



An
Bord
Pleanála

Inspector's Report ABP-318152-23

Development	<i>Retention of extension to 1st Floor residential unit and ground floor public house and all ancillary site works</i>		
Location	<i>Harp Bar, White Abbey Road, Kildare, Co. Kildare</i>		
Planning Authority Ref.	<i>221215</i>		
Applicant(s)	<i>Nicholas & Catriona Kaye</i>		
Type of Application	<i>Retention Permission & Permission</i>	PA Decision	<i>Spilt Decision.</i>
Type of Appeal	<i>Third Party</i>	Appellant	<i>Garrett Melia</i>
Observer(s)	<i>None</i>		
Date of Site Inspection	<i>23/12/2023</i>	Inspector	<i>Andrew Hersey</i>

Context

1. Site Location/ and Description. The site is located to the west of the town centre on White Abbey Road and has a stated site size of 0.053ha. There is an existing 2 storey building on site and an extension under construction to the rear. The building, a public bar fronts directly onto the main street. There is a gate and lane to the side of the building which accesses the rear of the site which comprises of a series of single storey stone sheds. There are existing two storey buildings

adjacent to the site – to the north apartments and to the south on the other side of the lane a commercial unit on the ground floor.

There are footpaths and public parking on both sides of the road. To the opposite side there are high wall boundaries with no buildings fronting onto the same

2. Description of development. *The proposed development comprises of Retention Permission for:*

- a partially completed first floor residential extension to existing first floor residence (over existing ground floor Public House), all to the rear of existing two storey structure, associated alterations to side and rear elevations and all associated site works.

Permission for:

- (1) The completion of this first floor residential extension and alterations to same including independent stair access and associated alterations to side and rear elevations.
- (2) The extension of the ground floor Public House into the existing outbuildings (to be refurbished) and extensions to same outbuildings, all incorporating bar area, toilets, bar and bin storage area and ancillary office space all in a single storey and 1 & 1/2 storey extension, in a court yard type development, ancillary changes to side & rear elevations,
- Foul water and surface water to existing mains sewers and all associated site works including the removal of existing temporary timber bar structures to rear).
- All at a Protected Structure RPS No. B22-41, NIAH Ref.11817028)

3. Planning History

Site

None of relevance

Adjacent

Planning Reg. Ref. 22/1304 granted permission on site to west of proposed development site for a detached two storey house.

4. National/Regional/Local Planning Policy

The Kildare County Development Plan 2023-2029

- The Kildare County Development Plan 2023-2029 is the statutory plan in force at present which came into effect on the 28th January 2023. The following policies are of relevance
 - *Objective AH 021* 'Protect the curtilage of protected structures or proposed protected structures and to refuse planning permission for inappropriate development that would adversely impact on the setting, curtilage, or attendant grounds of a protected structure, cause loss of or damage to the special character of the protected structure and/or any structures of architectural heritage value within its curtilage. Any proposed development within the curtilage and/or attendant grounds must demonstrate that it is part of an overall strategy for the future conservation of the entire built heritage complex and contributes positively to that aim'

The Kildare Town Local Area Plan 2023-2029

- The Kildare Town Local Area Plan 2023-2029 (adopted 6th December 2023). The site is located on lands zoned 'A'- 'Town Centre' where it is an objective To protect, improve and provide for the future development of the town centre'
- The lands to the west and north of the site are zoned as 'B' Existing Residential/Infill the objective of which is 'To protect and enhance the amenity of established residential communities and promote sustainable intensification'
- The plan also refers to area which it refers to as 'Transitional Areas' which states that 'While the zoning objectives indicate the different uses permitted in each zone it is important to avoid abrupt transitions in scale and use at the boundary of adjoining land use zones. In these areas it is necessary to avoid developments that would be detrimental to amenity'
- The site is located within an ACA.
- The subject building of this proposal is a Protected Structure RPS B22-41

- BHO 1.1 Protect the architectural heritage of Kildare Town by ensuring the protection and conservation of all protected structures and structures of historic significance (or parts of structures), including the curtilage and attendant grounds of structures detailed in Table 8-1 and Map 8.1 and Map 8.2 or any additional structure placed on the Record of Protected Structures.
- BHO 1.2 Support the sensitive conservation and restoration of protected structures and their attendant grounds and operate flexibility with regard to the sustainable reuse of these buildings to facilitate their ongoing use, subject to good conservation principles.

5. Natural Heritage Designations

- Pollardstown Fen SAC (Site Code 000396) – approximately 5km to north east

Development, Decision and Grounds of Appeal

6. PA Decision. Spilt Decision was issued on the 11th September 2023.

Refuse Permission for (a) retaining partially completed first floor residential extension to existing first floor residence (over existing ground floor public house), all to the rear of existing two storey structure, associated alterations to side and rear elevations and all associated site works, and (b) the completion of this first floor residential extension and alterations to same including independent stair access and associated alterations to side and rear elevations for the following reason:

1. *Objective AH 021 of the Kildare County Development Plan 2023-2029 seeks to protect the curtilage of protected structures or proposed protected structures and to refuse planning permission for inappropriate development that would adversely impact on the setting, curtilage, or attendant grounds of a protected structure, cause loss of or damage to the special character of the protected structure and/or any structures of architectural heritage value*

within its curtilage.... Having regard to the proposal to the rear of the Harp Bar, a Protected Structure, which is located in Kildare Town Architectural Conservation Area, and the form, bulk and architectural language of the proposed building, it is considered that the proposed development (i.e. retention of partially completed first floor) would have an adverse impact on the existing protected structure and have a negative impact on the character of Kildare Town Architectural Conservation Area. The proposed development would be contrary to Objectives AH 021 of the Kildare County Development Plan 2023-2029 and therefore, contrary to the proper planning and sustainable development of the area.

Grant permission for the extension of the ground floor public house into the existing outbuildings (to be refurbished) and extensions to same outbuildings, all incorporating bar area, toilets, bar and bin storage area and ancillary office space all in a single storey and 1 and 1/2 storey extension, in a courtyard type development, ancillary changes to side and rear elevations, foul water and surface water to existing mains sewers and mains sewers and all associated site works (including the removal of existing temporary timber bar structures to rear) subject to 15 conditions. Conditions include:

Condition 2: Within 3 months of this grant of planning permission, all temporary structures indicated on Drawing A1 2558 01 submitted to the Planning Authority on 16/08/23, shall be removed from the development site.

Condition 3: details with respect of material finishes to be agreed. Use of accredited conservation grade architect

Condition 5: (a) No music or reinforced speaker system shall be permitted in the courtyard area and smoking area of development and (b) that the Applicant shall implement all Mitigation Advice Measures and Recommendations outlined in Section 6 of the Noise Impact Assessment Report submitted to the Planning Authority on 16/08/23.

Condition 6(a): sets out thresholds with respect of noise control 55DBA 0800 to 1800 Monday to Friday (excluding bank holidays) 45DBA at other times.

Condition 6 (b) that there shall be no clearly audible tonal component or impulsive component in the noise emission from the development at any *noise sensitive location and

Condition 6 (c) that a detailed Noise Study, with recommendations, shall be carried out by a competent noise/environmental consultant within three months of the development being in full operation and at any other time as may be specified by Kildare County Council. The Noise Study shall be submitted for the consent of the Planning Authority.

Condition 7- Archaeology

Condition 15 - Development Contribution

7. Local Authority Reports/Referrals

Reports received prior to Further Information Request of the 01/12/2022

- Water Services (dated 27/10/2023) no objection
- Environment (23/11/22) requires further information with respect of noise levels
- Irish Water (16/11/2022) no objection
- Roads, Transportation & Public Safety (28/11/2022) requires details with respect of cycle parking
- EHO (22/11/2022) – acceptable subject to conditions
- Heritage Officer (17/11/2022) - no objection
- Architectural Conservation Officer (25/11/2022) requires further information
- Fire Service (15/11/2022) – no objection subject to fire safety certificate being obtained

Reports received after response to Further Information of 16/08/2023

- Architectural Conservation Officer (05/09/2023) recommends that the element of works for retention and completion are refused permission and that the extension and refurbishment of outbuildings be granted permission.
- Environment (07/09/23) – no objection subject to conditions
- Transport & Mobility (08/09/23) - no objection

8. Submissions *There is one submission on file from a*

- Garrett Melia on behalf of local residents (received 17th July 2023)

In summary the submissions raise issues with respect of:

- Excessive noise levels from live bands which are currently operating.
- That the noise levels recorded in the survey are disingenuous as they were recorded on a relatively quiet night
- Traffic congestion
- Anti-social behaviour

9. Third Party Appeal.

- A third party appeal was lodged on the 03/10/23 by Garrett Melia
- That the proposed courtyard is likely to see the continuation of live music and current noise levels. Noise levels from the site have been excessively high for the past two years for circa 3 nights per week
- Noise from other sources are also cited e.g. breaking bottles in the morning to fit into bins. This can occur before 8am.
- Noise and anti-social behaviour continues after the venue is closed out on the street.
- The proposed plans include for a new bar which will double the capacity of the pub.
- No car parking spaces are provided within the site despite the fact there is car parking chaos on While Abbey Road at the weekend.
- The adjacent apartment complex which comprises of 3 blocks was required to have 8 spaces for each block. A single house granted permission adjacent to the site was required to have two spaces. It is not clear therefore as to why the applicant has not been asked to provide spaces.
- Photographs of parking on road have been included as has a letters from residents of the adjacent apartment block to the applicants complaining of noise

10. PA Response (received 1st November 2023)

- The Planning Authority states that they wish to confirm their decision and to have regard to internal department reports and prescribed bodies in relation to the assessment of this planning application

11. Submissions (1st Party Response to Appeal received 1st November 2023)

- That sound insulation mitigation measures as recommended in the report prepared by Wave Dynamics will be installed by the applicant so as to ensure thresholds set out in Condition No. 6 of the planning permission issued by the planning authority
- There will be no music or entertainment staged in the courtyard area
- That the applicants/owners will live on site once the extension is completed
- They do not tolerate raucous behaviour outside of the premises and CCTV has been installed in this regard.
- There is only a 34sq.m net increase in floor area of the bar.
- Car parking is in line with development plan requirements.
- The noise concerns of the appellant will be alleviated once the works as proposed are completed
- The response questions as to whether letters from two of residents of the adjacent residential complex submitted with the appeal are genuine. There is no court case forthcoming as stated in the said letters.
- The applicants have a licence for the said premises

Environmental Screening

12. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, 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.

13. AA Screening

Having regard to the modest nature and scale of development, location in an urban area, connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 Assessment

2.1. Introduction

2.1.1. I have examined the application details and all other documentation on file and I have inspected the site and have had regard to relevant local development plan policies and guidance.

2.1.2. I am satisfied the substantive issues arising from the grounds of this third party appeal relate to the following matters-

- Principle of Development & Use
- Visual Amenities
- Noise Emissions
- Traffic

2.2. Principle of Development/Visual Amenity Considerations

2.2.1. The proposed development site is located on lands zoned as zoned 'A'- 'Town Centre' in the Kildare Town Local Area Plan 2023-2029 where it is an objective 'To protect, improve and provide for the future development of the town centre'

2.2.2. There are two elements to this application namely:

- The retention of an extension to an existing first floor residential unit . This extension is partially constructed. They are also seeking permission to complete this structure

- The refurbishment of outbuildings to the rear of the premises and extension of the same for the purposes of a further extension to the bar.

- 2.2.3. In principal I would consider the residential use and the extension of the bar use to be an appropriate use at this location which is zoned as 'Town Centre' in the statutory plan for the area.
- 2.2.4. I also consider that the proposed extension to the bar, which is a well-established use to be an acceptable use on lands zoned as town centre. This however, is subject to the protection of the amenities of adjacent private properties. It is apparent from the submissions received and from the appeal that there is currently an issue of excessive noise from the bar as a consequence of music and there are is also an issue of anti-social behaviour on the street after the bar is closed. This issue will be discussed in greater detail below.
- 2.2.5. I further note that the lands abutting the site to the north and west are zoned 'B' in the Kildare Town Local Area Plan 2023-2029 where it is the zoning objective to 'To protect and enhance the amenity of established residential communities and promote sustainable intensification'
- 2.2.6. The plan also refers to area which it refers to as 'Transitional Areas' which states that 'While the zoning objectives indicate the different uses permitted in each zone it is important to avoid abrupt transitions in scale and use at the boundary of adjoining land use zones. In these areas it is necessary to avoid developments that would be detrimental to amenity'
- 2.2.7. I would consider therefore that the said site is a transitional area between town centre and existing residential and as such it is appropriate that regard is had to the residential amenities of adjacent properties. This will be discussed later on in this report

2.3. Visual Amenities

- 2.3.1. As stated above there are two aspects to the built form of the development i.e. (a) the first floor residential aspect and (b) the reconstruction of stone buildings to the rear of the premises for further customer space.
- 2.3.2. The said building is a protected structure and is therefore subject to a number of policies in the statutory development plan which affords its protection. In particular, *Objective AH 021* seeks to 'Protect the curtilage of protected structures or proposed protected structures and to refuse planning permission for inappropriate development that would adversely impact on the setting, curtilage, or attendant grounds of a protected structure, cause loss of or damage to the special character of the protected structure and/or any structures of architectural heritage value within its curtilage. Any proposed development within the curtilage and/or attendant grounds must demonstrate that it is part of an overall strategy for the future conservation of the entire built heritage complex and contributes positively to that aim'
- 2.3.3. Similarly, objective BHO 1.1 of the Kildare Town Local Area Plan 2023-2029 seeks to 'Protect the architectural heritage of Kildare Town by ensuring the protection and conservation of all protected structures and structures of historic significance (or parts of structures), including the curtilage and attendant grounds of structures'
- 2.3.4. With respect of the residential aspect, this comprises of the retention of an extension at first floor, and to the rear elevation of the main building which faces onto the street. This extension is in the form of a flat roofed box is to be clad with a standing seam metal cladding. It is somewhat separate to the main building and does not integrate with the pitched roof of the main building. The design has been modified to a small degree upon response to a further information request in that it was reduced in size but the form of the extension is still that of a steel box at the rear of the main building being the protected structure. It will be very visible from the main street as it is directly adjacent to the side passage to the property. The purpose of this extension is for an extension to the first floor residential use within the main building which faces onto the street.

- 2.3.5. The Conservation Officer does not consider that this extension is appropriate and states that *'it appears to overwhelm and considerably detracts from the adjoining protected structure. I do not consider that the design solution and architectural language, which consists of a standing seam metal box over the existing ground floor extension....is a high quality design proposal. It is not a suitable extension to a protected structure'*
- 2.3.6. The case planner concurs with the said recommendation and it is recommended to refuse the retention and completion of this first floor residential element.
- 2.3.7. I agree with this assessment. While, I am not against a contemporary approach when extending protected structures, I consider that the design solution proposed is ad hoc and detracts from the character of the protected structure.
- 2.3.8. With respect of the refurbishment and extension of the outbuildings to the rear again I concur with the Conservation Officers assessment, I am not against this proposal in principal and in visual amenity terms.

2.4. Noise Impacts

- 2.4.1. I consider that this is the fundamental aspect of the appeal and I am of the opinion that every effort needs to be made to protect the residential amenities of adjacent properties from loud late night and early evening noise.
- 2.4.2. There are residential units on at least two sides of the development. To the north there is an apartment complex. To the west permission has been granted for a detached house and to the south there is a 2 storey building which appears to be commercial at ground floor level but it could be residential at first floor. I note in this regard that lands to the north and west are zoned as 'B' Existing Residential in the Kildare Town Local Area Plan 2023-2029.
- 2.4.3. I note that permission was granted subject to a condition that sets out thresholds with respect of noise control 55DBA 0800 to 1800 Monday to Friday (excluding bank holidays) 45DBA at other times.

- 2.4.4. The latest Noise study carried out by Wave Dynamics, as part of a response to a further information request measure noise levels within the existing bar complex to be well in excess of these thresholds. 98dBA was measured at a live music bingo event.
- 2.4.5. It is stated in the same assessment that noise emanating from the Harp Bar extension and courtyard area exceeds the Kildare County Council criteria and will require mitigation.
- 2.4.6. The mitigation measures proposed are in the form of sound insulation within the building. It is also recommended that in order to avoid noise that gatherings in the proposed courtyard is dissuaded.
- 2.4.7. I note the report from the Environment section on file which does not object to these proposals subject to the mitigation measures being imposed and that no music or reinforced speaker system is permitted in the courtyard area of the smoking area.
- 2.4.8. I consider this approach to be fundamentally flawed. At present, the bar is exceeding the noise limits set out in Condition No. 6 and now they are wishing to increase the bar area further thereby having more patrons in the premises who will effectively result in increased noise levels notwithstanding any mitigation measures proposed.
- 2.4.9. The physical mitigation measures, the sound insulation proposed will only work if windows and doors are closed. The proposed development is designed with a central courtyard with windows and doors from the bar opening out onto the same. I do not believe it will be the case that doors and windows will remain shut and access to the courtyard prohibited. In this respect, I am of the opinion that the noise issue will remain and potentially worsen as a consequence of the proposal. The proposed design by way of the use of an outdoor courtyard does not work in this scenario. It would be a very different scenario if the proposed extension were all under one roof where sound barriers could be employed to mitigate against noise. However, the courtyard is a central feature in the proposed development and I do not consider it plausible that windows or doors onto it will not be opened nor will patrons not go out into the courtyard thereby allowing noise out to the detriment of neighbouring dwellings.
- 2.4.10. Notwithstanding the noise limits imposed by condition 6, I am of the opinion that these limits are not enforceable.

- 2.4.11. I would consider that it would be remiss of the Board to allow a development which could further impact upon the residential amenities of adjacent properties. While I note that the site is zoned as town centre, it is on the edge of the centre where residential properties dominate.
- 2.4.12. On the basis of the design of the said extension and on the basis of its location directly adjacent to numerous residential properties it is recommended that planning permission be refused.
- 2.4.13. On a final point with respect of noise and specifically noise generated after the bar is closed, I am of the opinion that this is a policing rather than a planning issue. The street I feel is managed by the police and not the applicant and any late night noise and loitering should be resolved by the police and is not a fault of the operator of the bar.

2.5. Traffic

- 2.5.1. I note the concerns raised by the applicant with respect of car parking and the lack thereof of car parking on site.
- 2.5.2. I note the recommendation of the Transport & Mobility Department of the council (dated 08/09/23) whom does not object to the same, presumably on the basis that the site is located within the town centre and is therefore accessible by foot or bicycle. It is also stated that the site is located proximate to public car parks and I note in this regard that Nugent Street Car Park is a 7 minute walk to the east of the site. With respect of the same I think it is unreasonable to seek car parking spaces on site and that in the case where it is decided to grant permission that a contribution in lieu of spaces be levied.
- 2.5.3. Again haphazard parking on this street needs to be resolved by Kildare County Council and I do not consider it the remit of the applicant to do so.
- 2.5.4. On this basis I am of the opinion that traffic issues are acceptable in this context.

3.0 Recommendation

3.1. I recommend that permission be refused for the following reasons:

1. The proposed development site is located on lands zoned as 'A' Town Centre in the Kildare Town Local Area Plan 2023-2029 where it is an objective of the plan 'To protect, improve and provide for the future development of the town centre'. The proposed uses which comprise of residential and commercial uses are acceptable uses within this land use category.

The plan also refers to area which it refers to as 'Transitional Areas' which states that 'While the zoning objectives indicate the different uses permitted in each zone it is important to avoid abrupt transitions in scale and use at the boundary of adjoining land use zones. In these areas it is necessary to avoid developments that would be detrimental to amenity'

The said site is one such of these 'Transitional Areas' as the surrounding land uses are clearly residential and are zoned as 'B Existing Residential' in the Kildare Town Local Area Plan 2023-2029.

It is considered that the proposed development and in particular the extension to the public house, by reason of its design which comprises of a central courtyard will result in excessive noise being generated to such a degree that it will impact upon the amenities of adjacent residential properties.

The proposed development would contravene the zoning objective for the site and would be therefore be contrary to the proper planning and sustainable development of the area.

2. Objective AH 021 of the Kildare County Development Plan 2023-2029 seeks to protect the curtilage of protected structures or proposed protected structures and to refuse planning permission for inappropriate development that would adversely impact on the setting, curtilage, or attendant grounds of a protected structure, cause loss of or damage to the special character of the protected structure and/or any structures of architectural heritage value within its curtilage. The Harp Bar is such a protected structure and the proposal to its rear which comprises of a first-floor residential extension for which

retention permission and permission to complete is being sought, is of a form and architectural language that would have an adverse impact on the existing protected structure. The proposed development would be contrary to Objectives AH 021 of the Kildare County Development Plan 2023-2029 and therefore, contrary to the proper planning and sustainable development of the area.

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

Andrew Hersey
Planning Inspector

7th February 2024