



An  
Bord  
Pleanála

## Inspector's Report ABP317790-23

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<b>Development</b>	Construction of dwelling house, outbuildings, wastewater treatment system and ancillary works
<b>Location</b>	Derreen Gardens, Derreen, Lauragh, Co Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	23/662
<b>Applicant(s)</b>	Charles Bigham
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Charles Bigham
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	4 <sup>th</sup> December 2023
<b>Inspector</b>	Ann Bogan

## 1.0 Site Location and Description

- 1.1. The site is located in a rural coastal location in the grounds of Derreen House and Gardens, to the south-west of the settlement of Lauragh, which is on the northern coast of the Beara Peninsula. The site is approximately 24km south-west of Kenmare and is accessed off the R573.
- 1.2. The landholding is approximately 24ha (60acres) in area and is located on a peninsula which overlooks Kilmakilloge Harbour on three sides. The gardens, which include mature woodland as well as formal gardens, were developed in the 19<sup>th</sup> and early 20<sup>th</sup> century. They are privately owned but open to the public all year round as a tourist attraction. Derreen House is a Protected Structure (RPS 108-5) and there are two other houses located in the landholding, occupied by staff/former staff.
- 1.3. The proposed site, which 0.98ha in area, is approximately 180m to the south-west of the main house and is located within an undeveloped clearing which contains a hardstanding area for horticultural use. It is bounded to the north and west by a band of mature mixed woodland separating it from the main house and formal gardens and to north east by a narrower band of woodland. A further band of woodland lower in height borders the site to the west.
- 1.4. The site adjoins Kilmakilloge Harbour, a large bay off Kenmare River, and is part of the Kenmare River SAC. Derreen is located in the inner (southern) part of this bay, where there are many sheltered inlets and small islands. The site has views over the salt marshes which adjoin the site to the bay and to a number of inlets and islands and more distant mountains as well as views towards Lauragh village.

## 2.0 Proposed Development

- 2.1. The proposed development consists of:
  - Construction of a four bed 385sq.m dwelling house, broken into three interlinked forms intended to reflect the clustering of buildings in vernacular farmsteads. The building is faced with stone and roofed by a combination of stone/slate and a 'green' roof.
  - An outbuilding (77sq.m) is proposed to the west of the house to be used as a store.

- House and store are to be grouped in the north eastern part of the site, adjacent to the existing woodland.
- The house is stated to be for the occupation of the applicant and his family and is justified based on his role as the owner and manager of the Derreen gardens estate and a plan for the existing Derreen House to be used for short-term letting as an income generator to help sustain the estate.
- Secondary wastewater treatment unit to be located between the house and outbuilding, with a tertiary treatment unit and 45sq.m infiltration area located uphill and to the north-west of the site.
- Private well to be located to south-west, close to the dwelling.
- Installation of a horizontal geothermal collector and heat pump to heat the dwelling, collector location not specified.

The planning application is accompanied by a Planning Statement, a Design Statement, a series of photomontages, an Appropriate Assessment Screening Statement and a Site Suitability Assessment Report.

Additional documents submitted with the appeal include an addendum to the Design Statement, revised AA Screening Report, a letter from Munster Environmental, an Arboriculture and Horticulture Assessment, a revised site layout plan and a landscape plan.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Kerry County Council issued a decision to refuse permission on 20<sup>th</sup> July 2023 for four reasons:

1. The Planning Authority is not satisfied on the basis of information submitted with the planning application, that a rural housing need has been demonstrated in accordance with Objective KCDP 5-16 of the County Development Plan 2022 – 2028 having regard to the location of the application site in an area designated as Other Rural Areas. The proposed development would, therefore, contravene Objective

KCDP 5-16 of the said development plan and would be contrary to the proper planning and sustainable development of the area.

2. Based on the information submitted the Planning Authority is not satisfied that the effluent arising from the proposed development could be adequately disposed of on site. The proposed development would, therefore, be prejudicial to public health. Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.

3. Based on the information submitted and in the absence of pre-development archaeological testing, the Planning Authority is not satisfied that the proposed development would not negatively impact on the archaeological heritage of the County which is necessary to protect and preserve, as per Section 8.3 of the Kerry County Development Plan 2022-28. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

4. Based on the information submitted, the Planning Authority is not satisfied that the proposed development would not have adverse impacts on water quality downstream, would not adversely impact local biodiversity interests and would not result in adverse impacts on the integrity of the Kenmare River SAC, in view of the sites' Conservation Objectives. The proposal would therefore contravene Objectives KCD 11-1 and 11-2 of the Kerry County Development Plan 2022-2028 and would be contrary to the protection of the environment, biodiversity, water and natural heritage and the proper planning and sustainable development of the area.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The Planning Officer determined that there were no negative visual impacts or traffic issues associated with the proposed development. His report stated: 'the Planning Dept is not satisfied of the applicant's compliance with the Rural Settlement Policy as it applied to this location. The applicant already has a dwelling house and has not

established a satisfactory need for a dwelling house in this case. The applicant is proposing to convert his existing dwelling (Derreen House) to short term lettings’.

Further information had been recommended on other issues, but the report states: ‘as the application is proposed to be refused for another reason its deemed unnecessary to put the applicants to other costs in this case’.

The report was countered signed by the SEE and formed the basis of the Planning Authority’s decision.

### 3.2.2. Other Technical Reports

Area Engineer: No observations to be made from roads perspective

Site Assessment Unit: Further information recommended requesting excavation of new trail holes near the polishing filter location.

County Archaeologist: No recorded monuments in proximity to proposed development. But as site is greater than 0.5ha pre-development archaeological testing to be carried out across the site and report submitted prior to grant of permission.

Ecologist, Environmental Assessment Unit:

- Proposed WW treatment system is located away from and uphill from the dwelling and would require pumping and elongated pipework. Proposals should be to satisfaction of SAU as application identifies groundwater connectivity between proposed site and Kenmare River SAC.
- Proposed ground and installation work for borehole and heat pump require assessment.
- Issues raised in relation to management of invasive species and concern re impact of the development on the woodland.
- Annex 1 habitats, Mediterranean and Atlantic salt meadows are located within adjacent SAC and horseshoe bat and otter usage possible in the area.
- Concluded he was not satisfied that sufficient information had been submitted to rule out with certainty potential for significant impact on the Kenmare River SAC. Not satisfied that the proposal would not damage water quality. Sought a more detailed site layout plan be submitted showing all proposed works and

potential surface water drainage conduits leading to SAC, as well as a detailed landscaping plan and arborist report.

- Recommended further information to address the issues raised or alternatively refusal of permission based on inadequacy of the information received.

### **3.3. Prescribed Bodies observations**

#### **3.3.1. Irish Water: No objection**

#### **3.3.2. An Taisce:**

- Site is in an area of hydrological and ecological sensitivity, with variable soil thickness and conditions and rock outcrops.
- There are serious location suitability constraints for wastewater treatment on site due to adverse impact on Kenmare River SAC and Derreen beach.

#### **3.3.3. Dept Housing, Local Government and Heritage**

Nature Conservation: as site is within 100m of Kenmare Bay SAC, it is recommended that applicant provide further information in a screening report

### **3.4. Third party submission to Planning Authority**

- Proposed dwelling essentially a holiday home. Derreen House vacant for much of the year and not primary residence of applicant. Unique housing need of applicant put forward does not fall under Development Plan.
- Development Plan policy is that holiday homes/second homes not be permitted in rural areas; residential development in rural areas to have Occupancy Clause; renovation of existing houses is preferred over new houses.
- Concern re impact of development on SAC, risk of run-off to the sea from groundwork and construction; Stage 2 AA required.
- Tertiary wastewater treatment system is higher than two ponds which empty into sea, creating a pathway which could impact on SAC.
- WWTS not designed for infrequent use; outbuilding might be converted to holiday accommodation, overloading WWTS.

- Part of site is in area prone to flooding

## 4.0 Planning History

4.1. **06/1051** Permission granted for modifications and extension to Derreen House, Lauragh, a protected structure

**20/80** Retain as constructed dwelling house, associated works and new wastewater treatment system. House to be occupied by wife of retired gardener who had lived in Derreen for long period. Permission refused by Planning Authority based on non-compliance with Development housing policies in rural area of Prime Special Amenity, as it was not for a son/daughter/farm family member engaged in agriculture and inadequacy of effluent disposal system.

Permission granted on appeal by An Bord Pleanála on the basis that it complied with Sustainable Rural Husing Guidelines and NPF National Planning Objective 19 and the nature and horticulture related function of the development, and revised acceptable location of WWTS.

**ABP-309945-21** Reference to ABP re provision of a hard-standing area for horticultural use on the site. Found not to require permission.

## 5.0 Policy and Context

### 5.1. National Policy

#### **Sustainable Rural Housing Guidelines 2005**

The Guidelines aim to ensure that the needs of rural communities are identified in the development plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities, is accommodated.

#### **National Planning Framework: National Policy Objective 19**

NPO 19 distinguishes housing in rural areas under urban influence and rural areas elsewhere: The objective in rural areas elsewhere is to '*facilitate the provision of*

*single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.'*

## 5.2. Kerry County Development Plan 2022-2028

### **Rural Development Policies:**

Three rural housing area types have been identified and mapped in the Plan in accordance with the Sustainable Rural Housing Guidelines 2005. These are 'areas under significant urban influence', 'areas under urban influence' and 'other rural areas'. The subject site is in an 'other rural area'.

**5.5.1.3 Other Rural Areas** *Some of these areas have low population density and by virtue of their location and topography are isolated. In these areas, the challenge is to stop sustained population and economic decline with a focus on both villages and rural areas.*

**KCDP 5-16 In Other Rural Areas** *objective to accommodate demand for permanent residential development as it arises subject to good sustainable planning practice in matters such as design, location, wastewater treatment and the protection of important landscapes and environmentally sensitive areas. Preference should be given to renovation/ restoration/ alteration/ extension of existing dwellings on the landholding before consideration to the construction of a new house.*

Relevant general rural housing policies include:

**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.*

**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.*

### **Biodiversity Policies**

It is an objective of the Council to:

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

**KCDP 11-2** *Maintain the nature conservation value and integrity of Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas (NHAs) and proposed Natural Heritage Areas (pNHAs). This shall include any other sites that may be designated at national level during the lifetime of the plan in co-operation with relevant state agencies.*

### **Landscape Policies**

**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: Visually Sensitive Areas and Rural General. This site is within a Visually Sensitive Area.

**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 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.*

#### *11.6.4*

*‘.....The capacity of an area to visually absorb development is also influenced by a combination of the following factors:*

- 1. Topography - development in elevated areas will usually be visible over a wide area; development in enclosed areas will not.*
- 2. Vegetation - areas which support (or which have the potential to support) trees, tall hedges and woody vegetation can screen new development from view. Areas which cannot easily sustain such vegetation will be unlikely to screen new development.*
- 3. Development - new development is likely to be more conspicuous in the context of existing development in the landscape.*

*Visually sensitive landscapes are particularly notable by virtue of their scenic and visual quality and offer significant opportunities for tourism development and rural recreational activities. The Council will seek to ensure that a balance is achieved between the protection of sensitive landscapes and the appropriate socioeconomic development of these areas. Development is not precluded in visually sensitive landscapes, however, development proposals will be required to demonstrate that they integrate and respect the visual quality of the landscape.*

*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.*

**Natural Heritage Objective 11.2** aims to protect all nature conservation designations:

*Maintain the nature conservation value and integrity of Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas and proposed Natural Heritage Areas.*

### **5.3. Natural Heritage Designations**

Kenmare River Special Area of Conservation adjoins the site.

### **5.4. EIA Screening**

5.5. Having regard to the nature and modest scale of the proposed development, 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

The grounds of appeal as set out by McCutcheon Mulcahy planning consultants on behalf of the applicant are summarised below:

- Planning Authority failed to give legally valid reasons for refusal, particularly in regard to alleged contraventions of County Development Plan
- Refusal on grounds of contravention of Objective KCDP 5-16 is not properly justified in Planner's Report and is based on a mis-application of the criteria relating to areas under urban influence. It therefore contravenes national policy on weaker rural areas in Sustainable Rural Housing Guidelines 2005.
- Planning Authority failed to give due consideration to justification for applicant's requirement for a dwelling set out in Planning and Design Statements, and did not seek further information in regard to queries on housing demand.
- Planning Authority has not disputed that proposed wastewater treatment has been designed and will be installed in accordance with EPA Code of Practice. Non-inspection of trail holes by Planning Authority before decision was made is not valid reason for refusal.
- No justification to require pre-decision archaeological testing on entire site as the development would only affect small portion of the site.
- Planning Authority failed to complete and document screening for Appropriate Assessment as the 'competent authority'. Fact that further information was sought by Environmental Assessment Unit is not a valid reason for refusal.
- Request the Board to consider the application de novo having regard to documents submitted with application and additional information submitted with the appeal which seeks to address concerns raised in planning authority reports, and is willing to submit further information including Natura Impact Statement if required.

- Client has no objection to conditions to address concerns of planning authority/observers including submission of more detailed landscaping and management plan and an occupancy agreement.

## 6.2. **Planning Authority Response**

- No additional comments

## 6.3. **Observations**

- None

## 7.0 **Assessment**

7.1. Having considered the documentation accompanying the planning application and the appeal, relevant national and local policy and having visited the site, the following issues have been identified for assessment:

- Principle of the development
- Visual Impact
- Wastewater treatment and other services
- Biodiversity
- Appropriate Assessment

## 7.2. **Principle of the development**

- 7.2.1. As outlined above the proposed development is located in an area designated as '*Other Rural Areas*' in terms of rural housing policy in the County Development Plan, where the objective is to 'accommodate demand for permanent residential development as it arises subject to good sustainable planning practice', with a preference for renovation or extension of existing dwellings on the land holding before considering construction of a new dwelling.
- 7.2.2. The applicant has an existing house on the land, Derreen House, a protected structure. The Planning Statement states that the house and gardens have been in the ownership of the applicant's family for generations and that the gardens are

currently undergoing an extensive programme of renovation overseen by the applicant with full-time gardening staff and horticulture contractors. I note the staff cottages were occupied at the time of the inspection, while Derreen House appeared unoccupied.

- 7.2.3. In the appeal documentation the applicant is stated to have a 'genuine housing need which is linked to the business operation of Derreen House and is required to support the ongoing maintenance and operation of the estate for him and his successors.' The house is stated to have 'almost year-round occupation' by the applicant and his extended family.
- 7.2.4. As mentioned earlier, the current application seeks to provide an alternative house for the applicant to facilitate the year-round use of Derreen House for short-term rental accommodation for tourists. It is envisaged that using Derreen House for this purpose would generate income to support the ongoing maintenance and operation of the house and gardens, which is currently running at a loss. It states 'there is a need to make the current business model more sustainable to ensure the continuous protection and use of Derreen House into the future'.
- 7.2.5. Additional information is provided in the appeal documentation on the potential alternatives to meet the stated housing need via reuse or refurbishment of other houses or buildings in the estate. The gardener's cottage and housekeeper's cottage are in use for staff and not available while other sheds and the boathouse are required for other purposes. The alternative of Derreen House being used partly (either part of the house or part of the time) by the owner and partly for short-term letting is not fully explored, although reference is made to limited informal arrangements whereby friends and acquaintances have been accommodated.
- 7.2.6. I accept that the applicant's role as the owner and manager of the estate is greatly facilitated by having a residence there, and would likely help ensure its future in succeeding generations. I note Section 5 of the Development Plan which says that in Other Rural Areas 'the challenge is to stop sustained population and economic decline with a focus on both villages and rural areas'. The house and gardens represent a key piece of tourism infrastructure in South Kerry which helps attract visitors to this remote part of the country and their continued operation and viability into the future will make a positive contribution to the local economy.

- 7.2.7. However, based on the information supplied, I am not satisfied that there is adequate justification for provision of a house for primary permanent residential purposes, in line with Objectives KCDP 5-16, in the current circumstances. Based on the information provided, the concept of fully utilising Derren House for short-term letting would appear to be at an early stage of development. As it stands, the applicant already has a residence on the estate. I am not convinced, in the absence of evidence of a well progressed plan for use of the existing house, which is a protected structure, for alternative purposes, and taking account of the limited information supporting the statement that the proposed house is required as a primary permanent place of residence, that there is sufficient basis for granting of permission for the proposed development. Refusal of permission is therefore recommended on the basis of the development not being in keeping with Objective KCDP 5-16 of the Development Plan.
- 7.2.8. Should the Board be minded to grant permission, conditions would be recommended requiring the proposed dwelling to be for permanent residential use, with an occupancy clause limiting its use to the applicant and his family, and for it to continue to be used and managed as part of the estate, rather than sold off or let separately.

### 7.3. **Visual Impact and design**

- 7.3.1. The site is located in an area designated a '*Visually Sensitive Area*' in the Development Plan Landscape Strategy. 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 proposed dwelling, although relatively large in overall area, is broken up into three interlinked elements grouped to reflect a traditional 'farmyard' pattern. The one and a half storey and the storage shed are stone faced and set against the backdrop of the existing mature woodland, which helps reduce visual impact and integrate them into the landscape. The band of woodland to the north and east of the site will also ensure that the protected Derreen House and its curtilage will not be negatively impacted by the proposed development.
- 7.3.2. The series of photos and photomontages included with the application, illustrate that, largely due to existing woodland in the estate and the wider area, the proposed development would not be visible from most publicly accessible locations. This was

confirmed during the inspection. The site and buildings are however, partially visible from Lauragh village and the nearby road bridge. Additional tree planting on the southern/ southeastern boundary of the site is proposed which, over time, would help screen the development, assuming it can be properly established. There are more distant views of the site from a boat anchorage and shoreline to the south, although the views are somewhat limited by intervening wooded land and islands. Overall, I consider that the design of the building, the screening provided by existing woodlands, and the additional screen planting proposed, would help minimise the visual impact of the proposed development and integrate it satisfactorily into the landscape. If permission is to be granted, I recommend a condition requiring roof materials/colour of the dwelling and store to be submitted to and agreed by the local authority.

#### **7.4. Wastewater treatment and other services**

- 7.4.1. The protection of the adjoining SAC from risk of pollution by wastewater or surface water is a primary concern in the assessment of the application. The Derreen Gardens area has rock outcrops both near Derreen house and within the gardens and woodland area. There is also evidence of vegetation associated with poor drainage in some areas, with extensive rush growth on extensive parts of the subject site. The Planning Authority Ecologist raised the need for the Wastewater Treatment System to be fully assessed pointing out that the application identifies groundwater connectivity between proposed site and Kenmare River SAC and also recommended seeking a revised site layout drawing to provide more information on surface water disposal and on the well and geothermal heating system.
- 7.4.2. The Site Suitability Assessment Report includes standard details of the site assessment and proposed treatment system. (The text of the report incorrectly gives the distance from the proposed dwelling to Kilmakilloge harbour as 175m and the distance to Derreen beach /wetlands as 150m, the correct distances are approximately 90m and 105m respectively. However, the drawings in Section 6 of the report indicate largely accurate distances).
- 7.4.3. The proposed wastewater treatment system consists of a proprietary tertiary treatment system and infiltration/treatment area, which will discharge to groundwater. The secondary wastewater system is to be located between the dwelling and the



outbuilding. After testing, the area close to the proposed dwelling was not considered suitable for the tertiary treatment/infiltration area and an alternative location was selected some distance north and uphill of the proposed dwelling, as it has the greatest depth of suitable sub-soil. Effluent will be pumped from the secondary treatment tank to this location along the access road. Sewer layout including route of pipe to tertiary treatment area is shown on a drawing in Section 6 of the Site Assessment Report (not shown on site-layout drawing). The proposal to pump the effluent approximately 160m uphill to an infiltration area is questionable from the point of view of sustainable energy usage. I note also no details are given of provision of storage capacity for effluent in the event of a power outage.

- 7.4.4. The selected site for the tertiary treatment unit and 45sq m infiltration area is part of a linear landscaped area, laid out mainly in grass, bounded by shrubs and trees which provides views from Derreen House towards the shoreline. The site suitability assessment report carried out tests in August 2022 and reported bedrock at 1.90m, water table level was not encountered and a subsurface percolation value of 21. The soil profile found loam to 0.3m, clay silt to 1m and gley below this level. The report states that in order to maintain the recommended level of existing subsoil (900mm) underneath the infiltration bed the ground level at the location of the infiltration bed will be approximately 0.5m higher than existing ground level.
- 7.4.5. Two interlinked manmade ponds are located approximately 15m downhill from the infiltration area. They discharge by a drain to the shoreline and the Special Area of Conservation. The drain to the shore is not shown on the drawings but was evident during the site inspection. The existing ground level at the infiltration area is approximately 2.5m higher than the upper pond and the ponds are downstream of the infiltration area based on the direction of groundwater. I note an Appropriate Assessment Screening report accompanied the application and concluded that no elements of the project are likely to cause significant effects to the relevant European sites. However, risk of effluent from the infiltration area reaching the SAC via the interlinked ponds nearby was not specifically discussed or assessed in the Appropriate Assessment Screening report.
- 7.4.6. Taking account of the slope, the direction of groundwater flow, uncertainty regarding the level of bedrock on the slope and the proximity of the ponds to the infiltration area, the potential for effluent reaching the ponds prior to being fully treated, and

being carried onwards to the SAC, cannot be ruled out, based on the information provided.

#### 7.4.7. Surface Water Disposal

During the inspection water was noted in a drain flowing from the existing surfaced area southwards along the site boundary and then south-eastwards to the shoreline. A further drain flowed southward to connect to this drain. These drains were found to be dry in the AA Screening Report. The development area is circa 50m from the drainage ditch and 90m from the SAC which should reduce risk of pollution.

However, surface run-off during the construction period would need to be carefully managed within the development area to ensure silt or other material does not access the drains or otherwise feed into the SAC.

No details have been provided on the location or level of excavation required for the geothermal collector system. Generally, such systems require a network of pipes to be laid at circa 1m depth over an area at least double the floor area of the dwelling which could result in significant ground disturbance. Again, run-off during construction would need to be carefully managed to ensure inappropriate material does not find its way to the SAC. If permission is to be granted a condition requiring location, details and proposals to contain any run-off to be submitted and agreed by the Planning Authority would be appropriate.

The revised layout plan submitted with the appeal showed locations of soakaway for surface water disposal west and south of the proposed buildings, which I consider satisfactory.

### 7.5. **Biodiversity**

7.5.1. Issues raised by the Planning Authority ecologist in relation to the treatment of invasive species, external lighting to limit impact on bats, and the impact on the woodland of the buffer area, have mainly been satisfactorily addressed in the arborists report, the landscaping plan, and revised site layout plan. However, a more detailed landscaping plan, including a management plan, would be required prior to construction commencing.

7.5.2. I am satisfied that the issue of archaeological testing could be satisfactorily addressed by requiring a survey of the area to be disturbed by construction of the house and services, prior to commencement of development.

## 7.6. Appropriate Assessment Screening

7.6.1. The only European site which could potentially be impacted by this development is the Kenmare River Special Area of Conservation which adjoins the site. There are no realistic pathways between other European sites and the site.

Qualifying interests of Kenmare SAC are:

- Large shallow inlets and bays [1160]
- Reefs [1170]
- Perennial vegetation of stony banks [1220]
- Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
- European dry heaths [4030]
- *Juniperus communis* formations on heaths or calcareous grasslands [5130]
- Calaminarian grasslands of the *Violetalia calaminariae* [6130]
- Submerged or partially submerged sea caves [8330]
- *Vertigo angustior* (Narrow-mouthed Whorl Snail) [1014]
- *Rhinolophus hipposideros* (Lesser Horseshoe Bat) [1303]
- *Lutra lutra* (Otter) [1355]
- *Phoca vitulina* (Harbour Seal) [136]

Annex 1 habitats recorded adjacent to the site are Mediterranean Salt Meadows and Atlantic Salt Meadows. Offshore reefs may also be present.

Other qualifying interest species: otter use of the nearby coastline is likely; horseshoe bats were recorded using the site.

The overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. The overall conservation objective for 'Atlantic salt meadows' and 'Mediterranean salt meadows'

in Kenmare River SAC is to 'maintain the favourable conservation condition'. Specific Conservation Objectives have also been set out by NPWS for habitats within Kenmare River SAC and are available at npws.ie. Derren has the largest concentration of Mediterranean salt meadow in Kenmare River and conservation targets include that the area of salt meadow 'should be stable or increasing, subject to natural processes, including erosion and succession'.

I am not satisfied based on the information provided with the application and appeal that there is not a risk of hydrological and hydrogeological pathways from the application site to the Special Area of Conservation and therefore it is not possible to conclude, in the absence of a Natura Impact Statement that there would be no significant impacts on any European site.

## **8.0 Recommendation**

8.1. Refusal of permission is recommended.

## **9.0 Reasons and Considerations**

1. Having regard to the location of the site in an area Designated 'Other Rural Areas' in the Kerry County Development Plan 2022-2028 and to the fact that the applicant already has a residence on the Derreen estate, and based on the information supplied with the application and appeal it is considered that the applicant has failed to demonstrate a need for a rural home in accordance with Development Plan Objective KCDP5-16. The proposed development would therefore contravene Objective KCDP and would be contrary to the proper planning and sustainable development of the area.
2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site No. 002158, Kenmare River Special Protection Area, or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

3. Notwithstanding the proposed tertiary treatment system, based on the proximity of water bodies, the direction of groundwater flow, the sloping terrain, uncertainty in relation to the location and level of bedrock and the difficulty of ensuring electricity supply to the pump, there is a reasonable risk to ground and surface water quality in the area. The proposed development would therefore be prejudicial to the natural environment and public health and contrary to proper planning and sustainable development of the area.

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

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Ann Bogan  
Planning Inspector

15<sup>th</sup> December 2023