



An  
Bord  
Pleanála

## Inspector's Report ABP-321539-24

<b>Development</b>	Permission to construct a two-storey building containing a one bedroom apartment at first floor level & retail unit at ground floor level.
<b>Location</b>	Dodd's Lane, High Street, Killarney, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	2460796
<b>Applicant(s)</b>	Florence & Padraig McCarthy
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	John Clifton; Andrew Duggan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	21 <sup>st</sup> February 2025
<b>Inspector</b>	Bernadette Quinn

## **1.0 Site Location and Description**

- 1.1. The site, which is irregular in shape and has a stated area of 0.03ha, is located on a laneway off High Street in the centre of Killarney town. Access to the site is via Dodd's Lane, a small laneway which is accessed via a gated entrance located under the first floor of a building fronting onto High Street. A single storey structure which is occupied by a fish shop is located on part of the site and the area of the proposed development is overgrown and vacant. The rear of the site (west) backs onto the rear of a four-storey apartment building with windows on upper floors overlooking the site. To the south, the site is bound by a wall separating the site from rear yards of properties fronting onto New Street, and the rear of the buildings which front onto High Street. There is a small access lane off the subject site, running south to north, which provides access to the rear of existing buildings fronting onto High Street.
- 1.2. The area of High Street in the vicinity of Dodd's Lane is characterised by retail and food outlets. High Street has a one-way system in operation for vehicular traffic. There are parking and loading bays located along the street, including in front of the entrance to Dodd's Lane. Dodd's Lane is approximately 2m in width at its entrance to High Street and narrows to approximately 1.2m wide and cannot accommodate vehicular traffic.

## **2.0 Proposed Development**

- 2.1. Permission is sought to construct a two-storey building with a gross floor area of 134 sq.m containing a retail unit with a floor area of 45.5 sq.m at ground floor level and a one bedroom apartment with a floor area of 58 sq.m. at first floor level. An area of bin storage and bike storage is located at ground floor level. The proposed building has a height of 6.6m and has a flat roof and render finish. The east elevation facing Dodd's Lane includes ground floor accesses serving the proposed retail unit and apartment and a balcony at first floor.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 10<sup>th</sup> December 2024, Kerry County Council issued notification of the decision to grant planning permission subject to 12 conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The planner's report dated 10/12/2024 can be summarised as follows:

- The proposed development is acceptable in principle on M2 Town Centre zoned land.
- A set back of 900mm from the southern boundary is proposed which was considered acceptable by An Bord Pleanála in the previous application on the site and will ensure that the development potential of the adjoining site is not affected.
- The Planning Authority cannot adjudicate on ownership issues.
- The proposed two-storey height is acceptable, and the ground floor retail unit will add vibrancy to the laneway.
- Dodd's Lane which provides access to the site has a width of approximately 1.2m and a distance of approximately 7m and was considered by An Bord Pleanála to be acceptable access to the site in the previous application.
- Constraints to the site are noted, however given the town centre location it is considered appropriate to permit development.
- Waste arising from one apartment and a small retail unit is unlikely to give rise to any significant issues.
- The proposal will occupy space to the east of an adjacent apartment development which does not include windows at ground or first floor level and will have little or no impact on existing residential amenity associated with these apartments.

- The overall design is acceptable in terms of impact on existing residential amenities in the vicinity.
- The proposed apartment meets the minimum criteria in the Apartment Guidelines.
- The reasons for refusal in the Bord decision for a similar structure have been adequately addressed in this application and the proposal makes best use of this vacant town centre site.

### 3.2.2. Other Technical Reports

None received.

### 3.2.3. Conditions

The following conditions are of note:

Condition 10: Notwithstanding the provisions of the Planning and Development Regulations 2001 (as amended), no part of the proposed apartment shall be used for the provision of overnight commercial guest accommodation without prior grant of planning permission. Reason: In the interests of orderly development and residential amenity.

Condition 12: Save for the signage indicated on the elevational drawings received by the Planning Authority on 16/10/2024 no further advertising signage shall be allowed on the building, site or approach roads/streets without a prior grant of planning permission. Reason: In the interest of visual amenity and traffic safety

### 3.3. **Prescribed Bodies**

TII: No objection noted.

### 3.4. **Third Party Observations**

Two no. third party observations were received objecting to the proposed development. The issues raised are similar to those raised in the third party appeals.

## 4.0 Planning History

### *Appeal Site:*

21194 / ABP-314922-22: Permission granted by Kerry County Council and refused by An Bord Pleanála for construction of a two-storey building containing a store and 1 no. office and all ancillary services. Permission refused for the following reason:

Having regard to the nature and layout of the proposed building, with a store proposed at ground floor level, the Board is not satisfied that the proposed development would be in accordance with the provisions of the Kerry County Development Plan 2022-2028, as it relates to the town of Killarney in terms of facilitating the sustainable regeneration and renewal of sites in the town centre and the revitalisation of the public realm and laneways in Killarney. The proposed ground floor store, and the eastern façade of the proposed building, would result in a closed and inactive elevation onto the public realm area of Dodd's Lane, and would not support the revitalisation of the area or facilitate the regeneration of retail in Killarney Town Centre, contrary to Objectives KA 10, KA 35, KA 37 and KA 44 of the Kerry County Development Plan 2022-2028. It is considered that the proposed development would be out of character with the pattern of development in the area and would militate against the provision of an attractive pedestrian environment and would thereby constitute a substandard form of development which would not contribute to the revitalisation of Dodd's Lane. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

21/1195 / ABP-314925-22: Permission granted by Kerry County Council and An Bord Pleanála to demolish existing shop and store and to construct a three-storey building containing a shop and 2 no. offices and all ancillary services and areas.

### *Adjoining Site to west:*

16/144: Permission granted by Kerry County Council to construct 2 no. apartments at the rear of No. 7 New Street.

17/456: Permission granted by Kerry County Council to construct 1 no. penthouse apartment, in addition to the 2 no. apartments, as granted under PA ref. 16/144 at the rear of No. 7 New Street.

*Adjoining Site to South:*

PA ref. 17/982: Permission granted at 6 New Street by Kerry County Council to demolish existing store room, construct a store serving existing retail unit at ground floor level, construct a duplex apartment at first/second floor level and all associated site works to the rear of 6 New Street (with access from Dodds Lane).

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. The Kerry County Development Plan 2022-2028 is the statutory development plan for the area. Volume 2 of the Development Plan outlines Town Development Plans and includes the Killarney Town Development Plan. The appeal site is located on land zoned “M2 Town Centre” with the stated objective to ‘provide for the development and enhancement of town core uses including retail, residential, commercial, civic and other uses’. Volume 6 of the Kerry County Development Plan provides a description for ‘M2’ zoned lands which seek to consolidate the existing fabric of the core/central areas of settlements by densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure, residential uses and urban streets, while delivering a quality urban environment. The zoning emphasises compact growth objectives and priority for public transport, pedestrians and cyclists while minimising the impact of private car-based traffic.
- 5.1.2. Volume 2 includes a number of objectives in relation to Killarney Town Centre which seek to facilitate regeneration and renewal of vacant sites and the public realm and support retail shopping and living over the shop. These include objectives KA 10, KA 35, KA 37, KA 40, and KA 44.

### **5.2. Ministerial Guidelines**

- 5.2.1. Sustainable Residential Development and Compact Settlements – Guidelines for Planning Authorities (Compact Settlements Guidelines) outline that it is a policy and objective of the Guidelines that residential densities in the range 40 dph-100 dph

(net) shall generally be applied in the centres and urban neighbourhoods of Key Towns/Large Towns.

- 5.2.2. Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2023 (Apartment Guidelines) set out national policy and standards for apartment development including recommended standards in relation to housing mix, aspect, and minimum floor areas.

### **5.3. Natural Heritage Designations**

- 5.3.1. The appeal site is located 230m north of Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (Site Code 000365) and Killarney National Park SPA (Site Code 004038).

### **5.4. EIA Screening**

- 5.4.1. See Appendix 1 - Form 2 EIA Preliminary Examination attached to this report. Having regard to the nature and scale of the proposed development, to the established urban nature of the receiving environment, to the nature, extent, characteristics and likely duration of potential impacts, and to the criteria set out in Schedule 7 of the Regulations, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Assessment is not required. 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**

Two third party appeals have been received from John Clifton and Andrew Duggan. The grounds of appeal can be summarised as follows:

- There are concerns in relation to the potential use of the proposed retail unit in association with the existing fish shop and processing facility which is noxious and unpleasant and unsuitable for the enclosed courtyard.

- Given the restrictive nature of the site, the subject application and planning application 211195 should be assessed concurrently.
- The proposal will result in overdevelopment of a restricted site resulting in a plot ratio of 2.2 to 1 and over-use of the restricted archway access of 2m wide by 2.4m high.
- The previous reasons for refusal on the site have not been addressed.
- Expired planning permission 17982 permitted a store at ground floor and apartment at first and second floor to the rear of No.6 New Street facing Dodd's Lane and with access on to the lane. It is intended to reapply for permission for this development and the proposal immediately abuts the property at No. 6. Granting permission for the proposal would contradict the terms and conditions of expired permission 17982 and make it impossible to implement.
- The existing laneway is overdeveloped and was originally intended as a source of light and air to surrounding buildings which will be restricted by the proposal.
- The proposed balcony on the south elevation is not set back the stated 900mm from the stone boundary wall and will hang over the rear entrance gate to No.6 thereby blocking the sky height dimension at the rear entrance resulting in a 'balcony tunnel' restricting access and should be omitted.
- A setback of 1.5m is requested between the existing stone boundary wall to the rear of No. 6 and the proposed south elevation building line and a setback at least 1.5m of the proposed east elevation building line (without the balcony) westwards towards the rear of the site.
- The proposed 900mm setback from the south elevation would require elimination of rear windows on the north elevation of expired permission 17982 and the proposed balcony will interfere with the operation of the doorway permitted under 17982.
- The proposal will negatively impact the amenity of No.6 New Street and depreciate its value.



- The proposal fails to indicate the nature of uses proposed, proper access and bin disposal and storage.
- The proposed retail unit will not benefit from footfall due to its location and restricted access and is likely to be used for a use other than retail.
- The existing gate to the laneway is under the control of the applicant and is believed to be unauthorised and there is unauthorised advertising signage. If permission is granted it is requested that the gateway and signage be removed. There is no evidence that the existing fish shop is authorised and if the new shop is a fish shop it represents expansion of a use which is incompatible with surrounding uses.
- The existing gateway is unlikely to meet fire regulations for an apartment.
- The right to build over the entirety of the yard is questioned and an extract from an 1861 map appears to show a much wider right of way than shown in planning application documents.
- The proposal is not in the interests of the objectives indicated in the development plan, in particular the laneway revitalisation programme.
- The proposed apartment would face onto bins, odours and will have an absence of appropriate light with private amenity space which enjoys no privacy which would provide for inadequate residential amenity.
- If permission is granted, it is requested that the Board attach conditions prohibiting the location of bins along the laneway or outside the applicants' properties and a condition that no fish processing for purposes of supply off site should be carried out. If a commercial use is permitted it should specifically prohibit the sale or processing of fish.

## 6.2. **Applicant Response**

Two responses were received in relation to the appeals and can be summarised as follows:

- The balcony will not impede access to the rear of no. 6 as it is located over 2.6m above ground level which is greater than the height of the stated 2.4m high archway and as such access will not be further restricted.
- Mr. Clifton's right of way is from High Street via Dodd's Lane to the pedestrian gate to the rear of No. 6 and the right of way does not extend any further into the rear of the site in a western direction and no right of way exists to use the 1.5m corridors that would be created by the required setback of the southern and eastern boundaries.
- The proposed southern boundary is set back 900mm from the stone wall separating the site with No. 6 and has not incorporated any windows or openings on this elevation as a good will gesture to Mr. Clifton.
- Any potential planning application that may be submitted in the future is irrelevant to the assessment of this appeal. Any such future application should incorporate a 1.5m set back from the appeal site's southern boundary which would facilitate a balcony, bin storage and bicycle storage for development on the site to the rear of No. 6.
- The development would accord with the Kerry County Development Plan and facilitate sustainable regeneration of the site and revitalisation of the public realm and laneways in Killarney.
- The ground floor retail unit and eastern façade will result in an open and active elevation on to Dodd's Lane and support revitalisation and regeneration of retail in the Town Centre and addresses previous reasons for refusal.
- The plot ratio of 2.2:1 is incorrect and no calculation submitted to support it.
- The proposal will not result in overdevelopment and will not reduce light and air.
- The access has been in place for 150 years providing adequate rear access to premises on High Street. This access has been restricted by an unauthorised structure containing gas tanks at the rear of Mr. Duggan's property.

- The proposed use is retail, there is no intention to use the retail unit as a processing facility and the existing retail unit is a fish shop and not a processing facility which has been at this location for over 40 years.
- The proposed apartment complies with all current guidelines and it is disingenuous to state that it would be facing out onto obnoxious uses. The proposed balcony will support the vibrancy of the laneway and provide passive surveillance.

### 6.3. **Planning Authority Response**

None received.

### 6.4. **Observations**

None received.

## 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, the reports of the local authority, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issue in this appeal are as follows:

- Principle of Development
- Impacts on Residential & Visual Amenities
- Impact on Development Potential
- Traffic Impacts
- Impact on Rights of Way
- Other Matters

## **7.2. Principle of Development**

- 7.2.1. The subject site is located to the rear of High Street in Killarney Town Centre which is within the Core Retail Area of the town. The site is zoned 'M2' Mixed Use - Town Centre with the stated objective 'provide for the development and enhancement of town core uses including retail, residential, commercial, civic and other uses'. Residential is a use which is 'open to consideration' and 'shop' is a use which is 'permitted in principle' on such zoned lands. It is the policy of the Kerry County Development Plan 2022-2028 on M2 zoned lands to consolidate the existing fabric of the core/central areas of settlements by densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure, residential uses and urban streets, while delivering a quality urban environment. Having regard to the above I am satisfied that the principle of the proposed development accords with the provisions of the zoning objective and supports objectives of the Development Plan relating to revitalisation and regeneration of vacant sites and the public realm.
- 7.2.2. In relation to concerns regarding the appropriateness of the site for retail use, I note that there is an existing retail unit (fish shop) on the site and that permission was granted on the overall site for a retail unit under planning reference ABP-314925-22. Condition 13 of this grant of permission states that no processing of fish or related products shall occur at the site. In the event of a grant of permission I recommend the inclusion of a condition to this effect. I do not consider it necessary or appropriate to restrict the type of retail provided at this town centre location as suggested by the appellants.
- 7.2.3. Concerns are raised in the appeals in relation to the failure to address the previous reasons for refusal which related to the proposed inactive elevation of the ground floor store onto the public realm and its failure to support the revitalisation of the area or facilitate the regeneration of retail in Killarney Town Centre. I am satisfied that the proposal for retail use at ground floor and residential use at first floor with window and door openings facing onto the lane addresses the previous reason for refusal and provides for an appropriate use and design to achieve the objectives of the plan in relation to revitalisation of the laneway and public realm.

### **7.3. Residential and Visual Amenity Impacts**

- 7.3.1. The appeal raises concerns in relation to impacts from the proposed development on the amenities of No. 6 New Street, on Dodd's Lane and on the proposed apartment arising from issues including overdevelopment, loss of light, bin storage, restrictions on access and increased use of the lane.
- 7.3.2. Existing development surrounding the appeal site includes four storey apartments to the west at the rear of No. 7 New Street and commercial uses at No. 6 New Street and No. 75 High Street. The third party appellants note that they have the benefit of a right of way from the rear of No 6 New Street and No. 75 High Street through the appeal site and access on to High Street from Dodd's Lane.

#### ***Overlooking***

- 7.3.3. The proposed flat roof building will have an overall height of 6.6m and a render finish. Windows are proposed at first floor serving the apartment on the eastern elevation which is set back in excess of 16 metres from the rear of properties on High Street. No windows are proposed on the remaining elevations. Existing apartments to the rear of the site adjoining the western site boundary contain windows located on upper floors and which will overlook the roof of the proposed development. Having regard to the above I am satisfied that the proposal will not give rise to an unacceptable level of overlooking to surrounding properties.

#### ***Loss of Light***

- 7.3.4. In relation to concerns regarding loss of light, I consider the proposed two storey development with a height of 6.6m is of a moderate scale when taken in the context of existing and permitted development. The orientation of the appeal site is such that it is located to the north of No. 6 New Street and existing windows on the main rear façade of no. 6 are set back approximately 6m from the southern elevation of the proposed development. Having regard to the orientation of the site, the separation distances from existing windows, the height and scale of surrounding development to the east and west, and to the height of the proposed development, I consider the proposal is unlikely to result in adverse impacts on levels of daylight and sunlight in surrounding properties and I consider it unlikely that the proposed extension will give rise to overshadowing beyond what already occurs at these properties.

- 7.3.5. In relation to concerns regarding inadequate light serving the proposed apartment, I note that the proposed apartment is single aspect with windows and private amenity space facing east. I consider the levels of daylight in the proposed apartment would not be out of character for a town centre location and I note the proposal seeks to provide for an increased scale of development at this urban location in line with wider planning objectives. Having regard to the above and to the scale of residential development proposed I am satisfied that the proposed development is acceptable in relation to daylight levels for future occupants of the apartment and I do not consider a technical assessment of daylight and sunlight is required in relation to the proposed development.

***Proximity of Proposed Balcony***

- 7.3.6. The third party raises concerns in relation to the proximity of the proposed balcony which will overhang the existing rear entrance to no. 6 resulting in a tunnel effect and impeding access. It is submitted that the owner of No. 6 has a right of way over the Dodd's Lane to access its rear entrance. The existing ground level on the laneway is indicated on the site layout plan as c.101.3m and the finished ground floor level of the proposed building is also indicated as 101.3m. The proposed balcony will be c. 2.65m above finished ground floor level. I note that the angle of the proposed first floor balcony is such that it will be located within the 0.9m separation distance provided for with limited separation from the existing rear access to No. 6 and that the base of the balcony will be located above this rear access. Having regard to the height of the balcony above ground level and to the limited scale of the balcony, I consider the proposal is acceptable and will not result in unacceptable impacts on the existing rear access to No. 6 and I do not consider omission of the balcony is required. I note that the Apartment Guidelines provide for a relaxation in private open space standards, with Section 3.39 stating that the private amenity space standards for apartments may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality on urban infill schemes on sites of up to 0.25ha. Should the Board wish to grant permission with the omission of the balcony I note for the Boards consideration that a condition could be attached requiring its omission.

***Odour and Bins***

- 7.3.7. In relation to concerns regarding residential amenity impacts for future occupants from smells and bins, I note that the existing fish shop on the site was in operation on day of my site visit with no obvious signs of litter, smell or other issues and bins were appropriately stored. I also note that a proposal for retail use on the site was granted permission by the Board under file reference ABP-314925-22 and I do not consider the proposal would give rise to amenity issues beyond those that would be typical of a mixed-use town centre site.
- 7.3.8. In relation to concerns raised regarding lack of clarity regarding storage of bins, I note a gated store area is proposed at ground floor along the northern side of the proposed retail unit. Whilst details in relation to the number of bins capable of being stored have not been submitted, having regard to the limited scale of the development I am satisfied that details in this regard can be addressed by a condition if the Board decides to grant permission.

### ***Overdevelopment***

- 7.3.9. Planning permission ABP-314925-22 was granted by An Bord Pleanála on 09<sup>th</sup> January 2024 to replace the existing fish shop with a three storey building containing a retail unit and offices immediately to the east of the proposed development in the location of the existing fish shop. At the time of my site visit construction had not commenced in relation to this permission.
- 7.4. Planning permission ABP-314925-22 permitted a gross floor area of 232.5m<sup>2</sup>. The application to which this appeal relates has a gross floor area of 134 sq.m amounting to an overall plot ratio for the permitted and proposed development of 1.22 which I consider appropriate for a town centre site. I note that the assessments of planning application ABP-314022-22 which proposed a similar scale and footprint on the site was considered acceptable in terms of plot ratio and issues relating to overdevelopment of the site were not raised in the decision relating to that proposed development.
- 7.4.1. I do not have concerns that the proposal will result in overuse of the non-vehicular laneway, noting the scale of development and the town centre location and I consider the additional development will support the vibrancy of the laneway in line with Development Plan objectives in this regard.

- 7.4.2. The appeals raise concerns in relation to matters including disability access, ventilation and fire safety concerns arising from the proposed development. I note that these matters are addressed under separate legislation and are not relevant to the assessment of the appeal.

### ***Residential & Visual Amenity Conclusions***

- 7.4.3. Having regard to the scale and design proposed, I do not consider that the development would significantly or adversely affect the existing character of the area or impact on any existing or future residential amenities. I note that the proposed apartment complies with the minimum floor areas set out in the Apartment Guidelines and I consider a two storey proposal is acceptable and I am satisfied that the proposal will not result in overdevelopment of this site.
- 7.4.4. Having regard to the above I am satisfied that the proposal is an appropriate scale for the appeal site and will not give rise to unacceptable impacts on residential and visual amenities in the vicinity of the site.

### **7.5. Development Potential of Surrounding Property**

- 7.5.1. The appellants raise concerns that the proposal will negatively impact the development potential of the adjoining property at No. 6 New Street wherein permission was granted on 03/01/2018 under permission reference 17982 for a ground floor store and duplex residential unit above. The appellants note that the proximity of the proposed development to the shared boundary with No. 6 will mean that previously permitted windows to the rear of No. 6 can no longer be accommodated and the proposed balcony will impede access and encumber future development. I note that construction under planning permission 17982 has not commenced and that this permission expired in early 2023. Notwithstanding the third party's indicated intention to resubmit this planning application I do not consider it appropriate to consider the impact on the expired planning application in the assessment of this appeal. I do however consider it relevant to consider the impact of the proposal on the development potential of adjoining sites.
- 7.5.2. I note the constrained nature of the site and surrounding area. I also note that the Board, in assessing a previous application on the appeal site file reference ABP-314922-22 which also proposed a 0.9m setback between the appeal site and the rear of No. 6, did not raise concerns in relation to the impact of the proposal on No.



6. Having reviewed the drawings I am satisfied that the setback from the southern boundary is 0.9m as indicated on the site layout plan. I consider the proposed setback is appropriate for an urban infill site within a town centre location and I not consider it necessary to require a 1.5m setback from the southern boundary as required by the appellant to allow for a corridor access between the appeal site and No. 6. Having regard to my assessment in section 7.3.6 above, I am satisfied that the proposed balcony is acceptable, and I do not consider it necessary to require a setback of the proposed eastern elevation.

- 7.5.3. Having regard to the above I do not consider the proposal is likely to devalue property in the vicinity of the appeal site.

## **7.6. Traffic Impacts**

- 7.6.1. Dodd's Lane has a width of between 1.2m and 2m and is partially covered by the upper floors of a building on high street. Concerns are raised in relation to overuse of the lane as a result of the proposal with the appellants noting the restricted nature of the lane and lack of capacity for future development. The appellants raise concerns regarding deliveries to the site and the removal of waste and rubbish and construction impacts which are considered to have the potential to result in congestion on High Street due to the absence of vehicular access to Dodd's Lane. Whilst I acknowledge the constrained nature of Dodd's Lane, I note that the laneway does not facilitate vehicular traffic with pedestrian access only. I note the presence of loading bays and car parking on high street in the vicinity of the entrance to Dodd's Lane and at the time of my site inspection loading from the fish shop was underway without any noticeable impact on traffic flows on High Street.

- 7.6.2. Having regard to the central location of the site I am satisfied that the laneway can accommodate additional development and that the proposal will support the vibrancy of this laneway and that the proposal is acceptable in relation to traffic impacts. I consider that that if the Board decides to grant permission that concerns relating to construction access can be addressed by way of a standard condition requiring a Construction Management Plan.

## **7.7. Impact on Rights of Way**

- 7.7.1. Concerns are raised in relation to the impact of the proposal on rights of way and the right to build over the rear yard is questioned. Having assessed the proposed

development I am satisfied that the proposal will not restrict existing rights of way. In relation to concerns regarding the extent of the right of way over the rear yard, having considered the information available on file I am satisfied that the applicants have demonstrated sufficient interest to carry out the works pertaining to the proposed development. I also note to the Board that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land. In this regard, it should be noted that, Section 34(13) of the Planning Act (as amended) states that a person is not be entitled solely by reason of a permission to carry out any development. Should planning permission be granted and should the appellants or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant.

#### **7.8. Other**

- 7.8.1. In relation to a request that the subject application should be assessed concurrently with 211195 (ABP-314925-22), I note that this application was granted permission by the Board on 18/01/2024 and as such I consider this is not a relevant consideration to this application and I am satisfied that the subject application should be assessed on its merits.
- 7.8.2. I note a number of concerns raised in relation to unauthorised development on the site regarding the existing fish shop, the access gate to Dodd's Lane and advertising signs. I consider matters relating to the enforcement of unauthorised development are a matter for the planning authority and are not a matter for the Board in its consideration of the appeal.
- 7.8.3. I note the planning authority attached a condition restricting the use of the residential unit for tourist accommodation and limiting additional advertising signage. Having regard to the location of the site within Killarney Town Centre I consider it appropriate that if the Board decides to grant permission that conditions of a similar nature should be attached.
- 7.8.4. The applicant form submitted with the planning application includes an application for a certificate of exemption in relation to the provision of social housing and the Planning Authority did not attach a condition to this effect. I am satisfied that no such condition should be attached if the Board decides to grant permission.

## 8.0 AA Screening

- 8.1.1. I have considered the proposed development of a two storey building containing a one bedroom apartment at first floor and retail unit at ground floor and associated site works in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located approx. 230m north of Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code 000365) and Killarney National Park SPA (Site Code 004038).

The proposed development comprises the development of a building containing a one bedroom apartment and retail unit and associated site works. No nature conservation concerns were raised in the planning appeal.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site.

The reason for this conclusion is as follows:

- The nature and scale of the proposed development and associated site works.
- The location and distance from nearest European site and the lack of any hydrological connectivity between the application site and the SAC/SPA.
- Taking into account the screening determination by the Planning Authority.

I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

## 9.0 Recommendation

- 9.1. I recommend that planning permission should be granted, subject to conditions.

## **10.0 Reasons and Considerations**

10.1. Having regard to the provisions of the Kerry County Development Plan 2022-2028 including the M2 Town Centre land use zoning of the site and objectives of the Killarney Town Development Plan contained in Volume 2 of the Development Plan in relation to regeneration and renewal of vacant sites, to the pattern of existing and permitted development in the area, to the infill nature and size of the site, and to the design of the proposed development, it is considered that subject to the conditions set out below, the proposed development would be in keeping with the established pattern of development at this location and would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would be acceptable in terms of design and access. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **11.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. The shop shall be used solely for the purposes as detailed in the planning application and no processing of fish or related products shall occur at the site.

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

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

Reason: In the interest of visual amenity.

4. No signage, advertisement or advertisement structure (including that which is exempted development under the Planning and Development Regulations, 2001 (as amended)), other than those shown on the drawings submitted with the application, shall be erected or displayed on the buildings or within the curtilage of the site unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

5. Notwithstanding the provisions of the Planning and Development Regulations 2001 (as amended), no part of the proposed apartment shall be used for the provision of overnight commercial guest accommodation without a prior grant of planning permission.

Reason: In the interests of orderly development and residential amenity.

6. Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works.

Reason: In the interest of public health.

7. Prior to the commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Uisce Eireann to provide for a service connection(s) to the public water supply and/or wastewater collection network.

Reason: In the interests of public health.

8. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

9. Proposals for a naming/numbering scheme for the development shall be submitted to and agreed in writing with the planning authority prior to the occupation of the dwelling.

Reason: In the interest of urban legibility.

10. The proposed shopfront shall conform to the following requirements:

- (a) Signage shall be restricted to a single fascia sign using sign writing or comprising either hand-painted lettering or individual mounted lettering;
- (b) Lighting shall be by means of concealed neon tubing or by rear illumination;
- (c) No awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of planning permission; and
- (d) External roller shutters shall not be erected and any internal shutters shall be of the 'open-lattice' or 'perforated' type and shall be coloured to match the shopfront colour.

Reason: In the interest of the visual amenities of the area

11. The developer shall control odour emissions from the premises in accordance with measures which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

12. A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the agreed waste facilities shall be maintained and waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment and the amenities of properties in the vicinity.

13. Site development and building works shall be carried out only between 0800 to 1900 hours Mondays to Fridays inclusive and 0800 to 1400 hours on Saturdays, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

14. The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise and dust management measures, waste management and recycling of materials, environmental protection measures, welfare facilities, site deliveries, complaints procedure, pest control and traffic management arrangements.

Reason: In the interest of public safety, environmental protection, and residential amenity.

15. A detailed construction traffic management plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

Reason: In the interest of sustainable transport and safety.

16. Prior to commencement of development, a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of reducing waste and encouraging recycling.

17. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads,

footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

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



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Bernadette Quinn  
Planning Inspector

18<sup>th</sup> March 2025

# Form 1

## EIA Pre-Screening

<b>An Bord Pleanála</b> <b>Case Reference</b>	ABP-321539-24		
<b>Proposed Development Summary</b>	Permission to construct a two-storey building containing a one bedroom apartment at first floor level & retail unit at ground floor level.		
<b>Development Address</b>	Dodd's Lane, High Street, Killarney, Co. Kerry.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X
		<b>No</b>	Tick if relevant. No further action required
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>	X	Class 10 (b) (i) and Class 10 (b) (iv).	Proceed to Q3.
<b>No</b>			Tick if relevant. No further action required
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	X		Proceed to Q4

4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	X	Class 10 (b) (i) and Class 10 (b) (iv).	Preliminary examination required (Form 2)

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

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

## Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	ABP-321539-24
<b>Proposed Development Summary</b>	Permission to construct a two-storey building containing a one bedroom apartment at first floor level & retail unit at ground floor level.
<b>Development Address</b>	Dodd's Lane, High Street, Killarney, Co. Kerry.
<p><b>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.</b></p> <p><b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b></p>	
<p><b>Characteristics of proposed development</b></p> <p>(In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p>	<p>The site comprises an urban infill site within an existing town centre characterised by mixed use development. The proposed development would therefore not be exceptional in the context of the existing environment in terms of its nature.</p> <p>The development would not result in the production of any significant waste, emissions or pollutants due to the nature of the proposed retail and residential use.</p>
<p><b>Location of development</b></p> <p>(The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European</p>	<p>The site is not located within, or immediately adjoining, any protected areas. The development would be located in a serviced urban area and would not have the potential to significantly impact on an ecologically sensitive site or location. There is no hydrological connection present such as would give rise to significant impact on nearby</p>

<p>sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	<p>water courses (whether linked to any European site or other sensitive receptors). The site is not considered to be an environmentally sensitive site.</p> <p>The closest European Sites are Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (Site Code 000365) and Killarney National Park SPA (SiteCode 004038) located 230m south of the site.</p> <p>It is considered that no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on any European Site.</p> <p>The proposed development would not give rise to waste, pollution or nuisances that differ significantly from that arising from other urban developments.</p> <p>Given the nature of the development and the site/surroundings, it would not have the potential to significantly affect other significant environmental sensitivities in the area.</p>
<p><b>Types and characteristics of potential impacts</b> (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p>The development would generally be consistent with the scale of surrounding developments and would not be exceptional in the context of the existing urban environment.</p> <p>There would be no significant cumulative considerations with regards to existing and permitted projects/developments.</p>
<p><b>Conclusion</b></p>	

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

Inspector:

Date:

DP/ADP: \_\_\_\_\_

Date: \_\_\_\_\_

(only where Schedule 7A information or EIAR required)