



An
Bord
Pleanála

Inspector's Report

ABP-309582-21

Development

Development of a new 23 bedroom hotel, demolition of extensions to rear of properties at numbers 19 and 20 John Street, demolition of out building and former garage to the rear of the property at Barrack Lane, change of use of existing dwellings at numbers 19 and 20 John Street to hotel use, including demolition of internal first and second floors and insertion of a new first floor two-storey extension to rear of numbers 19 and 20 John Street, additional separate three storey hotel pavilion building to the rear of the site along Barrack Lane, internal courtyards, rooftop plant enclosure, boundary treatments and all associated site development works, all within the John Steet Architectural Conservation Area.

Location

Numbers 19 and 20 Lower John Street and Horse Barrack Lane, Kilkenny.

Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	19/976
Applicant(s)	Kevin Moore Building Contractor Ltd
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party V. Grant
Appellant(s)	Mr J and Mrs O Bergin
Observer(s)	None
Date of Site Inspection	10th December 2021
Inspector	Fergal O'Bric

1.0 Site Location and Description

- 1.1. The site is centrally located in the centre of Kilkenny city, at numbers 19 and 20 and fronting onto Lower John Street and part of the side (north-eastern) section of the site with frontage onto Barrack Lane, a pedestrian lane that links John Street with the recently restored Evans House, which houses the Butler Gallery. The appeal site comprises part of a two and a half-storey terrace of buildings and there are several commercial and civic uses neighbouring the site, including number 21 Lower John Street which is a café at ground floor level and has residential uses over, Langton's hotel, bar, and restaurant premises on the opposite side of Lower John Street and the offices of Kilkenny County Council which are located south-east of the appeal site, on the opposite side of John Street.
- 1.2. The appeal site comprises two vacant two and a half storey residential properties with extensions to the rear and outbuildings and stores within the long rear garden space. The buildings have a smooth plaster finish and are painted a grey colour. The main access to the properties is off John Street with access to the rear/side of the properties from Barrack Lane.
- 1.3. The appeal site is located within the John Street Architectural Conservation Area (ACA), and within the zone of archaeological potential for the city as per KK019-026-historic town. There are a number of recorded monuments in proximity to the site, KK019-026071-a bridge, KK019-026024 a house and KK019-026068 St Johns Priory.

2.0 Proposed Development

- 2.1. The application is for permission for a change of use of two vacant residential properties to a 23-bedroom hotel premises. Demolition of the rear extensions of numbers 19 and 20 is proposed, demolition of internal first and second floors, a new first floor two-storey extension to the rear of numbers 19 and 20, additional three storey separate hotel pavilion at the rear of the site along Barrack Lane, internal courtyards, boundary treatments and associated site development works all within the John Street Architectural Conservation Area.

- 2.2. The overall site has a stated area of 679 square metres (sq., m.). The existing buildings on site have a floor area of 423.1 sq. m, with 408. 2 sq. m to be demolished. 53.7 sq. m would be retained and the new development on site would comprise 900.2 sq. m. with a stated maximum ridge height of 12.58 metres.
- 2.3. A three-month extension of time for the submission of the further information response was accepted by the Planning Authority on the 13th day of September 2020. Further information was submitted on the 6th day of January 2021 in relation to, inter alia, bin storage; Arrangements for deliveries, maintenance and operation of the development; Location of laundry storage and room cleaning storage for the development; Proposals for upgrade/replacement of public lighting along Barrack Lane; Revised elevational proposals onto Barack Lane; Provision for the retention of the Terrazzo flooring within number 20; Revised fenestration detailing fronting onto John Street; Details of colour and type of stone finish for John Street façade: Archaeological testing to be conducted and an Archaeological Report submitted to the Planning Authority: A revised Architectural Impact Heritage Assessment; A revised streetscape images: A structural Engineers report detailing how adjoining properties within the John Street Terrace would be safeguarded structurally during the works and to submit a response to the issues received within the two submissions received from neighbouring property owners.

3.0 Planning Authority Decision

3.1. Decision

Planning permission was granted subject to 11 conditions. The pertinent conditions are as follows:

Condition number 2 Financial contributions.

Condition number 3: Hours of Construction

Condition number 8: Irish Water pre-connection agreement.

Condition number 9(a): Submit a Construction Traffic and Management Plan

Condition number 9(b): Submit a Mobility Management Plan

Condition number 10(a): All mitigation measures outlined within the Archaeological Impact Heritage Assessment shall be adhered to in full.

Condition number 10(c) and (d): Details of sash windows for the John Street elevation and Bangor Blue slate for the re-roofing of the original buildings on site shall be submitted.

3.2. Planning Authority Reports

3.2.1. *Planning Reports*

The two Planning Officer's reports form the basis of the Planning Authority decision. The latter report considers that, having regard to the provisions of the Kilkenny City & Environs Development Plan 2014-2020, the general business zoning objective pertaining to the site, the city centre location, the development, subject to conditions, would not seriously injure the architectural heritage or visual amenities of the Architectural Conservation Area (ACA) and would not detract from the neighbouring protected structures nor adversely impact upon the amenities of the area.

3.2.2. *Other Technical Reports*

Conservation Officer – No objection, subject to conditions on foot of the further information response.

Fire Officer: No objections, subject to conditions.

Roads Department: No objections, subject to conditions.

3.3. Prescribed Bodies

Irish Water – No objections, subject to conditions.

An Taisce: Requested that further information be sought regarding the treatment of the façade onto John Street, that the development is welcome especially with the proposals to consolidate the mill race wall and retain sections of the random rubble wall along Barrack Lane and the lack of on-site car parking is also welcomed.

3.4. Third Party Observations

Two submissions were received from neighbouring property owners: James and Orla Bergin, who own Soldiers House. A three-storey dwelling north-east of the appeal site with access off Barrack Lane, and Susan and Conor Walsh who own the property a three-storey red bricked commercial and residential property south-west of the appeal site. This property is set back by approximately 4.5 metres from the appeal site. The issues raised within the submissions are largely covered within the grounds of appeal with the exception of the following:

Residential Amenity:

- Overlooking and overshadowing of neighbouring residential properties would arise as a result of the development.
- Noise, traffic, waste management and maintenance management impacts would arise as a result of the development proposals.
- The outdoor areas should not be used for the serving or consumption of alcohol.
- The external lighting should only illuminate the property within the appeal site.
- Would there be access to the flat roofed link section between the existing street facing structures and the proposed hotel pavilion?
- What uses are proposed for the roof area, roof plant or a smoking area?
- Construction hours should be limited to between 8.30am and 6pm to have regard to adjacent residents' amenities.
- An independent monitoring expert should be hired for the duration of the works to ensure that vibration is maintained within best practice parameters.

Built and Natural Heritage:

- The development would adversely impact upon the archaeological and architectural heritage of the area.
- Archaeological investigations on site could have an adverse structural impact upon the Bergin property.
- The original old stone wall along the mill stream boundary needs to be restored and repaired with no openings onto the laneway.

Design and Layout:

- Rainwater goods are not addressed in the planning documentation nor is their future maintenance and management.
- No provision for waste storage on site is included.

Other Issues:

- Site clearance works have already been carried out on site.

4.0 Planning History

Subject Site

Planning Authority reference number P14/0990027, in 2014, planning permission was granted for the demolition of two semi-derelict single storey sheds to the rear of the existing dwellings and the renovation of a semi-derelict garage/shed to provide for a two bedroomed single storey dwelling and attached garage with access off Barrack Lane. This permission has not been enacted.

5.0 Policy Context

5.1. **Kilkenny City and County Development Plan, 2021-2027**

- 5.1.1. The site is in an area zoned 'General Business' which has an objective 'to provide for general development'. A restaurant is cited as a permissible use under Section 3.4.5.4 (General Business) of the Plan.
- 5.1.2. Volume two of the Development Plan pertains to development in the city area.
- 5.1.3. Section 2.9.18 of the Plan pertains to public realm improvements and objective C2K is "To upgrade the public realm on Barrack Lane linking to John Street".
- 5.1.4. Section 4.5.4 of the Plan pertains to the John Street Architectural Conservation Area (ACA) The structures are generally of two and three storeys and suitable proposals for the regeneration of buildings would be considered acceptable subject to suitable design and signage proposals. There are a number of relevant development

management considerations that should be taken on board when assessing proposals for development within the ACA and they relate to retaining the integrity of the town walls, that appropriate materials and signage proposals are presented

- 5.1.5. Section 5.3 of the Plan refers to RPO 176 seeks “attain sustainable compact settlements with the 10-Minute City/Town concept. This is supported within the Development Plan through the commissioning of a Local Transport Plan which supports the 10-minute city concept by ensuring increased safety, accessibility and permeability for pedestrians, cyclists, and development of public transport users.
- 5.1.6. Section 7.3 (Heritage – Built Heritage) and Section 7.4 (Architectural Heritage) of the Plan are relevant to the application. Protected structures are referred to in Section 7.4.4 (Record of Protected Structures) and the National Inventory of Architectural Heritage is referred to in Section 7.4.5. The appeal site is contained within John Street, the workshop footprint subject of the application is not included within the ACA boundary. (The site is within the zone of archaeological potential established around the Historic Town of Kilkenny RMP. No. KK019-026).

5.2. **Section 28 Ministerial Guidelines**

These guidelines are relevant to the planning application.

Architectural Heritage Protection Guidelines for Planning Authorities Department of arts, Heritage, and the Gaeltacht, 2011.

Urban Development and Building Height Guidelines for Planning Authorities, Department of Housing, Planning and Local Government, 2018 (as amended in 2020).

5.3. **National Planning Framework**

The relevant policies of the National Planning Framework which relate to creating high quality urban places and increasing residential densities in appropriate locations are set out below.

- Policy Objective 4: Attractive, liveable well-designed high-quality urban places.

- Policy Objective 6: Regenerate and rejuvenate cities.
- Policy Objective 11: Encourage more people and generate more jobs and activity within cities.

5.4. **Natural Heritage Designations**

The closest Natura 2000 sites are the River Nore SPA and River Barrow and River Nore SAC approx. 130 metres to the north.

5.5. **EIA Screening**

- 5.5.1. Having regard to the nature and scale of the proposed development within the confines of an urban city centre site which is zoned and fully serviced and to the nature of the receiving environment there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination.
- 5.5.2. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.5.3. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
 - Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use).
- 5.5.4. It is proposed to change the use of two residential units and outbuildings to a hotel use. The site has an overall area of 678 sq. m. The site is located in a business district and constitutes a brownfield site. The site area is therefore well below the applicable threshold of 2 ha or a built-up area and 20ha in the case of a site contiguous to the built-up area. The introduction of a commercial use will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the

site is not located within an area of landscape sensitivity and the proposed development is not likely to have a significant effect on any European Site (as discussed below in section 8.0 of my report) and there is no hydrological connection present such as would give rise to significant impact on nearby water courses (whether linked to any European site/or other). The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Kilkenny County Council, upon which its effects would be marginal.

5.5.5. Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site on lands that are governed by the general business zoning objective under the provisions of the Kilkenny County Development Plan, and the results of the strategic environmental assessment of the Kilkenny County 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 residential 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).

5.5.6. 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 (EIAR) for the proposed development was not necessary in this case.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted by Mr J Bergin and Mrs O Bergin who are the owners of a house at the northwest corner of Barrack Lane, on the opposite side of the lane to the appeal site. The main issues raised can be summarised as follows:

Design and Layout:

- A more sensitive and appropriate use for the site should be proposed for the appeal site.

Residential Amenity:

- The applicants have dismissed the issues of overshadowing/loss of daylight within their planning documentation and failed to address them.
- The applicants have stated that “overshadowing is not a reasonable basis for an objection for a three-storey development in a city centre location”, however it is without justification and is at odds with the development of a three-storey structure.
- One of the development management criteria set out within the Urban Development and Building Height Guidelines for Planning Authorities, 2018 is access to natural daylight and also have the provisions of the BRE Guidance in relation to daylight/sunlight been considered?
- The windows at all three levels within the appellants property are likely to experience overshadowing from the proposed development. Both of the

pitched roof areas within the proposed development combine to contribute to the overshadowing impact.

- The proposed three storey hotel development directly south of and across the narrow Barrack Lane will significantly reduce access to natural daylight within the appellants property, where all rooms, except for one are single aspect and south-west facing.
- The proposals would result in a significant reduction in the skylight component of natural daylight throughout the entire year leading to a significant and unacceptable diminution in the amenity of the appellants property.
- The shadow created by number 21 John Street in addition that the shadow created by the proposed development will result in most, if not all of Barrack Lane being overshadowed for significant periods during the Summer, before and after the Summer Solstice.
- The development proposal would adversely impact the value and amenity of the appellants property on Barrack Lane as well as adversely impacting upon the John Steet ACA.

Built Heritage:

- The appellants property, known as Soldier's House, has a regional rating within the National inventory of Architectural Heritage (NIAH), reference number 12000214. The NIAH describes the property as "A House representing an important component of the built heritage of Kilkenny with the architectural value of the composition".
- When assessing development management proposals within an ACA, Planning Authorities are required to have regard to the Architectural Heritage Protection Guidelines
- Objective 7M of the Development Plan is "To ensure the preservation of the special character of each ACA".
- The following guidance is provided within the updated Development Plan in relation to Development in an ACA "In this regard new development should be of a very high standard of design and should contribute to the visual enhancement of the area and respect the character of the ACA as set out in the

statement of character. New development should be appropriate in form and use to its corner, infill, or backland location. Established views to local landmarks should be maintained”.

- Section 3.10 of the Architectural Heritage Protection Guidelines, 2004 sets out the following criteria in terms of development proposals “It is preferable to minimise the visual impact of the proposed structure on its setting” and “the scale of new structures should be appropriate to the general scale of the area and not its biggest buildings”.
- The 2021 Development Plan refers to the significant contribution by the Augustinian Priory of St John the Evangelist to the character of the ACA. Ensuring the preservation of the special character of the ACA is a stated objective of the Development Plan.
- The proposed development will impact upon the local skyline when viewed from the junction of Maudlin Street with John Street and adversely impact upon the views of local landmark buildings including St Mary’s Church Bell Tower, St Mary’s cathedral Bell Tower and the Tholsal, not evident within the applicant’s streetscape images
- Figure 3 in the Design Intent Statement submitted by the applicants that the proposal ae not sensitive in scale to the surrounding buildings as required within the development management standards as per the Development Plan for the John Street ACA.
- The appeal site siding onto Barrack Lane offers a window to the skyline stretching from the Bell Tower of St Mary’s Medieval Mile Museums to the Bell Tower at St Mary’s Cathedral and these views should be maintained.

Other Issues:

- The appellants have invested heavily in their property on Barrack Lane in an area which has become an important link into the Butler Gallery.
- The funding that will be expended by the Local Authority and the planned public realm upgrade of Barrack Lane would be compromised by the proposed development

6.2. Applicant’s response to appeal submission

The applicants have issued a response to the third-party appeal. The main points made can be summarised as follows:

Design and Layout:

- The development has been designed to provide active frontage onto Barrack Lane, which adds to the animation and passive surveillance in this area.
- A more active street frontage to Barrack Lane would be provided with the outward facing café, some seating would enliven Barrack Lane as a pedestrian route and re-generate vacant properties in the city centre.
- The predominant building height within Kilkenny City is three storeys, with two storeys being the exception rather than the rule. Therefore, the three-storey pavilion structure to the rear would be consistent with the established scale and height of development within the city.
- The Urban Development and Building Height Guidelines (December 2020) indicate that discretion should be applied where it is desired and where a scheme meets wider planning objectives such as urban regeneration.
- Taken in conjunction with the regeneration and redevelopment of the Evans House/Butler Gallery and the new public realm along Barrack Lane into which the applicant was requested to integrate into (as part of the further information request), the proposals would contribute to regeneration in the city centre.
- The scheme provides for a sustainable level of development on the site and some discretion can be applied in terms of meeting performance standards.
- A courtyard open space and a retail/café unit will be provided onto the Barrack Lane elevation, the courtyard being directly opposite the appellants dwelling, and provide a greater sense of openness onto the lane.
- Fenestration detailing directly opposite the appellants dwelling have been modified as part of the further information response, with only narrow slit windows serving ensembles opposite the appellants' dwelling.
- The applicants have worked closely with the Planning Authority and the local public realm project liaison architect with regard to the network of lanes and streets in Kilkenny city centre. The development has been sensitively designed

to sit comfortably within its context and to enrich and enliven Barrack Lane as an important part of the Kilkenny tourism trail.

- The appellant's property is a three-storey structure over a basement level, and the proposed development would not exceed the height of the appellants dwelling.
- The site is set within a context of where there are several guest houses and hotels, it is considered that the proposals would not be out of character in the surrounding streetscape nor established uses within the town centre and ACA.
- The proposals would involve the refurbishment of buildings that front onto John Street.
- Frontage onto Barrack Lane would also be opened up
- The two houses fronting onto John Street would be altered from two storey plus dormer to two storeys to provide for a hotel reception and six suites.
- The design proposed is reminiscent of the medieval townhouse courtyard typology with a series of small courtyards between interlinked buildings, echoing the massing and form of Rothe House, a notable architectural feature within Kilkenny city.

Residential Amenity:

- The site layout Planning for Daylight and Sunlight guide sets out that some degree of overshadowing is to be expected within an urban context where it states "It must be borne in mind that nearly all structures will create areas of new shadow, and some degree of transient overshadowing of a space is to be expected, Guidelines should be interpreted flexibly since natural lighting is only one of many factors to be considered in site layout design".
- In general, the design meets the principles of the BRE guide and BS-8206-2 2008 and Government planning policy in terms of the need to develop sustainable, compact, and attractive cities and major towns.
- The southwestern elevation of the appellants dwelling house, which draws much natural light from the south-east and north-east where there is open aspect over the graveyard and church grounds. The ground floor rooms within

the appellant's property are dual aspect with access to alternative light sources other than from Barrack Lane.

- The protection of all amenities in central urban locations is not a reasonable basis for assessment and is not in accordance with Government guidance. The proposed development will make a positive contribution to the overall streetscape
- The applicants submitted details of shadow modelling and the potential impact of the development on the neighbouring residential property for the date of the Spring Equinox.
- The positive aspect and access to sunlight on several sides of the appellants dwelling will remain and not be interrupted. Therefore, the dwelling will, continue to enjoy a high standard of residential amenity within this urban context.

Built Heritage:

- The Planning Authority were satisfied that the proposals would not seriously injure the amenities of the ACA nor neighbouring properties and would enhance the streetscape onto John Street and Barrack Lane with the redevelopment of a vacant building and a derelict site to the rear within a city centre brownfield site.
- The development would not impede any of the long-distance views throughout the city centre. Google street View cameras are set at approximately 3 metres above ground level and therefore, would not accurately represent the views of pedestrians walking down a particular street.

Other Issues:

- The site is currently occupied by two dilapidated houses and outbuildings on an L-shaped site.
- Barrack Lane is to become the main access point into the Evans House, the home of the newly refurbished Butler gallery.

- The development would comprise a car-free small boutique style city centre hotel, a short distance from the railway station and transport hub for buses and taxis, including the town bus service.

6.3. Planning Authority Response

The main points made can be summarised as follows:

Principle of Development:

- The appeal site comprises two vacant houses in a state of disrepair, facing onto John Street, a main arterial route through the city.
- Kilkenny County Council have plans to refurbish Barrack Lane with the intention of the route becoming a pedestrian/cyclist priority area, with public lighting, street furniture, paving and signage being installed.
- Having regard to the hotel use being acceptable under the general business land use zoning objective, the opening up of a cul-de-sac on Barrack Lane to access the Butler Gallery to the west of the site, the opportunity the appeal site presents in terms of regenerating a vacant city centre property and having regard to the sensitive design and layout proposed which reflects the character in the area.
- The Planning Authority request that the Planning Authority's decision to grant planning permission be upheld.

Design and Layout:

- The applicants have modified the design onto Barrack Lane where fenestration has been removed and now smaller slit windows serving ensembles are proposed in order to afford the appellants greater privacy
- The development of the site would represent an improvement to the area, providing aesthetic enhancement to Barrack Lane and would bring about the regeneration of a vacant brownfield city centre site.
- The design proposed onto John Street will ensure a continuity of style with that of neighbouring buildings.

Built and Natural Heritage:

- The development proposals are supported by the Conservation Officer who is satisfied that the proposals will not detract from the cultural or historical surroundings, nor conflict with the conservation objectives of the John Street ACA.

Residential Amenity:

- The appeal site is located south of the appellants property, some degree of overshadowing is anticipated onto the front of the appellants dwelling. However, given the city centre location where a three-storey development is acceptable and consistent with the height of other buildings within the city centre, where three storey development is prevalent.

7.0 Assessment

- 7.1. At the time the Planning Authority made its planning decision on the 3rd day of February 2021, a general business zoning objective pertained to the appeal site. However, the Kilkenny City and County Development Plan (KDP) 2014-2020 has since been superseded by the Kilkenny City and County Development Plan (KDP) 2021-2027, operational since the 15th day of October 2021, where the zoning objective for the appeal site remains as general business.
- 7.2. The appeal refers to the proposed development submitted to the Planning Authority on the 8th day of January 2021, by way of further information. The following assessment focuses on that proposal with reference to the original development where appropriate. The main issues in this appeal relate to the principle of development, residential and visual amenity, built and natural heritage. Appropriate Assessment requirements are also considered. I am satisfied that issues relating to water services, traffic and car parking were addressed satisfactorily within the planning application and were not raised within the appeal/observations submitted to the Board. No other substantial planning issues arise. The main issues can be dealt with under the following headings:
- Zoning and Principle of Development
 - Residential and Visual Amenity
 - Built and Natural Heritage

- Other Issues
- Appropriate Assessment

7.3. **Zoning and Principle of Development**

- 7.3.1. The proposals would comprise of a change of use of two vacant dwelling units to a hotel use and the development of a hotel pavilion and courtyard areas to the rear as part of the hotel development. The site is in an area zoned 'General Business' in the Kilkenny City & Environs Development Plan 2021-2027 which has an objective 'to provide for general development'. Permissible uses include hotels. Therefore, I consider that the use is consistent with the zoning objective and the principle of the development is acceptable, subject to the detailed considerations below.
- 7.3.2. The Urban Development and Building Heights Guidelines outline the following in relation to building heights in town and city centres. "It is Government policy that building heights must be generally increased in appropriate urban locations. There is therefore a presumption in favour of buildings of increased height in our town/city cores and in other urban locations with good public transport accessibility". The proposed development is two and three storeys in height, incorporating courtyards to the rear and setbacks from Barrack Lane. I have no objection in principle to the proposed height and consider the building heights appropriate on this site, having regard to the context set out above and subject to the issues of amenity and heritage being addressed satisfactorily.

7.4. **Residential and Visual Amenity**

- 7.4.1. Impact on the amenity of neighbouring residents of the Soldier's House on the opposite ((north-eastern) side of Barrack Lane is referenced within the grounds of appeal. Issues of overshadowing and overlooking are specifically referenced. A shadow impact assessment including analysis was submitted by the applicants as part of their appeal response. The shadow analysis is based on shadows that would be experienced during the Spring Equinox on the 20th day of March. The analyses sets out that the south-western elevation of the Soldiers House, which faces onto Barrack Lane would be in shadow at 9am, however, the south-eastern elevation with an above ground floor bay window remains completely in sunshine at this time. This is the situation at present, with no redevelopment of the appeal site. At 12 midday,

the analysis sets out that no window within the appellants property is affected by shadow and no effect arises from the proposed development. The south-eastern elevation of the appellants property would experience full access to daylight at this stage of the day. This is the case at present with no redevelopment of the appeal site. By 3pm, much of the south-eastern elevation (except for the high-level bay window) and much of the south-western elevations are in shadow, and between 3pm and 6pm this situation improves whereby the extent of the dwelling in shadow is reduced, with half of the south-western elevation in shadow and the north-western elevation benefitting from the evening sunlight until sunset. I would concur with the findings of the shadow assessment.

7.4.2. The separation distance from the nearest part of the appeal site to the nearest part of the appellants dwelling is approximately 5 metres. I note that windows on three elevations of the appellants property, namely the north-western, south-eastern, and north-eastern elevation are not. and would not be materially or adversely impacted upon by reason of overshadowing from the proposed development. The south-eastern and eastern elevations are open to the graveyard and church grounds of St Johns Priory and therefore, not adversely impacted by shadow. I acknowledge and accept that the proposed development would impact upon the appellants property by virtue of elements of overshadowing at certain times throughout the day. However, by virtue of the separation distances and the orientation of the sun, the impact from overshadowing would not be so adverse as to warrant a refusal of planning permission. I am satisfied that the proposed development would not have any excessive overshadowing impact on neighbouring properties or their associated amenity spaces. Therefore, I consider the potential impact to be acceptable.

7.4.3. In relation to overshadowing, BRE guidelines state that an acceptable condition is where external amenity areas retain a minimum of 2 hours of sunlight over 50% of the area on the 21st day of March. Overall, I acknowledge that the proposed development would not meet BRE targets in all instances, namely with regard to some of the elevations of the appellants being overshadowed at certain times of the day by the proposed development during the Spring Equinox. However, this is the situation with the current site as it stands, being undeveloped to its rear. I do not consider there to be significant impact upon neighbouring residents' daylight and

sunlight as a result of the current proposals. The level of impact is considered to be acceptable. In my opinion, and based upon the analysis presented, the proposed development would not significantly alter daylight, sunlight, or overshadowing impacts from neighbouring residential properties, and this is considered acceptable. I am satisfied that the proposed development would not unduly overshadow surrounding amenity spaces, over and above the current situation.

7.4.4. The issue of overlooking and impacts on privacy has been raised in the appeal submission received. I note the separation distance from the appeal site to the Soldiers dwellings is approximately 5 metres, across the width of Barrack Lane. The applicants were requested as part of the further information response to amend their design proposals having regard to the need to respect the privacy of the occupants of the neighbouring Soldiers House. The applicants amended their proposals and submitted a Design Statement, whereby a more traditional form, with two pitched roof gables is proposed within the rear extension element. Fewer windows are proposed within the eastern elevation facing onto Barrack Lane and the windows proposed take advantage of views over St Johns Priory. The windows on this elevation would incorporate a shroud type angled feature on the window heads and on the side of the rear extension windows nearest Barrack Lane to minimise overlooking of neighbouring properties and provide for views over the internal courtyard areas within the appeal site. The second gable portion facing onto Barrack Lane, that nearest the appellants property provides for fewer windows facing onto Barrack Lane and smaller slit type vertical fenestration detailing serving ensuite bathrooms. A courtyard area is to be developed directly opposite the Soldier's House. I am satisfied that opaque glazing could be inserted within these window features which would obviate any potential for overlooking and respect the amenities of the neighbouring residents. This is a matter that can be addressed by means of an appropriate planning condition. Splayed bay windows are proposed to the rear of the pavilion extension to reduce the impact of undue overlooking of neighbouring properties.

7.4.5. Given the locational context of the site, the orientation of existing and proposed development, together with the design rationale proposed as set out within Section 3 of the Design Statement, which includes for setbacks and appropriate separation

distances, I consider that the issue of overlooking would not be so great as to warrant a refusal of permission. Given the urban location of the site, a certain degree of overlooking is to be anticipated. It is also anticipated that neighbours would see other development from their property. I am satisfied that impacts on privacy would not be so great as to warrant a refusal of permission.

- 7.4.6. In conclusion, the appeal site is located within an urban serviced area, the overall height, scale, and massing of development reflects the established character of this area, this is apparent from the Design Statement where montages illustrate the proposed development in context of the neighbouring context and the Site sections submitted as part of the planning documentation. I am satisfied that the amenities of neighbouring properties would be respected and that the proposals accord with local and national planning the policies and objectives in terms of regeneration and rejuvenation of town and city centre brownfield sites.

7.5. Built and natural Heritage

- 7.5.1. The appeal site is located within the John Street ACA. The appellants property, located north-east of the appeal site is included on the National Inventory of Architectural Heritage. The applicants submitted an Architectural Impact Heritage Assessment, prepared by a Conservation Architect, in which the historical context of the area and the appeal site are set out, a description of the existing buildings on site, their architectural significance, a description of the impact of the proposed development and proposed mitigation measures to be incorporated within the development works.
- 7.5.2. The Planning Authority raised some issues in relation to the original design and layout as submitted in terms of its impact upon the John Street ACA and upon the local streetscape and the neighbouring residential property, Soldier's House on the opposite (eastern) side of Barrack Lane. Further information was sought, inter alia, for detail of, how the development may impact on the protected structure and clarity on any ground works along Barrack Lane, and how these works would integrate with the public realm works proposed to be completed providing for improved connectivity between John Street and the Evans House/Butler Gallery, northeast of the appeal site along the route of Barrack Lane. The response included revised design

proposals providing for a more active street level frontage onto Barrack Lane, including provision for a retail/café unit and a courtyard area and seating onto Barrack Lane. The response provides for a gable ended structures facing onto Barrack lane, with linked glazing and courtyard areas between the structures facing onto John Street and the new rear pavilion extensions. The rear extensions represent a more contemporary style building to the rear of the more traditional two storey buildings fronting onto John Street. The applicants set out that there would be no adverse impact upon the fabric of the mill race wall, which in fact as part of the mitigation measures proposed would be conserved as part of the redevelopment proposals. These proposals, specifically regarding the conservation of the mill race wall were considered acceptable by the Planning Authority, the Conservation Officer and by An Taisce.

- 7.5.3. In terms of the Architectural Heritage Protection Guidelines (SAHG), 2004, Section 7 sets out conservation principles that should be incorporated within re-development of architectural heritage. Among the principles set out are that structures be brought back into use, or to keep buildings in use, that expert conservation advice be sought and used and use of appropriate materials and repairing rather than replacing. I am satisfied that the applicants in this instance have incorporated these conservation principles within their proposals and have liaised with the Local Authority, including the Conservation Officer in developing their proposals.
- 7.5.4. In terms of archaeology, the appellants have raised issues as regards the impact of the proposed development upon the archaeological heritage of the area. The appeal site is located within a zone of archaeological potential, reference number KK019-026-a historic town and the east wall is of the 13th century millrace KK019-026077. The applicants submitted an Archaeological Impact Heritage Assessment as part of their planning documentation.
- 7.5.5. Archaeological test excavations were undertaken on the appeal site in 2017 and again in 2019. The archaeological excavations conducted within the appeal site “provide evidence that the site contains extensive stratified archaeological deposits, features and structures, as well as archaeological objects of medieval and post-medieval date. There is a millrace wall along the eastern boundary of the site, thought previously to have formed part of the western boundary of St Johns Priority.

No human remains were discovered within the excavations, however remains of an old well, a house, pit and yard surfaces were discovered.

- 7.5.6. The archaeologists recommended that the development maximise the preservation in situ of archaeological materials on site. All archaeological methodology for the excavations shall be agreed in advance with the National Monuments Service, by means of the submission of a method statement. A structured programme of archaeological monitoring of sub-surface groundworks should be undertaken under licence to the National Monuments Service. The archaeologist also recommended that pre-development buildings archaeology recording should be taken of the standing historic walls. A methodology for the conservation of the walls shall be agreed in advance of works with the national Monuments Service.
- 7.5.7. On Balance, I consider that the proposals will have a positive impact upon the street frontage of John Street in that two vacant structures will be brought back into a commercial use and the traditional architectural style proposed respects the character of the ACA as set out within Section 4.5.4 of the Development Plan. I am also satisfied that the more contemporary rear extensions will replace derelict and dilapidated buildings and bring active frontage onto Barrack Lane, now identified by the Local Authority and An Taisce as the main entrance point to the Butler Gallery, an important pedestrian and tourism route within the city. I am satisfied that the extensions and alterations will have a significant positive impact on the setting or character of the John Street ACA and the neighbouring protected structures, including St John's Priory and the Evans House/Butler Gallery.

7.6. Other Issues

- 7.6.1. I note the concerns raised in the grounds of appeal in respect of the devaluation of neighbouring property. However, having regard to the assessment and conclusion set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.
- 7.6.2. I note that there are discrepancies in terms of details of existing floor areas, area to be demolished and retained. I would like to bring to the Boards attention that the existing floor area is stated to be 423.1 sq m and 408.2 sq

m is to be demolished which would leave a balance of approximately 15 sq m to be retained. The applicants state that they are retaining 53.7 sq m. The floor area of the proposed development is stated to be 900m sq m and this corresponds with the floor plans submitted as part of the planning documentation.

8.0 Appropriate Assessment

8.1. Having regard to the nature and scale of the development and to the nature of the receiving environment, namely an urban and fully serviced location with no hydrological pathway to any European site, no appropriate assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

I recommend that planning permission be granted.

10.0 Reasons and Considerations

Having regard to the provisions of the Kilkenny City and Environs Development Plan 2021-2027 and the nature and scale of the development, it is considered that, subject to compliance with the conditions as set out below, the development would be consistent with the provisions of the plan in terms of land use, would not have any adverse impact on the setting, character or fabric of the John Street Architectural Conservation Area nor the adjacent protected structures, and would not seriously injure the amenities of the area nor property in the vicinity. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further

plans and particulars submitted on the 8th day of January 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. All of the mitigation measure cited in Section 8 of the Archaeological Impact Assessment (final report) and Section 6 of the Architectural Heritage Impact Assessment submitted to the Planning Authority on the 8th day of January 2021 shall be implemented in full.

Reason: In the interest of the natural and built heritage of the area.

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

Reason: In the interest of public health.

4. The applicant or developer shall enter into a water and/or wastewater connection agreement(s) with Irish Water.

Reason: In the interest of public health.

5. A plan containing details for the management of waste, including the provision of facilities for the storage, separation, and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority within eight weeks of the date of grant of this planning application. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To ensure the provision of adequate refuse storage.

- 6 Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, 0800 to 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

- 7 Storage of materials shall not be permitted on the public road, laneway, or footpath

Reason: In the interest of pedestrian and traffic safety.

- 8 The construction of the development shall be managed in accordance with a Construction Traffic 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.

Reason: In the interests of clarity, orderly development and amenity.

- 9 Opaque glazing shall be inserted within the ensuite windows within the rear pavilion extension

Reason: In the interest of residential amenity.

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

Reason: In the interest of visual amenity.

- 11 Details of external signage shall be agreed in writing with the Planning Authority prior to the commencement of development.

Reason; In the interest of architectural heritage.

- 12 The developer shall facilitate the archaeological appraisal of the site and

shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary archaeological excavation) prior to commencement of construction works.

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

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site

- 13 The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development

Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

Fergal Ó Bric

Planning Inspectorate

25th February 2022