



An
Bord
Pleanála

Inspector's Report ABP-313162-22.

Development

Retain short term stay camping site within revised site boundaries. Retain the alterations to existing toilets. Permission for extension to the existing toilets, construction of a reception building, extend camp site and construct a WWTP including the decommissioning of the existing septic tank. A Natura Impact Statement (NIS) has been prepared and will be submitted to the authority with this application.

Location

Inch, Annascaul, Co. Kerry.

Planning Authority

Kerry County Council.

Planning Authority Reg. Ref.

21/438.

Applicant(s)

Mark, George & Zara Hussain

Type of Application

Retention Permission & Permission.

Planning Authority Decision

Split Decision.

Type of Appeal

Third Party

Appellant(s)

Patrick Henderson

Observer(s)

None

Date of Site Inspection

24/06/2022.

Inspector

A. Considine.

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1.0 Site Location and Description

- 1.1. The subject site is located approximately 45m to the north-east of the northern area of Inch Beach in Annascaul, Co. Kerry. The site lies to the north of Regional Road, the R561, which runs between Castlemain to the east to Annascaul to the north-west. The site is located in close proximity to the junction of the public road which runs towards Inch Beach off the regional road. The area includes a number of one-off houses towards the west of the site and the site offers views over the beach and sea.
- 1.2. The initial proposed development site occupied a stated area of 2.8ha, comprising the entire landholding at this location and extending between the R561 to the south and the local road to the north. The local road also runs along part of the north-western boundary of the site. The site rises towards the rear, up from the public road. The area of the site towards the front (roadside) is currently used as a short stay camp site and the site also includes a small toilet block and gravel roads. Access to the site is via a barriered entrance which is located on a stretch of road which has a solid white line in the centre.

2.0 Proposed Development

- 2.1. Permission was initially sought, as per the public notices for the following:
- (a) Retain the existing short term stay camping site within revised site boundaries
 - (b) Retain the alteration and renovation works to the existing toilets and site as constructed
 - (c) planning permission to construct an extension to the existing toilets including alterations to the existing toilets
 - (d) permission to construct a camping site reception building which will contain the reception, campsite shop, staff rooms and associated rooms.
 - (e) permission to construct an access road, parking spaces and 8 no. Glamping Pods including alterations to the gate and fence on the local

public road at the rear of the site to create a traffic passing area for the public road.

- (f) permission to construct additional camping spaces on grass area including all necessary landscaping and site works.
- (g) permission to construct two wastewater treatment tanks with puraflo modules and polishing filter including decommissioning the existing septic tank.

all at Inch, Annascaul, Co. Kerry.

2.2. The application included a number of supporting documents including as follows;

- Plans, particulars and completed planning application form
- Cover letter
- Planning Report
- Archaeological Report
- Landscaping Report
- Site Characterisation Report.

2.3. Following a request for further information, the application amended the proposed development, excluding a number of elements including the proposed glamping pods and associated roads and parking areas. The overall site area was also significantly reduced to include only the southern area of the landholding. The development proposes to provide as follows:

- (a) Retain the existing short term stay camping site within revised site boundaries
- (b) Retain the alteration and renovation works to the existing toilets and site as constructed
- (c) planning permission to construct an extension to the existing toilets including alterations to the existing toilets
- (d) permission to construct a camping site reception building which will contain the reception, campsite shop, staff rooms and associated rooms.

- (e) permission to extend the camp site with access to same including all necessary landscaping and site works
- (f) permission to construct a wastewater treatment tank with puraflo modules and polishing filter including decommissioning the existing septic tank.

A Natura Impact Statement (NIS) has been prepared and will be submitted to the authority with this application, all at Inch, Annascaul, Co. Kerry.

- 2.4. Following the PAs request for further information, the applicant submitted a letter advising that they had successfully completed the works requested in the further information letter, including the removal of the glamping pods, and associated access road and parking.
- 2.5. A request for clarification was issued as the submitted letter was not deemed a full response to the PAs FI request.
- 2.6. A response to the FI and Clarification was submitted on the 14th of December 2021 and includes as follows:
 - Details relating to the WWTP system
 - Noting that the campsite has had 70 spaces in the past. This has been reduced to 50 spaces in order to comply with the Fire Regulations and Failte Ireland Regulations for separation distances between pitches.
 - Speed Survey Report & sight line drawings.
 - Building Control matters are being dealt with.
 - Natura Impact Statement dated 25th August 2021.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to issue a split decision as follows:
 - Refuse permission to (e) extend the camp site with access to same including all necessary landscaping and site works for the following stated reason:

The proposed extension to the campsite with access to same at this location would be unduly obtrusive by virtue of its visual impact on the landscape and would interfere with the character of the landscape, which is necessary to preserve, in accordance with Objective ZL-1 of the Kerry County Development Plan 2015-2021. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- Grant planning permission to: Schedule 2(a)
 - (a) Retain the existing short term stay camping site within revised site boundaries
 - (b) Retain the alteration and renovation works to the existing toilets and site as constructed

Subject to 4 conditions.

- Grant planning permission to construct: Schedule 2(b)
 - (c) An extension to the existing toilets including alterations to the existing toilets
 - (d) A camping site reception building which will contain the reception, campsite shop, staff rooms and associated rooms.
 - (f) A wastewater treatment tank with puraflo modules and polishing filter including decommissioning the existing septic tank.

Subject to 15 conditions.

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 policies and objectives. The report also notes the requirement for the applicant to submit an Appropriate Assessment Screening Report.

The Planning Report notes the extent of the development sought and its location within with the Dingle Peninsula SPA. It is indicated that the proposals for works to the lower section of the site where the existing camping sites are laid out including the proposal for a new reception building in this area can be considered. The proposal for a 250m service road up the hillside to the rear of the existing camp site with associated camping area, pods and car parking is considered unacceptable. It is further noted that the works to the agricultural gate on the local road are unnecessary.

The report concludes that the applicant should be advised to omit the proposed works to the uphill section of the site in order to avoid a refusal of permission. Further information was noted to be required in terms of AA, WWTP proposals, details of camping spaces, roads issues and building control issues associated with the elements for retention.

Following receipt of the response to the further information request, the Planning Officer noted the omission of the glamping pods, access road and associated parking. The NIS and Speed Survey Report are noted. The comments of the Biodiversity Office in relation to AA matters are noted.

The report notes that the amended proposal still seeks an extension of some 30m uphill of the existing campsite, including an extension of the access road. It is noted that camping and car parking will be in the grassed area. It is concluded that this extended area should be refused as by itself, and by precedent, would have a negative visual impact on amenities in the area.

The final report presents a reasoned conclusion for the recommendation which notes that while there has been adhoc camping on the site for some time, evidence indicates that it was a greenfield site in 2009, with a small toilet block and that there was no change to this set up in 2017. It is noted that the applicant has already carried out significant works without the benefit of planning permission creating a formalised caravan and camp site with some 29 hard pitches, access road and renovation of a facilities building. These elements are deemed acceptable. The proposed standalone reception building is also considered acceptable.

The report recommends that a split decision issue as detailed above, and this Planning Report formed the basis of the Planning Authority's decision.

3.2.2. Other Technical Reports

County Archaeologist: The submitted reports notes that the site is partly located within the zone of notification of the recorded monument Ke045 087, a ringfort. Based on the location and scale of the development, a pre-development archaeological testing report accompanies the application. The report notes that no archaeological features or strata were encountered during the testing. No further mitigation is required.

Housing Estates Unit: The report notes that the development will not be taken in charge as it is not a housing estate.

The report includes a number of conditions to be included in the event of a grant of planning permission.

Fire Services Department: The report notes no record of a valid commencement notice for the works in question. The application for retention planning permission, if granted, would conflict with the requirements of the Building Control Regulations as the submission of a commencement notice is required prior to commencement of works. Failure to submit a commencement notice in respect of works, where it is required by the Building Control Regulations is an offence.

In the absence of a CN, a Certificate of Compliance of Completion for the works cannot be accepted or registered on BCMS. It is an offence to open, occupy or use a building without a registered Certificate of Compliance on Completion where one is required by the Regulations, and there is no regulatory mechanism for the correction of circumstances.

It is recommended that the retention application be deferred, pending receipt of a valid application for a Regularisation Certificate to the Building Control Authority.

A Second Report is noted on the file, signed by the Building Control Officer, advising no objection subject to compliance with conditions, prior to the commencement of works.

Following the submission of the response to the FI request, the Assistant Chief Fire Officer advises that no Regularisation Fire Application has been filed electronically on the Building Management System for the works referenced. It is advised that retention permission should be deferred pending the filing of a valid applications for the Regularisation Certificate. With regard to the proposed works, it appears that the requirement to obtain a Fire Safety Certificate and a Disability Access Certificate applies.

Biodiversity Officer: This application is for the retention of and permission for a proposed camping site and associated works located within the Dingle Peninsula SPA and adjacent to the Castlemaine Harbour SAC and SPA.

An Appropriate Assessment Screening Report is required to be submitted in order to screen the proposed development, including any proposed discharges, for possible significant effects on a European Site.

Following the submission of the response to the FI request, the Biodiversity Officer submitted a further report, advising as follows:

- Accepts the camping site has been present for many years
- Notes that the site is now located within the Dingle Bay SPA and that this SPA was not so designated until 2006.
Therefore, the camping facilities pre-date the SPA designation.
- With regard to the proximate Castlemaine Harbour SAC and SPA, it is noted that the SAC was formally advertised for designation in 1997 and the SPA in 2010.
- As the site was being used as an informal camp site, they were not available for use for birds of SCI and/or were not

annexed habitats and/or likely to support annexed species for which the SAC was designated.

- It is concluded that the development for retention pre-dates the Habitats Directive (1992) and there is no realistic pathway for impact or possibility that the proposal could have significantly affected Natura 2000 sites. AA would not have been or is required for the development concerned.
- With regard to the proposed works, it is requested that the mitigation measures proposed in the NIS are attached as conditions.

The Biodiversity Officer also includes an Appropriate Assessment Report.

Environment Section: The report recommends conditions, including notice that a discharge licence will be required from Kerry County Council Environmental Services.

Site Assessment Unit: The report considers the notes the information submitted in the site characterisation report. Further information is required with regard to the proposed pump to be used due to the 40m rise from the position of the proposed underground wastewater treatment tanks to the front of the site and the Puraflo modules at the rear of the site.

Other issues noted relate to a contingency plan in the case of pump failure, separation distances, consideration of the months the system will be idle in the design and how the applicant reached a PE of 70 for the proposed site.

Following receipt of the response to FI, the SAU advises no objection subject to the inclusion of conditions.

Roads & Transportation: No objections noted subject to conditions.

3.2.3. Prescribed Bodies

Irish Water: No objections.

Failte Ireland: The report notes that the Inch Beach Campsite backs directly onto the Dingle Way and would provide a perfect overnight stop for Dingle Way walkers. The accommodation offering is an alternative product to the dominant and established offering of hotels and would be a valuable addition to the accommodation stock in the area.

The improved access and parking facilities will make this a safer and more enjoyable experience for visitors to the Campsite. The upgrade of toilet and showering facilities is welcomed and should result in positive environmental impacts having regard to the upgrade of wastewater systems infrastructure.

Failte Ireland are supportive of the proposed development in line with all proper planning and environmental requirements being met.

3.2.4. Elected Members

Cllrs Michael D. O'Shea, Seamus Cosai Fitzgerald, Breandan Fitzgerald and Michael Cahill submitted representations on behalf of the applicants.

3.2.5. Third Party Submissions

The Board will note that a submission from Anne Drechsler and Leslie Hanelman was subsequently withdrawn following clarification on the issue of access.

There are 2 no third-party objections/submissions noted on the planning authority file. The issues raised are summarised as follows:

- Roads and traffic issues – in particular, the potential for access to the site via the breen, which would impact on walking trails and safety.

Following the submission of the response to the FI request, 3 further submissions were received. The content of same are summarised as follows:

- which explicitly refers to Section 3.3 of the NIS which states that 'the site is primary accessed via the entrance to the campsite on the R561 but can also be from the unnamed road immediately to the north'. Assurances are required that this access will not be used as a second camp site entrance.

- The retention application is within the environs of a Natura 2000 site in breach of the Planning and Development Act.
- The development does not enjoy pre-1963 planning status. The photographs submitted by the applicants show caravanning on the lands to the south of the site.
- The applicants have continued to trade for two full seasons without planning permission for the hospitality business including accommodation, motor home pitches, caravan pitches, camping, food and beverage, in direct competition with local authorised businesses.
- An agricultural entrance has been extended at a dangerous bend and at a location which causes traffic congestion.
- Works to the toilet block were carried out over weekends and during public holidays.
- Water supply issues.
- Appropriate registration with relevant bodies is not in place.

4.0 Planning History

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

PA ref: 04/4164: Permission sought by ZAG Developments for the construction of a holiday home development consisting of 16 houses, a common WWTP, signage and access road, footpaths and parking areas etc. Permission was refused by Kerry County Council for the following stated reason:

Having regard to the location of the site of the proposed development on an exposed elevated hillside in a scenic rural area, it is considered that the proposed additional holiday homes, when taken in conjunction with the existing development, would result in an overall development which, by reason of its nature, excessive scale and layout, could not be satisfactorily assimilated into its surroundings and would seriously injure the visual amenities of the area of property in the vicinity. The proposed development

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

PA ref: 19/1026: Permission sought to retain the renovation and alteration works carried out to the existing building in the caravan and camping site. Further information was sought by the PA. As no response to the FI request was submitted, the application was deemed withdrawn.

Adjacent site:

ABP ref: ABP-307622-20 (PA ref: 19/945): Permission refused by Kerry County Council for the demolition of house and outbuildings and construction of a new house with attached garage Ardroe, Inch, Annascaul, County Kerry (site to the west of the current appeal site). The PA refused for reasons of visual impact. Following a first party appeal, the Board refused planning permission for the development for the following stated reason:

1. Having regard to the form, scale, design and height of the proposed dwelling on a prominent and sensitive hillside location adjoining Inch Strand, to Objective ZL-1 of Kerry County Development Plan 2015-2021, which seeks to protect the landscape of the county as a major economic asset and invaluable amenity, it is considered that the proposed development would be visually obtrusive (particularly on the approaches from the east and west) and would undermine the landscape character of this sensitive scenic area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy and Context

5.1. Development Plan

Kerry County Development Plan 2015-2021

- 5.1.1. The Kerry County Development Plan 2015-2021 as extended to the 28th November 2022, is the relevant policy document pertaining to the subject site. The site is located in an area zoned 'Rural General' which is detailed in section 3.3.1 of the Plan.

5.1.2. Chapter 12 deals with Zoning and Landscape and Section 12.3.1 deals with Rural General stating that Rural(c) 'It is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development'.

5.1.3. The following landscape policies are considered relevant:

- **ZL-1:** Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.
- **ZL-5:** Preserve the views and prospects as defined on Map No's 12.1, 12.1a – 12.1u

5.1.4. Chapter 5 of the Plan deals with Tourism & Recreation, with Section 5.9 dealing with Coastal Tourism. The following objective is considered relevant:

- **T-43:** Ensure that future caravan, camping and parking facilities in coastal areas will not be visually intrusive or impact on sensitive coastal environments (e.g. sand dune systems), by requiring, appropriate siting, layout, design, and native locally provenanced natural screening, the protection of biodiversity and compliance with the requirements of the Habitats Directive.

Kerry County Development Plan 2022-2028

5.1.5. The Board will note that the Kerry County Development Plan 2022-2028 identifies the subject site as being located within a visually sensitive area, being 'Prime Special', and that the site is located to the north of a road which offers views and prospects to the south.

5.1.6. Chapter 10 of the 2022 plan deals with Tourism & Outdoor Recreation, with Section 10.3.5.1 dealing with Camping/Glamping, Campervans and Caravans. The Plan recognises that the provision of suitable sites for such facilities is an important element in the range of tourist accommodation offers. It is the policy of the council to support developments locating in existing settlements where such proposals demonstrate the provision of safe pedestrian links to the settlement or at established centres which provide existing services to tourists, subject to the capacity of the site and the location to facilitate the proposal, and the following policies are considered relevant:

- **KCDP 10-29:** Support the development of appropriately scaled camping/glamping, campervan and caravan type accommodation located within/or adjacent to existing settlements, established tourism assets or adjacent to a main farmyard complex on suitable sites and at an appropriate scale subject to normal planning considerations.
- **KCDP 10-30:** Ensure that future caravan, camping and parking facilities in coastal areas will not be visually intrusive or impact on sensitive coastal environments (e.g., sand dune systems).

5.1.7. Chapter 11 of the 2022 Plan deals with Environment and Section 11.2, deals with biodiversity and designated sites. This plan seeks to protect and manage the Natura 2000 Network in the County. The Planning Authority will assess all plans and projects for compliance with Article 6 of the Habitats Directive in accordance with the DEHLG (2010) Appropriate Assessment of Plans and Projects in Ireland.

- **KCDP 11-1:** Ensure that the requirements of relevant EU and national legislation, are complied with by the Council in undertaking its functions, including the requirements of the EU Birds and Habitats Directives.

5.2. Natural Heritage Designations

- 5.2.1. The site is partly located within the Dingle Peninsula SPA (Site Code: 004153) designated site. This SPA extends to the north and east from the site with the Castlemaine Harbour SAC (Site Code: 000343) and the Castlemaine Harbour SPA (Site Code: 004029) located approximately 7m to the south of the subject site. These Natura 2000 sites comprise an extensive coastal area which is located approximately 2km to the west of the subject site.
- 5.2.2. The Slieve Mish Mountains SAC (Site Code: 002185) lies approximately 1km to the north-east of the site.
- 5.2.3. While I will discuss the matter further in my assessment, I consider it appropriate to advise at this stage, my concerns in terms of the consideration of a retention application for development which lies within a European Site. It is clear that AA is required in the first instance, and prior to permission being granted for the development. In this regard, I refer to Section 34(12) of the Planning and Development Act 2000 as amended, which states:

A planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more than one of the following was carried out—

- (a) an environmental impact assessment,
- (b) a determination as to whether an environmental impact assessment is required, or
- (c) an appropriate assessment.

5.3. Environmental Impact Assessment

- 5.3.1. The requirement for EIA of certain types of developments is transposed into Irish legislation under the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001 as amended. Schedule 5, Part 1 of the Regulations provides a list of projects which are subject to mandatory EIA based on, *inter alia*, their scale, nature, location and context. Part 2 of Schedule 5 includes a list of projects that require EIA where specific thresholds are breached or where it is determined that there is potential for significant environmental impact.
- 5.3.2. The proposed development seeks the retention of the existing short stay camping site and alterations and renovations to the toilets as well as seeking permission to construct an extension to the toilets and a new camping site reception building to include a shop and staff rooms, amongst other elements. The development does not come within the scope a project which are subject to mandatory EIA.
- 5.3.3. In terms of Schedule 5 Part 2 projects,
 - 12. Tourism and Leisure includes
 - (c) Holiday villages which would consist of more than 100 holiday homes outside built-up areas; hotel complexes outside built-up areas which would have an area of 20 hectares or more or an accommodation capacity exceeding 300 bedrooms.
 - (d) Permanent camp sites and caravan sites where the number of pitches would be greater than 100.

- 5.3.4. Article 92 of the Planning and Development Regulations, 2001, (as amended) defines sub-threshold development, as ‘development of a type set out in Schedule 5 which does not exceed a quantity, area or other limit specified in that Schedule in respect of the relevant class of development’.
- 5.3.5. Having regard to the provisions of the Regulations, I am satisfied that the development does not require mandatory EIA. The need for environmental impact assessment, therefore, can be excluded at preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. This is a third-party appeal, by Mr. Patrick Henderson, against the decision of the Planning Authority to grant planning permission for elements of the proposed development. The appeal is noted to be submitted against the backdrop of ongoing unauthorised developments, and the initial pages of the appeal submission relate to enforcement concerns – which I don’t propose to restate here.
- 6.1.2. The grounds of appeal are summarised as follows:
- A planning authority cannot accept an application for retention permission for any development which would have required a Natura Impact Statement. As such, the PA was precluded from accepting the application in the first place.
 - Issues raised in relation to ownership of the site which result in the application being invalid.
 - The issue that the site enjoys pre-63 planning status has not been substantiated with a historical search of google maps showing no camping activity on the site from 2003 to 2019.
 - The campsite was established in 2019 without planning permission and no evidence to substantiate its previous use as such has been provided.
 - The applicant has not engaged with Irish Water and conditions 11, 12 and 13 are redundant.
 - Issues raised in relation to the PE requirements, revised boundaries and the calculation of levies.

- No revised landscaping plan was provided with the response to the FI request.
- No conditions are included restricting the use of the reception building which can clearly be used as a restaurant and an apartment above for letting. No proposals for parking provisions for such uses noted.
- Traffic issues, including congestion during the summer period indicate that there are no adequate local public amenities, parking, toilets or general amenity space to support the increase in tourist density at Inch Beach.

6.2. First-Party Response to Third-Party Appeal

6.2.1. The applicants' have responded to the third-party appeal through their agent, Cunnane Stratton Reynolds. The response to the grounds of appeal are summarised as follows:

- It is submitted that the first party has not appealed the decision of the Council to refuse elements of the proposed development
- A significant portion of the appeal lodged relates to enforcement which is not a matter for the Board.
- The principal behind the inclusion of Condition 18 is to link the two activities – the campsite and reception building – and it is considered that this is appropriate.
- With regard to the issue of the necessity for a NIS, it is submitted that if the Board feel that they are in a position to determine this appeal, it is believed that the NIS indicates that there is no impact envisaged on any Natura 2000 site.
- With regard to title and ownership of the site, a letter from the applicants' solicitor is included with the response to the third-party appeal.
- The applicant has not relied on pre-1963 planning status and the application contains elements for retention.
- Conditions in relation to water and wastewater, Conditions 10, 11, 12 and 13 can be discharged upon compliance with Condition 10.

- A precise methodology was set out to support the wastewater proposals. There will be a substantial upgrade over what exists on the site.
- A detailed landscaping plan was submitted with the application. The potentially visually obtrusive elements of the development have been refused.
- Levies are calculated on the quantum and nature of the development.
- There is no restaurant proposed and can be conditioned out.
- There is no restaurant proposed and there is no parking requirement.
- There is no evidence that local infrastructure is inadequate to accommodate the proposed development. The proposed shop will meet tourists needs as the nearest shop is 9.5km away towards Castlemain and 7.3km towards Annascaul.

The first party response to the third-party appeal includes a letter of support from the Inch Tourism and Development Committee.

6.3. Planning Authority Response

The Planning Authority has not submitted a response to the third-party appeal.

6.4. Observations

None

7.0 Assessment

7.1.1. The Board will note that I raised a concern with regard to issues relating to AA above at Section 5.2 of this report. I consider it appropriate to deal with this issue in the first instance and having had regard to all of the information presented in the file, and consultation with the Boards Ecologist, I consider that the following is relevant:

- A. The original application for development sought permission to develop the full field area plus the field to the north and west, to extend the short stay camping site, known as Inch Beach Camp Site (from the website for the facility).

B. This proposal included elements for retention for works carried out by the applicants/applicants' family since they developed the campsite in 2019 (again, information from the website). Some of these works are located within the Dingle Peninsula SPA (Site Code: 004153), including:

- (a) Retain the existing short term stay camping site within revised site boundaries
- (e) permission to construct an access road, parking spaces and 8 no. Glamping Pods including alterations to the gate and fence on the local public road at the rear of the site to create a traffic passing area for the public road.
- (f) permission to construct additional camping spaces on grass area including all necessary landscaping and site works.

In terms of the above, the existing short term stay campsite, the access road to the glamping pods and the additional camping spaces on grass area are all located within the Dingle Peninsula SPA (Site Code: 004153).

C. Following a request for further information, the proposed development was amended to omit the proposed glamping pods and the associated access road and additional camping spaces on the grass area in the northern area of the field.

The proposed development still seeks permission to retain the short term stay camping site within the revised boundaries and to extend the camp site, all within the designated site. The Board will note that the area to the left of the entrance, on the lowest level, is the only area of the subject site which is not located within the SPA. Areas of road and hard standing have been constructed within the SPA.

D. While I acknowledge that the toilet block and the proposed location of the reception building are not located within the SPA, I do not consider it appropriate to deal with these elements in isolation.

E. Having considered the boundaries of the Dingle Peninsula SPA (Site Code: 004153) at this location, it is clear that it followed the line of the hard standing that was present on the south-western area of the site (excluded from the

SPA) but included the remainder of the field and the adjacent fields to the east. Given this distinct pocket to the south-eastern reaches of the wider SPA site, and its proximity to the Castlemaine Harbour SPA immediately to the south of the public road, it is reasonably concluded that the subject site had merit for inclusion within the SPA at the time of its designation.

- F. The Board will note that as part of the archaeological assessment of the site, it would appear that the full area of the SPA within this landholding was trenched. I noted no reference anywhere to the SPA within the Archaeological test Excavation Report, and as such, I cannot advise as to whether AA was carried out prior to these works being undertaken.

7.1.2. I note the report of the Biodiversity Officer of Kerry County Council in relation to AA. While I would acknowledge the opinion that it appears that the site was used for adhoc camping before the designation of the SPA (2006), the works the subject of this application were carried out within the SPA in 2019. In this regard, I would wholly disagree that with the conclusion that the development being retained predates the Habitats Directive (1992) or that AA would not have been required to be carried out for the development concerned. There is no evidence to indicate that the extent of the camping area occupied the subject development site area and a perusal of google maps and the camping sites own website, would clearly suggest otherwise.

7.1.3. In terms of legislative requirements, the Board will note that retention applications that require an EIA, screening for EIA or an AA are undertaken under 'Substitute Consent' within Part XA of the Planning Acts. I note the landmark case in relation to the substitute consent procedure in Ireland, Case C 215/06 (EC v Ireland), where the European Court of Justice found that the provisions of the Planning Acts at that time which permitted applications for retention permission for existing developments requiring environmental impact assessment (EIA), were contrary to EU law.

Following this ruling Section 34(12) of the Planning Acts was amended to state:

A planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more than one of the following was carried out—

- (a) an environmental impact assessment,
- (b) a determination as to whether an environmental impact assessment is required, or
- (c) an appropriate assessment.

7.1.4. Given the location of the site within the SPA, it is clear that AA is required in the first instance, and prior to permission being granted for the development. In this context, Part XA, as inserted into the Planning Acts 2000 Act, sets out the procedure for applications for substitute consent, which is a form of retrospective development consent. The substitute consent process involves the preparation of a remedial environmental impact assessment report or a remedial Natura Impact Statement (NIS), or both as appropriate.

7.1.5. The Board will note that the Planning Authority sought an AA Screening Report as part of the further information request, and that the applicant, in response, submitted a Natura Impact Statement. Having read the NIS in its entirety, I am concerned that there are gaps in information and detail and that the NIS deals only with the proposed works, and not the elements which are the subject of retention. While I acknowledge that the element of retention now relates primarily to revised boundaries, the Board will note that works have been carried out within the European Site, including the provision of roads and hard standings, as well as the works undertaken as part of the archaeological assessment, all of which would have required to have been subject to AA.

7.1.6. I also note that no real assessment has been carried out in terms of impacts associated with the pipe work required to connect the proposed underground wastewater treatment tanks and the proposed Puraflo modules and polishing filter.

7.1.7. It might reasonably be concluded, therefore, that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

8.0 Recommendation

I recommend that the Board advise the applicant that it is precluded from giving further consideration to the granting of permission for the development the subject of

the application in the context of Section 34(12) of the Planning and Development Act 2000, as amended.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the location of an extensive area of the subject site within the boundaries of the Dingle Peninsula SPA (Site Code: 004153), together with the nature of the works the subject of retention permission, the provisions of Section 34(12) of the Planning and Development Act 2000 as amended, are relevant and state:

A planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more than one of the following was carried out—

- (a) an environmental impact assessment,
- (b) a determination as to whether an environmental impact assessment is required, or
- (c) an appropriate assessment.

Having regard to the fact that Appropriate Assessment would have been required for an application for permission for the works in the first instance, in these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application. In addition, it is not considered appropriate to extract the elements of the proposed development from the associated retention elements in order to issue a grant of permission.

A. Considine
Planning Inspector
02nd September 2022