



An  
Bord  
Pleanála

## Inspector's Report ABP-311654-21

<b>Development</b>	Demolition of wholesale warehouse and construction of hotel and short-let apartments.
<b>Location</b>	Lower New St./Walkin St., Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	20930
<b>Applicant(s)</b>	Veridical Limited.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Joe Brennan.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	15 <sup>th</sup> of September 2022.
<b>Inspector</b>	Stephanie Farrington

## Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	5
3.3. Prescribed Bodies .....	9
3.4. Third Party Observations .....	10
4.0 Planning History.....	11
5.0 Policy Context.....	11
5.1. Development Plan.....	11
5.2. Natural Heritage Designations .....	15
5.3. EIA Screening .....	15
6.0 The Appeal .....	15
6.1. Grounds of Appeal .....	15
6.2. Applicant Response .....	17
6.3. Planning Authority Response .....	19
7.0 Assessment .....	20
8.0 Recommendation.....	37
9.0 Reasons and Considerations.....	38
10.0 Conditions .....	38

## **1.0 Site Location and Description**

- 1.1. The site, which has a stated area of 0.72ha, is located south-west of Kilkenny City Centre, along Walkin Street and Lower New Street. The site comprises a collection of stone warehouse buildings including a 2-storey warehouse which was formerly in use as a Cash and Carry for Smithwicks and surface car park. The boundaries of the site comprise high concrete block walls with steel gate access. Access to the site is provided via Lower New Street.
- 1.2. The site is adjoined by St. Kieran's College to the east and residential dwellings which front onto Walkin Street to the west.

## **2.0 Proposed Development**

- 2.1. The proposed development, as revised in response to Kilkenny County Council's request for further information, comprises demolition of existing structures on site and the construction of a mixed-use development comprising the following:
  - Hotel – 5 Storey (16.1m) 154 no. bedrooms.
  - Block A – 4 storey (12.88m) long-term apartment block accommodating 12 no. apartments (5 no. 1 bed units, 7 no. 2 bed units).
  - Block B – 4 storey (12.5m) short term lease apartment block accommodating 18 no. apartments.
  - Block C – 4 storey short term let apartment block comprising 19 no. apartments.
- 2.2. The following documentation was submitted in support of the application:
  - Architectural and Engineering Drawings
  - Report on Archaeological Test Excavations
  - Traffic Impact Assessment
  - Mobility Management Plan
  - Lighting Impact Assessment Report
  - Preliminary BER/NZEB Report – Hotel and Short-let apartments

- BRIRL Output Document – Hotel and Short-let apartments
- Drainage Report

2.3. The following additional documentation was submitted in response to KCC’s request for further information:

- Further Information Response prepared by Bluett and O’ Donoghue including: Appendix 1: Design Statement, Appendix 2: Preliminary Construction Environmental Management Plan, Appendix 3: Grease Trap Details, Appendix 4: 3D Visualisations.
- Revised Architectural Drawings
- Revised Traffic Impact Assessment
- Stage 1 Road Safety Audit
- Daylight Access Impact Assessment

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. Kilkenny County Council issued a notification of decision to grant permission for the development in accordance with the following reasons and considerations:

*“Having regard to the provisions of the Kilkenny City and Environs Development Plan 2014-2020, to the “General Business” zoning objective pertaining to the area and to the regeneration of this brownfield site close to the city centre, it is considered that the proposed development on the subject site, subject to compliance with relevant planning conditions, would not seriously injure the visual or residential amenities of the surrounding area, would not adversely affect the character of the area and would therefore be in accordance with the proper planning and sustainable development of the area.”*

3.1.2. The planning authority’s decision is subject no 17 no. conditions. The following conditions are of note:

- Condition no. 5: outlines that the developer shall set up a Management Company/Companies to provide for the long-term operation, maintenance,

administration and management of the apartment block and short term let blocks within the scheme.

- Condition no. 16: relates to the registration of short let units annually. Short-term letting apartments shall not be used for long term rental without a separate planning permission.
- Condition no. 17: (a) outlines that the application shall consult with the Road Design Office prior to the commencement of development in relation to entrance layout, materials, finishes, services and proposals for junction improvements to Ormonde Street.

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

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

##### *Initial Planners Report (25/02/2021)*

The initial planner's report recommends a request for further information. The following provides a summary of the main points raised.

- The site is zoned for General Business purposes. Short term apartments would be permitted in principle as they would be a similar use to motels/hotels/guest houses which are all permitted uses on lands zoned for General Business purposes.
- The site is a prime development site within the City and the proposed plot ratio of 1 represents an under development of an urban infill site. The layout as proposed is dominated by a high proportion of hard surface/car parking area.
- In accordance with the requirements of Table 10.5 of the City and Environs Development Plan a total of 180 no. spaces would be required to serve the development. 101 car parking spaces are proposed which represents a shortfall of 79 no. spaces.
- The site has frontage to New Street and Walkin Street and there are opportunities to enhance the urban streetscape and enhance the visual

amenity of the area. The design as proposed is not seen as an enhancement to the streetscape of New Street or Walkin Street.

- A request for further information is recommended in relation to the following:
  - A revised design which optimises the sites potential and creates a proposal of high architectural merit which visually enhances the streetscape.
  - Revised entrance layout options for Lower New Street which take into consideration road improvements planned for the area, revised proposals for Walkin Street access.
  - Submission of a revised Traffic and Transport Assessment, a Stage 1/ 2 Road Safety Audit and a Preliminary Construction Management Plan and Waste Management Plan.
  - Details of drainage and soil excavation details.
  - Confirmation of internal and external waste storage proposals.
  - Response to issues raised within the submissions on the application.

Planners Report- Further Information (15/09/2021)

The FI planner's report provides a summary and assessment of the applicant's response to the FI request. The report recommends a grant of permission subject to conditions in accordance with the planning authority's decision. The following provides a summary of the key points raised:

- The report cross refers to the reports from the Environment Department and Roads Department which recommend a request for further information. The issues raised can be addressed via condition as the timeframe for seeking additional information had passed.
- The proposed scheme has been revised with an increase in density and plot ratio. The revised scheme includes the provision of 12 no. long term residential units.
- A small number of the apartments proposed within the short term let block are over the minimum floor areas for 1 bed apartments as set out within the

Apartment Guidelines 2020. It is unlikely that these units would be for long term residency especially where private and communal open space is lacking.

- The proposed long term apartment units comply with the requirements of the Apartment Guidelines 2020. No schedule of apartment sizes/layouts has been submitted in support of the FI response.
- Shadow diagrams are not submitted which illustrate the impact of the proposed height of the proposed buildings. The proposed hotel is located south/ south-west and south-east of existing buildings. The precedent of high buildings was previously accepted on the site under PA. Ref.: 07/990145.
- Due to timeframe restrictions, there is no scope to request a clarification of further information. It is recommended that permission is granted for the development subject to conditions.

### 3.2.2. Other Technical Reports

#### Road Design (23/02/21)

The initial road design report recommends a request for further information relating to a number of Items including:

- Submission of a revised TIA,
- Revised proposals which address compatibility of the proposed entrances with Ormonde Street traffic management and improvement works,
- Revised proposals for entrance on Lower New Street and Walkin which gives priority to pedestrians and cyclists and minimises impact on on-street parking,
- Submission of a Road Safety Audit.

#### Road Design (14/09/2021)

The following points are raised within the Road Design Report prepared in respect of the applicant's FI response:

- The report refers to the updated TIA and outlines that clarification is required in relation to trip assignment and RFC assumptions for the proposed entrance during the AM peak.

- Concerns are raised in relation to the shortfall in car parking and proposals for on-site management of car parking are unclear. The report refers to a general shortfall of parking within the vicinity of the site. A number of existing hotels rely on existing on street parking facilities and car parks. The proposal results in the loss of c.6 existing on street parking spaces at Walkin Street to accommodate the proposed entrance. No provision for the restoration of existing parking is made.
- The report refers to a number of hotel accommodation proposals in the City which are in the planning process which are not providing dedicated car parking facilities. Kilkenny County Council is currently preparing a Transport Plan for Kilkenny City which will deal with all modes of transport including car parking standards for development within the City. The proposal may be considered premature pending the publication of this study. The proposed development may be considered premature pending the publication of the Kilkenny City and Environs Development Plan and the Transport Plan for Kilkenny City.
- Dedicated parking should be provided in the vicinity of the long-term residential units.
- The applicant should be requested to address the significant shortfall in parking provision for the proposed development having regard to the Development Plan Standards and to take cognisance of the loss of any on street parking spaces arising from the provision of sightlines at the development entrance.
- The layout, materials and finishes of the proposed access points shall be agreed with the Road Design Office and the recommendations of the Road Safety Audit shall be incorporated within the site layout drawings.

#### Environment (24/02/2021)

The initial report received from the Environment Department recommends a request for further information in relation to submission of a Construction and Environmental Management Plan, submission of a Waste Management Plan, details of waste storage and proposals for a grease trap.



No objection to the proposal subject to conditions.

### 3.3. Prescribed Bodies

#### An Taisce

An Taisce submitted an observation on the application. The following provides a summary of the key points raised:

- The site is located close to Kilkenny City and has great potential to provide a liveable and likeable urban section.
- Walkin Street is neglected and has fallen into dereliction.
- The development has potential to provide an urban streetscape of high architectural quality. The proposed hotel has little architectural merit and would contribute nothing to the urban value of Kilkenny.
- The scale and fenestration is not complimentary to existing buildings in the area. The proposed materials including zinc covered metal dormers, extensive glazed areas and obscure glass balconies are out of character with existing development in the area.
- The development includes a vast area of car parking and tarmacadam leaving insufficient green planting.
- Many of the specifications for apartments and hotel rooms are minimum standards. The proposal seeks to increase the value of the site and doesn't contribute to the long-term vision for the area. The development could contribute to the environmental degradation of this area of the city.
- The development should contribute to a streetscape of high architectural quality. The submission questions the requirement for more hotels within Kilkenny City. An Taisce considers that this area of the city should be reimaged, and housing provided so that it can be occupied as a living space.

### 3.4. Third Party Observations

#### Submissions during Initial Consultation period

3 no. submissions were received during the initial statutory consultation period. The key points raised are summarised below:

- Concerns are raised in relation to the overbearing scale, height and poor quality of the design of the development.
- No attempt has been made to physically or visually integrate the development within the City Centre context. The layout is dominated by surface car parking.
- The proposed apartments do not meet standards of the Sustainable Urban Housing Guidelines for Apartments 2018.
- Impact of the proposal on adjoining properties including St Kieran's College and Brennan's Bottling Store in terms of overlooking and overshadowing. Concerns are raised in respect of elements of the proposal at shared boundaries.
- The proposed short-term accommodation use and low end hotel accommodation contributes little to the area.
- The submissions refer to information deficiencies within the application in relation to interface with existing properties, proposed boundary treatment and interface with the adjoining ACA and Protected Structures.
- Car parking shortfall and traffic impact.
- Concerns are raised in relation to the siting of the bin storage and associated disamenity impacts on adjoining premises.

#### FI response submissions

The applicant's FI response was deemed significant by the planning authority and revised public notices were submitted. 2 no. submissions were lodged in respect of the FI response. The following provides a summary of the points raised within the submissions and observations on the applicant's FI response:

- Concerns raised within the original submission remain. The revised proposals do not resolve the shortcomings of the overall concept and the proposal remains unsuitable for the backland site.

- The monolithic and bland elevational treatment does not respect the sites context in terms of design or materials. There is a dominance of surface level car parking within the scheme.
- The relationship to St Kieran's College, a Protected Structure, and properties to the rear of Walkin Street is unsatisfactory.
- No Housing Quality Assessment for the proposed apartments (internal standards and quality of private and communal open space) has been submitted in accordance with the requirements of the Apartment Guidelines 2020.
- Concerns are raised in respect of insufficient car parking to serve the development and the proposed removal of existing on-street car parking.

## 4.0 Planning History

- PA reference 07/990145. Permission granted in December 2008 for the demolition of buildings on site and construction of a 3 to 5 storey mixed-use development.
- PA Ref: 07/990003: Planning permission refused in March 2007 for the development of a mixed use five-storey over basement development comprising: retail space, a medical centre, a creche, 93 no. apartments, basement car park and open concourse area. The reasons for refusal related to substandard quality of residential accommodation, over-development of the site, overlooking and overshadowing, traffic hazard and insufficient water capacity.

## 5.0 Policy Context

### 5.1. Development Plan

#### Kilkenny City and County Development Plan 2021 – 2027

- 5.1.1. The site is located within the administrative boundary of Kilkenny County Council. At the time of the assessment of the application, the Kilkenny City and Environs Development Plan 2014-2020 was the operative development plan for the area. The

application was assessed by Kilkenny County Council in accordance with the policies and objectives of this plan.

- 5.1.2. The Kilkenny City and County Development Plan 2021-2027 was adopted on the 3<sup>rd</sup> of September 2021 and the Plan came into effect on the 15<sup>th</sup> of October 2021. I have assessed the proposal in accordance with the provisions of the operative development plan.

#### Zoning

- 5.1.3. The site is zoned for “General Business” purposes within the City and County Development Plan with an objective *“To provide for general development”*. Permitted uses under this zoning objective include dwellings, hotels, motels and guest houses.

#### Masterplan

- 5.1.4. The zoning map also illustrates that the site is located within Masterplan Area Z9: Fair Green – *“to complete the masterplan for the Fair Green area within the life-time of the plan”*.
- 5.1.5. Section 2.4.2 of the Development Plan sets out the following guidance for the area *“The Fair Green area offers a potential opportunity for redevelopment. There is a requirement to relocate the existing fire station and the Council’s yard area on the Gaol Road. This would result in significant amount of land being made available, and the site could be examined in conjunction with adjoining land in the ownership of the HSE and other publicly owned land. The area is conveniently defined by Parnell Street, Kickham Street, Dominic Street and the Gaol Road”*
- 5.1.6. Objective C2D of the Development Plan seeks: *“To complete a masterplan for the Fair Green area during the lifetime of the Plan”*.

#### Relevant Public Realm Objectives

- 5.1.7. Section 2.9.18 of the Plan sets out Public Realm Objectives. Objective C2H seeks: *“To upgrade the streetscape and public realm along Ormonde Street to include provision of a new one-way system; (B on Figure CS5)”*.

#### Designations

- 5.1.8. Figure HS4 of the Development Plan illustrates that the site is located within the Zone of Notification for a Recorded Monuments.

#### Architectural Conservation Area:

5.1.9. The site is located adjacent to the Patrick Street Architectural Conservation Area as identified in Figure HS10 of the Kilkenny City and County Development Plan. The ACA Statement of character outlines that Patrick Street is a mixed residential and commercial street with many good quality classical buildings.

5.1.10. The ACA Development Management Requirements include the following:

- PSACA 6: To avoid backland development which would negatively impact on the character of this area.
- PSACA 7: To request visual assessments for proposed development where it there may be an impact of the character of the area. New development which is visually intrusive and negatively impacts on the ACA, will not be permitted.

#### Tourism

5.1.11. Section 3.2 (Volume 2) of the Kilkenny City and County Development Plan outlines that tourism is an important economic driver for the economy of Kilkenny City. The Plan outlines that *“The Council recognises that to expand tourism’s potential, additional accommodation across all segments including hotels will be required into the future”*.

#### Car Parking

5.1.12. Section 12.12 of the Development Plan relates to Car Parking. Table 12.3 of the City and County Development Plan relates to Car Parking. The following parking standards are of relevance.

- Hotels, hostels and guesthouses – 1 space per bedroom;
- Hotel function rooms – 1 space per 10 sq.m.
- Apartments 1.25 spaces per unit, 0.25 spaces per unit for visitor parking.
- Public houses, incl. hotel bar - 1 car space per 10 m<sup>2</sup> of bar and lounge floor area.
- Footnote 16 attached to Table 12.3 outlines that “all non-residential parking standards will be applied as maxima”.

- Footnote 17 outlines that reference should be made to the Design Standards for New Apartments in relation to reduced car parking requirements for development adjacent to existing and future rail stations and minimum requirements in peripheral/or less accessible urban locations.

5.1.13. The Plan outlines that “Where a number of uses are contained within one development, the various uses shall be separated and the overall parking requirements for the development shall be assessed relative to each separate use in order to compute the overall parking requirement for the development (e.g. in a hotel the function rooms, bars etc. shall be assessed as separate from the bedroom provision). In cases where complete on-site provision of parking is not possible, the Planning Authority will insist on a Mobility Management Plan submitted as part of the application in weighing up the total requirements and possible financial contribution”.

5.1.14. Section 5.9 of Volume 2 of the Development Plan relates to car parking and outlines that the standards set out within Table 12.3 will be applied to the Kilkenny City area as well as to the rest of the County. While the provision of sufficient car parking is important, the rationale for the application of car parking standards is to ensure that consideration is given to the accommodation of vehicles in assessing development proposals. The Council will also take into account the need to promote a shift towards more sustainable forms of transport and that rigid standards for car parking may not be applicable in all circumstances in the City. The Council will look at performance-based criteria appropriate to the specific circumstances.

#### *Requirements for Developments*

5.1.15. Section 13 of the Development Plan relates to requirements for developments. The following guidance is of relevance:

- *Building Heights*

5.1.16. In accordance with the Specific Planning Policy Requirement 1 (SPPR 1) of the Guidelines, this Development Plan does not provide for blanket numerical limitations on building height. The Plan outlines that development proposals subscribe to the Development Management principles and satisfy Development management criteria as contained in the Ministerial Guidance document “Urban Development and Building Heights” (December 2018) when assessing applications for development.

5.1.17. The Plan outlines that within Kilkenny City, the Abbey Quarter Masterplan adopted by Council in 2015 provides for a mix of uses as described along with a block development type approach with building heights ranging from 3 to 5 storeys.

- The Council will support increased building height and density in central locations with good public transport accessibility for both regeneration and infill purposes to secure the objectives of the National Planning Framework and Regional Economic and Spatial Strategy.
- The Council will also ensure that proposals for urban densification make a positive contribution to the streetscape and does not detract from the historical environment/character of the surrounding area in general and/or neighbouring buildings in particular.
- 13.13 relates to standards for Apartments.

## **5.2. Natural Heritage Designations**

The following European sites are located within proximity to the site:

- River Barrow and Nore SAC – c. 420m to the north-east.
- River Nore SPA - c.440m to the north-east.

## **5.3. EIA Screening**

Having regard to the nature and scale of the proposed development, comprising a mixed use development on a brownfield site in an urban location, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

A third-party appeal on behalf of Joe Brennan, Brennan's Bottling Store, Walkin Street was submitted in respect of Kilkenny County Council notification of decision to

grant permission for the development. The following provides a summary of the grounds of appeal:

- The overbearing scale, height and nature of the proposed development is out of scale with the character of the area and is an inefficient and unsuitable use of this key city centre site.
- The appeal refers to the planning history of the site wherein permission was granted for a mixed-use development of 4 floors on site. However, the established density and scale was on foot of a more holistic examination of Walkin Street/New Street and included appellants property. Existing structures and uses, which includes the appellants property which includes both commercial and residential elements, should be taken into consideration in assessing the proposal. The development is overbearing, unsympathetic and out of context with its built environment.
- The application is not accompanied by an adequate sunlight and shadow study. The appeal refers to the location of the appellants property to the north of the application site and in this regard, it is stated that the development, if permitted, would have a profound effect on their property through significant periods of the day.
- The development of a “short stay 3 stay hotel” lacking any function room facilities in addition to Airbnb type accommodation is an inefficient use of a pivotal city centre site. The end users would contribute little to the immediate area or this area of the City as a whole. The design, siting and proposed use contribute little to Walkin Street and if permitted would have a serious visual impact on this section of the city centre.
- The development as proposed represents a failed opportunity to develop the site to its full potential and provide much needed city centre permanent residential/mixed use development providing a vibrant community in this vital edge of centre site.
- The development as proposed should have been accompanied by an adequate business management plan relating to the management of the apartments and measures to prevent their private usage.



- It is stated that the application drawings are deficient as they do not accurately demonstrate separation distances from opposing windows to the appellants property. The contextual streetscape is not accurately shown (eaves or ridge levels are not accurately shown). Elevations visually diminish the actual impact of the proposal on the skyline. A visual assessment of the proposal on New Street has not been submitted. A number of key plans are missing north points.
- The appellant has a side access gate to the existing yard. The application drawings do not accurately show what is proposed in this area. It appears that a domestic type timber trellises fence is being proposed directly adjacent to the appellants residential gable adjacent to New Street. This is unsuitable from both a visual and security perspective. The provision a security barrier adjacent to the appellants property will create a permanent noise nuisance throughout the day and night.
- The appeal raises concern in relation to the demolition phase and construction phase impacts on their property. No demolition plan, asbestos survey or Construction and Waste Management Plan is submitted in support of the application.
- The appeal raises concern in relation to the siting of the ESB substation and the plant and refuse area adjacent to the appellant's residential building. The appeal raises concern in relation to noise, odour and vermin impacts. A more suitable location along the southern boundary should be proposed.
- Insufficient car parking is proposed to serve the development. New Street/Walking Street is a congested street and existing parking facilities within the area are limited and utilised by 3 no. existing hotels. The road network cannot accommodate the additional traffic generated by the development.

## 6.2. Applicant Response

A response to the grounds of appeal was submitted by Bluett & O' Donoghue on behalf of the applicant. The appeal response is accompanied by a Sunlight Access

Impact Analysis prepared by ARC Architectural Consultants Limited. The following provides a summary of the points raised:

- The appeal response refers to changes to the development made on foot of Kilkenny County Council's request for further information. No submission was made by the appellant in respect of the revised proposals. The contents of the appeal reflect the contents of the appellants original submission on the application. It is stated that the revised proposals submitted in response to the FI request address the appellants concerns.
- The appeal outlines that the proposal responds to the existing site context, sits comfortable with the neighbouring buildings and does not conflict with established uses in the area. The revisions to hotel submitted in response to KCC's FI request provide a stronger presence in the streetscape in contrast to the current vacant warehousing. A mix of uses is proposed to include 12 residential apartments.
- A Daylight Impact Analysis and Sunlight Impact Analysis is submitted to address the third-party appeal. These studies assess the impact of the proposal on sample windows of each of the neighbouring buildings. In the case of the appellants property, it is stated that the impact of the proposal on south-west facing windows is "Imperceptible" and "Imperceptible to Slight" and in the case of south-east facing windows as "Imperceptible to Moderate".
- In terms of the proposed use, the appeal response outlines that the scheme as revised in response to KCC's request for further information, includes an apartment block of 12 no. apartment units. The proposed development provides short term let units, hotel rooms and long-term residential apartments.
- The appeal site extends to the side of the appellants property. A masonry screen wall was proposed in response to the FI request. It is stated that this provides additional privacy to the appellant from the ground floor window. A security barrier is no longer proposed in proximity to the appellants property.
- A Preliminary Construction Environmental Management Plan was submitted in response to the request for further information.

- In response to the RFI the ESB substation was moved southward. Specifications of the substation are detailed, i.e single storey structure, standard ESB design and concrete roof. The bin store is independent of the boundary wall and is a roofed and sealed structure. This will store clean recyclable material only. The refuse element of the waste has been relocated to the hotel kitchen service yard. The service room will not generate any emissions or odours and will not be used for the storage of waste.
- The TTA submitted in support of the application demonstrates that the adjoining road network can adequately cater for the development proposed. Proposed parking facilitates can adequately cater for the envisaged car parking demand.
- Traffic generated by the proposed development will be outside of peak hours.
- The appeal response refers to the car parking levy imposed by the planning authority under condition no. 2. It is stated that this levy is counterproductive to the local authority objective of a move towards sustainable transport. The appeal response refers to existing public car parks in the vicinity. Reference is made to PA Ref: 2132/ ABP Ref. 310749-21 in the vicinity where no levy was imposed by KCC in lieu of shortfall in car parking.
- It is requested that the board uphold the decision of KCC to grant permission for the development.

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

Kilkenny County Council confirmed that they had no further comments in respect of the appeal.

### **6.4. Further Responses**

- 6.4.1. I highlight to the Board that during the assessment of the appeal case, the omission of a number of drawings from the applicant's FI response was noted. Kilkenny County Council confirmed that they had not received the drawings.
- 6.4.2. The applicant was requested (under Section 132) to provide same. Upon receipt, the drawings were circulated to the appellant and Kilkenny County Council for comment (under Section 131). No responses were received within the specified time period.

## **7.0 Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle of Development
- Scale, Layout and Design
- Height, Visual Impact and Impact on Architectural Conservation Area
- Residential Amenity
- Access and Transportation
- Other Issues
- Appropriate Assessment

### **7.2. Principle of Development**

- 7.2.1. At the time of the assessment of the application, the Kilkenny City and Environs Development Plan 2014-2020 was the operative development plan for the area. The application was assessed by Kilkenny County Council in accordance with the policies and objectives of this plan. The Kilkenny City and County Development Plan 2021-2027 was adopted on the 3<sup>rd</sup> of September 2021 and the Plan came into effect on the 15<sup>th</sup> of October 2021. I have assessed the proposal in accordance with the provisions of the operative development plan namely the Kilkenny City and County Development Plan 2021-2027.
- 7.2.2. The appeal site is a brownfield site located to the west of Kilkenny City Centre. The site is currently occupied by a 2-storey warehouse building, the former Smithwicks Cash and Carry, and a series of stone outbuildings. The existing buildings on site contribute little to the visual amenities of the area. I have no objection to the demolition of the buildings to facilitate the redevelopment of the site.
- 7.2.3. The third-party appeal questions the requirement for an additional hotel within the City and raises concern in relation to the proposed mix of uses. The appeal outlines that the proposal which includes a “short stay hotel” and Airbnb type accommodation

represents an inefficient and unsuitable use of a key city centre site and that the proposed uses would contribute little to the immediate area or this area of the City as a whole. The appeal raises concern in relation to the proposed mix of uses and outlines that the development represents a failed opportunity to provide much needed permanent residential and mixed-use development on a vital edge of city site.

- 7.2.4. In terms of a justification for the proposed hotel, I note that the Kilkenny City and County Development Plan 2021-2027 acknowledges the importance of the tourism industry for the economy of Kilkenny City and identifies the requirement for additional hotel accommodation. Section 3.2 of the Kilkenny City and County Development Plan (Volume 2) states that tourism is an important economic driver for the economy of Kilkenny City and outlines that *“The Council recognises that to expand tourism’s potential, additional accommodation across all segments including hotels will be required into the future”*. I consider the principle of the provision of additional hotel accommodation within the City to be acceptable and in accordance with Development Plan policy.
- 7.2.5. In terms of the proposed mix of uses, the applicant’s response to the grounds of appeal outlines that the appeal reflects concerns raised by the appellant within their original submission on the application. The mix of uses was raised by Kilkenny County Council within the request for further information. Revised proposals were submitted which included the provision of long-term residential apartments. The revised mix of uses therefore includes the following: 154 bed hotel, 12 long term apartments and 37 no. short term lease apartments.
- 7.2.6. The site is zoned for “General Business” purposes within the Kilkenny City and County Development Plan with an objective *“To provide for general development”*. The uses hotel and dwellings are listed as “permitted” uses on lands zoned for general business purposes. I consider the proposal comprises an appropriate mix of uses for a City Centre site and will add to the overall mix of uses within the immediate vicinity.

### 7.3. **Scale, Layout and Design**

- 7.3.1. The appeal outlines that the design, siting and proposed use of the development contributes little to the Walkin Street and the proposal is overbearing, unsympathetic

and out of context with the built environment. The appeal outlines that while a 4-storey mixed use development was previously permitted on site, this was part of a more holistic examination of Walkin Street and New Street and extended to include the appellants property.

- 7.3.2. At the outset, I refer to the planning history of the site and the development permitted under PA Ref: 07/990145 as referred to within the appeal. I have reviewed the drawings submitted in support of this application and confirm that the previous application extended to include the appellants property and a number of adjoining properties on Walkin Street. Notwithstanding the reduced site area, I consider that the site, which has an area of 0.72ha, and frontage to both Lower New Street and Walkin Street is sufficient in both size and configuration to accommodate the development as proposed subject to visual and amenity considerations which are addressed in further sections of this report.
- 7.3.3. The appeal outlines that the proposal contributes little to Walkin Street and is out of context with the built environment. I note that the points raised within the appeal reflect those made within the original submission on the application. Kilkenny County Council's request for further information raised concerns in relation to the layout of the proposal, the limited plot ratio and interface with adjoining streetscape. Revised proposals were submitted by the applicant to address the planning authority's concerns. The applicant's FI response is accompanied by a series of 3D visualisations of the scheme which illustrate views of the proposal from the surrounding streetscape context (Appendix 4 of the applicants FI response).
- 7.3.4. I consider that the revised layout provides an improved relationship with the adjoining street context. Blocks A and B address Walkin Street and the proposed hotel addresses Lower New Street. The proposed hotel provides a stronger presence in the streetscape in contrast to the current vacant warehousing. I consider that the proposed blocks incorporate sufficient set-backs to negate against impact on existing properties along Walkin Street. The incorporation of a block of long-term residential apartments within the scheme provides a greater use mix on the brownfield site.
- 7.3.5. In design terms, I consider that the proposed blocks incorporate a simple pallet of materials including render and aluminium curtain walling for the hotel, and metal

cladding and render to the apartment block. These reflect the existing finishes within the area along Lower New Street and Walkin Street. In my view, the proposed finish would not conflict with the visual amenity of the area. I consider that the proposal is contemporary in design, and I do not consider that the proposal is out of context or unsympathetic to the surrounding site context.

- 7.3.6. In conclusion, I consider that the proposal is contemporary in design and reflects the existing pattern of development within the area. The development addresses the adjoining streetscape and I do not consider that the scale of the proposal is out of context or unsympathetic to the surrounding site context.

#### **7.4. Height, Visual Impact, and Impact on Architectural Conservation Area**

- 7.4.1. The appeal outlines that the proposal is overbearing, unsympathetic and out of context with its built environment and would impact on the visual amenities of the adjoining Architectural Conservation Area. The appeal raises specific concerns are raised in relation to the height of the proposal.
- 7.4.2. The site is located adjacent to the Patrick Street ACA. Policy PSACA 7 of the Kilkenny City and County Development Plan seeks: *“to request visual assessments for proposed development where it there may be an impact of the character of the area. New development which is visually intrusive and negatively impacts on the ACA, will not be permitted”*.
- 7.4.3. Existing buildings within the vicinity of the site range in height from 2 storeys along Walkin Street and 2-4 storeys along Lower New Street. The development includes 3 no. 4 storey blocks and a 5 storey hotel. The contextual elevations illustrate the relationship of the proposal to the existing built environment. I consider that the proposed building heights can be absorbed within the area and do not consider that the proposal represents an abrupt transition in scale. In my view sufficient setbacks are provided between the proposed blocks and existing developments on Walkin Street.
- 7.4.4. On an overall basis, I do not consider that the principle of a 4-5 -storey development on the site would represent an abrupt transition in height from the surrounding site context. I note that Kilkenny County Council have not raised concern in relation to the principle of the proposed height within Kilkenny City Centre and I consider the principle of the proposed height to be acceptable in this city centre location subject to

visual impact and amenity considerations. I consider that the principle of the proposed height is acceptable at this location subject to consideration of relevant qualitative and amenity standards.

- 7.4.5. The appeal outlines that the application drawings do not clearly illustrate the relationship of the proposal to the adjoining area. The appeal furthermore states that the application should be accompanied by a visual impact assessment. I consider that this has been sufficiently addressed within the FI drawings and the 3D visualisations. Contextual elevations are submitted which illustrate the relationship to the proposal with the adjoining streetscape and ACA. In terms of visual impact, I do not consider that the proposal will have a prominent visual impact upon or detract from the visual amenity of the adjoining ACA. The proposed finishes reflect those already established within the ACA along Lower New Street.

## **7.5. Residential Amenity**

### *Impact on Residential Amenity of Adjoining Properties*

- 7.5.1. The appeal raises concern in relation the impact of the proposal on the adjoining residential property to the north which includes both residential and commercial uses. Concerns are raised in relation to the interface of the proposal with this property in terms of the proposed layout, impact on sunlight and daylight and visual impact. The appellant makes the case that the previous proposals for the site, which extended to include the appellants property, provided for a more holistic approach to the redevelopment of the application site. I consider the specific issues raised in turn as follows.

- *Interface with adjoining property*

- 7.5.2. The appeal is submitted on behalf of the owner of Brennan's Bottling Store, Walkin Street and Lower New Street which adjoins the appeal site to the north/ northwest. The appeal outlines that the property is in both commercial and residential use. The eastern elevation of the appellants property directly adjoins the appeal site and includes windows which overlook the existing surface car park and a gated entrance as illustrated on the attached presentation document. At present, the Lower New Street elevation of the appeal site includes a high wall and gated entrance adjacent to the appellants property.



- 7.5.3. The appeal outlines that the application drawings do not accurately show what is proposed in the vicinity of their adjoining property. I refer to Drawing no. P-06 Contextual Elevations which illustrate the interface between the appeal site and the appellants property and Drawing no. P02 Site Layout Plan- Proposed.
- 7.5.4. The appeal raises concerns in relation to the interface between the proposed development and their dwelling which adjoins the site. The proposed development includes a pedestrian route, solid screen wall and entrance road in the vicinity of the appellants property. I note the reference in the appeal to the residential use of this property and consider that the development as currently proposed would impact on the amenity of the property by reason of noise and loss of privacy through increased pedestrian footfall.
- 7.5.5. The main access to the hotel is provided further south along Lower New Street and I do not consider that there is a requirement for a further pedestrian entrance in the vicinity of the appellants property. I consider that revised proposals should be submitted to the planning authority for written agreement which provide for soft landscaping and a low-level fence/boundary wall adjacent to the eastern elevation of the appellants dwelling in order to protect the amenity of this property. This point could be addressed via condition in the instance that the Board is minded to grant permission for the development.
- 7.5.6. I note the reference within the appeal, to the inclusion of the appellant's property within previous proposals for the site and the need for a holistic approach to the site's redevelopment. I consider that the appeal site is of a sufficient size and configuration to accommodate the nature of development proposed. However, as earlier detailed, I consider that there is a requirement for an improved interface between the development and the appellants property to protect the residential amenity of this dwelling. I recommend that this is addressed via condition.
- 7.5.7. The appellant raises, the proposed siting, and specifications of the ESB substation and waste area and provision of barrier in proximity to an existing residential unit. Concerns relating to noise, odour and visual impacts are raised.
- 7.5.8. The applicant's response to the grounds of appeal outlines that these issues have been resolved within the revised proposals submitted in response to Kilkenny County Council's request for further information. Details of the proposed ESB sub station

and bin store are illustrated on Drawing nos. P18 and P20. A security barrier is no longer proposed in proximity to the appellants property as illustrated on Drawing no. P-02 Site Layout Plan – Proposed.

7.5.9. The applicant provided clarification that the bin store will accept clean recyclable material and a separate waste disposal area is proposed adjacent to the hotel service yard and the service room will not generate emissions or odours. I consider that the revised proposals sufficiently address the above concerns raised by the appellant.

- Overbearing/Overlooking

7.5.10. The appeal outlines that the proposal is visually overbearing and unsympathetic to the existing site context, including the appellants property to the north. The appellant's property is located at the junction of Walkin Street and Lower New Street and fronts both of these streets. The appellants property has window openings on its eastern elevation which adjoins the appeal site and a side access gate to the existing yard.

7.5.11. The proposed hotel is set back by 10m from the appellants property as illustrated within Drawing no. P-02 Site Layout Plan – Proposed. The building line of the hotel is also set back by a minimum of 3m from the public footpath. Drawing no. P-12 Elevations Hotel Proposed illustrate that the hotel incorporates a setback at 4<sup>th</sup> floor level which reduces the massing of the north-western elevation.

7.5.12. The northwest elevation and window openings have opaque glazing to negate against overlooking. I consider that the proposed hotel has been sufficiently setback from the appellants property and Lower New Street to negate against the proposal being visually overbearing.

- Sunlight and Daylight

7.5.13. The appellant refers to information deficiencies within the application including the lack of a sunlight and shadow study. A Daylight Access Impact Assessment prepared by ARC Architectural Consultants Limited was submitted in response to Kilkenny County Council's request for further information and a Sunlight Access Impact Analysis was submitted in conjunction with the applicant's response to the

grounds of appeal. I consider that the content and scope of these documents are sufficient and in accordance with relevant BRE guidance.

- 7.5.14. The appeal refers to the siting of their property to the north of the site and outlines that the development, if permitted, would have a profound impact on their property through significant periods of the day.
- 7.5.15. Table 2.1 of the Daylight Access Impact Assessment presents the results of an assessment of the impact of the proposed development on daylight access to sample windows surrounding the site. 26 no. windows associated with adjoining properties are assessed. On an overall basis the proposed development results in an imperceptible impact on daylight to the majority of adjoining properties. An increase in daylight levels will be evident in some adjoining properties through the demolition of existing buildings on site.
- 7.5.16. Section 2.1 of the Daylight Assessment relates to the appeal site and outlines that:  
*“To the north/ northwest the proposed development is likely to result in little or no impact on daylight access on south-facing windows to the rear of Brennan’s Bar and Off-License. ARC’s analysis identified a potential for the proposed development as a result in a “moderate” change in daylight access in rooms served by windows in the easternmost edge of Brennan’s Bar and Off- License (i.e. rooms served by windows on the façade at the boundary with the application site, which now look into the surface car park on the application site)”.*
- 7.5.17. Windows Z7, Z8 and Z9 relate to ground floor windows on the appellants property at Lower New Street, including south facing windows (Z7 and Z8) and the ground floor eastern facing window (Z9) which fronts onto the car park of the appeal site. I note that these windows are assumed in commercial use within the assessment. The appellant outlines that the premises includes both commercial and residential use.
- 7.5.18. The impact of the proposal in Window Z7 is identified as “Imperceptible” the impact on window Z8 is identified as Imperceptible to Slight. The existing small ground floor window on the eastern elevation of the appellant’s dwelling is identified as window Z9. The impact on window Z9 is classified as “Moderate” (change in VSC from 34.2% to 18%). I consider that the impact on window Z9 represents the worse-case scenario impact and are acceptable within an urban context. The other larger window openings on the eastern elevation are not assessed within the Daylight

Assessment, but I note that such widows would not be obstructed as a result of the proposed set back of the hotel from Lower New Street at this location and impacts on daylight would be minimal.

- 7.5.19. The applicant's appeal response includes a Sunlight Access Impact Analysis prepared by ARC Architectural Consultants Limited which provides an overview of the potential impact of shadows cast by the proposed development on lands adjoining the application site. Table 2.1 of this report includes an assessment of the impact of the proposal on Sunlight access to sample windows surrounding the site. On an overall basis the proposed development results in an imperceptible impact on sunlight access to the majority of adjoining properties. An increase in sunlight levels will be evident in some adjoining properties, fronting Walkin Street, through the demolition of existing buildings on site. The assessment outlines that the proposal is likely to result in some additional overshadowing of open spaces associated with Kilkenny City Vocational School and St. Kieran's College to the east but this is classified as "imperceptible" in extent.
- 7.5.20. Section 2.1 of the report includes specific reference to the appellants property and outlines that: *"To the northwest, the proposed development is likely to result in additional overshadowing to the rear of Brennan's Bar and Off Licence during the mornings and early afternoons throughout the year; although this analysis indicates that the proposed development is unlikely to interfere with the capacity of any studied window to achieve the BRE Guide recommendations for sunlight access. The impact of the proposed development on sunlight access to Brennan's Bar and Off Licence is assessed as none to "moderate".*
- 7.5.21. Windows Z7, Z8 and Z9 relate to ground floor windows on the appellants property at Lower New Street as illustrated on Figure 2.1. The impact on Window Z7 is identified as "Imperceptible" and impacts on Windows Z8 and Z9 are classified as "Imperceptible to Slight" and "Imperceptible to Moderate" within Table 2.1. The assessment concludes that *"all windows will continue to receive more than 25% Annual Probable Sunlight Hours after the construction of the proposed development"*.
- 7.5.22. On review of the information submitted and having regard to the siting of the proposal relative to the appellants property I consider that the overshadowing/

sunlight /daylight impacts associated with the development will not unduly impact on the residential amenity of the appellant's property or of properties in the vicinity and are appropriate within an urban setting.

*Residential Amenity of Proposed Apartments*

7.5.23. The development, as revised in response to KCC's response to further information, includes the construction of a 4-storey apartment block which fronts onto Walkin Street. The block includes 12 no. apartments and associated amenity space. I note that no schedule of accommodation is provided in support of the application.

7.5.24. I have reviewed the proposed apartments in light of the standards and SPPR's set out within the Sustainable Urban Housing: Design Standards for New Apartments Guidelines 2022. The proposed apartments are broadly compliant with the stated standards. The proposed apartments sizes significantly exceed the standards for 1- and 2-bedroom units. I note the following deviations:

- Private amenity space – boundaries at ground floor are undefined. Balcony depths and areas are below required standards for Units 4 to 11.
- Aggregate living/dining room floor areas for Units 1,4,7 and 10 are all below the minimum standards.

7.5.25. The above points could be addressed by means of condition in the instance that the Board is minded to grant permission for the development.

7.5.26. In terms of the quality of the proposed units I note that no sunlight and daylight assessment was submitted in respect of the proposed apartment block. However, having regard to the layout and orientation of the block I consider that the separation distances between the proposed blocks are acceptable within an urban context and will limit the degree of obstruction that could result between blocks in the proposed development. Buildings proximate to the subject site are not of a scale or height that would generate significant obstruction to light or overshadowing of areas.

7.5.27. While the proposed apartment block includes overhanging balconies located directly above each other the rooms opening onto the balconies have additional windows on external walls which would provide the primary light source to the rooms. The proposed floor to ceiling heights at upper levels within the proposed apartment block will provide natural light to living areas and provide a high-quality living environment.

I consider that appropriate daylight and sunlight standards will be achieved for future occupants of the development. Proposed Blocks A and B incorporate setbacks to the top floor of the blocks on the elevation closest to the site boundary. A third-floor terrace is proposed which includes obscure glazing to negate against overlooking.

7.5.28. In conclusion, I consider that the proposal would provide a high quality of residential amenity for the future occupants of the scheme.

7.5.29. I note the reference on submissions on the application to non-compliance of the short term let apartment blocks with the standards set out within the apartment guidelines in terms of adherence of minimum floor areas and private open space requirements. However, I note that the use of the short-term lease blocks would operate in a similar manner to an apart hotel. In this regard apartment standards do not apply. I note the requirements of Condition no. 16 of KCC's notification of decision to grant permission for the development which outlines that short term blocks shall not be used for long term residential development. I consider that this condition should be attached in the instance of a grant of permission.

7.5.30. I furthermore note the reference within the appeal to deficiencies in the application in relation to the management of the units and measures to prevent their private usage. I refer to the requirements of Condition no. 5 of KCC's notification of decision to grant permission for the proposed development which relates to the establishment of a Management Company to provide for the long-term operation, maintenance, administration and management of the apartment block and short term let blocks within the scheme. I also refer to the requirements of Condition no. 16 which imposes restrictions on the use of the short-term letting apartments. I consider that the concerns raised by the appellant in relation to the management and operation of the short-term letting units could be addressed by means of condition in the instance that the Board is minded to grant permission for the development.

## **7.6. Access and Transportation**

7.6.1. The appeal raises concern in relation to traffic impact associated within the proposal and insufficient car parking proposed to serve the development. The appeal outlines that the adjoining road network in the vicinity of the site is congested (New Street/Walkin Street) and existing parking facilities within the area are limited and utilised by 3 no. existing hotels. The application is accompanied by a Traffic Impact

Assessment, Mobility Management Plan and Road Safety Audit. I have had regard to the contents of these documents in assessing the proposal.

#### Proposed Access

- 7.6.2. The proposal accommodates a mix of uses including a hotel, long-term let apartments and short-term let apartments. Access to the hotel and apartments is provided the proposed entry only from Lower New Street and entry/exit from Walkin Street. Lower New Street and Walkin Street operate within the speed limit of 50kmph.
- 7.6.3. Drawing no. P-02 "Site Layout Plan – Proposed" illustrates sightlines of 45m within the vicinity of the proposed entrance. A number of existing on street parking spaces on Walkin Street are proposed for removal to facilitate sight lines on Walkin Street. I note that KCC has raised no objection to the principle of the removal of these spaces.

#### Traffic Impact

- 7.6.4. The appeal raises concern in relation to traffic impact associated with the development. Section 3 of the TIA relates to the baseline traffic environment based on a survey undertaken in September 2020. The AM peak is identified from 07.30 to 09.30 and PM peak is identified between 16.30 and 18.30. The survey identified that traffic flows on 41% less in the AM peak and 17% less than the PM peak flows identified within the traffic assessment undertaken for the Ormonde Street traffic survey carried out in November 2018. The TIA outlines that the change in traffic flows are as a result of Covid restrictions in place. Traffic flows are therefore factored up to 2018 levels.
- 7.6.5. Section 4 of the TIA relates to trip generation associated with the proposal. This outlines that the proposal will generate 88 trips during the AM peak and 89 trips during the PM peak. Section 5 of the TIA outlines the operational assessment (traffic impact) of the proposal on the adjoining road network. This outlines that in 2022, 2027 and 2037 Lower New Street will operate within capacity with no queues and delays during the AM and PM peak and Walkin Street will operate within capacity with small queues and delays during the AM and PM peak hour.

- 7.6.6. Gaol Road/Lower New Street will operate within capacity and with delays and queues in both the “no development” and “development” scenarios. Gaol Road/Walkin Street will operate within capacity and with no queues and minimal delays during the AM and PM peak hour within both the “no development” and “development” scenarios.
- 7.6.7. Based on the information set out within the TIA, and the location of the site relative to the City Centre I consider that the adjoining road network can accommodate traffic associated with the proposed development.

#### Car Parking

- 7.6.8. The appeal raises concern in relation to shortfall in car parking to serve the development. The proposal includes a 154-bedroom hotel, including a bar/restaurant and a bar. The development also includes 36 no. short-term accommodation apartments and 12 no. long term accommodation apartments. Section 6 of the TIA outlines a car parking requirement of 190 no. spaces in accordance with the parking requirements set out within the Kilkenny County Development Plan 2014-2020. The proposed development includes the provision of 85 no. surface level parking spaces.
- 7.6.9. Concerns in relation to the shortfall in car parking are also raised within Kilkenny County Council’s Road Design Report. The report outlines that the shortfall in parking is understated by the applicant as no consideration was given to the bar and function room elements of the hotel. The report furthermore refers to the loss of existing on street parking to facilitate sightlines at the site entrance.
- 7.6.10. The following car parking standards are set out within Table 12.3 of the Kilkenny City and County Development Plan 2021-2027:
- Hotels, hostels and guesthouses – 1 space per bedroom;
  - Hotel function rooms – 1 space per 10 sq.m.
  - Apartments 1.25 spaces per unit, 0.25 spaces per unit for visitor parking.
  - Public houses, incl. hotel bar - 1 car space per 10 m2 of bar and lounge floor area.
- 7.6.11. The following footnotes attached to Table 12.3 are of relevance:



- Footnote 16 attached to Table 12.3 outlines that “all non-residential parking standards will be applied as maxima”.
- Footnote 17 outlines that reference should be made to the Design Standards for New Apartments in relation to reduced car parking requirements for development adjacent to existing and future rail stations and minimum requirements in peripheral/or less accessible urban locations.

7.6.12. The Development Plan furthermore provides guidance in respect of parking requirements for mixed-use developments and deviations from parking requirements. This outlines that: *“Where a number of uses are contained within one development, the various uses shall be separated and the overall parking requirements for the development shall be assessed relative to each separate use in order to compute the overall parking requirement for the development (e.g. in a hotel the function rooms, bars etc. shall be assessed as separate from the bedroom provision). In cases where complete on-site provision of parking is not possible, the Planning Authority will insist on a Mobility Management Plan submitted as part of the application in weighing up the total requirements and possible financial contribution”*.

7.6.13. A justification for the proposed parking provision is set out within Section 6.3 of the TIA. This outlines that the maximum difference between cumulative arrivals and cumulative departures occurs between 19:00 and 20:00 and is 69 vehicles. The report also refers to existing parking facilities in the vicinity of the site including on street parking provided along Walkin Street, Lower New Street and Gaol Road and public car parks in Fair Green and Ormonde Street which could accommodate parking in the instance that the proposed car park is at capacity. The TIA concludes that the proposed parking provision is sufficient to accommodate the needs of the development.

7.6.14. A Mobility Management Plan is submitted in support of the application. This outlines that the appeal site is located c.0.5km from Kilkenny City Centre and is easily accessible with good footpath connections. The MMP refers to the existing on street parking and public car parks available within a 2-minute walk from the appeal site. The Plan identified that the site is c.16 minutes walking distance from MacDonagh Train Station and within walking distance of a number of bus stops.

- 7.6.15. The Plan outlines that staff numbers for the development are unknown at present. The modal split targets set out within the MMP include 20% of staff on foot, 10% via bicycle, 10% via public transport and 60% via car/motorcycle.
- 7.6.16. In considering parking requirement for the proposal, I note at the outset that non-residential parking standards are applied as “maxima”. I consider that the applicant has made a sufficient justification for the level of parking proposed to serve the mix of uses proposed within the Traffic Impact Assessment submitted in support of the application. In terms of residential parking, I note that the site would be classified as a central and/or accessible urban location, being within 15 minutes walking distance of Kilkenny City Centre. In such locations the Design Standards for New Apartments Guidelines 2022 identify that reduced parking requirements will apply.
- 7.6.17. On the basis of the central location of the site, I consider that the proposed parking provision is sufficient to meet the requirements of the scheme. Having regard to the mix of uses on site, including long term residential uses, I recommend the inclusion of a condition requesting a car parking management plan for submission to the planning authority for written agreement prior to the commencement of development.

#### Car Parking Levy

- 7.6.18. The appeal response refers to the car parking levy imposed by the planning authority under Condition no. 2. 7.6.24. I note that the applicant has not submitted a first party appeal in respect of the contribution applied under Condition no. 2 of the planning authority’s notification of decision to grant permission. Condition no. 2 of the notification of decision to grant permission for the development relates to development contributions applicable under Section 48 of the Planning and Development Act. A contribution of €317,525 is detailed.
- 7.6.19. The planner’s report which informs the decision of KCC to grant permission for the proposed development sets out the following breakdown for the Development Contribution outlines the following:

#### *Class 4: Development Contribution*

- Hotel: 5,470 sq.m. X €25 = €136,750.
- Short Stay Apartment Blocks: 2,228 sq.m. x €25 = €55,700.
- Long Term Apartment Block: 962 sq.m. X €25= €24,050.

- Service Buildings: 41 sq.m. X €25 = €1,025.
- Shortfall in car parking spaces in excess of 5 spaces: 100 X €1,000 = €100,000.
- Total Levies: €317,525.

7.6.20. The Kilkenny County Development Contribution Scheme 2016-2017. The table included in the scheme for the Level of Development Contribution payable includes the following:

- Mobility Management- Shortfall in car parking spaces > 5 space - €1,000 per space.

7.6.21. The appeal response outlines that the imposition of the levy is counterproductive to the local authority objective of a move towards sustainable transport. The appeal response refers to existing public car parks in the vicinity which can accommodate overspill car park associated with the development if required. Reference is made to the hotel development permitted by Kilkenny County Council at Wolfe Tone Street under PA Ref: 2132/ ABP Ref: 310749-21 wherein no levy for shortfall in parking is applied. The TIA submitted in support of the application outlines that the level of parking proposed is sufficient to cater for the requirements of the proposed development.

7.6.22. I refer to the planner's report dated the 15<sup>th</sup> of September 2021 which sets out the following justification for the imposition of the levy: *"In other large-scale applications within the City, a justification of the shortfall in parking has been provided, outlining nearby parking areas, capacity in each car park as well as on street and this calculated whilst taking account of cumulative impact of existing and permitted developments within the vicinity. Due to the lack of such justification, the planning authority deem a levy for the shortfall in car parking spaces justified"*.

7.6.23. I would question the level of contribution applied by the planning authority in respect of a shortfall in car parking in the current instance as non-residential parking standards set out within Table 12.3 of the Kilkenny City and County Development Plan 2021-2017 are stated as "maxima".

7.6.24. Notwithstanding the above, I note that the applicant has not submitted a first party appeal in respect of the contribution applied under Condition no. 2 of the planning

authority's notification of decision to grant permission. I consider that there should be scope for the planning authority and developer to reach an agreement on the level of contribution payable on the basis of a justification being provided by the applicant. In default of such agreement, the matter can be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme. I recommend the inclusion of a general Section 48 development contribution condition on this basis.

## **7.7. Other Issues**

### Construction/Demolition Impacts

- 7.7.1. The appeal raises concern in relation to demolition and construction impacts of the proposal on adjoining properties and the lack of the submission of a demolition plan, asbestos survey and Construction Management Plan in support of the application.
- 7.7.2. I note that a Preliminary Construction Environmental Management Plan was submitted in response to KCC'S request for further information (attached as Appendix 2 of the applicants FI response). This sets out details of mitigation measures which will be implemented to negate against construction and demolition relation impacts on the receiving environment. The CEMP outlines that the report is preliminary in nature and the appointed contractor will be required to provide a fully detailed CEMP.
- 7.7.3. I refer to the requirements of Condition no. 12 of KCC's notification of decision to grant permission for the development which outlines that an Environmental Construction Management Plan shall be submitted to the planning authority for written agreement prior to the commencement of development. I consider the requirements of this condition to be sufficient to address the concerns raised by the appellant and recommend the inclusion of this condition in the instance of a grant of permission.

### Archaeology

- 7.7.4. The site is partially located within a Zone of Notification of a Recorded Monument as illustrated within Figure HS4 of the Kilkenny City and County Development Plan 2021-2027. An Archaeology study prepared by Shanarc Archaeology is submitted in support of the application. This outlines that the appeal site is located outside and to

the west of the historic town of Kilkenny (RMP KK019-026) and its associated town defences (RMP KK019-026001).

- 7.7.5. Walkin Street was one of the principal routeways leading to and from the medieval city and buildings of the 18<sup>th</sup> century remain upstanding on the street immediately adjacent to the proposed development site's north-west boundary. 13 no. trenches were excavated throughout the development site and no finds of archaeological interest relating to the adjacent St. Rioc's graveyard or to the medieval city were identified during archaeological test-trenching.
- 7.7.6. The report identified that several features were exposed which are consistent with the post-medieval use of the site including drainage channels/service trenches and stone and brick wall footings which relate to structures constructed on site during its use as a Bottling Store for Smithwicks brewery. The assessment recommends that groundworks on site are monitored by a suitably qualified archaeologist. I note that no condition to this effect is attached to Kilkenny County Council's notification of decision to grant permission for the development. I recommend the attachment of an archaeological condition in the instance that the Board is minded to grant permission for the development.

#### **7.8. Appropriate Assessment**

Having regard to the nature and scale of the development and to the nature of the receiving environment and separation distance from the nearest designated site, no appropriate assessment issues arise, and it is considered that the development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European sites

#### **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

Having regard to the General Business zoning objective for the area and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not have a significant adverse impact on the special character of the Patrick Street Architectural Conservation Area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the plans and particulars submitted on the 20th day of August 2021 and by the further plans received by An Bord Pleanála on the 6<sup>th</sup> of December 2022 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Prior to the commencement of any development on site, the developer shall submit revised plans, illustrating the following revisions to the proposed development for the written agreement of the planning authority:</p> <ul style="list-style-type: none"><li>• The omission of the proposed masonry wall and the public pedestrian entrance in the vicinity of the existing residential unit associated with Brennan's Bottling Bar to the north of the site and the provision of soft landscaping and a low level fence/wall boundary treatment in its place.</li></ul>

	<ul style="list-style-type: none"> <li>• Provision of internal minimum floor areas and private open space within the long-term apartment block (Block A) in accordance with the standards set out within the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2022).</li> <li>• Details of proposed boundary treatment between the ground floor private amenity areas in Block A.</li> </ul> <p>In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In the interest of residential and visual amenity.</p>
3.	<p>All short term let units within the development shall be registered with Kilkenny County Council annually. Short-term letting apartments shall not be used for long term rental without a separate planning permission.</p> <p>Reason: In the interests of orderly and sustainable development.</p>
4.	<p>Details (including samples) 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.</p> <p>Reason: In the interests of visual amenity and streetscape.</p>
5.	<p>The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.</p> <p>Reason: In the interest of public health and to protect the amenities of the area.</p>
6.	<p>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:</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) 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.</p> <p>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.</p>
7.	<p>(a) Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority pursuant to Section 47 of the Planning and Development Act 2000, that restricts any such residential units permitted (the number and location of each housing unit being specified in such agreement), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all residential units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>(b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not</p>



	<p>been possible to transact each residential unit for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>(c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.</p> <p>Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.</p>
8.	<p>Full details of the following shall be submitted to the planning authority for written agreement prior to the commencement of development:</p> <ul style="list-style-type: none"> <li>(i) Details of all external signage and lighting. No signage shall be internally illuminated on the building.</li> <li>(ii) The name and numbering of the long-term apartment block.</li> </ul> <p>Reason: In the interest of visual amenity.</p>
9.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p>

	Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.
10.	<p>The developer shall set up a Management Company/Companies to provide for the long-term operation, maintenance, administration and management of the apartment block and short term let blocks within the scheme. Full details of this arrangement shall be submitted to the Planning Authority for approval prior to any long-term apartment unit being sold or occupied. Any changes in ownership of the overall site or of any individual dwelling which is part of the Management Company shall be notified to the planning authority.</p> <p>Reason: To ensure adequate maintenance and administration of the proposed development.</p>
11.	<p>Water supply and drainage arrangements, including the disposal of surface water from the site, shall be in accordance with the detailed requirements of the planning authority.</p> <p>Reason: In the interests of public health.</p>
12.	<p>Prior to the commencement of development, the developer shall liaise with the Road Design Office in Kilkenny County Council to ascertain their requirements relating to the removal of existing on street parking to facilitate sight lines for the proposed entrance, specifications and finishes for the proposed entrance to the development and tie in with junction improvement works for Ormonde Street.</p> <p>Reason: In the interest of orderly development and to ensure traffic safety.</p>
13.	<p>Prior to the commencement of development on site, the developer shall submit the following for written agreement of the planning authority:</p> <ul style="list-style-type: none"> <li>• A car parking management plan for the site which illustrates dedicated parking areas for the residential and hotel aspects of the development for written agreement of the planning authority.</li> </ul>

	<ul style="list-style-type: none"> <li>• A revised Site Layout Plan which incorporates the recommendations of the Stage 1/2 Road Safety Audit and enhanced pedestrian connections within the site.</li> <li>• A minimum of 10% of all communal car parking spaces should be provided with functioning EV charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the Planning Authority prior to the occupation of the development.</li> </ul> <p>Reason: In the interest of orderly development.</p>
14.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground.</p> <p>Reason: In the interests of visual and residential amenity.</p>
15.	<p>The applicant shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of development.</p> <p>Reason: In the interest of public health.</p>
16.	<p>Site development and building works shall be carried out only between the hours of 0700 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the amenities of property in the vicinity.</p>
17.	<p>No additional development shall take place above roof parapet levels, including lift motor enclosures, air handling equipment, storage tanks, ducts</p>

	<p>or other external plant, machinery or telecommunications aerial, antennas or equipment unless authorised by a further grant of planning permission.</p> <p>Reason: In the interests of residential and visual amenity.</p>
18.	<p>Prior to the opening of the development, a Mobility Management Strategy shall be submitted to, and agreed in writing with, the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and car-pooling by staff employed in the development and to reduce and regulate the extent of staff car parking. The management strategy shall include policies and strategies to minimise the impact of car parking on existing on street parking within the vicinity of the site. The mobility strategy shall be prepared and implemented by the management company for the development. Details to be agreed with the planning authority shall include the provision of adequate facilities within the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy.</p> <p>Reason: In the interest of encouraging the use of sustainable modes of transport</p>
19.	<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>Reason: In the interest of sustainable waste management.</p>

20.	<p>The construction of 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. The plan shall provide a demolition management plan, together with details of intended construction practice for the development, including a detailed traffic management plan, hours of working, and noise management measures.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
21.	<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 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>Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.</p>
22.	<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 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>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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Stephanie Farrington  
Senior Planning Inspector

6<sup>th</sup> of March 2023