



An
Bord
Pleanála

Inspector's Report ABP-313775-22.

Development	Redevelop premises formerly known as Sheila O'Neills/Dail bar.
Location	Upper Bridge Street, Killorglin, Co Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	22/77.
Applicant(s)	Tom Crowley.
Type of Application	Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party
Appellant(s)	Patrick & Kathleen Finnegan.
Observer(s)	None.
Date of Site Inspection	23/09/2022.
Inspector	A. Considine

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1.0 Site Location and Description

- 1.1. The subject site is located within the centre of the town of Killorglin in Co. Kerry and lies to the south west of, and fronting onto, Upper Bridge Street. The building occupies a mid-terrace location in the streetscape and rises to three storeys in height. At ground floor level, the building comprises a shop front with an almost centrally located door, and a second door is located to the northern corner of the site. The building is occupied by a bar at ground floor level and residential accommodation on the upper floors. The bar has not operated for a number of years.
- 1.2. The site has a stated area of 0.0536ha and the existing building on the site has a stated floor area of 552m². To the rear of the site, there is a large yard area which includes a large two storey outbuilding which is currently unroofed and in a derelict state. This structure rises to two storeys. In addition to the above, there is an existing keg store and smaller shed in the yard as well as an elevated area to the rear (west) of the site.
- 1.3. On the date of inspection, the premises was closed, and I could not gain access to the rear of the site. There are, however, a number of photographs on the PAs file.

2.0 Proposed Development

- 2.1. Permission was sought, as per the public notices, to redevelop premises formerly known as Sheila O'Neills/Dail bar to include the following:
 - (1) partial demolition of existing structure to create wider laneway access on ground floor level, with front elevation changes
 - (2) internal alterations to the existing bar with the addition of a new stairwell to the first and second floors
 - (3) construction of toilets and keg store at rear
 - (4) roofing and refurbishing existing double height outbuilding for use as bar and performing arts centre
 - (5) development of rear yard as beer garden complete with parasols and awnings
 - (6) redevelopment of first floor as apartment and staff facilities and

(7) redevelopment of second floor as apartment,
all at Upper Bridge Street, Killorglin, Co Kerry.

- 2.1. The application included a number of supporting documents including plans, particulars and completed planning application form.
- 2.2. Following a request for further information, the applicant submitted a Structural Engineers Report in relation to the redevelopment of the existing stone structure to the rear of the site which is to be developed as a Performing Arts Centre (PAC). The submission advises that the PAC will include a bar / serving area and will be operated in conjunction with the existing bar. The type of performances will be confined to musical performances, one man shows and plays, and the operating hours will parallel the bar opening hours and in accordance with the licencing laws.
- 2.3. In addition to the above, the response to the FI request advises that the existing bar area is being reduced and that the beer garden will not result in appreciably increased noise level over and above the current levels. There will be an increase in sound during musical performances at the PAC, but the stage and audience will be screened by the existing 600mm thick rubble wall and the new insulated roof which will attenuate the sound. In addition, and to further mitigate the sound, the applicant is to install a sound barrier at 1st floor level between the existing bar building and the corner of the PAC to complete the enclosure of the beer garden area.
- 2.4. The response to the FI request has provided for a revision to the design of the residential apartments with the provision of an internal stairs and the alteration of the window which raised concerns for the third party. All roof waters are currently conveyed to a drainage system within the site and are wholly contained within the site. There will be no overspill to the neighbouring properties.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission for the proposed development subject to 7 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Officers Report:

The initial Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submission, planning history and the Killorglin Functional Area LAP 2010-2016 policies and objectives. The report also includes a section on EIA and AA.

The Planning Report notes the zoning afforded to the site and concludes that the principle of proposed development can be considered. The report notes no issues in relation to visual impacts, road safety / traffic or water services issues. The report acknowledges the issues raised in the third-party submission and notes concerns in relation to noise with regard to the proposed Performing Arts Centre and the rear section of the proposed second floor apartment. Further information is required with regard to a number of issues.

Following the submission of the response to the FI request, the planning officers report accepts said response. The report sets out the details of the levy contribution and includes car parking assessment. Ultimately, the report recommends that permission be granted for the proposed development, subject to 7 conditions. The SEP endorsed the planning officers report.

This Planning Report formed the basis of the Planning Authority's decision to grant planning permission.

3.2.2. Other Technical Reports

County Archaeologist: The report notes no recorded monuments listed in the RMP in proximity to the proposed development site which has previously been disturbed. No mitigation is required.

Kerry National Road Design Office: No observations to make.

Fire Officer: No objection to the proposed development but advises that a Building Control Regulations and Fire Safety Certificate will be required for each building prior to the commencement of any works. In addition,

a Disability Access Certificate will be required for each building prior to the opening, operation or occupation of the buildings.

3.2.3. Prescribed Bodies

TII: No observations.

Irish Water: No objection.

3.2.4. Third Party Submissions

1 third party submission is noted in terms of the planning application submitted. The issues raised are summarised as follows:

- Development description does not include a change of use for the 'disused rear enclosure' to 'rear bar enclosure'. The area has never been used as a bar area and significantly increases the floor area of the public house.
- Issues relating to the disposal of rainwater.
- No details have been provided about vehicular access to the proposed new laneway.
- The development will result in overlooking of adjacent property.
- Noise pollution will dramatically increase and could be disruptive to the residential amenity of the adjoining properties. Issues with late openings and live music would be a serious concern.

It is requested that Kerry County Council limit noise nuisance to normal working hours by means of planning conditions and adhere to their Development Plan Building Control objectives in this regard.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

PA ref 93/871: Permission granted for toilet extension, stairs and extension at the site.

5.0 Policy and Context

5.1. Kerry County Development Plan 2022-2028

- 5.1.1. The Board will note that the subject application was considered under the Killorglin Functional Area Local Area Plan 2010 – 2016 and the previous Kerry County Development Plan 2015 - 2021. In the interim, the Board will note that the Elected Members of Kerry County Council adopted the Kerry County Development Plan 2022-2028 at a full Council Meeting on the 4th of July 2022. The Plan came into effect on the 15th of August 2022 and incorporates the Planning and Development (Kerry County Development Plan 2022-2028) Direction 2022, dated 5th December 2022. The Killorglin Functional Area Local Area Plan 2010 – 2016, and other LAPS, are to be reviewed within 12 months of the adoption of the 2022 CDP, and the Board will note that Killorglin will be covered in the future South Kerry LAP. The 2022 CDP is the relevant policy document pertaining to the subject site and notes that the existing zoning in Killorglin is that which is included in the Killorglin FALAP.
- 5.1.2. Chapter 4 of the CDP deals with Towns & Villages and Section 4.3.7 relates to Upper Floors / ‘Living over the Shop’. The Plan notes that one of the guiding principles of the RSES 2019-2031 is to, ‘Set out measures to reduce vacancy and the underuse of existing building stock and support initiatives that promote the reuse, refurbishment and retrofitting of existing buildings within urban centres’. It is desirable to maintain an element of residential use in or close to town centres as it provides night-time activity. As such, proposals for the residential conversion of the upper floors of retail and commercial premises will be favourably considered. It is further acknowledged that it is not always possible or practical to achieve current residential standards and as such, discretion can be applied in terms of open space and car parking provision. It is required that minimum standards in relation to overall floor areas, storage spaces and natural light are complied with. The following objectives are considered relevant:

KCDP 4-36: Promote and encourage the refurbishment and reuse of the upper floors of retail/commercial premises for residential purposes in town and village centres.

KCDP 4-37: Facilitate a flexible approach in relation to development proposals for residential accommodation in the upper floors of retail/commercial premises based on high-quality design that ensures minimum floor areas, storage space and natural light.

- 5.1.3. Killorglin is identified as a regional town which is described as ‘economically vibrant and vary in terms of scale of retail provision and size of catchment.’ The site lies within the Killorglin town centre on lands zoned for such purposes. In addition, the site is located within the towns ACA, and adjacent to protected structures and as such, the following policy objectives are considered relevant:

KCDP 8-44: Ensure developments in an ACA have a positive impact on the intrinsic character of the area, respect the existing streetscape and layout, and are compatible in terms of design, materials, traffic, views, and intensity of site use.

KCDP 8-45: Resist demolition in an ACA and avoid the removal of structures and distinctive elements including boundary detailing, historic street furniture, cobblestones, flagstones, post boxes, water pumps and ensure new elements are respectful of the character of the historic ACA environment.

5.2. Killorglin Functional Area Local Area Plan 2010 – 2016

- 5.2.1. Section 2 of the LAP deals with Killorglin noting the strategic location of the town with regard to Tralee and Killarney. The town is identified as a regional town which functions as an important local service centre for the northern part of the Iveragh Peninsula and has a wide diversity of services and facilities, ranging from public services, convenience shops, cafes, restaurants, public houses and financial services.
- 5.2.2. Part 3 of Section 2 of the LAP includes objectives for the town centre which seek to promote the sustainable development of the town centre as an attractive location for shopping, business, tourism, residential and community life (Objective TC-1 refers). In addition, the following objectives are considered relevant:

- TC-2: Promote the re-use and regeneration of key town centre sites.
Facilitate a range of appropriate uses as outlined in the Zoning Matrix table.
- TC-3: Promote the development of the town centre as the primary location for retail and other commercial development in the town.
- TC-4: Ensure that future development in the town centre is sympathetic to the existing built heritage of the town
- TC-7: Encourage the use of upper floors in the town centre for commercial or residential use.
- TC-8: Promote in-fill development while maintaining the building line throughout the central core area, thereby consolidating the town structure and creating a sense of enclosure in order to strengthen the streetscape in the town.

5.3. Natural Heritage Designations

- 5.3.1. The site is not located within any designated site. The closest Natura 2000 site is the Castlemaine Harbour SAC (Site Code: 000343) which is located approximately 300m to the east of the site. The Castlemaine Harbour SPA (Site Code: 000343) is located approximately 1.7km to the north east. The Slieve Mish Mountains SAC (Site Code: 002185) lies approximately 7.9km to the north of the site. The Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365) lies approximately 5.5km to the south of the site and the Killarney National Park SPA is located approximately 13.3km to the south east. The Lough Yganavan and Lough Nambrackdarrig SAC (Site Code: 000370) lies approximately 5.5km to the west of the site.

5.4. EIA Screening

- 5.4.1. The application was submitted to the Board after the 1st September 2018 and therefore after the commencement of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018.

5.4.2. Item (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 2ha in the case of a business district, 10ha in the case of other parts of a built-up area and 20ha 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.)

5.4.3. The proposed development seeks to redevelop an existing building on Upper Bridge Street, Killorglin, Co. Kerry which will include partial demolition, elevational changes and the roofing and refurbishment of an existing double height outbuilding for use as a bar and performing arts centre, and other ancillary uses on a site of 0.0536ha. The site is located on zoned lands within the town centre of Killorglin and within the ‘business district’. As such, I am satisfied that the site area is substantially below the 2ha threshold for ‘business district’. It is therefore considered that the development does not fall within the above classes of development and does not require mandatory EIA.

5.4.4. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

5.4.5. Having regard to:

- (a) the nature and scale of the development,
- (b) the location of the site within the development boundaries of Killorglin,

- (c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded 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

6.1.1. This is a third-party appeal, submitted by Andrew Hersey Planning on behalf of his clients Patrick & Kathleen Finnegan, against the decision of the Planning Authority to grant planning permission for the proposed development. The appellants reside in the adjacent property to the south east and the grounds of appeal, which reflect those raised with the Planning Authority during its assessment of the proposed development, are summarised as follows:

- The appellants, mother and son, operate a business from their property adjacent to the subject site. Mr. Finnegan resides in the upper floors of the premises.
- While welcoming the redevelopment of existing derelict buildings and acknowledging the existence of the public house on the site, the proposed development, which will include an increase of commercial floorspace for use as a bar, a beer garden and a performing arts venue, will likely significantly increase noise levels during the evening and late-night hours. This matter has not been addressed satisfactorily by the Planning Authority who did not include a condition to stipulate a threshold for noise levels.
- Excessively loud music from the arts centre and bar will have a profound impact on their residential amenities and a serious impact on their lives.

- The lack of conditions will mean that no enforcement action could be taken in the event of noise complaints from members of the public. It is requested that the Board refuse permission for the development on the grounds of noise.
- The conditions attached to the PAs grant of permission are fundamentally flawed as the noise mitigation measures proposed have not been determined to be successful or not. A noise assessment should have been prepared with appropriate recommendations for noise suppression measures.
- There are no conditions included in relation to the hours of operation. A condition should be included limiting the hours to be in line with regular public house and bar opening hours. Any proposal for opening later than these hours should require planning permission.
- The development will overlook the appellants' yard. While the windows are present, they will now serve apartments. The windows should be constructed with obscure glazing.
- The proposed development does not provide for open space to serve the proposed apartments as required by the CDP. In addition, the proposed apartments do not provide for storage as required in the Sustainable Urban Housing: Design Standards for Apartments 2020 and therefore, they do not comply with relevant standards.
- Concerns regarding surface water management at the site. There are gutters and downpipes present on the south east elevation of the existing building which outfall to the appellants property. Proposals are required to prevent this from occurring in the future. No gutters or eaves should overhang the appellants property in the event of the roof being replaced.
- Condition 4 obligates the applicant to move the downpipes from the south east elevation which faces the appellants property and that surface water off the roof be directed elsewhere.
- The site is located within an ACA which has not been referred to, or assessed, in the PAs report. There are significant changes proposed to the front elevation of the building.

It is requested that permission for the proposed development be refused.

6.2. Applicant Response

The first party submitted a response to the third-party appeal via Frank Curran Consulting Engineers Ltd. The response is summarised as follows:

- The planning history of the site is detailed, and it is submitted that the proposed development seeks to reverse the previous works permitted under PRN 871/93 which included the extension of the bar into the laneway. Reinstating the laneway to its original width will allow better access to the rear of the site.
- The response references the Draft CDP 2022 (now adopted). In terms of the location of the site within the ACA, the proposed development will see the restoration of the traditional laneway to the yard at the rear of the site, preserving the streetscape. Internal changes return the bar to its historic size and layout and the backland development consists of the restoration of the old store.
- The proposed development complies with the Town Centre zoning of the site and is supported by the emphasis on the re-use of vacant buildings, regeneration and removal of dereliction in town centres.
- Section 4.3.7 of the CDP makes specific reference to upper floors / living over the shop, which will be favourably considered.

In terms of issues raised in the third-party appeal, the following is submitted:

- Residential amenity:
 - No change of use at the site is proposed – it has operated as a bar for many years (until recently) with the rear garden operating as a beer garden.
 - The proposed works will see a net increase of 47m² which is a modest overall increase and will not create a super-pub.
 - The noise impact has been considered and mitigation measures proposed. Sound from the bar and the Performing Arts Centre will for the most part be contained within the buildings which have no direct openings onto the

appellants' site. The sound screen proposed will mitigate noise from the beer garden.

- The appellants having lived next door to the site, will have experienced the noise impact of the bar during festivals in the town, as well as musical nights conducted in the open air. The introduction of noise impact as a reason to refuse permission is not valid as the noise level is already part of the environment in which the appellants reside.
- The developer does not propose to raise the noise impact on neighbours.
- Intensification of use is not a reason to refuse permission as it is not a material change of use.
- The development is proposing the creation of a more attractive environment which will attract customers and the business will be viable and create employment.
- Overlooking:
 - The proposed design neither increases the number nor the sizes of the windows on the boundary interface wall.
 - Overlooking of a small internal courtyard referred to is a historical situation and cannot now be reversed.
 - The windows on the development site must remain and the issue of overlooking has no basis.
- Lack of Open Space:
 - There are currently two residential units – one on each floor of the development premises. The developer is entitled to retain the units.
 - The current proposals are a redesign of the existing with a single bedroom apartment on the first floor and a two-bedroom apartment on the second floor.
 - As the residential units pre-date the 2020 Apartment Guidelines, they are not obliged to conform to the standards in relation to open space. They will conform to the standard in relation to the internal layout.

- The CDP also accepts that not all modern standards can be met and projects such as town centre developments (as proposed) will be treated in a discretionary manner.
- It is requested that the Board dismiss these grounds of appeal.
- Surface Water Disposal:
 - The site is served with a combined sewer which caters for all surface water in the area, including all neighbouring sites. All gutters and downpipes are directed to gulley traps which are connected to the public system.
 - There is no practical or legal reason for changing a system that is required, works and if maintained will not cause flooding.
 - Water from the new roof of the PAC will discharge back into the development site.
 - It is requested that the Board dismiss these grounds of appeal.
- Opening Hours:
 - The PA and ABP do not generally concern themselves with opening hours of licenced premises, which are a matter for the courts.
 - It is requested that the matter of opening and closing times be left to the appropriate authorities, ie Courts and Gardai.
- The response concludes, requesting that the Board reject the third-party appeal and confirm the decision to grant permission for the proposed development made by Kerry County Council.

6.3. Planning Authority Response

None.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 Assessment

7.1. Introduction

7.1.1. Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the development the subject of this application and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Impacts to Character of Protected Structure
3. Residential Amenity Issues
4. Other Issues
5. Appropriate Assessment

7.2. Principle of the Development:

7.2.1. The proposed development seeks to redevelop the premises formerly known as Sheila O'Neills/Dail bar to include the following:

- (1) partial demolition of existing structure to create wider laneway access on ground floor level, with front elevation changes
- (2) internal alterations to the existing bar with the addition of a new stairwell to the first and second floors
- (3) construction of toilets and keg store at rear
- (4) roofing and refurbishing existing double height outbuilding for use as bar and performing arts centre

- (5) development of rear yard as beer garden complete with parasols and awnings
 - (6) redevelopment of first floor as apartment and staff facilities and
 - (7) redevelopment of second floor as apartment,
- all at Upper Bridge Street, Killorglin, Co Kerry.

7.2.2. The subject site lies within the town centre of Killorglin and on lands zoned for town centre uses. The site is occupied by an existing, and long-established public house, although it has been closed for a number of years. The building has also provided for residential use at the upper floors of the building. While I propose to consider the detailed proposal before the Board further below, I consider that the principle of the proposed development might reasonably be considered acceptable and in accordance with both national and local policy. All other relevant planning issues are considered below.

7.3. Impacts to Character of Protected Structures & ACAs

7.3.1. In the first instance I would advise the Board that the applicant, while acknowledging the location of the site within the curtilage of a protected structure, has failed to identify the location of the site within the Architectural Conservation Area of the town of Killorglin. The applicant has completed question 17 of the planning application form erroneously, indicating that the site is not located within an ACA. The proposed development seeks permission to add an awning to the walls of the northern boundary which comprise a protected structure and includes proposals for works to the exterior of the structure which is located within an ACA. While I acknowledge the indication that the proposed works to the front of the building seek to reinstate the former and original elevations of the building, and reinstate the former laneway, no clear assessment in this regard has been provided.

7.3.2. The subject site lies within the Architectural Conservation Area of Killorglin – which encompasses the central core of the town and comprising Upper and Lower Bridge Street, Main Street, Market Street, Annadale Road and parts of Newline Road. While the proposed development site does not include a protected structure, the Board will note that it bounds a PS along the northern boundary of the site. In terms of the principle of the proposed development, the Board will note that both national and

local planning policy seek to protect architectural heritage, with the '*Architectural Heritage Protection, Guidelines for Planning Authorities*' providing guidance in respect of the criteria and other considerations to be taken into account in the assessment of proposals affecting protected structures and Architectural Conservation Areas.

- 7.3.3. Chapter 6 of the guidelines relate to development control, including within Architectural Conservation Areas. The guidelines advise seek to encourage the sympathetic maintenance, adaption and re-use of buildings of architectural heritage, and notes that it is generally recognised that the best method of conserving a historic building is to keep it in active use. Section 6.8.1 of the guidelines deals with extensions and notes that in urban areas, careful consideration needs to be given to proposals for the construction of rear extensions to protected structures and buildings within ACAs.
- 7.3.4. In addition, the guidelines state that planning authority should discourage the infilling of gardens, lanes or courtyards of architectural or historical interest. Open spaces such as these have a function in the natural illumination and ventilation of a densely developed urban area. Where surviving plot-divisions remain in the older areas of towns, these can be of historic interest as indicators of the original layout of the area.
- 7.3.5. I would note that there has been no input to the proposed development from a qualified conservation architect, and that the PAs Conservation Officer did not provide a report on the proposed works. No Conservation Report, Design Statement, Architectural Heritage Impact Assessment Report, or Method Statement were submitted in support of the proposed development which, given the location of the site within Upper Bridge Street, Killorglin, is inappropriate. I do acknowledge however, that the proposed works seek to reverse the previous development at the site which included the incorporation of the original laneway into the bar. The reinstatement of the laneway is not likely to have a significant impact on the streetscape within the ACA and I would note that there are examples of such laneways within Killorglin town centre.
- 7.3.6. I refer the Board to the provisions of the Architectural Heritage Protection Guidelines for Planning Authorities in terms of the documentation required to accompany an application for developments within the curtilage of a protected structure or within an

ACA. As indicated in the 2001 Regulations, a planning application for works to a protected structure or proposed protected structure must include (in addition to the normal requirements to supply maps and drawings) 'such photographs, plans and other particulars as are necessary to show how the development would affect the character of the structure (Article 23(2) refers). The same requirements also apply to applications for permission for works to the exterior of a structure which is located within an ACA or an area it is proposed to designate as an ACA.

- 7.3.7. In addition to the above, I refer the Board to Section 8.4.3 of the Kerry County Development Plan 2022-2028 where it relates to ACAs. Having regard to the information available, I am generally satisfied that if permitted, the development as proposed would not have a negative impact on the intrinsic character of the area. The development would appear to respect the existing streetscape in terms of scale, height and layout, and would likely be compatible in terms of design, materials, traffic, views and intensity of site use as required in policy objective KCDP 8-44. In addition, while policy objective KCDP 8-45 seeks to resist demolition in an ACA, I am generally satisfied that the elements proposed for demolition comprise more recent structures and do not appear to impact the historical fabric of the original buildings.
- 7.3.8. However, the detail of the proposed gates to the laneway may require further consideration in the context of the ACA. In addition, the Board will note the proposals to redevelop the existing store located to the rear of the site. A method statement and design are required to be provided with regard to the proposed works to this building as the proposal before the board seeks to reduce the overall height of the structure which will result in historic fabric being lost. I further note that the proposal seeks to erect a retractable awning onto the building and any impacts to the historic fabric of the building should be considered and addressed.
- 7.3.9. A second retractable awning is proposed to be erected along the northern boundary of the site. The Board will note that this boundary wall forms part of a Protected Structure RPS-KY-0619 Townhouse Bunkers Bar and Café. Should the Board be minded to grant planning permission for the redevelopment of this urban site, for which I have no objection in principle, a condition should be included to require the submission of a Architectural Heritage Impact Assessment Report and Conservation Plan to address the potential impacts to the protected structure and historic fabric of buildings affected, for agreement with the Councils Conservation Officer and prior to

the commencement of any development works at the site. A Method Statement for works to the wall of the protected structure and for the restoration of the old store building is also required.

7.4. Residential Amenity Issues

- 7.4.1. Having regard to the urban location, the density of development is high and the potential impact of the proposed performing arts centre and the development of the rear yard as a beer garden, to the rear of the existing public house building has been raised as a concern by an adjoining property owner. The concerns raised primarily relate to noise and overlooking. I would note that the appellant raises concerns regarding the lack of conditions in terms of noise threshold levels and opening hours in the submission to the Board. It is requested that the Board refuse permission on the grounds of noise impact.
- 7.4.2. In terms of overlooking, the Board will note that the proposed development does not include any new windows on the existing building which would result in overlooking of the appellants private yard area. The existing windows serve the upper floors of the building which are noted to serve two existing residential units. The proposed works will see the redesign of the existing residential units to include a one-bedroom unit at first floor level and a two-bedroom unit at second floor level. The proposed development will not alter the size, number or location of the existing windows.
- 7.4.3. Having regard to the proposed layout of the two residential units, the Board will note that the first-floor windows on the elevation facing the appellants yard (south-eastern) will serve two bathrooms and the stairwell, while the second-floor window will serve an ensuite. I do not consider that the proposed development, if permitted will give rise to any significant overlooking of the adjacent property.
- 7.4.4. In terms of the issues raised around noise impact, I note that the subject appeal site has operated as a public house for many decades. I note that the proposal before the Board will see the reduction in the floor area of the bar, back to its original size, with the reinstatement of the laneway to the rear of the site, with minor extensions to the rear of the building to incorporate an existing store as a cold room and WCs. I also note that the applicant submits that the rear yard has been operating as a beer

garden. Having regard to the location of the site and the historical use of the site, I have no objection to the proposed development in principle.

- 7.4.5. The redevelopment of the store as a Performing Arts Centre (PAC) will introduce a use which has in the past been perhaps *ad hoc* on the site. The applicant advises that the rear yard area has in the past been used for musical nights with performances held in the open air. The space has also been used during festivals in the town. It is submitted that with the establishment of the PAC within the old store building, sound from this space will for the most part be contained within the building. There will be no direct openings onto the appellants site and the proposed sound screen to be erected in the vicinity of the appellants boundary will mitigate noise from the beer garden. While I would accept that the location of the site within the town centre provides for a certain level of noise within which the appellant resides, I would agree that a condition in terms of noise limits should be included in any grant of planning permission to protect existing residential amenity. A time limit for amplified music in the beer garden area could also be dealt with by condition if the Board consider it necessary.
- 7.4.6. Overall, I have no objection to the proposed development in terms of the potential impact of the development on the residential amenities of adjacent properties, subject to the inclusion of appropriate conditions relating to noise.

7.5. Other Issues

7.5.1. Residential Element of the Development

The Board will note that the third-party appellant has raised concerns in relation to the proposed apartments in that they do not appear to comply with the open space requirements of the CDP, or the provision of storage as required in the Sustainable Urban Housing: Design Standards for Apartments 2020 and therefore, they do not comply with relevant standards. I would accept that the upper floors of the subject building have been occupied as residential units in the past and that the proposal before the Board seeks to redesign the layouts of the existing units.

Having regard to the town centre location of the site, together with the historical use of the upper floors of the building and the provisions of the current CDP which provides that proposals for the residential conversion of the upper floors of retail and

commercial premises will be favourably considered, Objective KCDP 4-36 refers and subject to compliance with Objective KCDP 4-37 which seeks to 'facilitate a flexible approach in relation to development proposals for residential accommodation in the upper floors of retail/commercial premises based on high-quality design that ensures minimum floor areas, storage space and natural light', I would advise that the proposed residential units:

- Provide for appropriate minimum floor areas.
- Facilitate appropriate levels of natural light.
- While specific storage areas are not identified on the submitted floor plans, I am satisfied that there is ample opportunity to provide such storage within the proposed units. This issue can be appropriately dealt with by way of condition of permission.

Overall, I am satisfied that, having regard to the town centre location, no car parking or open space is required. I have no objection to the proposed development in this regard.

7.5.2. Roads, Traffic & Car Parking

The proposed development site is located within the town centre of Killorglin and currently has no parking spaces associated with the premises. I would note that there is ample public parking available in the vicinity of the site and I would not consider the lack of parking spaces to be a reason to refuse permission. The Board will note that Kerry County Council included condition 3 which requires the payment of €18,400 in respect of the provision of car parking in the absence of car parking facilities to serve the proposed development.

I have no objections to the proposed development in terms of roads and traffic.

7.5.3. Water Services

In terms of site suitability, the Board will note that the application advises that the proposed development is to be served by the existing connections to the public water mains and sewer which are currently present in the existing building. I note that Irish Water has advised no objection to the proposed development. I have no objections to the development in terms of the provision of water services.

I note the third-party submission with regard to the management of surface water from the site, and in particular, I note that there are existing gutters and downpipes on the south eastern elevation of the existing building which outfall into the combined sewer via the appellants property. It is requested that this arrangement be altered to direct surface water from the roof elsewhere. I have considered this issue and would agree with the applicant in this regard. The existing situation is an historical one, and the current proposal does not seek to alter this. With regard to the new elements of the proposed development, including the restoration of the old store for use as a performing arts centre, and which will include the re-roofing of the structure, the surface water arising from the new roof will be directed into the development site. I have no objections in this regard.

7.5.4. Third-party Issues

The Board will note that the third-party appellant raised a concern in terms of the proposed development in terms of opening hours. It is requested that a condition of planning permission be included limiting the hours to be in line with regular public house and bar opening hours with any proposal for opening later than these hours requiring planning permission. I would note that such issues relating to licenced premises are a matter for the courts.

7.5.5. Development Contribution

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

The 2017 Kerry County Council Development Contribution Scheme provides that where there is a shortfall in car parking provision, a contribution of €2,300 per space may be imposed. The proposed development will have a demand for 8 car parking spaces. The Board will note that Kerry County Council included condition 3 which requires the payment of €18,400 in respect of the provision of car parking in the absence of car parking facilities to serve the proposed development.

A condition to this effect should be included in any grant of planning permission.

7.6. Appropriate Assessment

- 7.6.1. The site is not located within any designated site. The closest Natura 2000 site is the Castlemaine Harbour SAC (Site Code: 000343) which is located approximately 300m to the east of the site. The Castlemaine Harbour SPA (Site Code: 000343) is located approximately 1.7km to the north east. The Slieve Mish Mountains SAC (Site Code: 002185) lies approximately 7.9km to the north of the site. The Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365) lies approximately 5.5km to the south of the site and the Killarney National Park SPA is located approximately 13.3km to the south east. The Lough Yganavan and Lough Nambrackdarrig SAC (Site Code: 000370) lies approximately 5.5km to the west of the site. There are no other Natura 2000 sites noted within 15km of the site.
- 7.7. I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites.
- 7.8. Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal development would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development, separation distances involved to adjoining Natura 2000 sites and the location of the site within the built-up area of the town of Killorglin. It is also 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.

8.0 Recommendation

- 8.1.1. Having regard to the information submitted in support of the appeal and development the subject of the appeal, I would accept that the principle of the proposed development within the Killorglin ACA is generally acceptable.
- 8.1.2. I consider that the scale and nature of the proposed demolition works and that the principle of the works to the existing buildings are acceptable and would, if permitted, not significantly affect the intrinsic character and scale of the streetscape. I have

advised no objection in principle to the proposed development in terms of residential amenity, roads and water services. However, a condition should be included to require the submission of a Conservation Report / Architectural Heritage Impact Assessment Report and Method Statement to ensure that the historic character of the ACA would be respected and that the proposed works would not adversely affect the setting of the adjacent protected structure, as well addressing the potential impacts to the historic fabric of buildings affected, for agreement with the Councils Conservation Officer and prior to the commencement of any development works at the site.

- 8.1.3. I recommend that permission for the proposed development be granted subject to the following stated conditions.

9.0 Reasons and Considerations

Having regard to the location of the site within the town centre of Killorglin, Co. Kerry and on lands zoned town centre, together with the existing uses associated with the subject site, and having regard to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be detrimental to the character of the area and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 19th day of April 2022 and 10th day of May 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.

Reason: In the interest of clarity.

2. Prior to the commencement of development, the developer shall submit revised apartment floor plans to ensure compliance with Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in December, 2020, as they relate to the provision of storage.

Reason: In the interests of proper planning and sustainable development.

3. An Architectural Impact Statement and Conservation Plan for the proposed works to the wall of the protected structure to the north of the site including the installation of retractable awnings, the proposed reinstatement of the original laneway onto Upper Bridge Street, Killorglin, as well as the restoration works to the old store building, proposed Performing Arts Centre, together with a Method Statement for said works shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The development shall be carried out in accordance with this plan, and the relevant works shall be restricted to conservation, consolidation and presentation works. The reports shall be prepared by a conservation expert, approved by Kerry County Council, who shall manage, monitor and implement works on the site and ensure adequate protection of the historic fabric during those works.

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

designed to cause minimum interference to the building structure and/or fabric.

Reason: To ensure that these elements of the historic structure are maintained and protected from unnecessary damage or loss of fabric and in the interest of preserving the architectural integrity and heritage value of the retained structures.

4.
 - (a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 0800 to 2200 hours and by more than 1 dB(A) at any other time, when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as L90 and the specific noise shall be measured at LAeq.T.
 - (b) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be subject to the same locational and decibel exceedance criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at LAeqT.
 - (c) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating; either
 - (i) during a temporary shutdown of the specific noise source, or
 - (ii) during a period immediately before or after the specific noise source operates.
 - (d) When measuring the specific noise, the time (T) shall be any five minute period during which the sound emission from the premises is at its maximum level.
 - (e) Any measuring instrument shall be precision grade.

Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority prior to the use of the premises. An

acoustical analysis shall be included with this submission to the planning authority.

Reason: In order to protect the amenities of residential property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.

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

Reason: In the interests of public safety and residential amenity.

6. 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. The plan shall include details of a programme of works that amongst other items provides for interception containment and treatment of construction runoff. No construction runoff should be diverted to the proposed sustainable drainage system. Any surface water sewer pipes used to convey construction runoff should be thoroughly cleaned before subsequent connection to Sustainable Drainage System. This plan shall be prepared in accordance with the provisions of the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

7. Details of the materials, colours and textures of all the external finishes to the building, including windows, doors and roof finishes, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Sample panels shall be erected on site for inspection by the planning authority in this regard.

Reason: In the interest of visual amenity.

8. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 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.

9. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of orderly development and the visual amenities of the area.

10. All plant including extract ventilation systems and refrigerator condenser units shall be sited in a manner so as not to cause nuisance at sensitive locations due to odour or noise. All mechanical plant and ventilation inlets and outlets shall be sound insulated and or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations.

Reason: In the interest of residential amenity.

11. A plan containing details for the management of waste within the development, 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 prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

12. Notwithstanding the provisions of the Planning and Development Regulations, 2001, or any statutory provision amending or replacing them, no additional development shall take place at roof level, including any lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area, and to permit the planning authority to assess any such development through the statutory planning process.

13. 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 Kerry County Council Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended, in respect of Roads & Transport, Community & Amenity Infrastructure and Car Parking. 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

A. Considine
Planning Inspector
24th March 2023