



An  
Bord  
Pleanála

## Inspector's Report PL08.248783

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<b>Development</b>	Retention of demolition of original dwelling and retain and complete existing dwelling and all associated works.
<b>Location</b>	Derreenamucklagh, Tahilla, Kenmare, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	16/867.
<b>Applicant(s)</b>	Emer O' Sullivan.
<b>Type of Application</b>	Retention & Permission
<b>Planning Authority Decision</b>	Grant Retention & Permission.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Suaimhneas Limited
<b>Observer(s)</b>	1. An Taisce.
<b>Date of Site Inspection</b>	21 <sup>st</sup> September 2017
<b>Inspector</b>	Fiona Fair.

## 1.0 Site Location and Description

- 1.1. The appeal site (0.429 ha) is located off a narrow third class roadway approximately 0.5 kilometres south of the N70 (Ring of Kerry Route) c.9 kilometres east of Sneem and c. 17 Km west of Kenmare in County Kerry. The laneway which leads to the site terminates at a small stone pier and a roughly pebbled inlet / beach on the northern side of Kenmare Bay. The eastern tip of Rossmore Island is located directly opposite the quay.
- 1.2. A partially constructed dwelling house is present on the appeal site.
- 1.3. The appeal site, located on the coastline and overlooking Kenmare Harbour is a prominent site with extensive views south and east. The landscape character of the surrounding rural coastal area is hilly with marsh land, reeds, scrub and sporadic coniferous trees present.
- 1.4. The application site is close to but outside the Kenmare River cSAC, located to its south and east. Two water courses from Derreenrickard Lough (spelling as per OSI mapping), located to the north east, flow to the north of the on-site dwelling, one of the unnamed streams flows through the appeal site.
- 1.5. The area is sparsely populated with only one dwelling, visible from the appeal site, in the immediate surrounding area. The appellants house is located c.75 metres to the east in a secluded stone walled and tree-lined setting, overlooking Kenmare Bay. An existing breakwater walls runs along the sea frontage to the north east of the quay, to the south of the adjoining dwelling and encloses a private boathouse finished in stone which is associated with the adjoining dwelling.

## 2.0 Proposed Development

- 2.1. The proposal comprises:
  - A) Retention permission to retain the demolition of the original dwelling house
  - (b) Retention permission to retain and complete existing dwelling house.
    - The dwelling to be retained has a stated GFA of 182.36 sq. m and a stated ridge height of 7.2m.

- It comprises two double bedrooms, a study, bathroom, sitting room, living room / kitchen and a utility.
- It currently has a concrete block finish to external walls UPVC external windows and doors.
- It is proposed that the dwelling be finished with stone facing.

(c) Permission for proprietary treatment unit and sand polishing filter and

(d) All associated site works

The planning application is accompanied with:

- Supplementary Information Form
  - Applicant is a self-employed Hairdresser working in Kenmare – 12 miles from the appeal site.
  - She currently lives with her mother at Staybank, Tahillia, Sneem, adjacent to the appeal site.
  - Proposed dwelling is as a primary permanent place of residence for the applicant.
- Letter of consent from landowner (Marie O’Sullivan)
- Subsequent to further information being requested:
  - A Site Characterisation Report was submitted to the p.a.  
Inspectors Note: No P Value or T Value was recorded on the site. Tests Failed ground conditions on site are not good.
  - A Revised Site Layout Drawing indicating the proposed treatment plant and site section drawings were also submitted.

### 3.0 Planning Authority Decision

#### 3.1. Decision

Following a request for Significant Further Information with respect to

- (i) Description of works that have taken place on site, incl. what structures were originally located on site, what happened to same, photographic evidence. Need to amend the description of the proposal, to include, retention permission to retain the demolition of the original dwelling house and the raising of ground levels / regarding works on site with the importation of fill material.
- (ii) The applicant shall arrange to have a full site assessment carried out in accordance with EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses.'
- (iii) Cross sectional drawings running north / south and east / west through the site which clearly show the original ground levels and the floor levels of the original structures along the with the FFL of the unauthorised dwelling house and GL that exist on site.
- (iv) A detailed revised site layout map which clearly show the location of any original dwelling house as it relates to the existing dwelling house under construction. Clarification of building line. Details of another structures located on the site.
- (v) Detailed maps and drawings required showing the extent and depth of the fill material which has been placed between the unauthorised house and the shoreline. (6) Detailed tree survey and a landscape plan with a timescale for its implementation.

**Permission and Retention Planning permission was granted** subject to sixteen number conditions:

Schedule 2(a)

The development shall be retained in accordance with the plans and particulars received by the planning authority on the 08/09/2016, 27/04/2017 and 09/05/2017

Schedule 2(b)

Permission to complete existing dwelling house and Permission for proprietary treatment unit and sand polishing filter and all associated site works to facilitate this development.

Condition 5.

(a) The use of the proposed dwelling shall be as a primary permanent all year round private residence.

(b) The proposed dwelling shall not be used as a holiday home or second home.

Condition 6. Occupancy condition for 7 years

Condition 7.

(a) Proposed dwelling house shall be in accordance with the design drawing received on the 08/09/2016.

(b) Roof shall be covered with slates or tiles which shall be either black, dark-grey or blue-black. The colour of the ridge tile shall match the colour of the roof.

(c) Stonework to the external walls shall be constructed of natural stone which shall be sourced locally.

Condition 8. De-exempts further extension or garage on site without a further grant of planning permission.

Condition 10. Prior to the occupation of the proposed dwelling a packaged waste water treatment unit to be agreed with the p.a. to be installed.

10(k) '...there shall be no increase in the bedroom number for the dwelling to which this permission relates above the approved number of two'.

Condition 11. Proposed effluent treatment system to be certified

Condition 12. Maintenance or service contract for on-going maintenance of the packaged waste water treatment unit.

Condition 13. Prior to any works commencing on site the applicant / owner shall agree proposals for decommissioning the existing wastewater treatment system on site.

Condition 15 Any external lighting shall be cowled and directed away from the public roadway and shall not be visible from any point 100m away from the light.

Condition 16. The site shall be landscaped in accordance with plan received 27/04/2017. Existing boundary treatment shall be retained as per details received on the 27/04/2017.

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

#### 3.2.1. Planning Reports

The Planners Report considers having regard to the nature, extent and location of the proposed development that subject to condition the proposed development would not be visually obtrusive, would not seriously injure the amenities of the area or be otherwise contrary to the proper planning and sustainable development of the area.

#### 3.2.2. **Other Technical Reports:**

**Site Assessment Unit**, Environment Department: Report subsequent to A.I. recommends conditions be attached to any grant of planning permission.

**Biodiversity Officer**: Three reports on file. The final report subsequent to A.I states that Appropriate Assessment (AA) Screening carried out concludes that further to conditions proposed by the Site Assessment Unit, that significant effects on the SAC are considered unlikely.

### 3.3. **Prescribed Bodies**

The file was referred by Kerry County Council to An Comhairle Ealaoin, An Taisce, Fáilte Ireland and DAU Dept. of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, no response was forthcoming / on file.

An Board Pleanála further referred the file to DAU – Department of Arts, Heritage, Regional, Rural & Gaeltacht Affairs and the Heritage Council, again, no response was forthcoming / on file.

Inspectors Note. The appellant notes in a response to the Board that ABP issued notice under Section 131 inviting the DAU of the NPWS to make a submission. This is not the case.

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

Two objections were received from An Taisce and Suaimhneas Ltd. Issues raised are similar to that raised in the appeal and observation submitted, which are summarised in detail below.

A letter of support was received from Michael Healy-Rae.

## 4.0 Planning History

- 4.1. **Reg. Ref. 16/736** Invalid Application to retain and complete dwelling as constructed, same applicant on the same site as the subject appeal site.

### **Planning History pertaining to adjoining Site on the Family Landholding adjoining to the north east.**

- 4.2. **Reg. Ref. 09/568** Withdrawn Application to construct a dwelling house with proprietary wastewater treatment system and raised soil polishing filter. Same applicant.
- 4.3. **Reg. Ref. 09/1623** Permission Refused to Emer O’Sullivan to construct a dwelling house on her land along with proprietary wastewater treatment system and raised soil polishing filter. Reasons for Refusal are summarised as follows:
1. Having regard to soil conditions on site the p.a. is not satisfied that effluent arising could be satisfactorily disposed of on site. The proposed development would therefore be prejudicial to public health.
  2. The proposed development would be located within an area zoned Rural Secondary Special Amenity Area in the CDP 2009 – 2015 where it is policy of the CDP to limit development to a site and design that would not have an adverse impact on the character of the landscape. The proposal is obtrusive in its landscape setting on an open and exposed coastal site and would seriously injure the amenities of the area, it is contrary to policy ZL11 – 1 of the Kerry CDP 2009 – 2015.
  3. The proposal would contravene Objective SS3-34 of the current CDP. The proposal would interfere with the character of the landscape designated as Secondary Special Amenity Area.

**Planning History pertaining to neighbouring site (appellant's property) to the east.**

- 4.4. **PL08.205921 (Reg. Ref. 2608/03)** Permission Granted to reconstruct and extend existing boathouse incorporating proposals to reconstruct partially collapsed boundary walls and filling in of swimming pool area at Derreenamucklagh, Tahilla
- 4.5. **PL08.129775 (Reg. Ref. 3357/01)** - By order dated 24/9/2002 the Board refused permission for a proposed development at this location comprising the replacement of existing boathouse, existing pool area and small plant room incorporating small outdoor sauna and storage building on the basis that it would be visually intrusive, thus seriously injuring the amenities and natural beauty of the area.
- 4.6. **PL08.126949 (Reg. Ref. 2111/01)** - This was a broadly similar application to the one outlined above. The Planning Authority decided to grant permission, but two third party appeals were lodged. The application was subsequently withdrawn.

## **5.0 Policy Context**

### **5.1.1. Sustainable Rural Housing Guidelines for Planning Authorities**

The guidelines refer to criteria from managing rural housing requirements while achieving sustainable development. Among the policy aims identified for sustainable rural housing are

- Ensuring that the needs of rural communities are identified in the Development Plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas at appropriate location necessary to sustain rural communities is accommodated.
- Expanding on the rural policy framework set out in the National Spatial Strategy, the Guidelines provide that the people who are part of the rural community should be facilitated in the planning system in all rural areas, including those under strong urban based pressures. The principles set out in the Guidelines also require that new houses in rural areas be sited and designed to integrate well with the physical surroundings and be generally compatible with:



- The protection of water quality and the arrangements made for on-site wastewater disposal facilities.
- The provision of a safe means of access in relation to road and public safety.
- The conservation of sensitive sites such as natural habitats, the environs of protected structures and other aspects of heritage.

### 5.1.2. Development Plan

The site is governed by the policies and provisions contained in the Kerry County Development Plan 2015-2021. The site is located in an area zoned Rural Secondary Special Amenity Area which is detailed in section 3.3.2.2 of the Plan. Excerpt attached as appendix to this report.

The following sections of the Development Plan are of relevance:

Chapter 3, Section 3.3 sets out Rural Development Policies.

Objectives numbers RS-1 to RS-6 constitute the overall objectives relating to Rural Housing Policy.

I note in particular **RS-4** which states: 'Ensure that the provision of rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the County'. And **RS- 5** which states: 'Ensure that future housing in all rural area complies with the EPA's 2009 Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e < 10).

Chapter 5 Tourism and Recreation

Objective T-37 'Prohibit development which would significantly diminish the amenity, natural environment and/or economic value of the County' s coastline and beaches or any of their built natural or cultural assets or amenities' .

Chapter 12 Zoning and Landscape'.

Objective ZL-1 'Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to people's lives'.

## 5.2. Natural Heritage Designations

The site is zoned 'Rural Secondary Special Amenity Area' and located abutting Kenmare River cSAC at its south-western corner.

The River Blackwater cSAC is located c. 2.77Km, Clonee and Inchiquin Loughs, Uragh Woods cSAC is c. 2.77 Km, Old Domestic Building, Dromore cSAC is 5.10Km, Old Domestic Building, Askive cSAC is 5.4 Km, Cahal Mountains cSAC is 8 Km, Killarney National Park Macgillcuddy Reeks and Caragh River Catchment cSAC is 8.55 Km, Maulagowna Bog cSAC is 9 Km, Mucksna Wood cSAC is 13 Km and Glanmore Bog cSAC is 13.2 Km and Cleanderry Wood cSAC is c.13.6 Km, Erik Bog SPA is located c. 13Km

Of the Natura 2000 sites listed above one site is considered likely to be affected by the proposed development - Kenmare River cSAC. All other Natura sites are either a considerable distance away or are not Hydrologically connected to the development site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The issues raised are summarised as follows:

#### **Background.**

- The appellant owns the adjoining property to the east of the appeal site.
- Subsequent to the applicants demolishing the holiday chalet on site and carrying out grounds works the appellants met with them and urged the applicants not to carry out further development until planning permission was granted.
- Concerns with regard to the height of the proposed development, the excessive amount of fill at the front of the site and the need to provide an adequate means of effluent treatment and disposal.
- The applicants continued to carry out works to the structure subsequent to enforcement proceeding being initiated.

- The appellants support the principle of a replacement structure on the site provided a suitable layout, design and means of effluent disposal can be agreed.

**The Planning Authority has failed to properly consider the objection made in their assessment of the proposal.**

**Concern of potential effects on the Kenmare River cSAC due to unauthorised filling along the shore line and unsuitability of ground conditions for effluent treatment and disposal.**

- Mitigation measures should not be taken into account at screening stage for AA
- If potential effects on a Natura site cannot be ruled out, or designed out, during the initial screening exercise, then the project should be either rejected or a NIS submitted.
- The p.a. should have consulted with the NPWS and the EPA as provided for under Section 177U(3)
- Also the F.I. should have clarified that information was being requested as part of the formal AA screening process under Section 177U(3) as well as under Article 33 of the Planning Regulations.
- The Site Assessment unit (SAU) of Kerry County Council did not carry out a site visit subsequent to F.I. being requested.
- The new effluent disposal system is located outside of the site boundaries of the original site.
- The SAU report does not recommend a grant of planning permission it merely suggests that certain conditions should be applied.
- The SAU report does not explicitly refer to effects on the Kenmare River cSAC and does not attempt to provide the level of objective analysis required for AA
- Conditions placed on the grant of permission to ensure no significant effects on the cSAC are contrary to / contravene Guidance on AA
- The Biodiversity office did not make an independent assessment of the information submitted by way of FI and simply replied upon the opinion of the SAU

- The precautionary principle should apply here.
- If the effects are deemed significant, potentially significant, or uncertain, or if the screening process becomes overly complicated, then the process must proceed to Stage 2 (AA).
- Capacity of the treatment system is inadequate for the proposed use, as it was designed for a 2 bedroom chalet rather than a two storey dwelling of. C. 365 sq. m
- Condition 10 (k) of the notification of decision to grant permission limiting the occupancy to a maximum of 4 is unenforceable.
- Failure to address the potential impact on the cSAC of the unauthorised fill

#### 6.1.1. **Request that the Board**

- Issue notices under Section 131 of the Planning Act inviting NPWS and the EPA to make submissions and to comment on the evidence provided under Section 177U(3)
- To reassess the potential effects on the Kenmare River cSAC of both the unauthorised fill and the proposed effluent treatment and disposal system having regard to the precautionary principle and the screening criteria set out in the NPWS Guidance on AA
- To determine whether a NIS should have been required by the p.a. and if so, to consider the legal implications of any decision to grant permission for retention of a development which is dependent on works for which an appropriate assessment is required.
- Having regard to precedents established by the Board in cases where effluent treatment and disposal systems are proposed on similar ground conditions adjoining an cSAC, e.g. PL04.240602

#### 6.1.2. **Lack of Clarity in regard to Building Height and the Use of the Upper Floor**

- The lack of clarity with regard to dimensions of the proposed dwelling unit, the number of bedrooms proposed and the proposed use of the upper floor.
- The existing structure is almost 1 m taller than shown on the drawings as permitted by the p.a. and has a steeper pitch

- The dwelling as constructed is designed for residential accommodation at first floor and residential ceiling heights exists across almost the entire footprint of the attic space.
- The scale of the dwelling is contrary to Condition 10(k) limiting occupancy to 4 persons and the capacity of the effluent treatment plant.
- The p.a. grant of permission requires the development to be retained in accordance with the plans and drawings submitted. The applicant is therefore required to remove the roof and lower the walls to correspond to the dimensions shown.

### 6.1.3. **The Visual Impact of the Development**

- The visual impact on the adjoining beach and foreshore due to excessive height of the dwelling and the unauthorised filling along the shoreline.
  - The development immediately adjoins a public beach the p.a. assessment did not give due cognisance to visual impact upon the beach in their assessment.
  - The development is prominent from the access road to the beach; from adjacent sections of the shoreline to the east and west and from boats on the Kenmare River.
  - Negative impact to important amenity and tourism resources within the Area of Secondary Special Amenity.
  - Surprising that the design was not altered by the p.a., in particular, roof height and fenestration improvement.
  - Landscape plan submitted is inadequate and insufficient to mitigate visual impact upon the adjoining beach. It does not accurately show existing trees or levels and is unrealistic given ground conditions.
  - A proper remedial landscape plan should be required.

### 6.2. **Appeal accompanied with**

- Copy of notification of decision to grant planning permission Reg. Ref. 16/867
- Copy of observations submitted to the p.a. by McCutcheon Halley Planning on behalf of the appellant.

- Engineering Report by William Moyles & Associates
- Photographs

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

Response received it is summarised as follows:

- GIS map indicating the file reference numbers of all developments (planning applications) adjoining the subject appeal site since 1991

### 6.4. **First Party Response**

Response received it is summarised as follows:

#### 6.4.1. **Planning Context**

- The applicant has lived and worked in the area her entire life, her childhood home is located less than 0.5 Km from the site the subject to the appeal.
- She is a valued member of the community and has a local need and complies with rural housing need policy set out in the CDP.
- The site had an existing habitable dwelling owner by the applicant family served by an existing septic tank.
- This is a replacement dwelling, comparable with dwellings in the area (far smaller than some) and in no-way adds to the cumulative effect of development in the area.
- It is clear even to the objector that a replacement structure is acceptable.
- The dwelling is proposed as a permanent place of residence for the applicant close to her family home.
- The structure is a single storey structure
- Attach photos A & B to show scale of the dwelling in comparison to the property to the East which dwarfs the modest proposal
- Visual impact will be lessened once planting has been completed.

- To call the adjoining inlet a 'beach' is a stretch and it is submitted this beach / inlet is impacted more by the adjoining dwelling to the east than the dwelling under completion.

#### 6.4.2. **AA of the effects on the Kenmare River cSAC**

- The dwelling is close to but not in an cSAC and the Biodiversity Officer and the Site Assessment Unit of KCC have gone to great lengths to ensure an environmental improvement has been achieved.
- There will be substantial environmental gain from replacement of the existing septic tank with a new state of the art treatment unit and sand polishing filter, is substantial and effectively designed out any potential effects at the screening stage.
- The AA process allows for potential effects to be 'designed out' at the screening stage and this was done and the updated form which was submitted by the Biodiversity Officer on 31/05/2017.
- An AA under Section 177V of the Planning and Development Act 2000, as amended is not required.
- KCC have followed all due process and made an informed and thorough decision
- All possible effects on the Kenmare cSAC were analysed and deemed to cause 'no significant effects', those included any effects by the movement of fill material onsite (never intruded onto the foreshore) and wastewater which would be generated from the dwelling in future.

#### 6.4.3. **Lack of Clarity in relation to Building Height and the Use of the Upper Floor**

- It is not incumbent on the Board to investigate the validity of a planning application.
- The first party will not be making comment on the appellant's statements in relation to the height of the structure as this is outside of the scope of the Board.
- The structure is a modest structure which once given appropriate time will be completed and screened and can be suitably bedded into the surroundings.

- There is no evidence to support the claim of a first floor, staircase or anything other than a large attic.
- The permitted dwelling is two bedroomed structure with floorspace comparable with all modern houses, in comparison, the adjoining dwelling to the east comprises a five-bedroom house with swimming pool, gym, relaxation room, sauna, play attic, yoga room and pool room.

#### 6.4.4. **Visual Impact**

- The visual impact of the dwelling which is and will be screened on all sides has been deemed by KCC to have no impact when viewed from the N70 and that visual impact would be confined to the immediate locality of the site and would be minor.
- The public beach described by the appellant is a minor inlet which will be impacted slightly more than previously when considering that there was an existing dwelling onsite as seen in photograph N.
- The public road does not go as far as the inlet and stops roughly 100m short, the privately owned access track offers access to the foreshore and not a beach as described, it is unclear if it is even accessible by the public as there is no evidence of any right of way and no proof of same submitted with the appeal.
- The approved landscaping plan is substantial and condition 16 of the draft grant of permission requires that this be carried out in the first growing season following occupation. This will integrate the dwelling significantly.

#### 6.4.5. **Response accompanied with:**

- Photographs
- Letter by Ger O'Keeffe Consulting Engineer, new points, only, noted.
  - The property was inspected on the 5<sup>th</sup> Nov 2016 & 13<sup>th</sup> Feb 2017 following Legal Proceedings by Suaimhneas Ltd.
  - Following inspection one it is stated '... it is not correct to state that there was a stairwell incorporated in the development.' 'This property internally on the date of inspection had a part concrete ceiling to the ground floor



and a part timber ceiling. Externally it was not complete' Subsequent to inspection two it is stated '...part of the roof supports was off the floor slab. There were no windows on either gable, there were no velux windows. With no slates or tiles on the roof there was light to inspect the attic space.'

- Do not believe that the existing structure is almost 1 m taller than shown on the drawings permitted by the p.a.
- The dwelling as constructed does not have residential accommodation at first floor.
- The floor level of the new house is lower than the floor level of the original house.
- The appellants account and description of the interaction between the parties is not accurately reflected in their submission
- Photographs attached.
- Letter from Applicant Emer O'Sullivan
  - Reiterates background planning context
  - Has a local need and cannot afford to restart the house.
  - Realises her mistake in renovating the house without planning permission, however, she did not do it intentionally.

#### 6.5. **Appellants Response to First Party Response**

Only New issues raised in the Response are summarised here, issues already raised by the appellant are summarised above:

- Accepts that the applicant has a need for a house in the area and is therefore an eligible candidate under the rural housing policy.
- Do not accept that that dwelling is single storey.
- Do not believe that the applicant would have incurred additional expense of raising the roof and putting in a concrete floor if they only intended to use the upper floor for storage.

- OS Map attached which shows that there has been a road to the public quay on the foreshore for more than 100 years.
- Note the Board has issued a notice under S131 inviting the DAU of the NPWS to make a submission.
- Ask the Board to use its powers under S132 of the Planning and Development Act to require the applicant to submit an accurate internal and external survey of the unauthorised works.
- Floorspace is not appropriate for what is claimed to be a two-bedroom house which is a replacement for a small summer chalet.
- PL08.226166 / Reg. Ref. 07/3185 is of relevance. A replacement dwelling with revised layout and design, of reduced floor area, to that previously refused, was subsequently permitted under Reg. Ref. 08/2767.
- The visual impact from the coast is exacerbated by reason of the unsuitable design of the replacement dwelling.
- Refute allegations that the appellant is pursuing a 'vendetta' against the applicant.
- The appellants dwelling is in a location where there has been a substantial dwelling for more than 100 years.
- Permission was granted under Reg. Ref. 99/3717 to renovate and extend the pre-existing dwelling. A revised design and layout was subsequently granted under Reg. Ref. 03/518 and alterations were subsequently approved as exempted development under Section 5.
- The layout and design of the appellant's boat house and the landscaping along the shoreline were the subject of three appeals by the applicant's family. PL08.205921 having been permitted.
- Photo number 4 attached to Mr. O'Keeffe's submission appears to show that the ridge level is equivalent to 36 courses of 225mm high concrete blocks which would give an overall ridge height of 8.100m rather than 7.250m as shown on the submitted plans.
- Queries why Mr. O'Keeffe did not clarify this matter.

- Do not accept that the development as now complete is due to an unintentional mistake. Numerous meeting and discussions took place between the applicant and representatives of the appellant prior to substantial unauthorised works having been carried out.
- The appellant gave helpful professional advice to the applicant and offered to assist her with an unauthorised development on the site. It is therefore unreasonable to suggest that by submitting an objection and appeal the appellant is pursuing a 'vendetta'.

**Response accompanied with:**

- Copy of ABP decision PL08.226166
- Historic OS Map showing in yellow the access route to the foreshore.
- Internet Listing for 'Sadie's Lodge' – holiday rental of previous dwelling on the site.

## 6.6. Observation

The issues raised in the Observation are summarised as follows:

- Concern with respect to the scale, mass and height of the replacement dwelling, given the prominent landscape setting and its designation as a rural area of Secondary Special Amenity in the Kerry CDP.
- Negative visual impact, in particular, given the removal of mature vegetation
- Visual prominence undesirable in a scenic rural area
- Pollution concern to the nearby cSAC – proposal to pipe treated effluent across the small river is of concern as any leakage which may go un-noticed.
- Site is located very close to Kenmare River cSAC the ground conditions appear to be unsuitable for providing a percolation area for the on-site waste water treatment plant.

## 7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- **Visual Impact**
- **Foul Drainage**
- **Other Issues**
  - **Whether NIS is required**
  - **Changes to site boundary and development description**
- **Appropriate Assessment**

### 7.1. Visual Impact

- 7.1.1. The site is located within an area designated 'Rural Secondary Special Amenity Area' and is designated as a Stronger Rural Area in the Kerry County Development Plan 2015 – 2021. The site is located abutting the Kenmare River cSAC. The views and Prospects are also protected from the N70 Ring of Kerry Route, located some 0.5 Km to the north. Chapter 12 of the County Development Plan deals specifically with zoning and landscape. Policy relating to areas zoned Rural Secondary Special Amenity in section 12.3.1 Rural (b) states that: 'The landscape of areas in this designation is sensitive to development. Accordingly, development in these areas must be designed so as to minimise the effect on the landscape'... 'permission will not be granted for development which cannot be integrated into its surroundings. 'Chapter 12 sets out objectives for landscape protection I note in particular:

ZL-1 'Protect the landscape of the county as a major economic asset and an invaluable amenity which contributes to people's lives'.

ZL-4 'Regulate residential development in Rural Areas in accordance with the zoned designation of that area and the policies outlined in the Rural Settlement Strategy set out in section 3.3 of the plan'.

- 7.1.2. The applicant Emer O'Sullivan is the daughter of the land owner, currently resident in the area and it is not disputed by the appellant or the planning authority that she does not comply with the rural housing need criteria as set out in the County Development Plan. The proposal as revised by way of Significant Further Information (S.F.I.) seeks permission for demolition of an existing chalet / dwelling located on the site and retention permission to retain and complete the replacement dwelling house currently under construction and permission for a proprietary treatment unit and sand polishing filter.
- 7.1.3. Section 3.3.5 of the County Development Plan deals with renovation or restoration of existing and vacant buildings situated in rural areas. It states that 'the planning authority shall give positive consideration to the renovation and restoration of existing structures and to the conversion of derelict and vacant buildings in the rural countryside for use as permanent primary residences and as holiday home accommodation. Consideration will be related to the specific location and condition of the structure and the scale of any works required to upgrade the structure to modern standards'.
- 7.1.4. The Plan goes on to state that: 'In the case of refurbishment and extension proposals, the scale and architectural treatment of proposed works shall be sympathetic to the character of the original structure and the surrounding area including adjoining or nearby development'.
- 7.1.5. 'Restored or renovated dwellings shall be located where safe access, acceptable wastewater disposal arrangements can be put in place and where specific development objectives outlined in the CDP are not contravened. Where necessary surveys on protected species may need to be undertaken in order to assess the impact of restoration and renovations on these protected species. Any proposal will be subject to the Development Management requirements set out in the Plan'.
- 7.1.6. The subject application is not for renovation, restoration or refurbishment it is partly one for retention of demolition of an existing dwelling and for retention and

completion of a new substantially larger dwelling, the scale and character of which bears no visual or architectural relationship to the original dwelling. This in-itself poses questions in regard to the first party's approach to the planning process.

- 7.1.7. Given the planning history of the site and the adjoining area (see section 4.0 of this report above) the applicant should have been aware of the sites constraints. In particular, I highlight the planning history of the adjoining dwelling on foot of which the applicant's family repeatedly appealed proposals on grounds of impact upon the special amenity of the area. Also the refusal of permission (Reg. Ref. 09/1623) to the same applicant on the Family Landholding adjoining to the north east, similarly, designated a sensitive location, within the zoned Rural Secondary Special Amenity Area, in the CDP 2009 – 2015, where it is policy of the CDP that siting and design of development should not have an adverse impact on the character of the landscape.
- 7.1.8. From photographic evidence on the file it is clear that the replacement dwelling sought to be retained is substantially larger in terms of floor area and height than the small, low-rise chalet which previously occupied the site. I have serious concern with respect to the pitch of the roof and height of the dwelling, stated in the submitted plans to have a ridge height of 7.2m. It is more akin to the height of a two storey dwelling with floor to ceiling height (i.e.  $2.4 + 2.4 = 4.8$  therefore there would be sufficient floor to ceiling height for two full height habitable stories with generous attic space). The appellant has raised concerns around the height of the dwelling and use of the upper floor. It is contended that the attic space has been constructed for habitable purposes. While at present I see no evidence to substantiate this claim, windows were completely covered on the date of my site inspection, I too have concern with respect to the need for a 7.2m high dwelling at this sensitive coastal landscape setting.
- 7.1.9. It was clear from my site visit and from information on file that extensive clearing and infilling has taken place. Trees have been removed from the site, also, ground levels on the site have been raised, particularly in the area between the new house and the shore and lowered to the west and north of the dwelling. I consider the scale, height, mass and architectural design treatment of the partially complete dwelling are unsympathetic to the character of the original structure and would have an adverse impact on the character of this sensitive coastal landscape setting.

- 7.1.10. It is clearly set out in the County Development Plan that 'Rural Secondary Special Amenity Areas' are generally sensitive to development. Accordingly, development must be designed to minimise the effect on the landscape. The proposal is obtrusive in its landscape setting on this open and exposed coastal site and would seriously injure the amenities of the area. The proposal would contravene Objectives ZL-1 and ZL-4 of the current CDP.
- 7.1.11. Having visited the area I am satisfied, in agreement with the p.a. that the building will not be visible from the N70 due to separation distance, topography and natural screening. However, I have serious concern with respect to impact of the development from the opposite side of the Kenmare River. The coastal zone is a vital asset with limited capacity to absorb development. It is an objective of the Council T-37 to; 'Prohibit development which would significantly diminish the amenity, natural environment and/or economic value of the County's coastline and beaches or any of their built natural or cultural assets or amenities'.
- 7.1.12. In design terms, I note for the Boards attention that a condition has been placed (Condition 7) on the draft decision to grant permission Reg. Ref 16/867 that stone work to external walls shall be of locally sourced natural stone and the roof tiles / slates shall be either black, dark-grey or blue black. Also a condition is attached that further extensions / garage or other exempted development structure shall not be constructed on the site without a prior grant of planning permission (Condition 8).
- 7.1.13. Overall, however, the replacement dwelling is of a much larger scale and significantly more obtrusive than the chalet it proposes to replace. While I agree in principle with the chalet structure being upgraded, refurbished, replaced, as clearly there is a long established residential use on the site, I consider that the height of the replacement dwelling, proposed to be completed and retained, would diminish the amenity of the area and interfere with the character of the landscape designated as Secondary Special Amenity Area.

## 7.2. Foul Drainage

- 7.2.1. Subsequent to further information being requested a Site Characterisation Report was submitted to the planning authority. A Site Layout Drawing indicating the

proposed treatment plant and site section drawings were also submitted. It is now proposed to install a proprietary wastewater treatment unit and sand polishing filter with UV disinfection to treat the sewerage generated by the proposed dwelling house prior to discharge to ground. To accommodate the proposed new percolation area and sand polishing filter, the applicant has extended the site boundary to the north and encompassing a stream which flows from Derreennamucklagh Lough to the north east to the waters of Kenmare River cSAC to the south west. The proposed sand filter and distribution area is located within the extended site boundary area on the green area to the north of the river. It is proposed to pipe UV treated effluent across the stream to the distribution / percolation area.

- 7.2.2. It is clear from the site characterisation report submitted that ground conditions on-site are not good, with failed percolation tests, shallow water table and shallow bedrock. The third party and observers to the appeal have concern that, in the event that there is a leak from the pipe that effluent would, most likely, make its way into the river and from there into the cSAC causing pollution.
- 7.2.3. It is of concern that ground conditions on site are not good and that no P Value or T Value was recorded on the site, especially, given the proximity of the site to the Kenmare River cSAC. From my site visit it was evident that ground conditions are of a rocky, boggy nature, with extensive reeds present. I did, however, evidence that the trial hole test locations (P and T test holes) were dry of water. I witnessed no evidence of the existing septic tank on the site as the area indicated was heavily overgrown and piled with building rubble.
- 7.2.4. I note, the technical reports of the Environment Department and Biodiversity Officer which consider that the installation of a new state of the art treatment unit and sand polishing filter at a revised location distant from the Coastline and the Kenmare River cSAC is likely to improve the existing situation. The existing septic tank indicated to be sited to the west side of the dwelling is only approximately 25m from the coastline of the Kenmare River cSAC. It is to be decommissioned and the revised WWTP location is to be located the rear north of the appeal site approx. 75m from the Kenmare River cSAC. The distribution area is 10.4m from the edge of the River which flows into the cSAC.



- 7.2.5. Regard being had that the subject appeal proposal relates to retention and completion of a dwelling house which replaces a previous chalet-type dwelling served by an older septic tank system. It is clear from the site characterisation information submitted that ground conditions on-site are not good. The application seeks to retain a dwelling substantially larger than the pre-existing (suggested summer) chalet. While I am in agreement with the planning authority that there may be environmental gain from replacement of the existing septic tank with a new state of the art treatment unit and sand polishing filter I have concern with respect to the size of the dwelling and the p.e. proposed. I agree with the appellant that condition 10 (k) attached to the draft decision to grant permission is unenforceable and clearly highlights the concerns with respect to wastewater treatment and compliance with EPA Code of Practice for on-site waste water treatment units.
- 7.2.6. On the basis of the evidence available, therefore, I have serious concern with respect to the suitability of ground conditions to accommodate a waste water treatment unit, it is my conclusion that the appeal should be upheld in relation to this issue.

### 7.3. **Other Issues**

#### 7.3.1. **Whether NIS is required**

The Biodiversity Officer of the p.a. carried out Appropriate Assessment Screening

- 7.3.2. The initial report of the Biodiversity Officer states: 'The application is close to but outside the Kenmare River cSAC. The Natura site is predominantly designated for Marine and coastal habitats and species. Considering the scale, nature and location of the development outside the cSAC – it is not considered likely that the development would have a significant effect on the habitat types and / or species associated with the cSAC'.

- 7.3.3. A subsequent report of the biodiversity officer, after a site visit was conducted, concludes that in accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information provided that significant effects on the Kenmare River cSAC cannot be excluded. Further to 177U(3) of the Planning and Development Act 2000 (as amended) further information is required in order for the p.a. to complete this screening exercise. Specifically, information on the condition of the existing wwtu onsite is required.

With respect to Screening for appropriate assessment Section **177U**. —of the Planning and Development Act 2000 (as amended) states:

(1) 'A screening for appropriate assessment of a draft Land use plan or application for consent for proposed development shall be carried out by the competent authority to assess, in view of best scientific knowledge, if that Land use plan or proposed development, individually or in combination with another plan or project is likely to have a significant effect on the European site.

(2) A competent authority shall carry out a screening for appropriate assessment under *subsection (1)* before —

( a ) a Land use plan is made including, where appropriate, before a decision on appeal in relation to a draft strategic development zone is made, or

( b ) consent for a proposed development is given.

(3) In carrying out screening for appropriate assessment of a proposed development a competent authority may request such information from the applicant as it may consider necessary to enable it to carry out that screening, and may consult with such persons as it considers appropriate and where the applicant does not provide the information within the period specified, or any further period as may be specified by the authority, the application for consent for the proposed development shall be deemed to be withdrawn .

7.3.4. **177V**. — (1) An appropriate assessment carried out under this Part shall include a determination by the competent authority under Article 6.3 of the Habitats Directive as to whether or not a draft Land use plan or proposed development would adversely affect the integrity of a European site and an appropriate assessment shall be carried out by the competent authority, in each case where it has made a determination under *section 177U(4)* that an appropriate assessment is required, before —

( a ) the draft Land use plan is made including, where appropriate, before a decision on appeal in relation to a draft strategic development zone is made, or

( b ) consent is given for the proposed development.

- 7.3.5. A full site assessment in accordance with the EPA Code of Practice was carried out by way of F.I. The Biodiversity officer consequently carried out another AA screening of the proposed development. It concludes that further to the conditions proposed by the site Assessment Unit that significant effects on the cSAC are considered unlikely. It is further concluded that an AA under Section 177V of the Planning and Development Act 2000 (as amended) is not required.
- 7.3.6. I am of the opinion that the planning authority has followed due process in making their determination. However, given my considerations with respect to size of the dwelling, inadequate foul drainage and hydrological links to the Kenmare River cSAC I recommend that a cautionary approach is required as it has not been proven that it wouldn't result in significant effects on the SAC.
- 7.3.7. The site suitability assessment report submitted raises concerns that disposal to groundwater of effluent treated by the waste water treatment plant and percolation area is possible without giving rise to a deterioration in the quality of water.
- 7.3.8. Given the scale, nature and location of the development I agree that there is no requirement of EIA.
- 7.3.9. However, on the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement I am of the opinion that the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site code No. 2158 Kenmare River cSAC.
- 7.3.10. **Changes to site boundary and development description**
- 7.3.11. In order to accommodate the proposed new percolation area and sand polishing filter, the applicant has extended the site boundary a significant distance to the north of the stream which formed the original site boundary. Cognisance is had to the appellants concerns that the decision to grant permission for works outside of the original site boundaries could be ultra vires, as albeit, the applicant published new press and site notices, the impression given by the notices is that the F.I. is in regard to works within the original site boundaries. Concern is raised that there may be landowners or residents adjacent to the extended site area who would not be aware

from the public notices that the development has been extended to the north of the stream.

7.3.12. The appellant and An Taisce are the only objectors to the proposal and it is clear from the appellant's submission that they were not misled by the public notices and were fully aware of the changes proposed by way of S.F.I. Therefore, I am of the opinion that the changes to the site boundary and to the development description as proposed and described do not diminish the rights of any individuals and further public advertisement or a refusal of permission in this regard would not be warranted.

#### 7.4. **Appropriate Assessment**

7.4.1. The appeal site directly abuts Kenmare River SAC but is not located within the cSAC. The appeal site is located within 15 Km of the following Natura Sites:

- Blackwater cSAC (Kerry) 2.77Km
- Clonee and Inchiquin Loughs, Uragh Woods cSAC 2.77 Km
- Old Domestic Building, Dromore cSAC 5.10 Km
- Old Domestic Building, Askive cSAC 5.40 Km
- Caha Mountains cSAC 8 Km
- Killarney National Park, McGillycuddy Reeks and Caragh River catchment cSAC 8.55Km
- Maulagowna Bog cSAC 9 Km
- Glanmore Bog cSAC 13.2 Km
- Cleanderry Wood cSAC 13.6Km
- Erik Bog SPA 13 Km

7.4.2. Of the Natura 2000 sites listed above one site is considered likely to be affected by the proposed development – Kenmare River cSAC. All other Natura sites are either a considerable distance away or are not hydrologically connected to the development site.

- 7.4.3. Qualifying interests of the Kenmare River cSAC include: Common seal, Otter, Lesser Horseshow Bat, Cataminarian dry heaths, fixed coastal dunes, Mediterranean salt meadows, Atlantic salt meadows, Large shallow inlets and Bays, Reefs, submerge or partially submerged sea caves.
- 7.4.4. The habitats and species listed for the Kenmare cSAC are predominantly marine and / or coastal in nature. Otter and to a lesser extent Seal is likely to be the only species that would be indirectly affected due to indirect impacts on food source from poor quality water, in particular, marine water pollution in the context of seals.
- 7.4.5. The proposal seeks permission for a wastewater treatment unit with UV treatment, a sand polishing filter and a gravel distribution layer. It is proposed to pipe the treated effluent across a stream to a raised distribution area. The distribution area is located 10.5m of the stream which flows into the Kenmare River cSAC some 200m to the south west. The Biodiversity officer and the Environment Department of the Council have concluded that subject to condition, that significant effects on the cSAC are considered unlikely.
- 7.4.6. It is noted that in relation to the treatment of wastewater the assessment, while recognising the potential impacts on water quality that could arise, is essentially based on the assumption that the proposed wastewater treatment system would function satisfactorily for a maximum occupancy of four persons. However, my conclusions drawn above, under section 7.2 does not support this assumption. Ground conditions on-site are not good. The site suitability assessment report submitted raises concerns that disposal to groundwater of effluent treated by the waste water treatment plant and percolation area is possible without giving rise to a deterioration in the quality of water, the size of the dwelling is also of concern in terms of p.e. Therefore, I recommend that a cautionary approach is required as it has not been proven that it wouldn't result in significant effects on the SAC.
- 7.4.7. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site code No. Kenmare River cSAC site code 2158

## 8.0 Recommendation

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

## 9.0 Reasons and Considerations

1. The proposed development is located on an elevated and exposed site which overlooks the Kenmare River and which is designated in the current development plan for the area as being within an Area of Secondary Special Amenity, where it is the policy of the planning authority to ensure that development is designed to have minimal landscape impact. The proposed replacement dwelling by reason of its height, mass and scale is obtrusive in its landscape setting on this open and exposed coastal site and would seriously injure the amenities of the area. The proposed development would contravene Objectives T-37, ZL-1 and ZL-4 of the current County Development Plan and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the difficult ground conditions on this site, including failed percolation tests, shallow water table and shallow bedrock, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the site can be drained satisfactorily, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

3. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site code 2158 Kenmare River cSAC, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

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Fiona Fair  
Planning Inspector

03.10. 2017