



An
Bord
Pleanála

Inspector's Report ABP-314922-22.

Development	Permission to construct a two-storey building containing a store and 1 no. Office and all ancillary services and area.
Location	Dodd's Lane, High Street, Killarney, Co Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	21/1194.
Applicant(s)	Florence & Pdraig McCarthy.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Multiple Third Party
Appellant(s)	Andrew Duggan John Clifton.
Observer(s)	None
Date of Site Inspection	20/03/2023.
Inspector	A. Considine.

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1.0 Site Location and Description

- 1.1. The site is located on zoned lands within the settlement boundary of the town of Killarney, Co. Kerry, and to the west of High Street in the town centre. High Street and Main Street are noted to be the primary commercial area of the town of Killarney and the proposed development site lies to the rear of the buildings which front onto High Street. Access to the site is via Dodd's Lane, a small laneway which runs under the first floor of a building fronting onto High Street. There is a right of way over the laneway from two separate properties, one on New Street to the south and one into an area connecting to Bishop's Lane. There is also a small access lane off the subject site, running south to north, which provides access to the rear of existing buildings fronting onto High Street.
- 1.2. The site the subject of this appeal, has a stated area of 0.03ha and is currently occupied by a single storey structure which is occupied by a fish shop (closed at the time of my inspection). The rear of the site (west) backs onto a four-storey building which includes a mix of uses and residential on the upper floors. There are windows in the second and third floors of this building which overlook into the subject proposed site. To the south, the site is bound by a wall which encloses the rear spaces of properties fronting onto New Street, and the rear of the buildings which front onto High Street.
- 1.3. The proposed development site includes the full area of the landholding at this location. The Board will note that there is a concurrent appeal for the northern area of the site for the replacement of the existing single storey building and the construction of a three-storey building containing a shop and two offices, ABP-314925-22 refers.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices, to construct to construct a two-storey building containing a store and 1 no. Office and all ancillary services and area, all at Dodd's Lane, High Street, Killarney, Co Kerry.

- 2.2. The application included a number of supporting documents including plans, particulars and completed planning application form and a cover letter setting out the details of the application. The letter also refers to the second application being progressed for the wider site.
- 2.3. The proposed development seeks to construct a two-storey building which will provide for a storage area at ground floor level and an office space at first floor level. The office will be accessed via its own door. The rendered building will have an overall floor area of 143.4m² and will have a flat roof, rising to a total of 6.6m in height.
- 2.4. Following the request for further information, the applicant submitted proposals to address the issues raised in the PAs FI request. The further information amended the scheme to provide for a 900mm set back from the southern boundary to address the issues raised by the third-party objector. This amendment has reduced the overall floor area of the proposed building. The response also seeks to address the matter of the right of way which the third-party raised, as well addressing all other issues raised in the further information request.
- 2.4.1. The response to the FI request was deemed significant and revised public notices were requested and provided.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority, following the submission of the response to the FI request, decided to grant planning permission for the proposed development subject to 11 conditions.

3.2. Planning Reports

Planning Officers Report:

- 3.2.1. 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 in the area and the Killarney Town Development Plan policies and objectives. The report also includes a section on EIA and AA.
- 3.2.2. The Planning Report notes the provisions of the Killarney Town Development Plan as it relates to the redevelopment of laneways and considers the development in terms of visual impact, roads and traffic, site assessment, water services and residential amenity. Further information was required in relation to 22 issues relating to a variety of matters, including questions noted with regard to the fact that two applications are being sought on the same site. Further details as to the proposed uses for both developments, and how they are ancillary to each other, is required. Other areas requiring further information relate to impact on adjacent properties / permitted development, internal layouts of the proposed development, intended uses of the building, waste and traffic issues, hours of operation, noise, odour and nuisance issues including vermin and insect infestations.
- 3.2.3. The applicant sought an extension of time of 3 months to address the further information issues. This was granted by the PA.
- 3.2.4. Following the submission of the response to the FI request, the planning officers report noted the response to the request issues, as well as the internal technical reports in relation to same and to further third-party submissions. The final report accepts the response to the issues raised and concludes that the proposed development will make better use of an undeveloped site, activating the dormant space with increased footfall. The report does require that the proposed office use be relocated to the ground floor and the store be moved to the first floor which will allow ease of access to the public. The store at ground floor level with a roller door, will do nothing to enhance vibrancy of the laneway. It is recommended that a condition be included to address this issue.

3.2.5. The report recommends that permission be granted for the proposed development, subject to 11 conditions. The SEE noted and endorsed the planning officers report. This Planning Report formed the basis of the Planning Authority's decision to grant planning permission.

3.3. Other Technical Reports

Kerry National Road Design Office: No observations to make. The application should be referred to the relevant Municipal District Roads Engineer for a response.

Chief Fire Officer: No objection subject to the applicant being advised regarding Building Control Regulations and the need to obtain a Fire Safety Certificate and Disability Access Certificate.

Environment Report: The report requires that clear details of the processes to be undertaken at the development be provided, particularly if any processing of fish or related products are proposed. Other issues to be addressed include waste management, noise, hours of operation, proposals to deal with any nuisance issues arising and an odour assessment.

Following the submission of the response to the FI request, the Environment Engineer submitted a further report and advised that the response addressed the queries raised. The report advises a number of conditions to be included in a grant of permission.

Area Engineer: The report, submitted following the submission of the response to the FI request, raises a number of concerns with regard to access in terms of the delivery of materials and the impact on High Street. However, conditions are recommended to be included in a grant of planning permission.

3.4. Prescribed Bodies

Irish Water: No objection subject to conditions.

3.5. Third Party Submissions

3.5.1. 4 third party submissions are noted in terms of the planning application submitted from Mr. John Clifton¹, Mr. Peter MacAleer, Mr. Andrew Duggan and Ms Elizabeth and Ms. Veronica Lyne. The issues raised are summarised as follows:

- Issues raised regarding the splitting of the two proposed developments within the same site – it is submitted that both applications should be dealt with together as they are related / linked developments.
- Issues around the planning status of the existing shop operating from the site.
- Impacts on permitted development (yet to be constructed) due to the proximity of the proposed building to boundary making it impossible to implement permission.
- Impacts on rights of way. Issues also raised that the identified RoWs are not agreed or correct.
- Details of deliveries to the site have not been provided.
- Details of waste arising from the development have not been provided. A waste management plan is required.
- No storage of bins / deliveries should be kept on the laneway and the existing bin storage obligations to Quinlans Restaurant should be conditioned.
- Plot ratio is excessive at 2.2 to 1 in a highly restricted town centre area.
- The Killarney LAP refers to the importance of the laneways of Killarney from a residential point of view. The commercial development proposed will set an

¹ The Board will note that page 7 of Mr. Cliftons initial submission to the Planning Authority is missing but is available on the submission to 21/1195.

undesirable precedent and would not be in the interests of the objectives indicated in the plan.

- It should be a condition of permission that the use of the new shop is solely for retail use and not for fish processing and wholesale distribution.
- Issues in terms of the removal of gates to facilitate increased traffic and signage to be addressed.
- A business plan should be requested.
- The proposal represents an overdevelopment of the site.
- Impact on parking and residential amenities.

3.5.2. Following the submission of the response to the FI request, 3 further objections are noted on the PAs files. These objections, most of which refer to both proposed developments on the site, are summarised as follows:

- The response to the FI request did not address the issues raised in initial objections.
- It is unlikely that one development can be entirely stand-alone without the other. A single application and stand-alone design should be brought forward.
- Was planning required for the demolition on the site?
- Inadequate services proposed for the scale of development.
- Intensification and modernisation at the site, is substantial.
- Waste management proposals are unsuitable.
- The 1861 Earl of Kenmare map of Killarney shows the entirety of the site as an access and a means of giving light and air to surrounding buildings.
- The provisions of permission 17/982 have not been taken into account.
- Emergency access concerns.
- Impacts on the right of way.

3.5.3. All submissions request that the application be refused.

4.0 Planning History

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

ABP ref: ABP-314925-22 (PA ref 21/1195): Permission sought to demolish existing shop and store and construct a three-storey building containing a shop and 2 offices and all ancillary services. The PA granted permission for this development, and it is currently the subject of a third-party appeal with decision pending.

Adjacent site:

West:

PA ref. 17/456: Permission granted to construct 1 no. penthouse apartment, in addition to the 2 no. apartments, as granted under PA ref. 16/144 at the rear of No. 7 New Street.

PA ref. 16/144: Permission granted to construct 2 no. apartments at the rear of No. 7 New Street

South

PA ref. 17/872: Permission granted to demolish existing store room, construct a store serving existing retail unit at ground floor level, construct a duplex apartment at 1st/2nd floor level and all associated site works to the rear of 6 New Street (with access from Dodd's Lane).

5.0 Policy and Context

5.1. Urban Development and Building Heights Guidelines for Planning Authorities December 2018.

- 5.1.1. The guidelines encourage a more proactive and flexible approach in securing compact urban growth through a combination of both facilitating increased densities and heights, while also mindful of the quality of development and balancing the

amenity and environmental considerations. Building height is identified as an important mechanism to delivering such compact urban growth.

5.2. Killarney Town Development Plan 2015 as varied and extended

- 5.2.1. The subject site lies to the west of High Street in Killarney Town Centre and is zoned 'M2' Mixed Use - Town Centre. The site lies to the rear of the properties which are located within the Core Retail Area of the town.
- 5.2.2. Chapter 8 of the Plan deals with Retail Development and Section 6.8.4.3 of the Plan identifies that Killarney is well served by a network of laneway and that where the laneways are developed for appropriate retail, these would act as important through routes.
- 5.2.3. Chapter 12 of the Killarney TDP deals with Land Use Zoning Objectives and Development Management Standards and Section 12.3.7 of the Plan deals with Mixed Use (Town Centre/Core Retail Area) (M1-M5). It is policy to primarily provide for mixed uses and any other uses appropriate to the town centre in areas zoned mixed use. The Land Use Zoning Matrix of the TDP sets out the Land Use Zoning Matrix and it is noted that office use is permitted in principle on such lands. While the proposal seeks to construct a building which includes a store at ground floor level and office overhead and given the lack of detail associated with the proposed use of the 'store' at ground floor level, I would note that warehouse / storage depots are identified as being not normally permitted on such zoned lands.
- 5.2.4. In addition, the following DM sections are considered relevant to the subject case:
- 12.3.9 Development in existing built-up areas
 - 12.9 Site Coverage and Plot Ratio
 - 12.10 Densities
 - 12.26 Infill Developments
 - 12.27 Laneways
 - 12.28 Brownfield Development

5.3. Killarney Municipal District Local Area Plan 2018-2024

- 5.3.1. The Killarney MD LAP sets out the local planning framework for the area with the exception of Killarney town. The Killarney Town Development Plan 2009-2015 (as extended) continued to apply to the area formerly administered by the Killarney Town Council. It is indicated that this Town Development Plan will remain in force until after the adoption of the new County Development Plan.
- 5.3.2. Part B, Section 3 of the MDLAP advises that the Council will encourage the redevelopment of the laneways as part of the Laneway Revitalisation Programme. Their redevelopment and subsequent revitalisation could promote outside dining and street theatre entertainment.

5.4. Kerry County Development Plan 2022-2028

- 5.4.1. The Board will note that the subject application was considered under the Killarney Town Development Plan 2009 – 2015. 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. Therefore, the 2022 CDP is the relevant policy document pertaining to the subject site. The Killarney Town Development Plan 2009 – 2015 was incorporated into the new County Development Plan 2022 – 2028 on 4th July 2022.
- 5.4.2. Killarney is identified as a key town which is described as a ‘Large population scale urban centre functioning as self-sustaining regional drivers, and strategically located urban centres with accessibility and significant influence in a regional and sub-regional context’.
- 5.4.3. Volume 2 of the Kerry CDP deals with Town Development Plans and zoning maps, while Volume 4 contains the relevant zoning maps for the towns, including Killarney. Volume 2 Part 2 of the Kerry CDP deals with Killarney Town. The vision for Killarney is to create an attractive location to live, work and visit. It seeks to mirror the natural environment of Killarney National Park with an exceptional urban experience that

sets Killarney apart as a world class tourism destination. The Zoning Objectives from the Killarney Town Development Plan 2009-2015 have been carried into the Kerry County Development Plan 2022-2028. It is the stated strategic objective of the CDP, KA 10 refers, to facilitate the sustainable regeneration and renewal of vacant / derelict sites within the town. Other relevant objectives of the Plan include:

- KA 35 - Sustainably plan for and facilitate the continued regeneration and renewal of Killarney's Town Centre's streets...
- KA 37 - 37 Facilitate improvements to Killarney Town Centre Public Realm at the following locations: Kenmare Place, New Street / High Street/....
- KA 44 - Facilitate the regeneration of retail shopping in Killarney Town Centre where appropriate....
- KA 45 - Facilitate town centre projects that come out of the initiatives such as Putting Town Centres First and the Town Centre Health Checks.

5.4.4. Volume 3 of the CDP includes a number of appendices with part 6 identifying the Architectural Conservation Areas. The subject appeal site does not lie within or adjacent to such an ACA. There are two protected structures which the site adjoins, no. 4 New Street to the south, and which comprises part of the southern boundary wall of the site, and no. 74 High Street, which is a terraced building which backs onto the adjoining smaller lane which provides rear access to nos. 70 – 75 High Street.

5.4.5. Volume 6 of the CDP includes details of the Land Use Zoning in section 2. The site is zoned M2 Town Centre where it is the stated objective of the Kerry County Development Plan 2022-2028 'to provide for the development and enhancement of town core uses including retail, residential, commercial, civic and other uses'. Volume 6 of the CDP provides a description for such zoned lands, seeking to consolidate the existing fabric of the core/central areas of settlements by densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure, residential uses and urban streets, while delivering a quality urban environment. The zoning emphasises compact growth objectives and priority for public transport, pedestrians and cyclists while minimising the impact of private car-based traffic.

5.5. Natural Heritage Designations

5.5.1. The site is not located within any designated site. The closest Natura 2000 site is the Killarney National Park, MacGillycuddys Reeks and Caragh River Catchment - SAC (Site Code: 000356) and Killarney National Park SPA (Site Code: 004038) which is located approximately 200m to the south of the site. The Sheheree (Ardagh) Bog – SAC (Site Code: 000832) lies approximately 2.7km to the south-east of the site. The Castlemaine Harbour – SAC (Site Code: 000343) lies approximately 5.5km to the north of the site.

5.6. EIA Screening

5.6.1. 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.

5.6.2. 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.)

5.6.3. The proposed development to construct a 2-storey building comprising an office and store on a site of 0.03ha. The site is located on zoned lands within the settlement boundary of the town of Killarney. The site is located off High Street in the town centre, and as such, is reasonably described as a ‘business district’. High Street and Main Street, are the primary commercial area of the town of Killarney. 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.

5.6.4. 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.

5.6.5. Having regard to:

- (a) the nature and scale of the development,
- (b) the location of the site within the development boundaries of Killarney,
- (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 multiple third-party appeal against the decision of the Planning Authority to grant planning permission for the proposed development. Both appeals were submitted by Leahy Planning Ltd., on behalf of clients Andrew Duggan and John

Clifton. The grounds of appeal reflect those issues submitted during the PAs assessment of the proposed development and are summarised as follows:

- Both appeals should be assessed jointly as one cannot proceed without the other. A grant of permission would amount to piecemeal development.
- Planning status of the existing fish shop.
- The storage area proposed appears to be ancillary to the fish shop proposed under PA ref 21/1195.
- The site is a light well area for surrounding buildings and is an inappropriate development of back-lands area.
- The development, either singly or in tandem with the proposed adjacent development does not make any or adequate provision for the acceptance of deliveries or removal of waste and rubbish.
- The absence of information about the nature of use of the proposed store and office causes concerns that it will be ancillary to the expansion of the existing fish shop and distribution facility.
- A grant of permission would contradict the terms and conditions of planning permission ref. 17/982 in that it would preclude proper access. The setback of 900mm between the building and the boundary is inadequate to allow light or access.
- Excessive plot ratio and the development is not sympathetic to protecting the amenities of the historic laneways of Killarney and is contrary to the local area plan for Killarney.
- Issues raised in relation to the planners' report maintaining that the FI issues had been addressed. It is not believed that they have.
- No convincing rationale has been put forward as to why a single application should not have been lodged.
- No assessment of noise or deliveries impact have been carried out.

- It is an overdevelopment of the site.

It is requested that permission be refused.

6.2. Planning Authority Response

The Planning Authority submitted a response to the third-party appeals via email on the 14th of November 2022. The response is summarised as follows:

- The backland site is located off High Steet on lands zoned 'Mixed Use', which provide for a wide range of uses.
- Consideration was given to the response to the issues raised in the FI request.
- The development for a proposed office building will make better use of this backland vacant site. There are examples of backland laneway development adjoining the site and it is policy that backland sites in the town, should be redeveloped and used for a mixture of uses to increase vibrancy and general visual attractiveness.

A grant of permission is recommended.

6.3. First Party Response to Third Party Appeal

6.3.1. The first party submitted a response to the third-party appeals via Hickey Design & Associates. The response is summarised as follows:

- There are two applications on the site because if each permission is granted there may be financial constraints prohibiting the development of this development.
- There are no ancillary uses in this proposed structure which will be required by the adjacent proposed three storey structure in addition to the running of the fish shop. The store may be used by the occupants of the two offices proposed in PA ref: 21/1195 (other development proposed) for bikes and bins.

- Alternatively, the applicant has a right to store bins on the lane if required, in the same fashion as adjoining owners.
- The inclusion of condition 6 in the PAs decision is incorrect as a first-floor store for bins and bicycles associated with the development would not be practical. The office should remain at first floor level and the store at ground floor level.
- The proposed store is not a warehouse, storage depot or distribution centre. It is small in scale and will provide space on site for storage of bins to be used in conjunction with the proposed office. It is not commercial in nature.
- No bins are associated with the fish shop as fresh fish is brought from a parent company plant in Kenmare to site each day and all waste is transferred back for further processing.
- Issues raised regarding the two exit doors permitted under PA ref. 17/982 onto the applicants land.
- The proposed development will not impact on the residential amenity of the permitted duplex apartment.
- The permitted development, PA ref. 17/982, overhangs the applicants property and should be set back 900mm from the boundary to allow for adequate bin and bike storage facilities.
- Revised proposals to set back the proposed store and office building 900mm from the boundary are submitted.
- The permitted development, PA ref. 17/982, expired on 03/01/2023 and the proposal is unlikely to obtain planning permission in its current format due to non-compliance with current guidelines.
- It is submitted that the proposed development will add vibrancy and footfall to the laneway and is in keeping with existing adjacent development.
- The final layout of the office, which will include a WC, will be determined when the unit is leased or sold.

- There is no refrigeration or extractor fans proposed in the store or office.
- No deliveries will be made to the store or office on a regular basis. Where necessary, deliveries will use the existing loading bays on High Street.
- With regard to construction traffic, a Health and Safety Plan and a Construction Management Plan will be put in place prior to commencement of development.
- 100mm PVC foul sewer will connect to the existing manhole on site which exits via a 150mm foul sewer pipe to the public sewer on High Street.
- Storm water will also connect to public storm sewer on High Street.
- The width of Dodd's Lane is 1.2m which is the minimum width required for emergency access.
- Map identifying the applicants as owners, and location of right of way submitted.
- There are no issues of noise or odours arising and hours of operation are undetermined but are generally between 8.00am and 6.00pm, Monday to Friday, 9.00am to 1.00pm on Saturdays and closed Sundays and bank holidays. There will be no nuisance arising from vermin or insect infestation.

The response includes a number of enclosures including Odour Management Plan and it is requested that the Board uphold the decision of the Council to grant permission.

6.4. Observations

None.

7.0 Planning 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 proposed development 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. Third Party Issues
3. Access
4. Visual Impacts and Residential Amenity
5. Other Issues
6. Appropriate Assessment

7.2. Principle of the development

7.2.1. The application, the subject of this appeal relates to the construction of a two-storey building which will provide for store at ground floor level and an office space on the first floor. The Zoning Objectives from the Killarney Town Development Plan 2009-2015 have been carried into the Kerry County Development Plan 2022-2028, which is the applicable plan with regard to the subject site. The subject site lies to the west of High Street in Killarney Town Centre, within the Core Retail Area of the town, and is zoned 'M2' Mixed Use - Town Centre. It is the stated objective of the Kerry County Development Plan 2022-2028 'to provide for the development and enhancement of town core uses including retail, residential, commercial, civic and other uses'.

7.2.2. Volume 6 of the CDP provides a description for such zoned lands, seeking to consolidate the existing fabric of the core/central areas of settlements by

densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure, residential uses and urban streets, while delivering a quality urban environment. The zoning emphasises compact growth objectives and priority for public transport, pedestrians and cyclists while minimising the impact of private car-based traffic. I further note that while office use is identified as being permitted in principle on such zoned lands, stores are not.

- 7.2.3. The Board will note that it is the policy of the CDP that within the existing built-up areas, to facilitate development that supports the primary land use of the surrounding existing built up area. I would note that Chapter 6 of the Killarney Town Development Plan deals with Retail Development and Section 6.8.4.3 of the Plan identifies that Killarney is well served by a network of laneway and that where the laneways are developed for appropriate retail, these would act as important through routes.
- 7.2.4. In addition, I note the provisions of Section 12.27 of the TDP. I would note that the subject site, although including a right of way, does not provide through access to other parts of the town. Section 12.27 of the TDP also provides that redevelopment of laneways should take the form of retail units at ground level and residential above ground floor level in order to promote revitalisation of the laneways.
- 7.2.5. Volume 2, Part 2 of the current CDP 2022 relates to Killarney, and the strategic objectives for the town include KA 10 which seeks to facilitate the sustainable regeneration and renewal of vacant / derelict sites within the town. The Climate Action and Urban Regeneration policies of the Plan also promote the redevelopment of brownfield sites in the town centre and seek to facilitate improvements to the Killarney Town Centre Public Realm at High Street, among other streets, (Objective KA 35 and 37 refer). In this context and having regard to the existing development on the site, I would advise no objection in principle to the sustainable regeneration and redevelopment of the brownfield site in the town centre.
- 7.2.6. However, I would note the Planning Authority's requirements in terms of Condition 6 included in the decision to grant permission, that the proposed uses of the building be reversed, and that the office use be provided at ground floor level. The reason for this requirement is that a store at ground floor with a roller door at the end of the

laneway would do nothing to enhance the vibrancy or the laneway and would be something of a dead space. In response, the appellant has submitted that the inclusion of condition 6 in the PAs decision is incorrect as a first-floor store for bins and bicycles associated with the development would not be practical. It is requested that the office should remain at first floor level and the store at ground floor level. It is further submitted that 'the proposed store is not a warehouse, storage depot or distribution centre. It is small in scale and will provide space on site for storage of bins to be used in conjunction with the proposed office. It is not commercial in nature.'

7.2.7. I would advise that while I would have no objection in principle to development at this site, I would fully concur with the conclusion of the Planning Authority. I would not accept that the scale of the proposed 'store' at ground floor level is not of an excessive scale to accommodate bins and a small number of bicycles to serve the proposed 67m² office space. I further agree that a grant of permission as proposed, would not accord with the provisions of either the previous Killarney Town Development Plan as it relates to the revitalisation of the laneways in the town of Killarney, nor the strategic objective of the current Kerry County Development Plan 2022, as it relates to Killarney, to facilitate the sustainable regeneration and renewal of sites in the town centre. The eastern façade of the proposed building will result in a closed and inactive elevation onto the public realm area of Dodd's Lane and will not support the revitalisation of the area or facilitate the regeneration of retail in Killarney Town Centre, and would, therefore, be contrary to the provisions of Objectives KA 10, KA 35, KA 37 and KA 44 of the Kerry County Development Plan 2022.

7.2.8. In the absence of an amended layout, which provides for the appropriate bin and bicycle storage at ground floor level with appropriate use to revitalise the laneway and public realm in accordance with the provisions of the current CDP, and as the applicant has advised that they do not wish to accept the provisions of the PAs condition 6, I do not consider it appropriate for the Board to seek to address this issue by way of condition.

7.3. Third Party Issues:

- 7.3.1. The Board will note that the third-party appellant has raised a number of issues with regard to the proposed development. I also refer to the second application / appeal which is currently with the Board for consideration located within the same site – ABP-314925-22 refers, which seeks permission for a three-storey building containing a shop at ground floor level and offices at first and second floor levels.

Two Planning Applications:

- 7.3.2. The third-party has submitted that both appeals should be assessed jointly as one cannot proceed without the other and that a grant of planning permission in isolation would lead to piecemeal development. It is submitted that a single application should have been lodged for both elements of the development.
- 7.3.3. In response to this issue, the first party submits that two applications were lodged as they are not dependent upon each other and the actual construction of both buildings at the same time may not be possible due to financial concerns. If one application was submitted, the applicant was concerned that compliance with conditions of a grant of permission may not be possible if one building at a time was constructed. The Planning Authority accepted the arguments of the applicant and approved both applications.
- 7.3.4. I would note the appellants concerns that the two proposed developments are co-dependent, but I would be generally satisfied that this could be dealt with by way of condition of permission. I would also be satisfied that if one permission was granted, it would not be hampered or restricted by the refusal of the second, should the situation arise. As such, I am satisfied to proceed with an assessment of the subject appeal as it is presented.

Planning Status of the existing Fish Shop:

- 7.3.5. I note that the existing retail unit on the site appears to have been in operation at this location for many decades. The applicant advises that there has been a fish shop at this site since 1914, with the current applicant operating the unit for 38 years. While the appellants raise questions over the planning status of the shop, there is no

argument that it has been present for many years. I am satisfied to accept the submission of the applicant that the shop is pre-1963 and therefore, planning permission was not required.

7.3.6. The Board will also note the location of the unit within the town centre of Killarney and on lands immediately adjacent to the core retail area of the town.

7.3.7. I have no objections to the consideration of this appeal in this regard.

Impacts on Right of Way:

7.3.8. The appellant has raised concerns in terms of the impact of the proposed development on existing rights of way across the site. The applicant, following a request for further information submitted amended proposals which set back the wall of the building from the southern boundary by 900mm to address the concerns raised. Having regard to the existing structures on the site, together with the nature of the existing boundary wall, I am satisfied that this can be considered acceptable.

7.3.9. The Board is also referred to the previous grant of planning permission to the south of the subject site, which granted permission to demolish an existing store room, construct a store serving existing retail unit at ground floor level, construct a duplex apartment at 1st/2nd floor level and all associated site works to the rear of 6 New Street (with access from Dodd's Lane) (PA ref. 17/872 refers). I would note that this permitted development has not been developed to date, and that the permission expired on 03/01/2023. I would also note that there are currently no windows on the southern boundary wall in the vicinity of the proposed development, which would affect it, notwithstanding the previous grant of permission.

7.3.10. I would also note the provisions of Section 34(13) of the Planning and Development Act, 2000 – 2019, whereby reliance can be placed upon the fact that “A person shall not be entitled solely by reason of a permission under this section to carry out any development.”

7.3.11. The applicant has submitted sufficient information in terms of legal interest to make the planning application for the Board to consider the subject appeal in the normal manner. Civil issues are a matter for the courts.

Backland Development & Density

- 7.3.12. The existing site lies to the rear of the properties which front onto High Street to the east and is bound to the south and west by the rear of properties fronting onto New Street, while the northern boundary of the site backs onto properties on Bishops Lane and Pawn Office Lane. The general height of buildings surrounding the site rise to between two and four storeys. It is argued by the third party that the subject site is a light well area for surrounding buildings and that the development as proposed is an inappropriate development of a backland area.
- 7.3.13. In the context of my comments above in Section 7.2 of this report, I would advise that in principle, I have no objection to the appropriate development of this site. Such development would be required to accord with the provisions of the current CDP in terms of the appropriate redevelopment of the brownfield site and which promotes the revitalisation of the laneway and public realm. The current proposal, as discussed, fails, in my opinion, to provide for such revitalisation of Dodd's Lane.
- 7.3.14. The subject site has a stated area of 0.03ha and in the context of just the subject proposed development which has a stated floor area of 134m², and a ground floor area of 67m², the site coverage would amount to approximately 22.3%, which is substantially below the 80% provided for in the CDP for town centre uses. In terms of plot ratio, is 1:0.447, which, again, is well below the 2.5 figure provided for in the Plan.
- 7.3.15. In terms of compliance with the local policy requirements, and while I have no objection in principle to the development of the subject site, I would not consider that the development of a ground floor store will add any vibrancy to the laneway or public realm. As such, and if permitted as proposed, I consider that the development would fail to provide for the sustainable regeneration of the brownfield site or revitalise the laneway.
- 7.3.16. In terms of the concurrent appeal on this site, I would advise that combined, the two developments will, if both are permitted, result in an overall development with an overall ground floor area of 144.5m² and a site coverage of 48% and a plot ratio of 1.2. In the context of the subject site and its location in the town centre, I do not

consider this to be inappropriate or excessive. I would note some concerns however in terms of the provision of adequate bicycle parking for employees and patrons to the development. Should the Board be minded to grant permission in both cases, this issue should be clearly addressed.

7.4. Access:

- 7.4.1. Access to the site is via Dodd's Lane which comprises a width of approximately 1.2m. The lane is covered for a distance of approximately 7m and the appellant raises concerns regarding deliveries to the site and the removal of waste and rubbish. I also note that Kerry County Councils Engineer also raised a number of concerns with regard to access in terms of the delivery of materials and the impact on High Street in their initial report. The concerns amount to how the applicant will manage the construction and delivery traffic required for the development. I would note that such matters should be the subject of a Construction Management Plan with full details to be agreed with the Planning Authority prior to commencement of construction. While I acknowledge that there are constraints to the site, given the town centre location, it would not be appropriate to refused permission on such grounds.
- 7.4.2. In terms of the deliveries to the proposed development, the applicant has set out the current situation which arises at the site with regard to the fish shop. I am satisfied that the proposed development of an office unit, would not give rise to significant deliveries such as to warrant a refusal of planning permission and would be a matter for future occupants.
- 7.4.3. With regard to the issue of bin / waste storage and removal, the Board will note that the existing lane includes access to a number of businesses fronting onto High Street who store commercial sized bins on the lane to the rear of their properties, with access via Dodd's Lane. The nature of waste arising from a small office development is unlikely to give rise to any significant dis-amenity concerns for surrounding properties. A condition of permission should be included to address the

proposals for waste disposal arising from the proposed office unit, in the event of a grant of planning permission.

7.5. Visual Impacts & Residential Amenity

- 7.5.1. The proposed flat roofed building will rise to approximately 5.6m in height over ground level and will be finished in a render. The proposed building will occupy the space to the east of the existing blank wall associated with the adjacent apartment development and the Board will note that this existing building does not include windows at ground or first floor level. The proposed development will therefore, have little or no impact on any existing residential amenity associated with these apartments.
- 7.5.2. The Urban Development and Building Height Guidelines for Planning Authorities (Dec 2018), builds on the wider national policy objective to provide more compact forms of urban development as outlined in the National Planning Framework. Increased building heights is identified as having a critical role in addressing the delivery of more compact growth in urban areas, particularly cities and larger towns. Specific Planning Policy Requirements (SPPRs) of the height guidelines take precedence over any conflicting policies, and objectives of the Kerry County Development Plan and as it relates to the town of Killarney.
- 7.5.3. In principle I have no objection to the overall design approach to the proposed development, and I have no objection to the finishes proposed or the overall height of the building. I consider that the proposed development adequately provides an appropriate transition in scale with regard to the adjacent developments and will have little or no impact on existing residential amenities in the vicinity.
- 7.5.4. Section 3.2 of the Urban Development and Building Height Guidelines (2018), in terms of the at scale of the site/building, deals with matters relating to daylight. The applicant has not submitted any shadow impact assessment to assess this issue. In terms of impact on existing residential property however, I would accept that there is likely to be very little impact in terms of shadowing due to the orientation of the site, the nature of the existing boundaries and the location of the existing residential units.

7.5.5. The Board will also note that the appellant submits that recent grants of permission for residential use have changed the nature of use of the courtyard. I would note that the planning permission granted to demolish existing store room, construct a store serving existing retail unit at ground floor level, construct a duplex apartment at 1st/2nd floor level and all associated site works to the rear of 6 New Street (with access from Dodd's Lane) (PA ref. 17/872 refers) has not been developed, and the permission expired on 03/01/2023. The other residential developments in the area are occupied.

7.5.6. I would advise that following my site inspection, there is no indication that the existing development gives rise to any significant amenity concerns. I would note the location of the subject site within the town centre, together with the nominal scale of the development, and consider that any deliveries to the site are unlikely to give rise to any significant impacts on existing residential amenity. I would also note that presently, there does not appear to be any residential developments using Dodd's Lane or the subject site.

7.6. **Other Issues**

7.6.1. **Water Services**

I note that Irish Water has raised no objections to the proposed development subject to compliance with conditions. I have no objection in principle to the proposed development from a Water Services view point.

In terms of flooding, I would note that there is no historical data which suggests that the subject site has been subject to flooding in the past. I am generally satisfied that the development, if permitted, will not exacerbate or add to flooding risk in the area.

7.6.2. **Development Contribution**

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

8.0 Appropriate Assessment

- 8.1.1. The applicant did not prepare an Appropriate Assessment Screening Report as part of the subject retention application. The site is not located within any designated site. The closest Natura 2000 site is the Killarney National Park, MacGillycuddys Reeks and Caragh River Catchment - SAC (Site Code: 000356) and Killarney National Park SPA (Site Code: 004038) which is located approximately 200m to the south of the site. The Sheheree (Ardagh) Bog – SAC (Site Code: 000832) lies approximately 2.7km to the south-east of the site. The Castlemaine Harbour – SAC (Site Code: 000343) lies approximately 5.5km to the north of the site.
- 8.1.2. The development the subject of this retention application and appeal is not directly connected with or necessary to the management of a European site, being the construction of a two-storey building comprising an office and store on a zoned and serviced, brownfield urban site. I am generally satisfied that the potential for likely significant effects on the qualifying interests of the Killarney National Park, MacGillycuddys Reeks and Caragh River Catchment - SAC and Killarney National Park SPA can be excluded given the distance to the sites, the nature and scale of the development.
- 8.1.3. 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. It is reasonable to conclude on the basis of the information available, that the ecology of the species and / or the habitat in question is not structurally or functionally linked to the proposal site. There is, therefore, no potential impact pathway identified, connecting the designated site to the development site.
- 8.1.4. Overall, I consider it is reasonable to conclude on the basis of the information available that the proposed 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. 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.

9.0 Recommendation

I recommend that permission for the proposed development be refused for the following stated reason.

10.0 Reasons and Considerations

1. Having regard to the proposed nature and layout of the building, with a store proposed at ground floor level, the Board is not satisfied that the development, if permitted, would accord with the provisions of the Kerry County Development Plan 2022-2028, as it relates to the town of Killarney in terms of facilitating the sustainable regeneration and renewal of sites in the town centre and the revitalisation of the public realm and laneways in the town of Killarney. The proposed ground floor store, and the eastern façade of the proposed building, will result in a closed and inactive elevation onto the public realm area of Dodd's Lane, and will not support the revitalisation of the area or facilitate the regeneration of retail in Killarney Town Centre, contrary to Objectives KA 10, KA 35, KA 37 and KA 44 of the Kerry County Development Plan 2022.

It is considered that the proposed development would be out of character with the pattern of development in the area and would militate against the provision of an attractive pedestrian environment and would thereby constitute a substandard form of development which would not contribute to the revitalisation of Dodd's Lane and would be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

A. Considine
Planning Inspector
24th April 2023