



An
Bord
Pleanála

Inspector's Report

ABP-318918-24

Development	Demolition of 19 Friary Street with reconstruction of front facade, construction of 12 apartments and associated site works. Development is located within an Architectural Conservation Area (ACA).
Location	19 Friary Street, Kilkenny, R95 E76V
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	2344
Applicant(s)	Martin Murphy.
Type of Application	Permission.
Planning Authority Decision	Refusal.
Type of Appeal	First Party
Appellant(s)	Martin Murphy.
Observer(s)	Martina McGuinness.
Date of Site Inspection	7 th October 2024.
Inspector	Jennifer McQuaid

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Appendix 1 – Form 1: EIA Pre-Screening & Form 2: EIA Preliminary Examination.

1.0 Site Location and Description

- 1.1. The subject site (site area 0.0688ha) is located at 19 Friary Street, Kilkenny City, Co. Kilkenny. The site is located approximately 250m from the city centre of Kilkenny City. There is an existing two-storey dwelling on site and a vehicular access to the rear of the site via an existing archway. The site is bounded by existing walls along the site boundaries to the rear of the dwelling. 19 Friary Street is listed on the NIAH and noted as being of architectural merit.
- 1.2. Presentation Primary School and the living quarters of the Presentation Sisters and School library are located to the rear (north) of the site. Residential and office space is located to the east and west of the subject site.
- 1.3. The site is within the Architectural Conservation Area (ACA) of Kilkenny City.

2.0 Proposed Development

- 2.1. The proposed development consists of:

- Demolition of no. 19 Friary Street two storey dwelling.
- Provision of temporary structural works.
- Reconstruction of the front façade to Friary Street dwelling.
- construction of a new residential apartment block to rear (3 two bed, 9 one bed)

The applicant proposes to revise the design as part of the appeal response. This includes:

- retention, refurbishment and renovation of the two-storey dwelling along Friary Street and convert to 4 bed dwelling.
- Construction of new residential apartment block to rear (10no. apartments)

3.0 Planning Authority Decision

3.1. Decision

Refused for 2 reasons:

1. The proposed development is located in the St. Mary's Architectural Conservation Area (ACA) of Kilkenny City. The development includes a proposal to demolish number 19 Friary Street, a structure listed on the National Inventory of Architectural Heritage and in close proximity to the former Kilkenny city defences (the medieval town walls in Kilkenny City (RMP KK019-026001) which is a recorded monument) given the high archaeological and architectural heritage potential of No. 19 Friary Street, the Planning Authority is of the opinion that both the "Archaeological Impact Assessment Report on proposed development at 19 Friary Street, Kilkenny City, Co. Kilkenny" and "19 Friary Street, Kilkenny Architectural Heritage Impact Assessment" are incomplete. It is also considered that the potential negative impact on buried archaeology, which may be part of the town defences, would be significant with associated architectural and archaeological significance and embodied energy. The proposed development therefore would be contrary to the policies and objectives contained in the Kilkenny City & County Development Plan 2021-2027 in relation to the protection of archaeological sites and monuments (including their setting), and archaeological objects, including those that are listed in the Record of Monuments and Places, and in the Urban Archaeological Survey of County Kilkenny or newly discovered sub-surface archaeological remains.
2. It is considered by the Planning Authority that given the sensitivity of the site in terms of archaeology and architectural conservation that the design approach taken is incompatible with the policies and objectives of the City & County Development in relation to archaeology, architectural conservation and embodied energy, the loss of which would adversely affect not only the ACA setting, but detract from the medieval character and archaeological heritage of the City as a whole. The proposed development approach does not justify the demolition of such significant structure and has insufficient regard for the prominence of the existing building and its contribution to the architectural and archaeological heritage of the immediate area. Accordingly, it is considered the proposed development would adversely affect the St Mary's Architectural Conservation Area and associated archaeological and

built heritage and would accordingly be contrary to the proper planning and development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planning report assessed the application in comparison to the previous refusal on site for planning reference 22124. The planner has stated the applicant has not addressed the previous refusal reasons, the building at 19 Friary Street, should be retained and renovated. No Archaeological Heritage Impact Assessment submitted. No car parking has been provided. The planner recommended refusal, but the senior planner recommended a further information request in relation to architectural heritage, archaeology, shadow analysis, parking, compliance with Design Standards for Apartments and Urban Development and Building Heights, waste management plan, engineers report and submit sufficient legal interest to carry out works on the rear boundary wall of No. 20 Friary Street.
- Further information response received; the Planning Authority were in favour of demolishing the front façade subject to approval from the Depart. However, the Dept, strongly opposed the demolition. Concerns were raised in relation to the location of the former city wall and potential works on recorded monuments. Shadow analysis submitted and potential impacts on neighbouring library skylights noted. Car parking will be levied on 18 spaces, as parking isn't required due to city centre location and not proposed as part of the application. No Structural Engineer report submitted. All other further information requests were addressed adequately. Refusal recommended.

3.2.2. Other Technical Reports

- Roads – No objection subject to conditions.
- Environment – Sought further information initially regarding waste management, drainage plan, Asbestos survey, wheel wash, noise and dust monitoring, details of management company. No follow up comments on FI received.

- Conservation Officer – does not support demolition of Number 19.

3.3. Prescribed Bodies

- Uisce Eireann – No objection subject to conditions.
- Department of Housing, Local Government and Heritage: Refusal recommended for the following reasons:
 1. Impact on recorded monument SMR: KK019-026001 – Town Defences
 2. Insufficient and possibly incorrect interrogation of sources.
 3. Insufficient full understanding of No. 19 Friary Street.
 4. Non-consideration of alternative options to demolition of No. 19 Friary Street.
 5. Built heritage concerns raised in previously refused planning application 22/124 have not been addressed in the FI.

3.4. Third Party Observations

Five submissions were received with the initial application. The concerns raised were:

- No parking proposal
- Road safety and traffic concerns
- Overlooking from apartment unit 5&9 and stair core serving apartments 3, 5 and 6.
- Separation distance less than 22 metres.
- Overshadowing of playschool building and overlooking of vulnerable community.
- Proposal does not comply with KCDP in relation to protection of adjoining properties or DM Standards.
- Urban Design Statement not submitted.
- Residential amenity impact and no consideration of adjoining properties.

- Façade not in keeping with ACA or streetscape.
- Inadequate assessment of impacts on conservation and archaeology.
- Construction management, disruption, noise impacts no information submitted.
- waste management
- stress on existing water and waste services.
- No structural information submitted on shared party boundary wall.
- Conflict regarding boundary walls.
- Contrary to Human Rights Act for right to peaceful enjoyment of possessions including home and land and respect for private and family life.
- Site notice from previous application only removed prior to new site notice erected.

Further submissions were received in relation to the further information response. The same concerns were raised.

4.0 Planning History

22/124: Permission refused for the demolition of no. 19 Friary Street and construction of 16 no. apartments. Refusal reasons are as follows:

1. The proposed development will result in an overdevelopment of the site (plot ratio of 2.16) and will, by virtue of its height, bulk and proximity to the neighbouring residential boundaries, impose on and be overbearing to its neighbours, would cast long shadows and reduce light to its neighbours and onto open amenity space and as a result will seriously injure the residential amenities and depreciate the value of property in the vicinity. It is considered therefore that the proposed development would be contrary to the proper planning and sustainable development of the area.
2. The proposed development is located in the St. Mary's Architectural Conservation Area, the objective of which is to protect and enhance the setting of St. Mary's Cathedral and the Black Abbey while respecting its visual

prominence. Having regard to the design, height and bulk of the proposed apartment development, the loss of a structure on the National Inventory of Architectural Heritage (With associated embodied energy) and the potential for impact on the amenity of neighbouring lands, it is considered that the proposed development is contrary to the policy and objectives of the Architectural Conservation Area having insufficient regard for the existing character and amenity of the immediate area. The proposed development does not justify the demolition of the existing structure on site having regard to the embodied energy of the building and the loss of such energy through its demolition. Accordingly, it is considered the proposed building would detract from the ACA and would not accord with heritage policies of Kilkenny County Council and would therefore be contrary to the proper planning and development of the area.

10/8: Permission for retention from residential to office.

5.0 Policy Context

5.1. Development Plan

Kilkenny City and County Development Plan 2021-2027 Volume 2 City.

The site is zoned as General Business, the objective is to provide for general development. The adjoining lands to the north of the site, are zoned for community facilities relating to the Presentation School.

The subject building is listed on the National Inventory of Architectural Heritage ref. 12001005. The site is located within St. Mary's Architectural Conservation Area and is located within a designated zone of archaeological potential.

Chapter 4, section 4.3 relates to Built Heritage of Kilkenny City.

Chapter 4, section 4.3.2 Walled Town – the walls are part-standing and part-buried. Town defences are considered to be monuments for the purposes of National Monuments Acts, 1930-2004. The Council will support the National Policy on Town Defences which sets out national policy for the protection, preservation and conservation of the defences of towns and cities.

Chapter 4, section 4.5.7 St. Mary's ACA. ACA development Management requirements based on assessment of special character.

- SMACA 1: To protect and enhance the setting, of St. Mary's Cathedral and the Black Abbey, while respecting its visual prominence.
- SMACA2: To protect the residential character, setting and appearance of the dwellings on Parnell Street, Jame's Green, Kickham Street, Dominic Street, Stephens Street, Rothe Terrace and the Kennyswell Road. The cumulative effect of removal of front garden walls and railings damages the character and appearance of these suburban streets and roads. Proposals for off street parking need to be balanced against loss of amenity. The removal of front garden walls and railings will not generally be permitted where they have a negative impact on the character of streetscapes. See Volume 1, Section 13.17 Off Street Parking for the criteria which must be met when proposals for off street parking are made within an ACA.
- SMACA 3: To protect Kenny's Well and its setting and adjacent open space along the River Breagagh.
- SMACA 4: To protect and retain the historic integrity of the city walls in accordance with the Kilkenny City Walls Conservation Plan (Heritage Council, 2005).
- SMACA 5: To protect the visual amenity of the Breagagh River and ensure any future developments adjacent to it addresses its riverside location.

Chapter 6, Section 6.3 Residential Development

Objective C6E To compile an analysis and a development guidance criterion with recommended interventions for housing opportunities in Kilkenny City's backland areas, underutilised lands and brownfield sites.

Objective C6F To promote the redevelopment and renewal of areas identified having regard to the core strategy, that need regeneration, in order to prevent:

- i. Adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,

- ii. Urban blight and decay
- iii. Anti-social behaviour, or
- iv. A shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

Kilkenny City and County Development Plan Volume 1

Chapter 13 Requirements for Developments is off relevant, particularly section 13.4 Compact Growth and section 13.5 Infill Development.

Kilkenny City Walls Conservation Plan (Heritage Council, 2005).

The policy is:

- To minimise risk to the historic fabric of the monument from normal public use and administrative operations.
- Ensure that public services and infrastructure works outside of planning control do not cause damage to the monument.

In relation to the promotion of the medieval city walls of Kilkenny, this document promotes the policy as follows:

- Highlight lost stretches of wall and gates in e.g. Paving.

5.2. National Policy

- National Planning Framework – Project Ireland 2040
- Sustainable residential Development and Compact Settlement Guidelines 2024.
- Design Manual for Urban Roads & Streets (DMURS) 2019.
- National Policy on Town Defences

5.3. Regional Policy

- Regional Spatial and Economic Strategy for the Southern Region.

5.4. Natural Heritage Designations

The site is not located within or adjacent to a Natura 2000 site, the nearest protected sites are:

- River Nore SPA (Site code: 004233) and River Barrow and River Nore SAC located 300 metres to the east.
- Lough Macask pNHA (site code: 001914) is located c1.7km northwest.
- Newpark Marsh (site code: 000845) is located c1.4km northeast.

5.5. EIA Screening

- 5.5.1. The proposal relates to the refurbishment and renovation of an existing building and construction of 10 no. apartments with connection to public services in the Kilkenny City. The site is located on zoned lands and not within a designated area. 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. Please refer to Form 1 and Form 2 as per Appendix 1 below.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal has been received from the applicant. The grounds of appeal can be summarised as follows:

- The response from the Department was only received following the further information response. The applicant relied on the information received at preplanning stage. The applicant wishes to amend the design and now proposes to retain 19 Friary Street as a single dwelling and upgrade the building in lieu of developing two apartments to the rear of the reconstructed façade.

- The applicant wishes to expedite the planning process and progress with an amendment to the application.
- In support of the amendment, the Board should note:
 - The Department are supportive of the repair and reuse of extant historic buildings and are happy to review any revised application which takes into account archaeological and built heritage concerns.
 - Conservation Officer – opposed the demolition of 19 Friary Street and recommended a repair and conservation strategy for the building.
 - Third parties – overall, were supportive of the retention of 19 Friary Street on grounds of conservation and to safeguard the stability of adjoining structures.
- The applicant has submitted revised drawings, there is no change to the footprint of the existing original building and a small private garden for the occupants will be provided to the rear.
- Grade 1 Conservation Architect will be appointed to advise on the repair and conservation strategy.
- A revised Archaeological Impact Assessment Report submitted and carried out by Colm Flynn, Archaeologist which addresses the concerns of the Department and the proposed revisions.
- The retention and upgrading of 19 Friary Street will not result in any further disturbance of the ground beyond the footprint of the existing house to be retained and therefore, there will be no impact on potential buried archaeology under the dwelling or its proposed curtilage.
- The report states further testing is not considered necessary at this time. The main conclusions in the AIAR are that it can be demonstrated that the development will not directly impact on significant archaeology. The raft foundation, and the archaeological excavation, will allow for preservation in situ, and appropriate archaeological recording of 19th century masonry. Also, the Department's concern is based on an unsupported concern regarding the whole site. The project archaeologist's reports show that only one archaeological feature was present, at the very east extent of the site.

- In relation to the third-party submissions, the site is located in the city centre and the Planning Authority discourage car use in this situation and therefore parking is not required. There is ample public car parking and on-street disabled parking can be requested if required.
- The Roads Department have no concerns regarding the proposed development on road safety or traffic.
- In regard to overlooking, the northwest facing windows in units 5, 9 are high level windows. The southeast facing windows in these apartments have been designed with privacy screens to avoid overlooking and the stairwell windows are to be fitted with obscure glazing. It is considered that there will be no loss of privacy to neighbours. Although alternative measures can be designed to deflect lines of vision from the bedroom windows, and this can be dealt with by way of a condition.
- 22 metre separation does not apply if good design has been incorporated and this has been achieved through the application of privacy screens to affected windows or angled windows.
- The playschool building will not be impacted by the proposal as it is located at the opposite end of Presentation Community Complex. The proposed apartment block has been set back from the northwestern boundary to minimize any overshadowing to the library building. There is no overlooking to Presentation Sister's accommodation or garden, the overshadowing of the school garden ground will be minimal and acceptable.
- A Design Statement was submitted with the further information response. An Architectural Heritage Impact Assessment and 3D images/photomontages were also submitted.
- The density and height of the 3-storey apartment block was deemed acceptable by the Planning Authority, no concerns were raised. The sun path analysis demonstrated that there was no unacceptable loss of sun or daylight to neighbouring properties.
- The design and scale of the proposal were made following the previous refusal and responded to the concerns raised.

- 19 Friary Street will be retained, and the photomontages submitted confirm the apartments to the rear will not impact the streetscape or adversely impact the character of the ACA.
- A revised Architectural Heritage Impact Assessment submitted following the retention and reuse of 19 Friary Street.
- The proposed apartment block will not be visible and will have no adverse impact on the character of the ACA. The apartment block will abut modern office buildings to the northwest along Garden Row and modern buildings in the Presentation Community complex to the northwest and southwest.
- A Site Access and Construction Management Plan was submitted with the further information submitted; all further details will be confirmed when a project contractor is confirmed. A Waste Management Plan was also submitted and deemed acceptable.
- The proposal has been altered to retain the existing structure as such there will be no stress on the shared party wall and the applicant intends to engage with the neighbours at no. 18 and no. 20 Friary Street when undertaking any required structural stability works.
- A comprehensive method statement will be submitted as part of planning conditions to deal with any replacement of a party wall.
- The site notice was acceptable by the Planning Authority and the appellants were not denied the opportunity to make submissions, therefore their entitlements were not compromised.

6.2. Applicant Response

- As above

6.3. Planning Authority Response

- No further comments to make.

6.4. Observations

An observation has been received from No. 24 Friary Street. The concerns raised are:

- The 2 previous refusal reasons of planning reference 21124 are still applicable regardless of the reduction in height from 5 storey to 3 storey.
- The 2 current refusal reasons under planning reference 2344 are still applicable.
- Need to preserve the existing character of the historic St. Mary's Architectural Conservation Area. The proposed building 2 would not be in keeping with the existing character of the historic St. Mary's ACA.
- The garden directly adjacent to No. 19 Friary Street is incorrectly identified as No. 25 Friary Street instead of No. 24 Friary Street.
- Overlooking, our rear garden directly borders the proposed development site. The proposal will be overlooking and invade our privacy. Units 5 & 9 will face directly into our garden. The proposed 3 storey building bordering their garden wall will block out/reduced natural light to their garden. The residents of St. Mary's ACA need to be safeguarded and protected.
- Car parking – 18 car parking spaces are required but the applicant will provide bicycle parking and storage in lieu of parking. There are only 6 car parking spaces available for residents on Friary Street with parking permits. The proposed development will only exacerbate the parking problems.
- No reference made regarding the proposed modern block abutting the garden of No. 24 Friary Street.
- The original site notice for the previous planning application 22124 remained in place for 9 months until 22nd Jan 2023 and a new site notice was placed up on 20th Feb 2023. And the site notice was still in place on 18th Feb 2024. The residents weren't aware that a new planning application was submitted.

6.5. Further Responses

Due to the proposed amendments put forward by the applicant in the first party appeal. The application was referred to:

- Department of Housing, Local Government and Heritage. The Dept. is of the view that there is insufficient information in the new appeal documents for the National Monuments Service and National Built Heritage Service to make informed comments.

7.0 Assessment

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

- Revised Design & Architectural Conservation Area (ACA).
- Archaeology.
- Car parking.
- Residential Amenity.
- Appropriate Assessment.

7.2. Revised Design & Architectural Conservation Area (ACA).

7.3. The proposed site is located along Friary Street which is located in St. Mary's ACA to the west of the walled town sharing a boundary on its east side with the City Centre ACA. The two-storey building at 19 Friary Street (subject building) is a building listed on the NIAH website under reference 12001005. The building is described as a terrace five bay two storey house, c.1825, possible originally two separate three-bay two-storey (south-west) and two-bay two-storey (northeast) houses with square headed carriageway to right ground floor. The building was extensively renovated c.1900 with rendered façade enrichment added.

7.4. The proposed development includes a proposal to demolish this building due to the poor condition of the building and to construct a new front façade for No. 19 along

Friary Street and construct apartment to the rear along with a new three storey residential apartment block to the rear of the No. 19 Friary Street. The Planning Authority refused permission as the demolition of No. 19 Friary Street would adversely affect not only the ACA setting but detract from the medieval character and archaeological heritage of the City and the proposed development would have a potential negative impact on buried archaeology which may be part of the town defences. The conservation officer and the Department (National Monument Service) recommended a repair and conservation strategy for the building and were both opposed to its demolition on historic grounds.

- 7.5. The grounds of appeal have been submitted from the applicant and the applicant has submitted amended drawings and associated design/layout retaining No. 19 Friary Street as a single four bed dwelling and upgrade the building in lieu of developing two apartments to the rear of the reconstructed façade. The applicant has outlined that the Department and the Conservation Officer are both supportive of the repair and reuse of the historic building and that the third parties were overall supportive of the plans to retain the building.
- 7.6. The revised drawings, indicate no change to the footprint of the existing original building and a small private garden (27.5sqm) for the occupants will be provided to the rear. The applicant will appoint a Grade 1 Conservation Architect to advise on the repair and conservation strategy. The grounds of appeal are accompanied by a revised Archaeological Impact Assessment Report submitted and carried out by Colm Flynn, Archaeologist which addresses the concerns of the Department and the proposed revisions. The retention and upgrading of 19 Friary Street will not result in any further disturbance of the ground beyond the footprint of the existing house to be retained and therefore, there will be no impact on potential buried archaeology under the dwelling. The report also highlights, the retention, renovation and refurbishment of the existing building will have a positive impact on the archaeological heritage of the area by ensuring the survival of the building and allowing the preservation in situ of any constituent archaeological features.
- 7.7. An engineer assessment was also submitted outlining how the existing dwelling will be retained, an internal braced steel frame will allow for full retention of the existing masonry structure. The internal “skeleton” steel frame will also provide support for floor joists. The steel frame is a standalone frame in so far as it will be installed

within the internal building footprint, and the existing masonry walls will be connected to the steel frame using metal tie rods.

- 7.8. I support the repair and reuse of existing two storey dwelling, this will strengthen the town centre and preserve and enhance the architectural heritage and residential amenity of the area. I note the revised plans were submitted to the Department as part of the referral from An Bord Pleanála, however, the Department stated; “it is of the view that there is insufficient information in the new appeal documents for the National Monuments Service and National Built Heritage Service to make informed comments”. However, in saying that, I note the Department were supportive in all previous correspondence with the Planning Authority in relation to the refurbishment of the existing dwelling. The Planning Authority Conservation Officer was also in support of retaining the building and recommended “a conservation engineer shall be engaged to compile a repair and conservation assessment/strategy for its stabilisation”.
- 7.9. It is my opinion that the retention and renovation of no. 19 Friary Street as a single dwelling is acceptable and addresses the concerns raised by the Department and the Conservation Officer which recommended renovation and refurbishment of the existing dwelling. The retention of this building will also address some of the refusal reason of the Planning Authority which rejects the demolition of the two-storey dwelling as the building is located in St. Mary’s ACA and is listed on the NIAH website. The retention of this building will preserve the historic character of the immediate area and provide a positive benefit to the existing streetscape. The renovation and refurbishment of the building will also maintain the medieval character and archaeological heritage of the city by adding to the streetscape of St. Mary’s ACA. The proposal will have a positive affect on St. Mary’s ACA and is in accordance with section 4.5.7 of Kilkenny City and County Development Plan Volume 2.
- 7.10. Having regard to the comments from the Department and from the Conservation Officer in relation to the refurbishment, renovation of the existing no. 19 building as listed on the NIAH website is consider acceptable. And in accordance with Section 4.5.7 St Mary’s ACA Development Management requirements based on the assessment of special character of the KCDP.

Visual Impact on the ACA.

- 7.11. The Planning Authority had concerns that the proposed development would detract from the medieval character of the city.
- 7.12. The grounds of appeal include revised photomontages which confirm the apartments to the rear will not impact the streetscape or adversely impact the character of the ACA. The Board should note that no design changes were proposed to the apartment block in the grounds of appeal. The grounds of appeal indicated the proposed apartment block will not be visible and will have no adverse impact on the character of the ACA. The apartment block will abut modern office buildings to the northwest along Garden Row and modern buildings in the Presentation Community complex to the northwest and southwest.
- 7.13. The observation received states there is a need to preserve the existing character of the historic St. Mary's Architectural Conservation Area. The proposed new apartment building would not be in keeping with the existing character of the historic St. Mary's ACA.
- 7.14. I have assessed the proposal in relation to the potential impact on the ACA. The applicant proposes to renovate and refurbish the existing two storey dwelling along the streetscape of Friary Street. Therefore, this will enhance the character of Friary Street by bringing an existing derelict building back into residential use.
- 7.15. The proposed three storey apartment block to the rear of the site referred to as Building 2, will be assessed in regard to its impact on the ACA. The overall height of the proposed apartment block is 9.55 metres with a flat roof, the existing two storey dwelling to the front of the site is 8.55metres. The proposed apartment block will be finished in selected render finish, selected litcore standing seam metal panelling and selected blue/black brick. As the proposed apartment is located to the rear of the existing two storey dwelling with limited views via the archway to and from Friary Street. I do not consider that the proposed apartment block will have a negative visual impact on the streetscape of Friary Street in relation to the ACA. The height difference between the existing and proposed is minimal and unlikely to be viewed from pedestrian and passing traffic along Friary Street. The proposed apartment block is similar to the existing building heights in the area and similar material finishes.

- 7.16. Having regard to the proposal to renovate and refurbish the existing two storey dwelling along Friary Street, I consider the proposal will contribute to and enhance Friary Street and thereby positively enhancing the visual character of St. Mary's ACA. In regard to the proposed apartment block to the rear, having regard to the limited views along Friary Street and the similar height and finishes proposed, I do not consider the proposed apartment will negatively impact on the streetscape of Friary Street and therefore will not negatively impact on St. Mary's ACA.

Revised design compliance with KCDP

- 7.17. In regard to the renovation and refurbishment of No. 19 Friary Street two-storey 4 bed dwelling. A rear private garden is proposed with an area of 27.5sqm. Section 13.5.1.1 Development Management Requirements for Urban Infill Development of the County Development Plan allows for original units on infill sites to retain at least a minimum of 25sqm of consolidated usable private open space. The proposed 27.5sqm is acceptable and in accordance with the CDP. In regard to separation distance, a setback of at least 7.5 metres from the rear of any neighbouring house should be maintained, and to avoid overlooking the 22-metre rule should apply between opposing first floor windows unless good merit exists for relaxation. Approximately 15 metres separation is proposed between the existing dwelling first floor bedroom 2 and the proposed units 7 & 8. The Compact Settlement Guidelines allow for a minimum of 16 metres separation and state below 16 metres may be considered acceptable in circumstances where there are no opposing windows serving habitable rooms and where suitably privacy measures have been designed into the scheme to prevent undue overlooking of habitable rooms and private amenity space.
- 7.18. In my opinion, I accept the proposed layout and design and provision of the proposed open space for the renovated two storey dwelling. The proposal will bring the building back into use a residential structure in the centre of Kilkenny, which will be both sustainable in regard to carbon saving and improve the residential amenity of the area. I note the proposed separation distance is below the minimum 16 metre requirement of the Compact Settlement Guidelines, Unit 7's window is located slightly at an angle to the existing bedroom window of the existing dwelling and Unit 8's bedroom window is angled eastwards. The applicant has proposed angled windows with obscure glazing for units 5 & unit 9 to prevent overlooking to No. 20

Friary Street. It is in my opinion, that this is an exceptional case, due to the infill location in close proximity to Kilkenny City Centre and the proposed separation distance and proposed angled windows with obscured glazing is considered acceptable.

7.19. Having regard to the site location, the infill nature of the proposal, the design, pattern of development in the area and the Compact settlement guidelines, I consider the proposal is acceptable subject to conditions.

7.20. **Archaeology**

7.21. The proposed development is located within the archaeological zone of constraints for Kilkenny City, identified as a historic town in the Record of Monuments and Places (RMP KK019-026). The development is also in the vicinity of the medieval city walls of Kilkenny which are included in the Record of Monuments and Places (RMP KK019-026001). All archaeological sites included in the RMP are afforded legal protection under the National Monuments Acts (1930-2004).

7.22. The east boundary wall of the proposed development site at 19 Friary Street is located along the route of the medieval town walls of Kilkenny City. The extent above ground eastern boundary wall displays evidence of repeated alterations and interventions, related to its reuse in the 19th and 20th centuries. However, it is likely that the eastern boundary wall includes some masonry elements that formed the medieval town walls due to the known location of the defence walls at this site. The AIA submitted with the grounds of appeal notes historical references to an associated town gate at Friary Street. The location of this town gate is not known, but it was likely street fronted, and located along the north side of Friary St, at the location of either No. 18 or No. 19 Friary Street.

7.23. As part of the grounds of appeal, a revised Archaeological Impact Assessment Report (AIA) was submitted and carried out by Colm Flynn, Archaeologist. The AIA attempts to address the concerns of the Department and has regard to the proposed revisions. The AIA states that:

- The renovation and upgrading of 19 Friary Street will not result in any further disturbance of the ground beyond the footprint of the existing house to be retained and therefore, there will be no impact on potential buried archaeology under the dwelling or its proposed curtilage.

- Further testing is not considered necessary at this time as the main conclusions in the AIAR are that it can be demonstrated that the development will not directly impact on significant archaeology. The raft foundation, and the archaeological excavation, will allow for preservation in situ, and appropriate archaeological recording of 19th century masonry. Also, the Department's concern is based on an unsupported concern regarding the whole site. The project archaeologist's reports show that only one archaeological feature was present, at the very east extent of the site.

7.24. In response to the further information submitted to the Planning Authority, the Department undertook an inspection of the site during the archaeological testing carried out under the Licence 23E0061. The following concerns were noted:

1. Impact on recorded monuments SMR: KK019-026001-Town defences.

The Department are of the view that there is a high probability that the masonry evidence noted represents part of the town defences and associated rampart and fosse. The Department also consider the presence and extent of likely fosse was not studied during the archaeological testing nor in the recommendation made in the report that raft foundations can be placed to avoid subsurface archaeological features.

The grounds of appeal responded to this concern and outline that test trenching identified evidence of a previously unidentified subterranean stone feature, which was a revetment, likely associated with the town defences. This archaeological feature will remain in situ. No other features were identified, there may have been other features but with the construction of outbuildings and sheds in the garden in the 19th and 20th centuries has truncated this location, removing any evidence of other archaeological features associated with the stone revetment. The proposed raft foundations will have a maximum impact of 0.75m below existing ground level thus avoiding impacts on the stone revetment archaeological feature.

2. Insufficient and possibly incorrect interrogation of sources.

The Department are of the opinion that the building and laneway as depicted on Rocque's 1758 map of Kilkenny are very likely to be the upstanding No. 19 Friary Street and its associated laneway. Therefore, the upstanding eastern boundary wall

between the Nos. 19 and 18 Friary Street is potentially part of, or could be built on the line of, the recorded monument SMR: KK019-026001-Town Defences.

The grounds of appeal state the author of the AIA also believes that this is possible, but it is well documented that Roque's map of Kilkenny 1758 contains some discrepancies in terms of scaling and location of cartographic depictions and is therefore not wholly reliable. However, the applicant now purposes to renovate and refurbish No. 19 which will address the concerns of the Department regarding the potential for a building depicted on Rocque's map of Kilkenny.

3. Built Heritage concerns raised in previously refused planning application 22/124 have not been addressed in the FI.

The Department conclude that the potential negative impact on buried archaeology, which may be part of the town defences, would be significant.

The grounds of appeal state the proposal for raft foundations will preserve any unidentified archaeology insitu.

- 7.25. Prior to construction, the applicant has proposed to carry out compilation of a photogrammetry or 3D laser scan survey of the eastern boundary wall, this will be followed by the conservation of this wall.
- 7.26. The AIA concluded the level of impact of the proposed development on the archaeological heritage is Moderate. The EPA Guidelines on the information to be contained in Environmental Impact Statements 2022 classify Moderate impact as; *this applies when a change to the site is proposed which though noticeable, is not such that the archaeological integrity of the site is compromised, and which is reversible. This arises where an archaeological feature can be incorporated into a development without damage and that all procedures used to facilitate this are reversible.*
- 7.27. I have assessed the information submitted with the grounds of appeal; as part of the construction of the apartment block, raft foundations are required. The consultant engineer has advised that the raft foundations will result in a maximum depth of impact of 0.75m below the existing ground level and this will be above the highest point of the archaeological stone revetment feature identified during the test trenching.

- 7.28. In consideration of the AIA submitted and the comments from the Department, I note that the existing wall and artefact found on site are potentially part of the Kilkenny defence wall and are of archaeological significance which was highlighted by the Department during their visual investigation of the test trenching, they note that there is a “high probability” that the masonry evidence is part of the town defences and associated rampart and fosse. I have considered the proposed mitigation measures which include raft foundations for the proposed apartment block, which the applicant states will allow for any artefact found on site to be preserved in situ. However, the Department are uncertain if the raft foundations can be placed to avoid subsurface archaeological features as this was not studied during the test trenching. The applicant has stated they will carry out an archaeological excavation within the footprint of the proposed raft foundations prior to commencement. However, having regard to the sensitivity of the site and the potential location of town defences masonry and associated rampart and fosse, it is in my opinion that archaeological excavations should have been carried out prior to the submission of the planning application to ensure that the proposed apartment block can be constructed without having a negative impact on any unidentified artefacts and this would have addressed the Department’s concerns.
- 7.29. The applicant has also proposed a number of other pre-commencement mitigation measures including 3D laser scan or photogrammetry survey of the eastern boundary wall, appropriate conservation and repair of the extant eastern boundary wall. However, it is noted from the site layout plan and drawings submitted that the proposed apartment block will be constructed up against the existing eastern and western boundary wall and a non-shrink cementitious grout fill is proposed between the new apartment wall and the existing wall. Having regard to the importance of the defence wall and the information in the AIA, the Departments submission I recommend that the eastern boundary wall should be repaired and conserved in-situ and visible to the public. The existing eastern boundary wall could be a feature for the proposed development and be utilised rather than hidden between an apartment block.
- 7.30. Having regard to the AIA submitted and the insufficient information submitted in relation to unidentified objects within close proximity to the known defence wall of Kilkenny City, it is in my opinion, that the proposed development will have a negative

impact on archaeological heritage of the area and would be contrary to section 4.3.2 Walled Town of the CDP Volume 2 and objective 9C of the CDP Volume 1.

7.31. Car Parking

- 7.32. The subject site is located in the city centre approximately 250 metres west of Kilkenny City Centre. As part of the proposed development, the applicant is not proposing any car parking. Kilkenny City is noted as a key town, which supports consolidation within and close to the existing built-up footprint.
- 7.33. The grounds of appeal state the Area Engineer of Kilkenny City Council has no objection to the proposal for no car parking on site and therefore no parking is proposed.
- 7.34. The observation submitted that 18 car parking spaces are required but the applicant will provide bicycle parking and storage in lieu of parking. There are only 6 car parking spaces available for residents on Friary Street with parking permits. The proposed development will only exacerbate the parking problems.
- 7.35. I note the concerns raised in relation to car parking however, the site is a city centre location and in accordance with SPPR 3 – Car Parking of the Sustainable Compact Settlement Guidelines and Section 2.8 of the CDP states; “general restrictions on building height or universal standards for car parking or garden size may not be applicable in all circumstances in the City and in appropriate situations, performance based criteria maybe applied”. And Section 5.4.2 of the CDP Land Use Objectives states; C5D: To promote compact urban forms close to public transport corridors to encourage more sustainable patterns of movement.
- 7.36. Section 5.9 Car Parking of the CDP states; while the provision of sufficient car parking is important, the rationale for the application of car parking standards is to ensure that consideration is given to the accommodation of vehicles in assessing development proposals. The Council will also take into account the need to promote a shift towards more sustainable forms of transport and that rigid standards for car parking may not be applicable in all circumstances in the city. The Council will look at performance-based criteria appropriate to the specific circumstances.
- 7.37. I note the location of the site within the city centre of Kilkenny, the provision of no parking is considered acceptable having regard to the accessibility of public transport

link and accessible walking distance to the city centre. The applicant has provided 16 bicycle spaces which is considered sufficient for the development. The Engineer for Kilkenny City Council has recommended a development contribution in lieu of the parking provision. If the Board are mindful to grant permission, a parking contribution condition shall be attached.

7.38. Having regard to the location of the site within walking distance of the city centre and the provision as set out in the CDP and the Compact Settlement Guidelines, the provision of no car parking on this site is considered acceptable.

7.39. Residential Amenity

7.40. There is an existing two storey dwelling located along Friary Street, this building will be renovated and refurbished and will consist of 4-bedroom dwelling. The proposed apartment block to the rear will consist of three floors and contain 10 no. apartments. The overall height of the apartment block to the rear will be 9.55metres. This area is currently hardcore ground bounded by existing stone walls.

7.41. To the rear of the subject site is a line of non-residential outbuildings associated with the Presentation Primary School (library) and associated grounds. To the southwest, beyond the school grounds, are gardens laid out by the Presentation Sisters which are associated with their living quarters. Directly to the east are a terrace row of residential and office buildings. To the western boundary there is a shed associated with the gardens of the Presentation Sisters, along with the rear garden of 24 Friary Street and 20, 21 & 22 of Friary Street.

7.42. The grounds of appeal state in regard to overlooking, the northwest facing windows in units 5, 9 are high level windows. The southeast facing windows in these apartments have been designed with privacy screens to avoid overlooking and the stairwell windows are to be fitted with obscure glazing. It is considered that there will be no loss of privacy to neighbours. Although alternative measures can be designed to deflect lines of vision from the bedroom windows, and this can be dealt with by way of a condition. The appeal also outlines that the 22-metre separation does not apply if good design has been incorporated and this has been achieved through the application of privacy screens to affected windows or angled windows. The playschool building will not be impacted by the proposal as it is located at the opposite end of Presentation Community Complex. The proposed apartment block

has been set back from the northwestern boundary to minimize any overshadowing to the library building to the north. There is no overlooking to Presentation Sister's accommodation or garden, the overshadowing of the school garden ground will be minimal and acceptable.

- 7.43. The grounds of appeal highlight the Planning Authority has no concerns regarding the density and height of the 3-storey apartment block was deemed acceptable by the Planning Authority, no concerns were raised. The sun path analysis demonstrated that there was no unacceptable loss of sun or daylight to neighbouring properties.
- 7.44. The proposal has been altered to retain the existing structure as such there will be no stress on the shared party wall and the applicant intends to engage with the neighbours at no. 18 and no. 20 Friary Street when undertaking any required structural stability works.
- 7.45. The observation submitted noted the garden directly adjacent to No. 19 Friary Street is incorrectly identified as No. 25 Friary Street instead of No. 24 Friary Street. The observation raised concerns in relation to overlooking, our rear garden directly borders the proposed development site. The proposal will be overlooking and invade our privacy. Units 5 & 9 will face directly into our garden. The proposed 3 storey building bordering their garden wall will block out/reduced natural light to their garden. The residents of St. Mary's ACA need to be safeguarded and protected.
- 7.46. I have assessed the proposed site layout and the floor plans for Unit 5 (first floor) & Unit 9 (second floor) which has a kitchen and bathroom window located on the western elevation. These windows look directly over the garden of the Sister Presentation Community Complex, they do not directly overlook the garden of No. 24 Friary Street. The garden of No. 24 Friary Street abuts the paving and opening landscape area for the apartments and the private open space for the existing dwelling. Therefore, it is in my opinion that there are no overlooking issues onto the gardens of 24 No. Friary Street or No. 20, 21 & 22 of Friary Street.
- 7.47. The front elevation (southern) bedroom windows of Unit 5 and Unit 9, are located less than 16 metres from the rear window of No. 20 Friary Street. This issue has not been raised by the applicant or in the observation. The applicant has proposed a design solution of angled windows partially fitted with obscure glazing. The Compact

Settlement Guidelines, SPPR 1 – Separation Distances state: *Separation distances below 16 metres may be considered acceptable in circumstances where there are no opposing windows serving habitable rooms and where suitable privacy measures have been designed into the scheme to prevent undue overlooking of habitable rooms and private amenity space.* Given the measures proposed by the windows of angled windows with obscure glazing and the separation slightly below the minimum standard of 16 metres at 15.1 metres. I consider the proposed is acceptable and if the Board are mindful to grant permission a condition shall be attached in relation to angled and glazed windows for Units 5 & 9.

- 7.48. In relation to overshadowing, I have examined the sun path analysis document submitted with the planning application. And I have assessed the pattern of the sun rising in the east and setting in the west. The properties to the west of the proposal may be impact by slight overshadowing in the early morning hours as the sun rises. They will not be impacted during the day or into the evening given the location of the sun. Overshadowing may occur to the building (library) on roof lights to the north of the proposal during the mid-day spring and summer, however, these will be minimal given the location of the existing library and I considered this is acceptable.
- 7.49. Having regard to the orientation of the proposed apartment block and the location of the adjacent gardens, I do not consider the proposal will negatively impact on the privacy or overlook the private open space. The overshadowing is minimal and is no more than experienced in built up urban areas. Therefore, the proposal is acceptable in terms of residential amenity.
- 7.50. **Procedural Issues**
- 7.51. In terms of procedural matters and the alleged disposal of the initial site notice for the previous application and the new site notice on white background received by the Planning Authority. I note the submitted information was deemed acceptable by the Planning Authority and the erection of a site notice on white background is in accordance with the Planning and Development Regulations 2001-2024. A site notice only needs to be on a yellow background where a valid application was made within 6 months prior to submission of a new application.

7.52. I am satisfied that this did not prevent the concerned parties from making representations. The above assessment represents my de novo consideration of all planning issues material to the proposed development.

8.0 AA Screening

8.1. Having regard to the proposed development of 10 no. residential apartment and the refurbishment/renovation of an existing two storey dwelling with connection to public sewer and public water and discharge of surface water to the existing public storm water network and within the development boundary for Kilkenny City. The nearest European site is River Nore SPA (Site code: 004233) and River Barrow and River Nore SAC which lies approximately 300 metres to the east of the site. Having regard to the separation distance and the use of public sewer and water with no on-site car parking, it is considered that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant impact individually or in combination with other plans or projects on a European site.

9.0 Recommendation

I recommend that planning permission should be refused for the reasons and considerations as set out below.

10.0 Reasons and Considerations

1. It is considered that the archaeological significance of the site is such that any development of the site in advance of a comprehensive archaeological assessment, carried out to the requirements of the appropriate authorities, would be premature and would be contrary to the policies and objectives contained in section 4.3.2 of Kilkenny City and County Development Plan 2021-2027 Volume 2 in relation to the protection of archaeological sites and monuments (including their setting), and Objective 9C of Kilkenny City and County Development Plan 2021-2027, Volume 1, therefore the proposed development is 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.

Jennifer McQuaid
Planning Inspector

21st October 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-318918-24		
Proposed Development Summary	The proposed development will consist of the renovation and refurbishment of an existing two storey dwelling and the construction of 10no. apartments to the rear of the existing dwelling and all associated site works.		
Development Address	No. 19 Friary Street, Kilkenny City, Co. Kilkenny.		
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	X
		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) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No			
Yes	X	Class 10b(i) Construction of more than 500 dwelling units.	The proposal relates to the renovation and refurbishment of 1 no. dwelling and the construction
			Conclusion
			Proceed to Q.4

			of 10 no. apartments in the urban area of Kilkenny. The site measures 0.0688hectares.	
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4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ Date: _____

Appendix A.1 – Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-318918-24	
Proposed Development Summary	Renovation and refurbishment of an existing dwelling and construction of 10 no. apartments to the rear.	
Development Address	No. 19 Friary Street, Kilkenny City, Co. Kilkenny.	
<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>		
	Examination	Yes/No/Uncertain
<p>Nature of the Development. Is the nature of the proposed development exceptional in the context of the existing environment.</p>	<ul style="list-style-type: none"> • The development consists of renovation and refurbishment of an existing dwelling and the construction of 10no. apartments. • The development will consist of generally typical construction and related activities and works. However, due to the location in an ACA and potential unfound archaeology and proximity of Kilkenny defence wall, raft foundations will be utilised. • Refurbishment and steel Frame will be used for the NIAH listed two storey building. 	No

<p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<ul style="list-style-type: none"> • Surface water will be discharged to public storm water. • Wastewater will be discharged to public sewer. • Storm water will be directed to public storm water drainage system. 	<p>No</p>
<p>Size of the Development Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and / or permitted projects?</p>	<ul style="list-style-type: none"> • The development site measures 0.0688 hectares. The size of the development is not exceptional in the context of the existing urban environment. • There are existing terrace dwellings and office and apartments block surrounding the site the proposed site, however, there is no real likelihood of significant cumulative effects with the existing and permitted projects in the area. 	<p>No</p>
<p>Location of the Development Is the proposed development located on, in, adjoining, or does it have the potential to significantly impact on an ecologically sensitive site or location, or protected species?</p>	<ul style="list-style-type: none"> • The subject site is not located within any designated site. The nearest sites are: <ul style="list-style-type: none"> ○ River Nore SPA (Site code: 004233) and River 	<p>No</p>

Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area, including any protected structure?	<p>Barrow and River Nore SAC located 300 metres to the east.</p> <ul style="list-style-type: none"> ○ Lough Macask pNHA (site code: 001914) is located c1.7km northwest. ○ Newpark Marsh (site code: 000845) is located c1.4km northeast. 	
Conclusion		
EIA is not required.		

Inspector:

Date: _____

DP/ADP: _____ Date: _____
 (only where Schedule 7A information or EIAR required)