

An
Bord
Pleanála

Inspector's Report ABP-321725-25

Development

Retention of two-storey structure to the side and rear of the property, together with all associated works.

Location

Cunningham's Bar & Restaurant,
Market Square, Kildare Town, Co.
Kildare

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

2461120

Applicant(s)

Robin Developments Ltd.

Type of Application

Retention Permission

Planning Authority Decision

Refuse Permission

Type of Appeal

First Party

Appellant(s)

Robin Developments Ltd.

Observer(s)

None

Date of Site Inspection

25th April 2025

Inspector

Aoife McCarthy

Contents

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.137 hectares and is located within a terrace of two storey properties, fronting to Market Square (R445), Kildare Town, Co. Kildare.
- 1.2. The north-western component includes a 3-bay structure (Round Tower House, NIAH Ref.: 11817051); whilst the southern property comprises 4 bays, and is of a similar style and appearance, to Round Tower House. Barrett House (NIAH Ref. 11817048) is located to the north-west of the subject site, also fronting to Market Square. Of note, there is an archway access through the structure leading to the car park to the rear of the site. Beyond that is a car parking area. There are no physical boundaries between the car park and the rear of the site.
- 1.3. The subject retention application relates to an extension to the side and rear of a bar and restaurant, with guest rooms at first floor level.

2.0 Proposed Development

- 2.1. The proposed development consists of retention permission for a two-storey structure to the side and rear of an operating bar and restaurant (Cunningham's Bar & Restaurant), consisting of bin, barrel storage and pedestrian access to lower ground level and to covered beer garden / terraced area at ground level, and all associated site development works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority issued a Notification of a Decision to Refuse Retention Permission for the following reason:

“Objective **TCO 2.1** as set out in the Kildare Town Local Area Plan 2023-2029 seeks to ‘Support and facilitate the implementation of the projects detailed in Table 4-1 (as per the Kildare Town Renewal Masterplan)’. It is considered that to

permit the retention of the as constructed two storey structure to the side and rear of the property in effect results in the closure of the archway/laneway connecting Dublin Road to the car park and onto St. Brigid's Square which would irrevocably hinder the delivery of key projects contained in the Kildare Town Renewal Masterplan and would represent a regressive form of development in terms of connectivity, permeability and the overall vitality of the historic core. Furthermore, the removal of such a strategically located town centre connection would be contrary to the Kildare County Council Permeability Guidelines, 2024, in particular Chapter 2 Urban development, would be injurious to the amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area."

3.2. Planning Authority Reports

3.2.1. Planning Report (13th December 2024)

- The planning report is the basis of the planning authority decision.
- The site is situated in Kildare Town Architectural Conservation Area (ACA).
- The report includes a summary of planning history relating to the subject site (09/1276; PL09.237291); and Warning Letter relating to an alleged unauthorised 2 storey structure.
- The report includes a summary of planning policy and provisions as set out in the Kildare Town Development Plan 2023-2029, Kildare Town Renewal Masterplan.
- The closure of the archway/laneway connecting Dublin Road [Dublin Street] to the car park and onto St. Brigid's Square would hinder the delivery of key projects contained in the Kildare Town Renewal Masterplan 2024 and would constitute regressive form of development with respect to connectivity, permeability and overall vitality of the historic core, as noted below.
- The provision of a car park within the red line boundary constitutes additional unauthorised development.
- The proposal includes access from an unauthorised car park, with no access to Main Street; historically this laneway previously functioned as a frequently used pedestrian access route from the car park.

- The proposal would be contrary to Objective **TCO 2.1** of the Kildare Town Local Area Plan, which seeks to support the implementation of the Market Square and Environs Project, supporting permeability and connectivity within the town and to wider sites. The closure of this strategically located connection would be contrary to Kildare County Council's Permeability Guidelines, 2024.
- The Planning Authority recommend refusal on that basis.

3.2.2. Other Technical Reports

Environmental Health Service: No objection subject to condition.

Transportation Department: Further Information recommended.

Strategic Projects and Public Realm (SPPR): Recommends refusal noting the following:

- The site is the subject of a specific Delivery Project in the Kildare TRMP and is located within the Architectural Conservation Area.
- The car park is identified as an Opportunity Area and a through route with access points onto Market Square and Bride Street.
- Project 1C Old Burgage Plots Development: Short term, formalise the car parking, improve pedestrian facilities and permeability. In the longer term it is proposed that the subject site and wider area would facilitate "the consolidation of the historic core, with the provision of an animated pedestrian through route should be encouraged" linking the Square to Bride Street, Brigid's Square and onto Kildare Village.
- Connection opportunities with the site are referenced in Project 5 Kildare Village Link and Project 6 Old Town Courthouse and Water Tower Sites, providing pedestrian connectivity from Kildare Village and into the historic town centre.
- There is an extensive planning and unauthorised development history associated with the subject site and the wider car park. This laneway previously functioned as a well-used pedestrian and vehicular route until the unauthorised development closed this laneway off.

- The dimensions, character and nature of the remaining access is not sufficient to accommodate a sufficient, attractive and safe walkway connecting the town centre through the car park and onto Bride Street.
- The closure of a strategically located town centre connection would be contrary to the Kildare County Council Permeability Guidelines, 2024 (Chapter 2 Urban Permeability refers).

3.3. Prescribed Bodies

3.3.1. None received.

3.4. Third Party Observations

3.4.1. None received.

4.0 Planning History

4.1. Subject Site

- 4.1.1. **P.A. Ref. 09/1276; ABP Ref.: PL09.237291:** A Notification of a Decision to Grant Permission issued by Kildare County Council in July 2010 for A) Construction of a new bar/lounge and open terraced to the rear of the existing premises at ground floor level. B), Construction of new toilet facilities, ancillary storage, to the rear of the existing premises at basement/lower ground floor level. C) Modifications to the existing toilet, utility and storage areas at ground floor level, and all associated site development works.
- 4.1.2. A First Party Appeal was made to the Board with respect to a Condition relating to Development Contributions attached to Condition 21 of this Permission. The Board issued a Decision with a revised Contribution in November 2010.

4.2. Environs of Site

- 4.2.1. **Rear of Barrett House (Previously Grace's Public House), Market Square, Kildare Town (P.A. Ref. 22/123):** Permission granted by Kildare County Council in April 2023 for a 2 storey apartment building comprising 4 no. 2 bedroom units with access via existing entrance from Market Square, associated landscaping design, and all ancillary site works, including the removal and reconstruction of existing rear boundary wall.

- 4.2.2. As cited by the Appellant, the Report of the Roads and Transportation Department had no objection to the development, subject to compliance with Conditions, Condition 2 stating:

The Developer shall facilitate future access by allowing the Public Realm Section of Kildare County Council to create a pedestrian link, with passive surveillance, between Bride Street (L7014) and Dublin Street (R445)/ Market Square.

Reason: To promote walking in the town centre.

5.0 Policy Context

5.1. Kildare County Development Plan 2023-2029

5.2. Settlement Strategy

- 5.2.1. The Council's strategic aim for the county is;

To provide for the delivery of an additional 9,144 housing units to accommodate an additional 25,146 people by the end of the Plan period, and to continue to create the environment to retain existing and attract new employers to locate in County Kildare through the delivery of sustainable, compact settlements supported by a commensurate level of physical, social and green infrastructure to mitigate against climate change and enhance the quality of life for residents.

- 5.2.2. With respect to Compact Growth and Climate Action, the Plan states that,

The promotion of a compact urban form of development... is a central part of reducing the need to travel and mitigating climate change and to enhance public transport options for these areas to encourage the use of same. The policies and objectives of this Core Strategy seek to provide for a consolidated urban form within existing settlements. In applying this approach, alongside the various other components in the Development Plan, the aim is to strive towards the delivery of connected neighbourhoods and the 10-minute settlement concept within the urban settlements.

- 5.2.3. Kildare Town is identified as a Self-Sustaining Growth Town, which along with Newbridge, Leixlip and Athy will continue to attract a moderate level of jobs and services through a range of employment types including biotechnology, ICT, high-

tech manufacturing and research, bloodstock, tourism and food and beverage products.

5.2.4. The Plan includes the following objective:

CSO13 Require that the design of future development complies with the 10- minute settlement principle through the creation of a safe, attractive, permeable, and universally accessible environment for all, including permeability to existing estates to require public consultation which maximises the potential for active modes of travel along with accessibility to both present and planned public transport options and to advocate for increased public transport options to meet this goal where none are in place.

5.3. **Urban Design, Placemaking and Regeneration**

5.3.1. The Plan includes the following relevant policies and actions:

UD P2 Develop towns and villages of all types and scale as environmental assets and ensure that their regeneration and renewal forms a critical component of efforts to achieve compact growth development and increased climate resilience within settlements across the county.

UD A3 'Prepare and implement on a phased basis Town/Village Renewal Masterplans' for a range of settlements including Kildare Town.

5.3.2. **Sustainable Mobility & Transport**

5.3.3. The Plan includes the following objectives:

TM O20 Ensure new development areas are fully permeable for walking and cycling at a minimum, public transport (where appropriate) and provide for filtered permeability for private vehicle access in accordance with the NTA Permeability Best Practice Guide in order to give a competitive advantage to active travel modes for local trip making.

TM O21 Ensure site layout proposals detail present and possible future connections to pedestrian/cycle links and improve permeability between existing and proposed developments including adjacent developments thereby facilitating the '10-minute settlement' concept.

5.4. **Development Standards – Development in Architectural Conservation Areas**

5.4.1. The Plan sets out the following:

- The Council will require planning applications for developments in or immediately contiguous to an ACA to be accompanied by an Architectural Heritage Impact Assessment Report as described in Appendix B of the Architectural Heritage Protection Guidelines for Planning Authorities (DAHG, 2011) in order to assess the impact of the development on the ACA.
- The Council will normally only permit development proposals for new buildings, alterations, extensions and changes of use where the proposal is sympathetic to the special character of the ACA and where the design is appropriate in terms of scale, height, density, layout, materials and finishes having regard to the advice contained within each ACA document.
- In an ACA the Council will have regard to the following:
 - The effect of the proposed development on buildings and the surrounding environment, both natural and man-made.
 - The impact of development on the immediate streetscape in terms of design, scale, height, plot, width, roof treatment, materials, landscaping, mix and intensity of use proposed.
 - New alterations and extensions should complement existing buildings / structures in terms of design, external finishes, colour, texture, windows / doors / roof / chimney / design and other details.

5.5. Reimagining Permeability in Kildare - Reconnecting our Communities: Permeability Guidelines, 2024

5.5.1. The vision of the guidelines is to ensure that towns, villages and neighbourhoods provide a comprehensive range of conveniently accessible services to enhance the quality of life for its residents and facilitate safe and convenient short journeys on foot and by bicycle to access these services, the focus is on promoting healthy placemaking and creating high quality public spaces; that is based on the 10 minute approach.

5.5.2. Urban permeability is defined as the degree to which urban areas permit and encourage the free movement of pedestrian and cyclists. (**Section 2.1** refers).

5.6. Kildare Town Development Plan 2023-2029

5.7. Land Use Zoning Objective

- 5.7.1. The site is subject to 'A' Town Centre Zoning Objective, which seeks 'To protect, improve and provide for the future development of the town centre'.
- 5.7.2. 'Guest House/ Hotel/Hostel', 'pub' and 'restaurant' uses are Permitted in Principle under this zoning objective.

5.8. Consolidation and Renewal of Town Centre

- 5.8.1. The Plan includes the following relevant objectives:

TCO 2.1 Support and facilitate the implementation of the projects detailed in Table 4-1 (as per the Kildare Town Renewal Masterplan) as follows:

- **Market Square and Environs Project**
- Cycle and Pedestrian Network Enhancements Project
- Public Realm Enhancements Project
- Train Station Improvements Project
- Courthouse and Water Tower Improvements Project.

TCO 2.6 Support the completion of a public realm strategy for Kildare Town, as part of the implementation of the Town Renewal Masterplan. Such a Strategy shall incorporate a bespoke materials palette, including for pavement, signage and street furniture which will complement and enhance the natural and built environment of Kildare Town.

5.9. Movement and Transportation

- 5.9.1. The following permeability measures are of relevance to the subject development:

PERM 28 Creation of pedestrian / cyclist link from Phase 3 of Kildare Tourist Outlet Village to Academy Street.

PERM 29 Creation of pedestrian / cyclist link from Bride Street to Main Street via newly proposed car park.

- 5.9.2. Please see Figure 1 in the photographs.

5.10. Implementation

- 5.10.1. The Plan identifies that the Town Renewal Masterplan would be delivered within the Short Tern (1-2 years); the burgage plots development and laneway strategy as short-medium term (1-5 years).

5.11. Built Heritage and Archaeology

- 5.11.1. The site is located within the Kildare Town Architectural Heritage Area (AHA), as referenced below.

- 5.11.2. The Plan includes the following relevant objective:

BHO 1.1 Protect the architectural heritage of Kildare Town by ensuring the protection and conservation of all protected structures and structures of historic significance (or parts of structures), including the curtilage and attendant grounds of structures detailed in Table 8-1 and Map 8.1 and Map 8.2 or any additional structure placed on the Record of Protected Structures.

5.12. ACA Kildare Town, 2023

- 5.12.1. The ACA includes a detailed assessment for all streets in the town; and includes a summary of “interrelated elements which contribute to the special character of Kildare ACA”. These include:

- The strong definition given to the market space by terraces and two and three storey houses.
- The relatively narrow and long plots to the south of the town, contrasted with wide and shallow plots to the north. Both generating a lot of variety and life to the street elevations.
- The roofscape of pitched slate roofs and chimney stacks.

- 5.12.2. The Statement of Significance is noted to refer to “historic laneways are retained, as are the alignments of the historic Burgage Plots to the south of Dublin Street and Market Square.”

5.13. Kildare Town Renewal Masterplan, 2024

- 5.13.1. This document is noted to be “supported by and supportive of objectives in the Development Plan and Kildare Town Local Area Plan 2023-2029”.
- 5.13.2. Renewal masterplans, as prepared on behalf of the Council seek to maximise the potential of the built and natural heritage to enhance their role as visitor destinations

with associated employment opportunities. The Plan is focused on the delivery of 'place-based change' through a series of 'realistic and achievable' Delivery Projects, including the following relevant to the subject site:

Opportunities and Constraints

- 5.13.3. The car park to the rear of the subject buildings is identified as forming part of this Backland Site/Opportunity Area with access extending along the route of the arched passage from Market Square to Bride Street facilitating the development of "a safer pedestrian network of secondary town walks off the main vehicular link roads."

Project 1C: Old Burgage Plots Development

- 5.13.4. The project seeks to utilise backland site of former burgage plots formerly fronting to Dublin Road and Market Square. The proposal seeks to address the loss of car parking from Market Square through the provision of a one way vehicular access from Dublin Road via the arched passageway to a dedicated car park to the rear of the subject site, while creating a new landscaped pedestrian route from Bride Street to Market Square.

Project 5. Kildare Village Link

- 5.13.5. The Plan includes indicative pedestrian routes as part of the pedestrian route to provide access to Kildare Village.

Project 6. Old Town Courthouse and Water Tower Site

- 5.13.6. The Plan includes indicative pedestrian routes from the Water Tower Site and Old Courthouse, via the pedestrian link referenced as part of Project 1C.

5.14. Natural Heritage Designations

- 5.14.1. There are no European sites within the subject site.
- 5.14.2. The closest European site to the subject site is the Pollardstown Fen SAC (Site Code: 00396), located within 4.81 km to the north-east of the site.
- 5.14.3. The closest designated site is the Curragh (Kildare) pNHA (Site Code: 0042332), located 1.47km to the north-east of the site.

5.15. EIA Screening

5.15.1. The proposed development does not come within the definition of a 'project' for the purposes of EIA, that is, it does not comprise construction works, demolition or intervention in the natural surroundings. (Please Refer to Form 1 in Appendix 1 of report).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A First Party Appeal has been lodged on behalf of the Applicant on the 21st January 2025, the grounds of which is summarised below:

- The size, scale, use and design of the proposal is acceptable.
- By reason of lack of third party objection, there is an inherent support for this proposal.
- The reason of refusal relates to the provision of certain pedestrian connections between Market Square/Dublin Road and the car park to the rear of the appeal site. The proposed development would does not result in the closure of a laneway between these points.
- The masterplan is a non-statutory document.
- The masterplan does not envisage a walkway through the appeal site, but via an adjacent land.
- An extract from the Masterplan illustrating people generators, bus stops and pedestrian routes from Market Square to the west of the site, based on the movement and permeability analysis was undertaken to inform the masterplan.
- Permission was granted for an apartment block, to the west of the subject site, which is located on one of the access points as set out in the Masterplan. (**P.A. Reg. Ref.: 22/123** refers). The planning authority did not require the inclusion of a footpath connection to the rear of this development as recommended by the Roads and Transportation Department. The planning authority have refused permission in this instance, in order to address this oversight and provide an access at this location.

- The proposed development does not differ, materially, from the development as permitted under **P.A. Reg. Reg.: 09/1276**, comprising extensions to the rear of the subject property, taking account of the walkway immediately adjacent to the side of Cunningham's premises.
- The laneway to the rear of the property is in private ownership and is gated to ensure safety and security to the Appellant.
- The focus of the town centre has relocated to the west; Cunningham's Bar and Restaurant occupy a peripheral location with respect to the cultural/historic and retail core of the town centre.
- Premises to the south of Market Square are currently served by the existing car park to the rear of Cunninghams Pub and Restaurant, via Bride Street.
- There is therefore no need for this access through the Applicant's lands.
- The extension does not affect the existing pedestrian walkway on the site, and this can be utilised as car park for patrons of Cunningham's Pub and Restaurant.
- The appeal also includes reference to *Mahon v An Bord Pleanála* ([2010] IEHC 495), in which concluded that the zoning of public open space does not infringe on the Applicant's property rights.
- The appeal also includes reference to *Ashbourne Holdings Ltd. v An Bord Pleanála* ([2003] IESC 18). In this case, the Court held that the merits of a decision in terms of public benefit did not override the property rights of landowners. The first party considers that the proposal to provide a walkway/vehicular access over private property without the landowner's consent is ultra vires. Therefore to refuse planning permission on the basis of interfering with an access is an abuse of power.

• **Planning Authority Response**

6.1.2. The Planning Authority has reviewed the First Party Appeal and reconfirm that planning permission should be refused, as per the Reason of Refusal, as outlined above.

6.2. **Observations**

6.2.1. None received.

6.3. Further Responses

6.4. None received.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the report of the local authority, having inspected the site and having regard to the relevant local and national policies and guidance, I consider the substantive issues in this appeal are as follows:

- Principle of Development
- Built Heritage and Archaeology
- Design and Layout – New Issue
- Transportation, Traffic Access and Permeability

7.2. Principle of Development

7.2.1. The proposed development relates to retention of a two-storey external structure, located to the side and rear (south-west) of an existing pub and restaurant ('Cunningham's Bar & Restaurant'). The upper rooms within the facility are in use as Guest Room accommodation.

7.2.2. The works include the provision of storage at lower ground floor level, with terraced seating at first floor, accessed. The structure is accessed via the existing arched laneway from Market Square to the rear service yard/parking area.

7.2.3. The Appellant notes that permission has been granted for a similar extension, (**P.A. Ref. 09/1276; ABP Ref.: PL09.237291** refer). Whilst this is noted, the subject application is nonetheless assessed, on the merits of this case.

7.2.4. The subject development provides an extension to serve part of an existing public house, restaurant and Guest Room uses, Permitted in Principle under the 'A' Town Centre zoning objective, under the Kildare Town Development Plan 2023-2029.

7.2.5. In my opinion, the subject development is acceptable in principle, subject to assessment with respect to a range of planning considerations as addressed below.

7.3. Built Heritage and Archaeology

- 7.3.1. As noted above, the site includes Round Tower House (NIAH Ref.: 11817051) and is immediately adjacent to Barrett House (NIAH Ref. 11817048). The site is located within Kildare Town ACA, as identified under the Kildare County Development Plan 2023-2029 (Development Plan). I note the subject application was not accompanied by an Architectural Heritage Impact Assessment Report as required under the Development Standards of the Development Plan.
- 7.3.2. From a review of the file and site visit, I note that the two-storey height of the subject extension is generally not visible when viewed from Market Square / Dublin Street. For this reason, I do not consider that the design of the elevation to the rear affects the character of the ACA, having regard to the emphasis placed in the ACA on the relationship between the structures fronting to Market Square (as discussed below).
- 7.3.3. There is no evidence to suggest that the development proposal would affect the structural integrity of the original buildings within this streetscape.
- 7.3.4. I note that the Special Character within the ACA, relating to the narrow and deep plots fronting the southern side of Market Square, are in my opinion, largely unaffected by the subject development.
- 7.3.5. The works include the insertion of the gate to Market Square with reduced access to the rear of the property. Notwithstanding, as the works do not include construction works to original buildings including the laneway, I consider that the works would not preclude the provision of a through route to the rear of the site. In my view therefore, the proposed works to the laneway would not affect the special character of the ACA.
- 7.3.6. In summary, I consider that the proposed extension to the rear of this property would not affect the special character of the ACA and would be compliant with the relevant Development Standards as set out within the Development Plan.

7.4. Design and Layout – New Issue

- 7.4.1. From a review of drawings and site visit, I note that structurally, the development comprises a timber and steel frame, with timber and plastic sheet panelling. The elevations also include timber frame and plastic sheet panelling with corrugated metal sheeting, with an extendable roof structure covering the full extension.

- 7.4.2. The site is located within Kildare Town ACA, in which the special character as it relates to, inter alia, the relationship between scale, height and design of structures fronting to Market Square and the layout and scale of the Square itself. The special character is also noted to include the narrow and deep plot sizes of former burgage plots at this location. Having regard to the location, scale, height and of the subject development proposal, I do not consider that the special character of the ACA is affected by the subject development (see above).
- 7.4.3. From a review of the previous permission, I note that materials used included natural stone wall with a more discrete roof structure with a notably shorter span. (**P.A. Ref. 09/1276; ABP Ref.: PL09.237291** refer). Such a development in design terms, should take account of recently constructed apartment building with respect to materiality (**P.A. Ref. 22/123**) to the north of the site.
- 7.4.4. In my opinion, the mix of materials as proposed presents an unattractive elevational treatment, that may affect the residential and visual amenities of the wider environs of the site, noting that the first-floor level is visible in the wider environs of the site; and that a more simplistic architectural approach would provide a more suitable design solution at this location.
- 7.4.5. I recommend that Retention Permission is refused on this basis. This is a new issue in the context of this appeal. The Board may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal set out below, it may not be considered necessary to pursue the matter.

7.5. Transportation, Traffic, Access and Permeability

- 7.5.1. There are a series of projects identified within the Kildare Town Renewal Masterplan 2024 (the Masterplan) relating to the subject site.
- 7.5.2. At the outset I note the subject extension is accessed through the existing Cunningham's Pub and Restaurant facility which in turn is accessed from Market Square. The extension is also accessed via the laneway route on the western side of the site from Market Square to the rear of the property, providing access to the car park and rear yard. From this car park, the extension can be accessed at lower ground and ground floor levels, including via an internal staircase between these floors. Vehicular access to the rear car park is from Bridge Street to the south-west of the site.

- 7.5.3. The first party notes the Masterplan is a non-statutory document, which indeed is the case. Notwithstanding, the preparation of this masterplan is supported by objective **TCO2.1** of the Kildare Town Local Area Plan and Urban Design Action **UDA3** of the Development Plan. The document states that the masterplan was informed by a series of public consultation processes. I am therefore satisfied that it is appropriate to have regard to the provisions of this document in assessing this appeal.
- 7.5.4. The Masterplan includes an Opportunities and Constraints drawing, an extract of which is appended to this report (Figure 2 refers). The car park to the rear of the subject site is identified as part of an Opportunity Area, with a potential link route from Market Square and Bride Street, providing an opportunity to generate, a “safer” pedestrian network of town walks off the main vehicular link roads. The Opportunity Area which includes the subject site, illustrates upgraded car parking works. I note that the access from Market Square on this drawing is not explicitly vehicular.
- 7.5.5. The Old Burgage Plots Development (Project 1C) reflects to a large degree the Opportunities and Constraints as referenced above and indicates a “one-way vehicular access” incorporating the existing laneway from Market Square to a wider “backlands site” providing an upgraded pedestrian route from Market Square to Bride Street, Brigid’s Square and Kildare Village (Outlet). It also shows a two way access point to Bride Street. I note that the annotation for Cunningham’s Store and Service Yard on this drawing, is misleadingly, located on the adjoining site to the west. (Figure 3 of this report refers).
- 7.5.6. The Report of the Planning Officer (SPPR) notes that, in the short term it is proposed to “formalise the car parking arrangement and improve pedestrian facilities and permeability.”
- 7.5.7. As noted above, the provision of a meaningful dedicated pedestrian route is referenced as part of Projects 5 (Kildare Village Outlet link) and Project 6 (Old Town Courthouse and Water Tower Sites) of the Masterplan (Figure 1, attached refers).
- 7.5.8. Having regard to the above, the first party considers that the subject access point relates to adjoining lands, referring to lands to the west of the site. The first party appeal includes extracts from the masterplan. Map 4 including an extract from the Square to the south of Market Square to the west of the site. Map 5 includes

principal routes, which are noted to include two parallel navy dashed lines either side of the subject site.

- 7.5.9. There is an additional drawing, as included within the Report of the SPPR, including two parallel access points from Market Square to the rear of the subject site. The drawing does not explicitly specify whether these accesses are pedestrian or vehicular. I note that the eastern route traverses through the subject site, whilst the adjoining access is aligned to the west of Barrett House and site of the newly constructed apartment block. (**P.A Reg. Ref.:22/123**) (Please refer to Figure 4 attached).
- 7.5.10. The sketch drawing of four projects within the Masterplan includes a single pin dotted line referring to future connections and includes, in my opinion, the above referenced single route through the subject site (Figure 1 attached refers).
- 7.5.11. As such, it is possible that the applicant may have misinterpreted the vehicular link inherently proposed, having regard to the mix of drawings which form part of the Masterplan. On balance however, I consider that Drawing 1C as a key masterplan drawing, which clearly illustrates the intention to provide a one way vehicular link through the subject site, that is through the archway.
- 7.5.12. From a review of the drawings I note that the access has a width of c.3m metres at Market Square, which narrows for the length of the as constructed extension (c.19m in length), to a width of c.1.3m to the rear of the site (overall length 41.1m). In this context, this access route is not sufficiently wide to accommodate vehicular to the rear of the site.
- 7.5.13. From site visit, I note that this access is unlit, and that the narrow alignment and lack of a clear opening to the rear, creates, in my opinion, an unsafe and unattractive environment for prospective clients to the premises, and when ungated, the wider public. I consider that the development as completed to be retained would provide a substandard access, and would be contrary to Policy Objective **CSO13** of the Development Plan, requiring the design of future areas to comply with the 10-minute settlement principle, through the creation of “a safe, attractive, permeable, and universally accessible environment for all.”
- 7.5.14. I also consider that the development proposed to be retained would obstruct the achievement of Permeability Actions **PERM28 and 29** of the Kildare Town LAP and

the Reimagining Permeability in Kildare - Reconnecting our Communities:

Permeability Guidelines, 2024, which seek to ensure the creation of legible routes.

- 7.5.15. The proposed development would in my opinion, diminish the access to Projects 1C, and to a lesser extent Projects 5 and 6 of the Kildare Town Renewal Masterplan 2024 and would be contrary to Objective **TCO2.1** of the Kildare Town Local Area Plan, 2023-2029, which seeks to support and facilitate the implementation of these projects.
- 7.5.16. The first party considers that the focus of the masterplan is misplaced as, in their view the cultural /social centre of the town has shifted west. This consideration is noted. However, I note that this non-statutory Masterplan is now made, and as referenced above, is supported at local planning policy level, and therefore, in my opinion, is not a matter which can be addressed in this appeal.
- 7.5.17. The first party considers that the application has been refused permission further to the Council failing to include a condition of permission, which would facilitate the creation of a pedestrian link by the Council between Bride Street and Dublin Street / Market Square. (**P.A Reg. Ref.:22/123**). This matter has not been identified or discussed within the documentation of the planning authority as part of the subject application, and thereby advise the Board that this application is being assessed on its own planning merits.
- 7.5.18. The first party queries the legality of the Council's decision, which seeks, in their view to use planning code to affect the property rights of the applicant, with reference to Mahon v An Bord Pleanála [2010] IEHC 495). I note that this case relating to the decision of Cork City Council to refuse permission for the construction of 4 no. apartments on his property on Bishopstown Road, Cork. The case considered whether the zoning of the land for public open space in the Development Plan infringes on his property rights. The Judgement concluded that the zoning of land does not infringe on the applicant's property rights and is within the remit of the Planning and Development Act, 2000 as amended.
- 7.5.19. The first party also includes reference to Supreme Court decision Ashbourne Holdings v. An Bord Pleanála ([2003] IESC 18), including High Court and Supreme Court findings; relating to retention permission for public access to the Old Head of Kinsale. The findings include that the decision of the Board to impose a condition is

not within the scope of s.26 of the Local Government (Planning and Development) Act, 1963 because the condition was not necessary for the proposed development.

- 7.5.20. The appellant argues that the merits of a local authority, compelling public access over a parcel of private property in terms of public benefit does not override the property rights of landowners, and "that this tenet logically extends to refusals of planning permission."
- 7.5.21. In this case, it is noted that again, the Masterplan as prepared by the Council has provided for vehicular access from Market Square to the rear of site. The next steps in terms of implementation of the Plan is outside the scope of this application, and indeed, is a matter for the Council to determine and progress the most appropriate course of action.
- 7.5.22. As such, the precise nature of this access route has not been determined, but I am satisfied that the width of the corridor remaining is excessively narrow to accommodate vehicular access and constitutes a poor quality pedestrian link.
- 7.5.23. In conclusion, therefore I consider that the development as constructed to be retained would prejudice the delivery of these projects (1C, 5 and 6) and would result in a poor quality pedestrian environment.

8.0 Appropriate Assessment Screening

- 8.1. I have considered the retention of a 2 storey timber extension at Cunningham's Bar and Restaurant, Market Square, Kildare Town, co. Kildare in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 8.2. The subject site is located 5.7km to the south-east of Pollardstown Fen SAC (Site Code: 00396).
- 8.3. The proposed development comprises retention permission for the construction of a 2 storey an extension at Cunningham's Bar & Restaurant, Market Square, Kildare Town, Co. Kildare.
- 8.4. No nature conservation concerns were raised in the planning appeal.
- 8.5. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.

8.6. The reason for this conclusion is as follows:

- The small scale and nature of the development.
- The distance from nearest European site and lack of connections.

8.7. I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

8.8. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

I recommend that Retention Permission should be refused for the reasons and considerations stated below.

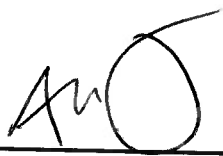
10.0 Reasons and Considerations

1. Policy objective TCO2.1 of the Kildare Town Local Area Plan 2023-2029, seeks to 'Support and facilitate the implementation of the projects detailed in Table 4-1 (as per the Kildare Town Renewal Masterplan)', Projects 1C, 5 and

The retention of the development as constructed would prejudice the delivery of these projects. The development as constructed to be retained is premature pending the determination by the planning authority of a road layout for the area. The development as constructed to be retained would result in a poor pedestrian environment and would therefore be contrary to the proper planning and sustainable development of the area.

2. The development to be retained would result in a substandard elevational treatment and would be injurious to the residential and visual amenities of the area and would therefore, be contrary to the proper planning and sustainable development of the area.

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

A handwritten signature in black ink, appearing to be 'Aoife McCarthy', written over a horizontal line.

Aoife McCarthy
Planning Inspector
14th May 2025

Form 1 - EIA Pre-Screening

Case Reference	321725-25
Proposed Development Summary	Retention of two-storey structure to the side and rear of the property, together with all associated works
Development Address	Cunningham's Bar & Restaurant, Market Square, Kildare Town, Co. Kildare.
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2. <input checked="" type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in <u>Part 1</u>, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. No Screening required.	

<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	State the Class and state the relevant threshold
<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	State the Class and state the relevant threshold

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes <input type="checkbox"/>	Screening Determination required (Complete Form 3)
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)