



An
Bord
Pleanála

Inspector's Report ABP317531-23

Development	Construct dwelling, use existing entrance to improve sightlines and all associated works, including connection to public sewer. Retain existing adjacent house within revised boundaries
Location	Cliff Road, Ballyheigue, Co Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	22/1247.
Applicant(s)	William and Marie Wall.
Type of Application	Permission and retention permission
Planning Authority Decision	Grant permission.
Type of Appeal	Third Party
Appellant(s)	Noel Casey.
Observer(s)	None.
Date of Site Inspection	11 th September 2023.
Inspector	Ann Bogan.

1.0 Site Location and Description

- 1.1. The site is to the west of the seaside town of Ballyheigue, Co Kerry, approximately 18km from Tralee. The 0.15 ha site is an undeveloped plot which forms part of the garden of a single storey existing house (formerly a terrace of 3 small holiday cottages, now stated as having been amalgamated into 1 dwelling, although the three entrance doors remain). The site is approx. 1km from the centre of the town and faces onto the L1033 Cliff Road and is within the 50km speed limit.
- 1.2. The site is between the road and the sea, directly overlooking Ballyheigue Bay to the south. There are three existing detached houses to the east, on the seaward side of the road, while a housing development, Marian Park, is located on the opposite side of the road, to the north. A physical boundary with the neighbouring house to the east (the appellant) is formed by a circa 2m concrete block wall and an overgrown hedge. The road boundary is formed by a stone wall topped by railings and a hedge. The existing vehicular entrance is to the east of the existing dwelling.
- 1.3. The site slopes gently north to south towards the cliff edge, which is approximately 12m from the nearest point of the proposed house and is bounded by chain link fencing. The cliff face appears to be a 'soft coastline' of bolder clay, as opposed to a rocky cliff. The existing houses to the east have had varying forms of hard coastal defences constructed and a project is in progress by the local authority to strengthen coastal defences adjoining a section of the road to the east, due to coastal erosion.

2.0 Proposed Development

- 2.1. The proposed development consists of:
 - Construction of a single storey, split level dwelling 266 sq m in area, to the east of the existing house
 - Use the existing vehicular entrance as a shared entrance with existing house, including works to improve sight distances.
 - Associated site works to include connection to the public sewer infrastructure

2.2. Further information request stated the boundaries of the current application overlap with the boundaries of a separate retention application. The existing dwelling on the site therefore needs to be retained within revised boundaries. Further information was submitted and clarification of further information led to revised drawings being submitted showing revised site boundary. The shared parking area is now shown within the boundary of the existing house, with the proposed house having a right of way over it. A revised public notice was submitted including the addition of the following in the development description:

- Retention of existing house and garage within revised site boundaries

2.3. As the site is in an area considered vulnerable to coastal erosion further information was requested and submitted on ground conditions and confirmation that there was no risk of undermining of cliff face arising from the development.

2.4. A landscaping plan was also requested and submitted.

3.0 Planning Authority Decision

3.1. Decision

Kerry County Council granted permission for the proposed dwelling and granted retention permission for revised boundary of the existing house, subject to 10 conditions.

Condition 4 restricted first occupancy to the applicant for 7 years; condition 5 restricted usage to permanent private residence and not to be used as a holiday house; condition 10 required implementation of a landscaping plan including screening of boundaries.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Report dated 1.02.23: The development was considered acceptable in principle in terms of complying with the Rural Settlement Policy. The Planning Officer noted the designation of the area as a Visually Sensitive Area and concluded that although there were previous refusal reasons based on the visual impact, the proposed

design with a similar ridge height and finished floor level as existing house, is acceptable, and the site is well screened to north and east.

Further information was requested and received as outlined in 2.2-2.4 above.

Planners report dated 9.6.23: The further information received was considered and the Planning Officer concluded '*the principle of the development is considered acceptable and can be integrated into the landscape*'. A grant of permission and of retention permission were recommended and the report formed the basis of the planning authority's decision.

3.2.2. Other Technical Reports

Listowel Municipal District Office (Roads) 1.02.23: recommended further information and requests applicant to liaise with Listowel MD in relation to sightlines, liaise with the Flooding, Coastal and Marine Unit of Kerry Co Council in relation to any coastal protections they may require, and submit a section of proposed junction with public road.

Further report from Road's office referred to in Planners report: but not on file permission recommended subject to conditions.

Environmental Assessment Unit: Concludes proposed development is not likely to have significant effect on European sites. Consideration should be given to landscaping with native Irish species.

3.3. Third Part Submissions

Lily Dunne of Marian Park and 10 others raised concerns re loss of amenity and natural beauty of the area, dwelling not in keeping with the area, traffic hazard, development will cause stability issues with cliff.

Noel Casey (appellant) raised similar issues as in appeal, including the importance of the coastal landscape and impact of the proposed development on native wild birds. Contended the term infill site is inaccurate as there are only three dwelling houses on the seaward side of the road between the proposed dwelling and the town, the rest is open field, cliff and scrub with sea views, '*which explains the importance of its designation as a Visually Sensitive Area*'.

4.0 Planning History

09/1594 permission granted for retention of existing dwelling (Paddy's Cottage) on revised site boundaries. This referred to the easternmost of the three holiday cottages (now reportedly amalgamated into a single dwelling) and the revised boundary took in the immediate area around that cottage as well as the undeveloped land to the east, which is the subject of the current planning application.

08.232466 (08/2441) Permission refused for the following reason:

The site is located within an area designated as being of Prime Special Amenity Area in the current County Development Plan. It is considered that the development taken in conjunction with existing development in the immediate vicinity would constitute an excessive density of development and would impact on the open character of the scenic rural landscape and would therefore contravene materially a development objective of said development plan which seeks to preserve the landscape character of such areas of Prime Special Amenity. The proposed development would, therefore, be contrary to the proper planning development of the area.

The planning authority had included additional refusal reasons in their decision including non-compliance with settlement strategy, materially contravening conditions of previous permission, traffic hazard due to poor sightlines and that the proposal would give rise to environmental damage or erosion of the cliffs.

08/1232 Withdrawn. Single dwelling on same site as current application

08.224326 (07/1013) The application referred to the current appeal site and what was then the three holiday cottages adjoining. Permission was granted for the demolition of the cottages and the erection of 1 dwelling on site no 2. A second dwelling proposed on the site of the holiday cottages was not permitted due to the designation of the area as Prime Special Amenity, overdevelopment of the site and would set a precedent for further ribbon development.

06/2145 Permission refused for demolition of cottages and construction of a dwelling and two holiday homes, for reasons of visual impact, interference with the character of a designated Prime Special Amenity landscape, scale and design and conflict the Development Plan objectives.

5.0 Policy and Context

5.1. National Policy

National Planning Framework National Policy Objective 19

'Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere.

In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.'

Sustainable Rural Housing: Guidelines for Planning Authorities, 2005

The guidelines distinguished between rural generated housing and urban generated rural housing and advised local authorities to identify areas under urban influence in which appropriate policies would apply to meet genuine rural housing need:

Section 3.2.1 states that in the settlement strategy *'each development plan should start by putting forward a development vision for rural areas that:*

- *Aims to support the sustainable development of these areas in economic, social and environmental terms in a way that supports the rural economy and rural communities,*
- *Ensures that development of rural areas takes place in a way that is compatible with the protection of key economic, environmental and natural and cultural heritage assets such as the road network, water quality, important landscapes, key identified areas with wind energy potential, habitats and the built heritage, and*
- *Promotes the development and consolidation of key settlements in rural areas'*

5.2. Development Plan

Volume 1

Ballyheigue is designated a District Town in the Kerry County Development Plan 2022-2028, with a target population of close to 800. The site is located at the western edge of the town and is outside the development boundary as indicated in the Ballyheigue town plan in Section 3.4 of the **Listowel Municipal District Local Area Plan 2020-2026**.

The Local Area Plan aims to ensure that the settlement benefits from a more compact form through development of zoned backland sites and from regeneration of and re-use of existing properties within the settlement's core and that development should not extend the existing pattern of linear development in the town.

Vol 1 Chapter 5 Rural Housing

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

- (a) Establishing that there is a genuine economic or social need for permanent occupation.*
- (b) Prioritising the reduction of residential vacancy rates in all the Rural Areas in preference to new residential development.*
- (c) The renovation or modification of existing structures in rural areas for residential use.*
- (d) Encouraging people who wish to reside in the countryside to live in existing villages or small village settlements where there are services available'.*

The subject site is designated in the Plan as a **Rural Area Under Urban Influence:**

'Objective KCDP 5-15

In Rural Areas under Urban Influence applicants shall satisfy the Planning Authority that their proposal constitutes an exceptional rural generated housing need based on

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

a) Farmers, including their sons and daughters or a favoured niece/nephew where a farmer has no family of their own who wish to build a first home for their permanent residence on the family farm.

b) Persons taking over the ownership and running of a farm on a full-time basis, who wish to build a first home on the farm for their permanent residence, where no existing dwelling is available for their own use. The proposed dwelling must be associated with the working and active management of the farm.

c) Other persons working full-time in farming or the marine sector for a period of over seven years, in the local rural area where they work and in which they propose to build a first home for their permanent residence.

d) Persons who have spent a substantial period of their lives (i.e., over seven years), living in the local rural area in which they propose to build a first home for their permanent residence.

e) Persons who have spent a substantial period of their lives (i.e., over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation and currently live with a lifelong or life limiting condition and can clearly demonstrate that the need to live adjacent to immediate family is both necessary and beneficial in their endeavours to live a full and confident life whilst managing such a condition and can further demonstrate that the requirement to live in such a location will facilitate a necessary process of advanced care planning by the applicants immediate family who reside in close proximity.

Preference shall be given to renovation/restoration/alteration/extension of existing dwellings on the landholding before consideration to the construction of a new house.

Rural Housing Objectives:

KCDP 5-17 *Monitor the trends in rural housing and population during the lifetime of the plan to ascertain if further rural housing policy responses are required during the plan period.*

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

KCDP 5-20 *Ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence and subject to the inclusion of an Occupancy Clause for a period of 7 years.*

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

KCDP 5-22 *Ensure that the design of housing in rural areas comply with the Building a house in Rural Kerry Design Guidelines 2009 or any update of the guidelines.*

5.6 Holiday / Second Homes

Development Plan policy is that holiday home should not be located in rural areas:

The County experiences pressure for holiday / second homes particularly in visually sensitive landscapes. It is apparent from the Census 2016 that the level of holiday homes in some areas far exceeds the local indigenous population. The overall result of this sporadic one-off development is an incremental deterioration of the visual and in some cases, the ecological qualities of the landscape.

In order to underpin the basis for sustainable long-term economic development of the County, particularly in the rural areas, holiday home developments shall be concentrated in and adjacent to existing towns, villages and small village settlements thereby minimising the impact on the open landscape. Such developments should respect the existing fabric of the settlement, both in scale and design. The level and scale of development permitted shall relate to the availability of infrastructure and services and the scale of the existing settlement.

It is the policy for the Council that one-off holiday / second homes will not be permitted in rural areas.

Holiday/Second Home: It is an objective of the Council to:

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

Landscape Sensitivity: It is an objective of the Council to:

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*

There are two landscape designations for the county:

1 Visually Sensitive Areas

2 Rural General

The site is within an area designated a 'Visually Sensitive Area' in landscape terms. (This replaces a designation of the site as 'Prime Special Amenity Area' when previous planning applications on the site were being considered).

11.6.3.1 Visually Sensitive Areas

'Visually sensitive landscape areas comprise the outstanding landscapes throughout the County which are sensitive to alteration. Rugged mountain ranges, spectacular coastal vistas and unspoilt wilderness areas are some of the features within this designation. These areas are particularly sensitive to development. In these areas, development will only be considered subject to satisfactory integration into the landscape and compliance with the proper planning and sustainable development of the area.'

'The following provisions shall apply to development in Visually Sensitive Landscapes areas:

- There is no alternative location for the proposed development in areas outside of the designation.*
- Individual proposals shall be designed sympathetically to the landscape and the existing structures and shall be sited so as not to have an adverse impact on the character, integrity and distinctiveness of the landscape or natural environment.*
- Any proposal must be designed and sited so as to ensure that it is not unduly obtrusive. The onus is, therefore, on the applicant to avoid obtrusive locations.*

Existing site features including trees and hedgerows should be retained to screen the development.

- *Any proposal will be subject to the Development Management requirements set out in this plan in relation to design, site size, drainage etc.*
- *The new structure shall be located adjacent to, or a suitable location as close as possible to, the existing farm structure or family home. Individual residential home units shall be designed sympathetically to the landscape, the existing structures and sited so as not to have an adverse impact on the character of the landscape or natural environment. Existing site features including trees and hedgerows shall be retained to form a part of a comprehensive landscaping scheme. Consideration must also be given to alternative locations.*
- *Extending development into unspoilt coastal areas is to be avoided.*

The County enjoys both a national and international reputation for its scenic beauty. It is imperative in order to maintain the natural beauty and character of the County, that these areas be protected.

Coastal Erosion

The Ballyheigue area is referred to in the Development Plan as one of the areas of soft coastline which have been particularly vulnerable to coastal erosion.

It is an objective of the Council to:

KCDP 11-51 Support and facilitate the implementation of the recommendations and actions arising from the ongoing Tralee Bay and the Dingle Bay East/Castlemaine Harbour Coastal Studies, subject to compliance with the EIA and Habitats Directive.

KCDP 11-52 Prohibit any coastal protection works which have not been the subject of a recognised design process and have not been assessed in terms of their likely impact on the marine and coastal environments.

KCDP 11-53 Restrict development in coastal areas where the natural erosion process is likely to threaten the viability of such development.

KCDP 11-54 Facilitate and support site specific interventions to reduce the risk of coastal erosion, subject to environmental assessment.

KCDP 11-55 *Facilitate and support the maintenance and/or appropriate replacement*
Natural Heritage Designations

Kerry Head SPA – 1.5km

Tralee Bay Complex SPA – 1km

Askeragh, Banna and Barrow Harbour cSAC 1km

Lower Shannon SAC 1.2km

5.3. **EIA Screening**

5.4. Having regard to the nature and modest scale of the proposed development, and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- There have been several applications for similar development on this land. The Area Planner in report on retention permission (09/1594) was of the view that the revision of the boundary around Paddy's Cottage as proposed would prohibit the construction of a second unit within the site. This view seems to have been overlooked in the current application on this site.
- Development Plan designates this coastline as a Visually Sensitive Area. Designation takes into account level of existing development, importance of the landscape to overall amenity of the area and its importance to local communities
- Kerry County Council position has been to refuse planning for new builds on the seaward side of the road, and has refused permission on this site on more than one occasion

- The cliffs and open spaces and gardens in the area are important for native wild birds who are on the Red and Amber lists of Birds of Conservation concern, including Choughs, Skylarks, Martins, Meadow Pippits and Grey Wagtail and consideration must be given to any negative impact development may have.
- The proposed house has 3 bathrooms, a separate WC, a shower, plus hydrapool, sauna and steamroom which seems excessive for a family home. Concerned about the combined demand on finite resources of this plus the existing eight bedrooomed, commercial holiday rental with 7 bathrooms plus hot tub in the existing house.
- Re the proposed removal of railing and lowering of the wall of roadside wall, suggests the complete removal of the wall and railing and reinstatement of the original earthen bank, which was a condition on a previous permission.
- Condition 10a of the permission refers to 'retaining boundary screening'. Existing screening is a high concrete wall and overgrown planting, which may interfere with right to light of neighbouring property and does not contain native trees or shrubs. Nature of the screening should have been examined and replaced with native planting whether permission is granted or not.
- Appeal accompanied with extracts from planning applications referring to boundary of site and boundary planting conditions, and copy of on-line advertisement for rental of existing house on site.

6.2. Applicant Response

Letter received from agent, accompanied by letter from applicants: and a letter from parents of one of the applicants:

- The proposal by definition is an infill site. The building design and location will not negatively impact on appellants property or any other party.
- Applicants outline their connection to Ballyheigue. Applicant and family have lived with her parents in the adjacent house adjoining this infill site since and before they married in 2019.

- Applicant's parents have owned the property since 1998, which was built as three holiday cottages in 1962/3. Intended it would be their permanent residence at some stage and hoped adjoining site would be for one of their children. The building was rented as three holiday cottages until 2008. Following renovations in 2008, the parents have lived in the house as their permanent residence for the last 15 years from 2008. The references in the third-party appeal are historical.
- Applicant's parents wish to hand over the subject site to their daughter and son in law to build their family home on.
- Re issues raised by appellant, applicant states that following a car accident the use of hydro pool, sauna, steam room have been a matter of routine physio as recommended by her doctor.

6.3. **Planning Authority Response**

- None

6.4. **Observations**

- None

7.0 **Assessment**

7.1. I consider the main issues to be assessed are as follows:

- Principle of development and settlement policy
- Visual impact on landscape
- Impact on wild birds
- Residential amenity
- Coastal erosion
- Appropriate assessment

7.2. **Principle of development and settlement policy**

- 7.2.1. As outlined in Section 4.0 above there is a long planning history on this site which has seen a consistent refusal of permission for one or more extra dwellings on the site. A common reason for refusal was that it would constitute an excessive density of development and would impact on the open character of the scenic rural landscape in the context of the designation of the area as a Prime Special Amenity Area.
- 7.2.2. This application is for a 266 sq m single storey dwelling located within the garden area of an existing dwelling, and is intended to house the daughter and family of the owners of the site and adjacent dwelling. The existing dwelling was built as three holiday cottages which have been extended since previous applications in 2008 and appear to have also been amalgamated into one dwelling. The three front doors remain but the documentation submitted with the appeal states that it is a single dwelling, occupied by the applicant's parents as their permanent residence, although this is challenged by the appellant who refers to it as a holiday rental property. The status of the alterations of the existing property is a matter for the planning authority and is outside the scope of this appeal.
- 7.2.3. Under the Development Plan Rural Housing Policy, the site is within an area designated as a Rural Area Under Urban Influence. The preference in the Plan is that those wishing to live in a rural area should live within existing towns and villages where existing services are available. I note the site is located outside the development boundary of the town as defined in the Local Area Plan and is considered to be in a rural area. Applicants for houses in rural areas must show that their proposal constitutes *'an exceptional rural generated housing need based on their social (including lifelong or life limiting) and / or economic links to a particular local rural area'* (Objective 5.15) and a series of qualifying categories are set out. Social need includes having lived in the area for 7 years or more, or sons or daughter of a farmer building their first permanent residence on the family farm. The Plan also aims to ensure the provision of rural housing will not *'affect the landscape, natural and built heritage, economic assets, and the environment of the county'* (Objective 5.19). The National Planning Framework (NPO 19) also requires social or economic need for housing in the location to be demonstrated.
- 7.2.4. The applicants state they have lived in the existing dwelling on site since their marriage in 2019 and the applicant's parents have had a holiday home which they

have lived in both part-time and full time over a considerable period. No economic justification for a home in the area is presented. Taking into account the location and characteristics of the area and the impact on the landscape (as outlined below) and the proposed development, it is not evident, in my opinion, that an exceptional rural housing need to live in this location has been established, in accordance with the Development Plan and National Planning Framework NPO 19 policies.

7.3. Impact on the landscape

- 7.3.1. A Landscape Review was carried out of all landscapes in County Kerry to examine and identify those that should be protected in the Development Plan as 'Visually Sensitive Areas' and/or views and prospects (the review is included as an Appendix to Volume 1 of the County Plan). This system has been incorporated into the current Development Plan and replaces the designation of areas as Prime or Secondary Special Amenity in earlier Development Plans.
- 7.3.2. The subject site is located in an area which is designated as a 'Visually Sensitive Area'. These areas are particularly sensitive to development and *'development will only be considered subject to satisfactory integration into the landscape and compliance with the proper planning and sustainable development of the area.'* Objective KCDP 11-78 *seeks to 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.*
- 7.3.3. A number of provisions are set out in Section 11.6.3.1 that apply to development in Visually Sensitive Areas, among them that *'there is no alternative location for the proposed development in areas outside the designation'*. In this case there are locations for housing available in towns and villages nearby, including in Ballyheigue itself where land is zoned for housing development adjoining the town core, as set out in the Ballyheigue Town Plan (contained in the Listowel Municipal District Local Area Plan 2020-2026). The Town Plan aims to create a more compact urban area and states that future development *'should not extend the existing pattern of linear development in Ballyheigue'*.
- 7.3.4. As well as being designated a visually sensitive site, the site is outside the development boundary of the town, as defined in the Ballyheigue Town Plan. There are only three houses (all which appear to have been constructed at least 50 years

ago) on the seaward side of the road between the subject site and the edge of the town and it is clear that the designation of this stretch of coastline as 'Visually Sensitive Area' and its exclusion from the development boundary of the town was intended to place limitations on development in the area in recognition of its landscape value and a desire to reduce the pressure for ribbon development along the coast and on the approach roads to the town.

- 7.3.5. The existing low-profile structure to the west constructed in the early 1960s, is on a large site and is circa 45 m from the nearest house, reducing its visual impact on the area somewhat and maintaining an open landscape character on most of the site. While the design of the proposed dwelling is largely acceptable, construction of an additional substantial dwelling in the gap between the existing house and its nearest neighbour would consolidate the ribbon of development, adding to the negative impact on the sensitive coastal landscape caused by the existing development to the east. Furthermore, in my opinion, permitting the additional dwelling could create a precedent for further development on the coastal land to the west (which is also designated a 'Visually Sensitive Area'), contrary to a Development Plan provision in relation to Visually Sensitive Sites that '*extending development into unspoilt coastal areas is to be avoided*' (Section 11.6.3.1).
- 7.3.6. I am not satisfied that there has been a significant change in policy or circumstance that would justify overriding the previous refusals for an additional dwelling on this site and in my opinion the proposed development would constitute excessive density and overdevelopment of the site and would negatively impact on the visually sensitive character of the landscape, which it is an objective of the Development Plan to protect.
- 7.3.7. The application includes for the retention of the existing house within revised boundaries. The main purpose of this is to facilitate the delineation of a boundary between the existing dwelling and the proposed dwelling. The approval of the proposed retention would imply acceptance that the site can accommodate a second dwelling. Therefore, if the proposed second dwelling on the site is not acceptable, it follows that the granting of the retention application would not be appropriate.

7.4. **Impact on birdlife in the area**

- 7.4.1. The appellant raises concerns about the impact of the development on native birdlife, in particular 'red listed' birds. A report from the Environmental Assessment Unit of Kerry County Council assessed the potential impact of the development on SPAs in the vicinity and on non-annexed birds of conservation interest. The Kerry Head SPA which is 1.5km from the site is designated for birds of special conservation interest, namely chough and fulmar. The report found that the habitat at the location of the proposed development is not supporting or functionally linked habitat for fulmar nor a suitable breeding habitat, as they use exposed isolated sea cliffs for nesting. As regards chough, the report found that the existing habitat is not optimal habitat as it is close to an existing cottage and is not suitable breeding habitat. It concluded that there is ample prime habitat for choughs along the coast and the proposed development 'further to its scale nature and location would not impact on chough populations'.
- 7.4.2. As regards non-annexed birds of conservation interest the report noted that although the site may be used for occasional foraging by other bird species, it does not contain suitable breeding habitat for farmland birds and notes the absence of substantial hedging or trees in the exposed coastal location. Based on the findings of the report, I am satisfied that the proposed development would not have any significant impact on bird species in the area.

7.5. Residential amenity

- 7.5.1. The proposed dwelling is 7 metres from the side of the adjacent dwelling to the east and there are no windows in the east elevation overlooking the neighbouring house. I note that the site boundary as defined by the 'red line' is 2m inside the existing physical boundary between the houses, formed by a concrete block wall and an overgrown hedge/trees. The reason for this is unclear. In any case, the wall and existing planting provide screening between the houses and the landscape plan submitted by way of further information shows an additional hedgerow to be planted along the 'red line' western boundary, providing additional screening. I conclude therefore that the proposed development would not have a negative impact on the residential amenity of the neighbouring house, nor on the existing house to the west. The issue of right to light raised by the appellant would, I consider, be a legal matter to be addressed between the parties themselves.

7.6. Coastal Erosion

- 7.6.1. The Ballyheigue area is identified in the Development Plan as have a 'soft coastline' which is vulnerable to coastal erosion. This is evidenced on the Cliff Road where works are underway to improve coastal defences to protect the road. The three houses to the west of the site have all constructed various forms of coastal defences, which are somewhat ad hoc and visually unattractive. The subject site appears to have a similar 'soft coastline', but there is no evidence of coastal protection in place. The nearest point of the proposed dwelling would be approximately 12m from the fence at the top of the cliff. A report provided by way of further information concluded following site investigations that *'there is no risk of subsidence or undermining of the cliff face arising from the proposed development'*.
- 7.6.2. Development Plan policy is *'to restrict development in coastal areas where the natural erosion process is likely to threaten the viability of such development'*. Based on images supplied with the application and from what I noted during the site inspection, there appears to be some areas of bare earth on the cliff bounding the subject site which may indicate erosion, and I note the property boundary extends southwards beyond the line of the cliff, which may be indicative of previous erosion. However, information is not available in relation to the level or speed of erosion that may have occurred or may occur in the future, that would allow a determination to be made that coastal erosion would threaten the viability of the development in the future.
- 7.6.3. There is no reference in the development description or drawings of an intention to include coastal defence measures in the planning application. However, there is some ambiguity in some of the photomontages provided of the proposed development in the Design Statement accompanying the application. This may be 'artistic licence' but I would suggest that if planning permission were to be granted a condition would be appropriate clarifying that coastal defences are not considered part of the application and if proposed in the future would need to be subject of a separate application process.

7.7. Appropriate Assessment Screening

- 7.7.1. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom and the distance from any European site it is

possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

8.0 Recommendation

8.1. Refusal of permission and retention permission is recommended.

9.0 Reasons and Considerations

The site is within an area designated as being a Visually Sensitive Area in the Kerry County Development Plan 2022-2028. It is considered that the proposed development taken in conjunction with existing development in the immediate vicinity would constitute an excessive density of the development, and would have a negative impact on the open character of the scenic coastal landscape and could create a precedent for similar undesirable development on lands to the west which have is also designated as a Visually Sensitive Area. The proposed development and the development to be retained would therefore materially contravene objective KCDP 11.78 of the Kerry County Development Plan 2022-2028 which seeks to preserve the landscape character of the county and 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.

Ann Bogan
Planning Inspector

26th October 2023