



An
Bord
Pleanála

Inspector's Report ABP-312414-22.

Development	Demolish existing dwelling house and construct 2 houses.
Location	'Rooska', High Road, Ardbrack, Kinsale, Co Cork.
Planning Authority	Cork County Council.
Planning Authority Reg. Ref.	21/6756.
Applicant(s)	Andrew and Laura Corcoran.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Andrew and Laura Corcoran.
Observer(s)	Matthias & Aoife Hellstern Clwyd & Mary Evans and Michael & Patricia Murphy.
Date of Site Inspection	04/03/2022.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The appeal site is located in the area of Ardbrack, approximately 1km to the east of centre of the town of Kinsale in Co. Cork. The site lies within the built-up area of the town, but in an area which could be described as suburban in nature. The character of the area comprises large one-off houses located on large residential sites, with small, low density residential estates. The topography of the area sees the residential sites to the south and west of the spine road, High Road, steeply falling from the road towards Kinsale Harbour.
- 1.2. The subject site is accessed off High Road to the north-east, and steeply falls towards Scilly Way (Lower Road) to the south-west. While Scilly Road provides access to a very small number of residences, it is primarily used by walkers. The subject site offers extensive views over Kinsale Harbour.
- 1.3. The subject site has a stated area of 0.2213 hectares and is currently occupied by a low-rise single storey house, with a lower split level. The site could be described as comprising two parts with the house and all built elements located within the upper levels, directly adjacent to High Road, while the lower levels of the subject site, as well as the other residential sites in the area and towards Scilly Walk, is undeveloped and occupied by trees and other vegetation. The lower areas of the residential sites are identified as a 'green finger' within the Local Area Plan for Kinsale, and a Tree Protection Order is noted with regard to the area.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices to demolition of an existing dwelling, and the construction of a family double-house arrangement comprising 1 no. two storey (3 bed) dwelling and 1 no. single storey (2 bed) dwelling, with 1 no. single storey home office/studio (elevated on posts), an inclined elevator domestic access system, reconfiguration of existing site access off High Road (L-3228), connection to public services, on-site surface water soakaways and all associated site works, all at 'Rooska', High Road, Ardbrack, Kinsale, Co Cork.
- 2.2. The application included the following documents:
 - Plans and particulars

- Completed planning application form
- Planning Report
- Photomontage Study & Design Presentation
- Ecological Impact Assessment
- Tree Survey
- Landscape Plan
- Engineering Report & Drawings
- Part V Exemption Certificate.

2.2.1. The proposed development comprises the demolition of an existing split-level house, with a stated floor area of 250m², and its replacement with two houses, 1 x 3-bed and 1 x 2 bed on the site. The development also includes the proposal to construct a single storey home office/ studio building which will be elevated on posts and an inclined elevator domestic access system. The proposed site layout will provide for the proposed 3 bedroomed house to be located in the general position of the existing house on the site (to be demolished) with the second, 2-bedroom house, to be located between the 3-bed house and the studio building. The finished floor levels of the buildings will be stepped down towards the rear of the site.

2.2.2. In terms of the proposed buildings, the following is relevant:

House 1:

- House 1 will comprise a 3 bedroomed house with a stated floor area of 282m².
- The house will offer accommodation over two floors with the kitchen / dining / living room, utility, sitting room, cellar and sommelier room and WC located at ground floor level, with 3 double bedrooms, bathroom and utility rooms at first floor level.
- A large patio is accessed directly from the sitting room, with a larger lower-level patio area also proposed on the roof of proposed house no 2.
- The building will rise to an overall height of approximately 8m in height.

- The building will be finished using a variety of materials including a coloured render finish to the ground floor level and a mix of seamed metal wall system and timber louvres with powder coated aluminium door / window system.

House 2:

- House 2 will comprise a 2 bed roomed house with a stated floor area of 123m².
- The house will offer accommodation over a single floor.
- The flat roofed building will rise to an overall height of 4.25m and will be constructed in part, elevated over the land.
- The building will be finished using a variety of materials including a mix of seamed metal wall system and timber louvres with powder coated aluminium door / window system.

Studio:

- The studio will occupy a stated floor area of 45m² and will provide a kitchen, sitting and dining area, bathroom, work-space / office and an outside deck area.
- The flat roofed building will rise to an overall height of 4.1m and will be constructed as an elevated structure through the use of posts.
- The building will be finished using a variety of materials including a mix of seamed metal wall system and timber louvres with powder coated aluminium door / window system.

2.2.3. In terms of servicing the proposed development, the Board will note the intention to install an inclined elevator (funicular) access system on the site. The system will run along the north-western boundary of the site and will provide access to each of the lower building levels. The system will run for a distance of approximately 41m with level access points at a number of locations. A stair access is also proposed immediately adjacent to the proposed elevator system.

2.2.4. The proposed development will connect to public services, and it is intended to install rising mains to the north of the buildings with a rising main discharge stand-off manhole in the northern corner of the site. The layout also includes the provision of 3

Klargester Domestic Pumping Stations with typical Grundfos AP Pump or similar approved units to be installed. 3 storm water soakaways are also proposed to be installed on the site, 2 to the west and 1 to the south of proposed Unit 2.

- 2.2.5. The existing entrance to the site is located within the northern corner of the site. The proposed development proposes the alteration of the existing entrance to the site, in order to achieve sight distances in both directions. The internal site levels are at a significantly lower level than the public road – approximately 3m and the development proposes to backfill and compact at the road edge with a retaining wall with an overall height of approximately 3.7 to be constructed. This retaining wall will also comprise part of the proposed car port.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse planning permission for the proposed development for the following reason:

The proposed improvement of a restricted vehicle access that is poorly aligned cannot support the proposed additional development (extra house) and the level of sightlines proposed in both directions is considered insufficient having regard to the volume and speed of passing vehicles and therefore conflicts with Policy Objective TM 3-3 in the County Development Plan 2014 which seeks to ensure all new vehicular accesses are designed to appropriate standards of visibility to ensure safety of other road users.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submission, planning history and the County Development Plan, and local area plan policies and objectives. The report also includes an Appropriate Assessment Screening and EIA assessment.

The Planning Report concludes that while the applicant has sought to address the previous reasons for refusal associated with the subject development, the issues relating to roads and traffic have not. I also note that the report indicates that the Councils Ecologist is supportive of the regenerative approach to the development in the TPO area. However, the report concludes advising against any sort of split decision to grant permission for the replacement house (dwelling 1) and refuse permission for dwelling 2 on the basis that the project is an integrated design. It is recommended that permission be refused.

The SEP has supported this recommendation and the two planning reports formed the basis of the Planning Authority's decision to refuse planning permission.

3.2.2. Other Technical Reports

Area Engineer: The report notes that he has previously reported on this application under a previous planning file number (21/05419). The current application has not removed concerns previously raised and the issues have not changed.

It is considered that the site entrance is unsafe and does not show safe sightlines for safe access and egress. It is further submitted that the application is unclear on how many dwellings are proposed as it appears that there could be as many as 3. With potential increase in footfall and safety concerns over the substandard entrance with insufficient sightlines and parking, refusal is recommended.

The report includes a reason for refusal.

Ecology Report: The County Ecologist submitted a comprehensive report noting that this is a second application for the development. It is noted that the applicant has indicated that the development has been designed to provide for the relocation of the proposed home office 10m to the northeast of the previously proposed area and within an existing cleared area. It is indicated by the applicant that this will reduce the tree felling requirement within and immediately adjacent to the TPO to one Field Elm which has been classified as dead, and a poor-quality Sessile Oak whose'

trunk is located outside the TPO but whos' canopy overhangs the TPO area. Overall, the development will require the removal of 28 pieces of vegetation, 24 of which are hedging and 4 trees. The proposed development will see the planting of 93 new semi-mature trees within the TPO area.

A number of concerns were raised under the previous application in relation to bats in terms of the potential disturbance / displacement effects the proposal may have, including light spillage from the proposed elevated office onto the treetops. It is noted that the applicant proposes to carry out the development of the home-office in close liaison with the project ecologist. The protection of the species is the responsibility of the PA and a deferral of the application is recommended so that a Bat Protection Plan can be prepared for the site, informed by a bat survey.

In terms of the landscape report, the Ecologist notes the comments in relation to the previous Ecologist Report. However, it is submitted that the TPO was not granted due to the ecological value of the trees but rather from an amenity landscape point of view. While the proposed development will result in the loss of 1 tree within the TPO area, the TPO refers to the woodland as a whole. The management and enhancement of the woodland is welcomed but matters relating to a protected site should not be done by way of condition. It is recommended that the application be deferred in order that a Woodland Management Plan can be submitted by the applicant.

In terms of AA, it is noted that no assessment was provided by the applicant as to the potential impacts of the development on nearby European sites. 6 Natura 2000 sites are noted within 15km of the site. The report concludes, having regard to the information available, that the development poses no risk of causing significant impacts the QIs and/or species of the nearby designated sites for a number of reasons.

Finally, the report notes the recommendation of the AE to refuse permission.

Further information is required.

Liaison Officer: The report notes no comment.

3.2.3. **Prescribed Bodies**

None.

3.2.4. **Third Party Submissions**

There are 3 third-party submissions noted on the PAs file. All 3 seek that the application be refused and the issues raised are summarised as follows:

- Height of dwelling 1 substantially higher than the existing house making it unduly obtrusive from the surrounding areas.
- The planting of a hedge outside the proposed boundary wall will be dangerous for cars entering/exiting the site.
- The 3 dwellings will result in a high density and will involve the demolition of protected trees in the designated green area, contrary to the CDP.
- Contrary to the applicants' submission, the majority of Cork County Council's reasons for refusal have been ignored. The objections have not been taken into consideration.
- Visual impacts and impacts on scenic walks and views and impact on the character of the high value landscape.
- The proposed development conflicts with the TPO for the site and CDP objectives for the green areas.
- Roads and traffic implications.
- 20% of the site is covered by hardstanding, the proposed development will increase this to approximately 45%. Issues raised in relation to stormwater retention and soakaway capacity which will result in damage to the extensive root structure of the trees within the green fingers.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

PA ref: 21/5419: Permission refused by Cork County Council for a development essentially the same as currently proposed, with minor amendments. The reasons for refusal were stated as follows:

1. It is an objective of the County Development Plan to provide protection to trees the subject of Tree Preservation Orders (HE 2-5). Furthermore, it is an objective of the County Development Plan (HE 2-3) to provide protection to areas of local biodiversity value, ecological corridors and habitats that are features of the County's ecological network and to protect these from inappropriate development. It is considered that the proposed development would be likely to have a significant negative effect on such an area and that the granting of permission for this development would be contrary to policy HE 2-3 & HE 2-5.
2. The proposed development represents over-development of a restrictive site and protected and designated 'high' value scenic landscape in the County Development Plan 2014 and the proposed scheme is not considered sufficiently sympathetic because it necessitates removal of extensive amounts of trees and shall not preserve the visual and scenic amenities of the immediate surrounds in the harbour and along Scilly Walk in conflict with Policy Objective GI 6-1 landscape in the County Development Plan 2014.
3. The proposed improvement of a restricted vehicle access cannot support the proposed additional development (extra house) and the level of sightlines proposed in both directions is considered insufficient having regard to the volume and speed of passing vehicles and therefore conflicts with Policy Objective TM 3-3 in the County Development Plan 2014 which seeks to ensure all new vehicular accesses are designed to appropriate standards of visibility to ensure safety of other road users.

Adjacent sites:

PA ref: 16/4187: Permission granted for the construction of single storey detached structure for use as a garden study with tea station and shower room,

ancillary to main dwelling, detached plant room and associated works on site to the south of the current appeal site.

PA ref: 16/6151: Permission granted for the construction of a single storey extension at lower level and minor elevational changes to the existing dwelling and the re-routing of foul water from existing septic tank to main sewer on Ardbrack Heights road on site to the north.

PA ref: 20/5052: Permission sought for the construction of a detached dwelling and associated site works including wastewater pumping storage station pumped to existing connection in the higher road and connection to existing storm water on lands to the north-west of the current site with a house proposed at similar levels to the proposed house 2 and studio buildings currently proposed.

The Board will note that the application was withdrawn following a request for further information and prior to a decision issuing.

5.0 Policy and Context

5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

- 5.1.1. The National Planning Framework – Project Ireland 2040 is a high-level strategic plan for shaping the future growth and development of Ireland to 2040. A key objective of the Framework is to ensure balanced regional growth, the promotion of compact development and the prevention of urban sprawl. It is a target of the NPF that 40% of all new housing is to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites with the remaining houses to be delivered at the edge of settlements and in rural areas.

National Planning Objective 13 provides that “in urban areas, planning and related standards, including, in particular, height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected”.

5.1.2. Relevant policies of the NPF seek to support the creation of high-quality urban places and to increase residential densities in appropriate locations. The following objectives are relevant in this regard:

- Policy Objective 4
- Policy Objective 6
- Policy Objective 10
- Policy Objective 11
- Policy Objective 33
- Policy Objective 35

5.2. Sustainable Residential Development in Urban areas, Guidelines (DoEHLG, 2009):

5.2.1. These statutory guidelines update and revise the 1999 Guidelines for Planning Authorities on Residential. The objective is to produce high quality – and crucially – sustainable developments. The guidelines state that car parking standards need to be set at realistic levels, having regard, *inter alia*, to proximity to public transport.

5.2.2. The guidelines promote the principle of higher densities in urban areas as indicated in the preceding guidelines and it remains Government policy to promote sustainable patterns of urban settlement, particularly higher residential densities in locations which are, or will be, served by public transport under the *Transport 21* programme.

5.2.3. Section 5.6 of the guidelines suggest that there should be no upper limit on the number dwellings permitted that may be provided within any town or city centre site, subject to a number of safeguards.

5.3. Design Manual for Urban Roads and Streets (DEMURS), DoTTS, March 2013

In terms of the design of the proposed development, including the entrance and access to the site, it is a requirement that they be considered against the Design Manual for Urban Roads and Streets (DEMURS), DoTTS, March 2013. This Manual replaces DMRB in respect of all urban roads and streets and it does not differentiate between public and private urban streets, where a 60kph speed limit or less applies.

The implementation of DMURS is obligatory and divergence from same requires written consent from relevant sanctioning authority (NRA, NTA or DTT&S). The Manual seeks to address street design within urban areas (i.e. cities, towns and villages) and it sets out an integrated design approach.

5.4. Development Plan

5.4.1. Cork County Development Plan 2014 is the relevant policy document pertaining to the subject site. The site is located within the settlement boundary of Kinsale and on serviced land. The following policy objectives are considered relevant in the context of the proposed development:

- Policy Objective ZU 2-1 – Development and Land Use Zoning
- Policy Objective ZU 2-2 – Development Boundaries:
It is a general objective to locate new development within the development boundary identified in the relevant LAP that defines the extent to which the settlement may grow during the lifetime of the plan.
- Policy Objective ZU 3-2 – Appropriate Uses in Residential Areas
- Policy Objective HOU 3-2 – Urban Design
- Policy Objective SC 5-8 – Private Open Space Provision.

5.4.2. Chapter 12 of the Plan deals with Heritage and Objective HE 2-3: Biodiversity outside Protected Areas is relevant and seeks to:

‘Retain areas of local biodiversity value, ecological corridors and habitats that are features of the County’s ecological network, and to protect these from inappropriate development. This includes rivers, lakes, streams and ponds, peatland and other wetland habitats, woodlands, hedgerows, tree lines, veteran trees, natural and semi-natural grasslands as well as coastal and marine habitats. It particularly includes habitats of special conservation significance in Cork as listed in Volume 2 Chapter 3 Nature Conservation Areas of the plan.’

5.4.3. Chapter 13 of the Plan deals with Green Infrastructure and Environment. Section 13.3 deals with Green Infrastructure and Development and provides that ‘all planning applications for development must have regard to the County’s green infrastructure

resources in order to ensure that development proposals provide for the protection of existing green infrastructure and, where appropriate, the provision of new green infrastructure in tandem with new development.’ The following objectives are relevant in this regard:

- GI 3-1: Green Infrastructure – New Developments
- GI 3-2: Green Infrastructure – Significant Developments (including multiple residential developments)

5.4.4. The site is also located within an area identified as Indented Estuarine Coast. Such locations are designated as area of very high landscape value, very high landscape sensitivity and are of national importance. Section 13.6 – Landscape Character Assessment of County Cork states that ‘very high sensitivity landscapes (e.g. seascape area with national importance) which are likely to be fragile and susceptible to change.’ The following policy objectives, as they relate to the protection of the landscape and ensure that new developments meet high standards in terms of siting and design, are considered relevant:

- Policy Objective GI 6-1- Landscape
- Policy Objective GI 6-2 - Draft Landscape Strategy.

5.4.5. The site is located on a scenic route (ref. S61), which is the road between Kinsale and Clonleigh via Summercover. As such the following policy objectives, as they relate to the protection of the character of scenic routes, are considered relevant:

- Policy Objective GI 7-2 - Scenic Routes
- Policy Objective GI 7-3 - Development on Scenic Routes.

5.5. **Bandon Kinsale Municipal District Local Area Plan 2017**

5.5.1. The subject site is located within the existing ‘built up’ area of the town of Kinsale, which is identified as a main town in the LAP. It is the objective of the LAP, in terms of Kinsale, to provide for development which reinforces the compact form of the town.

5.5.2. In terms of servicing, the LAP notes that there is capacity in the wastewater treatment system but notes that the Inishannon water supply has limited spare

capacity. There is also an issue concerning the availability of adequate reservoir storage. Upgrading of water supply is required and provision of adequate reservoir storage is required.

5.6. Draft Cork County Development Plan 2022

- 5.6.1. The Board will note that the Elected Members of Cork County Council adopted the Cork County Development Plan 2022-2028 at a full Council Meeting on the 25th of April 2022. The Plan will come into effect on the 6th of June 2022.
- 5.6.2. The 2022 CDP identifies the subject site as being within the settlement boundary of the town of Kinsale on lands part zoned Existing Residential/Mixed Residential and Other Uses towards the north-eastern area of the site, adjacent to Higher Road. The area of the site towards the lower area of the site is located on lands zoned Green Infrastructure within the CDP. The site is also located within a high value landscape and in the landscape character type Indented Estuarine Coast is not changed in the new Plan.
- 5.6.3. The subject site, therefore, is partly zoned with the objective KS-GC-13 in the new CDP. This objective states:

Open Space. Passive Open Space. This is an important woodland area which makes a positive contribution to the setting of the town and is of local biodiversity value.

I note the specific reference to this area within the body of Volume 5 of the Plan, which deals with West Cork, including Kinsale, which describes the area as:

Other areas of high visual prominence continue to be protected along with a new strip of Open Space (KS-GC-13) at Scilly Woods which is also an important area of local biodiversity value. (Section 1.5.29 Green Infrastructure in the Kinsale section of Volume 5 of the CDP)

- 5.6.4. Sections 1.5.5 and 1.5.6 of the new CDP deals with Planning Considerations and Proposals in Kinsale and notes that

‘There are some physical constraints which will clearly influence the future direction of growth in the town. These physical constraints are also the natural features that have contributed to its success and are found within and around

its spectacular scenic and historic harbour and dominate the southern and eastern boundaries of the town.'

'To the east, it is important that the attractive entrance to the town is maintained. Previous plans identified the 'green fingers' of land outside of the development boundary separating the historic settlements of Scilly and Summercove from the main town and their importance to the general setting of the town. It is the intention that this policy would be carried forward in this plan. It is also the intention of this Plan to provide more placemaking guidance on the management of built environment within these two satellite nodes of Scilly and Summercove.'

- 5.6.5. I also note General Objective KS-GO-02 seeks to 'retain the 'green fingers' of land separating the villages of Scilly and Summercove free from development as these are integral to the landscape setting of the town.

5.7. **Natural Heritage Designations**

The site is not located within any Natura 2000 site. The closest Natura 2000 site is the Sovereign Islands SPA (Site Code: 004124) which is located approximately 5km to the south-east. In addition to the above, the Old Head of Kinsale SPA (Site Code: 004021) lies approximately 10km to the south, Courtmacsherry Estuary SAC (Site Code: 001230) and Courtmacsherry Bay SPA (Site Code: 004219), approximately 13km to the south-west and Seven Heads SPA (Site Code: 004191) approximately 16km to the south-west.

Cork Harbour SPA (Site Code: 004030) lies approximately 13km to the north-east of the site.

5.8. **EIA Screening**

- 5.8.1. The application was submitted to the Board after the 1st September 2018 and therefore after the commencement of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018.

5.8.2. Item (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units
- Urban development which would involve an area greater than 2ha in the case of a business district, 10ha in the case of other parts of a built-up area and 20ha elsewhere.

5.8.3. The proposed development comprises the demolition of an existing urban house and the construction of 2 houses in Kinsale, Co. Cork, on a site of 0.2213ha. It is therefore considered that the development does not fall within the above classes of development and does not require mandatory EIA.

5.8.4. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

5.8.1. Having regard to:

- (a) the nature and scale of the development,
- (b) the location of the site within the development boundaries of Kinsale,
- (c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that 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.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. This is a first-party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The appeal document notes that this is the second application for the proposed development on the site and has sought to address the Council's concerns in relation to the previous application. It is submitted that the Council's substantive concerns with regard to the tree removal and visual impacts are considered to have been addressed. The single reason for refusal relates to the adequacy of the sightlines available from the proposed reconfigured entrance.

6.1.2. The grounds of appeal are summarised as follows:

- It is accepted that the existing wall to the south restricts the achievement of the required 45m sightline, but the applicant has secured the consent of their neighbour to alter the existing wall to achieve the required 45m.
- This will involve work outside the red line boundary but on adjacent lands which the applicants can control.
- Based on the provisions of Section 34(4) of the Planning and Development Act 2000, as amended, it is requested that this be dealt with by condition.
- It is submitted that the proposed development can provide for adequate sightlines in both directions so that the reconfigured entrance is designed to the appropriate standard of visibility to ensure safety of all road users.

The report sets out the details of the subject site and the nature of the proposed development. In addition, section 5.0 of the appeal document refers to Other Matters as follows:

- Ecology & Woodland Management: The appeal document notes the report of the Council's Ecologist and advises no objection to the inclusion of conditions relating to the preparation of a Bat Protection Plan and a Woodland Management Plan.

- **Public Sewer Connections:** The submission of Irish Water is noted. It is submitted that this matter can be easily addressed and revised proposals for connections are submitted.

The letter of consent from the adjacent landowner, revised sightline drawing, the Planning Statement, dated October 2021 and revised sewer connection proposals are also included with the appeal. It is requested that the Board grant permission for the proposed development.

6.2. **Planning Authority Response**

The Planning Authority submitted a response to the first-party appeal noting that the relevant issues have been covered in the technical reports already forwarded to the Board. The PA has no further comments to make.

6.3. **Observations**

There are two observations noted in relation to the subject appeal. Both observations request that permission be refused for the proposed development and the issues raised are summarised as follows:

- The proposed development will go against the objectives set out in the two main development plans governing the area – the Bandon Kinsale MD LAP and the CDP
- The proposal goes against the Cork County Council Ardbrack Tree Preservation Order No. 1:1980. It is an objective of the CDP to protect trees the subject of TPOs.
- A grant of permission will set a dangerous precedent for future developments into this visually valuable woodland, so important to the harbour setting.
- The location of the site is visually prominent and elevated, overlooking Kinsale harbour and visible from two scenic routes. The development would be significantly higher than the existing ridge line.
- The proposed 3 units replacing a single dwelling will significantly increase the car trips using the entrance with restricted sightlines.

- Recent redevelopments along the high road have taken the development plan objectives and the TPO into consideration.
- The previous reasons for refusal are still relevant and there has been no change to the scale and visual impact of the development in the current application.
- The detail of floor levels are not consistent with the submission that the finished floor level of the proposed dwelling has been dropped. The proposed house has a floor level a2.08m above the ffl of the existing house.
- The increased ffl and increased ridge height conflicts with the objectives of the CDP which seek to protect skylines and ridgelines from development (G16-1(d) refers).
- There are inadequate sight lines available.

7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the development the subject of this application and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Design, Scale & Visual Impacts
3. Roads & Traffic
4. Water Services & Site Suitability Issues
5. Ecology
6. Other Issues
7. Appropriate Assessment

7.1. Principle of the Development:

- 7.1.1. The Cork County Development Plan 2014 is the relevant policy document pertaining to the subject site. The site is partly located within the 'existing built-up' area of the town of Kinsale, partly within and has a stated area of 0.2213ha. The site is currently occupied by a large split-level house, with a stated floor area of 250m². The proposed development seeks to demolish this existing house and replace it with two residential units and a detached studio, with each unit being set behind each other. The levels of the proposed buildings will reduce, following the contours and levels of the site as it reduces from the northeast towards the southwest. The site can connect to the public services in Kinsale.
- 7.1.2. In terms of the principle of the development, I would note that national policy seeks to increase residential densities in appropriate locations and that this objective is provided for in the current CDP. Under the provisions of the current Cork County Development Plan 2014, development within 'existing built-up area' zoned lands is noted to include infill development and Section 14.3.3 of the Plan supports such

development as it is 'more sustainable than continually encouraging growth to concentrate only towards undeveloped areas.' I would also, however, acknowledge the provisions of Section 14.3.6 which clearly provides that within such zoned areas, the inclusion of areas of undeveloped land which perform valuable functions such as providing open space, does not imply a presumption in favour of development, 'unless this would enhance the character and amenity of the area as a whole'.

- 7.1.3. That said, the Board will note that the majority of the rear of the subject site is located on lands zoned 'Green Infrastructure' in the new CDP. Under the provisions of the current Bandon Kinsale MD LAP, I note the general objectives for Kinsale includes KS-GO-02 which states as follows:

Retain the 'green fingers' of land separating the villages of Scilly and Summercove free from development as these are integral to the landscape setting of the town.

The above objective was carried forward from previous plans due to the identified 'green fingers' of land outside the development boundary separating the historic settlements of Scilly and Summercove from the main town and their importance to the setting of the town. I also acknowledge the location of the site within a High Value Landscape. In addition, I note that the area identified as 'green finger' and Green Infrastructure correlates with the area of a Tree Preservation Order.

- 7.1.4. In terms of the above and having regard to the nature of the development proposed, I would have no real objection to the replacement of the current house on the site. I would also accept that the area of the site is reasonably sufficient to accommodate a second house. However, having regard to the proposed layout, which will set the second proposed house to the rear of, and below the ffl of the first house, with the studio further behind, I consider that such layout would be contrary to the vision, and objectives of the Bandon Kinsale Municipal District LAP for this area of Kinsale. The layout as proposed will result in part of the second house and all of the studio being constructed within the 'green finger', contrary to objective KS-GO-02 of the LAP. In addition, given that the newly adopted County Development Plan identifies the rear of the subject appeal site as 'green infrastructure', I am satisfied that the principles of the current LAP objectives will be carried through in the new CDP.

7.1.5. In terms of the above, I consider that the principle of the development might reasonably be acceptable on part of the overall proposed site. However, having regard to the proposed layout of the site which seeks to develop an area which is identified as a 'green finger', I consider that if permitted as proposed, the development would contravene a stated objective of the Bandon Kinsale Municipal District Local Area Plan 2017, which seeks to 'retain the 'green fingers' of land separating the villages of Scilly and Summercove free from development as these are integral to the landscape setting of the town' (Objective KS-GO-02 refers).

7.2. Design, Scale & Visual Impacts

7.2.1. The subject site is located within a high value landscape and off a designated scenic route. The proposed development seeks to construct two contemporary houses, one behind the other, and a single storey studio / home office behind. The studio will be elevated and constructed on stilts. In terms of the overall design of the buildings, I would have no objection in principle. I consider that the scheme has sought to use the topography of the site, which presents significant constraints, with the proposed stepped down approach to the buildings. The construction will require significant groundworks, not only to provide foundations for the 3 buildings, but also for the proposed incline elevator system and stairs to be constructed along the north-western boundary of the site, as well as the installation of wastewater pumps and soakpits.

7.2.2. The existing split level house on the site, with a stated floor area of 250m², has an overall ridge height of approximately 7.2m with a finished floor level of approximately 1.7m below the ffl of the proposed replacement house. The proposed house will rise to an overall height of 7.2m but with the increased ffl, will result in it being visible from the adjacent scenic route. The proposed replacement house design provides for a contemporary two storey house with an overall stated floor area of approximately 282m². The second house, to be located to the rear of the replacement house has a stated floor area of 123m² and the studio, 45m². The submitted drawings indicate that the buildings will be finished using a variety of materials including a coloured render finish to the ground floor level and a mix of seamed metal wall system and timber louvres with powder coated aluminium door /

window system. I have no objection in principle to the overall design and finishes of the buildings proposed.

7.2.3. The layout of the site sets the proposed buildings through the north-eastern area of the site and towards the rear of the site, which falls within the 'Green Finger' zoning. The site includes an extensive area of woodland environment together with trees and hedgerows along the boundaries of the site and through the site. The front boundary comprises a sod and stone boundary with trees and vegetation intermixed. The development will see the removal of the front boundary vegetation, as well as many of the trees along the upper-level side boundaries of the site.

7.2.4. The Board will note the location of the site in a prominent and elevated position overlooking Kinsale Harbour, in an area which is openly visible from identified Scenic Route number S61, which has been designated as a Scenic Route in the Cork County Development Plan 2014 and within a high value landscape. In this regard, it is a particular objective of the planning authority to preserve the visual and scenic amenities of those areas of natural beauty identified as scenic routes. While I have no objections in principle to the overall design of the development, I consider that, by reason of its overall height, design and elevated finished floor level, together with the necessary removal of a large area of vegetation to the front of the site, a grant of permission in this instance, would adversely affect the character of the designated Scenic Route S61, would seriously injure the visual amenities of the area and would contravene the policies of the said development plan for the protection of the Scenic Routes, which policies are considered reasonable. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.3. Roads & Traffic

7.3.1. The Board will note that the PA considers that the access to the site is substandard in order to facilitate the level of development proposed. In support of the appeal, the applicant has submitted a letter of consent from the adjoining landowner who has given his permission to alter the adjoining wall in order to achieve the 45m sight distance required towards the south towards Summercove.

- 7.3.2. The development proposes to use the existing entrance which is to be reconfigured and the layout provides that a car can do a 3-point turn within the confines of the proposed covered carport to ensure exit from the site in a forward gear. I also note that the applicant submits that the development is not intended to increase the traffic loading beyond that of a large residential dwelling. The Board will note that the submitted Civil Engineering Report suggests that the LA appears to be abrogating its responsibility regarding speed management on the Ardbrack Higher Road, which is described as 'very busy, serving a large residential area, is on a school route and carry's seasonal traffic and pedestrians on the road between the town and Charles Fort (a nationally significant tourist attraction). Many vehicles passing the site appear to be exceeding the maximum 50 kph speed zone'.
- 7.3.3. It is noted that the Cork County Council Area Engineer does not consider that the application removes his previous concerns and that the issues have not changed. Of particular note, it is submitted that the site entrance is unsafe and does not show safe sightlines. With the development appearing to provide for as many as 3 separate dwellings, the potential increase in footfall and safety concerns over the substandard entrance with insufficient sightlines and parking remains.
- 7.3.4. Notwithstanding the proposals to alter the existing entrance serving the house on this site, it is considered that the layout remains substandard in terms of sight visibility and gradient for vehicles exiting the property. Additional turning movements generated by the proposed development, including a second house and a studio on the site, would endanger public safety by reason of traffic hazard and would be contrary to Policy Objective TM3-3 of the County Development Plan which seeks to ensure all new vehicular accesses are designed to appropriate standards of visibility to ensure safety of other road users and would therefore, by itself and by precedent, endanger public safety by reason of traffic hazard.

7.4. Water Services & Site Suitability Issues

- 7.4.1. In terms of site suitability, the Board will note that the submitted Civil Engineering Report also deals with matters relating to surface water drainage, wastewater drainage and water supply. The proposed houses are to be served by connections to the public infrastructure in terms of water supply and wastewater and the Board will note that the pre-connection enquiry form submitted by the applicant to Irish Water

describes the development as being for 2 houses and 1 apartment. I do note however, that the form indicates that the enquiry relates to an increase in the size of an existing connection and that no additional connections are being sought. Only 1 connection to the public infrastructure is being sought in terms of water and wastewater.

- 7.4.2. In terms of water, a 3 Port Multi-Valve Manifold is to be installed with 3 no. 25Ø MWS, each to independently serve an individual unit.
- 7.4.3. In terms of wastewater drainage, it is proposed to install a gravity system around each unit, which will discharge to separate Klargester Domestic Pumping Stations. Individual rising mains will be installed from each of the 3 pumping stations, each of which will have a minimum 24-hour storage.
- 7.4.4. Surface water drainage will be installed as a gravity system, with the final outfall from each unit being conveyed into a soakaway. While concerns were raised previously in relation to issues of safety to the Scilly walkway and public below the site, it is submitted that any construction concerns can be addressed by way of a construction management plan, as a condition of planning permission. The Civil Engineering Report also notes that due to the time of year on making the application and appeal, it was not possible to carry out the necessary testing to allow the design to be completed prior to the application process.
- 7.4.5. In terms of the above, I would have a real concern as to the potential impacts associated with servicing of the site. While I accept that the site can connect to public infrastructure in the area, I do not accept that adequate consideration has been paid to the nature of the engineering requirements to do so. The installation of, in particular the proposed studio – or apartment as referred to in the IW pre-enquiry form – and the associated pumping stations and soakaways to deal with wastewater and surface water within the site, will impact on land within the TPO area and no details of any assessment of same has been provided.
- 7.4.6. I refer the Board to my concerns in terms of the impact of the development on the ecology of the site as discussed below and concluded that should the Board be minded to grant planning permission in this instance, the studio building should not be permitted. Nor should the seating area identified between house no. 2 and the studio building and the funicular lift access should stop at the level to house no. 2.

7.5. Ecology

- 7.5.1. While I will address matters relating to Appropriate Assessment further in section 7.6 of this report, I consider it appropriate to consider the potential impacts associated with the proposed development on the ecology of the site, and in particular, within the Green Finger area / TPO. The applicant submitted an Ecological Impact Assessment (EclA), prepared by DixonBrosnan Environmental Consultants, dated April 2021 as part of the suite of planning documents. The purpose of the EclA is to provide a description of potential ecological impacts arising from the proposed development on terrestrial and aquatic flora and fauna and the report provides a description of the proposed works and outlines the objectives of the EclA. The EclA notes that flora and fauna in Ireland are protected at national level by the Wildlife Acts, 1976 to 2000 and the EC (Birds and Natural Habitats) Regulations 2011. A survey of the subject site was undertaken on the 7th of April 2021 in relation to habitats, invasive species, bird species and a general mammal survey.
- 7.5.2. The receiving environment is described, and a description of the proposed development presented. The EclA notes that the subject site does not form part of any European designated site and notes the 6 designated sites within 15km of the site. Table 1 of the report also notes the location of 9 proposed Natural Heritage Areas within this 15km area, with James Fort pNHA (Site Code: 001060) being located approximately 100 to the south-west of the site, which sits in Kinsale Harbour.

Habitats:

- 7.5.3. The subject site slopes steeply towards Scilly Walk in a North-east to south-west direction from the Ardrack High Road. No Annex I habitats were recorded on the site and no protected species were noted during the site visit. In terms of potential survey constraints, the EclA does not refer to any, and all on-site identified habitats are fully described. The primary habitats identified on the site are as follows:

Habitat Type & Code	Area / location	Ecological Value
Buildings and Artificial Surfaces - BL3	Dominant feature in the norther section of the site – location of existing house	Local importance – lower value

	<p>which is indicated to be in a good state of repair.</p> <p>No obvious potential access points for bats were recorded.</p>	
<p>Amenity Grassland – GA2</p> <p>Flower beds and Borders – BC4</p>	<p>To the rear of the existing dwelling – overgrown lawn which is becoming diverse due to lack of management.</p> <p>To the front and rear of the house there are cultivated flower beds.</p> <p>Invasive species – Three Cornered Leek (<i>Allium triquetrum</i>) was recorded in one area close to the house.</p>	<p>Local importance – lower value</p>
<p>Stonewalls and other stonework – BL1</p>	<p>A stonewall separates the site from the walkway along the southern boundary. This is an old stone wall which supports a number of specialised species.</p> <p>At the base of the wall and outside the site boundary, there is a line of Invasive species – Three Cornered Leek (<i>Allium triquetrum</i>).</p>	<p>Local importance – higher value</p>
<p>Mixed Broadleaved / Conifer Woodland – WD2</p>	<p>To the south of the existing garden, the site falls away steeply towards Kinsale Harbour. Due to access difficulties, use of this area has been limited and is dominated by woodland habitat.</p> <p>Trees within the site are mapped and identified in a tree survey report.</p> <p>In the northern upper section of the site, the</p>	<p>Local importance – higher value</p>

	<p>invasive species - Rhododendron (<i>Rhododendron ponticum</i>) is present with a patchy distribution.</p> <p>In the lower section of the site there are mature trees, but with a dominance of non-native species.</p> <p>Woodland ground flora is limited with some typical woodland species noted.</p>	
Hedgerow - WL1 / Treeline – WL2	<p>The overgrown hedgerow to the south of the dwelling includes non-native grisilinea hedging (<i>Grisilinea littoralis</i>).</p> <p>There is a low value hedge along the roadside.</p> <p>A treeline of Lawson Cypress (<i>Chamaevyparis lawsoniana</i>) runs along part of the eastern boundary</p>	Local importance – lower value

7.5.4. In terms of impacts associated with the proposed development on habitats, the EclA, at Section 9, sets out an evaluation and notes that there will be a net permanent loss of terrestrial habitats due to the proposed development. It is submitted that most of the habitats to be affected have been significantly modified from the natural state by human activity and in a ‘do nothing’ scenario, a general pattern of succession from grassland or sapling/pioneer trees to scrub or mature forest would be expected to occur, with the most likely habitat being oak-birch-holly woodland (WN1) at the north of the wooded area, while the southern are would probably not alter its character greatly. However, the presence of invasive species, especially Rhododendron, could result in parts of the site becoming primarily this species.

7.5.5. The EclA concludes that impacts will be confined to the immediate development areas of the site and will be of a short-term duration. The EclA notes that indirect impacts may occur via damage and disturbance arising from vehicular activities and

storage of overburden and materials. Dust levels are predicted to be low and will not significantly impact vegetation. It is noted that no rare floral species were recorded within the study area and Table 11 of the EclA sets out the predicted impacts (on habitats) as a result of the development. Impacts range between no impact, to negative slight or not significant. The loss of habitats during the construction phase, including amenity grasslands and flowerbeds, hedgerows and treelines and mixed broadleaved/conifer woodland are noted to be a permanent impact.

7.5.6. Section 11 of the EclA sets out the mitigation measures to be employed to achieve a lowering or reducing of the risk of impact to acceptable levels. Such measures include construction best practice measures during the construction phase. Section 11.2 sets out the mitigation measures for the protection of habitats and species. Where habitats are damaged or disturbed, they will be left to regenerate naturally or will be rehabilitated and landscaped as appropriate, once construction is complete.

7.5.7. In addition to the above, a potential significant impact arising in terms of habitats relate to the potential for the introduction of invasive species to the site via importation of soil for the purposes of the landfill. In order to mitigate any such introduction, the applicant proposes to undertake control measures to ensure no invasive species, such as Japanese Knotweed, are introduced onto the site during the construction works. It is noted that Rhododendron and Three-Cornered Leek were identified on the site and the EclA includes mitigation measures to control / remove these species within the development site. A treatment programme will be carried out by a suitably qualified person who has experience of treating invasive species and will be carried out in line with the herbicide manufactures instructions. The entire site and adjacent area will be surveyed and the level of infestation of the Three-Cornered Leek assessed and mapped prior to the commencement of treatment works.

Flora & Fauna:

7.5.8. There are no endangered or protected species recorded by the National Biodiversity Data Centre (NBDC) within the 10km square W65 of OSIs National Grid System. No rare flora were recorded within the study area during surveys.

Otter:

- 7.5.9. In terms of mammals and species the EclA notes that the NBDC has 17 records of Otters within W65 and that Otters are known to occur within Kinsale Harbour. The subject site is separated from the shoreline by an existing walkway and a steep vegetated slope. Below the treeline the intertidal zone is delineated by steep, low rock cliffs. No signs of Otter were recorded and given the steep vertical nature of the rock faces, the potential for Otter holts is negligible.

Bats:

- 7.5.10. Table 4 of the EclA identifies the presence of bats within W65, as extrapolated from existing bat records. The Lesser horseshoe bat is the only bat species listed on Annex II of the Habitats Directive and does not occur within 10km of the proposed development site. 2 bat species are noted to occur within grid square W65 including the Leisler's bat and pipistrelle. Of particular note, no survey for bats appears to have been carried out by the applicant. It is indicated that due to seasonal factors, it was not possible to determine whether the habitats on site are actively used by feeding bats. It was also noted that the use of the existing building on the site as a summer roost could not be excluded and that a bat survey was to be carried out in the summer of 2021. The Planning Statement submitted with the application advised that it was not possible to carry out the bat survey as proposed in 2021.
- 7.5.11. In terms of the information submitted, and having regard to the Councils Ecologists Report, I would absolutely agree that no consideration of a grant of planning permission should be forthcoming in the absence of a full bat survey and the preparation of a Bat Protection Plan. The issues raised by the Councils Ecologist with regard to the potential impact of light spill, and in particular from the proposed office/studio building, on bats are significant in my opinion. Should the Board be minded to grant permission in this instance, these issues require to be addressed by way of further information, and in advance of a positive decision.

Other Mammals:

- 7.5.12. The EclA notes that 11 other species of terrestrial mammal have been recorded within grid square W65, including the following protected species (under the Irish Wildlife Act): badger, red squirrel, Irish hare and hedgehog. The EclA submits that no signs of Badger or Irish Hare were recorded within the site. Due to the habitats

recorded on the site, it is submitted that red squirrel is unlikely to occur, while the hedgehog is likely to occur. In terms of reptiles and amphibians, the common frog and common lizard are noted to be unlikely to occur at the site with neither species recorded in the area.

Birds:

- 7.5.13. A bird survey was carried out in April 2021. No species of high conservation status were recorded within the proposed development site and no signs of other significant nesting species were recorded.

Potential Impacts on Fauna:

- 7.5.14. Loss of habitat and increased noise and disturbance is predicted to occur during construction and occupancy of the residential development, however, impact the local fauna is predicted to be low to negligible. With regard to bats, the EclA submits that the development will not have significant adverse impacts through habitat loss with regard to grassland loss. The loss of immature woodland habitat 'may have adverse impacts on the local bat populations using the site' but with the retention of a large number of trees and proposed new trees, alternative foraging habitat will be provided. Long term, it is concluded that there will be no significant loss of habitat. With regard to lighting, it is submitted that the site is located within an urban area with streetlighting and lighting from existing dwellings. Mitigation measures during construction and operation lighting which will be limited to the dwellings and their curtilage will ensure that there is no significant impact on foraging bats. It is also concluded that there will be no significant light spillage onto surrounding habitats. In the absence of any bat survey, I do not consider that the potential impacts of the development on bats, including impacts on habitat and light spill, have been appropriately dealt with.
- 7.5.15. With regard to other mammals, it is submitted that increase noise and disturbance during construction is predicted to be slight in the short-term and not significant in the long term. Overall, the impact on protected mammal species is predicted to be negative, slight and short-term during construction and negative not significant during the operational phase.
- 7.5.16. In terms of impacts on birds, it is noted that no rare or uncommon species or species of high conservation value were recorded at the site. The birds using this area have

been doing so in an urban environment with other residential development, public lighting and road noises. The impact of the proposed development on birds during construction is predicted to be short-term and slight, while the operational impact will be permanent and not significant.

Water Quality:

- 7.5.17. Section 8 of the EclA deals with Water Quality and sets out the environmental objectives of the River Basin Management Plan for Ireland 2018-2021. The subject site lies within the Bandon – Ilen (Code 2) Catchment, which includes the Rivers Bandon and Ilen. This catchment comprises 17 sub-catchments with 87 river water bodies, 6 lakes, 25 transitional and coastal water bodies and 5 groundwater bodies.
- 7.5.18. Section 10.4 considers the potential impacts of the development on water quality in terms of increase silt levels in surface water run-off, inadvertent spillages of hydrocarbons from fuel and hydraulic fluid and increased nutrients from treated wastewater. Subject to the implementation of mitigation measures, no significant impact on surface water from the proposed development is envisaged during the construction phase.
- 7.5.19. In terms of the operational phase, the proposed development could result in an increase in nutrients discharging to the Bandon Estuary of Kinsale Harbour, which could impact on estuarine habitats by changing the baseline ecological conditions and increasing algal growth. Increased nutrients will also discharge to the Kinsale WWTP. Treated effluent from the WWTP ultimately discharges to the Bandon Estuary. It is noted that while the WWTP is currently operating significantly below the design PE capacity, the EPA Annual Environment Report 2019 indicates that the plant is non-compliant in terms of Total Ammonia and Orthophosphate levels of the discharge licence. I would acknowledge that the discharge from the WWTP does not appear to have an observable impact on the quality of receiving waters and does not impact negatively on the Water Framework Directive Status.
- 7.5.20. Construction best practice measures will be implemented throughout the project, including the preparation of detailed method statements which will incorporate the relevant elements of relevant guidelines. Overall, I have no objection to the proposed development in terms of impacts on water quality.

Conclusion:

- 7.5.21. Overall, the EclA concludes that the development impact primarily on low to moderate value habitats, with a net loss of immature woodland which are potentially used as nesting habitats for common bird species. No trees suitable for bat roosting habitat were identified within the site. No impact on aquatic habitats is predicted. Overall, the EclA concludes that given the availability of alternative nesting habitat in the vicinity, and the landscaping plan for the site, the impact on nesting birds is likely to be slight and short-term. With the exception of localised impacts and short-term impacts during construction in terms of noise and general disturbance, no significant negative impacts on habitats or protected species are predicted and it is concluded that the development will not impact negatively on any designated site.
- 7.5.22. The Board will note my concerns raised with regard to the potential impact of the development on bats. I consider that the issues arising with regard to lack of survey information and the potential for light spill on the habitat which would create a barrier for bats, potentially causing disturbance if not abandonment of foraging and commuting bat habitat, compound the argument to refuse, at minimum, permission for the studio / office / additional accommodation and development within the Green Finger / TPO area of the site.
- 7.5.23. Should the Board be minded to grant planning permission in this instance, the mitigation measures detailed in the EclA should be fully conditioned.

Trees:

- 7.5.24. In terms of the potential impact of the development on trees, the Board will note that the application documents included a Tree Survey / Arborist Report, prepared by County Tree Care Ltd as well as a Landscape Report on the Woodland, Land use and Tree Preservation Order, prepared by Forestbird Design. These documents are separate from the Ecological Impact Assessment submitted and discussed above.
- 7.5.25. In terms of the Tree Survey / Arborist Report, the aim of the survey was to identify the species of trees, given an estimation of age and advise on the condition and health of the tree. The report also advises on the ecological, cultural and aesthetic benefit that each tree offers. Recommendations are also provided based on the survey, and it is indicated that the survey should be regarded as a preliminary

assessment of the trees, dealing with the current condition as identified. The survey covers the entire proposed development site.

- 7.5.26. The Landscape Report on the Woodland, Land use and Tree Preservation Order, prepared by Forestbird Design, sought to address the previous reasons for refusal at the site. The report submits that following the relocation of the studio building, only 1 tree within the TPO, and 1 tree at the fringe of the TPO area are required to be removed. These include no. 662 – Field Elm – Category U (non-native), already dead and partially collapsed and no. 663 – Sessile Oak – Category C (native). The trunk of the Sessile Oak is outside the TPO but the small canopy hangs over the TPO area. It is the only Sessile Oak in the vicinity and is deemed to be a poor-quality specimen with a limited lifespan. As such, it is submitted that the proposed development retains all Category A and B trees and all trees that have a measurable contribution to the TPO. 28 pieces of vegetation are to be removed, 24 of which are hedging species and 4 no. trees – two of which are ornamental garden species. It is concluded that the removal of the plants will not have a significant negative impact on either Objective HE2-3 or HE2-5. The report seeks to address the concerns of the Councils Ecologist with regard to natural regeneration and concludes that the proposed scheme mitigates previous concerns and meets the landscape and biodiversity objectives of the Council. With the implementation of the landscape proposals, it is submitted by the applicant that the TPO will be substantially improved long-term.
- 7.5.27. The Board will note that the Councils Ecologist has welcomed the proposed enhancement of the woodland. However, outstanding issues relating to the management of the woodland are required to be addressed. I would agree that such issues relating to management and enhancement should not be dealt with by way of a condition of planning permission given the designation and protection afforded by the TPO to the woodland area of the site. As such, should the Board be minded to grant permission in this instance, a Woodland Management Plan should be requested by way of further information, which provides for the wider ecological significance of the habitat.

7.6. Other Issues

7.6.1. Development Contribution

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

7.7. Appropriate Assessment

Introduction:

7.7.1. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The site is not located within any designated site. The closest Natura 2000 site is the Sovereign Islands SPA (Site Code: 004124) which is located approximately 5km to the south-east.

7.7.2. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:

- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).
- Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.

7.7.3. Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

Consultations:

7.7.4. With regard to consultations, the Board will note that no issues relating to AA were raised by any party, although substantial discussion is noted in relation to the ecology of the site. I note that the Council's Ecologist Report included an AA Screening section.

Screening for Appropriate Assessment

- 7.7.5. The proposed development will connect to the public water services in the town, with the Kinsale WWTP being located to the west of the town at Commoge, with a discharge to the River Bandon. I note that there is capacity in the system to accommodate the proposed development.
- 7.7.6. The applicant did not prepare an Appropriate Assessment Screening Report as part of the subject application and did not submit a Natura Impact Statement. An Ecological Impact Assessment, however, was included with the application as well as a tree survey. In terms of AA, the Board will note that the development is not directly connected or necessary to the management of a European Site. There are 6 Natura 2000 Sites occurring within a 15km radius of the site, the closest one being the Sovereign Islands SPA (Site Code: 004124) located approximately 4.5km to the south-east. In addition to the above, the Old Head of Kinsale SPA (Site Code: 004021) lies approximately 9.5km to the south, Courtmacsherry Estuary SAC (Site Code: 001230) and Courtmacsherry Bay SPA (Site Code: 004219), approximately 12km to the south-west. Cork Harbour SPA (Site Code: 004030) lies approximately 13km to the north-east of the site. The Seven Heads SPA (Site Code: 004191) approximately 15km to the south-west.
- 7.7.7. I am satisfied that the following 5 sites can be screened out in the first instance, as they located outside the zone of significant impact influence because the ecology of the species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated sites to the development site and therefore, I conclude that no significant impacts on the following sites is reasonably foreseeable. I am satisfied that the potential for impacts on the following Natura 2000 sites can be excluded at the preliminary stage:

Site Name	Site Code	Assessment
Old Head of Kinsale SPA	004021	Site is located entirely outside the EU site and therefore there is no potential for direct effects. No habitat loss arising from the proposed development.
Courtmacsherry Estuary SAC	001230	
Courtmacsherry Bay SPA	004219	

Seven Heads SPA	004191	No disturbance to species.
Cork Harbour SPA	004030	No pathways for direct or indirect effects. Screened Out

7.7.1. I consider that the following Natura 2000 site, located within 15km of the subject site, can be identified as being within the zone of influence of the project, for the purposes of AA Screening, as follows:

- The Sovereign Islands SPA (Site Code: 004124)

Qualifying Interests for Natura 2000 Sites within Zone of Influence

7.7.2. The subject development site is located within the settlement boundary of the town of Kinsale, Co. Cork, on lands identified as 'built up'. The site is not located within any designated site. The site does not appear to contain any of the habitats or species associated with any Natura 2000 site.

7.7.3. The following table sets out the qualifying interests for the identified Natura site:

European Site	Qualifying Interests
Sovereign Islands SPA (Site Code: 004124) Located approx. 4.5km to the South of the site	<ul style="list-style-type: none"> • Cormorant (<i>Phalacrocorax carbo</i>) [A017]

Sovereign Islands SPA (Site Code: 004124)

7.7.4. The Sovereign Islands are two very small marine islands located approximately 1km off the coastline at the entrance to Oysterhaven Bay in Co. Cork. The islands are rocky stacks separated by a narrow sound of about 20m width. The eastern island is flat-topped and rises to 24m above sea level and the western one is more peaked and rises to 30m. Both islands are largely devoid of soil apart from small amounts of organic matter trapped in cracks. Vegetation is sparse.

7.7.5. The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for the Cormorant. The islands are important for breeding seabirds, with most occurring on the eastern stack. A Cormorant colony has been known since the late 1960s and 156 pairs were recorded here in 1999. A more

recent survey in 2008 recorded 89 pairs. Herring Gull and Great Black-backed Gull also breed, with 10 and 75 pairs respectively in 1999.

7.7.6. Sovereign Islands SPA is of ornithological importance mainly for the breeding colony of Cormorant, which is both the largest in Co. Cork and of national importance. The non-migratory population of Great Black-backed Gull is also of national importance.

Conservation Objectives:

7.7.7. The Conservation Objectives for the relevant designated sites are as follows:

European Site	Conservation Objectives
<p>Sovereign Islands SPA (Site Code: 004124)</p> <p>Located approx. 4.5km to the South of the site</p>	<p>The NPWS has identified the following generic objective for the site:</p> <p>To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA</p>

Potential Significant Effects

7.7.8. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 site, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies outside the boundaries of the European Sites, no direct effects are anticipated. With regard to the consideration of a number of key indications to assess potential effects, the following is relevant:

- Habitat loss / alteration / fragmentation: The subject site lies at a remove of some 5km from the boundary of any designated site, and within a developed urban area. As such, there shall be no direct loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- Disturbance and / or displacement of species: The site lies within a developed built-up environment towards the north-east of the site. That said, the subject site also includes an area towards the lower slopes which comprises mature vegetation and trees. The lower (south-western) area of the house sites along High Road, Ardbrack, which back onto Scilly Walk, all

appear to comprise heavily vegetated areas which are covered by a tree preservation order for many of the trees. I have also discussed above that the CDP identifies the area a high value landscape with the High Road comprising a designated scenic route. Objective KS-GO-02 of the relevant LAP also seeks to retain the 'green fingers' of land separating the village of Scilly and Sumercove free from development as these are integral to the landscape setting of the town'.

No qualifying species or habitats of interest, for which the designated site is so designated, occur at the site. As the subject site is not located within or immediately adjacent to any Natura 2000 site and having regard to the nature of the construction works proposed, there is little or no potential for disturbance or displacement impacts to species or habitats for which the identified Natura 2000 sites have been designated.

- **Water Quality:** The proposed development relates to the demolition of an existing house and the construction of two houses and an elevated home office / studio on a site within the built-up area of Kinsale, which will connect to public water services. Having regard to the scale of the proposed development, together with the separation distances between the site and the boundary of the SPA, I am generally satisfied that the development, if permitted, is unlikely to impact on the overall water quality of the Sovereign Islands SPA (Site Code: 004124).

I am generally satisfied that the potential for likely significant effects on the qualifying interests of the Sovereign Islands SPA can be excluded given the distance to the sites, the nature and scale of the development and the lack of a hydrological connection.

In Combination / Cumulative Effects

- 7.7.9. Given the nature of the proposed development, being demolition of an existing house and the construction of two houses and an elevated home office / studio on a site within the built-up area of Kinsale, I consider that any potential for in-combination effects on water quality of any of the Natura 2000 sites can be excluded. In addition, I would note that all other projects within the wider area which may influence

conditions in the Sovereign Islands SPA via rivers and other surface water features are also subject to AA.

Conclusion on Stage 1 Screening:

7.7.10. I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites. It is reasonable to conclude that on the basis of the information available, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the European Sites identified within the zone of influence of the subject site. As such, and in view of these sites' Conservation Objectives a Stage 2 Appropriate Assessment is not required for these sites.

8.0 Recommendation

8.1.1. Having regard to the information submitted in support of the appeal, together with all other matters and details on the file, I recommend that permission be refused for the development for the following reasons.

9.0 Reasons and Considerations

1. Notwithstanding the location of the site partially within an area identified as 'existing built-up' area in the Bandon Kinsale Municipal District Local Area Plan 2017, the proposed development affects a significant area of the site which is identified as a 'green finger' in the LAP. It is the stated objective of the LAP, KS-GO-02 refers, to 'retain the 'green fingers' of land separating the villages of Scilly and Summercove free from development as these are integral to the landscape setting of the town'.

Having regard to the proposed layout of the site, which includes the construction of part of proposed house 2 and the studio within the 'green finger', it is considered that the proposed development would contravene a stated objective of the Bandon Kinsale Municipal District Local Area Plan

2017 and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the site in a prominent and elevated position overlooking Kinsale Harbour within a high value landscape, in an area which is openly visible from identified Scenic Route number S61, which has been designated as a Scenic Route in the Cork County Development Plan 2014 and in relation to which it is a particular objective of the planning authority to preserve the visual and scenic amenities of those areas of natural beauty identified as scenic routes, it is considered that the proposed development, by reason of its overall height, design and elevated finished floor level, would adversely affect the character of the designated Scenic Route S61, would seriously injure the visual amenities of the area and would contravene the policies of the said development plan for the protection of the Scenic Routes, which policies are considered reasonable. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Notwithstanding the proposals to alter the existing entrance serving the house on this site, it is considered that the layout remains substandard in terms of sight visibility and gradient for vehicles exiting the property. Additional turning movements generated by the proposed development, including a second house and studio on the site, would endanger public safety by reason of traffic hazard and would be contrary to Policy Objective TM3-3 of the County Development Plan which seeks to ensure all new vehicular accesses are designed to appropriate standards of visibility to ensure safety of other road users and would therefore, by itself and by precedent, endanger public safety by reason of traffic hazard.

Note to the Board:

With regard to the above reasons for refusal, it should be noted that the new Cork County Development Plan, adopted on the 25th of April and coming into effect on the 6th of June 2022, identifies the former 'green fingers' as 'green infrastructure'. The principal for the protection of these areas is carried through to the new CDP.

In addition, the High Road remains a designated scenic route in the new CDP.

The Board will note my concerns raised with regard to the potential impact of the development on bats. I consider that the issues arising with regard to lack of survey information and the potential for light spill on the habitat which would create a barrier for bats, potentially causing disturbance if not abandonment of foraging and commuting bat habitat, compound the argument to refuse permission for the studio / office / additional accommodation and development within the Green Finger / TPO area of the site. This might be considered a new issue in terms of a reason for refusal.

A. Considine
Planning Inspector
10/05/2022