



An
Bord
Pleanála

Inspector's Report ABP-316259-23

Development	Construct a warehouse and to remove section of boundary wall within curtilage of a Protected Structure
Location	Ballymullen, Tralee, Co Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	22848
Applicant	Harry Kelliher
Type of Application	Permission
Planning Authority Decision	Grant permission with conditions
Type of Appeal	Third Party
Appellants	Kelliher's Feed Agri Supplies
Observers	None
Date of Site Inspection	12/06/2024
Inspector	Siobhan Carroll

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1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.363 hectares and is located to the south-eastern side of Tralee Town Centre. It is situated to the east of Ballymullen Road on lands to the east and south of the premises of Kelliher's Feed and Agri Supplies Ltd. The premises of Kelliher's Electricals is situated to the north of the appeal site.
- 1.2. The eastern boundary of the site adjoins the premises of Lee Strand Co-Operative Creamery Ltd. The land immediately to the south of the appeal site have an extant planning permission for a residential scheme of 30 units comprising 18 no. houses and 12 no. apartments. The Ballymullen Barracks are situated to the south of that site.
- 1.3. The appeal site does not directly adjoin the public road. Access is proposed through the yard of the adjoining property Kelliher's Feed and Agri Supplies Ltd. The boundary wall along a section of the northern boundary of the site is formed by a section of the outer prison wall of the former Ballymullen Jail, which is a Protected Structure.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a warehouse and the removal of a section of boundary wall within the curtilage of a Protected Structure.
- 2.2. The proposed warehouse has a floor area of 1,088.6sq m.
- 2.3. Section of boundary wall proposed to be removed is 7.5m in width.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission subject to 8 no. conditions.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports
- 3.2.2. The Planning Authority sought further information in relation to the following;

1. Applicant was requested to outline the intended use of the proposed development.
2. Applicant was requested to clarify if three separate units are proposed and whether first floor development is proposed.
3. The Planning Authority has reservations with regard to the indicated traffic movements within the site. The applicant was requested to submit revised proposals demonstrating turning circles for larger vehicles with the site and adequate access to the roller shutter by larger vehicles. Adequate parking to be provided within the site, including for HGV's as appropriate. The applicant was requested to address the impact of the traffic movements associated with the proposals on the operation of the existing KFAS business.
4. No surface water to enter foul sewer network as per Water Services KCC. The applicant was requested to address this.

3.2.3. Planners report dated 10/3/23 – The further information response addressed all the issues raised in the further information request. It is considered that there are no further issues arising. Grant of permission recommended.

3.2.4. Other Technical Reports

3.2.5. County Archaeologist: Report – Reg. Ref. 22/848- Construct Warehouse Unit, Remove Section of Boundary Wall, Ballymullen, Tralee. – There are no recorded monuments listed in the Record of Monuments & Places in proximity to the proposed development site which has previously been partly disturbed. The comments of the Conservation Officer should be sought in relation to the recommendation of the accompanying impact assessment that all ground works should be monitored should be made a condition of any grant of planning permission.

3.2.6. Kerry National Roads Design Office – No observations.

3.2.7. Water Services – No objection. No surface water to enter the foul sewer network.

3.3. Prescribed Bodies

3.3.1. Inland Fisheries Ireland – The proposed development is in the river lee (Tralee) 040 catchment, a valuable spawning and nursery ground for Salmonids. The Lee is a PAA. All other watercourses on site need to be identified including those not on OSI

maps. These need to be protected. Any proposal to affect any watercourse, to be clearly stated and agreed with IFI. Agreed measures to be included as conditions of planning. Machinery movement alongside any waters should be prohibited to protect banks. SUDs surface water drainage from impermeable areas should be attenuated on site by discharge to sustainable drainage measures, to alleviate flooding issues on the Ballymullen Road watercourse. Good site management practices should be adopted during site construction to prevent discharge of silt/hydrocarbon contaminated waters to surface waters or storm drainage, such measures adopted and included as conditions of planning.

3.4. Third Party Observations

3.4.1. The Planning Authority received two submissions/ observations in relation to the application. The issues raised refer to the following;

- The excessive scale and bulk of the proposed development.
- It would put further strain on the services. The grant of permission of housing on the adjoining site is noted.
- Concern raised by KFAS the feed and agricultural supply business on the adjoining site in relation to volume of HGV and truck traffic which would impact the operation of their premises.
- The intention to subdivide the building into three units would result in an intensification of use and increased traffic movements.
- The matter of right of way to the site from the KFSA property was raised.
- Access to the site is from the existing yard which is part of the KFSA premises which is a working environment used by trucks, forklifts, employees and customers. Concern was raised in relation to turning areas for HGVs and articulated lorries. No Traffic and Transport Assessment was submitted. No lorry/HGV parking indicated.
- No site specific method statement was provided in relation to the extent of construction traffic and impact on KFSA.

4.0 Planning History

- 4.1.1. Reg. Ref. 22/17 & ABP 317710-22 - Permission was granted to demolish existing 4 no. houses and construction of 18 no. houses and 12 no. apartments on the adjoining site to the south.

5.0 Policy Context

5.1. Kerry County Development Plan Development Plan 2022 – 2028

- 5.1.1. The Tralee Town Development Plan 2009-2015 (as extended and varied) is incorporated into the Kerry County Development Plan 2022-2028.
- 5.1.2. The site is zoned – Objective ‘M4’ – Built Up Area.
- 5.1.3. Chapter 8 of the Development Plan refers to Gaeltact Areas, Culture & Heritage
- 5.1.4. Section 8.4 refers to Built Architectural Heritage
- 5.1.5. Objective KCDP 8-40 - It is an objective of the Council to: Ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting including designed landscape features and views, is compatible with the special character of that structure.
- 5.1.6. Objective KCDP 8-42 - It is an objective of the Council to: Prohibit demolition or inappropriate alterations and replacement of elements of protected structures where they would adversely affect the essential character of a protected structure.
- 5.1.7. Volume 3 – Section 5 of the Development Plan refers to the Record of Protected Structures
- 5.1.8. RPS Ref. RPS-KY-0896 – Former Prison, Old Jail, Former Ballymullen Jail & Archway. Rating of Regional importance in the category of architectural interest.

5.2. Architectural Heritage Protection, Guidelines for Planning Authorities, DoEHLG, 2011

- 5.2.1. Chapter 6 refers to Development Control
- 5.2.2. Section 6.8.11 refers to Demolition

- 5.2.3. The Act provides that permission may only be granted for the demolition of a protected structure or proposed protected structure in exceptional circumstances. Where a proposal is made to demolish such a structure, it requires the strongest justification before it can be granted permission and will require input from an architect or engineer with specialist knowledge so that all options, other than demolition, receive serious consideration.
- 5.2.4. Caution should be used when considering proposals to demolish parts of protected and proposed protected structures as these parts may be of importance to the cumulative historic interest of a building. Where partial demolition of a protected structure is proposed, the onus should be on the applicant to make a case that the part – whether or not it is original to the structure – does not contribute to the special interest of the whole, or that the demolition is essential to the proposed development and will allow for the proper conservation of the whole structure.

5.3. Climate Action Plan 2024

- 5.3.1. The Climate Action Plan 2024 (CAP24) is the third annual update to Ireland's Climate Action Plan.
- 5.3.2. The purpose of the Climate Action Plan is to lay out a roadmap of actions which will ultimately lead us to meeting our national climate objective of pursuing and achieving, by no later than the end of the year 2050, the transition to a climate resilient, biodiversity rich, environmentally sustainable and climate neutral economy. It aligns with the legally binding economy-wide carbon budgets and sectoral emissions ceilings that were agreed by Government in July 2022.

5.4. National Biodiversity Action Plan 2023 – 2030

- 5.4.1. Ireland's 4th National Biodiversity Action Plan (NBAP) sets the national biodiversity agenda for the period 2023-2030 and aims to deliver the transformative changes required to the ways in which we value and protect nature.
- 5.4.2. The targets set out in the Plan are in the context of five objectives that lay out a clear framework for our national approach to biodiversity.

- Objective 1: Adopt a Whole of Government, Whole of Society Approach to Biodiversity.
- Objective 2: Meet Urgent Conservation and Restoration Needs.
- Objective 3: Secure Nature's Contribution to People.
- Objective 4: Enhance the Evidence Base for Action on Biodiversity.
- Objective 5: Strengthen Ireland's Contribution to International Biodiversity Initiatives.

5.5. Natural Heritage Designations

- 5.5.1. Tralee Bay Complex SPA (Site Code 004188) is situated 1.8km to the west of the appeal site.
- 5.5.2. Tralee Bay and Magharees Peninsula West to Cloghane SAC (Site Code 002070) is located 1.93km to the south-west of the appeal site.
- 5.5.3. Ballyseedy Wood SAC (Site Code 002112) is situated circa 1.64km to the south-east of the appeal site.

5.6. EIA Screening

- 5.6.1. The proposed development comprises a warehouse with a floor area of 1,088.6sq m and the removal of a section of boundary wall within the curtilage of a Protected Structure on a 0.363 hectare site.
- 5.6.2. The development subject of this application falls within the class of development described in 10(b)(iv) Part 2, Schedule 5 of the Planning and Development Regulations, 2001, as amended. EIA is mandatory where urban development would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.
- 5.6.3. Whilst within the town of Tralee it is not in a business district. The site is, therefore, materially below the applicable threshold of 10 hectares. The proposal for warehouse with a floor area of 1,088.60sq m and the removal of a section of boundary wall is located within the development boundary of Tralee on lands zoned Objective 'M4' – Built up area, in the Tralee Town Development Plan (as extended)

which is which is incorporated into the Kerry County Development Plan 2022-2028. The site comprises a brownfield site. It is noted that the site is not designated for the protection of the landscape or of natural heritage. The proposed development will not have an adverse impact in environmental terms on surrounding land uses. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other existing development in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The existing wastewater treatment plant serving the town of Tralee has a plant capacity PE of 50333 and has sufficient capacity to accommodate the development. The site is not within a European site. The issues arising from the proximity/connectivity to a European Site can be adequately dealt with under the Habitats Directive. The application is accompanied by an Archaeological & Historic Architectural Impact Report. These address the issues arising in terms of the sensitivities in the area.

5.6.4. Having regard to;

the nature and scale of the proposed development, which is below the threshold in respect of Class 10b(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,

- the location of the site on lands within the development boundary of Tralee on lands zoned under the provisions of the Tralee Town Development Plan, 2009-2015 as extended which is incorporated into the Kerry County Development Plan 2022-2028 and the results of the strategic environmental assessment of the Tralee Town Development Plan, undertaken in accordance with the SEA Directive (2001/42/EC).
- the location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of development in the area.
- the location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended),
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003),

- 5.6.5. The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and the need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. See Appendix 2 attached to this Report for the preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal was submitted by McCutcheon Halley Chartered Planning Consultants on behalf of the appellants Kelliher Feeds & Agri Supplies unlimited company. The issues raised are as follows;

- It is submitted that the proposal to demolish part of the protected structure has not been adequately justified in accordance with Section 57(10) (b) of the Planning and Development Act 2000 (as amended).
- Under Section 57(10)(b) of the Act it states, “A planning authority, or the Board on appeal shall not grant permission for the demolition of a protected structure, save in exceptional circumstances.”
- It is submitted in the appeal that while the planning application includes a heritage impact assessment report, it fails to provide justification for the demolition for part of the boundary wall which is deemed to a protected structure.
- The appeal refers to paragraph 3.10.2 and 3.10.3 of the Architectural Heritage Guidelines where the issue of demolition is dealt with.
- The site includes part of the historic prison wall of the Tralee County Gaol which is listed as Protected Structure 52. “Former Prison, Old Ballymullen Gaol” in the Tralee Development Plan.
- The boundary of the current planning application site in relation to the original Gaol is indicated on a copy of an historic OS map in the appeal. The wall

which is proposed to be demolished to provide a new vehicular access to the site formed part of the main outer wall of the prison.

- The historic settlement pattern of Tralee is detailed in Town Plan it states that the town was laid out along Smith's 1756 map of the town. The main street equates with the Castle Street/Mall and High Street part of the town. Dominant features on this early map include the main square, the market gaol and the church.
- It is detailed the appeal that the southern façade of the original gaol buildings has been retained and incorporated into Kelliher's Electrical Store. It is important for the legibility of this historic site as a former gaol that the original outer prison wall is also retained intact and remains visible and accessible as part of any redevelopment project.
- Objective AHP04 of the current Town Development Plan requires the planning authority to protect and enhance protected structures by ensuring the following
 - the maintenance, alteration, extension, replacement or insertion of any significant features or part(s) to the structure shall be appropriate to the architectural character and setting of the Protected Structure.
 - Development adjacent to a Protected Structure shall not detract from the character of the structure or setting, and existing views to and from the protected structure shall be protected from undue intrusion by new development, including structures, plant and equipment, signs or other devices.
 - Require planning permission for any alteration, change of use, or the replacement of any element of a Protected Structure where the character of the structure is affected.
 - Grant planning permission for the demolition or partial demolition of a protected structure only in exceptional circumstances in accordance with Section 57(10)(b) of the Planning and Development Act, 2000 as amended.
- The Archaeological and Historic Architectural Impact report prepared by Laurance Dunne Archaeological Ltd addressed those matters. The report

states that many parts of the original prison walls were demolished or replaced with concrete block walls as part of earlier redevelopment of the former gaol by the County Council and by the Kelliher Electrical and Agricultural Feeds businesses.

- It is set out in Section 5.0 of the report that the proposed development would have the following impacts (a) It is proposed to demolish c7.5m of relict remains of the outer prison wall to gain access to the development. (b) This is a material impact on the relict remains of the outer secondary wall of the recorded structure reg no: 21008010 (c) This impact is irreversible.
- A section of the report refers to mitigation and states given (1) that the majority of the prison complex has been demolished in the past; (2) substantial sections of the outer prison wall have been demolished in the recent past with precedent permission granted by Kerry County Council; (3) that access can only be gained to the proposed development site by demolition of a 7.5m section of the wall, in the context mitigation by record is proposed.
- The minimum extent of the wall required for demolition (7.5m) to gain access to the rear enclosed proposed development site should be judiciously demolished and recorded. All demolished material should be retained outside and reused in the proposed development. A report on the results should be submitted to Kerry County Council on completion.
- The report concluded that the proposed development site is within the external limits of the curtilage of the defunct and partially reduced Tralee Gaol/Kerry County Gaol a recorded structure Reg. No: 21008010 and consequently there is a medium possibility of discrete built heritage features relating to the prison structure surviving. In a built heritage context, a short section of the old prison wall is proposed for demolition.
- The appellants have concerns regarding the report.
- The report refers to the status of the site as part of the curtilage of the former Tralee Gaol which is in the National Inventory of Architectural Heritage under

reference no: 21008010, it does not acknowledge that the site includes part of the curtilage of Protected Structure 52 in the Tralee Town Development.

- The appellants consider that this is an important omission as the record of Protected Structures imposes a legal requirement on the planning authority to consider whether the proposed demolition of a section of the protected prison wall would be consistent with:
 - (a) Section 57(10)(b) of the Planning Act.
 - (b) Objective AHP04 of the current Town Development Plan and
 - (c) The criteria set out in paragraph 3.10.2 and 3.10.3 of the Guidelines for Planning Authorities on Architectural Heritage Protection.
- They consider that the conclusions reached in the report are the authors own professional opinion. However, they consider that the decision to permit the development should not have relied on conclusions which failed to refer to the policies, designations and guidelines to which the planning authority is legally obliged to have regard.
- It is highlighted that there was no report from the Conservation Officer even though the County Archaeologist identified the need for one.
- The Planning Authority did not avail of the opportunity of a request for further information to investigate whether there were alternative means of access to the proposed warehouse which would not involve partial demolition of protected structure.
- The appellants are of the opinion that the Board is now legally obliged to refuse permission under Section 57(1)(b) of the Planning and Development Act as there is no exceptional circumstances in this case.
- The site is located within an area which is zoned M4 in the Tralee Town Development Plan. The zoning objective provides for a mix of land uses for infill or brownfield redevelopment projects within existing built up area of mixed use.
- They cite Section 11.3 and 11.4 of the Town development Plan, which states that: "In this plan significant areas of land within the town have already been

developed. These are known as built up areas and constitute the majority portion of the zoning on the accompanying maps....In the plan areas of existing development are shown as existing residential (R2) or built up area (M4) or town/village centre area (M2). Within predominantly built up areas development proposals normally involve infill development, redevelopment or refurbishment or changes of use. It is important to recognise that this is part of the cycle of development or redevelopment in settlements that contribute to the character of the town... A mix of harmonious uses is often considered a desirable and attractive characteristic. It is therefore the policy of the planning authority to protect and improve existing/developed/residential areas and to provide facilities and amenities incidental to those areas. There is a range of additional uses open to consideration within these areas where it can be demonstrated that there is a need for such facilities and that it will not affect the predominant use of the area....It is the policy of the Local Authority to facilitate development that supports in general the primary land use of the surrounding existing built up area. Development that does not support or threatens the vitality or integrity of the primary use of these existing built up areas shall not be permitted.”

- While a wide range of additional uses may be “open for consideration” within M4 zones, there is no presumption in favour of any of these uses unless it would enhance the character and amenity of the area as a whole.
- The appellants submit that it is not sufficient to demonstrate that a proposed use is listed as “open to consideration” in the zoning matrix. It is necessary to show that the particular use proposed would be a good neighbour and provide “a mix of harmonious uses” along with the existing or proposed uses of the adjoining properties.
- It is the appellants opinion that the warehouse development which is proposed under the application does not harmonise with the housing development which has been permitted on the adjoining site and which is under appeal ref ABP 314710-22.
- The two layouts are poorly coordinated in terms of land use and urban design. They consider that neither of the two land parcels is capable of forming an

independent planning unit and that they should be developed in accordance with a joint masterplan.

- A coordinated approach would be of significant benefit from a built heritage viewpoint as it would allow the old prison wall to be preserved intact. They consider that two applications should be refused by the Board on the grounds that they are premature pending the approval of an overall masterplan which would identify the appropriate mix of uses for the part of the M4 zone which adjoins Protected Structure 52.
- Concern is raised regarding adverse impact on the established use at the premise of Kelliher's Feed Agri Supplies. They state that the applicant is not legally entitled to interfere with their business by routing the proposed vehicular access and service connections through the working yard of Kelliher's Feed Agri Supplies (KFSA).
- The applicant has not adequately addressed the serious issues raised in relation to the adequacy of the applicant's onsite traffic management and parking proposed. The applicant has not yet agreed a method statement to address the significant impacts on their business relating to construction traffic and access to services during the construction phase.
- It is stated that the applicant is proposing to permanently alter the business premises by carrying out substantial works and changes of use on land which are outside the red line boundary of the planning application. Kelliher's Feed Agri Supplies unlimited company have and are entitled to have a long-term lease on lands which the applicant is claiming a right of way to which they have not consented. The works outside the red line boundary comprise the construction of a new 7.5m through road and service corridor and a consequent reduction in the space available to KFSA for access, circulation, parking and open storage in accordance with the existing planning permission.
- They consider that the works and changes of use which are proposed to provide vehicular access to the applicant's warehouse require a new planning permission.

- While the applicant's response to the request for further information indicates that there will be sufficient area to turn a HGV within the applicant's site, the entire yard area in front of the proposed warehouse building would be utilised for the turning manoeuvre. Any HGV delivering to any one of the three doors will impinge on the turning area the restricted area available for delivery, disposal and turning has the potential to result in queuing of HGVs along the proposed access route.
- In conclusion, the proposal is premature pending the preparation of a conservation strategy and masterplan for the remaining underdeveloped lands within the Ballymullen M4 zone of which the proposed site forms an important part. The masterplan would allow the access, land use and conservation issues to be addressed in a more integrated and plan-led way.

6.2. Applicant Response

A response the third party appeal was submitted by SJK Engineering & Surveying Ltd. on behalf of the applicant Harry Kelliher. The issues raised are as follows;

- The appeal response includes a copy of the Archaeological & Historic Architectural Impact Report which was submitted with the application. The content of the report was reviewed by the Planning Authority as part of their assessment of the proposal and permission was subsequently granted.
- The site layout plan identifies that it is proposed to reuse the existing stone material from the section of the wall that is proposed to be demolished for access to the site on a section of the new proposed southern boundary wall.
- The site is located on lands which are zoned objective M4, where warehouse/storage/distribution centres/wholesale warehouse (Class 5) are open to consideration as confirmed by the planning report.
- A site plan with the landholding of the applicant indicated in blue is attached with the appeal.
- The existing site leased by Kelliher's Feeds & Agri Supplies from the applicant has limited access. In relation to deliveries to Kelliher's Feeds & Agri Supplies

they noted that vehicles have to regularly back into the site from the public road.

- It is respectfully submitted to the Board that the proposed development will not have an adverse impact on the third parties established use of the existing site.
- It is submitted by the first party that the proposed development has the potential to significantly improve the on-site operations and traffic management for the third party by providing alternative safe and efficient HGV turning and parking facilities within the proposed development site. It would free up valuable yard space for additional customer parking or material storage areas.
- The applicant and their design team understand the current and potential future traffic management needs of both the existing site leased by Kelliher's Feed & Agri Supplies and the proposed development site.
- A key objective of the proposed development layout was to first provide HGV turning and parking facilities for the proposed development site and also to facilitate a significant improvement to traffic management within the existing site, by permitted HGV vehicles associated with Kelliher's Feed & Agri Supplies to turn within the proposed development site.
- In relation to the issue of HGV's queuing, the first party submit to the Board that no HGV queuing will occur on the access route (right of way through the existing site) because sufficient HGV parking i.e. 3 no. space have been provided within the proposed development site. They submit that in excess of the required HGV parking has been provided to cater for any potential peak HGV demand from both the existing and proposed site.
- The appeal response includes a copy of a report prepared by Coakley Consulting Engineers that confirms that on the basis of the assessments that the proposed development in terms of traffic flows, vehicle movements and parking would operate in a safe and efficient manner with minimal impact on other road users and in particular on the existing Kelliher's Feed & Agri Supplies business.

- They confirm that the proposed development will benefit Kelliher's Feed & Agri Supplies business as it will allow delivery trucks to their business to have safe access and a turning area on the new site as identified on the proposed site layout plan.
- In conclusion, the first party disagree with the details contained in the appeal. They submit that the proposed development is suitable for its location and will give benefit to the operation and safe access to Kelliher's Feed & Agri Supplies.

6.3. **Planning Authority Response**

- None received

7.0 **Assessment**

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

- Compliance with policy
- Impact of proposed scheme on Protected structure
- Access and traffic

7.1. **Compliance with policy**

- 7.1.1. The appeal site at Ballymullen, Tralee, Co. Kerry is located on lands zoned – Objective 'M4' – Built Up Area under the provisions of the Tralee Town Development Plan 2009-2015 (as extended and varied) which is incorporated into the Kerry County Development Plan 2022-2028. The zoning objective provides for a mix of land uses for infill or brownfield redevelopment projects within existing built-up area of mixed use.

- 7.1.2. It is contended in the appeal that the proposed development is not appropriate for the site on the basis that it is not sufficient to demonstrate that a proposed use is listed as “open to consideration” in the zoning matrix. It is necessary to show that the particular use proposed would be a good neighbour and provide “a mix of harmonious uses” along with the existing or proposed uses of the adjoining properties. The appellant considers that the proposed development of a warehouse on the site would not harmonise with the housing development which has been permitted on the adjoining site (Reg. Ref. 22/17 & ABP 314710-22). They consider that the two layouts are poorly coordinated in terms of land use and urban design and that neither of the two land parcels is capable of forming an independent planning unit and that they should be developed in accordance with a joint masterplan.
- 7.1.3. The report of the Planning Officer dated 10/3/2023 in relation to the further information noted that the applicant intended use of the proposed development is for wholesale and distribution and that these uses are open to consideration under the M4 zoning objective of the site. It was concluded in the report that the proposed use was in accordance with the zoning and considered acceptable.
- 7.1.4. In relation to the case put forward by the appellant that a joint masterplan should be provided to co-ordinate the development of the appeal site and the adjacent site to the south, I would highlight that there is no objective in the Tralee Town Development Plan 2009-2015 (as extended and varied) to prepare masterplan for these lands. Furthermore under Reg. Ref. 22/17 & ABP 314710-22 permission was granted to demolish existing 4 no. houses and construction of 18 no. houses and 12 no. apartments on the adjoining site to the south. Accordingly, there is an extant permission for a residential scheme on the lands which appellant considers should be jointly developed with the appeal site.
- 7.1.5. Regarding the ‘M4’ zoning objective which refers to ‘Built Up Area’ the zoning matrix indicates that wholesale warehouse (Class 5) is open to consideration. The appeal referred to the necessity of the proposal to be a good neighbour and provide for a mix of harmonious uses. In relation to this I would highlight that the ‘M4’ zoning objective provides for a number of different uses which are either permitted in principle or open to consideration. This is detailed on the Zoning Matrix in Section 4 of Volume Two of the Kerry County Development Plan 2022-2028, having regard to

the town centre nature of the lands there are a large number of uses which are open for consideration including office, retail, warehouse and residential. I would note that the surrounding uses are the premises of Kelliher's Feed and Agri Supplies immediately to the north and west of the appeal site and the premises of Lee Strand Co-Operative Creamery Ltd to the east of the appeal site. The proposed warehouse use is therefore a use which is similar or comparable to these adjacent and adjoining uses. The residential scheme which has been granted permission under Reg. Ref. 22/17 & ABP 314710-22 is located on the lands immediately to the south of the appeal site. The side of the proposed warehouse would be setback circa 2m from the southern site boundary. The height of the subject warehouse unit at the apex of the roof is 10.7m. The permitted housing units on the site to the south comprises a mix of apartments and dwellings. A row of 4 no. terraced houses is proposed to the south of the subject warehouse. The gable of the dwelling at the end of this terrace is setback circa 2m from the northern boundary. Accordingly, I am satisfied that there is adequate separation distance between the gable of the permitted residential unit to the south and the proposed warehouse.

- 7.1.6. Having regard to the details set out above I consider that the proposed warehouse is acceptable in the context of the existing and permitted surrounding development.
- 7.1.7. In conclusion, having regard to the 'M4' zoning objective of the site and the relevant provisions of the Tralee Town Development Plan 2009-2015 (as extended and varied), I am satisfied that the proposed development of the site for a warehouse is in accordance with the zoning provisions and appropriate to the site context.

7.2. Impact of proposed scheme on Protected structure

- 7.2.1. The grounds of appeal raised the proposal to demolish a section of boundary wall on the basis that it forms part of the curtilage of the Former Ballymullen Jail & Archway which is a Protected Structure. RPS Ref. RPS-KY-0896 – Former Prison, Old Jail, Former Ballymullen Jail & Archway. Rating of Regional importance in the category of architectural interest.
- 7.2.2. Specific concern was expressed in relation to the proposal to demolish a part of the curtilage of the Protected Structure on the basis that the applicant had not

demonstrated exceptional circumstances in accordance with the provisions of Section 57(10)(b) of the Planning and Development Act, 2000 (as amended).

7.2.3. Section 57(10)(b) states;

(b) A planning authority, or the Board on appeal, shall not grant permission for the demolition of a protected structure or proposed protected structure, save in exceptional circumstances.

7.2.4. While I note the case made in the appeal for exceptional circumstances to be provided in respect of the proposed demolition of part of the curtilage of the Protected Structure, I would highlight recent case law.

7.2.5. In the case *Sherwin v. An Bord Pleanála* at the High Court Mr Justice Richard Humphreys found that in respect of Section 57(10)(b) of the Planning and Development Act, 2000 (as amended) that the matter had not been considered by the Board Inspector. An appeal of this case was heard at the Supreme Court.

7.2.6. Mr Justice Woulfe at the Supreme Court found that the High Court erred in its interpretation of Sub-section 57(10)(b) and that the requirement for 'exceptional circumstances' in relation to demolition of a 'protected structure' in sub-section 57(10)(b) is not triggered by the proposed demolition of a part of a protected structure. Accordingly, the Supreme Court upheld the Board's interpretation of Section 57(10) regarding part of a structure.

7.2.7. Accordingly, having regard to the decision of the Supreme Court I would therefore interpret based on this decision and precedent set that there is not a requirement for exceptional circumstances to be provided in respect of the current proposal before the Board.

7.2.8. The grounds of appeal refer to the appellant's concerns regarding the content of the Archaeological & Historic Architectural Impact Report. The appeal states that the report refers to the status of the site as part of the curtilage of the former Tralee Gaol which is in the National Inventory of Architectural Heritage under reference no: 21008010, however that it does not acknowledge that the site includes part of the curtilage of Protected Structure 52 in the Tralee Town Development. It is highlighted in the appeal that there was no report from the Conservation Officer even though the County Archaeologist identified the need for one.

- 7.2.9. In relation to the Archaeological & Historic Architectural Impact Report, this was prepared by Laurence Dunne, Archaeology Ltd. and was submitted with the application. In relation to point made in the appeal that the report does not refer to the site including part of the curtilage of Protected Structure 52 in the Tralee Town Development, I would note this. However, the report refers to National Inventory of Architectural Heritage under reference no: 21008010 which is the analogous reference number of the protected structure RPS Ref. RPS-KY-0896 – Former Prison, Old Jail, Former Ballymullen Jail & Archway as detailed in Volume 3 – Appendix 5 of the Kerry County Development Plan 2022-2028 which refers to Record of Protected Structures.
- 7.2.10. As detailed in the Record of Protected Structures RPS Ref. RPS-KY-0896 refers to Former Ballymullen Jail & Archway. The National Inventory of Architectural Heritage provides a detailed description of the subject Protected Structure it is described as the remains of Kerry County Gaol, built 1812-7, to designs by Richard Morrison (1767-1848). The design includes an attached three-bay two-storey block on a rectangular plan. It features a hipped artificial slate roof centred on pitched (gabled) artificial slate roof, ridge tiles, central chimney stack on axis with ridge having stepped capping. I would note that the description under NIAH reference no: 21008010 refers to the building being set in relandscaped grounds.
- 7.2.11. It is detailed in the Archaeological & Historic Architectural Impact Report that the narrow westernmost limits of the proposed development site extends parallel to and is demarcated by a surviving section of the outer wall of the prison. It is highlighted in the report that much of this outer wall was demolished in the past and was partially replaced by concrete block walls associated with the modern construction of boundary and party walls between Kelliher's Electrical and Kelliher's Feed & Agri Supplies in the 1990's.
- 7.2.12. In relation to the proposal, it is set out in the report that it would entail the demolition of 7.5m of the relict remains of the outer prison wall to gain access to the proposed development site. This is described as a material impact on the relict remains of the outer secondary wall. It is described as an irreversible impact. Section 5.1 of the Archaeological & Historic Architectural Impact Report refers to impact mitigation. It advises that all groundwork associated with the construction should be monitored by an archaeologist with experience in recording 19th century historic structures. The

report refers to the majority of the prison complex having been demolished in the past and that substantial sections of the outer prison wall having been demolished in the recent past under permission granted by the Council. It is highlighted in the report that access can only be gained to the proposed development site with the demolition of the subject section of wall and that all demolished material would be retained onsite and reused in the development.

7.2.13. Regarding the subject section of wall, I would note that it is separated from the former gaol building now occupied by Kelliher's Electrical and it is an outer secondary wall associated with the former gaol. This is confirmed in the description of the remains of Kerry County Gaol under NIAH reference no: 21008010 refers to the building being set in relandscaped grounds.

7.2.14. Furthermore, I would note that as detailed in the Archaeological & Historic Architectural Impact Report that substantial sections of the outer prison wall have previously been demolished in the recent past. Therefore, I would conclude that a precedent for the proposed demolition of a section of outer prison wall associated with Former Ballymullen Jail & Archway within the curtilage of the Protected Structure has been established. While the proposal would entail the demolition of the section of the subject wall which would be an irreversible impact, I would consider that it would be acceptable specifically in the context of the level of demolition and interventions which have occurred to the prison wall.

7.2.15. Having regard to the details set out above I conclude that the proposed to demolish the subject section of wall would not unduly impact upon the character and setting of Former Ballymullen Jail & Archway, Protected Structure.

7.3. Access and traffic

7.3.1. The grounds of appeal refer to the matter of access to the proposed development and the level of traffic which would be generated. The appellants are concerned that the proposed access through the working yard of Kelliher's Feed Agri Supplies (KFSA) would impact the operation of the business. The appeal refers to concerns in relation to onsite traffic management and parking proposed during the construction phase.

- 7.3.2. Regarding HGV deliveries to the proposed warehouse the appellant raised concerns whether there would be sufficient area to turn a HGV within the applicant's site, the entire yard area in front of the proposed warehouse building would be utilised for the turning manoeuvre. Any HGV delivering to any one of the three doors will impinge on the turning area the restricted area available for delivery, disposal and turning has the potential to result in queuing of HGVs along the proposed access route.
- 7.3.3. The appellant Kelliher's Feed Agri Supplies (KFAS) unlimited company state that they have and are entitled to have a long-term lease on lands which the applicant is claiming a right of way to which they have not consented.
- 7.3.4. As part of the further information the Planning Authority required that the applicant address the issue of traffic movements within the site. The applicant was required to demonstrate turning circles for larger vehicles within the site and adequate access to the roller shutters by larger vehicles. The provision of adequate parking within the site was also required.
- 7.3.5. In response to the matters a report prepared by Coakley Consulting Engineers was submitted to the Planning Authority which included a revised site layout. A HGV turning circle is provided to the west of the proposed warehouse building. 26 no. car parking spaces are proposed along the northern and southern side of the site and 3 no. HGV parking bays are proposed to the western area of the site.
- 7.3.6. It is detailed in the Consulting Engineers report that vehicle swept path analysis indicated that large HGV's (articulated vehicles of 16.5m) can access, egress, park, turn and safely negotiate the revised layout proposed and internal access road through the KFAS site.
- 7.3.7. Regarding the issue of traffic generation, it is detailed in the report from the Consulting Engineers that the existing KFAS premises has 1-2 daily deliveries in and 4 deliveries out to customers which are carried out in small delivery vans. Traffic volumes in the peak hours of 11.00 – 12.00 are 6 no. arrivals and 4 no. departures. It is concluded in the report that the existing KFAS business generates minimal customer traffic flows and would easily and safely accommodate additional traffic generated from the proposed development.
- 7.3.8. Coakley Consulting Engineers using the TRICS database projected the level of traffic which would be generated by the proposed development. From 08.00 – 09.00

2 no. arrivals and 2 no. departures were estimated. From 11.00 – 12.00 2 no. arrivals and 1 no. departure were estimated. From 13.00 – 14.00 3 no. arrivals and 2 no. departures were estimated and from 17.00 – 18.00 1 no. arrival and 2 no. departures were estimated. It was set out in the report from the Consulting Engineers that the traffic generated by the proposed development would have a negligible impact on peak hour periods and that it would generate 50% less traffic and parking demand compared with the KFAS premises.

- 7.3.9. It was concluded in the report from the Consulting Engineers that the revised layout caters for the safe movement and turning of large HGV's through both the existing KFAS premises and the proposed development site and that in terms of traffic flows, vehicle movements and parking that it would operate in a safe and efficient manner.
- 7.3.10. The first party response sets out that the appellants Kelliher's Feed Agri Supplies (KFAS) have leased their premises from the applicant Harry Kelliher. Figure 4 in the first party response indicates the application site outlined in red, the adjacent land in the ownership of the applicant outlined in blue and the extent of the 6.5m wide Right of Way from the public road to the site is indicated in yellow. Accordingly, this indicates that the proposed vehicular access to the site is in the ownership of the applicant and that there is an existing right of way to access the site.
- 7.3.11. In relation to the proposed vehicular access the first party confirmed in the response to the further information that they propose to formally mark parking spaces within the existing KFAS site for both staff and customers and that the access road will be clearly demarcated using new road markings and that it will be kept clear of materials/product storage, parked vehicles and other obstacles. These proposals will ensure that traffic at the existing KFAS premises and the proposed development site are effectively managed to ensure safe operation and minimal impacts caused to both premises by the operation of the neighbouring premises.
- 7.3.12. In conclusion, having regard to the details set out above, I consider that traffic impact associated with the development will be limited and I consider that the proposal can be accommodated in the context of the adjoining existing business premises and the proposed vehicle access via that site. I consider that the principle of the proposed access arrangements acceptable.

8.0 AA Screening

- 8.1.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000, as amended.
- 8.1.2. The subject site is located approx. 1.64km, at the closest point from Ballyseedy Wood SAC (Site Code 002112). Tralee Bay SPA (Site Code 004188) is located to 1.8km to the west of the appeal site and Tralee Bay and Magharees Peninsula, West to Cloghan SAC (Site Code 002070) is located 1.93km to the west of the appeal site.
- 8.1.3. The proposed development comprises the construction of a warehouse and the removal of a section of boundary wall within the curtilage of a Protected Structure, all on a 0.363 ha site, located on serviced lands within the Tralee development boundary.
- 8.1.4. No nature conservation concerns were raised in the planning appeal.
- 8.1.5. No streams/watercourses are identified on site.
- 8.1.6. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European site. The reason for this conclusion is as follows:
- The nature of the works proposed which are located on serviced lands
 - The distance to the nearest European sites, and the absence of any hydrological or other pathways
- 8.1.7. I conclude on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 8.1.8. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000, as amended, is not required.

9.0 Recommendation

- 9.1. I recommend that planning permission is granted for the proposed development in accordance with the following reasons and considerations:

10.0 Reasons and Considerations

- 10.1.1. Having regard to the provisions of the Kerry County Development Plan 2022 – 2028 and Tralee Development Plan 2009-2015 (As extended and varied) as incorporated into the Kerry County Development Plan 2022 – 2028, and having regard to the pattern of existing development in the area and the design, scale and layout of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area, would not unduly impact upon the character and setting of Former Ballymullen Jail & Archway, Protected Structure and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the planning authority on the 14th day of February 2023, 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 the 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. The proposed development shall be used as a single unit for wholesale and distribution use as detailed in the further information submitted to the planning authority on the 14th day of February 2023. No change of use or subdivision of the unit shall take place without a prior grant of permission.

Reason: In the interest of orderly development.

3. Prior to the commencement of development, the developer shall enter into water and/or wastewater agreement(s) with Uisce Éireann.

Reason: In the interest of public health.

4. The mitigation measures as set out in Section 5.1 of the Archaeological and Historical Architectural Impact Report submitted to the planning authority on the 12th day of August 2022 shall be complied with. A report on the results shall be submitted to Planning Authority on completion.

Reason: In the interest of archaeological and historic architectural protection.

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

Reason: In the interest of visual amenity.

6. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:-
 - (a) details of all proposed hard surface and/or permeable surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
 - (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;
 - (c) details of proposed street furniture, including bollards, lighting fixtures and seating;
 - (d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity.

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation

provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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.

Siobhan Carroll
Planning Inspector

26th November 2024

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP 316259-23		
Proposed Development Summary	Construction of a warehouse and the removal of a section of boundary wall within the curtilage of a Protected Structure		
Development Address	Ballymullen, Tralee, Co. Kerry.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes	✓	Class 10(b)(iv), Schedule 5 Part 2	Proceed to Q3.
No			
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No	✓		Proceed to Q4

4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	✓	Class 10(b)(iv), Schedule 5 Part 2 refers to Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere. The proposal to construct a 1,088.6sq m warehouse on a 0.363 hectare site is significantly below the threshold of urban development of a 10 hectare site within a built-up area.	Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	✓	Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference Number	ABP- 316259-23
Proposed Development Summary	Construction of a warehouse and the removal of a section of boundary wall within the curtilage of a Protected Structure.

Development Address	Ballymullen, Tralee, Co. Kerry.
<p>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>	
<p>Characteristics of proposed development</p> <p>(In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p>	<p>The development has a modest footprint. It does not require the use of substantial natural resources, or give rise to significant risk of pollution or nuisance. The development, by virtue of its type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change. It presents no risks to human health.</p>
<p>Location of development</p> <p>(The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	<p>The development is situated in a urban area and is removed from sensitive natural habitats, designated sites and landscapes of identified significance in the County Development Plan. The proposal entails the demolition of a section of boundary wall which is part of the curtilage of a Protected Structure.</p> <p>RPS Ref. RPS-KY-0896 – Former Prison, Old Jail, Former Ballymullen Jail & Archway.</p>
<p>Types and characteristics of potential impacts</p>	<p>Having regard to the modest nature of the proposed development, its location removed from sensitive</p>

<p>(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p>habitats/features, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.</p>
<p>Conclusion</p> <p>Having regard to:</p> <p>the nature and scale of the proposed development, which is below the threshold in respect of Class 10b(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,</p> <ul style="list-style-type: none"> the location of the site on lands within the development boundary of Tralee on lands zoned under the provisions of the Tralee Town Development Plan, 2009-2015 as extended which is incorporated into the Kerry County Development Plan 2022-2028 and the results of the strategic environmental assessment of the Tralee Town Development Plan, undertaken in accordance with the SEA Directive (2001/42/EC). the location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of development in the area. the location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended), The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), <p>The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and the need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. See section 5.6 this Report.</p>	

Likelihood of Significant Effects	Conclusion in respect of EIA	Yes or No
There is no real likelihood of significant effects on the environment.	EIA is not required.	No
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	No
There is a real likelihood of significant effects on the environment.	EIAR required.	No

Inspector: _____ Date: _____

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)