in its future development. The redesign and rationale are accepted in the subsequent SFI planner's report and it is concluded that the proposed development will initiate a new streetscape along St. Canice's Place which would not detract from the Abbey Quarter Masterplan Area.
- 7.2.8. In the third party appeals, it is submitted that the Masterplan zoned these lands for residential development, that the proposed development is a contravention of same, and that the planning authority provides no rationale for facilitating the hotel in contravention of its own guidance. In the appeal response, the applicant claims the non-statutory nature of the Masterplan.
- 7.2.9. In considering the divergence of the proposed development from the use and layout as indicated in the Masterplan, the status of the Masterplan is of relevance. The Masterplan, prepared in July 2015, is a non-statutory indicative development framework. In this regard, I concur with the applicant's position in the appeal response. However, I highlight to the Board that while Variation 1 and Variation 5 of the CEDP do not adopt the Masterplan per se, the variations have inserted a number of objectives into the CEDP which refer to aspects of the Masterplan or endorse further studies undertaken relating to the Masterplan lands. Through the variation process these objectives have a statutory basis and I highlight that Variation 1, dating from September 2015 postdates the Masterplan, dating from July 2015.
- Objective 3O in Variation 1 of the CEDP
- 7.2.10. Objective 3O in Variation 1 of the CEDP puts on a statutory basis the intention to provide for housing on part of the appeal site. This is a position as submitted by the appellants, and I note that neither the planning authority or applicant appear to expressly cite the implications of Variation 1 of the CEDP in the application or appeal documentation.
- 7.2.11. Objective 3O seeks to provide for housing in an area north of the Central Access Scheme ((CAS), the implemented Phase 1 corresponds with the extended St.

Canice's Place and the new St. Francis' Bridge). This area is mapped in Figure 3.4 which accompanies Variation 1. Importantly, this area identified for community housing includes the eastern part of the northern portion of the appeal site (coinciding with Area B) but excludes the southern portion (Area C) of the appeal site. That being, Objective 3O and the accompanying Figure 3.4 have been incorporated into the CEDP and the identification of Area B of the appeal site for residential development (in compliance with the underlying Existing Residential zoning for the area) has a statutory basis.

7.2.12. The proposed extension is sited on Area A and Area C, which are excluded from Objective 3O, while for the proposal in Area B is for decommissioning works. As such, I consider that the proposed development would not materially contravene the CEDP or prejudice the achievement of Objective 3O of the CEDP.

7.2.13. Due to the status of the Masterplan, I do not concur with the appellants' contention that the full extent of the appeal site is zoned for residential use in the Masterplan, or that that the proposed development is a material contravention of same as the Masterplan is not a statutory plan. Whilst I accept that the proposed development is a divergence from the indicative use and layout for these lands in the Masterplan area, having regard to the size of the southern portion of the site and to its peripheral position at the edge of the wider Sweeney's Orchard area, I do not consider the divergence to be prejudicial to the delivery of the majority of the Masterplan area.

#### Appropriateness of Hotel Extension

7.2.14. An appellant and the observer question the transfer of the parcels of land between the applicant and the Council which is facilitating the proposed hotel extension. I do not consider the land ownership to be a relevant planning matter in the determination of the appeal as it is sufficient that the lands are suitably zoned for permissible development, and that a letter of consent has been provided by the Council thereby allowing a valid application to be made on the site.

7.2.15. Appellants and the observer question the need for the hotel rooms, state that there are more suitable locations for hotel uses in the St. Francis' Abbey area of the city and that the proposal contravenes the CEDP in relation to tourism (in what manner is not further specified). Conversely, I find these positions to be somewhat unsubstantiated as no supportive evidence is provided. I consider that the proposal



to extend an existing hotel operation in a city centre location adjacent to much of the city's tourism offer, in close proximity to a mix of transport and recreational facilities, offering a range of hotel accommodation to be a reasonable, logical and appropriate form of development which supports national, regional and local policy.

7.2.16. Finally, the grounds of appeal include that the site is in a transitional zone and the proposed development does not comply with Section 3.4.5.14 of the CEDP, which I have cited in Section 5.0 above. While I note the applicant's response that the proposed extension transitions from the hotel which is in the residential zone to an extension located in the business zone, I agree with the appellants that the proposal straddles two zoning objectives, one of which includes Existing Residential, and that the proposal is in a transitional zone where regard is to be given to residential amenity impacts.

### **7.3. Design, Streetscape and Visual Amenity**

7.3.1. The grounds of appeal and submissions received from An Taisce raise concerns relating to architectural design, streetscape and visual amenity stating that the hotel extension will be out of character and overbearing, is a monolithic block, will set an undesirable precedent for subsequent development in the new streetscape, and the starkness of the eastern gable will be visually injurious.

7.3.2. The proposed development extends the existing hotel building to an inverted 'L' shape footprint, whereby the existing frontage onto Vicar Street is maintained and new street frontage is created addressing St. Canice's Place along its southern elevation. The extension, as revised, provides for 66 rooms, a mix of pod rooms, suites, and family suites over four levels of accommodation principally on the first to third levels, a number of which have aspects onto the central courtyard area. The ground floor level also accommodates a lobby, reception area, luggage store, courtyard area, relocated ESB substation, and a café unit with a terrace area onto St. Canice's Place.

7.3.3. The applicant submits the internal design of the extension is based on the SML business model for hotels (modular rooms of small, medium, and large sizes). I have reviewed the proposed floor plans and consider the design and layout to be practical, integrating with and maintaining connection to the existing hotel building. The extension is achieved through the redevelopment of part of the existing surface

car park, with upper levels of accommodation constructed over the remaining car spaces. This aligns with the model's premise to limit on-site car parking provision and to service the hotel operation from the newly developed set-down area at street level. In terms of architectural design, I consider these items to be acceptable.

- 7.3.4. With regard to the proposal being out of character, I have reviewed the applicant's Design Intent Statement document submitted at SFI stage inclusive of revised photomontages, and note the contemporary design approach employed for the extended hotel building. I positively note the elevational treatments and external finishes including, on St. Canice's Place, the brick façade with architectural detailing, fenestration proportions and arrangements with an enclosing vertical emphasis metal cladding, dormer windows rising from the wall plate, and a double-pitched roof profile, and on the eastern gable, the proposed green wall and the splayed windows. The plant proposed at roof level is set back from the building edges and will be well screened within a plant enclosure area. On balance, having regard to the chosen building height (4 storeys within the context of a planned/ urban designed framework), architectural typologies and features (ground floor design for commercial use, vertical emphasis fenestration, pitched roof profile), and external finishes (brick traditional external finish in the city, modern use of metal cladding), I do not consider that the proposal will be out of character with the existing area or that of the future planned area.
- 7.3.5. With regard to the proposal being overbearing, the pertinent issues are the height and depth of the extended building. A building height parameter of between 3 to 4 storeys features strongly in the Masterplan for most of the urban blocks, including for developments addressing the CAS, which the southern part of the site is located along. Through the SFI revised design, the building height of the extension decreased from 5 to 4 storeys and, as such, is consistent with the design parameter. The proposed building height of 4 storeys has a planned/ urban designed context and I consider this to be an appropriate height which facilitates the creation of a new strong urban edge onto St. Canice's Place. Furthermore, I consider it reasonable to conclude that future developments along St. Canice's Place in the adjacent Sweeney Orchard area will maintain this design parameter, as will developments in the opposite Brewery area, on the southern side of the CAS.

- 7.3.6. The depth of the proposed extension is notable, with the eastern gable wall being c. 44.5m in depth and I accept the appellants' positions that the extension will be visually prominent. However, it is apparent that the high level of exposure is due to the Council controlled landbank currently being undeveloped. I note that the northernmost portion of the extension's gable wall features splayed windows serving the hotel rooms, to avoid prejudicing the development of the Sweeney Orchard area through overlooking, but also serving an architectural feature allowing elevational activity instead of a blank gable. Similarly, I consider the proposed green wall, submitted by the applicant as being temporary measure, as being an innovative design solution reflective of the currently constrained circumstances.
- 7.3.7. With regard to the proposal being monolithic, I note that a number of the appeals include an image from the Masterplan of the 'Compact City' block form and refer to the proposal being a similar 'mono bloc'. I consider this to be somewhat of a misrepresentation of the proposal. The proposed development is a single building within the wider urban block that is formed by Vicar Street to the west, St. Canice's Place to the south, Green Street to the north and the edge of the River Nore to the east.
- 7.3.8. The proposed extension does constitute a form of development that has a high plot ratio, site coverage, and building height. In terms of the quantitative requirements in Chapter 11 of the CEDP, these appear to be within acceptable standards and the CEDP allows for an exceedance of same. For example, from the available information, I estimate the plot ratio as being c.1.74 which is well within the range of up to 2.0 for city centre locations and 1.0 for all other areas. In terms of qualitative parameters, Section 11.8.7 on building height contains 13 items to which consideration will be given in determining whether an application for a building of height is appropriate. I have reviewed the items and consider these to come within the scope of the items considered in these grounds of appeal. As is discussed under each item in this report, in my opinion the proposed development is within acceptable parameters and I find that the proposal, on balance, is consistent with the thrust of Section 11.8.7. This section does not include a quantitative standard, that being, a specific building height (principal measurement or number of storeys) and as such, the proposed development does not constitute a material contravention of the CEDP.

- 7.3.9. With regard to the proposal setting an undesirable precedent or starting point for the development of the new streetscape, I consider that a number of adverse descriptions of the proposal such as being likened to a commercial warehouse, are somewhat subjective. In determining whether the design approach is acceptable, as outlined in Section 7.3.4 above, I am mindful of the developing urban context. At this location, St. Canice's Place is a newly emerging streetscape extending eastwards towards St. Francis' Bridge. The remainder of the wider undeveloped landbank will be developed in time with opportunities for variations in architectural designs for individual buildings, including their building height, elevations, roof profiles, and external finishes.
- 7.3.10. Whilst the appellants submit that the design approach is a missed opportunity and not the way to develop this key site, for the reasons outlined above I do not agree with that position. Additionally, through the inclusion of a ground floor café use and setting back the front building line of the extension to create an associated terrace area, consideration has been given to the public realm at this location. The café use, terrace area and reoriented main entrance into the hotel will contribute positively to the streetscape and pedestrian experience, creating an active street frontage, attracting footfall and enlivening the area. I consider that the reorientation of the premises with its entrance point and active public interface on the newly emerging St. Canice's Place streetscape to be a logical and appropriate design solution, maximising on the existing hotel premises and the finite resource of serviced lands which has become available.
- 7.3.11. In conclusion, I consider that the proposal is of an acceptable architectural design, that constitutes a positive contribution to the streetscape, and an investment in the public realm along this newly emerging streetscape and urban block. In the event that the Board is minded to grant permission, I recommend the attachment of conditions relating to agreement with the planning authority on external materials of the development, including the roof plant screening, on lighting, and signage.

#### **7.4. Architectural and Archaeological Heritage**

- 7.4.1. The grounds of appeal, and submissions from the third parties and prescribed bodies during the assessment of the application submit that the design and siting of the proposed extension will have a negative impact on the built heritage of the receiving

area. These concerns relate to both the architectural heritage, as the site is located in the St. Canice's ACA, and the archaeological heritage, as the site is located in the city's zone of archaeological potential and there are three recorded monuments within the appeal site. I propose to address each issue in turn.

#### St. Canice's Architectural Conservation Area

- 7.4.2. The CEDP describes the complex of buildings associated with St. Canice's Cathedral and outlines its importance to the city, which I have cited above in Section 5.0 of this report. That section also contains policy on the landmark buildings and protected views included in the CEDP as relevant for the appeal determination. I consider there are two pertinent issues relating to the proposed development and the context of the ACA: firstly, the impact of the proposed development on views towards the cluster of historic buildings in the ACA, and secondly, the design of the proposed development within the ACA setting.
- 7.4.3. With regard to the first issue of the impact on views of the ACA, from a review of the reports of the Conservation Officer and those of the Planner, initial concerns relating to the impact on views towards the principal buildings within the complex, St. Canice's Cathedral and Bishop's Palace, were addressed through the SFI revised design. The reduction in the height and scale of the extension was determined to have minimised the visual impact when viewed against the backdrop of the surrounding historic built environment. The Conservation Officer recommends a condition relating to agreement of materials and finishes. The Planner's SFI report states that the proposed development is not considered to have a negative impact on existing views towards the St. Canice's Cathedral complex, and that the redesign of the extension, including the verticality of elevational features and the proposed use of materials, is acceptable.
- 7.4.4. The grounds of appeal continue to raise the impact of the proposed development on views towards the historic complex at St. Canice's Cathedral and Bishop's Palace, that the setting of the cathedral and palace will be compromised, and that an understanding of historic Kilkenny will be negatively impacted upon. The applicant's response states that the penthouse/ fifth storey of the building was removed, and the roof profile revised to allow greater visibility of St. Canice's Cathedral.

- 7.4.5. I calculate that the proposed extension onto St. Canice's Place is c.125m to the east of the cathedral complex, separated by buildings and plots along Vicar Street and Common Hall Lane, and there is a c.10m height differential in the ground levels between the appeal site and the elevated grounds of the cathedral and palace. I consider that due to the separation distance across an existing built-up area and the notable topographical difference, that the proposed development is at a remove from the main cluster of historic buildings in the ACA. That being, there are only certain views and aspects in which the proposal is visible and has potential to impact upon the ACA setting.
- 7.4.6. I have reviewed the applicant's Design Intent Statement document submitted at SFI stage of the revised scheme. This includes a serial vision sequence of six (Streetscapes A-F) photomontages indicating views as Existing, Proposed, Proposed and Future Development. Streetscapes A and B have an easterly aspect along Dean Street, St. Canice's Place towards St. Francis' Bridge over the River Nore (which serves as the eastern boundary of the ACA). The southern façade of the extension is visible within the existing urban fabric and will exert a strong visual impact. However, I consider the extent of this to be largely due to the open nature of the area further along St. Canice's Place towards St. Francis' Bridge. In due course, the extent of the impact will diminish as the remainder of the landbank to the east of the site is developed.
- 7.4.7. Streetscapes C, D, E and F have westerly aspects featuring the complex of historical buildings in the ACA as a backdrop. I consider that Streetscapes C, E and F, while at a distance away, are representative of the strength of visual impact the proposal will exert from those vantage points across the city. That being, the proposal will be clearly identifiable but read as a new insertion into the urban fabric of the city, whereby other tall or otherwise prominent features continue to remain visible on the city's skyline. The key viewpoint for the appeal determination is that of Streetscape D from St. Francis' Bridge where the extension exerts its strongest visual impact on views towards the western part of the ACA and the cluster of historic buildings. In the immediacy of this viewpoint to the site, the eastern gable of the extension dominates, as the southern element of the extension removes much of the view of St. Canice's Cathedral, the central element removes the view of the rear of the

existing hotel, and the northern element removes much of the view of Bishop's Palace.

- 7.4.8. In determining whether the visual impact from St. Francis' Bridge is acceptable, I have had regard to a number of considerations. These include the close proximity of this viewpoint to the site (the proposed extension dominates the foreground); the singular nature of a view with such an impact (there are not likely to be other viewpoints that would exert the same degree of visual impact); the transitory nature of this visual impact (the viewer will be travelling over the bridge and the visual impact therefore is fleeting), the cathedral and the palace, the principal buildings in the ACA, are sited on a rising hill and due to the elevated level remain partially visible; the view indicated in Streetscape D (and the other photomontages) are not protected in the CEDP (as other vantage points are); the positions in the reports of the planning authority where views of the buildings within the ACA are not considered to be negatively impacted; and that the wider landbank is identified for future development for the depth of the extension (i.e. the extent of the eastern gable) and of a similar building height fronting onto St. Canice's Place.
- 7.4.9. In conclusion, I consider the proposal will have a strong visual impact on certain viewpoints in the city, but do not consider the effect to be of such degree to have negative or detrimental impact on views of the historic buildings within the ACA. In this regard, I consider that the proposed development complies with the requirements of the applicable CEDP development management standards SCACA 1 and, in particular, SCACA 4.
- 7.4.10. With regard to the second issue of the design of the proposal within the ACA context, the grounds of appeal include that the extension is unsympathetic to the fine urban grain of medieval street pattern. From a review of available documentation including the Masterplan, historical mapping (archaeological reports prepared for the application) and photographic imagery, I consider that the appeal site comprises lands (the hotel premises and part of the Sweeney Orchard area previously associated with the Smithwick's yard), which have been subject to some site clearance and boundary rearrangement since their historical development as houses and burgage plots of the vicar and chancellor, though were originally relatively large extending from Vicar Street to the banks of the River Nore. I consider the streets on the western side of Vicar Street near the St. Canice's Cathedral complex in the ACA

to be examples of the fine urban grain of medieval street pattern referred to, and as such I do not concur with the objection.

7.4.11. In respect of the architectural design of the extension, in its submission on the SFI, An Taisce expresses concern regarding certain features (the use of box dormers and Juliet balconies), the eaves line being punctuated by the dormers, and external finishes (the use of metal cladding) not being traditional architectural features within this historic part of the city. A simplified pitched roof profile with sloping mansard windows is recommended.

7.4.12. I highlight to the Board the attachment of Condition 12 on the planning authority decision. Whilst not raised per se by the appellants or the applicant, the implications of same are a consideration within this subsection due to the reason given for the condition, as follows:

*Condition 12:*

*The front elevation of the proposed building facing onto St. Canice's Place (Central Access Scheme) shall be as follows:*

*a) The balconies on the third floor shall be recessed behind the eaves (sic) line of the roof of the building.*

*b) the elevation shall provide for a continuous profile/ line for the eaves of the roof along this elevation.*

*Reason: In the interests of visual amenity and to ensure that the proposed building and its design features reflect a more vernacular design with the Conservation Area.*

7.4.13. Save for the position outlined in the An Taisce submission, the rationale for Condition 12 is not apparent from a review of the planning authority reports which, as I outlined above, accept the SFI revised design. I have considered the design implications of the condition which require a solid eaves line and therefore the dormers and balconies would be set into roof plane as opposed to rising from the wall plate. I consider that this condition would alter the effect of the metal clad vertical-emphasis frames whereby the windows on the ground to second floors would be enclosed and, in my opinion, would lessen the visual effect of these features which I consider to be a positive aspect of the redesign of the elevation.



7.4.14. I consider the proposal is of a design featuring typologies and finishes that have a modern expression and the proposal represents a next stage of building within the city, albeit in an ACA. The site is at a remove from the main cluster of protected structures in the ACA which are centred on the western side of the ACA, well within the medieval core of the city, while the proposed development is on the eastern periphery of the ACA boundary adjacent to areas planned for new development. As such, I recommend that in the event of a grant of permission, this condition or one with a similar effect, is not attached.

#### Zone of Archaeological Potential

- 7.4.15. In addition to being within the city's zone of archaeological potential (K019-026), there are three archaeological monuments recorded at the appeal site. Identified by previous excavations in the northern portion of the site, these include a 16<sup>th</sup>/ 17<sup>th</sup> century house referred to as the Vicar's Choral building (KK019-026120), and miscellaneous medieval deposits associated with same (KK019-026243) preserved in situ under the car park area. In the southern portion of the site, a tannery site with historical references from the mid-1650s (KK019-026277). Adjacent to the west of the site, at 17 Vicar Street is another 16<sup>th</sup>/ 17<sup>th</sup> house, referred to as the Chancellor's Manse House (KK019-026121).
- 7.4.16. The applicant initially submitted an Archaeological Desk Study Assessment, the conclusions of which (details to be provided on previous archaeological remains left in-situ in the hotel's car park area; test excavations to be undertaken of the southern portion of the site; and survey of historical stone boundary walls) were requested to be undertaken and submitted as further information. The subsequent Archaeological Assessment Report outlines the findings of test trenching and the partial remains of a wall of the Chancellor's House which will be removed in the development works. The report concludes with recommendations for pre-development recording of historic walls, monitoring of subsurface ground works, maximisation of in-situ preservation where possible, and excavation where necessary due to subsurface impacts on archaeological remains. The Conservation Officer's SFI report notes the findings included in the subsequent Archaeological Assessment Report and recommends the attachment of a condition requiring compliance with the recommendations of that report.

7.4.17. In the grounds of appeal, the appellants claim that insufficient protection has been afforded to the archaeological heritage at the site, which is countered in the applicant's response by stating investigations were undertaken as part of the SFI stage which has informed the subsequent decision making. I concur with the positions of the planning authority and applicant in this regard. The Archaeological Assessment Report indicates the likelihood of archaeology being discovered and outlines a strategy for managing same including excavation. The CEDP policy allows for preservation by record where preservation in-situ is not possible where there will be an adverse impact on archaeological remains. I consider that the impact on archaeological heritage can be addressed by way of condition in the event of a grant of permission.

## **7.5. Residential Amenity**

7.5.1. The proposed development's negative impact on the residential amenity of the adjacent properties is a key issue for each of the appellants. The grounds of appeal include negative impacts relating to overshadowing, overlooking, noise disturbance from the hotel use, in particular emanating from the proposed ground floor courtyard and café terrace area, and traffic related inconvenience caused by guests and services (cited as illegal parking, frequency of deliveries, and set down area congestion). I propose to address each issue in turn.

7.5.2. The four appellants' properties are located adjacent to or in close proximity to the boundaries of the appeal site. To the north of the site, the rear garden area of 13 Vicar Street will be adjacent to the northern elevation of the proposed extension. To the west of the site, Chancellor's House, Vicar Street will be adjacent to the western gable of the extension and the closest residence to the new southern façade of the hotel with café, terrace, and set down area. The buildings at 18 and 19 Vicar Street are at a greater distance from the western gable of the extension, though the surface car parking area to the rear of 17/ 18 Vicar Street will be opposite the proposed courtyard area of the extension. From my site inspection and review of details on the application and appeal, it would appear that some properties (eg. 17 and 18 Vicar Street) are in commercial use or a mix of residential and commercial use, with limited private open space which has not been converted to surface car parking (eg. 19 Vicar Street and Chancellor's House).

- 7.5.3. In respect of overshadowing as raised by the appellants, I have reviewed the Shadow Impact Analysis included in the Design Intent Statement document submitted at SFI stage, the applicant's SFI response including comments on the third party objections (table in Item 10), and the applicant's appeal response. Due to the orientation of the site, layout and height of the extension, overshadowing is a consideration for the adjacent property to the north, 13 Vicar Street, and the adjacent undeveloped landbank to the northeast. The appellants' properties to the west of the site cast shadows across their own properties (buildings, car parking areas, circulation space around the buildings) to varying degrees for much of the day. New shadow cast from the proposed development, on March 21<sup>st</sup> for example, is within the morning hours, which is fleeting and passes by midday. I do not consider the appellants' properties to the west to be unduly affected by overshadowing.
- 7.5.4. The appellant's property to the north, 13 Vicar Street, shares a boundary with the appeal site of c.36.5m in length, opposite the rear garden area of that property. The northern elevation of the proposed extension is 15.86m in width and 12.4m in height, sited towards the eastern end of the property's garden, and abutting the shared boundary wall. The appellant states that the extension will cause serious overshadowing of her property. The applicant's appeal response states that the impact is minimal as there is no development proposed along a distance of c.27.8m, and that there will be a transitory shadow at the foot of the garden. The applicant states that the applicable BRE 2011 standard of 2 hours of daylight/ sunlight in a rear garden on March 21<sup>st</sup> is achieved.
- 7.5.5. From a review of the Shadow Impact Analysis, I note that on March 21<sup>st</sup> for example, the property experiences a high degree of shadow cast from the existing hotel premises during the middle and later parts of the day. The most significant new shadow cast from the proposed extension is in the morning hours, decreasing steadily during the remainder of the day. A guidance document and relevant standard for determining shadow impact (though I highlight not a mandatory standard) is as identified in the appeal response, in Section 3.3.17 of the BRE 2011 guidance document on daylight and sunlight. From a review of the documentation and having regard to the extent of existing shadow cast, I consider that the standard of a central area of the garden receiving 2 hours of daylight/ sunlight during March 21<sup>st</sup> is achieved. While I note the concerns of the appellant, on balance, I consider

that the property will remain provided with sufficient daylight/ sunlight on a transitory pathway along the northern, central and eastern parts of the garden.

- 7.5.6. The lands adjacent to the northeast of the site, presently part of the Council's undeveloped landbank identified for future residential use, are cast in new shadow from the proposed extension in the afternoon of March 21<sup>st</sup>. While I note the high degree of shadow cast at that time, these lands enjoy hours of daylight/ sunlight in the morning and midday whereby the amenity spaces of any future residential development (eg. gardens, terraces, balconies) will achieve an acceptable standard. The appellant's property and the eastern landbank are city centre locations adjacent to/ within an area identified for future development on a scale of potentially 3 to 4 storeys. Continual development of zoned and serviced lands, a finite resource, in central urban locations has many planning gains. On balance, I consider the overshadowing arising from the proposed development is of an acceptable degree having regard to the extent of existing shadow cast, the transitory nature of the new shadow cast, the achievement of acceptable standards during definitive portions of the day, and the city centre locations.
- 7.5.7. In respect of overlooking as cited to different degrees by the appellants, it is apparent that the design of the extension has attempted to ameliorate associated impacts on the adjacent properties. The northern elevation and the southernmost part of the western elevation do not feature any windows. The northernmost part of the western elevation, and the sections of the western and southern elevations addressing the internal courtyard area include windows serving bedrooms and corridors on levels above the ground floor. The majority of the eastern elevation does not feature windows, relying instead on windows in the southern elevation onto St. Canice's Place and the western and southern elevations addressing the internal courtyard area. The northernmost part of the eastern elevation does feature windows serving bedrooms, and these are of a splayed design with a restricted northerly aspect to prevent direct overlooking of the landbank adjacent to the east.
- 7.5.8. From my site inspection, I noted overlooking in northerly, westerly and southerly directions from the upper floors of the existing hotel and that aspects from the curtilages associated with 17, 18, 19 Vicar Street and Chancellor's House (as viewed from accessible surface car parking areas), feature and/ or are dominated by the built form of the existing hotel.

- 7.5.9. For properties to the north of the site, including the appellant's property at 13 Vicar Street, the main northern elevation of the proposed extension is void of windows to prevent direct overlooking. There are windows in the northernmost part of the western elevation and the splayed windows in the northernmost part of the eastern elevation which give rise to potential overlooking of properties to the north of the site. While I note the concerns of the appellant, having regard to the absence of windows on the most proximate northern elevation, the oblique angle of aspects from windows on the western elevation (the windows are not directly opposing the rear of any northern property on Vicar Street), the limited and restricted aspect from the splayed windows on the eastern elevation, the range of separation distances, the extent of overlooking from the existing hotel premises in a northerly direction, and the city centre locations of the site and appellant's property, I consider the impacts to be within acceptable parameters.
- 7.5.10. For Chancellor's House, the proposed extension has been sited so that its western gable is adjacent to the eastern gable of the appellant's property. This western gable does not have windows and overlooking of western properties is prevented. There will be a marginal increase in potential overlooking from the extension's southern elevation onto the courtyard area, however due to the oblique angle (the windows are not directly opposing the rear of Chancellor's House) and the greater separation distance of c.22m than that of the existing rear building line c.16m, I do not consider this potential for overlooking to be anymore more impactful than is presently the case from the existing hotel.
- 7.5.11. For properties to the west of the site, including the appellants' properties at 18 and 19 Vicar Street, as the lands to the east are undeveloped, the existing easterly aspect does not include any built form so the opposing western elevation of the proposed extension will result in the presence of a new building with windows. While I note the appellants' concerns, I consider the construction of a new built form and the associated impacts to be reasonable having regard to the c.34m separation distance (between the western elevation onto the courtyard and the rear building line of the properties), that the Council's adjacent landbank is planned for future development potentially of a similar scale to the extension, the existing high boundary wall, the indicated landscaping in the courtyard area, and due to the city centre locations of the site and appellants' properties.

- 7.5.12. With regard to overlooking of future residential developments to the east, as referred to above, the northernmost part of the eastern gable wall has splayed windows serving bedrooms. I positively note this design solution as it serves as an architectural feature allowing a degree of elevational activity instead of a blank gable while simultaneously avoiding undue direct overlooking of future residential development to the east, which otherwise could prejudice the development of that adjacent landbank.
- 7.5.13. The appellants are critical of the planning authority's assessment, stating that due consideration has not been given to the impact of the proposal on the existing residences. As cited above in Section 5.0 of this report, I consider policy in Section 3.4.5.14 on transitional zones to be relevant to the appeal determination requiring express consideration of proposed uses, scale, density and appearance of development and landscaping proposals to safeguard existing residential amenities. I note that the planner's reports consider issues of overshadowing and traffic activity, though do not reference CEDP policy on transitional zones and while I note that Condition 4 restricting hours of operation of the construction phase, and Condition 6 relating to air and/ or odour emissions would have beneficial results for adjacent residences (for the latter condition, in addition to the stated environmental protection reason) there are no express conditions relating to the operation phase of the proposed development attached to the permission protecting the residential amenities of adjacent properties in particular, relating to noise impacts.
- 7.5.14. While, as outlined above, I consider issues of overshadowing and overlooking to be on balance acceptable, I concur with the appellants regarding the potential negative impact on residential amenity associated with the noise disturbance associated with the proposed uses and unrestricted hours of operation. The proposal is an extension of the existing hotel use and, in that regard, is an acceptable use. The design and layout of the extension do newly propose an open courtyard area at ground floor level in close proximity to the western residences.
- 7.5.15. While I consider the courtyard beneficial to the hotel's design allowing daylight and ventilation to the rooms, and that importantly the main seating area of the café or any other function room/ area does not access onto same, it's use by guests does constitute a potential source of noise disturbance to the adjacent properties. I consider that a condition restricting noise to appropriate levels during certain periods

of the day/ between specific hours should be attached in the event of a grant of permission.

7.5.16. The proposed café use which is sited at the ground floor level with an associated terrace area onto St. Canice's Place is an acceptable use at this location. Similarly, however, the café is adjacent to a residence to the west and I consider similar restrictions on noise levels as may emanate from the café and terrace area to be necessary, as are restrictions relating to air and/ or odour emissions. The appellants raise concerns in respect of the hours of operation of the hotel use, deliveries to the front of the extension and set down/ drop offs, however I do not consider it necessary or reasonable to restrict these fundamental activities per se, as a noise related condition allows activities to continue to be undertaken but within acceptable parameters. In the appeal response, the applicant does not comment on the grounds of appeal relating to hours of operation and impacts from certain uses, save to state the proposed hotel extension is an existing use, and to submit that the proposal transitions from the hotel use in the residential zone to an extension located in the business zone.

7.5.17. The appellants of the Chancellor's House property specifically object to the proposed alteration of the southwestern part of the boundary wall. The existing boundary wall, indicated as c 3.2m in height, presently encloses the paved area to the front of the appellant's property. Within the appeal site, this area coincides with the proposed terrace area associated with the café use, and the alteration is a reduction in height to 2m with new paving and landscaping. The appellant and applicant dispute ownership over the wall. I highlight the limitations of the planning process in respect of involvement in landownership issues, and note that the appellant has not submitted documentary evidence of the claim, stating instead that the wall has been there since the 1970s. I consider the proposed alteration, a reduction in height of the wall to 2m (which will continue to provide a significant degree of privacy to the appellant's property), with new base and landscaping on the appeal site side framing the terrace area and demarcating the entrance to the hotel, to be acceptable in and of itself. I recommend that the details of the hard and soft landscaping within the proposal, including the green wall planting along the eastern elevation, should by condition be subject to final agreement with the planning authority.

## 7.6. **Services: Access, Parking and Utilities**

7.6.1. In relation to services for the proposed development, the key issues are traffic related services and site-specific water supply infrastructure. The grounds of appeal include strong objections to traffic services citing concerns on access, insufficient parking provision, requirement for a development contribution, and the proposal being premature pending the completion of a transport plan for the city. I propose to address each services issue in turn.

#### Access

- 7.6.2. The proposed development involves a reorientation of the hotel layout, with the southern elevation onto St. Canice's Place becoming the main entrance of the premises. The vehicular entrance on Vicar Street remains operational serving a smaller surface car parking area. The newly extended area to the front of the extension onto St. Canice's Place comprises a paved terrace area, footpaths and a set down area. This element of the proposed development was subject of revision through the SFI response (Item 6), with amendments made to the size and layout of the set down area, designing the area to function as a loading bay for vans/ trucks and as a taxi rank accommodating two taxi/ drop off spaces. The SFI response also included provision of road markings, loading bay/ taxi signage, footpath realignments, traffic bollards, and measures ensuring sufficient space for cyclists.
- 7.6.3. The SFI response (Items 5 and 7) provided clarification on the access arrangements for deliveries (indicated as between 6am-10am) and emergency vehicles using the redesigned set down area. Building services and maintenance vehicles are indicated as using the Vicar Street entrance and parking in the spaces as available during daytime hours when guests are not using same.
- 7.6.4. In respect of access, the SFI report of the Roads Design Section indicates the proposal is acceptable and recommends consultation with the Municipal District Engineer to agree the finalised details of the set down area (also the potential for a loading bay on Vicar Street as part of the plan for a one-way system). The planning authority assessment does not highlight any concern in respect of congestion or traffic hazard.
- 7.6.5. I have reviewed the application and appeal documentation, and while the appellants raise concerns regarding congestion in and around the set down area, and the observer submits there is a proliferation of entrances/ drop off points in close



proximity to each other on St. Canice's Place, a location with severe traffic problems, I do not consider these concerns to be material and/ or evidentially demonstrated. Conversely, while the appellants raise the issue of congestion due to the new access arrangements, I consider that the occurrence of same would be significantly greater if the shortfall of some 100 car parking spaces was being provided on site. I accept the premise for the hotel model, the information provided on existing and likely traffic generated at and around the hotel site, and that a sizeable portion of future guests will likely arrive by taxi or by foot following use of public transport or commercial car parks in the city.

- 7.6.6. In the event of a grant of permission, I recommend conditions be attached in respect of agreement with the planning authority of final design details, a construction traffic management plan, and a mobility management plan thereby further assisting access arrangements.

#### Car and Bicycle Parking Provision

- 7.6.7. At present, the 30-room hotel operation is served by 21 car parking spaces located to the rear of the site, accessed from Vicar Street. The proposed development reduces this provision at the rear to 8 spaces and provides for 2 spaces for taxis in the new set down area to the front onto St. Canice's Place. Through the SFI response, the revised design provides for 66 rooms, thereby resulting in a total number of 96 rooms. The SFI report of the Roads Design Section calculates that, based on the hotel rooms and café use, 101 car parking spaces are required.
- 7.6.8. The approach to car parking in the proposed development is based on the use of the SML model, the premise of which is that the type of guests attracted to stay at the hotel due to the type of accommodation and facilities on offer, will arrive by public transport, and if choosing to arrive by private car, will use the existing commercial car parks in the city, within which there is sufficient capacity. The appellants dispute the model, the applicant's reliance on public transport, and the use of adjacent car parks stating instead that guests will arrive by private car and attempt to park in the vicinity of the hotel which is characterised by narrow streets thereby causing congestion and nuisance to the residents.
- 7.6.9. The quantum of car parking being provided, the rationale for same, the way potential negative impacts such as unauthorised on-street parking or parking nearby

residential areas would be managed, and information on alternative modes of transport and commercial car park availability featured in the SFI response (Items 3 and 4). The SFI report of the Roads Design Section states three items which are subsequently used in the grounds of appeal by the appellants; firstly, that the proposal may be premature until the completion of a transport plan for the city (which is stated as being undertaken by the planning authority and is due to include a car parking strategy for the city); secondly, that the applicant has not identified a formal agreement with an operator of an existing car park for use as an overflow car park for the hotel; and thirdly, that in the absence of dedicated parking facilities for the proposal, a development contribution in lieu of parking should be considered. The amount of such a contribution is not calculated.

- 7.6.10. In the planner's SFI report, the shortfall in on site car parking is noted and considered acceptable for two reasons: that the planning authority is preparing a transport plan for the city, which will address car parking standards, and that the applicant envisages a formal agreement with a car parking provider being in place prior to the completion of the extended hotel. This position appears to be the basis for Condition 10(a) as follows:

*Condition 10(a):*

*Prior to the commencement of any development on the site, the applicant shall submit any formal agreement in place to provide for an over-flow parking area for hotel patrons....*

*Reason: In the interests of traffic and pedestrian safety.*

- 7.6.11. The implication of this position is that firstly, the planning authority did not determine the proposal to be premature in the absence of a city transport plan (a grounds of appeal considered further below) thereby potentially necessitating refusal of permission, and that secondly, the proposal is not considered to be deficient in parking provision such that the shortfall in on-site parking spaces automatically required an in-lieu development contribution (another grounds of appeal considered below). Instead, the planning authority sought to achieve a degree of control on overflow car parking associated with the extended hotel through requiring details of any formal agreement for same, as per Condition 10(a).

- 7.6.12. As is raised in the grounds of appeal and the observation, the provision of c.10 spaces when the proposal generates a requirement for c.100 spaces is considered to represent an unacceptable shortfall in parking provision. The appellants state that permission has been granted with only a vague condition on off-site parking, and the observer states the proposal is permitted without clarity on the parking arrangement. I have reviewed the wording in Condition 10(a) and concur that it simply requires submission of any formal agreement, as opposed to stipulating an express requirement (eg. redesign to provide additional on-site spaces, or definitive evidential proof of a legally binding agreement with an existing car park operator).
- 7.6.13. In my opinion, the decision on car parking provision pivots on whether the proposed hotel model, the premise of which is based on a demand management approach to on-site car parking, is acceptable in principle or else a refusal of permission is warranted. Having regard to the overarching policy included for sustainable smarter travel patterns, the established operation of the proposed hotel model in other city locations, the transport patterns of guests at the existing hotel via public transport, taxi and walking and the likely continuation of these patterns, the maximum use of existing and planned commercial car parking facilities, the city centre locations involved, and that a deviation from on-site parking standards is allowed for under the CEDP, I consider that the hotel model is acceptable and believe the proposed development does not warrant a refusal of permission due the shortfall in car parking provision.
- 7.6.14. Conversely, I consider that the on-site provision of some 100 parking spaces would arguably be an inefficient use of a finite resource of zoned and serviced lands. In the event of a grant of permission, I do not consider it necessary to attach a condition similar to Condition 10(a) simply gathering information, nor reasonable to attach a stronger condition stipulating that the applicant obtains formal agreement for overflow car parking, as such a condition would have the effect of beholdng the applicant to an unknown third party based on an agreement potentially involving payment to same.
- 7.6.15. With regard to bicycle parking, three stands, each indicated with 6 spaces, are provided in two locations: two stands in the parking area to the rear of the existing hotel (a note states a total of 10 spaces will be provided in the rear area) and one stand in the terrace area proximate to the front entrance of the hotel and café use on

St. Canice's Place. I consider the locations for the stands, their accessibility/ safety and the number of spaces to be provided are appropriate, within the CEDP standards, and acceptable.

#### Development Contribution in-lieu of Parking Provision

- 7.6.16. In the grounds of appeal, the appellants state that the applicant should be required to pay a development contribution to address the shortfall in car parking provision. As outlined above, the planning authority did not determine the provision to be deficient thereby attracting an in-lieu development contribution. Instead, the potential for a third party agreement for off-site overflow car parking, which Condition 10(a) refers to, has been relied upon.
- 7.6.17. The observer refers to the Council's involvement in operating the temporary car park granted permission in June 2021 on the southern side of St. Canice's Place, opposite the appeal site (under PA Ref. 20762, ABP 309377-21). The car park is stated as being operated by the Abbey Quarter Development Company Ltd (50% owned by the Council) and it is inferred that the overflow car parking for the hotel may be accommodated therein. The planning authority does not provide any comment or information in its appeal response on involvement, if any, in this commercial car park, nor has it identified any plans to provide and pay for public car parking (on-street, surface or multi storey car park) that an in-lieu development contribution arising from the proposed development could reasonably be required to go towards paying for.
- 7.6.18. I highlight to the Board that in the event of a grant of permission, were a condition similar to Condition 10(a) involving agreement with a separate car park operator, as attached by the planning authority, and a condition requiring an in-lieu development contribution to be paid by the applicant, as requested in the grounds of appeal by the appellants, to be attached, I consider this would in effect be a form of double charging for the applicant.
- 7.6.19. In the applicant's appeal response, there is no reference to Condition 10(a) or any potential agreement with a separate car park operator. The applicant submits that there is capacity in the proximate commercial car parks and guests who chose to arrive by private car can avail of same. On balance, I consider an in-lieu

development contribution is not necessary or appropriate as the hotel model and the demand management approach to on-site car parking provision is accepted.

### Prematurity Grounds

- 7.6.20. The appellants and observer state that the car parking provision for the proposed development is unresolved and is premature until the local traffic management plan with an overall parking strategy for the city is undertaken. From a review of the local policy context, including the Abbey Quarter Masterplan, Variation 1, and Variation 5 of the CEDP, it is apparent that developing a plan for managing car parking, including identifying appropriate locations for same, has been an issue for the city in recent years. Variation 5 of the CEDP set the policy context for the temporary car park recently granted permission on the southern side of St. Canice's Place.
- 7.6.21. The potential for the proposed development to be considered as premature pending the completion of the transport plan for the city features in the planning authority reports. The Roads Design Section report refers to potential prematurity and that in the absence of dedicated parking facilities an in-lieu development contribution should be considered. While the planner's report also refers to prematurity deciding though to address the on-site parking shortfall through reference to a formal agreement between the applicant and a third party for off-site overflow spaces. Neither final report objected to the proposal on prematurity grounds.
- 7.6.22. While I note firstly, the position of the appellants and observer that the parking provision for the proposed development is unresolved and, by association, the proposal is premature until the city transport plan is completed, and secondly, the manner in which the planning authority sought to manage the parking shortfall thereby overcoming the basis for prematurity (an in-lieu development contribution vs a formal agreement with a third party for off-site parking), I consider that firstly, the hotel model with a demand management approach to on-site parking is acceptable, and secondly, neither an in-lieu development contribution or an agreement with a third party car park operator are, respectively, necessary or reasonable. As such, in conclusion, I do not consider that prematurity grounds warrant a refusal reason.

### Utilities

- 7.6.23. The proposed development is connecting into the existing public water services infrastructure located in Vicar Street and/ or St. Canice's Place. Wastewater will be

collected by gravity at a new manhole on St. Canice's Place, discharging by gravity to the existing main foul water sewer. Surface water will be collected by gravity to the rear of the site, discharged through a petrol interceptor to an attenuation tank, and pumped to a new manhole on St. Canice's Place discharging by gravity to the existing main surface water sewer.

- 7.6.24. In respect of water supply, as confirmed in the SFI response, the applicant has indicated agreement to pay for an extension of the watermain in Vicar Street to the hotel entrance for a distance of c.35m as identified as necessary by Irish Water. In the event of a grant of permission, I recommend that this site-specific item should be conditioned accordingly.
- 7.6.25. No other capacity issues for public infrastructure utilities have been raised, and flooding is not an issue for consideration.

## **7.7. Appropriate Assessment Screening**

### Compliance with Article 6(3) of the EU Habitats Directive

- 7.7.1. The requirements of Article 6(3) of the EU Habitats Directive as relate to screening the need for appropriate assessment of a project under section 177U, part XAB of the Planning and Development Act 2000, as amended, are considered fully in this section.

### Background on the Application

- 7.7.2. The applicant has not submitted an appropriate assessment screening report or a Natura Impact Statement for the proposed development with this appeal case. Therefore, this screening assessment has been carried *de-novo*.

### Screening the need for Appropriate Assessment

- 7.7.3. The first test of Article 6(3) is to establish if the project could result in likely significant effects to a European site. This is considered Stage 1 of the appropriate assessment process, that being, screening. The screening stage is intended to be a preliminary examination. If the possibility of significant effects cannot be excluded on the basis of objective information, without extensive investigation or the application of mitigation, a plan or project should be considered to have a likely significant effect and appropriate assessment carried out.

### Test of Likely Significant Effects

- 7.7.4. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).
- 7.7.5. The project is examined in relation to any possible interaction with European sites designated SACs and/ or SPAs to assess whether it may give rise to significant effects on any European Site.

#### Brief Description of the Development

- 7.7.6. The project at Vicar Street and St. Canice's Place in Kilkenny city centre, is an extension to an existing hotel operation, which is located c. 118m to the west of the River Nore and c.61m to the north of the Breagagh River, a tributary of the River Nore.
- 7.7.7. The site is a 'T' shaped configuration, with distinct northern and southern portions. The northern portion of the site comprises the existing hotel building and associated surface car parking area, while the southern portion comprises hard surface areas with storage of various materials associated with the Smithwick's yard area. The southern portion of the site traverses some boundary walls adjacent to which is some incidental vegetation. The southern portion is part of a larger undeveloped landbank under the control of the Council, which extends in an easterly direction to the River Nore.
- 7.7.8. The site comprises developed/ disturbed lands only, with no greenfield lands. There are no watercourses, hedgerows, significant tree groupings, habitats identified in the site, or in the landbanks to the east adjacent to the River Nore, or the south adjacent to the Breagagh River.
- 7.7.9. The proposed development (as revised through Significant Further Information (SFI)) comprises the following the key elements:
- Hotel extension over four storeys measuring c.2,171 sqm, accommodating an additional 66 rooms, within a site measuring 0.229 ha;
  - Ground floor café with terrace, and set down area on St. Canice's Place;
  - Surface car parking, bicycle parking, utility and refuse facilities;

- Decommissioning and site clearance works of the existing ESB substation and refuse store within the easternmost part of the northern portion of the site;
- Water services infrastructure installed within the site allowing the connection of the proposed development into the existing public infrastructure systems located in Vicar Street and/ or St. Canice's Place; and
- Specifically for water supply, an extension of a public watermain in Vicar Street for a distance of c. 35m to the proposed hotel entrance on St. Canice's Place.

7.7.10. Taking account of the characteristics of the proposed development in terms of its location and scale of works, the following are considered for examination in terms of implications for likely significant effects on European sites:

- Construction and/ or operation related surface water and wastewater pollution.

#### Submissions and Observations

7.7.11. Raised in third party submissions received on the application and in the observation on the appeal is the proximity of the proposed development to the River Nore and the absence of a Screening Report for appropriate assessment and/ or a Natura Impact Statement for the proposal. The observer refers to other development proposals located to the south of the site for which Natura Impact Statements have been prepared. The observer expresses concern over the cumulative impacts on habitats and water quality of the River Nore European Sites.

7.7.12. The Irish Water report indicates no objection to proposals to connect to the wastewater and water supply infrastructure (the latter including an extension of the watermain in the public roads). There are no distinct planning authority Water Services or Parks reports, nor do the submissions from the prescribed bodies refer to appropriate assessment related issues.

#### European Sites

7.7.13. The application site is not located in or immediately adjacent to a European Site. There are two European Sites located in close proximity to the appeal site associated with the River Nore. The River Nore has a SPA designation, the River Nore SPA (004233) and a SAC designation, the River Barrow and River Nore SAC



(002162), which overlap in parts along the river's length. As measured from the closest corners of the site, the River Nore SPA is 118m to the east, and the River Barrow and River Nore SAC is 140m to the east. The Breaghagh River, a tributary of the River Nore, is located 61m to the south of the site.

- 7.7.14. The River Nore SPA has a single qualifying interest, the kingfisher bird, the conservation objective for which is to maintain or restore its favourable conservation condition. The River Barrow and River Nore SAC consists of the catchments of these two rivers passing through eight counties from the Slieve Bloom mountains in Offaly to the estuary at Creaden (Creadaun) Head in Waterford. In the Conservation Objectives report for the SAC, the National Parks and Wildlife Service (NPWS) identifies 22 qualifying interests, comprising 11 habitats and 11 species with varying objectives for their conservation condition.
- 7.7.15. In my opinion, the European Sites of relevance for consideration in this screening for appropriate assessment are the two European Sites associated with the River Nore. There are no other European Sites that have been considered as being potentially within the zone of influence due to the nature and scale of the proposed development, the distance from, and absence of a connection to the appeal site.
- 7.7.16. A summary of the two European sites including their conservation objectives and qualifying interests, the nature of the connection (source-pathway-receptor), and possibility of likely significant effects arising are presented in Table 1 below.

#### Identification of Likely Effects

- 7.7.17. As outlined above, the site does not have any habitats that are associated with species or habitats for which SACs or SPAs are designated. As such, there is no likelihood of effect on the European Sites through habitat loss/ fragmentation or habitat disturbance/ species disturbance. Therefore, it would be due to construction and/ or operation related surface water and wastewater pollution that implications for likely significant effects on European sites may arise.
- 7.7.18. However, from my site inspection and a review of available sources, there is no watercourse at the site or in the adjacent landbank to the east which could serve as a hydrological connection between the proposed development and the River Nore. Similarly, there is no watercourse at the site or in the adjacent landbank to the south which could serve as a hydrological connection between the proposed development

and the Breagh River which in turn would connect to the River Nore. That being, there is no watercourse that could serve as hydrological connection through which surface water and/ or wastewater pollution could effect the European Sites' conservation objectives.

7.7.19. Once operational, the proposed development is to be served by existing water services infrastructure, with wastewater and surface water discharging to the piped drainage systems located in the adjacent Vicar Street and/ or St. Canice's Place. For the construction phase of the proposed development, applying the precautionary principle, there exists the potential for pollution of groundwater and surface water environments at the site. However, having regard to the absence of any watercourse and the relative distances involved to the Breagh River and the River Nore, the likelihood of effect on the European Sites and their conservation objectives is negligible.

7.7.20. In respect of potential for in-combination impacts, I note that recent developments have been permitted in the vicinity of the site (see the planning history in Section 4.0 of this report above) for which Natura Impact Statements have been prepared and which have been subject to surface water drainage and wastewater treatment requirements through planning conditions. Similarly, plans have been prepared incorporating the area (the Kilkenny City and Environs Development Plan, 2014-2020 as varied, and the Abbey Quarter Masterplan 2015) for which Natura Impact Statements have been prepared. However, as it is considered that no likely significant effects will arise from the proposed development, therefore, logically by association, significant effects will not arise as a result of any in-combination effects with these individual planning applications or plans.

#### Mitigation Measures

7.7.21. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

#### Screening Determination

7.7.22. The project has been considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out screening for appropriate assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give

rise to significant effects on the European Sites in view of the Sites' conservation objectives and qualifying interests, and that a Stage 2 appropriate assessment, and submission of a Natura Impact Statement, is not therefore required.

**Table 1: Summary of Screening Matrix**

<b>European Site (code)</b>  <b>Conservation Objectives and Qualifying Interests</b>	<b>Distance from Devt (m)/ Connection (source-pathway- receptor)</b>	<b>Likely Significant Effect</b>	<b>Screening Conclusion</b>
<u><b>River Nore SPA (004233)</b></u>  To <b>maintain</b> or <b>restore</b> the favourable conservation condition of the <b>species</b> – Kingfisher.	118m  No connection	None arising as no connection	Screened out for need for AA
<u><b>River Barrow and River Nore SAC (002162)</b></u>  To <b>maintain</b> the favourable conservation condition of the following <b>species</b> – Desmoulin's whorl snail; White-clawed crayfish; and Killarney fern.	140m  No connection	None arising as no connection	Screened out for need for AA

<p>To <b>restore</b> the favourable conservation condition of the following <b>species</b></p> <ul style="list-style-type: none"> <li>– Sea lamprey;</li> <li>Brook lamprey;</li> <li>River lamprey;</li> <li>Twaite shad;</li> <li>Atlantic salmon;</li> <li>Otter; and Nore freshwater pearl mussel.</li> </ul> <p>Conservation objective <b>under review</b> for the <b>species</b> – Freshwater pearl mussel.</p> <p>To <b>maintain</b> the favourable conservation condition of the following <b>habitats</b></p> <ul style="list-style-type: none"> <li>– Estuaries;</li> <li>Mudflats and sandflats not covered by sea water at low tide;</li> <li>Salicornia and other annuals colonizing mud</li> </ul>			
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<p>and sand; Water courses 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; and Petrifying springs with tufa formation.</p> <p>To <b>restore</b> the favourable conservation condition of the following <b>habitats</b></p> <ul style="list-style-type: none"> <li>– Atlantic salt meadows;</li> <li>Mediterranean salt meadows; Old sessile oak woods with Ilex and Blechnum in the British Isles; and</li> <li>Alluvial forests with</li> </ul>			
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<p>Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae).</p>			
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## 8.0 Recommendation

8.1. Having regard to the above, it is recommended that permission be granted based on the following reasons and considerations, and subject to the attached conditions:

## 9.0 Reasons and Considerations

9.1. Having regard to the land use zoning objectives of the site in the Kilkenny City and Environs Development Plan 2014-2020, as varied, the existing hotel use on the site, to the nature and pattern of development in the area, and to the design and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would constitute an appropriate land use at this location, and would comply with the relevant provisions of the Kilkenny City and Environs Development Plan 2014-2020, as varied, of the Regional Spatial and Economic Strategy for the Southern Region, 2020-2032 and of the National Planning Framework. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

<p>1.</p>	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the significant further information plans and particulars submitted on the 23<sup>rd</sup> day of October 2020, except as may otherwise be required in order to</p>
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	<p>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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>Details of the materials, colours and textures of all the external finishes to the proposed development shall be as submitted with the application, unless otherwise agreed in writing with the planning authority/ An Bord Pleanála prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
3.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
4.	<p>(a) Prior to commencement of development, the developer shall enter into water and/ or wastewater connection agreement(s) with Irish Water.</p> <p>(b) As part of the connection agreement with Irish Water, the developer shall extend the existing watermain in Vicar Street for a required distance as necessary to the proposed hotel entrance, implement any measures required by Irish Water to protect and ensure the integrity of the watermain, and bear the costs for same.</p> <p><b>Reason:</b> In the interest of public health.</p>
5.	<p>The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -</p>

	<p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and</p> <p>(b) undertake in full the mitigation measures included in Section 8.2 of the Archaeological Assessment Report submitted as significant further information on the 23<sup>rd</sup> day of October 2020.</p> <p><b>Reason:</b> In order to conserve the archaeological heritage of the site and to secure the preservation (in-situ and/ or by record) and protection of any remains that may exist within the site.</p>
6.	<p>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 noise management measures and off-site disposal of construction/ demolition waste.</p> <p><b>Reason:</b> In the interest of public safety and amenity.</p>
7.	<p>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. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery, and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.</p> <p><b>Reason:</b> In the interest of sustainable waste management.</p>
8.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400</p>



	<p>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.</p> <p><b>Reason:</b> In order to safeguard the amenities of properties in the vicinity.</p>
9.	<p>No additional development, to that indicated and hereby permitted within the proposed plant enclosure area, shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.</p> <p><b>Reason:</b> To protect the visual amenities of the area.</p>
10.	<p>Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority the following:</p> <p>(a) a Construction Traffic Management Plan ;</p> <p>(b) a Mobility Management Plan; and</p> <p>(c) final design, construction, and operation details of the set down area inclusive of footpath and cycle path.</p> <p><b>Reason:</b> In the interest of amenity, sustainable transportation, and traffic and pedestrian safety.</p>
11.	<p>(a) The car and bicycle parking spaces shall be provided as indicated in the plans and particulars submitted as significant further information on the 23<sup>rd</sup> day of October 2020, unless otherwise agreed with the planning authority; and</p> <p>(b) The car and bicycle parking spaces shall be clearly demarcated and reserved solely to serve the proposed development, and shall not be sold or sublet for any other purpose.</p> <p><b>Reason:</b> In the interest of orderly development.</p>

12.	<p>(a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location shall not exceed:</p> <p>(i) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.</p> <p>(ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.</p> <p>(b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.</p> <p><b>Reason:</b> To protect the amenities of property in the vicinity of the site.</p>
13.	<p>Measures for the control of air (including light overspill) and odour emissions from the premises (including the courtyard, café and terrace area) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of public health and to protect the amenities of the area.</p>
14.	<p>A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:-</p> <p>(a) details of all proposed hard surface finishes, including samples of proposed paving slabs for the terrace area, materials for footpaths, kerbing and road surfaces within the development;</p> <p>(b) proposed locations of trees, other landscape planting (including the green wall planting on the eastern gable elevation) in the development, including details of proposed species and settings;</p> <p>(c) details of proposed street furniture, including bollards, lighting fixtures and seating;</p> <p>(d) details of proposed boundary treatments at the perimeter of the site, including wall/ fence heights, materials and finishes.</p>

	<p>The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.</p> <p>If any tree or plant dies or is otherwise lost within a period of five years, it shall be replaced with a tree or plant of the same species, variety and size within the planting season following such loss.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
15.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. All existing over ground cables shall be relocated underground as part of the site development works.</p> <p><b>Reason:</b> In the interests of visual amenity.</p>
16.	<p>A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p><b>Reason:</b> To provide for the appropriate management of waste, and in particular recyclable materials, in the interest of protecting the environment.</p>
17.	<p>No signage, advertising structures/ advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.</p> <p><b>Reason:</b> To protect the visual amenities of the area.</p>
18.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting 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</p>

<p>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.</p> <p><b>Reason:</b> 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.</p>
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Phillippa Joyce  
Senior Planning Inspector

13<sup>th</sup> August 2021