



An
Bord
Pleanála

Inspector's Report ABP-321016-24

Development	Indefinite retention of a single-storey, one-bedroom, detached family flat and planning permission for partial demolition of the existing porch and utility room of the family flat, plus other alterations to the existing structure.
Location	No. 43 Michael Street, Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	2460363
Applicant(s)	P. J. Norton
Type of Application	Permission & Permission for Retention
Planning Authority Decision	Refusal
Type of Appeal	First Party v. Decision
Appellant(s)	P. J. Norton
Observer(s)	None.
Date of Site Inspection	14 th & 17 th February, 2025
Inspector	Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located at No. 43 Michael Street, Kilkenny, approximately 280m east of Parliament Street in the City Centre, where it occupies an elevated position in an established residential area overlooking the River Nore and an adjacent linear park. The immediate surrounds are predominantly characterised by two-storey rendered 1880s terraced housing and in this respect it is notable that the surrounding area retains an attractive quality and is of some interest from a built heritage perspective given its location within the Michael Street / Wolfe Tone Street Architectural Conservation Area.
- 1.2. The site itself has a stated site area of 0.03 hectares, is irregularly shaped, and comprises a mid-terrace, two-storey property with a narrow and elongated garden to the rear. This rear garden area is separated from the main dwelling house by a shared laneway, which provides access to the rear of the properties along Michael Street, and it is within this space that the 'family flat' proposed for retention is situated. The existing 'flat' extends from the laneway alongside the northern site boundary and is of a split-level construction with an area of raised decking between it and the remainder of the rear garden area which includes a detached shed.

2.0 Proposed Development

- 2.1. The proposed development consists of the indefinite retention of a single-storey, split-level, detached 'family flat' within the rear garden area of No. 43 Michael Street, Kilkenny, so as to provide for additional residential accommodation ancillary to the main dwelling house for occupation by the owner of that property. Permission has also been sought for a number of alterations to the existing structure which include the following:
 - The demolition of the existing utility room, hall and part of the kitchen / dining area thereby recessing the overall construction eastwards and reducing the stated floor area of the 'family flat' from 94m² to 79.4m² as per the submitted drawings and application form (although accompanying correspondence refers to a reduced floor of 78.6m²).

- The provision of a private terraced area between the front gable elevation of the ‘family flat’ and the adjacent laneway.
- The recessing of the side access gate to follow the new front building line of the flat.
- The reconfiguration of the internal room layout / accommodation with a reduction from 2 No. bedrooms to a single bedroom.
- The removal of a series of 4 No. windows within the northern elevation of the structure and the blocking up of the opes.
- The installation of 2 No. additional rooflights within the north-facing pitch of the existing roof.

2.2. The existing structure is based on a principle rectangular plan with a conventional pitched roof construction. External finishes include a sand / cement render and concrete roof tiles. At present, it includes 2 No. bedrooms (which will be reduced to 1 No. bedroom as part of the subject proposal), a sitting room, a living room, WC / shower, a combined kitchen / living area, entrance hall, and a utility space. Access to the property is obtained via a shared laneway to the rear of St. Micheal’s Street. Water supply and sewerage services are available from the public mains while surface water has been shown as discharging to an on-site soakpit.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On 23rd September, 2024 the Planning Authority issued a notification of a decision to refuse permission for the following 2 No. reasons:

- As per the application documents submitted the development to be retained is stated as a “detached family flat” in which the applicant resides as they operate a B&B in the main dwelling. Having regard to (a) the detached nature of the structure, (b) the use of the structure by the applicant to accommodate commercial use of the main dwelling, and (c) the scale of the development, the subject development does not comply with the policy for family flats as set out in section 13.15 of the Kilkenny City and County Development Plan 2021-

2027. The proposed development would set an undesirable precedent to the rear of houses on Michael Street and would therefore be contrary to the proper planning and sustainable development of the area.

- The structure, due to its size and scale relative to the existing house, is excessive and detracts from the amenity space associated with the main house, and would seriously injure the privacy and amenity of the adjoining property due to overbearance given the extent of the structure located on the property boundary. The structure therefore does not accord with the zoning objective for the area to protect, provide and improve residential amenity. The development proposed for retention would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

Details the site location, planning history, and the applicable policy considerations before analysing the proposal by reference to the development previously refused permission on site under PA Ref. No. 23/136 / ABP Ref. No. ABP-317800-23. It proceeds to note that the proposed demolition of the existing porch and utility area to the front of the 'family flat' along with the blocking up of the windows within its northern elevation are intended to address the reasons for the refusal of ABP Ref. No. ABP-317800-23. The assessment subsequently states that although permission was previously granted for detached units to the rear of those dwellings along Michael Street in 2001 and 2002, the current Kilkenny City and County Development Plan, 2021-2027 does not support the development of a detached family flat which facilitates the commercial use of the primary residence on site. The report concludes by recommending that permission be refused for the reasons stated.

3.2.2. Other Technical Reports:

Road Design: No objection.

Conservation Officer: No objection.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Relevant Planning History

4.1. On Site:

- 4.1.1. PA Ref. No. 23/136 / ABP Ref. No. ABP-317800-23. Was refused on appeal on 30th April, 2024 refusing P.J. Norton permission for the indefinite retention of a single storey two-bedroom detached family flat to the rear of 43 Michael Street, Kilkenny. The development proposed for retention is located within the Michael Street / Wolfe Tone Street Architectural Conservation Area.

- The development proposed for retention, as described by the applicant, is akin to a family flat or extension to the existing family unit. The structure, due to its size and scale relative to the existing house, is excessive and detracts from the amenity space associated with the main house, and would seriously injure the privacy and amenity of the adjoining property due to overlooking and overbearance given the extent of the structure located on the property boundary. The structure therefore does not accord with the zoning objective for the area to protect, provide and improve residential amenity. The development proposed for retention would be contrary to the proper planning and sustainable development of the area.

- 4.1.2. PA Ref. No. 09990085. Application by P.J. Norton for permission to retain a single storey detached extension to rear of dwelling house. This application was withdrawn.

- 4.1.3. PA Ref. No. 01/990080. Was granted on 28th December, 2001 permitting Mr. Patrick Geoghegan permission to erect a Bed & Breakfast sign.

4.2. On Adjacent Sites:

None.

4.3. On Sites in the Immediate Vicinity:

- 4.3.1. PA Ref. No. 02/990033. Was granted on 24th June, 2002 permitting Mr. & Mrs. Billy & Rose Lanigan permission to construct a granny flat at the rear of No. 35 Michael Street, Kilkenny.

- 4.3.2. PA Ref. No. 01/990089. Was granted on 24th January, 2002 permitting Mr. & Mrs. Francis & Ellen Coyne permission for the retention of existing granny flat at the rear of No. 32 Michael Street, Kilkenny.

5.0 Policy and Context

5.1. Development Plan

5.1.1. Kilkenny City and County Development Plan, 2021-2027:

Land Use Zoning:

The proposed development site is located in an area zoned as ‘*Existing Residential*’ with the stated land use zoning objective ‘*To protect, provide and improve residential amenities*’.

Other Relevant Sections / Policies:

Vol. 1: County:

Chapter 9: Heritage, Culture and the Arts:

Section 9.3.3: Architectural Conservation Areas:

Objective 9J: To ensure the preservation of the special character of each ACA listed in this Plan (See Table 9.2 and Volume 2 Heritage Strategy) with particular regard to building scale, proportions, historical plot sizes, building lines, height, general land use, fenestration, signage, and other appendages such as electrical wiring, building materials, historic street furniture, paving and shopfronts.

Objective 9K: To designate ACAs where appropriate and provide a local policy framework for the preservation of the character of these areas.

Objective 9L: To prepare and introduce a set of Shopfront Guidelines.

Chapter 13: Requirements for Developments:

Section 13.5: Infill Development:

The Council will also have regard to the Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) Guidelines for Planning Authorities (DEHLG, 2009) Infill development:

“Infill” residential development may range from small gap infill, unused or derelict land and “backland” areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. Sub-division of sites can be achieved where large houses on relatively extensive sites can accommodate new residential development without unduly impacting the existing residential amenity. “Backlands” development generally refers to lands to the rear of existing dwellings which may, with the appropriate coordinated access and service interventions, give rise to opportunities for new development. New developments, particularly in established built up areas can only be developed with the appropriate consideration of existing neighbouring amenity.

Availing of development opportunities for infill sites will need to be sensitive to the potential of them imposing on existing neighbouring structures in terms of encroachment, overlooking and overshadowing. The potential for the development of such sites, which includes backland locations, should be considered on a site by site basis and will only be acceptable where the developer can show that the development is able to comply with certain minimum requirements.

In order to advance this process in Kilkenny City a study of the opportunities that exist with accompanying guidance will be carried out. It is Council policy to facilitate infill development where minimum requirements can be met and where the proposed development will not materially impact the residential amenity or character of neighbouring developments.

Objective 13A: To compile an analysis and a development guidance criterion for housing opportunities in Kilkenny City’s backland areas, underutilised lands and brownfield sites.

Section 13.5.1.1: *Development Management Requirements for Urban Infill Development:*

Smaller single unit infill sites:

For single unit infill developments (permanent subdivision), the following requirements should be met;

- normal plot ratio and site coverage requirements
- in the case of development proposals with access from communal access roads (back lanes), such communal access roads shall be improved to comply with DMURS standards or such relaxation as determined by the Planning Authority;
- Where accessing from existing public roads, have direct access via an access road at least 3m in width along its entire length;
- the proposal must provide a minimum of 25sqm of consolidated usable private open space, reserved exclusively for use of the infill unit. The original unit should also retain at least a minimum 25 sqm of consolidated usable private open space;
- Structures should maintain a setback distance of at least 7.5m from the rear of any neighbouring house;
- Structures must not unduly overlook any neighbouring house or private open space from upper floor levels and orientation and setback are important in this regard (22m rule applies between opposing first floor windows unless good merit exists for relaxation);
- Structures must not unduly overshadow or encroach on any neighbouring house and a shadow path impact analysis may be required;
- The proposed development must not unduly affect the character of the immediate environs, including ACAs or neighbouring protected structures

Each application shall be considered on its own merit and in accordance with the principles of proper planning and sustainable development.

Section 13.15: *Family Flat*:

A 'family' flat refers to a sub-division or extension of a single dwelling unit to accommodate a member of the immediate family and is generally acceptable, provided it is not a separate detached unit and that it is possible to provide direct access to the remainder of the house. There shall be no permanent subdivision of the garden. The 'family' flat shall not be let or sold, other than as part of the overall property and shall revert to being part of the original house when no longer occupied

by a family member. The design should ensure that the flat forms an integral part of the main dwelling unit capable of reintegration for single family use.

The principal requirement for any proposed family flat extension is that the family flat shall generally be less than 50% of the floor area of the main dwelling. In the case of a two-storey family flat, an internal connecting door will normally be required at both levels. External doors will normally only be permitted to the side and rear of the house, with the presumption against an independent front door.

Access shall be either from an internal door or by side door well screened from the front elevation. The design should have regard to the need for light and privacy of adjoining properties. The form and design of the existing building should be followed and the extension should integrate fully with the existing building by using similar detailing and window proportions, materials and finishes.

Vol. 2: City:

Chapter 4: Heritage Strategy:

Section 4.5: Kilkenny City ACA's:

Section 4.5.6: Michael Street / Wolfe Tone Street Architectural Conservation Area:

ACA Development Management Requirements based on assessment of special character.

- MSACA 1: To promote the conservation of the front garden areas to the houses in John's Terrace located on John's Quay and to ensure that proposals for accommodating residential parking which impact on these will not be permitted.
- MSACA 2: To ensure a high standard of architectural design to any development to the rear of Michael Street and Wolfe Tone Street, and ensure it is sensitive in scale and materials to the existing area.
- MSACA 3: To promote the restoration and appropriate re-use of derelict or vacant buildings, particularly the 18th century Infirmary building on John's Green.

- MSACA 4: Any proposals for new development in the former mart site should take account of the setting of the ACA and the importance of the 1930's former shoe factory to the setting of the ACA. (See Zoning Objective Z10).
- MSACA 5: Any proposals for new development along the river must acknowledge the green belt on the east bank of the River, and its visually pleasing role when viewed from the Abbey Quarter. Development here should be omitted, as the new bridge is the most prominent insertion.
- MSACA 6: To provide for the conservation of Green's Bridge, a protected structure of National importance, and to ensure where works are proposed that they do not impact on the bridge, either directly or indirectly.

Section 6.3: Residential Development

Section 6.4: Infill Development:

In considering proposals for infill development within the City, the Council will also have regard to the Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) Guidelines.

"Infill" residential development may range from small gap infill, unused or derelict land and "backland" areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. Sub-division of sites can be achieved where large houses on relatively extensive sites can accommodate new residential development without unduly impacting the existing residential amenity. "Backlands" development generally refers to lands to the rear of existing dwellings which may, with the appropriate coordinated access and service interventions, give rise to opportunities for new development. New developments, particularly in established built up areas can only be developed with the appropriate consideration of existing neighbouring amenity.

Availing of development opportunities for infill sites will need to be sensitive to the potential of them imposing on existing neighbouring structures in terms of encroachment, overlooking and overshadowing. The potential for the development of such sites, which includes backland locations, should be considered on a site by site basis and will only be acceptable where the developer can show that the development is able to comply with certain minimum requirements.

In order to advance this process in Kilkenny City a study of the opportunities that exist with accompanying guidance will be carried out.

It is Council policy to facilitate infill development where minimum requirements can be met and where the proposed development will not materially impact the residential amenity or character of neighbouring developments.

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.

5.2. Natural Heritage Designations

5.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The River Barrow and River Nore Special Area of Conservation (Site Code: 002162), approximately 40m to the west of the site.
- The River Nore Special Protection Area (Site Code: 004233), approximately 40m to the west of the site.

5.3. EIA Screening

5.3.1. Having regard to the nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- In its previous determination of PA Ref. No. 23/136 / ABP Ref. No. ABP-317800-23, the Board accepted that the nature of the development then under consideration aligned more with that of a family flat than an infill development. It also noted the layout of the site and the difficulty in extending the property due to the shared access dividing the garden area from the main house.

Having reviewed the rationale for the refusal of ABP Ref. No. ABP-317800-23, it is submitted that the Board has recognised the site constraints, with particular reference to the difficulties arising from the shared access bisecting the property, and is not opposed to the principle of a detached family flat in the rear garden area.

- In order to address the reasons for the refusal of ABP Ref. No. ABP-317800-23:
 - It is proposed to demolish the existing entrance porch / hall & utility room and to set back the side access gate (the removal of more floorspace would result in the loss of essential living accommodation and / or a significant reconfiguration or redesign of the existing structure. The Board is also requested to note that the applicant's partner has mobility issues and the level access provided from the bedroom to the rear deck / patio is an important amenity for her). This will have the effect of reducing the floor area of the family flat by 15.4m² to 78.6m² (or 49% of the floor area of the main house).

The removal of the front hall will also reduce the extent of the structure alongside the garden area of the neighbouring property with the overall length of the construction being reduced from 21.5m to 17.95m. In addition, this will allow for the creation of a small sit-out terrace to the front of the flat that will not obstruct the passageway to the rear of the main house.

The aforementioned reduction in the footprint of the structure will bring its floor area within the limits of the 'family flat' criteria set out in Section 13.15 of the Development Plan (i.e. less than 50% of the main house).

- To overcome the concerns as regards overlooking of the rear garden area of the neighbouring property, all those windows within the northern elevation of the flat are to be infilled (with the neighbouring property owner at No. 44 Michael Street having consented to access through their property to accommodate the works).
- With respect to the initial reason for refusal wherein it has been asserted that the 'family flat' does not comply with the applicable policy set out in Section 13.15 of the Development Plan, it is submitted that Section 13.1 of the Plan states that Section 13.15 only contains guidance and not does specify policy provisions.

The only aspect of the proposed development not in accordance with the guidance contained in Section 13.15 of the Plan is the fact that the construction (similar to other family flats in the vicinity) is detached from the main house due to the presence of the shared access to the rear. It is respectfully submitted that, under the circumstances, this does not render the proposal unacceptable.

- For the purposes of clarity, the Board is advised that the applicant operates a 'Bed & Breakfast' from his house which comprises 2 No. self-catering 'B&B' suites along with family accommodation in the main dwelling house as well as the two-bedroom family flat to the rear. The 'Bed & Breakfast' use is authorised and does not encompass the entirety of the main house with the remaining family accommodation (encompassing a bedroom, kitchen / living area and a bathroom) being occupied by the applicant's daughter. It is misleading to imply that the reasoning for the detached 'family flat' is because the entirety of the main house is used for guest accommodation. The Planning Authority has never inspected the property.
- There are two further instances of planning permission having been granted for detached 'granny flats' within the rear garden areas of properties along Michael Street.

- If the principle of a detached ‘family flat’ is acceptable in circumstances where extending to the rear of the main house is not physically possible due to the presence of a shared access, the subject proposal would not necessarily set an unacceptable precedent.
- No justification has been given for considering the structure excessive due to its size and scale relative to the existing house; the flat being excessive and detracting from the amenity space of the main house; or the flat seriously injuring the privacy and amenity of the adjoining property due to overbearance.

The floor area of the structure to be retained accords with the guidance provided in Section 13.15 of the Development Plan i.e. it is less than 50% of the floor area of the existing house. Furthermore, the proposal does not detract from the amenity of the existing house and will instead enhance the property by providing valuable additional family living space for the applicant and his partner within a rear private garden area of 100m² (with an open terrace and a garden potting shed).

6.2. Planning Authority Response

None.

6.3. Observations

None.

6.4. Further Responses

None.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues raised by the appeal are:

- The principle and nature of the proposed development

- Overall design and layout
- Appropriate assessment

These are assessed as follows:

7.2. The Principle and Nature of the Proposed Development:

- 7.2.1. By way of background, and in the interests of clarifying the broader use of the development site, it would appear from a review of the available information (including PA Ref. No. 23/136 / ABP Ref. No. ABP-317800-23) that the main dwelling house at No. 43 Michael Street historically operated as a 'Bed & Breakfast' with this use continuing upon the applicant's acquisition of the property in 2002. This would seem to have initially involved 3 No. bedrooms within the main house being used for the purposes of providing overnight guest accommodation by way of exempted development pursuant to Article 10(4) of the Planning and Development Regulations, 2001, as amended, with the remaining bedroom accommodation being occupied by the property owners. The existing detached family flat was subsequently developed (through the apparent conversion and extension of an outbuilding) by the applicant in 2005 in order to allow him to continue operating the 'Bed & Breakfast' with three of the (then) bedrooms in the main dwelling house being used as overnight accommodation and the applicant's family occupying a fourth bedroom in addition to the family flat. Following construction of the family flat, the applicant undertook various alterations to the internal configuration of the main dwelling house which involved the conversion of the 3 No. 'Bed & Breakfast' bedrooms into 2 No. self-contained, self-catering 'Bed & Breakfast' suites with the remainder of the accommodation being retained for family use (and occupied by the applicant's daughter). It is this room layout which is currently present on site.
- 7.2.2. Regrettably, no drawings of the internal configuration of the main dwelling house / 'Bed & Breakfast' have been submitted in support of the subject application, however, having conducted a site inspection, I can confirm that the existing accommodation comprises the following:

Ground Floor:

- 1 No. self-contained, self-catering suite encompassing an ensuite bedroom and a combined kitchen / dining / living area.

- A further ensuite bedroom with a separate combined kitchen / dining / living area (purportedly occupied by the applicant's daughter) accessed via a single doorway from the adjacent hallway which serves as the access route through the main dwelling to the rear laneway and the detached family flat beyond.

First Floor:

- 1 No. self-contained, self-catering suite encompassing an ensuite bedroom and a combined kitchen / dining / living area.
- A separate general storage room.

7.2.3. Notwithstanding the applicant's assertions as regards the current usage of part of the main dwelling house as a 'Bed & Breakfast' (as set out in both the subject application and that previously assessed under PA Ref. No. 23/136 / ABP Ref. No. ABP-317800-23), I would have some reservations as to whether the nature of the overnight accommodation provided constitutes exempted development pursuant to Article 10(4) of the Planning and Development Regulations, 2001, as amended. At the outset, there is a notable absence of any advertising or other signage on the exterior of the property which would serve to identify it as providing for overnight guest accommodation in the guise of a traditional 'Bed & Breakfast' premises. However, more pertinently, I am inclined to suggest that the overall design, layout and configuration of the property gives cause for concern. Both the 'suites' are entirely self-contained with an ensuite bedroom and a combined kitchen / living area while the applicant's own correspondence has acknowledged that these spaces are 'self-catering'. The remaining 'family accommodation' within the dwelling house also has the appearance of a self-contained living area / unit and does not appear to be of sufficient size to function as a communal space (such as a breakfast room, T.V. room etc.) as would more commonly be associated with the operation of a 'Bed & Breakfast' premises. The 'self-catering' and 'self-contained' nature of the two suites, particularly when combined with the absence of communal facilities / services and their broader appearance as observed during the course of my site inspection, would lend support to the suggestion that their usage is more akin to that of individual units offered for short-term letting or as other private rental accommodation. Any such use would not constitute exempted development by reference to Article 10(4) of the

Planning and Development Regulations, 2001, as amended, and would give rise to material planning considerations (It is of relevance to note that in the Board's determination of ABP Ref. No. PL29S.RL3490 it was held that the use of a residential apartment for short term holiday lettings constituted development that was not exempted development).

- 7.2.4. Given that the purported need for the retention of the detached flat stems from a requirement for additional private accommodation due to the use of the main dwelling house for 'Bed & Breakfast' purposes, the Board may wish to consider whether it would be necessary to seek further information on this issue in advance of a final decision.
- 7.2.5. At this point, I would emphasise that the Board has no function in respect of issues pertaining to enforcement or the investigation of alleged unauthorised development and that the pursuit of such matters is generally the responsibility of the Planning Authority. Accordingly, I propose to assess the subject proposal on the basis that any use of the main dwelling house for 'Bed & Breakfast' purposes is authorised by way of Article 10(4) of the Planning and Development Regulations, 2001, as amended (as appears to have historically been the case). It is also of relevance to note that notwithstanding any determination of this appeal, the Planning Authority is empowered to commence enforcement proceedings in respect of any incidence of unauthorised development or breach of condition, including (but not limited to) any unauthorised usage of the main dwelling house.
- 7.2.6. The development as proposed for retention comprises a single-storey, split-level, detached 'family flat' within the rear garden area of No. 43 Michael Street, Kilkenny, which is intended to provide additional private residential accommodation ancillary to the main dwelling house for occupation by the owner of that property. In this regard, it is of relevance to note that in its previous determination of ABP Ref. No. ABP-317800-23, the Board accepted that the development proposed for retention was akin to a family flat or an extension of the existing family unit as opposed to an 'infill development'. Therefore, it is appropriate to assess the subject proposal by reference to the guidance contained in Section 13.15: '*Family Flat*' of the Kilkenny City and County Development Plan, 2021-2027.

- 7.2.7. Although Section 13.15 of the Development Plan sets out various criteria against which proposals for the development of 'family flats' are to be assessed, it should be noted (as has been emphasised by the applicant) that the preceding Section 13.1 of the Plan clarifies that these standards are merely a statement of general principles intended to provide guidance and assistance to those who seek permission for development and that individual applications for development are to be determined on a case-by-case basis in accordance with circumstances at the time an application is submitted. In this regard, it is my opinion that the Development Plan allows for a degree of flexibility in the application of certain development management criteria.
- 7.2.8. Perhaps the key 'requirements' of Section 13.15 are that the proposed 'family flat' cannot comprise a separate detached unit and must be capable of providing direct access to the remainder of the dwelling house. In effect, the design should ensure that the flat forms an integral part of the main dwelling house and is capable of reintegration for single family use. Clearly, these criteria cannot be complied with in the subject instance due to the presence of a shared laneway between the proposed flat and the main dwelling house, however, I would suggest that given the particular circumstances of the development site (whereby the rear garden areas of those houses along Michael Street are physically separated from the main residence by a communal / shared laneway), some leniency could be afforded to the subject proposal. Indeed, there are at least two other instances of detached 'family / granny flats' having been permitted elsewhere to the rear of Michael Street, although I would acknowledge that these were approved under previous iterations of the Development Plan. Further credence is lent to the submitted proposal by reference to the confined nature of the plot occupied by the main dwelling which limits the opportunity for the physical extension of the property. Therefore, while I would concede that the development to be retained does not fit comfortably within the parameters of a 'family flat' as sought by the Development Plan, I am amenable to an exception in this instance and I am of view that the principle of the detached 'family flat' is generally acceptable and would not set a broader undesirable precedent.
- 7.2.9. The flat itself is stated as being occupied by the applicant (as the owner of No. 43 Michael Street) and is intended to function in an ancillary capacity to the remaining family accommodation (occupied by the applicant's daughter) in the main dwelling house which is not utilised as part of the overnight guest accommodation. Given that

the only available family accommodation within the primary dwelling is limited to a bedroom with an ensuite bathroom along with a combined kitchen / living area, the need for additional family accommodation would seem reasonable. While the Planning Authority has implied that the applicant's accommodation needs could be satisfactorily addressed by the loss / conversion of all / part of the overnight guest rooms and that the family flat serves to accommodate the continued commercial use of the main dwelling, given the historical use of the property as a 'Bed & Breakfast', the comparatively small scale and nature of the commercial usage, and the particularities of the on-site constraints, on balance, I am inclined to suggest that the retention of the family flat as accommodation ancillary to the main dwelling house is permissible in this instance.

7.3. Overall Design and Layout:

- 7.3.1. In response to the decision to refuse permission for the previous development proposal lodged under PA Ref. No. 23/136 / ABP Ref. No. ABP-317800-23, the submitted proposal includes for a number of alterations to the existing structure with a view to addressing the Board's earlier concerns.
- 7.3.2. With regard to the assertion that the existing structure, due to its size and scale relative to the existing house, is excessive and detracts from the amenity space associated with the main house, the submitted proposal includes for the demolition of the existing utility room, hall / porch and part of the kitchen / dining area so as to reduce the overall floor area of the 'family flat' from 94m² to 79.4m² as per the submitted drawings and application form (although accompanying correspondence refers to a reduced floor of 78.6m²) which is considered to bring the proposal in line with the Development Plan requirement (Section 13.15) that any family flat should generally be less than 50% of the floor area of the main dwelling (stated to be 160m²). Regrettably, floor plans of the main dwelling have not been submitted with the subject application, however, in its determination of ABP Ref. No. ABP-317800-23 the Board appears to have accepted that said property has a floor area of 160m² and thus the family flat as proposed for retention (i.e. minus the existing porch & utility area etc.) is less than 50% of that of the main dwelling. The demolition works will also serve to reduce the extent of the existing construction alongside the site boundary shared with the neighbouring property to the north (thereby improving the amenity of that property) and simultaneously allow for the creation of a private

terraced area between the front elevation of the 'family flat' and the adjacent laneway thereby enhancing the overall provision of amenity space on site. It is also of note that the proposed reconfiguration of the internal layout of the flat (with a reduction from 2 No. bedrooms to a single bedroom) could be construed as lessening the demand for private amenity space.

- 7.3.3. In order to avoid impacting on the privacy and amenity of the adjoining property to the immediate north by reason of overlooking, it is proposed to remove the 4 No. existing windows within the northern elevation of the structure and to block up the remaining opes. In turn, it is proposed to install 2 No. additional rooflights within the north-facing roof pitch of the family flat so as to ensure adequate daylighting of the affected rooms while improving the amenity of the neighbouring amenity space.
- 7.3.4. On balance, it is my opinion that the amendments proposed to the existing flat serve to improve the level of amenity afforded to both the main dwelling house on site (through the provision of additional private amenity space) and the neighbouring property to the north (due to the reduction in the size & scale of the construction along with the removal of the windows in its northern elevation) and thus accords with the zoning objective for the area to protect, provide and improve residential amenity.
- 7.3.5. More generally, given the surrounding pattern of development along the laneway to the rear of Michael Street, which includes various structures such as storage buildings, garden structures and 'granny flats', I am satisfied that the overall design of the structure proposed for retention is in keeping with the area.

7.4. Appropriate Assessment:

- 7.4.1. Having regard to the nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, the physical separation from the nearest sensitive location, and the absence of connectivity to any European Site, it is concluded that no Appropriate Assessment issues arise as the development proposed for retention would not be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission for retention & permission be granted for the reasons and considerations and subject to the conditions set out below:

9.0 Reasons and Considerations

- 9.1. Having regard to the information submitted with the planning application and appeal, and the design, nature and scale of the development proposed to be retained, it is considered that, subject to compliance with the conditions set out below, the development proposed to be retained would accord with the land use zoning for the area and would not seriously injure the visual or residential amenities of property in the vicinity. The development proposed to be retained would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained, carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Within twelve months of the date of this Order, all works proposed to the family flat as shown on the plans and particulars lodged with the application shall be completed in full.

Reason: In the interests of residential amenity.

3. The family flat proposed for retention shall be jointly occupied as a single residential unit with the main dwelling and shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

Reason: To restrict the use of the family flat in the interests of residential amenity.

4. The existing bed and breakfast / dwelling shall not be used for overnight guest accommodation unless the house is also occupied by the owner or a member of the owner / occupier's family, unless the change of use of the house to exclusively overnight guest accommodation is authorised by a prior grant of planning permission.

Reason: To restrict the use of the dwelling house in the interests of residential amenity.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

6. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

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 within three months of this Order 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.

Robert Speer

Senior Planning Inspector

19th February, 2025

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála	ABP-321016-24		
Case Reference			
Proposed Development Summary	Indefinite retention of a single-storey, one-bedroom, detached family flat and planning permission for partial demolition of the existing porch and utility room of the family flat, plus other alterations to the existing structure.		
Development Address	43 Michael Street, 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	✓
		No	No further action required
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		Class.....	EIA Mandatory EIAR required
No	✓		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)
Conclusion			
No	✓	N/A	No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	✓	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ Date: _____