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Bord  
Pleanála

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## Inspector's Report ABP.315782-23

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<b>Development</b>	Retention of change of use from residential to short term holiday letting
<b>Location</b>	Ballyaglisha, Ballyferriter, Dingle, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	22/1183
<b>Applicant(s)</b>	Sue Earnshaw
<b>Type of Application</b>	Retention planning permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First party
<b>Appellant(s)</b>	Sue Earnshaw
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> August 2023
<b>Inspector</b>	Mary Kennelly
<b>Appendices</b>	Extract Kerry CDP 2022 Guidance Note for LAs – Regulating Short-term Letting (July 2019) Circular PL4/2019

## **1.0 Site Location and Description**

- 1.1. The site is located in the townland of Ballyaglisha, just outside Ballyferriter Village, on the Dingle Peninsula. It is located approx. 1.5km to the northwest of Ballyferriter, which in turn is located approx. 12km to the northwest of Dingle town. Ballyaglisha is an agricultural area with a strong rural character, in a highly scenic area close to beaches. However, it also has a strong presence of one-off houses. There is a long ribbon of development (approx. 17 houses) along the local road leading north-westwards from Sleah Head Drive (R559). This local road continues to Ferriter's Cove beach. A further local road, which is a cul-de-sac terminating in a farm complex, branches off this road in a south-westerly direction. The appeal site is located towards the end of this cul-de-sac road.
- 1.2. The appeal site is located approx. 80m from the farmyard and is the last house on the cul-de-sac. It is on the southern side of the road and forms the sixth house on the ribbon of development on this road. There is a right-of-way leading to a field immediately to the east and a field associated with the farm to the west.
- 1.3. The site area is given as 0.12ha. The appeal property comprises a detached 2-storey with a stated floor area of 141sq.m. The house is set back from the road with a front garden and driveway and amenity space to the side and rear. The house is served by an existing septic tank system, for which retention permission was granted in 2003. The house has three bedrooms.

## **2.0 Proposed Development**

- 2.1. Permission is sought to retain a change the use of the house from permanent residential to a short-term letting property.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to **refuse** permission for one reason which reads as follows:

1. The proposed development seeks retention permission for the change of use of a dwelling in an area designated as a Rural Area Under Urban Influence as per the Kerry County Development Plan 2022-2028 to short-term rental accommodation. The proposed development, if permitted would not comply with the policy of the Council in relation to short-term letting set out at Section 10.3.5.3 of the said development plan and would result in the withdrawal of a suitable property from the limited available supply of long-term rental accommodation in the area. The proposed development would also contravene Objective KCDP 10-34 of the Kerry County Development Plan 2022-2028 to only *“Consider the change of use of derelict/vacant buildings to short-term letting where such buildings are not suitable for long-term residential accommodation and will not have a negative impact on the long-term rental market or the residential amenity of the area”*. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

## **3.2. Planning Authority Reports**

### **Planning Reports**

- 3.2.1. It was noted that the site is located in a scenic rural area, with a high density of one-off houses, many of which appear to be in use as holiday homes. It was further noted that the site is located in an area which is designated as a Rural Area Under Urban Influence in the Kerry County Development Plan 2022-2028. It was further noted that policy 10.3.5.3 states that proposals for a change of use of a residential property to one used for short-term letting will be considered on a case-by-case basis having regard to whether the structure, by virtue of its location, condition or layout would not ordinarily be suitable as a place of permanent residential occupation. In this instance, the Area Planner considered that the property would be an ideal one for use as a permanent single-family dwelling as it has a good plot size, car parking and private amenity space, has three bedrooms and room for an extension.
- 3.2.2. It was noted that the house appeared vacant at the time of inspection. However, it was considered that the proposal would not comply with policy objective KCDP10.34 of the CDP which makes provision for consideration of a change of use of a vacant/derelict building to short-term letting where such buildings are not suitable for

long-term residential accommodation and would not have a negative impact on the long-term rental market. It was stated that the proposed change of use would remove a suitable family home from the long-term rental market.

**Refusal of permission was recommended.**

### **3.2.3. Other Technical Reports**

None received.

### **3.3. Prescribed Bodies**

None

### **3.4. Third Party Observations**

None.

## **4.0 Planning History**

### **4.1.1. On this site**

**04/244** – Retention permission granted for alterations to an existing dwelling house. Alterations comprised retention of new roof cladding and front porch.

**03/2500** – retention permission for septic tank and percolation area.

### **4.1.2. Relevant planning decisions elsewhere**

**PL29S.RL3490** – Decision by the Board in December 2016 on a Declaration which determined that the use of a residential apartment in Temple Bar, Dublin for short-term holiday lets on a year-round basis was a material change of use which required planning permission.

**ABP.313199-22 – 11 Marian Park, Dingle** – Permission was refused by the Board for change of use from a house to use as short-term holiday let in June 2023. The reason for refusal reads as follows:

The change of use of the house from residential use to short-term letting, within an established residential area, would have an adverse impact on the existing residential amenities of the area by reason of noise and disturbance, and would

give rise to additional traffic movements and parking requirements within the restricted estate roads, where parking is limited. The proposed development, by itself and by the precedent for which a grant of permission would set, would be contrary to the provisions of the Corca Dhuibhne Electoral Area Local Plan 2021-2027 which notes that more than one third of all dwelling units in Dingle are holiday homes or second homes and which seeks to ensure affordable housing is provided in order to retain permanent residents. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

## **5.0 Policy Context**

### **5.1. National Policy**

- 5.1.1. 'Housing For All – a New Housing Plan for Ireland'** – seeks to address the issues arising from homelessness and to provide access to housing across all tenures as well as increased efficiency in the use of housing stock. Four 'pathways' to achieve these aims have been identified. Pathway 4 is to Address Vacancy and Efficient Use of the Housing Stock, which includes the establishment of new controls on short-term lettings and a Town Centre First approach.
- 5.1.2. Residential Tenancies Legislation** – The Government introduced '**Rent Pressure Zones**' in 2016, one of the implications of which is that planning permission is now required for short-term letting (less than 14 days of a non-principal residence) in such zones. The site is not located in a Rent Pressure Zone.
- 5.1.3. Circular PL4/2019 – Government Short-Term Letting Policy (July 2019)** – this Circular provides advice on the new legislative arrangements under the Residential Tenancies Acts and Exempted Development arrangements under the P & D Act. The new arrangements are intended to address pressures in the private housing rental market, particularly in respect of large numbers of properties being withdrawn from the long-term rental market for use as short-term lettings.
- 5.1.4. Guidance Note for Local Authorities in Regulating Short-Term Letting** – This Government Guidance Note seeks to bring back houses and apartments in RPZs which are currently being used for short-term letting purposes to the traditional long-

term rental market. It is stated that a balance must be achieved between competing demands of residential and tourism accommodation, particularly in areas where there is a shortage of traditional tourist accommodation.

## **5.2. Kerry County Development Plan 2022-2028**

**5.2.1. Chapter 5 Rural Housing** – sets out policies to ensure that the type and scale of development in rural areas will sustain rural communities and ensure the viability of community services. There is a strong emphasis on striking a balance between facilitating people with an economic or social need to live in the rural areas while ensuring that other housing demand is facilitated and encouraged within towns and villages (5.5). The site is located in an Area Under Urban Influence (Map 5.1).

The demand for holiday homes is identified as a problem, particularly in visually sensitive landscapes (5.6). In some areas, the level of holiday homes far exceeds the local indigenous population which results in an incremental deterioration of the visual and sometimes ecological qualities of the landscape. The policy is to focus holiday home developments in towns and villages and that one-off holiday /second homes will not be permitted in rural areas.

Relevant policies include:

**KCDP 5-14** Rural generated housing need based on social or economic links to a particular area. Must comply with certain criteria where a new house is being proposed.

**KCDP 5-23** Ensure that holiday/second homes shall be located in established settlements in towns and villages and not in the rural landscape.

**5.2.2. Chapter 7 Housing For All** – sets out how current and future housing needs will be accommodated. At 7.3 it is stated that it is the policy of the local authority to support the pathways identified in housing for all to ensure that everyone in the county should have access to a home to purchase or rent at an affordable price, built to a high standard and in the right place, offering a high quality of life.

**5.2.3. Chapter 10 Tourism and Outdoor Recreation** – Section **10.3.5** relates to **Visitor Accommodation** and section **10.3.5.3** relates to **Short-Term Letting**. It is stated that there has been a significant increase in short-term letting and hosting across

Ireland in recent years through platforms such as Airbnb and this has become an attractive option for many tourists and visitors. However, it is noted that care needs to be exercised to ensure that the short-term letting of properties does not displace or remove properties from the long-term rental market. It is the policy of the council to maintain established and newly constructed residential areas as places of permanent residential occupation by owner occupiers and or long-term tenants.

- 5.2.4.** It is stated (10.3.5.3) that the local authority will consider on a case-by-case basis changes of use of residential properties to short-term letting where the structure by virtue of its location, condition and/or layout would not ordinarily be suitable as a place of permanent residential occupation. It will be necessary to demonstrate that any such proposed development will not have a negative impact on the long-term rental market or the residential amenity of adjacent properties in the vicinity.

**KCDP 10-29** Direct tourism-based accommodation into towns and villages.

**KCDP 10-33** Prohibit the change of use of residential properties to short-term letting in established residential areas and newly constructed residential developments.

**KCDP 10-34** Consider the change of use of derelict/vacant buildings to short-term letting where such buildings are not suitable for long-term residential accommodation and will not have a negative impact on the long-term rental market or the residential amenity of the area.

### **5.3. Corca Dhuibhne Electoral Area Local Area Plan 2021-2027**

- 5.3.1.** This plan came into effect on 27<sup>th</sup> May 2021. The LAP has been prepared to provide a statutory framework for the future growth, development and improvement of the Corca Dhuibhne Electoral Area.

- 5.3.2.** Section 2 Settlement section (2.3.4) states that there are large numbers of holiday homes/second homes in Corca Dhuibhne, and in particular on the Dingle Peninsula, which has experienced extreme pressure for this form of development in recent years. It is stated that in some areas, in excess of 50% of the housing stock comprise of holiday /second homes and that it often far exceeds the local indigenous population. Thus, the policy is to direct holiday home developments into towns and villages and not to permit one-off holiday/second homes in rural areas.

**Policy objective WK-R-11** seeks to facilitate the change of use of holiday homes to permanent places of residence subject to compliance with development management standards.

- 5.3.3.** Rural Areas (2.6) states that affordability and rising price of dwellings in Dingle has increased the demand for rural dwellings and it is recognised that there is a need to maintain and strengthen rural communities throughout the county and to provide for the needs of local people to live in their own community.
- 5.3.4.** Section 2.5.6 states that the Gaeltacht Corca Dhuibhne covers 50% of the plan area and constitutes an important part of the linguistic, social and cultural tradition of the county, which must be preserved and maintained. It is the policy of Kerry County Council to preserve and promote the use of Irish as a living daily-use language and Gaeltacht communities will be supported in order to strengthen and expand the social networks that nourish Irish as the community language. It is stated that significant development pressures on the Gaeltacht arise from both holiday homes and permanent homes, with the associated migration of non-Irish speakers which has the ability to affect the viability of the language.

#### **5.4. Natural Heritage Designations**

- 5.4.1.** There are no European Sites in close proximity to the development site. The closest European sites are as follows:

Dingle Peninsula SPA (004153) approx. 1km to the west.

Blasket Islands SAC (002172) approx. 3km to southwest

Mt. Brandon SAC (000375) approx. 10km to east.

#### **5.5. Grounds of Appeal**

This is a first-party appeal against the decision to refuse permission. The main points raised may be summarised as follows:

##### **1. Background**

The property was constructed by the first party's grandfather in the early 1930s and has remained in the family ever since. The first party lives between Ireland and the UK and when in Ireland this is her principal primary residence.



Her brother similarly lives between Germany and Ireland and occupies the property as his sole residence when in Ireland. The first party's cousin continues to farm the wider lands on which the property stands.

2. **Property not available for long-term letting**

The P.A. reason for refusal, which states that “the proposal would result in the withdrawal of a suitable property from the limited available supply of long-term rental accommodation in the area” is both subjective and false. It makes assumptions that the property is otherwise vacant. However, it is used by the first party and her family, and by her brother, throughout the year. Thus, it is unavailable for long-term lease and will not be removed from the market.

3. **Rent Pressure Zone not applicable**

The site is not located in a Rent Pressure Zone. According to the Residential Tenancies Board, the only Rent Pressure Zone in Co. Kerry is Killarney. It is not understood what the relevance is of the site being located in a Rural Area Under Urban Influence, as stated in the Area Planner's Report. Furthermore, it is not understood why compliance with Section 5.5.1.2 and/or Objective 5-15 of the Kerry CDP is of any relevance to the current proposal. The house is a 90-year-old vernacular house and not a new one-off house in the countryside.

4. **Importance of tourism**

Section 10-3 of the Kerry CDP sets out the importance of tourism to the local economy. Since the onset of Covid-19, staycations have become particularly popular. Like many other property owners in the area, the first party lets the premises occasionally for short-term lets through a Dingle-based agent, Stayyna.com. The property was in a very poor state of repair prior to 2017 and was exempt from property tax. The first party and her family extensively renovated in 2017 and now use the income from short lets to supplement the upkeep of the house.

3. **Need for short-term accommodation in the Gaeltacht**

The site is located within a Gaeltacht area. Since the establishment of the property over 90 years ago, the Gaeltacht regions have experienced

significant decline, including this area. The provision of this property as a short-term letting opportunity attracts tourism to the Gaeltacht region and stimulates investment that is vital to sustaining the Gaeltacht area.

#### 4. **No material change of use of property**

- **Change of use** - Notwithstanding the wording of the statutory notices which had sought “Retention permission to retain change of use of the residential dwelling house to short term rental accommodation with all associated ancillary works,” it is claimed that having reviewed the situation, it is not entirely clear that a change of use has occurred. In order for a change of use to have occurred, it is argued that firstly, there must be an actual change of use and secondly that the change must be material.
- **No material change of use** – it is further submitted that for a change of use to be material, there must be sufficient planning considerations raised by the change in activity to justify its submission to development control.
- **The distinction of 90 days or fewer** - The appellant states that the short-term letting of the property occurs for 90-120 days per annum and it was only during the covid period that the 120 days was reached. It is submitted that short-term letting is defined in the Planning and Development Regulations (2019) as letting of one’s family home for a period of 90 days or less, and for more than 14 days. Thus, if the property in question is let for 90 days only, there is no change of use involved. However, the first party wants to be able to let the property for up to 120 days p.a. Thus, the key issue is the use of dwelling for 91 to 120 or more days.
- **Residual issue** – It is argued that the key issue is the use of the property during the period beyond 90 days p.a. and less than 120 days p.a. The first party ideally wants permission to let the property for at least 120 days p.a. However, a 90-day limit would be a secondary option.
- **Alternative solution** – it is submitted that should the first party decide to withdraw the current application, it would be in order for her to apply for a Section 5 Referral instead, which is considered to be the more appropriate action.

## 5.6. Planning Authority Response to grounds of appeal

The planning authority has not responded to the grounds of appeal. The change of use planning examples cited by the appellant (20/4251 and 20/4106) were granted prior to the designation of Kinsale as a Rent Pressure Zone on 16<sup>th</sup> July 2020.

## 6.0 Assessment

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

- Principle of development – Material change of use
- Compliance with planning policy
- Residential amenity
- Traffic considerations

### 6.2. Principle of Development

6.2.1. The first party appellant casts doubt on whether there has been a change of use and if so, whether this change is material. This issue was addressed by the Board in **PL29S.RL3490** in October 2016. It was determined that the use of a residential apartment in Temple Bar Dublin on a year-round basis for short-term letting was development and was not exempted development. The Board had concluded that the change of use to an apartment for short term holiday lettings raised planning considerations that are materially different to the planning considerations relating to the permitted use as a residential apartment. In particular,

- (i) The extent and frequency of coming and going to and from the apartment by short term renters.
- (ii) Associated concerns for other residents in respect of security and general disturbance and
- (iii) The fully commercial nature of the activity.

It was therefore concluded that the change of use was a material change of use and was development. It was further noted that neither the Planning and Development Act, 2000, as amended nor the Planning and Development Regulations 2001, as amended, provided any exemption in respect of such a change of use.

**6.2.2.** Subsequent to this decision, the Government introduced new legislative changes relating to regulation of the short-term letting sector. A new section (3A) was inserted into the Planning and Development Act 2000 (as amended) by means of Section 38 of the Residential Tenancies Amendment Act (2019) and new exemptions (sub-article 5) were added to Article 6 of the Planning and Development Regulations 2001 (as amended) by means of the Planning and Development (Amendment) Regulations 2019. The new legislative changes were accompanied by a **Circular PL04/2019** and by **Guidance Note for Local Authorities for Regulating Short-Term Letting**. The new legislative changes came into effect on the **1<sup>st</sup> July 2019** and apply to **Rent Pressure Zones**.

**6.2.3.** The stated purpose of the new legislative changes is to help address pressures in the private housing rental market due to the increasing tendency for houses and apartments that would normally be available for long-term lets being withdrawn and being rented instead as short-term lets. The aim of the legislation is to bring back such properties to the traditional long-term market in order to ease accommodation shortage pressures, particularly in areas of high demand.

**6.2.4.** **Section 3A** of the Act specifies that the use of a house or part of a house situated in a **Rent Pressure Zone (RPZ)** for short-term letting purposes is a material change of use of the house or part thereof as the case may be. ‘Short-term letting’ is defined as letting of the house or part of a house for any period not exceeding 14 days.

Subsection 4 of section 3 states:

This section shall not operate to abrogate or amend the law with regard to –

- (a) Lettings (including short term lettings) outside a rent pressure zone or
- (b) Lettings (other than short term lettings) in a rent pressure zone.

**6.2.5.** In addition, two new exemptions have been added to **Article 6 as sub-article 5**, which are as follows:

- (i) Development consisting of the short-term letting in a **rent pressure zone** of not more than 4 bedrooms in a house that is the principal private residence of the landlord or licensor concerned subject to conditions.
- (ii) Development consisting of the short-term letting in a **rent pressure zone** of a house that is the **principal private residence** of the landlord or

licensor concerned subject to certain conditions one of which is that the aggregate number of days during a year in which the house is the subject of short- term lettings does not exceed 90 days.

- 6.2.6.** The guidance in the Circular 4/2019 and Guidance Note for Local Authorities referred to above clarifies that home-sharing of a person's **Principal Private Residence** (PPR) will continue to be permissible on an unrestricted basis -
- (i) Where it involves the letting of a room or rooms in a person's PPR or
  - (ii) Where a person sub-lets their entire property (PPR) on a short-term basis for a cumulative period of 90 days, where they are temporarily absent from their home.

The new legislative provisions (Sub-article 5(i) of Article 6 of the Regulations) define **Principal Private Residence** as a house, which is subject to short-term letting, **as a house in which the landlord or licensor concerned ordinarily resides**. It is further stated that where the 90-day threshold is exceeded, change of use planning permission will be required. In such instances, the new legislation requires the planning authority and the owner/licensor of the property to fulfil certain specified reporting obligations. Importantly, however, where a person owns a property in a RPZ which is **not** their Principal Private Residence, planning permission will be required for short-term letting (unless it already has permission to this effect). The specified reporting obligations include the provision of statutory declarations by the owner confirming that the house is the person's principal private residence.

- 6.2.7.** Having regard to the foregoing, it is noted that the new legislative provisions relate to properties in Rent Pressure Zones only and that the subject site is not located in such a designated area. However, that is not to say that a change of use from residential to short-term letting in areas outside of RPZ's would be exempt from the need for planning permission, as Section 3A (4) states that the law in relation to these circumstances is not altered by the new legislation. It is also noted that this view is in accordance with a recent Board decision relating to a similar change of use of a property outside an RPZ, at Marian Park in Dingle (ABP.313199-22). In this case, the Board considered the change of use to be a material change of use which would have given rise to unacceptable impacts and the proposed development was refused.

**6.2.8.** The need for planning permission for a change of use from residential to short-term letting would arise if it can be determined that a **material change of use** has occurred. This matter has been the subject of previous Board decisions and case law as set out in the Inspector's Report on PL29S.RL3490 (attached). The board will note that Baron J. held in *McMahon-v-Dublin Corporation* 1997 1 ILRM 227:

*... in the absence of explicit reference in the planning permission to a permitted use, regard must be had to the use for which the structure was designed, i.e. the use which was objectively intended for the structure having regard to the relevant planning documentation. The purpose for which the plaintiffs' homes had been designed was private residential, whereas the use to which they were currently being put was commercial.*

**6.2.9.** The question as to whether a change of use is a material change of use was addressed by Keane J. in the case of *Monaghan County Council-v-Brogan*, who stated that the issues of relevance are:

*... the matters which the planning authority would take into account in the event of a planning application being made for the use. If these matters are materially different (from the original use), then the nature of the use must equally be materially different.*

**6.2.10.** In the case currently before the Board, the property was built in the 1930s as a house or farmhouse. Thus, it was constructed as a private residential building. The first party claims that the house is the applicant's Principal Private Residence and that it has been let on short-term lets since it was refurbished in 2017. It is stated that the first party "lives between Ireland and the UK" and that her brother "lives between Ireland and Germany", and that when either of them are in Ireland, it is their Principal Private Residence. This does not appear to me to meet the definition of 'Principal Private Residence' as set out in Article 6(5)(i), which is that it is the house in which the landlord or licensor ordinarily resides. Furthermore, there is no evidence on file to support the claim or that the applicant has engaged with the local authority to provide any such evidence to substantiate this.

**6.2.11.** The grounds of appeal include reference to the website that the site is advertised on, *Stayyna.com*. I have reviewed the website for this property, and I note that it appears to be available for rent throughout the year. Having regard to this factor, combined

with the circumstances of the owner(s), who have not adequately demonstrated that the property is their 'Principal Private Residence', indicates that the use of the property has changed from one that was originally designed as a private residence to a commercial use. In addition, there are planning considerations associated with short-term letting that would be materially different to the planning considerations that relate to the established use as a single-family dwelling. These include the following -

- (i) **Rural settlement policy** – the construction of a single dwelling in this location would be required to comply with the housing need criteria for a Rural Area Under Urban Influence which would be inconsistent with the use as a short-term rental property. Short-term renters would not be able to meet the housing need criteria and such a use would undermine the rural settlement policy to restrict housing in such areas to people with a demonstrable social and/or economic need to reside there.
- (ii) **Tourism policy** – there is a significant demand for holiday homes in this area which is highlighted in the both the Kerry CDP 2022 and the Corca Dhuibhne EALAP. This has resulted in a disproportionate number of holiday homes which are outnumbering the homes owned and occupied by the local community. The planning policy for the area is to reverse this trend by prohibiting such development in rural areas in order to strengthen local rural communities and to facilitate local people to live in their own communities. Thus, a proposal for a holiday home at this location would be contrary to the policies in the Kerry CDP and Corca Dhuibhne EA LAP.
- (iii) **Housing policy** – the trend of increasing use of permanent housing for short-term letting results in significant increases in the cost of buying or renting a house in the area, which is displacing local people. The Kerry CDP seeks to ensure that everyone has access to a home to purchase or rent at an affordable price. The use of the property for short-term letting would be contrary to this policy approach.
- (iv) **Increased activity associated with rental property** – the high turn-over of guests and servicing staff and the nature of activity associated with holiday homes would be likely to give rise to additional noise and disturbance and

increased traffic on the substandard rural road. This would potentially result in injury to residential amenity for neighbouring properties and in increased traffic hazard on the local road network.

**6.2.12.** It is considered, therefore, that the planning considerations that the planning authority would have taken into account, in the event that a planning application had been made for the use of the property for short-term letting compared with the issues arising in respect of the original use as a private residence are materially different. As such, the proposed change of use from a private residence to a commercial use as short-term letting is considered to amount to a material change of use requiring permission. These planning matters will be considered further in the following sections.

### **6.3. Compliance with Planning Policy**

**6.3.1.** The planning considerations that would arise in respect of a proposed holiday home for short-term letting at this location would include an assessment in terms of planning policy in relation to tourism, housing and rural settlement. The Guidance Note for LAs regarding Short-Term Lets also requires consideration of other matters such as the nature and character of an area, the suitability of the property for long-term rental and the need to balance competing demands of residential and tourism.

**6.3.2.** The site is located in a rural area which is also a highly scenic area and is popular with tourists and where tourism is very important to the local economy. It is also in the heart of the Corca Dhuibhne Gaeltacht where policies seek to protect and enhance the language and culture of the area. Thus, there are a range of planning policies which would be relevant to a proposal for use as short-term letting, which would differ from those relating to use as a single-family house in a rural area.

**6.3.3.** The rural settlement policies in Chapter 5 of the Kerry County Development Plan 2022-2028 are generally consistent with the national policies on rural housing, whereby rural generated housing need is accommodated in the local area where it arises subject to compliance with normal planning criteria, and urban generated housing is directed to towns and villages. In general, the policies seek to maintain and strengthen rural communities, provide for the needs of local people to live in their own communities and to ensure that community services are viable. This



includes ensuring that local schools are viable, that sports clubs, community activities and small businesses which rely on the local population are supported. In addition, the rural settlement policies seek to protect the character of the countryside and the rural environment from unsustainable patterns of development which are car-dependent and therefore restricts housing in such areas to those with a demonstrable economic/social need to live in a particular area.

- 6.3.4.** The site is located in a Rural Area Under Urban Influence. Policy KCDP 5-15 requires applicants for a new house in these areas to satisfy the P.A. that their proposal is an exceptional rural generated housing need based on economic or social links to the area. The criteria to be met include farmers and their immediate families who wish to build their first homes, people either taking over management/ownership of a farm or engaged in full-time farming or people who have spent a considerable period of their lives in the local area. Where planning permission is granted for a new house, these are generally subject to occupancy conditions. Although the current proposal relates to a house which was constructed c.90 years ago and would not have been subject to such an assessment, it is notable that the planning policy for the area is quite restrictive in relation to the provision of individual houses in the countryside and would require compliance with criteria which would be inconsistent with its use as a holiday home. As noted earlier, no supplemental information has been provided which would indicate that the house is the applicant's permanent private residence or demonstrating their links to the local area as required by the housing need criteria.
- 6.3.5.** Both the Kerry County Development Plan (5.6) and the Corca Dhuibhne EA Local Area Plan (2.3.4) highlight the demand for holiday homes in the area and on the Dingle Peninsula as being problematic. In some areas, the level of holiday homes outnumbers the homes of the local indigenous population quite significantly. Map 5.2 of the KCDP indicates that the site is located in such an area with 40-50% of the total housing stock in use as holiday homes. As a result, it is the policy of the P.A. not to permit holiday homes in rural areas and to direct them to towns and villages (KCDP 5-23). Objective KCDP 5-27 encourages the restoration and conversion of traditional and vernacular buildings to residential use as permanent places of residence. Policy Objective WK-R-11 of the CDEA LAP also seeks to facilitate the change of use of

holiday homes to permanent places of residence subject to compliance with development management standards.

- 6.3.6.** The Tourism Chapter (10) of the CDP also identifies the issue of the significant increase in short-term letting of properties and states that care must be taken to ensure that this practice does not displace or remove properties from the long-term rental market. The P.A. will consider on a case-by-case basis changes of use to short-term letting where the structure would not be ordinarily suitable as a place of permanent residential occupation, by virtue of its location, condition and/or layout (10.3.5.3). It is also a requirement that such proposals would not have a negative impact on the long-term rental market or residential amenities of adjacent properties.
- 6.3.7.** I would agree with the planning authority's view that the house is a suitable property for permanent residence. It has a substantial floor area with four bedrooms and is sited on a generous plot with reasonable front and rear garden areas. It is located within walking distance of Ballyferriter village and is within a cluster of one-off houses along the local road. The use of the premises for short-term letting would mean that it would be unavailable for occupation on a permanent basis as a family house both during and outside of the tourist season, which means that it is likely to lie vacant for much of the year. This pattern of usage does not contribute to the maintenance of the vibrancy of the established community and ultimately would detract from the amenities of the area. It would also potentially remove a viable family house from the long-term rental market as the short-term letting would create substantial breaks in the letting period.
- 6.3.8.** In conclusion, it is considered that the proposed development, which seeks to retain the change of use of a single-family dwelling to a short-term letting use at this location, which is one that is experiencing significant pressure for holiday homes, would be contrary to the housing, rural settlement and tourism policies for the area as set out in the Kerry CDP and the Corca Dhuibhne EA LAP, which are generally consistent with the national planning policies. It is further considered that the proposed development would undermine the planning authority's policies to direct such uses to towns and villages and to stem or reverse the trend of the loss of permanent homes to holiday accommodation in order to ensure that affordable housing is available for permanent residents and to maintain the viability of local rural communities.

## **6.4. Residential Amenity**

- 6.4.1.** The use of the property for short-term letting is likely to generate additional activity when the property is occupied, with guests and service/cleaning staff coming and going. Given the spacious size of the property, it could be rented to more than one household at a time. Tourists are more likely to be coming and going throughout the day. The additional noise and disturbance could give rise to injury to the residential amenities of neighbouring occupiers. On the other hand, the pattern of short-term lets followed by periods of vacancy is equally likely to result in a loss of amenity to neighbouring properties as it reduces the vibrancy of the area.

## **6.5. Traffic considerations**

- 6.5.1.** The site is located on a narrow rural road which is accessed from a further local road which branches off the R559 (Slea Head Drive). There are clusters of one-off houses arranged in ribbons along stretches of both the local road and the road serving the site, with individual entrances. The road serving the site is particularly narrow, c.3m, and also serves a working farm beyond the site.
- 6.5.2.** It is considered that the increased activity associated with the commercial use involving short-term letting of the property is likely to give rise to additional traffic movements on these narrow, substandard roads, which would be hazardous.

## **6.6. Other matters**

- 6.6.1.** The appellant considered that the proposed development would help to attract tourism to the Gaeltacht region, which would stimulate investment that is considered vital to sustaining the Gaeltacht. Chapter 8 of the Kerry CDP addresses the Gaeltacht and issues relating to the preservation and promotion of the Irish language, culture and heritage. It is stated at 8.1.3

Kerry County Council actively facilitates those individuals with an intrinsic and economic need to live in the rural Gaeltacht area. Between March 2015 and June 2021, 71.4% of all rural one-off housing planning applications were granted in the Corca Dhuibhne and Uibh Rathaigh Gaeltacht. However, it must be noted that according to the 2016 Census (CSO) there are 2,068 holiday

homes in Gaeltacht areas representing 32.5% of Gaeltacht housing stock. In some rural ED's over 50% of the housing stock comprises of holiday homes. The pressures of such development and associated migration of non-Irish speakers have the potential to affect the viability of the Irish language.

- 6.6.2.** The Irish Language policies set out in Chapter 8 seek to preserve and promote the daily use of the language by means of a range of measures. These include ensuring a sufficiently large and young population to maintain the vibrancy of the language and devising language centred economic strategies which would not rely on the immigration of large numbers of workers that do not speak the language. It is considered, therefore, that the proposed short-term letting use would not assist in the achievement of these goals.

## **6.7. Environmental Impact Assessment**

- 6.7.1.** The proposed development relates to the retention of a change of use from private residence to short-term letting. This development is not a class of development set out in Schedule 5, Part 2 of the Planning and Development Regulations 2001 (as amended). As such an EIA is not required.
- 6.7.2.** Having regard to the nature and scale of the development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at pre-screening stage and preliminary examination and/or a screening determination is not required.

## **6.8. Appropriate Assessment**

- 6.8.1.** The site is not located within a designated European site and the nearest European sites are as follows:

Dingle Peninsula SPA (004153) approx. 1km to the west.

Blasket Islands SAC (002172) approx. 3km to southwest

Mt. Brandon SAC (000375) approx. 10km to east.

- 6.8.2.** There are no known hydrological links to the protected sites. Given the scale and nature of the development which does not involve any physical works, the established residential use of the site and the distances involved, it is considered that no appropriate assessment issues are likely to arise.

## 7.0 Recommendation

- 7.1. It is recommended that planning permission be **refused** for the reasons and considerations set out below.

## 8.0 Reasons and Considerations

1. The site is located in a highly scenic rural area and popular tourist destination in the heart of the Corca Dhuibhne Gaeltacht, which is characterised by a high demand for holiday and tourist accommodation, whereby at least 40% of the housing stock is in use as holiday homes. Having regard to the suitability of the property for permanent housing due to its size, layout and generous amenity areas and to its location within a cluster of residential development which is within walking distance of Ballyferriter village, it is considered that the retention of a change of use to short-term letting would result in the loss of a property which is suitable for long-term letting and would undermine the efforts of the local authority to direct such development to urban areas and to restrict the conversion of permanent homes to short-let holiday accommodation in such rural areas, in order to maintain the vibrancy of and strengthen rural communities and to ensure affordable housing is available to retain permanent residents in the area. The proposed development would, therefore, be contrary to the tourism and settlement policies as set out in the Kerry County Development Plan 2022-2028 and the Corca Dhuibhne Electoral Area Local Area Plan 2021-2017, and to the proper planning and sustainable development of the area.
2. Having regard to the location of the site within a cluster of residential development, which is accessed by means of a poor quality rural road network, it is considered that the retention of a change of use from a single family dwelling to short-term letting would have an adverse effect on the residential amenities of the area by reason of noise and disturbance, and would give rise to additional traffic movements on the substandard rural roads which would endanger road safety. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Mary Kennelly  
Senior Planning Inspector

28<sup>th</sup> March 2024