



An
Bord
Pleanála

Inspector's Report ABP-312042

Development	Construction of dwellinghouse, tricol wastewater treatment system with polishing filter and ancillary works
Location	Beenbane, Dingle, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	21750
Applicants	Darragh O'Sullivan and Karen Murphy
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellants	1) Edward Leahy 2) Seosamh O'Críodain 3) James and Michael Rayel 4) Hanora Hanafin
Observer(s)	None
Date of Site Inspection	8 th July 2022.
Inspector	Suzanne Kehely

1.0 Site Location and Description

This appeal site of 0.303 ha is adjacent to a rural cluster of housing (clachan/clochan) in an elevated scenic coastal setting overlooking Beenbane Bay – a small sandy cove in the Dingle peninsula. The site is about 850m south off the N86 at a point approximately 2km east of Dingle Town. The road terminates in the form of a widened road/car park from which there is pedestrian access to the beach and to a clifftop walk. It was busy with both walkers and swimmers at time of inspection. The site is a corner site with a convex curved frontage onto the direct access to the beach and a relatively straight frontage onto a loop road which connects back onto the access road off the N86. The houses and buildings are a mix of prominent two storey traditional farmhouses, farm buildings, and newer houses with a total of around 25 dwellings in the vicinity. Other build features include stone buildings ruins and boundary walls.

The site relates to part of a grass field and appears to be for grazing. The site contours range from 21mOD to the southwest to over 28mOD to the North-east. There is a gated access along the western road frontage where the boundary is partly defined by a stone wall which appears to have been set back from the road leaving a grassed embankment. The remainder of the frontage is defined by a hedged embankment.

A submitted map plots the houses and indicates those connected to watermains supply and serviced by septic tank. There are no bored wells or springs in the vicinity.

2.0 Proposed Development

The application involves permission for the construction of a 296sq.m. dwelling house and wastewater treatment system with soil polishing filter. Mains water connection is proposed.

The house is proposed on the eastern side of the site less than 8m off the boundary with farmyard /buildings. The site entrance is in the western side and it is proposed to retain the stone wall to the north while setting back the boundary with a boundary fence to match and provide improved sight lines.

An existing underground piped drain through the site is to be relocated alongside the southern boundary.

The proposed dwelling comprises a series of interconnecting blocks ranging from single storey to two storey and each with a different roof profile and incorporating a mix of rendered and stone finishes. The ground level is also stepped and works involve some cut and fill but the ground retains a slope. The dwelling is of contemporary design with traditional references in window design and other details.

The proposed house extends to around 25.7m in length with a maximum ridge height of 7.56m above ground level. It has stepped roof profile with a 600mm difference range in ridge heights. The parapet heights have a 3000 difference in the front elevation and 4000mm difference storey.

The layout incorporates generously proportioned living space at ground level with a central entrance lobby into a 45 sqm open plan living kitchen area, a large utility and access to steps to a separate 13 sq.m office, 19sqm bedroom with 5.5sqm ensuite at one end and a c. 33 sq.m. living room at the other end. There is a separate front entrance to the office/ensuite bed area. A backdoor is off the utility area.

At first floor level 3 large bedrooms and 3 bathroom and separate wardrobe room are proposed off a 14 sq.m. landing.

The application is accompanied by a site characterisation form and in this the house is stated as having 2 double bedroom and 2 single bedroom with a stated maximum number of 6 residents. The site is described as having favourable conditions for percolation but minimum separation distances are flagged as an issue due to site shape.

The site is recorded as having a T test result of 35.17(min/25mm) and P Test result of 25.78 (min/25mm) indicating that the site is suitable for onsite wastewater treatment with discharge to ground. The site is identified as being in an area classed as LI - locally important aquifer- It is underlain by Devonian sandstones with extreme vulnerability. Groundwater protection Response is R2¹.

There are 11 dwellings served by septic tanks within a 250m radius and is c. 140m from the beach.

It is proposed to install a mechanical aeration unit with pumped discharge followed by a specifically designed polishing filter due the site constraints.

The applicants are both accountants and state that they work from home . One has the employer stated as being in Cor Airport. One of the applicant's is a nephew of the landowner.

3.0 Planning Authority Decision

Decision

3.1.1. Kerry County Council by order dated 4th November 2021 decided to grant permission following the submission of further information and notices as requested on 26th August and 4th October 2021 respectively. This was subject to 17 conditions.

- Condition 3 restricts occupancy (section 47 agreement also required)
- Condition 4 prohibits holiday home use.
- Condition 5 restricts exempted development
- Condition 14 requires specific entrance and front boundary works.
- Condition 17 requires landscaping among other specifications regarding time and species.

Planning Authority Reports

3.2.1. Planning Report: This report notes the Kerry County development plan 2015-2021 objectives and that the site is in the least sensitive of areas in terms of landscape character and visual amenity. The guidance for rural development as set out in chapter 3 of Development Plan, is cited, notably objectives RS1-6 inclusive. It is a 'stronger rural area' and objectives RS-10 and 11 also apply. No EIA issues or significant effects on SPA arise. Objections are noted as are the contents of the technical reports. A request for further information was recommended in respect of:

- Sightlines and revised site layout showing availability from 2.4m setback .
- Verification of links to area.
- Height and scale and erection of poles at proposed gable ends.
- Volumes of cut and fill.

(The copy of this request only includes pages 1 and 3)

3.2.2. On review of the further information the local connections of one the applicants is accepted as complying with the rural settlement criteria. The landscaping details are considered insufficient as are the details in respect of sightlines. Clarification of information as sought is requested.

3.2.3. In a letter submitted 24/9/2021 from the applicant's agent, Moriarty and Bambury Civil engineering and planning consultants it is stated that :

- The area roads engineer inspected the site and is satisfied with the sightlines except for the sightlines to the south (for vehicles coming from the beach) and that min 30m sightlines be provided beachward of the proposed entrance. 6 copies are submitted.
- The design is explained as following the existing contours and topography of the site with difference in floor levels while allowing for practicable family life in compliance with the building regulations.
- Maps/Images attached with sight poles and family home of the applicant .

3.2.4. Revised notices were sought by the Planning authority and submitted accordingly.

3.2.5. In the PA's review of the further information and taking account of the further objection notably on the sight poles and vast scale and impact of works on bird species , there are no substantive issues regarding vehicular access, intrinsic links, visibility in a wider context, residential amenity by way of overshadowing or overlooking or loss of sea views or design and integration with sloping site. It is also noted that in a pre-planning meeting the site was deemed most acceptable due to its proximity to the existing cluster.

3.2.6. Other Technical Reports

- Housing Estates Unit: (22/7/21) No services to be taken in charge. If permission granted consideration should be given to improve sightlines along the road where the entrance is proposed into a convex curve. A sightline triangle should be submitted . This is due to the poor sightlines down to the beach which can be improved.
- Roads report: (4/10/21) The revised details provide sight distances of 44m and 82m in respective directions. Taking account of the operational speed of the road, this is considered sufficient.

- Biodiversity Officer: updated 6/10/21- No impact on SPA in respect of initial and further information lodged.
- SAU:(4/11/21) no objection Subject to conditions. 1k from public water supply Correct design PE correct as per clarification to the design capacity requirements in section 7 and 9 of code of practice,
- Planning and sustainable development section: (5/7/21) Considered it may impact on SPA site code 004153

Prescribed Bodies

Irish Water: No objection

Ab Comhairle Ealaoin: No reply

An Taisce : No reply

Inland fisheries : No reply

DAU : No reply

Third Party Observations

- 3.4.1. Objections lodged relate to traffic safety(additional entrance now required for farm) , effluent, incongruous design and siting in an SPA outside the village and also proximity to farmyard/dwelling and impact generally on scenic landscape having regard to topography and height.

4.0 Planning History

- 4.1 None on site

5.0 Policy Context

Development Plan

- 5.1.1. The Kerry County Development Plan 2022-2028 is the operative plan. (The Kerry County Development Plan 2015-2021 was extended until 28th November 2022.)

Kerry County Development Plan 2022-2028

- 5.2.1. Settlement hierarchy : Dingle is a regional town. The area of the site is not included as a small village settlement. (Map 3.3). The site also falls under the category of rural areas under significant urban influence being within the catchment of Dingle town. (Map 5.5).
- 5.2.2. This plan aims to harness these new employment opportunities and maximise new funding streams to improve the quality of Kerry's Towns and Villages by applying the principles of Placemaking. Placemaking involves supporting existing communities, and the creation of new sustainable communities by providing accessible, safe, and distinct built environments that reflect the unique character, heritage and identity of each settlement supported by the creation of safe and attractive public places. Objectives KCDP-4-1, 4-2, 4-3 seek to achieve urban regeneration and compact growth supporting 'housing for all' actions, facilitating sustainable development in towns and villages of sufficient scale to be drivers of growth and preserving heritage.
- 5.2.3. Landscape: The site is in a visually sensitive area (map H)
- 5.2.4. Rural housing: Section 5.5 refers to rural housing. The site is in an area classed as **rural area under significant urban influence**. The area is not included in the settlements listed in the area as set out in Table 5.2 The plan highlight the imbalance in rural and urban housing and states that in order to address the socio-economic imbalance of our settlements, to retain existing and sustain new services and facilities in small villages, to reduce car dependency and meet the county's obligations to mitigate climate change, it is essential that a balance be struck between facilitating people with an economic or social need to live in the rural area while ensuring that other housing demand is facilitated and encouraged within Towns and Villages. The policy for single housing in the countryside in this is guided by national and regional policy. Underlying principles relate to agricultural activity as a priority, vibrant rural villages and protecting national heritage and assets, restoration of existing built fabric and the need to transition to low carbon climate resilient society eliminating unnecessary trip and efficient use of resources. Through centralised provision.
- Rural settlement Policy objective **KCDP 5-14**: In Rural Areas under Significant Urban Influence applicants shall satisfy the Planning Authority that their proposal

constitutes an exceptional rural generated housing need based on their social (including lifelong of life limiting condition) and / or economic links to a particular local rural area, and in this regard, must demonstrate that they comply with one of the following categories of housing need:

- a) Farmers, including their sons and daughters or a favoured niece/nephew where a farmer has no family of their own who wish to build a first home for their permanent residence on the family farm.
- b) Persons taking over the ownership and running of a farm on a full-time basis, who wish to build a first home on the farm for their permanent residence, where no existing dwelling is available for their own use. The proposed dwelling must be associated with the working and active management of the farm.
- c) Other persons working full-time in farming or the marine sector for a period of over seven years, in the local rural area where they work and in which they propose to build a first home for their permanent residence.
- d) Persons who have spent a substantial period of their lives (i.e., over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation and currently live with a lifelong or life limiting condition and can clearly demonstrate that the need to live adjacent to immediate family is both necessary and beneficial in their endeavours to live a full and confident life whilst managing such a condition and can further demonstrate that the requirement to live in such a location will facilitate a necessary process of advanced care planning by the applicants immediate family who reside in close proximity. Preference shall be given to renovation/restoration/alteration/extension of existing dwellings on the landholding before consideration to the construction of a new house.

It is the policy of the Council to ensure that future housing in rural areas complies with all National Policy documents including the National Planning Framework (NPO 15 & 19), the Sustainable Rural Housing Guidelines for Planning Authorities, 2005 (DoEHLG), RSES and Circular PL 2/2017 and this will be achieved through greater emphasis on the following:

- a. Establishing that there is a genuine economic or social need for permanent occupation.
- b. Prioritising the reduction of residential vacancy rates in all the Rural Areas in preference to new residential development.

- c. The renovation or modification of existing structures in rural areas for residential use.
- d. Encouraging people who wish to reside in the countryside to live in existing villages or small village settlements where there are services available.

5.2.5. Section 47 Agreements: In areas where significant levels of rural housing development have taken place on the edges of urban areas within the county and where the Council considers such areas are becoming over developed the council may seek agreement under Section 47 of the Planning Act if it considers it necessary to regulate development in the area.

5.2.6. Other Rural Housing objectives:

- KCDP 5-17 Monitor the trends in rural housing and population during the lifetime of the plan to ascertain if further rural housing policy responses are required during the plan period.
- KCDP 5-18 Give favourable consideration to the sustainable development of permanent places of residence on vacant sites within unfinished developments where services have already been completed to the satisfaction of the local authority.
- KCDP 5-19 Ensure that the provision of rural housing will not affect the landscape, natural and built heritage, economic assets, and the environment of the county.
- KCDP 5-20 Ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence and subject to the inclusion of an Occupancy Clause for a period of 7 years.
- KCDP 5-21 Ensure that all developments are in compliance with normal planning criteria and environmental protection considerations.
- KCDP 5-22 Ensure that the design of housing in rural areas comply with the Building a house in Rural Kerry Design Guidelines 2009 or any update of the guidelines.

Corca Dhuibhne Elected Area Local Area Plan 2021-2027

5.3.1. In this LAP In terms of settlement strategy the lowest tier is 'settlement nodes' level and this includes Dun Chaoin, An Bothar Bui, Inch and Stradbally and does not include Beenbane. These are not targeted population growth areas but are

recognised as having some capacity to allow limited organic development . The LAP supports enhancement of services in various centres which follows the strategy of consolidating towns and villages.

5.3.2. Beenbane is a clochan/ cluster settlement and for such settlements it is an objective to:

- D-DC-1 Protect the unique layout and architectural merits of clochan settlements.
- D-DC-2 Promote the redevelopment and reuse of derelict properties within clochan settlements.

5.3.3. CDP 2015-21 **Rural Housing policy**: The site in accordance with Map 3.1 falls within a **stronger rural area** which is described as generally stable within a well-developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong rural/agricultural economic base. It is an objective of the Council in Stronger Rural Areas to:-

- **RS-10** Facilitate the provision of dwellings for persons who are an intrinsic part of the rural community in which they are raised, subject to compliance with normal planning criteria and environmental protection considerations.
- **RS-11** Consolidate and sustain the stability of the rural population and to promote a balance between development activity in urban areas and villages and the wider rural area

National Planning Framework (February 2018),

5.4.1. National Policy Objective 19 relates to rural housing and seeks to '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,'

Climate Action Plan 2023

5.5.1. In relation to settlement patterns and rural planning, the following policies are relevant to meeting our commitment to reduction in emissions:

- Turning transport around — embracing a 'modal shift' (50% reduction in emissions) through town city and rural planning.
- Making family farms more viable — increasing tillage/ future-proofing our agricultural sector (25% reduction in emissions):

Natural Heritage Designations

5.6.1. The southern part of the site lies within the Dingle Peninsula SPA (site code 004153).

EIA Screening

5.7.1. The proposed development is of a class but substantially under the threshold of 500 units to trigger the requirement for submission of an EIAR and carrying out of EIA. Having regard to the nature of the development, which is a single new dwelling and associated site works, the absence of features of ecological importance within the site and I note the Report of Biodiversity Officer in this regard, I consider that the necessity for submission of an EIAR and carrying out of EIA can be set aside at a preliminary stage.

6.0 The Appeal

Grounds of Appeal

6.1.1. A third-party appeal has been lodged by Hanora Hanafin, Beenbane, and the grounds are based on the following:

- Visual impact by reason of size and scale which is not harmonious with surrounding area and would be obtrusive in the landscape – the character of which should be safeguarded particularly from cliff walks.

- Traffic impact on this busy beach access.

6.1.2. A third party appeal has been lodged by James Rayel and Michael Rayel of Beenbane. The grounds of appeal are based on the following:

- The grants of permission to the landowners relatives since 2003 PA 03/1001 and PA 08/2346 contrary to policy which restricts permission to family member or favoured niece/nephew. In fact multiple nephews have benefited. Dangerous precedent to circumvent planning policy.
- The site prominent and exposed and the design is not in keeping with the vernacular or typology that is part of the longstanding built environment of this scenic location. Negative visual impact. Contrary to Kerry rural design guidelines.
- Impact on SPA hydrological link to SPA not been assessed fully. AA screening report needed.

6.1.3. A third-party appeal has been lodged by Seosamh O’Criodain, Beenbane, and the grounds are based on the following:

- Impact on the old world charm of a quaint traditional country village – the proposed development will ruin the village .
- The applicant was not born in the area and has other options.

6.1.4. A third-party appeal has been lodged by Edward Leahy, Beenbane, and the grounds are based on the following:

- The substantial scale of the proposed structure does not attempt to match in scale or design.
- The earthworks will have a significant impact. The works to facilitate the sightlines will impact an SPA.

Applicant’s response

6.2.1. The applicant’s response comprises three elements: the agent’s comprehensive response to all the grounds of appeal, a co-signed statement by the applicant regarding his intrinsic links with the area and letters of support from school principals and a sports club demonstrating the applicant’s connection to the Dingle community, both previously and currently.

6.2.2. In summary the main points are:

- One of the applicants has strong family ties to the Beenbane area through parents and extended family living and farming in the area.
- The 2015 development plan classifies the area as 'rural general' in terms of landscape value and accordingly has the ability to absorb moderate development.
- The 2015 plan also classifies the area as a Stronger Rural Area in terms of settlement strategy and policies support housing for persons who are an intrinsic part of the community in such areas.
- An Bhinn Bhain is identified as a cluster /clachan development and development in this location is seen as complying with objectives to both provide for persons that are an intrinsic part of the rural community while sustaining the rural population and promoting a balance between rural and urban development.
- Visual Impact – objections are overstated and disputed by reference to the local and minor impacts as determined by the planning authority. It is a natural extension to the village.
- Scale and design: the assertions about excessive scale are disputed by reference to the different elements and clustered context that includes varying styles and also by the use of pitched roofs and a mix of traditional materials as acknowledged by the planning authority. It is further stated that the design reflects the topography of the site - 'the articulation of the various elements in the building in a varied manner together with the changes in level and the material as selected will assist in integrating the proposed house in the village..'
- Suitability of location: The site is 150m from the applicant's family home and was chosen as the most appropriate site within the family landholding in consultation with the planning authority in a pre-application meeting. It was most suitable as it is attached to a cluster of housing whereas lands to south were detached and part of the Dingle Peninsula SPA.
- Ecological Impacts: A total of 6 European sites are identified within 15km of the site – the nearest being the Dingle Peninsula SPA 004153. Five of these are remote and have no connection. The report of the Biodiversity Officer has screened out the need for an Appropriate Assessment. The report is restated - it

refers to the location of the site within a cluster of houses along a popular route to the beach where there is car parking . The Biodiversity officer is quoted as stating that 'baseline levels of disturbance already exist and the addition of a dwelling house would not result in significant disturbance to Chough populations or other birds of special conservation interest during the construction or operational phases.' None of the birds of SCI are freshwater dependant and fresh water quality is not a key ecological requirement for the said birds. There is no other development of significance in the vicinity which might have a bearing assessment in relation to the SPA. There is sufficient information to conclude that the development, individually or in combination with other plans and projects, would not be likely to have a significant effect on any European site.

- Traffic: The assertion of traffic hazard is disputed by reference to speeds along the public road due to its alignment and that the sightlines on the submitted in the revised layout provide for sightlines of 82m to the north and 44 m to the south. This will be achieved by setting back the boundary to the south along 29m of the boundary by up to 3m. This will also improve visibility for motorists travelling to and from the beach.
- Drainage: The assertion of the impact of the run-off from the waste water treatment system on water quality of the spring water table and the beach are dismissed by reference to the findings of the site assessment and appraisal by the planning authority. The Site Assessment Unit accepts the conclusions of the site characterisation assessment. It is further pointed out that the Biodiversity Officer attaches little relevance to the effects of the wastewater treatment system on potential impacts on the SPA and its bird species.
- Precedent: Each case should be assessed on its merits. It is however pointed out that the SPA designation limits further development to the south.
- Development Plan Policy: The policy and designation as cited above provide a basis to permit the applicant to build his first family house beside his parents in this cluster type development within a 'rural general' landscape area. The description as an area under strong urban influence is stated to be incorrect. Housing is supported in this case having regard to

- Section 3.2.3 of the Sustainable Rural Housing Guidelines support the proposal in that it states that
 'such person will normally have spent substantial periods of their lives living in rural areas as members of the established rural community. ... Examples would include,,, people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural area and are perhaps seeking to build their first home near their family place of residence. Returning emigrants who lived substantial parts of their lives in a rural area then moved abroad and who now wish to return to reside near other family members to work locally to care for elderly family members or to retire should also be accommodated.'
- The council has accepted the intrinsic links and that the applicant comes within the scope of Policy RS-10 facilitate those who are intrinsic part of rural community in which they were raised. Subject to normal planning criteria.
- It is part of a family farm and Mr O'Sullivan is the nephew of the landowner.
- Site is within an established settlements as recognised by the planning authority and LAP.

Planning Authority Response

6.3.1. No specific comment on appeal grounds .

7.0 Assessment

Issues

7.1.1. Having read the contents of the file and inspected the site I consider the key issues relate to:

- Principle of development - housing need
- Visual impact /Siting and design
- Traffic safety

- Drainage
- Appropriate Assessment

7.3 Principle of development - Housing Need

- 7.1.2. The applicant makes reference to the site location being within a cluster and that this qualifies the proposed dwelling as being compliant with the settlement strategy. However I note that in the current Kerry County Development Plan 2021-2028 the site location is outside any designated settlement area targeted for population growth in the settlement hierarchy. Beenbane is not included like other villages in the wider area. This is clearly set out in map 3.3 . In fact the clochan in An Bhinn Bhain (Beenbane) is designated for protection in the Local Area Plan although it is an area where reuse of derelict properties is promoted.
- 7.1.3. While I accept that the site is a sequential expansion of the cluster, I consider there are fundamental issues with the nature of the proposal in terms of its conflict with the county settlement strategy. The plan clearly advocates a hierarchy of development and emphasises the need to consolidate serviced areas and reduce trips in adherence to national policy. In this case the area is not included as a target area for growth nor for any planned facilities. The facts are that the site is in a scenic rural area lacking wastewater facilities and is highly car dependant; the area lacks shops, services and schools and the road network is also substandard in parts. To permit additional development would lead to a demand for the uneconomic provision of services and infrastructure and would moreover undermine the economic provision of such services in planned areas.
- 7.1.4. In the current plan the site is also classed as being under strong urban influence given its proximity to Dingle town and this is clearly mapped in Map 5.5 of the current plan. In respect of the criteria for rural settlement in objective KCDP 5-14 (CDP) I note that, the applicants are not farmers nor is either taking over the running of a farm or working in one or the marine sector. While one has lived locally there is no evidence of a lifelong or life limiting condition that demonstrably requires living in this rural area. Adherence to national policy must however take precedence.
- 7.1.5. Policy Objective 19 of the National Planning Framework seeks to ensure that, in providing for the development of rural housing, 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, it is policy to 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.

7.1.6. In this case, the applicants state that they work from home as accountants and that one of the applicants is also taking over his father's (Bernard O'Sullivan) agri-business which I note from site inspection in the area appears to be located in John's Street in Dingle town. The letters from the school principals indicate that the applicant went to school in Dingle Town and it is suggested that future children if any will also attend school in Dingle. It is further stated that the applicant is a nephew of the landowner whose children are in college and that there is a level of dependency on the applicants. The appellants make the case that a number of sites have already been provided by the family.

7.1.7. While I accept that the working from home reduces car trips and that the family connections are not in doubt, I consider that having regard to the settlement hierarchy which excludes the subject location, the applicants do not have a demonstrable rural housing need to the extent that is justifiable on the basis of its potential to undermine a more balanced housing pattern in line with the settlement hierarchy that is sustainable in terms of infrastructure and car dependency. I say this having particular regard to the key objectives for achieving compact growth in the surrounding towns and villages – a strategy that is further endorsed in the most recent Climate Action Plan 2023 which advocates reduced car dependency. I refer to the Climate Action Plan policies to improve town, city and rural planning and improve public transport while aiming for a reduction of distances travelled by car and increase in walking, cycling and public transport to a level amounting to 50% of journeys and also to provide 70% of rural Ireland with buses. These policies are also in tandem with the planned expansion of tillage farming and making farming more viable and in this regard the loss of farming land by .3 hectares relative to the holding as mapped in the submitted drawings may potentially be significant. Such policies are I consider best achieved by adhering to a strategy of housing development and redevelopment in planned areas.

7.1.8. Permission for a new rural house in such circumstances would service to contribute to a pattern of development that would be highly car dependant and would also undermine the policy of the planning authority to direct development into serviced areas and more specifically would conflict with the strategic aims for the towns and village in the area. A grant of permission would therefore conflict with Policy Objective 19 of the National Planning Framework, would undermine rural housing policy as set out in the current Kerry County Development Plan in its adherence to Sustainable Rural Housing Guidelines and in achieving the objectives of the current Climate Action Plan 2023. The proposed development would therefore be contrary to the proper planning and sustainable development of the area. This I consider constitutes grounds for refusal of permission.

Siting and Design

- 7.2.1. Visual impact is raised by all appellant parties as grounds for appeal. It is argued that the scale and size is out of character with design and scale. The applicant defends the proposal by reference to the siting and juxtaposition with existing development and that the massing and components, comprising a series of elements together with a mix of traditional finishes, assimilates the development.
- 7.2.2. In the first instance I note that the site is in a sensitive landscape context as compared to the 'rural general' in the previous plan and while the local context is of clustered housing and farm buildings, there is a specific policy in the LAP to protect the clochan character in An Bhinn Bain. Accordingly the context demands a particularly sensitive approach to siting and design.
- 7.2.3. In this case a complex and expansive 27m wide structure is proposed. It is sited at the edge of the cluster and would be dominant in scale as compared to the existing boxy two storey vernacular houses from which the character of the 'clochan' is very much derived. While I note the attempts to replicate elements of the vernacular such as by incorporating a central rendered element with traditional styled façade, there are many incongruent elements. I refer to the varying roof pitches, the shallow asymmetrical pitches, high eaves heights and the collective horizontal massing. The exposed frontier location would render the house as highly visible along the road and approach from the beach and cliff walk in both near and distant views from the south/southwest. Permission for a development of this nature and scale would I consider be contrary to the policy to protect the character of this clochan. For this

reason I consider permission should be refused. If the Board is of a mind to permit the development I consider the omission of the most southern two storey block should be omitted.

- 7.2.4. Residential amenity: There are also concerns about the impact due to the proximity of the dwelling to the eastern boundary. There is an operational farmyard to the east and there are concerns about overshadowing and also conflict of uses. The house is sited less than 8m from the boundary which I accept is a somewhat disproportionate burden on the adjacent site having regard to the size of the site. Even in a more finely grained urban setting, a setback of 8m from the rear of a storey house is quite a short distance for long term protection of amenities- although I am satisfied that there are no issues of overlooking likely to arise due to the separation and juxtaposition of dwellings. It would however be better to have a greater set back for the scale of house proposed. The site layout is however constrained by the required separation distances for a wastewater treatment system. It would appear that this underlines the issue of the extensive size and footprint of the development – if it were more in keeping with the traditional scale of the vernacular, increased set backs are more likely to be achieved.

Traffic Safety - Sightlines.

- 7.3.1. The submitted further information includes a drawing demonstrating how sightlines can be improved by setting back the boundary over a distance of 29m south of the proposed entrance. I note the Roads Engineer comments and how this will improve sightlines in excess of what was recommended and is accepted to be appropriate for the speed capacity of this narrow steep and curved road. The set back would not only appear to achieve adequate sightlines for the traffic entering and exiting the site, it would also improve visibility along this access road serving a popular amenity area. On balance I do not consider the proposal could be reasonably refused on grounds of traffic hazard.

Drainage

- 7.4.1. The appellants are concerned about the potential for contamination of groundwater and the freshwater spring and its seepage in the direction of the beach. I note that the application has been accompanied by a site characterisation assessment wherein the T test values reflect a percolation capacity for a septic tank. Notwithstanding, the wastewater treatment system incorporates a polishing filter and

has taken account of the site constraints. While I note percolation values are within an acceptable range and I note the Strategic Assessment Unit has no issue subject to conditions, I note that the site characteristic form refers to a PE of 6 yet the house of almost 300sq.m. with 4 double rooms, office and 4 bathrooms suggests a much greater capacity and possible limitations of the wastewater treatment design. Given the site constraints, this may be an issue. Again this underlines the issue of scale and could be addressed through further information and possibly revision of layout or reduction in house size but does not in my judgement constitute substantive grounds for refusal. There is also a wider issue of the concentration of independent wastewater systems which has been addressed in the context of sustainable settlement strategy in assessing the principle of such development.

7.5 Appropriate Assessment

Background:

- 7.5.1. Compliance with Article 6(3) of the Habitats Directive : The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section
- 7.5.2. A screening report for AA was not submitted with the application or appeal submissions. This screening determination has been carried out *de novo* while noting the comments of the Biodiversity Officer for the planning authority.

Test of likely significant effects:

- 7.5.3. The project is not directly connected with or necessary to the management of a European Site and therefore it is needs to be determined if the development is likely to have significant effects on a European Site(s).
- 7.5.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief Description of development

- 7.5.5. The proposed development is described in section 2 of this report. The southern section of the site forms part of the Dingle Peninsula SPA (site code 004153) where earthworks associated with the relocation of a culverted drain are proposed. In addition to this, boundary works relating to a section of the western frontage for a distance of c.30 south of the entrance are necessary as part of sightline provision. The works also involved cutting and filling to provide for a dwelling extending about 27m in depth (north-south axis) and driveway in addition to works associated with the provision of a wastewater treatment plant and polishing filter to the south west of the site. Accordingly the grassland habitat will be disturbed and altered within and adjacent to the site. The submitted details do not include a construction management plan or environmental management details. The drawings do not include the delineation of the SPA and there is no data on the site ecology provided by the applicant.
- 7.5.6. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:
- Habitat disturbance /species disturbance (construction and or operational)
- 7.5.7. Submissions: The application details were forwarded to the relevant prescribed bodies but no submission in response were submitted. The grounds of appeal refer to concerns about impacts on the SPA in general terms.

European Sites

- 7.5.8. The Dingle Peninsula SPA which extends into the development site can, by virtue of the proposed works, be considered to be within the zone of influence of the development. The next nearest European Site is Mount Brandon SAC 000375 about 3.7km north of the site and no hydrological connection or pathway. Having regard to the separation distances and nature of developments I do not consider any other European Sites to be within the Zone of Influence and I accept the opinion of the Biodiversity officer in this regard.
- 7.5.9. The Dingle Peninsula SPA is described in the NPWS website as a large site situated on the west coast of Kerry encompassing the high coast and cliff section of the

peninsula and includes sea cliffs and land adjacent to the cliff edge as well as sand dunes. The qualifying interests of this SPA are:

- A009 Fulmar, *Fulmarus glacialis*
- A103 Peregrine, *Falco peregrinus*
- A346 Chough, *Pyrrhocorax pyrrhocorax*.

The objective is to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA

Identification of likely effects

7.5.10. The subject site is part of these 'adjacent lands' to the cliff in this SPA. The grazed semi-improved pastures and well drained uplands in close proximity to breeding cliffs are stated to favour the Chough. The SPA extends into the southern end of the site which could be described as semi-improved grassland and well drained according to the site characterisation form and this is where a piped drain is to be culverted. The boundary hedge set back may marginally encroach into the SPA.

7.5.11. The Biodiversity Officer prepared a report (16th August 2021) which still stood following further information. In this report the qualifying Birds of Conservation interest are each considered in terms of the relationship with the site. The Fulmar is a sea bird and is considered to not be reliant on the site. Similarly the Peregrine is a raptor species nesting on the coastal cliffs but is identified as potentially foraging in the area but this is considered to be unlikely to be impacted by the nature and scale of the development. The Chough species is identified as being associated with the coastal sand dunes and grasslands and it is considered that the works are unlikely to affect the Chough as the lands are to be returned to grass cover. It is further stated that there is ample prime habitat so as not to impact on the chough populations. With respect to construction work it is further considered that the proximity to a built environment and car park that the development is unlikely to result in any significant disturbance at either construction or operational phases. It is further stated that none of the species are freshwater dependant and therefore any impact on water quality from the wastewater treatment plant is not likely to arise.

7.5.12. The Biodiversity officer has identified potential effects and impacts by way of temporary loss of grassland and potential disturbance to foraging areas and while

they are temporary and perhaps minimal in nature I do not consider it can be reasonably concluded in the absence of mitigation that there will be no significant affects.

7.5.13. The nature of the proposed development is such that it will involve the clearance and excavation of part of the site for the proposed house and percolation area. These works will result in removal and disturbance of part of grasslands that is identified as foraging area for at least one of the bird species listed as a qualifying interest of the SPA. I am of the opinion that this has potential to result in indirect impacts on the species and therefore, I cannot be satisfied that it would not have a significant adverse effect on the integrity of the European Site.

7.5.14. Mitigation Measures: No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

Screening Determination:

7.5.15. 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 the Dingle Peninsula Special Protection Area (site code 004153) or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

8.0 Recommendation

8.1 I recommend that permission be refused based on the following reasons and considerations.

Reasons and Considerations

1. Having regard to –

- (i) National Policy Objective 19 of the National Planning Framework (February 2018), which, for rural areas under urban influence, seeks to facilitate the

provision of single housing in the countryside based on the core consideration of demonstratable economic or social need to live in a rural area having regard to the viability of smaller towns and rural settlements,

- (ii) the pattern of development in the area which is considered to be under urban influence
- (iii) The objectives of the Kerry County Development Plan, 2022 to 2028 and the Corca Dhuibhne Electoral Area Local Area Plan 2021-2027 which seek to discourage urban generated housing in rural areas and to direct the provision for housing into towns and villages.
- (iv) The aims of the Climate Action Plan 2013 which seek to reduce car dependency

it is considered that the applicants have not sufficiently demonstrated an economic or social need to live in a rural area having regard to the viability of smaller towns and rural settlements and, therefore, the proposed development does not comply with National Policy Objective 19. The proposed development would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would contravene the provisions of the National Planning Framework. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. It is considered that, by reason of massing, scale and design relative to the indigenous character of adjacent clachan/housing cluster and its location in a visually sensitive landscape area, the proposed dwelling house would be visually obtrusive and overbearing in nature and would seriously injure the visual amenities of the area. The proposed development would accordingly detract from the distinctive character of the established housing cluster and therefore conflict with the objective D-DC-1 to 'protect the unique layout and architectural merits of clochan settlements' as contained in the Corca Dhuibhne Electoral Area Local Area Plan 2021-2017 and would therefore be contrary to the proper planning and sustainable development of the area.

3. The proposed development and associated earthworks are partly within and adjacent to the Dingle Peninsula Special Protection Area, Site code 004153. In the absence of mitigation the proposed works are considered to have the potential to result in disturbance and loss, temporary or otherwise of foraging habitats for bird species that are qualifying interests for this SPA , most notably the Chough species. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot, therefore, be satisfied that the proposed development, both during construction and operation by itself and/or in combination with other plans or projects, would not result in adverse effects on the integrity of this Special Protection Area in view of the site's conservation objectives. In such circumstances, the Board is precluded from granting permission.

Suzanne Kehely
Senior Planning Inspector

5th January 2023