



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309923-21

<b>Development</b>	Construction of a house, mechanical treatment unit, polishing filter, access and all associated site works.
<b>Location</b>	Lisnakealwee, Brandon, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	20628
<b>Applicant(s)</b>	John & Anna Lyne
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission with conditions
<b>Type of Appeals</b>	Third Party
<b>Appellant(s)</b>	(1) Tom & Nora Brick (2) Brendan Murphy & Deirdre O Sullivan
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	28 <sup>th</sup> June 2021.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. This appeal relates to a greenfield site located on the western side of the R550 on the southwestern approach to the village of Cé Bhréanainn or Bréanainn (Brandon) a Gaeltacht village on the northern coast of the Dingle Peninsula in County Kerry. The village which lies west of Brandon Bay is circa 11km north-east of An Daingean and 40km west of Tralee. The traditional settlement pattern within the village is characterised by small groupings of buildings facing the sea with a nucleus of development around the pier area and more ribbon development along the approach roads.
- 1.2. The initial appeal site had a stated area of 1ha which was reduced to .44hetares during the course of the application in response to a request for additional information by the council. The roadside boundary is defined by a grass verge with a fenced sod and stone ditch, inside which a drain / stream flows which then crosses the regional road at the north-eastern extremity of the site by way of a piped culvert. The site is within 50m of the foreshore to the east. There are also a number of open drainage ditches running through the site with considerable reed growth also evident. Adjacent to the north-east of the site close to the road frontage is a derelict dwelling which is heavily overgrown and includes large mature roadside hedgerows. There are ESB and Eir service poles located along the roadside boundary and crossing the site. An established two storey dwelling to the south, and two dwellings opposite to the east.

## 2.0 Proposed Development

- 2.1. The application involves permission to construct (a) a single storey dwelling serviced by a mechanical treatment unit and polishing filter. (b) Vehicular entrance, (c) All associated site works.
- 2.2. The proposed dwelling extends to 209sq.m broken up into three main interlinked wings and provides for four bedrooms. The dwelling is set back circa 30m from the road edge. During the course of the application the site boundary was revised reducing the site from 1ha to .44ha and the location of the proposed entrance was revised from the initial proposal to use the existing field entrance to provide for a new entrance towards the northern extremity of the appeal site frontage.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. By order dated 19<sup>th</sup> March 2021 Kerry County Council issued notification of the decision to grant permission subject to 17 conditions including the following of particular note:

Condition 2 Development Contribution €3,180

Condition 3. Permanent occupancy. Section 47 agreement.

Condition 4. Use as primary permanent all year-round private residence and shall not be used as a holiday home or second home.

Condition 14 All recommendations of the road safety audit to be implemented in full.

Condition 15. Prior to commencement of development, the developer shall agree all arrangements in relation to the piping of open drain behind the existing roadside boundary fence with the Area Roads Engineer.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

3.2.1.1 Planner's initial report outlines concern regarding visual impact and noted the need for clarification regarding the intended occupancy/ permanent residency. A request for additional information issued seeking a number of detailed matters including the following:

- Confirmation of the erection of sight poles to represent the proposed ridge roof height A contiguous elevation of the proposed development.
- Documentary evidence to demonstrate that the proposal would be full time permanent residence.
- Results of Archaeological testing given the size of the site,
- Sight distance to be demonstrated.
- Section drawings of proposed effluent treatment system and demonstration of relevant separation distance in accordance with the EPA Code of Practice.

3.2.1.2 Following the initial response a request for clarification of further information sought clarity on site boundaries given the discrepancy with regard to the site extent on various submitted plans. Detailed proposals were sought with respect to the treatment of the roadside drain. Confirmation was also requested on the of the extent and nature of the works to be carried out on third party lands to the north of the site to provide for the requisite sightlines. Proposals for boundary fencing and landscaping to be outlined. Further documentation with regard to occupancy arrangements was also requested. Final Planner's report recommends permission subject to conditions consistent with the subsequent decision.

### 3.2.2. Other Technical Reports

County Archaeologist. No recorded monuments in proximity however given the scale of the development pre-development archaeological testing should be carried out and report submitted as further information. Following reduction in site size to .44 hectares the second report indicates no archaeological mitigation required.

Initial report of Site Assessment Unit sought further information to include picture evidence of T and P test, Section drawings of the effluent treatment system, and relevant separation distances to be outlined including confirmation of relevant separation distance from the foreshore is in accordance with the EPA Code of Practice. Final report indicates - no objection to permission subject to conditions.

Roads Transportation and Marine Directorate (Area Engineer's) report . All road safety audit recommendations to be implemented in full. Works adjacent to public road shall not affect the surface water drainage and no surface water within the development shall be allowed to flow onto the public road. Applicant is to maintain the height of vegetation growth on the adjacent property as indicated. Appropriate measures to prevent material being drawn from the site onto the public road. Vehicles associated with the construction to be parked within the site.

### 3.3. **Prescribed Bodies**

3.3.1 Irish Water no objection subject to connection agreement and subject to capacity requirements and Irish Water code of practice.

### 3.4. Third Party Observations

- 3.4.1 Submission from Tom and Nora Brick, Lisnakealwee, Brandon. (Dwelling directly opposite to the east of the site) outlines objection to the proposal on a number of grounds. Appeal field is extremely wet with run off resulting in significant water coming onto the public road and flooding of their property on several occasions. Concerns arise regarding increased flooding. Traffic hazard arises given location on a bend. Second submission notes upset caused by the erection of ridge poles. Proposal will give rise to overshadowing and overlooking and negative impact on view. Appellant's dwelling has been flooded four times since 1986 and most recently on 11<sup>th</sup> January 2020 flooding was narrowly averted. Concern arises that the proposed clearance of the roadside ditch will result in additional flooding. Wastewater treatment system gives rise to risk of pollution. Subsequent submission supported by site photos reiterated concerns regarding loss of light and privacy. Concerns that drainage works within the field were installed to aid mechanical treatment system.
- 3.4.2 Mary Tarry, Brandon initial objection to the proposal was subsequently withdrawn.
- 3.4.3 Submission from Brendan Murphy and Deirdre O Sullivan, Lower Teer Brandon. Question the intention for full time residence. Note difficulty for local people to obtain planning permission. Third party rights of participation were compromised by delayed display of public notices. Adequacy of entrance sightline is questioned. Scope of works outside the site boundary questioned in relation to the removal and setting back of roadside boundary to the north. Note that more suitable alternative sites are available within the landholding. Safety issues arising from stream. Ridge poles erected on site are misleading with regard to development. Open drain extends for the full length of the field outside the site boundary. Revised siting in response to further information unclear. Removal of hedgerow contrary to design advice. Subsequent submission notes that the trial hole on border of site and second outside the site boundary and mechanical treatment system not located as per site assessment report and given location in relation to piped open drain the risk of pollution is significant. Minimal works are proposed in terms of setback of road boundary to the north will not be sufficient in providing required sightlines. Flood risk assessment required.

## 4.0 Planning History

No planning history on the appeal site.

**06/4192** Previous application by the applicant on a site to the north of the village withdrawn prior to determination.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1 The Kerry County Development Plan 2015-2021 and East Dingle Peninsula Local Area Plan refer.

The site is outside the settlement boundary for Cé Bhréanainn as defined within the local area plan and is within an area zoned rural general and structurally weak rural area.

Rural Housing It is an objective of the Council to:-

RS-1 Ensure that future housing in all rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities 2005 (DoEHLG) and the Development Guidance document of this Plan.

RS-2 Require the design of rural housing to have regard to the “Building a House in Rural Kerry; Design Guidelines” (KCC, 2009).

RS-3 Give favourable consideration to the sustainable development of permanent places of residence on vacant sites within existing cluster developments.

RS-4 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.

RS-5 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). RS-6 Ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence. In addition, such development shall be subject to the inclusion of an occupancy clause for a period of 7 years.

Structurally Weaker Areas It is an objective of the Council to:- RS-12 Accommodate demand for permanent residential development as it arises subject to good sustainable planning practice in matters such as design, location, wastewater treatment and the protection of important landscapes and environmentally sensitive areas.

## **5.2. Natural Heritage Designations**

5.2.1 The site is not within a designated area.

- The Mount Brandon SAC is located within 800m to the west of the site.
- Tralee Bay and Magharees Peninsula, West To Cloghane SAC within 1km to the southeast.
- Dingle Peninsula SPA occurs within 1.3km to the north of the site.

## **5.3. EIA Screening**

5.3.1 Having regard to the nature, size and location of the proposed development and the sensitivities of the site location, there is no real likelihood of significant effects on the environment and on preliminary examination an environmental impact assessment report for the proposed development is not necessary in this case.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1 There are two third party appeals by established local residents. The first is appeal submitted by Ger O Keefe Consulting Engineers on behalf of Tom and Nora Brick, Lisnakealwee, Brandon Co Kerry. The Second appeal is submitted by Brendan Murphy and Deirdre O Sullivan, Lower Teer, Brandon. Grounds of appeal which

include a number of enclosures including site photographs. raise common issues which in the interest of brevity I have summarised as follows:

- Scenic location and proximity to the village should be protected.
- Pre-planning discussions not fully documented on file.
- Documentary evidence with regard to employment and future occupancy not given.
- Site outside 50kph speed limit therefore the sightlines should be as per 80kph zone. Available sightlines are extremely restricted.
- Alternative road frontage available on the landholding north of the site.
- Site characterisation form notes 16 houses within 250m resulting in a proliferation of treatment systems in proximity to the foreshore.
- Site is prone to flooding. Watercourse on the southern boundary is a river rather than a stream.
- Due to high intensity rainfall and the substantial catchment the culvert under the road is regularly incapable of taking the water and any overflow is contained within the sod banks existing on the site. Implications of removal of sod and stone ditch will be significant.
- Flood study and catchment area study should have been carried out. Site layout inaccurate with regard to the east west watercourse.
- Percolation test carried out at time of year when water table would be low, 27<sup>th</sup> May 2020 extremely dry period.
- There are 3 drains running east west with two outlets under the road.
- Overlooking and loss of privacy. Development will be located on elevated part of the site and will be obtrusive in the skyline. Design and orientation out of character scale excessive.
- Arrangements with regard to set back of boundary to the north unclear. Letter from adjoining landowner unclear. Railing over wall to the south. Ability to maintain sightlines questioned.



- Kerry County Council failed to take account of third-party submissions. Late display / publication of notices and notification of decision compromised third party rights. Planning report documents were not made available until two weeks after the decision.
- Sight poles erected on site misleading to the public.
- No consideration the applicant's Irish language and impact on Gaeltacht.

## 6.2. Applicant Response

6.2.1 The first party response is summarised as follows:

- Reiterate commitment to return to Ireland permanently.
- Site is immediately adjacent to the settlement boundary and speed limit.
- Applicant is native Irish speaker.
- Floor area of the dwelling is 209 sq.m with ridge height of 5.22m. (relative to Murphy house 6.5m). Ridge height of 104.97 relative to 103.93 Tom and Nora Brick which is 38m away on the opposite side of the road.
- Proposal is immediately adjacent to the village speed limit.
- Traffic audit confirms sightlines.
- No overlooking. Appellants house fronts onto roadway with amenity to rear.
- Main reason for objection is view.
- Water flow is seasonal. Applicant has only had the property since July 2016 and since then has made 3 defined remediations to the drainage, both the temporary east west drain and permanent while the property was in probate to maintain waterflow, maintain open access to runoff and to accommodate waterflow to the south boundary.
- Kerry County council was accommodated in discharging road drainage water to field and in redesigning the road boundary for the benefit of all road users

and the property opposite. Significant water flows down the public road from the Cloghane side.

- Applicant working from home since 2004.
- Emigration is a fact of life for the Cloghane Brandon area and the applicant entitled to return to village where he was born.
- Letter attached from CHr Hanesen Ireland Ltd. confirms that the applicant has been working for CHr Hansen in remote capacity since 2004. Ability to relocate to Brandon is in line with Chr Hanesen policy and best practices.

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

6.3.1 The Planning Authority response is summarised as follows:

- Submissions from the first party state that the proposed dwelling would be used as permanent place of residence.
- Site is outside the settlement boundary of Brandon in an area zoned rural general and designated as a structurally weaker area which has exhibited population decline. It is an objective of the council to accommodate demand for permanent residential development subject to sustainable development practice.
- Based on the details provided the site suitable for effluent treatment.
- Area Engineer is satisfied with proposals as per road safety audit.
- As regards residential amenity having regard to the siting of the proposed house it is considered that the residential amenities of existing development will not be impacted due to overshadowing or overlooking.
- Regarding visual impact the proposal will not be visible when approaching from the north. Having regard to design and siting and mitigation effect of landscaping the proposal will be integrated into the landscape.

## 7.0 Assessment

This appeal can in my view be addressed under the following broad headings:

- Procedural Issues
- Principle of Development - Occupancy Housing Need
- Design and Layout
- Traffic
- Servicing and Flooding
- Appropriate Assessment Screening

### 8.2 Procedural Issues

**8.2.1** I note that the third-party appellants raised concerns with regard to the alteration of the nature of the development, including most notably the site extent, during the course of the application to the local authority, the timing of publication or display of public notices, the timeliness of notification of third parties of the decision by the local authority and the delayed availability of documentation of planner's reports online. I cannot verify the facts in relation to these issues however I note in any case that such procedural matters are not matters for the Board in terms of the appeal but rather are the preserve of the courts. I note from the extensive submissions of the third-party appellants with respect to the proposal as modified during the course of

the application it is evident that third parties exercised their rights in terms of participation in the planning application process.

### **8.3 Principle of Development Occupancy / Housing Need**

8.3.1 On the question of the principle of development, I note that the appeal site falls just outside the settlement boundary for Cé Bhréanainn as defined within the East Dingle Peninsula Settlements Local Area Plan and within an area designated as Structurally Weaker Area. Within structurally weaker areas it is the policy of the Planning Authority RS-12 to accommodate demand for permanent residential development as it arises subject to good sustainable planning practice in matters such as design, location, waste-water treatment and the protection of important landscapes and environmentally sensitive areas. Regarding the conflict with the defined settlement boundary and the potential for dilution of same I consider that given the character of the established pattern of development in the vicinity and the nature and size of the appeal site, a dwelling could be accommodated in visual terms on the site subject to normal proper planning considerations.

8.2.2 Regarding details of intended occupancy I note that the first party outlines that the proposed dwelling is intended to serve as a place of permanent residence on return to Ireland and the applicant's place of birth. The Planning Authority accepted the bona fides of this case and I consider that based on the submitted details a local housing need has been demonstrated. Therefore, I consider it is appropriate to proceed to assess the case in its detail on its planning merits.

### **8.3 Design, Layout and impact on established residential amenity.**

8.3.1 I note the dwelling design is a single storey structure. The dwelling extends to 209 sq.m and is broken up into three interlinked wings. The proposed dwelling provides for a good standard of residential amenity. As regards impact on established residential amenity, given the separation distance to adjacent dwellings I consider

that no undue negative impacts arises. The dwelling is set back in excess of 36m from the adjacent dwelling opposite to the southeast and 48m from the adjacent dwelling to the southeast. Finished floor level is 99.75 relative to dwelling opposite 98.73. In my view the proposed dwelling could be accommodated on site without any significant negative visual impacts. Given the separation distance to established dwellings undue overlooking and overshadowing does not arise.

## **8.4 Traffic**

8.4.1 I note the road safety audit completed by C Lonergan Consultancy Ltd submitted in response to the request for additional information. The site entrance is within the 80kph speed limit while the 50kph speed limit occurs within 12m to the north-east of the site frontage. The section of road is narrow with only yellow road edge lining with surface road width varying between 4.5m (at southeast corner) 4.2m at the entrance and 3.6m at the 50kph speed limit signs. Road frontage has a grass verge (c1.2m) with sod and stone ditch and timber post and wire fencing. Ambient speed was found to be 35-45kph for vehicles travelling south through the 50kph speed limit from the village and 50-60kph for vehicles travelling north towards the village through the 80kph speed limit. A maximum 65kph was recorded for a single vehicle travelling north through the village. Following the RSA recommendation, the initial proposal to use the existing agricultural entrance was revised with new entrance located 16.5m northeast of the existing entrance to increase the available sightlines particularly to the southwest. In terms of sightlines the revised proposal provides for 70 linear metres north and 110 linear metres to the south. Further recommendations include the lowering of the roadside sod and stone ditch and fencing over the field boundary to achieve sightlines. I note that the recommendation to provide for works to the roadside boundary on third party lands to the north. I note that the letter from the adjoining landowner indicates agreement to carrying out works to the road boundary ditch however this was submitted prior to the specific detailing of the necessary works. I consider that the proposal can achieve adequate sightlines and the proposal is generally acceptable from a traffic safety perspective.

## 8.5 Servicing and Flooding

8.5.1 There is no public waste-water treatment facility in the village of Cé Bhréannainn and existing dwellings are served by individual septic tanks. I note that the East Dingle Peninsula Settlements Local Area Plan notes the preparation of a preliminary report for a treatment plant for the village. The village is served by a public water mains supply and connection to same is proposed. As regards wastewater it is proposed to provide an on-site wastewater treatment system to serve the proposed dwelling. The site characterisation form notes approximately 16 houses within 250m of the site. The stream / watercourse to the southern boundary of the site is noted with drainage ditches through the site and beach lies within 50m to the east. Within the trial hole excavated to a depth of 2.4m water table was identified at 2.2m. Bedrock was not encountered. No smearing or mottling was evident in the trial hole. Soil is described as silt topsoil to 0.4m with Silt with occasional cobbles to 1.2m leading to sandy silt. A T value of 35.17 and P test value of 16.44 was noted. It is proposed to provide a treatment unit with polishing filter discharging to groundwater.

8.5.2 I note that the third-party appellants raise concerns with regard to the potential for flooding on site and potential pollution risk arising in the event of floodwater inundation of the wastewater treatment system. Photographs submitted demonstrate substantial waterflow in the east west stream on site which is particularly the case following high intensity rainfall. It is noted that the culvert under the roadway adjacent to the dwelling of the appellants Tom and Nora Brick is regularly incapable of taking the water with overflow contained within the sod banks on the site. I consider that this issue has not been adequately addressed by the first party. I would concur that a site-specific flood risk assessment is required to enable assessment of flood and pollution risk. In the absence of same it cannot be determined that the proposed development would not be prejudicial to public health.

8.5.3 As regards the proposal to culvert the east west stream to the front of the site I would be concerned regarding the negative impact of this work in terms of flood risk, the impact on ecology and impact on amenity. Given the extensive interventions proposed I would be of the view that alternative locations within the landholding

might be considered in terms of a more sympathetic design process and lessening the environmental impact of development. In my view the proposed development has not been justified and therefore refusal is recommended.

## **8.4 Appropriate Assessment Screening**

8.4.1 On the issue of appropriate assessment and in terms of identification of the European Sites which could potentially be affected, I note that Mount Brandon SAC is located circa 0.8km to the north-west of the site and Tralee Bay to Maharees Peninsula West to Cloghane SAC is within 1km to the southeast. Dingle Peninsula SPA is located circa 1.3km to the north of the site. There is no connectivity between the site and Mount Brandon SAC. Having regard to the small scale of the development and separation distance the proposal does not pose a risk of significant effect on the qualifying interests of the Dingle Peninsula SPA. Given the distance across an open water body to the Tralee Bay to Maharees Peninsula West to Cloghane SAC the proposed development does not pose a risk to the qualifying interests of this SAC having regard to the conservation objectives for this site. Therefore, the development can in my view be screened out from the requirement to carry out an NIS.

8.4.2 Having carried out screening for Appropriate assessment of the project it has been concluded that the proposed development individually or in combination with other plans would not be likely to give rise to significant effects on the Tralee Bay to Maharees Peninsula West to Cloghane SAC the Dingle Peninsula SPA or Mount Brandon SAC or any European Site in view of the sites conservation objectives and submission of an NIS is not required.

### **Recommendation**

Refuse permission for the following reasons.

## Reasons and Considerations

1. The retention and creation of features of local biodiversity value, ecological corridors and networks that connect areas of high conservation value such as woodlands, hedgerows, earth banks, watercourses and wetlands is a stated objective of the County Council as expressed in the County Development Plan (Objective NE-32). The proposed development would necessitate the removal of a substantial length of roadside hedgerow in order to achieve adequate sightlines and would also involve the culverting of an existing stream within the site which in combination would seriously damage the ecology, visual amenities and rural character of the area and would conflict with an objective of the development plan, which seeks to conserve and protect such features and with the Guidelines on Sustainable Rural Housing, published by the Department of the Environment, Heritage and Local Government. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the nature of the site including the presence of a watercourse and number of surface water drains crossing the site and in the absence of a flood risk assessment the Board is not satisfied on the basis of the submissions made in connection with the application and the appeal that the site can be drained satisfactorily by means of a septic tank, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

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Bríd Maxwell  
Planning Inspector

9<sup>th</sup> July 2021