



An  
Bord  
Pleanála

## Inspector's Report ABP 315882-23

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<b>Development</b>	Demolition of existing dwelling/sheds/rear steps/ramp & construction of new dwelling/stairs/entrance and ancillary works.
<b>Location</b>	Cliff Road, Ballyheigue, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council.
<b>Planning Authority Reg. Ref.</b>	22/438.
<b>Applicant(s)</b>	Colm & Michelle O'Leary.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party.
<b>Appellant(s)</b>	Donal Buckley & Others.
<b>Observer(s)</b>	Donal Buckley. Ivan & Eileen Ahern.
<b>Date of Site Inspection</b>	16 <sup>th</sup> October 2023.
<b>Inspector</b>	Aisling Dineen.

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## **1.0 Site Location and Description**

- 1.1. The site is located on the west side of Ballyheigue centre on Cliff Road. Ballyheigue Golf Club is positioned to the north of the site, behind the row of houses on the opposite side of the road. There are residential dwellings and a B&B premises lining each side of the road at this location. There are commanding sea views from the area of the site towards the ocean, which is located to the south of the site. Ballyheigue beach is situated to the southeast of the site.
- 1.2. The site contains a traditional single storey cottage, which is oriented towards the south. There are no window or door openings along the north elevation of the existing dwelling (along Cliff Road). The rear of the site comprises an open yard and outbuildings. There is a passageway along the east of the site, which appears to extend as an unsurfaced walkway/passage down towards the beach. (The ownership of same and whether it has public right of way, or not, has been raised as an issue under the appeal).

## **2.0 Proposed Development**

- 2.1. It is proposed to demolish an existing single storey dwelling house, with a stated area of c. 48 sq. m. along with sheds and outbuildings to the rear along with external steps and ramp along the east boundary. It is proposed to construct a replacement two-storey dwelling, with stated area of 228.15 sq.m., along with steps to the front and side. The proposal includes a covered balcony area to the rear, facing southwards. It is also proposed to provide parking spaces at the front of the dwelling along Cliff Road, and all ancillary site works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority made a decision to grant permission subject to 11 conditions no conditions on the 27<sup>th</sup> January 2023. Conditions are of a generic nature, say except for Condition No 8, relating to parking, which states the following:

*Prior to the commencement of development, a revised site layout plan drawing shall be submitted for the written approval of the planning authority showing the following:*

*(a) 1 No. parallel parking space only shall be provided to the front of the dwelling to the western corner of the site.*

*(b) The proposed off-street car parking space shall be finished in tarmacadam.*

**Reason:** *In the interest of traffic safety.*

The Chief Executive's decision reflects the planner's report.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The planning report describes the site as being zoned M4 in the Listowel MD Local Area Plan, the description is '*existing built-up areas of mixed use*'. The report states that there is a Primary Special Amenity Area and a Secondary Amenity Area 66 metres west of the site. the report states that the Roads Dept required further information and that Irish Water (Uisce Éireann) required a connection agreement.

The planning report recommended further information to be requested from the applicant, regarding the following topics:

- Parking/Traffic Safety,
- Existing passageway on west of site,
- Boundary issues,
- Overlooking/Privacy issues,
- Ground level depths/impacts on adjoining properties,
- Mobility issues,
- Public footpaths/user safety,
- Soakpits/surface water disposal,
- Revised design in keeping with area/address overlooking/privacy,

And,

- Demolition plans.

Upon receipt of further information response, the planners report refers to the various issues raised.

Regarding parking/traffic safety, the planners report summarises the response submitted, i.e., *“Two parallel parking spaces are now proposed in the same location. Roads Dept has recommended a refusal of planning permission on grounds of the proposed development being a traffic hazard. It is considered that after discussion with the Municipal District Area Engineer that one parallel parking space only can be facilitated to the western corner of the site to the front of the dwelling”*.

Regarding the passageway, the planners report summarises the response submitted, i.e., the passageway was in the ownership of the applicant but it was not intended to block it rather to carry out remedial works to it.

Regarding the eastern boundary, the planners report summarises the response submitted, i.e., a revised site layout was submitted.

Regarding the ownership of the site, the planners report summarises the response submitted, i.e., the applicant’s solicitor submitted map showing boundary of the site to be in the applicant’s ownership. The agent responded that there is no public right of way along the passageway.

Regarding overlooking/privacy issues, the planners report summarises the response submitted, i.e., a 2 metres privacy screen is proposed in the internalised balcony area.

Regarding depth of ground levels, the planners report summarises the response submitted, i.e., it is proposed to engage the affected landowners in relation to preparation of a method statement for pre-demolition and construction works.

Regarding access, the planners report summarises the response submitted, i.e., the steps to the front of the house will be in accordance with Part M of the Building Regulations.

Regarding public footpaths, the planners report summarises the response submitted, i.e., no public footpaths are to be impacted by the development.

Regarding soak pits for surface water, the planners report summarises the response submitted, i.e., the final design is to be completed in accordance with relevant Guidelines.

Regarding design, the planners report summarises the response submitted, i.e., there are other flat roof structures/balconies in the immediate area.

Regarding a demolition plan, the planners report summarises the response submitted, i.e., requested that they may undertake a demolition plan, by way of a planning condition.

The final planner's assessment (post FI response) considers issues raised and recommended a grant of planning permission.

### 3.2.2. Other Technical Reports

### 3.2.3. Roads Report

A Roads Report dated 10<sup>th</sup> June 2022, states that:

*“The proposed parking at the northern end of the site is likely to constitute a traffic hazard in its current proposed layout. An adjacent high stone wall restricts visibility both for the applicant accessing the public road, from this proposed parking area and creates a hazard for users of the public road as visibility for road users of vehicles leaving this area would be restricted.*

*The current proposed layout would also result in vehicles reversing in/out of this development onto a busy public road from this proposed parking area. This would be a traffic hazard.*

*This parking proposal needs to be reviewed and a revised site layout to address these matters needs to be submitted”.*

### 3.2.4. Irish Water

No objection subject to conditions.

## 4.0 **Planning History**

None relating to appeal site.

## 5.0 Policy and Context

### 5.1. Development Plan

#### Listowel Local Area Plan 2020 – 2026

Ballyheigue is described as a 'District Town' under Section 1.1.1 the plan.

Site is zoned M4 Mixed Use (Town Centres/Core Retail Area), 'Built Up Area', described as 'Existing built areas of mixed use'.

Section 2.7 states that built up/town and village centre areas include all lands within a development boundary, it includes a mix of land uses, which may have existing buildings in place, brownfield lands and undeveloped greenfield lands within the development boundary.

Objective LS-00-01 aims to provide for the development of the Listowel Municipal District area in a manner which is environmentally sustainable and protects its social, cultural, environmental and economic assets for future generations.

Objective BE-GO-02 aims to ensure that all development in Ballyheigue shall have regard to the scale and setting of the settlement in an attractive rural coastal landscape.

Objective BE-OS- 01 aims to promote streetscape and civic area improvements throughout Ballyheigue to attain an attractive urban environment, while protecting features of architectural and cultural importance.

Section 3.4: The overall vision for Ballyheigue is to ensure that it develops sustainably as an attractive location for residents and tourists alike and that future development preserves the town's character as a seaside town and reinforces it where necessary.

#### Kerry County Development Plan 2022 – 2028

KCDP 11-77 Protect the landscapes of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

KCDP 11-78 Protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness

or scenic value of their area. Any development which could unduly impact upon such landscapes will not be permitted.

Section 9.6 - The Council will actively pursue place making activities and local improvement measures including public realm improvements, regeneration of urban areas, the protection and enhancement of heritage towns and other measures to enhance the local environment.

KCDP 5-18 Give favourable consideration to the sustainable development of permanent places of residence on vacant sites within unfinished developments where services have already been completed to the satisfaction of the local authority.

KCDP 5-19 Ensure that the provision of rural housing will not affect the landscape, natural and built heritage, economic assets, and the environment of the county.

KCDP 5-21 Ensure that all developments are in compliance with normal planning criteria and environmental protection considerations.

## **5.2. Natural Heritage Designations**

The closest European Sites are: the Lower Shannon River SAC (002165) c 4 km north of the site. Akeragh, Banna and Barrow Harbour SAC (Site Code: IE0000332) positioned circa 1 km south/southeast of the site, Kerry Head SPA (Site Code: 004189) positioned c. 4 km north of the site.

## **5.3. EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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

- It is acknowledged that residential development is acceptable however the appellants concerns were not recognised at the initial design stage or under the response to further information.
- The proposal will have a negative effect on the character of the existing dwellings in the area, it will unduly negatively impact on the residential amenity of neighbouring properties and will result in clear road safety and traffic hazard issues.
- The Sustainable Residential Development in Urban Areas Guidelines (2008) are referenced and the requirement for development to respect the receiving environment. The flat roof proposed is completely at variance with and inconsistent with the established character of the urban environment within the village and would be incongruous.
- The flat roofed structure within the village, which is being referenced by the applicants and the planning authority is completely misplaced as the said structure, presents a disamenity in the village and when viewed from the beach.
- The fact that the existing structure is in disrepair does not justify the proposed design.
- Planning policies state that new development should have consideration for the existing building typologies and design, that currently exist within the town.
- There was no material change to design following the request for further information (Item No 10) and this was ignored by the Council in its decision to grant permission.
- The proposal is over scaled for the site context. Concerns are raised regarding overlooking, overshadowing and loss of privacy.

- Item 5 of the FI request raised issue with residential amenity and the response was to raise the privacy screen visible along the western boundary of the site from 1.8 metres to 2 metres. This will cause further overshadowing and provide disamenity. The suggested solution is entirely unsatisfactory.
- The terrace could have relocated to the eastern side of the site overlooking the public walkway and no disamenity would occur.
- The dwellings to the west are already subject to overlooking and loss of privacy due to the B&B further west.
- Should the Board be minded to grant planning permission for such a large covered terrace, it is requested that its reduction and reorientation be considered.
- Questions are raised about the 'constructability' of the proposal on the party boundary, where excavation of up to 8 foot is likely to occur. No agreements have been reached with the appellants.
- Scant regard was given to issues including traffic safety in the planning authority's final assessment after the response to FI.
- The planning authority FI request stated the proposal '*is likely to constitute a traffic hazard*', despite their own roads report stating that it definitely did and should be refused. A revised site layout was requested and the layout changed from perpendicular parking arrangement to parallel with the public road parking arrangement. These revisions were deemed substandard and formed key grounds for a recommendation to refuse, from the Councils roads office.
- Condition No 8 applied by the Council in no way addresses the road safety concern. There is also a public walk way at this location.
- The following modifications are suggested; a pitched roof design, a reduced building footprint, the removal of car parking from the front and its relocation to the rear, the repositioning of the building line closer to the public road, the repositioning of the covered terrace to the eastern side and removal of covered element.

## 6.2. Applicant Response

The response comprises a personal statement from the applicant and a submission from the agent for the applicant. The response is summarised as follows:

- It is the applicant's intention to reside full time in Ballyheigue and to attend for children to attend local schools etc.
- The applicants have not challenged the planning authority's decision and are happy to accept the conditions imposed, in order to ensure no significant impact on the amenity of adjacent properties.
- The planners report and consideration assessed the concerns raised in detail and formed the basis for a FI request. The planning officer found the proposal as a 'replacement of an existing dwelling' within RU 4, to be acceptable, in principle.
- The site is zoned M4, described as 'Existing Built-up areas of mixed use' in the Listowel Municipal District Local Area Plan'.
- In no instance was a refusal requested by any other section of the Co. Council. The Area Engineer sought further information and did not recommend a refusal on road safety or traffic grounds.
- Prior to the response to the FI being submitted the architect for the applicants' discussed proposals with the case planner and following the receipt of the response to FI, the case planner went through the details assiduously.
- The suggestion that the Council did not take the original concerns into account is undermined by the fact that there was a request for Additional Information - AI.
- An initial recommendation from the Roads Section for a refusal based on traffic hazard was overcome with a single parallel parking scheme to the western corner of the site to the front of the dwelling and this was accepted by the planning authority.

- A solicitor for the applicant confirmed that the existing passageway was in the ownership of the applicant. However, it is not proposed to close up the passage way but to carry out remedial work to the steps and the passage. The applicants submit that there is no right of way through their site but they are willing to permit the status quo. This is considered to be a considerable planning gain.
- Regarding overlooking, the FI response included details of a privacy screen of 2 metres and the planning officer stated that there is no overlooking of properties to the west.
- The applicants are to engage with affected landowners regarding ground levels and the planning officer confirms that the proposal will accord with Part M of the Building Regulations.
- The planning officer states that there are no public footpaths impacted by the proposed development.
- The planning officer accepts that surface water disposal will be in accordance with the relevant guidelines.
- The final design is accepted by the planning officer and it is accepted that there are other flat roof structures/balconies in the immediate area of the site.
- The planning officer in his final comments note that this is a replacement dwelling and this is a positive proposal for Ballyheige village.
- The appellants submission that flat roofs/balconies are not common in Ballyheigue should be rejected and it is submitted that there are many flat roof structures in Ballyheigue. Photographs are submitted. The ability to link the proposed flat roof with the B&B to the west will enhance the streetscape. It is submitted that the flat roof form is clearly strongly rooted in precedence across Ballyheigue.
- Regarding road safety and traffic issues the development is to be set back from the road and would create an opportunity to enhance the streetscape and would improve road visibility and design. Front access is preferable as it is stated that rear access can get congested during summer months. It would

be unwarranted to refuse permission where this element can be controlled by condition.

- The applicant's family have owned the house on site for almost 100 years. Relocating to Kerry would provide additional family supports for the applicants' young family. Both of the appellants are siblings and own holiday homes in Ballyheigue. It was never the intention to cause any distress with the proposed redevelopment. It was endeavoured to address the issues raised by the planning authority and a number of conditions must be adhered to prior to commencement of any works.

### 6.3. Planning Authority Response

- None

### 6.4. Observations

Both observations received have raised similar issues.

Donal Buckleys observation is summarised as follows:

- Due to lack of space in front of dwelling parallel parking would not comply with standard criteria.
- Due to walls on the east and west exiting from the car park would create a traffic hazard, for vehicles and pedestrians.
- The agent for the observer has been advised that the passageway is a public right of way and the extent of the site does not extend to the width of the public right of way and never did so.
- This passageway has been a public right of way for many years. It is used by locals to access the beach, houses to the southern side, the community centre, car park and the village.
- There are no openings out from the gable wall and in this particular regard it is clear that the site passage way should not be part of the applicants' site.

- Maps prepared by the applicants consulting engineer on the 7<sup>th</sup> June 2022 do not reflect the position on the ground as there is no physical boundary on the eastern side of the passageway.
- The boundary of the Buckley property is along the continuation line of the western edge, of the western garage, extending down to a point, opposite and in line with the front curtilage walls of the dwelling houses on the east side. The boundary of the Buckley property extends as far as the eastern side of the present pathway and between the footpath edge and the house/garden wall is a public right of way.
- It is stated that the Land Registry Map is dated the 6<sup>th</sup> July 2022 but there is no historic map incorporated with the FI response. The boundary of the site should not include the public pathway leading down by the gable of the property.
- It is noted that there appears to have been a discussion between the applicants' architect and the planning officer with reference to increasing the privacy screen to 2 metres. This balcony is at two storey level.
- If there is a requirement for a balcony it should be of much smaller area and should be open and not enclosed.
- Providing a roof and providing a screen is not in accordance with the proper planning and sustainable development of the area.
- The proposed balcony will overlook houses to the south and will impact on their privacy.
- Construction details are at variance with the adjacent houses and the proposal would be obtrusive in the skyline.
- Construction will generate noise, nuisance and disturbance.
- The proposed development could set a precedence to develop houses with viewing balconies to the detriment of adjacent house owners and the existing landscape and the visual amenities of the area.

- The flat roof element of the proposal is not consistent with development along Cliff Road and any new development must reflect the character of the existing built form in order to maintain and enhance the general area.
- It is considered that because there is a balcony on an adjacent property, it is not justifiable to say that precedence has been set.
- The proposal will be obtrusive and will not blend in with the area. The scale of the balcony is questioned and if a balcony is to be permitted a small balcony could be incorporated in the area of the planter, this would not be overlooking or affect the privacy of the adjacent properties.
- The reply to the further information request does not address the issue raised regarding the sensitive nature and character of the area/visual impact/overlooking/loss of privacy.
- The issues raised regarding proposed soak pit for surface water affecting the lower properties have not been addressed. No percolation tests have been carried out to indicate the ability of the ground to cater for substantial water flow from the development. The information submitted is not adequate and the observers have serious concerns regarding this, with implications for soil movement.

Ivan & Eileen Ahern's observation is summarised as follows:

- Due to lack of space in front of dwelling parallel parking would not comply with standard criteria.
- Due to walls on the east and west exiting from the car park would create a traffic hazard, for vehicles and pedestrians.
- The agent for the observer has been advised that the passageway is a public right of way and the extent of the site does not does not extend to the width of the public right of way and never did so.
- This passageway has been a public right of way for many years. It is used by locals to access the beach, houses to the southern side, the community centre, car park and the village.

- There are no openings out from the gable wall and in this particular regard it is clear that the site passage way should not be part of the applicants' site.
- Maps prepared by the applicants consulting engineer on the 7<sup>th</sup> June 2022 do not reflect the position on the ground as there is no physical boundary on the eastern side of the passageway.
- The boundary of the Buckley property is along the continuation line of the western edge, of the western garage, extending down to a point, opposite and in line with the front curtilage walls of the dwelling houses on the east side. The boundary of the Buckley property extends as far as the eastern side of the present pathway and between the footpath edge and the house/garden wall is a public right of way.
- It is stated that the Land Registry Map is dated the 6<sup>th</sup> July 2022 but there is no historic map incorporated with the FI response. The boundary of the site should not include the public pathway leading down by the gable of the property.
- It is noted that there appears to have been a discussion between the applicants' architect and the planning officer with reference to increasing the privacy screen to 2 metres. This balcony is at two storey level.
- If there is a requirement for a balcony it should be of much smaller area and should be open and not enclosed.
- Providing a roof and providing a screen is not in accordance with the proper planning and sustainable development of the area.
- The proposed balcony will overlook houses to the south and will impact on their privacy.
- Construction details are at variance with the adjacent houses and the proposal would be obtrusive in the skyline.
- Construction will generate noise, nuisance and disturbance.
- The proposed development could set a precedence to develop houses with viewing balconies to the detriment of adjacent house owners and the existing landscape and the visual amenities of the area.



- The flat roof element of the proposal is not consistent with development along Cliff Road and any new development must reflect the character of the existing built form in order to maintain and enhance the general area.
- It is considered that because there is a balcony on an adjacent property, it is not justifiable to say that precedence has been set.
- The proposal will be obtrusive and will not blend in with the area. The scale of the balcony is questioned and if a balcony is to be permitted a small balcony could be incorporated in the area of the planter, this would not be overlooking or affect the privacy of the adjacent properties.
- The reply to the further information request does not address the issue raised regarding the sensitive nature and character of the area/visual impact/overlooking/loss of privacy.
- The issues raised regarding proposed soak pit for surface water affecting the lower properties have not been addressed. No percolation tests have been carried out to indicate the ability of the ground to cater for substantial water flow from the development. The information submitted is not adequate and the observers have serious concerns regarding this, with implications for soil movement.
- The planning authority raised the issue of depth of ground levels and impacts on adjacent properties and the response from the applicant stated that the applicants proposed to engage with neighbour to the west and to commission a pre-existing condition schedule report. No engagement has taken place with the neighbour to the west. The observer has serious reservations about the impact the proposed development will have on his old house, which predates modern construction materials.
- Construction of this type has implications for adjoining properties and it increases risk for adjoining property to the west. A more suitably structured development should be designed to limit possibilities of future problems with adjoining properties.

## 6.5. Further Responses

None.

## 7.0 Assessment

7.1. Having examined all the application and appeal documentation on file and having regard to the relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and the planning authorities' grant of permission and I am satisfied that no other substantive issues arise. AA also needs to be considered. The main issues, therefore, are as follows:

- Principle of Development
- Design/Character/Visual Amenity
- Residential Amenity
- Traffic Safety
- Other issues
- Appropriate Assessment

### 7.2. Principle of Development

7.3. The subject site is situated within the development boundary of the town of Ballyheigue in Co. Kerry on a site with the zoning status of M4 - M4 Mixed Use (Town Centres/Core Retail Area), 'Built Up Area'. The site is positioned adjacent to a residential dwelling on its west boundary with which it has a shared boundary. There are a number of residential dwellings to the east of the dwelling and also on the opposite side of the serving road, known as Cliff Road.

7.4. There is an old-style, traditional dwelling house on the site and which is positioned longitudinally adjoining the public road, which is proposed to be demolished. An engineer's report is submitted with the application, which demonstrates that it has a number of structural issues.

7.5. Therefore, the proposal aims to replace an old traditional dwelling with a modern construct, which is proposed to be a permanent place of dwelling for the applicants' family.

- 7.6. It is considered that the principle of the proposed development is acceptable subject to an assessment of relevant planning matters, including visual and residential amenity and traffic safety, *inter alia*.
- 7.7. Design/character/visual amenity.
- 7.8. The appellant and observers to the appeal hold the view that the proposal would have a negative effect on the character of the existing dwellings in the area, and would be over-scaled in the context of the site. It is also submitted that the flat roof proposed is at variance with and inconsistent with the established character of the urban environment within the village and would be incongruous. The appellant also submits that any new development should have consideration for the existing building typologies and design, that currently exist within Ballyheigue.
- 7.9. With regard to flat roof structures, the appellant makes the case that the adjacent flat roof structure at the B&B should not be considered to set a precedent for the proposed development.
- 7.10. Having inspected the site and Ballyheigue generally it is apparent that there is undoubtedly a mixture of building styles established within the urban form. I note that there are quite a few flat roof structures within the development limits of Ballyheigue, not limited to the B&B premises referenced by the appellant to the west of the appeal site. I also note that there are at least 6 No properties with open first floor balconies within 150 metres of the subject site, all orientated towards the south.
- 7.11. While there are pitched roof dwellings either side of the subject site, I do not consider that creating an exact replica of such structures is required on the appeal site. The issue of the character of the area is an important one, however planning practice has demonstrated that contemporary styled constructs do not necessarily detract from spatial character.
- 7.12. Guidance refers that, when considering protecting the 'character' of areas, which is a crucial issue in this instant appeal, where there is an existing mixture of styles, a high standard of contemporary design that respects the character of the area should be encouraged.
- 7.13. This principle may be applied when assessing the importance of the character of the established urban form in Ballyheigue. I consider that, in principle, a high standard of

contemporary design is acceptable given the established mixture of styles within Ballyheigue.

- 7.14. The issue of scale is important when assessing character. I consider that from the northern perspective from Cliff Road, that the proposed scale in addition to the flat roof contemporary design, to be acceptable. The contiguous drawings submitted demonstrate the RL – ridgeline to be a continuum of the eaves line on the property to the west. The proposal appears to have a reduced scale and reduced visual impact when compared to both properties either side, from the perspective of Cliff Road. I also note that the window form was modified under the FI response, which is more in keeping with the residential area.
- 7.15. I am of the viewpoint that the contemporary design will have a positive impact on the streetscape at this location on Cliff Road, whereby the current blank façade, having no opening on the north elevation along the public road, does not lend to a positive vibrant streetscape/public realm at this location.
- 7.16. I also note that the front building line is proposed to be brought in line with the adjacent building line (west). This will enhance the overall streetscape and public realm at this location. I note that the proposed layout has a recessed set-back from the public road, which brings it in line with the established adjacent residences to the west. This is considered to be an improved layout for this spatial context. I do not consider that a contemporary designed dwelling at this location would detract from the character of the area, rather it would complement the vernacular of the town. Therefore, I concur for the most part with the planners report, which stated that this is a positive proposal for Ballyheigue village.
- 7.17. The view of the proposal from the southern perspective, from the beach and the area to the southeast at the carpark to the entrance to the beach (a visually sensitive area), is also acceptable. It is considered that the visual impacts would be absorbed by the back drop of the existing established development.
- 7.18. I note that the rear southern building line of the proposal extends towards the established building line of the houses to the east of the site, which is acceptable, in terms of pattern of development, design and visual amenity. However, I note that the rear building line extends considerably out from the established rear building line of the house on the west boundary. (Implications for the second storey element of the

extended rear building line on residential amenity of the property to the west will be discussed below).

7.19. Overall, it is considered that in general terms the proposal is acceptable in terms of design, character of Ballyheigue and in terms of visual amenity (With the exception of the covered balcony to be discussed under para 7.23 below).

7.20. Residential Amenity

7.21. The appellants have made the case that the covered balcony at the rear of the dwelling is unacceptable, that it would unduly negatively impact on the residential amenity of neighbouring properties by way of overlooking and privacy and would be incongruous.

7.22. The planning authority requested the applicant to address the above issues in its request for further information, stating, "*Concerns are raised due to overlooking/loss of privacy to the owners on the west boundary due to the poor design. Please address*". The appellant makes the case that there was no material change to the design in the response to the further information request but that the privacy screen was raised from 1.8 metres to 2 metres, which, it is stated, actually has a more negative impact on the amenity of the adjacent property in terms of overshadowing.

7.23. From the perspective of residential amenity of the property to the west, I note that the proposal, which appears as a two storey in effect, given the proposed covered balcony, extends south a considerable length of c.5 metres from the rear building line of the adjacent established dwelling to the west. It is acknowledged that the western façade of the proposed covered balcony, is to be less than 1 metre from the shared boundary between both sites, nevertheless, the visual impact of such a two-storey construct in such close proximity to the shared boundary, would, in my viewpoint, have an overbearing impact on the property to the west and would be incongruous when viewed from the adjacent property, therefore the residential amenity of the property would be negatively impacted.

7.24. The proposal would also overshadow the adjacent property, particularly regarding the rising morning sun from the east. Although, it is acknowledged that the existing properties to the east of the site, would already have some impacts in this regard. I agree with the appellant in that the impact of increasing the proposed privacy screen would exacerbate this negative impact, over and above the present impacts.

- 7.25. Notwithstanding any proposed screening for privacy purposes, I consider that the scale of the proposed covered balcony to be excessive in scale and bulk and would negatively impact on the residential amenities of the adjacent property with regard to overbearing, overshadowing, overlooking and loss of privacy cognisant of the overall scale of the proposed covered balcony.
- 7.26. In terms of the overall bulk of the proposed covered balcony and its overbearing impacts on the adjacent property to the west, in the context of the pattern of adjacent development, it is considered that a reduction in scale of the proposed balcony and omitting the covered element of the balcony design would mitigate against the negative impacts outlined above. Accordingly, it is recommended that should the board be minded to grant planning permission, that a condition, omitting the 'covered' element of the balcony and providing a reduced area of uncovered balcony, in addition to a privacy screen of 1.8 metres, should be applied. Having reviewed the plans in detail, it is considered that an uncovered balcony extending not more than 4 metres from the west façade of the first floor 'Open Plan Living' area, to be appropriate. This would leave a c. 4 metre space between the modified uncovered balcony and the shared site boundary. The dominant overbearing and overshadowing impacts would consequently be significantly reduced. The future occupants would benefit from a balcony, albeit not a covered one.
- 7.27. It is noted that all of the 6 No. first floor balconies on flat roof profiles within a 150-metre distance of the appeal site are uncovered in nature and therefore have reduced dominance, visual/overshadowing impacts on adjacent properties.
- 7.28. I do not consider that there will be any negative residential amenity impacts on the property to the east of the site. There are no first floor overlooking windows or balconies facing, or proximate to this property.
- 7.29. I do not consider that there will be any negative residential amenity impacts on the row of houses to the south of the site, given the separation distances involved.
- 7.30. Traffic Safety
- 7.31. The pattern of development, in the immediate vicinity of the site, with respect to parking is varied. In some instances, the front boundary walls of adjacent properties extend up to the serving road. Some properties have small gardens fronting their properties and the front boundary wall then abuts the public road. A property on the

opposite side of the road has a side paved area which allows a drive in, turn and egress. Two properties west of the site have established perpendicular parking to Cliff Road and at the time of inspection, cars had reversed into these parking spaces, obviously with safety in mind, for egress. This perpendicular format mirrors the original parking proposal under the initial planning application. There are two properties of apparently newer construct on the opposite side of Cliff Road and further west on Cliff Road, which have two parallel parking spaces similar to the parking layout presented under the response to the further information request.

- 7.32. It was noted on the date of inspection that the serving road is relatively straight and sight distances from the west are acceptable. It was also noted that approaching from the east, that the road is relatively straight, but that a stone wall, on the adjacent site to the east, would impede sight distances, in the east section of the front parking area.
- 7.33. I concur with the area engineers report dated 10<sup>th</sup> June 2022, which stated that *the proposed parking at the northern end of the site is likely to constitute a traffic hazard in its current proposed layout*. This report referred to the stone wall to the east of the site and the potential for dangerous reversing manoeuvres onto the busy serving road. This report specifically stated “*This parking proposal needs to be reviewed and a revised site layout to address these matters needs to be submitted*”.
- 7.34. The perpendicular parking spaces proposed under the original application would have contributed to dangerous reversing movements on this road and would not have been conducive to traffic safety, particularly at the eastern most parking space at the front parking area.
- 7.35. The revised plan submitted under further information response submitted two parallel parking spaces.
- 7.36. The appellants argue that the area engineers report recommended a refusal regarding the parking proposal at the appeal site. I have reviewed the reports on file and I note that the area engineers report recommended that the proposal needed to be revised from the layout originally submitted. I have no sight of a report on file that demonstrates that the area engineer recommended a refusal.
- 7.37. However, I note that in the final planner’s report (following receipt of FI), the planner states that *‘the Roads Dept had recommended a refusal on grounds of the proposal*

*being a traffic hazard' and "after discussion with the Municipal District Area Engineer, that one parallel car parking space only can be facilitated to the western corner of the site to the front of the dwelling".*

7.38. It is considered that the visibility from the western corner of the site along Cliff Road is adequate and that one parallel parking space in this area would be a satisfactory solution to the parking issue. Oncoming traffic would have sight of this space and likewise visibility would be acceptable upon egress of this space, whereas visibility from the proposed parking space on the eastern site frontage would clearly be impeded by the high stone wall.

7.39. I am satisfied with the condition imposed by the planning authority in this regard, however the space to the east and front (north) of the site, would require a solution to preclude this void area, to the front of the building line along Cliff Road, being used as an unauthorised car parking area.

7.40. Other Issues

7.41. There is disagreement under the appeal submissions about the ownership of the passageway along the east boundary of the subject site, which has been included in the site boundary in the application documents. The response to the further information (FI) request appears to indicate that there is no public right of way at this location and that the applicant owns the passageway, however the applicant is not proposing to close the passage way, rather remediate it. This ownership position is refuted by submissions to the appeal, as it is stated that there has been public right of way at this location for many years.

7.42. The Planning and Development Act 2000 (as amended) is clear that a person, without legal authority, cannot develop land solely based on a grant of planning permission:

Section 34 (13) of the Planning and Development Act 2000 (as amended) states:

(13) A person shall not be entitled solely by reason of a permission under this section to carry out any development.

7.43. Furthermore, in relation to boundary disputes it may be noted that the Development Management Guidelines (paragraph 5.13) also makes the point that the planning system is not designed to resolve disputes about title to land and that section 34(13)



of the Act, above, provides that a person is not entitled solely by reason of a permission to carry out development. I conclude therefore that the proposed development should not be refused on the basis of a dispute in relation to site boundaries/the subject passageway.

- 7.44. Submissions to the appeal refer to noise and disturbance. It is considered that this issue shall be addressed by way of condition of permission should the board be minded to grant planning permission.
- 7.45. Submissions to the appeal refer to the depth of development adjoining a house of older construct and older materials and any potential impacts that may arise as a result of development. It is considered that a detailed construction management plan including a detailed method statement regarding this issue, should be conditioned to be agreed by the planning authority, prior to the commencement of development, should the board be minded to grant permission.
- 7.46. The planning authority raised the issue of surface water disposal with the applicant under the FI request. The response indicated that storm water is to be directed to a soak pit within the site and will conform to requirements for it to be between 1.5 and 4 metres deep and not less than 2 metres above the groundwater table. The chamber will be large enough to store excess rain water between storm events. It was confirmed that a qualified insured chartered engineer will confirm the final design, including carrying out an infiltration test in compliance with BRE Digest 365. SUDS guidelines will also be applied. It is also noted that a pre cast concrete drainage channel will be installed along the entire front of the site to prevent water spilling onto the public road.
- 7.47. It is noted that the submissions to the appeal indicate that soil movement may arise as a result of storm event. I see no evidence or history documented on file of such soil displacement in this area and I note the local authority planner has not raised this as an issue. I am satisfied with the details presented relating to drainage and consider that an appropriate condition should be applied if the Board is minded to grant permission.

#### 7.48. Appropriate Assessment

Having regard to the limited nature of the proposed development and the nature of the receiving environment and the proximity to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

### 8.0 Recommendation

8.1. I recommend that planning permission be granted for the reasons and considerations set out below and subject to the following conditions.

### 9.0 Reasons and Considerations

Having regard to the land use zoning of the site of the proposed development, the size of the site, the pattern of development in the area, the design and layout of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and would be in accordance with the proper planning and sustainable development of the area.

### 10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by documents lodged on the 13 <sup>th</sup> December 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority
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	<p>prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>Prior to the commencement of development, a revised site layout plan drawing shall be submitted for the written approval of the planning authority showing the following:</p> <ul style="list-style-type: none"> <li>a. One (Number 1) parallel parking space only shall be provided to the front (north) of the dwelling in the western corner of the site.</li> <li>b. The parking area shall be in accordance with the detailed standards of the planning authority for such works.</li> <li>c. The remaining space to the east, (where the second parking space is to be omitted) shall be finished/treated, so as to preclude any parking thereon and be in compliance with the detailed standards of the planning authority for such works.</li> </ul> <p><b>Reason:</b> In the interest of traffic safety.</p>
3.	<ul style="list-style-type: none"> <li>a. The covered balcony shall be omitted from the proposal.</li> <li>b. A revised uncovered open balcony measuring no more than 4 metres from the west façade of the open space living area at first floor level shall be provided. The revised open uncovered balcony shall maintain the same rear building line as proposed.</li> <li>c. A privacy screen 1.8 metres in height shall be erected on the west boundary of the revised open uncovered balcony.</li> </ul> <p>Revised plans and drawings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>
4.	<ul style="list-style-type: none"> <li>a. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction</li> </ul>

	<p>practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>b. The construction management plan shall include a detailed method statement regarding protection of adjacent properties during the construction process.</p> <p><b>Reason:</b> In the interests of public safety and residential amenity.</p>
5.	<p>Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.</p> <p><b>Reason:</b> In the interest of sustainable waste management.</p>
6.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
7.	<p>The developer shall enter into water and wastewater connection agreements with Uisce Éireann.</p> <p><b>Reason:</b> In the interest of public health.</p>

8.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
9.	<p>All service cables associated with the proposed development (such as electrical, communal television, telephone, and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interest of orderly development and the visual amenities of the area.</p>
10.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

'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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Aisling Dineen

Planning Inspector

27<sup>th</sup> October 2023