



An
Bord
Pleanála

Inspector's Report 304048-19

Development	Retention and completion of dwelling house; Retention of stable/feed store, log store, mobile home for one year, site entrance and driveway within revised site boundaries; Permission to construct workshop.
Location	Dunboy, Castletownbere, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	1900002
Applicant(s)	Mark & Tanya Rodgers
Type of Application	Planning permission
Planning Authority Decision	Refuse permission
Type of Appeal	First party
Appellant(s)	Mark & Tanya Rodgers
Observer(s)	None
Date of Site Inspection	29 th May 2019
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.** The site is located in the townland of Dunboy, which is located to the southwest of Castletownbere (c.3km). The site is located to the southwest of the R572, which is the main regional road along the southern part of the Beara peninsula and leads to Cahermore, Dursey and Allihies. Access to the site is gained from the L8936-0, which is a local road that branches off the R572 and provides access to Dunboy Castle, Dunboy Woods and Pulleen Harbour. The site is located on a rural cul-de-sac road. This road is very narrow in parts with sharp bends and is poorly surfaced. There are a number of dwellings located on the road.
- 1.2.** The appeal site is situated on the eastern side of the local road. There is a B & B located immediately to the south and a house located to the east of the site, which is accessed from the same driveway serving the appeal site. However, this driveway is grassed over/overgrown beyond the appeal site, suggesting that the house to the rear is unoccupied. There are two further houses to the north/northwest of the site. It is an irregularly shaped site, which is roughly L-shaped. The southern boundary is defined by the driveway which is lined on both sides with mature hedgerows and trees. The western (roadside) boundary is defined by a sod and stone fence with trees and shrubs and the northern boundary is also defined by mature vegetation. The site area is given as 1.82ha. It is generally fairly flat but levels gently undulate within the site.
- 1.3.** There is an existing partially complete house on the site together with a number of outbuildings and a mobile home. The house is well set back from the roadside boundary (c. 121m). It is a one and a half-storey detached house which faces the public road and is set within a roughly gravelled apron in the centre of the site. There is a mobile home on the site which is currently occupied by the applicants. This structure is sited adjacent to the driveway to the front of the house. It is well screened from the road, the driveway and the adjoining property to the south. There is a stable/shed to the north of the house, which is also forward of the dwelling. The remainder of the area to the front of the house consists of a large field which contains the wwtp and percolation area, but is otherwise used for grazing horses. Immediately to the south of the house, there is a small log store.

2.0 Proposed Development

- 2.1. It is proposed to retain and complete the one and a half-storey dwelling, and to retain the log store, the stable/shed and the mobile home for a period of one year. It is also proposed to construct a new workshop (42m²) on the site which would be located to the rear (south-east) of the main dwelling. The intended use of the workshop is for the construction of “Shepherd’s Huts”, (8.3m² in size) which would be for sale. It is stated that the stable/shed would be used to house four horses and that there would be a private water supply.
- 2.2. The proposed development will be accessed by means of a new entrance at the south-western corner of the site. This involves a right-of-way over an existing access track which runs alongside the southern boundary of the site. Unsolicited additional information was submitted (8th January 2019) which provided evidence of the right-of-way over the proposed access track.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for three reasons which can be summarised as follows:

1. **Settlement policy** - Site is located within the designated Green Belt for Castletownbere and is contrary to policy objectives RCI 2-1, RCI 4-2 and RCI 5-8, which seek to discourage urban generated housing in rural areas unless there is an acknowledged local rural generated housing need. In the absence of sustained local rural ties, the proposal does not comply with the rural housing need criteria and the applicants do not qualify for the stricter greenbelt policy and the proposed development would therefore materially contravene the CDP objectives and the Sustainable Rural Housing Guidelines.
2. **Traffic hazard** - The visibility of the vehicular access to be retained is extremely poor and restricted and would be seriously prejudicial to road safety. The existing track, which is unauthorised, would seriously conflict with

conditions 6, 7 and 8 of the original permission (05/1317) and would materially contravene CDP policy Objectives TM 3-3 and EE 9-1 which seek to ensure that all new vehicular access points provide a safe means of access onto a public road.

3. **Visual amenity** - The unauthorised mobile home has been in situ for a sustained period of time and by reason of its form and ungainly materials has resulted in an inappropriate and alien feature in the area and should not be encouraged as a matter of principle unless there is other approved “development” associated with it. The mobile home would negatively impact on the amenities of the neighbouring property to the southwest and would materially contravene CDP policy objectives GI 6-1 and RCI 6-1 to encourage new buildings to meet high standards of design, respect the character and pattern and fit appropriately into the landscape.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Area Planner’s report (26/02/19) is a lengthy report (36 pages) and includes detailed information regarding the planning history and enforcement investigations regarding the appeal site as well as detailed references to the planning status/history of other properties in the locality. The Assessment section considers the main issues under specific headings and the main conclusions may be summarised as follows:

Preliminary Screening – the need for EIA was screened out on the basis of the small scale and nature of the project.

Unauthorised business use – it was concluded that given the “state of the art” workshop which currently occupies the ground floor of the partially constructed dwelling house, the use of the structure is as an unauthorised business for the construction of ‘Shepherd’s Huts’. The applicant’s claims that he operates his business from a workshop in the locality (Heathmount, Drom South) were dismissed on the grounds that the workshop at that address was in an extremely poor state of repair.

A Greenbelt dwelling house - concerns were raised regarding the precedent that would be set by a grant of permission to a “non-native and non-qualifying local” for

the completion of a partially constructed dwelling in the green belt, which had originally been granted to a “qualifying local” subject to an occupancy condition. That condition had required the applicant to enter into an agreement to use the dwelling as his permanent place of residence for a minimum of 5 years following the completion of the dwelling. It was considered that the proposed development would materially contravene this condition and would undermine the consistent approach taken by the planning authority in such cases to date. Reference was made to three previous decisions PA Reg. Ref.17/429, 06/731 and 00/7102. *[However, I note from the P.A. website, that 17/429 relates to the grant of permission for the retention and completion of a wall at a GAA Club property in Skibbereen and that 06/731 and 00/7102 respectively relate to grants of permission for a dwelling house at Ardgroom Beara and at Ahabeg, Castletownbere. Thus, the relevance of these decisions is unclear].* The Area Planner considered that a grant of permission in this case, whilst presenting a resolution to the unoccupied and incomplete structure on site, would be contrary to policy objective RCI 4-2. Notwithstanding this, it was further noted that the house is not a “habitable house” as it is occupied as a workshop on the ground floor.

Road safety – concerns were raised regarding the inadequate sightlines available at the entrance to the right-of-way, particularly on exiting the access track. It was also noted that the original permission for the house (05/1317) had proposed a new driveway and right-of-way alongside the northern boundary (rather than the southern boundary as now proposed). It was considered that the proposal would undermine the original permission and condition nos. 6, 7 and 8 which had required a recessed entrance with wing walls and a restriction on vegetation to 1.0m. It was concluded that the proposed entrance/access would be a traffic hazard, which would be exacerbated by its use by commercial vehicles.

Business use and amenity – the proposed workshop, which would be used for the construction of Shepherd’s Huts, would be contrary to Policy EE 9-1, (small scale rural businesses), on the basis of inadequate safe access and the impact on the residential amenities of the property to the southwest. It was acknowledged that noise levels could potentially be controlled by condition. Reference was made to a previous Board decision regarding a workshop in the vicinity (PL88.236570).

Unauthorised mobile home – it was considered that the retention of the mobile home for a further 12-month period would be unacceptable as the applicant is not a “qualifying” local person and that its retention would have some negative impact on the amenities of the neighbouring B & B. It was, however, acknowledged that the mobile home cannot be seen from the public road due to dense vegetative screening, but it was considered that this was not a sufficient reason to allow its retention.

Septic tank and percolation area – it was noted that the mobile home is connected to the septic tank and that further information would be required to confirm that it has been constructed in accordance with the appropriate standards. However, it was stated that FI would not be requested given the substantive reasons for rejecting the application as outlined above.

Stable/feed store – given that the structure was constructed within 5m of the dwelling house, it cannot be classified as Exempted Development. No objections were raised in respect of land-use, in terms of its siting and design, the form/function of the structure, impact on the landscape/amenities of neighbouring properties, and the rural nature of the use in this location. Notwithstanding this, it was considered that the retention of the shed would be predicated on the applicant being able to demonstrate that it would comply with the Dept. of Agriculture specifications and the EC (Good Agricultural Practice for Protection of Waters Regulations) 2017. However, FI would not be requested in respect of these matters having regard to the more substantive reasons for refusal referred to above.

Log store – the log store on the southern boundary was considered to be exempted development.

Appropriate assessment – having regard to the nature and extent of the development and the distance (790m) from the Beara Peninsula SPA (004155), appropriate assessment was screened out.

Recommendation - It was recommended that permission be refused on three grounds which are largely similar to those contained in the P.A. decision.

3.2.2. Other Technical Reports

Area Engineer’s Reports – (14/02/19 and 22/2/19) - Consideration of the application should be deferred pending further information regarding the existing

wastewater treatment system (size and composition of septic tank and percolation area) and certification as to what standard it has been designed and built to. Concern was raised regarding the safety of the proposed access with minimal sightlines. It was requested that the applicant provide a revised site layout plan showing the entrance and access track proposed as part of 05/1317.

Environment Report (11/02/19) – The report addresses the stable and the workshop elements of the proposed development only.

Stables

It is noted that it is proposed to house 4 horses, that uncontaminated rainwater will be discharged to soakpits and that the distances to nearest TP dwellings and to water courses are 60m and 280m respectively. It was considered that the site (1.82ha) is large enough to accommodate 4 horses. However, it will be necessary to comply with European Communities (Good Agricultural Practice for Protection of Waters Regulations) 2017 (i.e. Nitrates Regulations) in respect of animal nutrient excretion rates.

It will be necessary to comply with the *Dept. of Agriculture Specifications S156 Jan 2016 : "Minimum Specification for Horse Facilities & Fencing"*. Further information was requested in respect of the management, collection and storage of stable manure and of seepage from the stables. FI was also requested in respect of the quantity of soiled water, soiled bedding and manure generated on site and the means of managing same. If a separate manure storage facility is required, it will have to comply with *S108 Aug 07 " Minimum Specifications for Manure Pits and Dungsteads"* and must be a minimum of 60m for a public/private water supply source.

Workshop

It is noted that it is intended for use of construction of Shepherd's Huts and that the distance from the TP residential property to the south would be 85m. It was further noted that there is an existing workshop a further 70m to the south of the adjoining residential property, which has been permitted subject to conditions (ABP Ref. PL88.236570). The third-party observation had raised issues of noise from the property between March and September, with noise at night and sometimes activity being conducted outside. However, it was considered that appropriate conditions

could be attached. Further information was requested in respect of where the construction of the Shepherd Huts would take place, what activity would be carried on outside the workshop, how the huts would be removed from the workshop once finished (due to small door) and regarding the noise levels likely to be generated by the use.

3.3. Prescribed Bodies

None.

3.4. Third party observations

An objection was submitted by the neighbouring occupants of the property to the south-west, which is a B&B (Bellatrix). It is stated that they support and there is no objection to the following elements of the proposal:-

- Retention and completion of dwelling house;
- Retention of stable and feed store;
- Retention of log store
- Retention of existing site entrance.

The objection relates to the retention of the mobile home and the permission for a workshop only.

Mobile home – objection to current location as interferes with privacy as it is close to boundary and opposite sauna. It is requested that it be relocated elsewhere within the land holding. It is further requested that it be removed once the dwelling is completed or at least within one year.

Workshop – it is stated that notwithstanding the applicants' comments, the site has been used since 2015 for the construction of shepherd huts, including construction in the open. Objection is raised to the noise and disturbance from this activity which includes use of a nail gun, industrial sander, electric saw, hammering, drill as well as the delivery of materials, loading the huts once completed and customers viewing the items. The activity generally takes place between March and September, (sometimes at night and weekends) which is the peak tourist season and has a

detrimental effect on their B&B business. The objection was accompanied by a number of photographs and letters from clients.

Natural habitat – noise and activity from workshop would affect the wildlife in the woodland owned by Coillte to the rear of the site.

3.5. Unsolicited further information dated 19th February 2019

A response to the third-party objection was submitted by the applicants' agent as unsolicited further information. It is stated that the siting of the **mobile home** is based on the connection and proximity to the on-site wastewater treatment system, microclimatic and topographical conditions on site and accessibility for the delivery vehicle. It is not visible from any public place and is separated from the objectors' property by the access road and screening vegetation (hedge and trees) and is sited 1.5m below the ground level of the neighbouring garden. It is confirmed that it will be removed after one year.

The proposed **workshop** would be located a minimum of c.58m from the boundary and c.73m from their dwelling (closest point). Given that the loudest piece of equipment is the nail gun, which has a maximum operating level of 85dB, the likely sound level at the TP dwelling would be below 50 dB (using the Inverse Square Law for Sound). The applicant would be happy with a restriction of 60dB at the nearest sensitive location. The availability of workshops to rent in Castletownbere is extremely limited.

In respect of the **natural habitat**, it is pointed out that the woodland adjoins a commercial forest which is subject to logging machinery and that the complainants regularly carry out activities on their site which generate greater sound levels such as a chain saw to cut logs, folk group music sessions. There is also a working farm nearby, where a tractor would generate up to 110 dB noise levels.

In terms of **traffic**, it takes 6-10 weeks to make a shepherd's hut, which equates to 6-8 huts per annum. This is a small-scale business which in no way creates an untenable increase in traffic. It is pointed out that the complainant's business generates tourist traffic.

4.0 Planning History

05/1317 – planning permission granted by P.A. on significantly smaller site (0.7acres/0.28ha) for a dwelling house. The permission was granted subject to 15 conditions, the first of which restricted the occupation as a place of permanent residence of the applicant/members of his family for a minimum period of 5 years following completion of the dwelling. A S47 agreement was entered into with the P.A. within a year of the grant of permission. The design, siting and layout of the permitted dwelling is similar to that of the current proposal before the Board, except that the site was to be accessed by means of a new access track and r.o.w. to the south and that the site area has increased from 0.28ha to 1.82ha. The current proposal also includes a number of outbuildings as described in 2.0 above, and the dwelling house has been slightly enlarged.

PL88.236570 - The Board granted permission for a commercial workshop within the grounds of a one-off dwelling house c. 100m to the north-east. This permission was referenced by various parties to the appeal, including the planning authority.

5.0 Policy Context

5.1. National Planning Framework – Project Ireland 2040

National Policy Objective 19 – Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment and elsewhere:

- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory

guidelines and plans, having regard to the viability of smaller towns and rural settlements.

National Policy Objective 21 – Enhance the competitiveness of rural areas by supporting innovation in rural economic development and enterprise through the diversification of the rural economy into new sectors and services, including ICT-based industries and those addressing climate change and sustainability.

5.2. Cork County Development Plan 2017-2023

The site is located in an area designated as Rural Areas Under Strong Urban Influence and Town Greenbelts. Relevant policies include **RCI 2-1** and **RCI 2-2**, respectively, which seek to discourage urban generated housing and to facilitate rural generated housing and **RCI 4-2** which sets out the criteria which must be complied with whereby an individual with a genuine rural housing need seeks to build his/her first home for permanent occupancy. These include the following

- a) Farmers, son/daughters who wish to build a first home for their permanent occupation on the family farm.
- b) A person taking over the ownership/running of a farm on a full-time basis who wishes to build a first home for permanent occupancy.
- c) Other persons engaged in full-time farming, forestry or fishing etc. who wish to build their first home for permanent occupancy.
- d) Persons who have spent a substantial part of their lives (i.e. over 7 years) living in the local rural area and want to build their first home for permanent occupancy.
- e) Returning emigrants who spent a substantial period of their lives (i.e. over 7 years) living in the local rural area in which they propose to build a first home for their permanent occupation, who now wish to return to reside near other immediate family members, to care for elderly immediate family members, to work locally, or to retire.

RCI 5-8 – Greenbelts and Settlements – Retain the identity of towns, prevent urban sprawl and reserve the use as agriculture, open space or recreation. At para. 4.5.12 it is stated that the lands within a green belt will generally be reserved for

agriculture, open space and recreation uses and that exceptions to this will only be allowed in the case of an individual who can demonstrate a genuine rural housing generated need based on their social and/or economic links to a particular rural area in accordance with RCI 4-2.

RCI 7-3 – Small Scale Rural Businesses/Tourism – encourage the development of small-scale rural businesses and tourism in rural areas.

EE-9-1 – Business Development in Rural Areas – to be encouraged where the scale and nature of the development is appropriate to its surroundings, it will enhance the strength and diversity of the local rural economy, the landscape will not be adversely affected, the road network can accommodate the extra demand and safe access to the public road can be achieved.

TM 3-3 – ensure all new vehicular accesses are designed to appropriate standards to ensure the safety of other road users.

RCI 6-1 – Design and Landscaping of New Dwelling Houses in Rural Areas

- (a) Encourage design that respects character, pattern and tradition of existing places, materials and built forms and that fit appropriately into the landscape.
- (b) Promote sustainable approaches to design – energy efficient in design, layout and siting.
- (c) Require appropriate landscaping and screen planting with mainly indigenous /local species and groupings.

GI-6-1 Landscape

- (a) Protect the visual and scenic amenities of County Cork’s built and natural environment.
- (b) Landscape issues – important factor in all land-use proposals
- (c) Ensure new development meets high standards of siting and design.
- (d) Protect skylines and ridge lines for development
- (e) Discourage development requiring the removal of extensive amounts of trees, hedgerows and historic walls or other distinctive boundary treatments.

5.3. West Cork Municipal District Local Area Plan 2017

Castletownbere is designated as a Main town in the West Cork Municipal District LAP. The site is located approx. 3-4km to the south of the town, within the town Green Belt.

5.4. Natural Heritage Designations

Beara Peninsula SPA (004155)

Kenmare River SAC (002158)

6.0 The Appeal

6.1. Grounds of Appeal

The first-party appeal was submitted by the applicants' solicitors. The main points raised may be summarised as follows:

- **Background** – the applicant and his family moved to the area in 2014. The family relocated to Castletownbere from the U.K. because Mrs. Rodgers has three sisters who all reside and work in the local area along with their respective families, and have done so for 15 years. Mrs. Rodgers' mother has also relocated to the area. They purchased the appeal site in June 2014 and it is their intention to complete the house and live there with their daughter, who has Asperger's syndrome. This is their only home. Their daughter is currently sitting the leaving cert and in order to facilitate her studies and provide her with a peaceful environment, the applicants completed one room on the first floor of the house, whilst they continue to reside in the mobile home. Since the purchase of the property, they have been unable to complete it due to a failure to source suitable alternative commercial premises for his workshop and to earn sufficient income to complete the dwelling house. If permission is refused, they will become homeless, as all of their finances have been invested in the property.
- **Greenbelt house** – The applicants have resided at the property for 5 years and intend to operate their business from the area, their daughter attends a local

secondary school and they have family living in the area for the last 15 years. On this basis, they have developed sufficient local ties to the community and clearly meet a housing need as they have no other property. Thus, they comply with paragraph (d) of RCI 4-2. Had the dwelling been completed by the original applicant, the applicants would have been entitled to purchase and reside in it today. The applicants should qualify for a relaxation of the stricter greenbelt policy (RCI 5-8) as they have lived on the property for 5 years.

- **Free movement of people** – continuing to apply the residency clause in the 05/1317 permission would unlawfully discriminate against the applicants in terms of Article 43 (Free Movement of Persons) of the Treaty of the Functioning European Union
- **Site entrance** – in the consideration of the original permission (05/1317), the Area Engineer had requested that the applicant consider a right-of-way over the existing access track (to south) instead of that proposed (to the north) in the interests of road safety and to keep the number of entrances to a minimum. In the meantime, the current applicants have secured a right-of-way of the southern access track. It is submitted that the proposed entrance complies with policies TM3-3 and EE9-1 and that any visibility issues can be addressed by means of condition.
- **Mobile home** – The mobile home is only an option as temporary accommodation as the applicants cannot afford to rent/buy alternative accommodation until the house is completed. Should permission be granted, the applicants will undertake to complete the dwelling house within six months and thereafter remove the mobile home. It cannot be seen from any public place and the third-party objectors indicated that they would be satisfied if it were to be removed within one year.
- **Log store** – the log store is for storage of fire wood. The applicants would be happy to reduce the size of it if deemed necessary.
- **Stable/Feed store** – the appeal site comprises in excess of 1.8ha of mainly agricultural land. The stable/shed is required for the storage of food stuffs etc. for the proper husbandry of horses, which are kept for recreational purposes. It has an area of 68sq.m and cannot be seen from the public road. The P.A.'s

position that the stable is within the original planning site boundaries, and as such cannot be considered as exempted development as an agricultural building, it is submitted that it is used solely for agricultural purposes.

- **Workshop** – Policy objective CS 4-4 of the Cork County Development Plan, at paragraph (c), new investment and employment is encouraged. The workshop is to be used for the small-scale family business which sources its materials locally and contributes to the local economy. In addition, policy objectives RCI 7-3 and RCI 4-7 encourage small businesses such as this and facilitates the housing need of persons who commit to operating full time from their home in the area.

6.2. Planning Authority Response

The P.A. responded to the grounds of appeal on the 25th April 2019. This submission primarily reiterates the reasons for refusing the application. Reference was made however, to a recent Board decision near Castletownbere, Ref. ABP302568-18. It is noted that notwithstanding the Inspector's recommendation of a grant of permission for a new house in the greenbelt, (for an applicant which the Inspector noted had "a strong association with the area"), the Board decided to refuse permission on the basis that the applicant is currently employed in the urban area of Castletownbere. It was submitted that consistency in the application of policy would be appropriate.

7.0 Assessment

7.1. It is considered that the main issues arising from the appeal are as follows:-

- Principle of development
- Impact on visual and residential amenities
- Retention of unauthorised structures and uses on site
- Road safety and access; and
- Effluent treatment and disposal.

7.2. Principle of development

- 7.2.1.** The site lies within a designated greenbelt around Castletownbere, wherein the settlement policy is very restrictive. The main thrust of the P.A. refusal on this ground was based on the view that this represents urban generated housing and on the absence of demonstrable sustained local rural ties, as the applicants are from the U.K. The fact that there is a substantially complete house on the site, which it is proposed to retain and complete, was noted but disregarded given that the original permission for the house was only granted on the basis that it was intended for occupation by a local person who had demonstrated a rural generated housing need in 2005. The P.A. was adamant that the rural settlement and greenbelt policies cannot be undermined by a proposal such as this, as it would set a precedent for unfinished houses which have been permitted with restrictive occupancy clauses and are then sold to non-local people with no genuine rural housing need in the local area.
- 7.2.2.** I would agree with the P.A. that there is a need for consistent decision making such that these important settlement policies are not undermined in this way. However, it is considered that there are a number of particular circumstances associated with the assessment of the current proposal which need to be addressed. Firstly, the permission was granted in 2005, which is fourteen years ago, and the house has remained on the site in its current unfinished state for a considerable period of time. Secondly, had the original applicant finished the interior and occupied the dwelling, it would have been within the terms of that planning permission for him to have sold it to a non-local after 5 years. Thirdly, the current proposal relates to a much larger and more complex development than the original proposal. The site is more than six times larger (0.28ha compared with 1.82ha) and the current proposal could be described as a small-scale business/rural enterprise development which also incorporates the existing unfinished dwelling house.
- 7.2.3.** It is noted that the planning principles for the greenbelt (4.5.9 of the CDP) seek to maintain the distinction between the character of urban and rural areas by preventing sprawl and the merging of individual settlements; the strategic protection of land that may be required in the future; the retention of land in agricultural/open space/recreational use; and to focus attention on the lands within the settlement that

are zoned for development. The NPF (text associated with Obj. 19) draws a distinction between on the one hand, rural areas located within the commuter catchment of the five cities and largest towns and centres of employment in the country and, on the other hand, rural areas located outside these catchments. A more flexible approach is advocated for rural housing in areas that are not subject to urban development pressure.

- 7.2.4.** Castletownbere is a small town (c. 1,000 population) which is in a very remote area, being c.50km from the nearest town of Bantry and 125km (2hour drive) from Cork City. There are no other towns on the Beara peninsula. The greenbelt around Castletownbere would not have the same level of urban generated pressure as the greenbelts around Cork City or some of the larger towns closer to the city, or even around Bantry. It is considered that the location of the site in a relatively remote rural area 3km from the town, on a rural cul-de-sac road, means that the proposal would not threaten to erode the distinction between the urban and rural character of the area and the agricultural/recreational/open space element of the proposed use would also satisfy that principle.
- 7.2.5.** The settlement policy requires a demonstrable rural generated housing need based on social and economic links with the particular area. The applicant has argued that the fact that he and his family have lived and worked from the site and his daughter has attended school in the area for five years, and that they have extended family in the vicinity, means that they have developed strong local social and economic ties with the community. I note from the history file (05/1317) that that applicant was a nephew of the then landowner, but that his employment at the time consisted of bar work in Castletownbere, Bantry and Allihies. The applicants clearly intend to work and live on the site, with a small workshop to accommodate an existing established business, together with the stable and associated grazing land for the keeping of four horses for recreational use. It is considered that the current proposal is more of a life-style plot which seeks to combine a residential use of an existing (albeit unfinished) house with agricultural based hobbies and a commercial workshop.
- 7.2.6.** The applicant has advised that it is very difficult to find a commercial unit to rent in Castletownbere, which was also cited by the applicant in a similar application for a small-scale workshop near the appeal site (PL88.236570). It is further noted that in that permission, the Board had considered that the proposed workshop would be in

accordance with the green belt designation and attached a condition restricting its use to a commercial workshop ancillary to the family business and to the occupation of the residential dwelling on the site. I also noted that the NPF Policy Objective 21 supports innovation in rural economic development and enterprise through diversification of the rural economy. It is stated that the development of a strong enterprise culture is central to the economic and societal vibrancy of rural communities and micro-enterprises (less than 10 employees) are particularly relevant to the sustainability of smaller towns and rural areas.

7.2.7. Although the CDP settlement policy for the area is restrictive, the policy relating to the rural economy (Chapter 6 CDP) is quite supportive of small-scale businesses, such as EE 9-1, and this is also reflected in Policy RCI 7-3 which encourages small-scale rural businesses. Policy EE 9-1 encourages businesses where the scale and nature is appropriate to the rural area, where it would enhance the strength and diversity of the local economy, where the landscape would not be adversely affected and where the road network can accommodate the extra traffic and safe access can be provided. It is noted that the applicant sources the materials for his business locally, utilises a local forge for ironworks and intends to employ one employee in the future. It is considered that the proposed workshop would generally be in compliance with this policy subject to ensuring that any noise nuisance is controlled and that access issues are resolved. These matters will be addressed in the following sections.

7.2.8. In conclusion, it is considered that the nature and scale of the proposed development, comprising a workshop, a stable and associated pasture lands and a house, (which had previously been permitted albeit subject to a restrictive occupancy clause which has not been fully complied with), in which the applicant intends to reside as his sole family residence and from which he intends to operate his business, is appropriate in this rural location. It is similar to that permitted by the Board under 236570, the main difference being the non-compliance with the occupancy clause. However, it is considered that the current proposal differs significantly from the permission previously granted for a house at the site, having regard to the length of time that has passed since the permission was granted and the house was constructed (c.14 years), to the fact that the current application site is substantially larger than that of the original permission, and that it is now proposed to

resolve the unsatisfactory situation of the incomplete dwelling in conjunction with the construction of a workshop and to retain the majority of the site in agricultural use.

- 7.2.9.** On balance, having regard to the time that has elapsed since the first permission for the house (which has since lain vacant and disused), it is considered that the completion and occupation of the dwelling, together with the ancillary workshop and stable would be consistent with the policy favouring small scale rural enterprise and would not be entirely inconsistent with the settlement policy, having regard to the applicant's local ties, socially and economically, to the community. As such, I consider that should the Board be minded to grant permission for the proposed development in this instance, it would not undermine the rural settlement policy as it applies to the green belt in this area, as the circumstances are relatively unique to this site/application.

7.3. Visual and residential amenities

- 7.3.1.** The site is very well screened from the road and from all adjoining properties. The house is set back c.121m, the stable c.100m and the mobile home c.65m from the public road. The only structure visible from the road is the first floor of the dormer bungalow. Neither the stable nor the mobile home are visible from outside the site and the log store is nestled into vegetation on the southern boundary. The site of the workshop is hidden behind the dwelling house and would not be visible from outside the site. The proposed development would not adversely affect the visual amenities of the area. However, in the event that the Board is minded to grant permission, the mobile home should be required to be removed from the site as it is likely to deteriorate over time and is a mobile structure.
- 7.3.2.** The activity that would be carried on from the proposed workshop (42sq.m) is the construction of shepherd's huts. This essentially involves carpentry and joinery with the assembly of the finished units. These items are described in correspondence on file as being "timber framed and hand made to order and unique to each client....combine the aesthetics of the traditional hut with their cast iron wheels and curved roof but with modern construction methods." The metal towing yoke, turntable and cast iron wheels are made at a local forge. The dimensions of a hut are given as 3.6m long, 2.3m wide and 3.1m high. It is stated in the grounds of appeal that all materials are sourced locally, are constructed on demand and are only available for

viewing on line. Clients are directed to existing previously constructed huts to view a finished product, which minimises the number of visitors.

7.3.3. The main concern in terms of impact on residential amenity is the potential noise levels emanating from the activity. The letter from the applicant (received by P.A. on 19/2/19) indicated that the loudest piece of equipment is a nail gun with a sound level of 85dB but given the distance of the proposed workshop from the neighbouring dwelling, (estimated to be c. 73m), it was considered that this would reduce to c.50dB at the adjacent dwelling (using the inverse square law for sound). I note that in the case of the permitted commercial workshop (236570), the Inspector had considered that a noise level of 55dB(A) measured at the neighbouring dwelling (which was at a similar distance) would be appropriate, on the basis that the type of activities are consistent with the type of activities which would be typical within an active farmyard, and as such consistent with rural life, subject to strictly limiting the scale of works and the time of activities to within normal working hours. The Board agreed.

7.3.4. The applicants have indicated that they would be willing to accept a noise restriction of 60dB at the nearest dwelling. However, it is generally accepted that 55dB(A) is an acceptable noise level during normal working hours and such a restriction would be consistent with the recent permission for a workshop to the north. It is considered that normal working hours should not exceed 0800-19.00 Monday to Friday and 0800-1400 on Saturdays. It is considered that with such mitigation, the proposed workshop would not be likely to give rise to any undue adverse impact on residential amenity. Should the Board be minded to grant permission, appropriately worded conditions restricting the noise levels and working hours should be attached to any such permission.

7.4. Retention of unauthorised structures and uses on site

7.4.1. A grant of permission for the retention and completion of the house and for the construction of the workshop would obviate the need for the mobile home on the site. It would also address the unauthorised workshop being conducted from the house. It is accepted, however, that the workshop on the ground floor could be partially required for the completing and finishing works on the house. It was noted that the first floor was partially occupied by the applicant's daughter as a study/bedroom with

a bathroom. The applicant has indicated a willingness to undertake to complete the dwelling within six months and to remove the mobile home thereafter. I note that a similar situation had existed in respect of 236570 and that in that case, the Board had attached a condition requiring the caravan and other structures to be removed from the site within 6 months of the date of the order. The log store is a small open woodshed which the P.A. has accepted falls within the Exempted Development requirements for an outbuilding, and its retention is acceptable.

7.4.2. It is considered that the retention of the mobile home for a further 12 months is reasonable to facilitate the finalisation of works on the house to enable occupation as a residence and to construct the workshop. Should the Board be minded to grant permission, therefore, a condition requiring the cessation of the use of the house as a workshop and the storing of the mobile home on the site should be attached to any such permission.

7.4.3. The stable/feed store has a stated floor area of c.68sq.m, with a ridge height of 3.25m. The scale and nature of the building would generally come within the exempted development requirements for Class 6 (Part 3, Schedule 2 of the PDR 2001), but would not comply with some of the conditions and limitations, namely Conditions 3, 6 and 7. Insufficient information has been provided to determine whether the effluent storage facilities are in accordance with Dept. of Agriculture requirements, the shed is situated within 100m of a third party dwelling and the roof is of corrugated metal. However, the Environment Section of the P.A. has confirmed that the structure and associated landholding is of a sufficient size to accommodate 4 horses but noted that it will be required to comply with Dept. of Agriculture 'Specification S156 Jan 2016:Minimum Specification for Horse Facilities and Fencing'. It was further stated that if a separate manure storage area is to be constructed, it would have to comply with Dept. of Agric. 'S108 Aug 07 Minimum Specification for Manure Pits and Dungsteads'. The facility will also have to comply with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2017, (otherwise known as the Nitrate Regulations).

7.4.4. It is considered that provided that the management, collection, storage and disposal of effluent, including manure, soiled water and soiled bedding is in accordance with the requirements of the Dept. of Agriculture, specifications and the Nitrates Regulations as referred to above, the proposal to retain a stable/feed store in this

location is considered to be appropriate given the size and location of the site and the nature and scale of the proposed use of the structure. Should the Board be minded to grant permission, it is considered that appropriately worded conditions to this effect should be attached to any such permission.

7.5. Road safety and access

- 7.5.1.** The road serving the site is a narrow, winding and substandard local road which is challenged in terms of both vertical and horizontal alignment. However, it is a cul-de-sac road which serves a handful of dwellings and farms and a Coillte forest. It is therefore very lightly trafficked and the traffic would be predominantly for private access. The P.A. had noted that the original permission for the house on the site had included new proposed entrance/access from the north with a r.o.w. alongside the northern boundary of the site, whereas the current proposal is for access along an existing track with a r.o.w. alongside the southern boundary. The P.A. considered that any access to the site should be as previously permitted. The first party, however, has submitted that the current proposal represents an improvement over the original permission in that the number of entrances has been minimised, as requested by the P.A. at the time of the permission.
- 7.5.2.** It is noted from the history file (05/1317) that the applicant at that time could not secure a right of way over the existing track to the south (as requested by the P.A. engineer in order to minimise the number of access points on the road), and as such, his uncle (the then landowner) had agreed to provide a r.o.w over his land to enable a new entrance to be provided to the north. As the lands have since changed ownership and the applicant has secured a r.o.w. (copy on file) along the existing track to the south, in order to comply with the P.A. requirement, the applicant would have to provide a northern accessway within his landholding. I note from the submitted plans that this would require relocation of the stable/store. It would also result in a third entrance within 20 metres.
- 7.5.3.** The existing access point is substandard with poor visibility, particularly to the south and is in very close proximity to the entrance to the B & B. As noted above, the road is generally lightly trafficked apart from any traffic associated with the Coillte Forest, which would probably be infrequent, vehicles related to private houses and farm activity. The applicant has advised that the shepherd's hut business would attract

very few customers as each hut is constructed over a couple of months for one individual customer at a time, and that the business is essentially conducted on line. The delivery of materials and the removal of the completed hut would be infrequent events.

- 7.5.4.** It is acknowledged that the new entrance (as permitted) would have afforded the opportunity to provide a recessed entrance, which would have provided for better sightlines. Although improved sightlines can be provided at the entrance to be retained to the north, it is not possible to the south without the agreement of the adjoining landowners. On balance, it is considered that the provision of an access to a house using an existing access track is slightly more sustainable than the creation of a new access, even though the latter had previously been permitted. The safety issues relating to the restricted sightlines at the proposed entrance can be weighed against the safety issues associated with the introduction of an additional access, which would result in multiple accesses within a 20 metre stretch of the road. Having regard to the above and to the lightly trafficked road, it is considered that the proposed access arrangements are acceptable in this instance.

7.6. Adequacy of waste water treatment proposals

- 7.6.1.** The proposed development is served by an existing septic tank and percolation area, which was granted under 05/1317. I note that the P.A. Area Engineer had requested that details be sought regarding the satisfactory design and installation of the septic tank and percolation area. It is considered however, that these matters were addressed in Condition No. 14 attached to the previous permission.

7.7. Environmental Impact Assessment

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.8. Appropriate Assessment

There are two European sites in the vicinity of the site, which are as follows:

Beara Peninsula SPA (004155) which lies approx. 1km to the south.

Kenmare River SAC (002158) which lies approx. 9km to the west.

Having regard to the nature and scale of the proposed development, the distances from the said designated sites, no Appropriate Assessment issues arise. It is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend that planning permission should be granted for the proposed development for the reasons and considerations set out below.

9.0 Reasons and Considerations

The site is located within lands designated as a greenbelt around Castletownbere in the current Cork County Development Plan 2014. Having regard to :-

- The National Policy Objectives 19 and 21 of the National Planning Framework; the policies and objectives of the Cork County Development Plan 2014 and of the West Cork Municipal District Local Area Plan 2017;
- The planning history of the site whereby planning permission was granted for a house (05/1317) subject to a restrictive occupancy clause, but where the house was not completed or occupied;
- The considerable length of time that has elapsed since the house was permitted and erected, and to the fact that the current proposal seeks to complete and finish the house for occupation as a habitable dwelling;
- The substantially larger site area and the nature and scale of the proposed development including a small workshop, a stable and associated pasture

lands, and the dwelling house in which the applicant intends to reside and from which he intends to operate his business;

- the lightly trafficked nature of the local road and the consolidation of access points by means of the use of the existing entrance and access track leading to the site;

it is considered that subject to compliance with the conditions set out below, the proposed development would be in accordance with the rural settlement and rural job creation objectives of the National Planning Framework and with the development plan designation of the area as a greenbelt, would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted to the board on the 26th day of March 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity

2. The development shall be used solely as a commercial workshop ancillary to a domestic house, with a stable/feed store for recreational use. A change of use or intensification of this use shall not take place without the benefit of

a further planning permission, notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, as amended. The development shall not be separated from the main house by way of sale or letting or otherwise independently used as offices or commercial activities, including the repair and/or storage of motor vehicles, or by any other user apart from the occupiers of the main dwelling house.

Reason: In the interests of orderly development and to safeguard the amenities of the area.

3. (a) The workshop equipment which currently occupies the ground floor of the dwelling house shall be removed in its entirety and the interior of the dwelling house shall be completed and finished for occupation as the applicant's residence within 6 months of the date of this order.
- (b) The existing mobile home shall be removed in its entirety from the site within 12 months of the date of this order.

Reason: In the interests of orderly development.

4. The external walls of the dwelling house shall be finished in a neutral coloured nap plaster render, using colours such as grey or off-white.

Reason: In the interest of visual amenity.

5. The workshop shall not be used for any commercial activity outside the hours of 0800 to 1900 Monday to Friday inclusive and 0800 to 1400 on Saturdays and shall not be used at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: To safeguard the residential amenities of property in the vicinity.

6. No goods, raw materials or waste products shall be placed or stored outside the building, other than in receptacles approved by the planning authority.
Reason: In the interests of public health and the visual amenities of the area.
7. Receptacles for waste shall be provided and available for use at all times on the premises in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of construction works on the workshop.
Reason: in the interest of the amenities of the area.
8. The noise level shall not exceed 55dB(A) rated sound level, as measured at the nearest occupied dwelling. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development of the workshop.
Reason: To protect the amenities of property in the vicinity of the site.
9. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected within the curtilage of the site unless authorised by a further grant of planning permission.
Reason: In the interest of visual amenity.
10. The stable/feed store shall be used only in strict accordance with a management schedule which shall be submitted to and agreed in writing with the planning authority within one month of the date of this order. The management schedule shall be in accordance with the European

Communities (Good Agricultural Practice for Protection of Waters) Regulations 2017 and with Dept. of Agriculture 'Specification S156 Jan 2016 : Minimum Specification for Horse Facilities and Fencing' and shall provide for the following

- (a) Details of the number of horses to be housed.
- (b) The arrangements for the collection, storage and disposal of effluent and soiled bedding.
- (c) Arrangements for the cleansing of the structure.

Reason: In order to avoid pollution and protect residential amenity.

11. Water supply and drainage arrangements for the site, including the disposal of surface and soiled water shall comply with the requirements of the planning authority for such works and services. In this regard –

- (a) Uncontaminated surface water run-off shall be disposed of directly in a sealed system, and
- (b) All soiled waters shall be directed to a storage tank. Drainage details shall be submitted to and agreed in writing with the planning authority, prior to the commencement of development.
- (c) No surface water shall be discharged onto the public road or adjoining properties.

Reason: In the interests of environmental protection and public health.

- 12.
- (a) The entrance gates to the proposed access track serving the development shall be set back not less than four metres and not more than six metres from the edge of the public road. Wing walls forming the entrance shall be splayed at an angle of not less than 45 degrees and shall not exceed one metre in height.
 - (b) The existing front boundary hedge shall be retained except to the extent that its removal is necessary to provide for the entrance to the site.

(c) The access driveway to the proposed development shall be provided with adequately sized pipes and ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interests of traffic safety.

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

Reason: In the interest of visual amenity.

14. The site shall be landscaped, using only indigenous deciduous plants and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

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

matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under Section 48 of the Act be applied to the permission.

Mary Kennelly
Planning Inspector

13th June 2019