



An
Bord
Pleanála

Inspector's Report ABP-314925-22.

Development	Permission to demolish existing shop and store and to construct a three-storey building containing a shop and 2 no. Offices and all ancillary services and areas.
Location	Dodd's Lane, High Street, Killarney, Co Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	21/1195.
Applicant(s)	Florence & Padraig McCarthy.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant(s)	Andrew Duggan
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 western area of the site for the construction of a two-storey building comprising a store and an office, ABP-314922-22 refers.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices, to demolish existing shop and store and to construct to construct a three-storey building containing a shop and 2 no. Offices 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 demolish existing shop and store and to construct a three-storey building containing a shop and 2 no. offices and all ancillary services and areas. The development will replace the existing fish shop and store which is present on the site and have a combined floor area of 85.6m² and will provide for a new shop space at ground floor level and office space at first and second floor levels. The office will be accessed via a separate door, and both will be accessed via a shared stairwell. The rendered building will have an overall floor area of 232.5m² and will have a flat roof, rising to a total of 9.6m 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 included a detailed floor plan for the proposed replacement shop and details of a shared WC which is proposed at ground floor level of the 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.
- 2.5. With regard to the operation of the existing shop on the site, it is submitted that the applicant has owned the premises for 38 years and prior to that, the business was run by the McGillicuddy family since 1914. As the operation is pre-1963, no permission was required. Since purchasing the site, the applicant has removed loads of debris, rubbish and vegetation from the site. It is submitted that the shop to replace the existing will be similar in scale and details of the extractor fans, refrigeration equipment and condenser compressor unit are noted. There is no processing of fish at this site and the fish shop activities proposed are the same as the current activities on the site. It is submitted that the current activities cause no nuisance.
 - 2.5.1. 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.

3.1.1. Planning Reports

Planning Officers Report:

- 3.1.2. 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.
- 3.1.3. 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 19 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. It is further noted that there is no record of any planning permission for the existing shop on the site which requires to be addressed. 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 including whether processing of fish will occur at the site, waste and traffic issues, hours of operation, noise, odour and nuisance issues including vermin and insect infestations.
- 3.1.4. The applicant sought an extension of time of 3 months to address the further information issues. This was granted by the PA.
- 3.1.5. 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.

- 3.1.6. 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.

3.2. 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.

3.3. Prescribed Bodies

Irish Water: No objection subject to conditions.

3.4. Third Party Submissions

3.4.1. 4 third party submissions are noted in terms of the planning application submitted from Mr. John Clifton, 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

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.

3.4.2. 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.

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-314922-22 (PA ref 21/1194): Permission sought to construct a two-storey building containing a store and 1 no. office and all ancillary services and area. 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 shop and office uses are permitted in principle on such 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 to construct a three-storey building containing a shop and 2 no. offices and all ancillary services 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 third-party appeal against the decision of the Planning Authority to grant planning permission for the proposed development, submitted by Leahy Planning Ltd., on behalf of client Andrew Duggan, Nocwerdna Ltd. 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 is questioned, and it is submitted that the site is not suited to such use.
- 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 site is a light well area for surrounding buildings and is an inappropriate development of back-lands area.
- 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.
- 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.
- Recent grants of permission for residential use have changed the nature of use of the courtyard and the proposed development would affect residential amenity due to smells and extensive deliveries.
- The development is in contradiction to the LAP due to excessive plot ratio.
- Impacts on right of way.
- Issues raised in relation to the planners' report maintaining that the FI issues had been addressed. It is not believed that they have.
- 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 shop / 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 two storey structure in addition to the running of the fish shop. The store proposed under PA ref: 21/1194 (other development proposed) may be used by the occupants of the two offices proposed in this application for bikes and bins.
- The shop has been in the applicants ownership for 38 years and was operating since 1914 by previous owners.

- The provision of vents, extractor fans and refrigeration equipment will be the same as the existing.
- The current delivery system will be maintained in the proposed development. 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.
- The proposed development will be similar to the current use of the site and will not involve high levels of waste or contaminated soil waters being generated.
- 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.
- No processing of fish occurs at the site.
- There are no issues of noise or odours arising and hours of operation will be the same as the current operation between 9.00am and 4.00pm, Monday to Saturday and closed Sundays and bank holidays. There is currently no nuisance arising from vermin or insect infestation and none is anticipated in the proposed development.
- In relation to the possibility of asbestos containing materials on the site a survey will be carried out prior to construction stage. It is unlikely that asbestos is present as the existing shop on the site was refurbished in 1998.

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 demolition of the existing single storey retail building on the site and to replace it with a three-storey building which will provide for a replacement shop at ground floor level and two office spaces on the upper floors. 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 and is zoned 'M2' Mixed Use - Town Centre. I further note that both shop and office uses are identified as being permitted in principle on such zoned lands.

7.2.2. The site lies to the rear of the properties which are located within the Core Retail Area of the town. It is the policy of the Kerry County Development Plan 2022-2028 with regard to such zoned lands, 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.

7.2.3. Having regard to the existing use associated with the site, together with the nature of the proposed development, I am satisfied that the principle of the proposed development generally accords with the provisions of the zoning objective afforded to the site in the CDP.

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-314922-22 refers, which seeks permission for a two-storey building containing a store at ground floor level and an office at first floor level.

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 development, more notably with regard to the concurrent application / appeal before the Board, on existing rights of way across the site.
- 7.3.9. I would 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.”

7.3.10. 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

7.3.11. 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. The Board will note that permission was granted to the property to the south, 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). 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.

7.3.12. Having regard to the location of the site, 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 TDP 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. 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.

7.3.13. 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).

- 7.3.14. In this context and having regard to the existing development on the site, I would advise no objection to the redevelopment of the existing fish shop on the site. In addition, I would note that while the site lies within a 'laneway', office use is a permissible use in the 'M2' Mixed Use - Town Centre. I am generally satisfied that the proposed development can be considered acceptable and in accordance with the provisions of the CDP, and would facilitate the sustainable regeneration and redevelopment of the brownfield site in the town centre.
- 7.3.15. The subject site has a stated area of 0.03ha and in the context of the subject proposed development, in isolation from the concurrent appeal before the Board, which has a stated floor area of 232.5m², and a ground floor area of 77.5m², the site coverage would amount to approximately 26%, which is substantially below the 80% provided for in the CDP for town centre uses. In terms of plot ratio, is 1:0.775, which, again, is well below the 2.5 figure provided for in the Plan.
- 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 amounting to 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.
- 7.3.17. In terms of compliance with the local policy requirements, I have no objection to the development as proposed. I would not consider that the development, if permitted as proposed would significantly or adversely affect the existing character of the area or impact on any existing residential amenities.

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 by the upper floors of a building 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 refuse 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. I am satisfied that the subject development does not provide for any significant intensification of use with regard to the operation of the fish shop and the Board may consider the inclusion of an appropriate condition to prevent the processing of fish at the site, or for the use of the site as a distribution centre, as suggested by the appellant. With regard to deliveries to the proposed office units, I would consider that this operational issue is not insurmountable and is 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. I would note that the existing fish shop is one of these businesses and the applicant advises that the existing situation will continue in the event of a grant of planning permission. Having regard to the fact that the size of the proposed shop is not to increase significantly, I am satisfied that this is acceptable. A condition of permission should be included to address the proposals for waste disposal arising from the proposed office units.

7.4.4. I would, however, have a concern regarding the lack of the provision of bicycle parking / storage for potential future occupiers associated with the shop and offices. I would note that the applicant has advised that should the second application be permitted, bikes can be stored there. I would not accept this solution and would

agree with the appellant in this clearly suggests a level of dependency between the two proposals, which are submitted independently of each other.

- 7.4.5. In terms of the requirements of the Kerry County Development Plan 2022, 100m² offices require 4 bike parking spaces which 100m² shops require 1 bike space plus per staff member. In the context of the proposed development therefore, the development requires the provision of a minimum of 8 bicycle parking spaces. In the context of the subject proposed development alone and in isolation of the concurrent appeal before the Board, I would be satisfied that the application site is adequate to provide the necessary bicycle parking and bin storage facilities. A condition should be included in any decision to grant permission for such facilities, including the location, layout and design, to be agreed with the Planning Authority prior to the commencement of any development on the site.

7.5. **Visual Impacts & Residential Amenity**

- 7.5.1. The proposed flat roofed building will rise to approximately 9.6m in height over ground level and will be finished in a render. The proposed building will occupy essentially the footprint of the existing building on the site and will replace the existing shop and store with a new ground floor shop with offices on the upper floors. I have no objection to the proposed layout or design of the building.
- 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. Having regard to the nature of the proposed uses of the upper floors of the building, I am satisfied that the proposed 6-7m separation distance to the southern boundary of the site is adequate to prevent any potential for overlooking into the private rear garden space of the residential properties to the south.
- 7.5.5. 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 and the location of the existing residential units.
- 7.5.6. 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 and raises concerns in terms of smells arising and deliveries to the site. 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.
- 7.5.7. I would advise that on the date of my inspection, I witnessed no offensive smells or odours from the site. The bin storage area was reasonably tidy and included a number of full bins. There is no indication that the existing development gives rise to any significant amenity concerns and subject to appropriate conditions of permission, I have no objection to the development in this regard. In terms of deliveries, I would note the location of the subject site within the town centre, together with the nominal scale of the development, and would 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.

7.7. Appropriate Assessment

7.7.1. 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.

7.7.2. The development the subject of this application and appeal is not directly connected with or necessary to the management of a European site, being the demolition of the existing single storey retail building on the site and its replacement with a three-storey building which will provide for a shop at ground floor level and two office

spaces on the upper floors on an urban site. I am generally satisfied that the potential for likely significant effects on the qualifying interests of the closest Natura sites, as well as those within the zone of influence as detailed above, can be excluded given the distance to the sites, the nature and scale of the development.

- 7.7.3. 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.
- 7.8. 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.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the nature and scale of the development the subject of this application, the provisions of the current Kerry County Development Plan 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 development would not seriously injure the visual or general 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

water services, environment 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 retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 25th day of August 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 plans to clearly provide for toilet facilities on each office floor and secure parking for 8 bicycles at ground level to serve the overall development.

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

3. 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, delivery of materials to the site, noise management measures and off-site disposal of construction/demolition waste.

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

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no change of use or subdivision of units hereby permitted shall take place within the curtilage of the site, without a prior grant of planning permission.

Reason: In the interest of development control.

11. The shop shall be used solely for the purposes as detailed in the planning application and no processing of fish or related products shall occur at the site. Odour control measures as set out in the Odour Management Plan, submitted to the Planning Authority on the 25th day of August 2022, shall be fully implemented and agreed with the Planning Authority.

Reason: In the interest of public health and development control.

12. No advertisement or advertisement structure, other than those shown on the drawings submitted with the application, shall be erected or displayed on the building, or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity and orderly development.

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

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
22nd April 2023