



An
Bord
Pleanála

Inspector's Report ABP 318096-23

Development	Construction of a single-storey dwelling served by a mechanical treatment unit and polishing filter, vehicular access road and all associated site services.
Location	Lisnakealwee. Brandon. Co Kerry
Planning Authority	Kerry Co. Council.
Planning Authority Reg. Ref.	23820.
Applicant(s)	John & Anna Lyne.
Type of Application	Permission.
Planning Authority Decision	To Grant Permission.
Type of Appeal	Third Party.
Appellants	PJ Brick Thomas & Nora Brick Brendan & Murphy & Deirdre O'Sullivan
Observer(s)	None
Date of Site Inspection	17 th , April 2024.
Inspector	Breda Gannon

1.0 Site Location and Description

- 1.1. The site is located in the townland of Lisnakealwee, Brandon, Co Kerry. It is located south of the village of Brandon and west of Brandon Bay on the Dingle peninsula. The site is part of a larger agricultural field located on the west side of the R550. The site rises from road level towards the rear of the site and is used for grazing sheep. The front (roadside) boundary is formed by a fenced sod and stone ditch, behind which there is a drain/stream which is culverted under the regional road at the north-eastern corner of the site. Outside the site, the boundaries of the field are formed by hedgerows with streams/drains flowing in a west to east direction along the northern and southern sides.
- 1.2. The site is located on a bend on the road and within the 80 kph speed limit. Access is provided on the northern end of the site frontage. There are ESB service poles located along the roadside boundary and crossing the site.
- 1.3. The site is adjoined on its south side by a two-storey dwelling and to the north by unoccupied dwellings. On the opposite side of the regional road there are 2 no. residential properties. The approaches to the village are characterised by ribbon development along the road network. Within the village houses aligned the carriageway, predominantly facing the sea, with a small cluster around the pier.

2.0 Proposed Development

- 2.1. The proposal is to construct a dwelling on the site, which has a stated area of 0.44 ha. The house would be single-storey in scale and would be located towards the rear of the site. Vehicular access would be provided by a new entrance located towards the northern end of the site frontage (R550). Foul effluent from the house would be treated in a mechanical treatment unit and polishing filter prior to discharge to ground.
- 2.2. The application is supported by the following:
 - Design Statement.
 - Landscaping plan.

- Site Suitability Assessment.
- Site Specific Flood Assessment.
- Appropriate Assessment Screening Report.

2.3. Unsolicited further information was submitted on the application on September 4th, 2023 outlining the timeline of works on the site since the site was acquired/inherited from the then owner. It was also confirmed that there is no existing septic tank on the site requiring decommissioning.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the development subject to 15 no. conditions, which contains the following conditions of note:

Condition No 3: Occupancy clause.

Condition No 4: House to be used as a primary permanent all year round private residence and shall not be used as a holiday home or second home.

Condition no 5: Restrictions on future exempted development within the curtilage of the dwelling.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer's report states that the site is from a small landholding owned by the applicant and it is clear from the information on the current file and previous files (20/628 & 22/751) that he was raised in the area and it is a long-held intention to return to reside here permanently.

It is considered that adequate sightlines would be provided at the proposed vehicular entrance to the site subject to the implementation of the measures shown on submitted drawings. The report from the SAU is noted which recommends that conditions be attached to any grant of permission. The FRA report submitted in

support of the previous application (22/751) concludes that the proposed development will not increase flood risk elsewhere.

Having regard to the siting of the proposed dwelling and the distance from existing residential development in the vicinity, no impacts on residential amenities in terms of overlooking or overshadowing will occur. The proposed dwelling will only be visible over a short section of the public road approaching from the north and impacts will be local and minor.

The issues raised in previous refusal have been addressed.

3.3. Other Technical Reports

Roads Section: Sufficient sight distances are achievable in both directions at the proposed entrance onto the R550 with appropriate reduction in roadside vegetation and existing stone wall as outlined on the Site Layout Plan Dwg No 22/079/002 submitted with the planning application.

Environment Section: The Site Assessment Unit (SAU) reviewed the information submitted with the application and based on this and on the recommendation of the site assessor, would not object to a grant of permission subject to conditions.

3.4. Prescribed Bodies

No submissions.

3.5. Third Party Observations

Submissions were submitted by 3 no. parties which raise similar issues to those raised in the appeal.

4.0 Planning History

20/628 – Planning permission granted for a single-storey dwelling served by a mechanical treatment unit and polishing filter on the site. The decision was subsequently overturned by the Board (309923-21) and refused permission for 2 no. reasons relating to damage to the ecology, visual amenities and rural character of the area associated with the removal of a substantial length of roadside hedgerow to

achieve adequate sightlines and on the grounds of public health due to the presence of an open drain in the vicinity of the wastewater treatment system.

22/751 – Planning permission refused for a single-storey dwelling house served by a mechanical treatment unit and polishing filter on the site on the grounds that it would be prejudicial to public health and likely to cause water pollution.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the **Kerry County Development Plan 2022-2028**, which was adopted on July 4th, 2022 and came into effect on 15th August, 2022. The site lies in a rural area and is unzoned.

5.1.1. Rural Housing

Chapter 5 is dedicated to Rural Housing and identifies three different rural area types with objectives aimed at enhancing the vitality and viability of rural towns and villages to strengthen their role as rural service centres while at the same time facilitating those who have an economic or social need to reside in rural area.

The site is located in a ‘Rural Area Under Urban Influence’ and the relevant objective is Objective KCDP 5-15. It sets out the criteria which applicants need to satisfy when seeking to build a house in these areas. Other relevant objectives include the following:

Objective 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.

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

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

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

5.1.2. Landscape

Section 11.6 of the plan is dedicated to Landscape. There are two landscape designations for the county which include ‘Visually Sensitive Areas’ and ‘Rural General’, with the latter considered to have a higher capacity to absorb development.

The site is located within an area designated “Visually Sensitive Areas’ (Map - Landscape Designation). These areas comprise the outstanding landscapes throughout the County which are sensitive to alteration. The areas are particularly sensitive to development. Under the provisions of the plan, development will only be considered in these areas subject to satisfactory integration into the landscape and compliance with the proper planning and sustainable development of the area.

There are no listed views or prospects in the vicinity of the site.

Objective KCDP11-77: Protect the landscapes of the County as a major economic asset and an invaluable amenity that contributes to the quality of people’s lives.

Objective KCDP11-78: 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.

5.2. **National Planning Framework**

National Policy Objective 15: Seeks to support the sustainable development of rural areas and to manage the growth of areas under urban influence to avoid over-development.

Policy Objective 19: Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence within the commuter catchment of cities and larger 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.

- *In rural areas elsewhere, 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 small towns and rural settlements.*

5.3. Natural Heritage Designations

The closest European sites are as follows:

- Mount Brandon SAC is located c 0.8km to the west.
- Tralee Bay & Magharees Peninsula West to Clughane SAC is located c 1.1km to the east.
- Dingle Peninsula SPA is located c1.3 km to the north.

5.4. EIA Screening

- 5.4.1. Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impacts assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

Appeals were received from 3 no. parties and the issues raised are summarised as follows:

Planning history

- The previous reasons for refusal by Kerry Co. Council and An Bord Pleanala for development on this site have not been properly addressed.

- The applicant and his family have secured planning permission on other sites and this is not his only option.

Applicant Rural Housing Need

- The applicants fail to meet the requirements of planning policies with regard to one-off housing development in the countryside.
- There is no rural housing need associated with the proposal. There is no need to reside at this location on the basis of any economic or social imperative.
- Having regard to the rural housing policies of the development plan, the provisions of the Sustainable Rural housing Guidelines for Planning Authorities and national Objective 19 of the NPF, the Board cannot be satisfied that the applicants come within the housing need criteria for a house at this rural location or comply with National Policy Objective 19. A refusal of planning permission is merited on these grounds.

Site drainage

- In response to the previous refusal (22751), the field drains on the site were filled in. These drains have been existence for over 70 years and not just since 2008 as stated by the applicant's agent.
- The backfilling and diversion of these drains will substantially increase the volume of water in the adjacent streams with the potential to flood properties bordering the site.
- The issues raised in the original objection regarding the site assessment report were ignored by the planning authority.
- The site is wet with vegetation that is indicative of poor drainage conditions. It could not have passed a percolation test and is not suitable for the safe disposal of effluent. There are inconsistencies in the report regarding the date and time the digger arrived on the site and the date the report states the trial hole was opened.
- The percolation test hole pictures used to support this application were taken from a different report carried out by the same engineer for another application (22941) on a site in Ballinskelligs. Co Kerry (See Appendix A).

Road Safety

- The site is located at a dangerous bend on the Wild Atlantic Way. It is located on a regional road which is substandard in terms of width and alignment in this location.
- A 80km/h speed limit applies to the roadway along the totality of the application site.
- The consent letter obtained from the adjoining landowner to carry out works to provide sightlines is for planning Ref No 20628 and does not reference the current application. It should therefore have been deemed invalid and out of date.
- The submission to the planning authority clearly establishes the case that 120m sightlines in both directions are required, given the 80km/h speed limit and the nature of the public road at this location.
- It is not clear that appropriate sightlines to the near side of the roadway, in accordance with the relevant TII DMRD guidance can be achieved at the revised site entrance, particularly at the northern and southern extents of the site.
- No consent has been secured from one of the landowners on the northern side of the site into whose folio an appropriate sightline would encroach.
- The visibility envelop to the north is obscured by Mr O'Neill stone ditch and neighbouring property to the north which is also under renovation.
- The road was widened recently but in the drawings the old road verge is being referenced rather than the new road verge which is set back considerably compared to that described. This is of significance in terms of sightlines.
- To achieve the proposed sightlines it will be necessary to remove more hedgerow and biodiversity features than is suggested. The existing roadside ditch height which currently stands at over 2m in parts would need to be reduced by over half its current height along its whole length and not to a height of 800mm as stated.

- The proposal will result in the existing roadside stream, which could be considered more like a river, being unfenced which poses a risk to public safety.
- The Road Traffic Audit was carried out in 2020, is not fit for purpose and should not be relied on by the Board in its consideration of this appeal.
- The road safety audit carried out is not valid. Its auditor is not a registered as an auditor with the TII Road Safety Audit Approvals System and at least two auditors should have carried out the audit as per TII Guidelines. Reliance on observed ambient speed and levels of traffic from October 2020, when Covid 3 level restrictions were in place, is of particular concern. The maximum speed of one car was used to justify reducing sightlines in a 80km/h zone during the two hour period the audit was being conducted.
- The sightlines are misleading on the drawings and are not drawn correctly. The two properties to the north are being renovated and in separate ownership. The detail of the works being carried out on both properties is unknown. If planting is done or a wall/fence erected along the roadside boundary by either property owner, this could have a negative impact on the applicants' sight line.
- It is proposed to remove the existing field entrance and provide a new entrance to the dwelling, which would also need to serve the remaining agricultural land. This would make the new entrance a combined residential/agricultural entrance.
- The proposed development would lead to additional traffic turning movements on a narrow and substandard road, at a point where sight lines are restricted and would endanger public safety by reason of traffic hazard.

Visual Impacts

- The scale of the house and its visual impact on the landscape. While the size of the house is smaller than previous two storey proposals, its footprint is far greater (209m²)
- The proposed house has been moved at least 10m towards the northeast from previous proposals. This is the worst possible location in terms of visual

impact. It will block views and overlook adjacent property. The sight poles do not represent the current proposed location of the dwelling and never truly reflected the scale (gable to gable length) of the proposed development.

- The finished floor level is shown at 9.3m which is 3.3m higher than road level and 3.16m higher than appellants parents' home (PJ Brick).

Negative impacts on the environment and ecology of the area

- The site is wet and has drainage issues.
- The Councils AA Screening Report as well as the applicants own AA Screening statement rely on the applicants site suitability assessment to confirm that the site is suitable for effluent disposal and does not impact upon Natura 2000 sites.
- This matter was a key issue in a previous refusal of permission at the site. The failure of the applicants site suitability assessment under Ref No 22/751 was essentially the basis for refusal.
- Given the serious issues around the veracity of the applicants Site Suitability Assessment for this new application, the entire AA Screening Assessment must also be called into question.
- It is noted that the planning officer's report relies on the positive conclusion of the Council's own Site Assessment Unit (SAU) to recommend a grant of permission for this proposal. The SAU did not visit the site and relied totally on the information submitted by the applicants.
- The Board is asked to consider the planning history relating to the site, in particular the refusal of permission under Ref No 22/751, the submitted Site Suitability Assessment under this application and its implications for subsequent conclusions of other assessments carried out by both the applicant and the Council and arrive at its own conclusion as to the suitability of the site for the proposed development.
- The proposed development will still rely upon the removal of a substantial length of roadside hedgerow in order to achieve adequate sightlines. The Board's previous reason for refusal at this site (22/751) still stands and has

not been addressed. To safeguard consistency in decision making, the Board must consider refusal of permission.

- The applicants own Flood Risk Assessment (FRA) report identified flood risk zones at the entrance to the site and at its southern side. It appears that that proposed dwelling is partly located within this flood risk zone. The FRA states that the site does not fall within Flood Zone A or B. The development site does fall into these zones, as confirmed by the specific FRA itself and the Council's flood report on the previous 2022 planning application on the site.
- A justification test is required and the proposal would fail on the basis that the proposed residential use is a highly vulnerable development.

The appeals are supported by various attachments, to which I draw the attention of the Board.

6.2. Applicant Response

The applicants response clarified the matters raised regarding the site assessment.

6.3. Planning Authority Response

No response to the grounds of appeal were submitted by the planning authority

6.4. Observations

None

7.0 Assessment

7.1. Introduction

Having examined all the application and appeal documentation on file, I consider that the main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise.

I consider that the main issues that arise for determination by the Board in relation to this appeal relates to the following:

- Principle of the Development/Rural Housing.

- Impacts on the visual amenities of the area.
- Site drainage & flooding.
- Road safety.
- Appropriate Assessment.

7.2. Principle of the development/Rural Housing

- 7.2.1. I would point out to the Board that the previous decision by the planning authority to grant permission (20/628) for a house on this site, which was subsequently overturned by the Board, was assessed under the previous county development plan. Under its provisions the site was located in a 'Structurally Weak Rural Area' where the policy was to accommodate demand for permanent residential development as it arose.
- 7.2.2. Under the provisions of the current development plan the site is located in a '*Rural Area Under Urban Influence*'. The policies for these areas are more restrictive and the key challenge is to maintain a reasonable balance between development activity in smaller towns and villages and housing proposals in wider rural areas.
- 7.2.3. Objective KCDP 5-15 of the development plan applies to these areas. In order to be considered for a house, the applicants must demonstrate that the proposal constitutes an exceptional rural generated housing need based on social and/or economic links to a local area and in this regard satisfy one of the 5 no. categories of housing need set out in Objective KCDP 5-15.

As noted in the appeal, the applicants do not work in and have no attachment to farming or agricultural related activities or other economic activities in this rural area. The only category of housing need which the applicant is likely to be open for consideration is under KCDP 5-15 (c):

(c) 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.

- 7.2.4. One of the applicants (John Lynn) is stated to have been brought up in the Brandon area. While it would appear that the applicant meets the criteria set out in Objective KCDP5-15 (c), consideration must also be given to whether the proposal constitutes

an exceptional or demonstrable rural generated housing need based on economic and/or social links to a particular area as required by this objective and Policy Objective 19 of the NPF.

- 7.2.5. The applicant currently works in Utah and wishes to build a permanent home in Brandon. He wishes to return to Ireland he will be in a position to work remotely, and the office of his employer will be in Carrigtwohill, approximately 175km from the appeal site. I note that the planning authority have accepted the bone fides of the applicant.
- 7.2.6. The declared ability of the applicant to work remotely does not tie him to any particular location and as stated in the appeal, the applicants housing need could be met within towns and villages that have been serviced to provide such accommodation. On the basis of the information submitted, I accept that it is difficult to argue that the applicant has an exceptional or demonstrable economic need to live in this rural area in accordance with the provisions of the development plan and the National Planning Framework. While the applicants wish to return and reside in the Brandon area to reside close to his family this does not qualify as an exceptional social need under the provisions of the development plan.
- 7.2.7. Having regard to the rural housing policies of the development plan and National Objective 19 of the NPF, I accept the argument made in the appeal that the Board cannot be satisfied that the applicants come within the housing need criteria for a house at this rural location or comply with National Policy Objective 19. I consider that a refusal of planning permission is therefore merited on these grounds.

7.3. Impact on the visual amenities of the area

- 7.3.1. The impact of the proposed development on the visually amenities of the area has been raised in the appeals. The sight poles originally erected on the site, which were stated not to correspond with the current proposed location of the house, were not in place at the time of inspection. While the house design remains broadly similar to previous proposals, the position of the house has been relocated further to the northwest and at a slightly higher elevation.
- 7.3.2. In terms of the assessment of visual impact, I note that there have been changes to landscape designation under the current development plan. Under the previous development plan the site was located in a 'Rural General' which are considered to

have the capacity to absorb development. Under the current development plan the site is located within a 'Visually Sensitive Area', which comprise the outstanding landscapes throughout the County. They are particularly sensitive to development and according to the provisions of the development plan will only be considered subject to satisfactory integration into the landscape.

- 7.3.3. The *'Building a House in Rural Kerry-Design Guidelines'* also emphasise the need to integrate development. It identifies 4 no. landscape types, based on their character and ability to absorb development.
- 7.3.4. The site is located in an *'coastal open area'* which are areas characterised by very open and exposed lands with little or no vegetation making it difficult to integrate development. These areas are considered to be particularly vulnerable to intrusive development. In these areas development is best achieved through locating development adjacent to existing settlements and through the use of vernacular architecture or contemporary interpretations.
- 7.3.5. The proposed development is located on elevated ground with a floor level 3.3m above road level. Construction will require a degree of 'cut and fill' to create a level platform. The house, which consists of two main blocks in a roughly perpendicular arrangement, occupies a significant footprint. It will be recessed significantly from the regional road with an extended access along the northern site boundary that sweeps around the rear of the site. While the house is an attractive contemporary design, and notwithstanding the screen planting proposed, it is located in the most elevated area of the site and its exposed location will make it difficult to successfully integrate into its surroundings.
- 7.3.6. The Board will note in its previous decision on the site (309923), one of the reasons for refusal related to the significant impact on the visual amenities and rural character of the area associated with the removal of a substantial length of the hedgerow at the front of the site to achieve sightlines. The proposal will still rely on the removal of a substantial part of the roadside hedgerow to achieve the required sightlines.
- 7.3.7. The site lies on the outskirts of Brandon village in an area characterised by random one-off rural housing, facilitated by previous more lenient policies on rural housing in

development plans. These have now been replaced by tighter controls in the current plan.

- 7.3.8. The current proposal, if permitted, will contribute to the encroachment of random rural development in the area and would interfere with the character of the landscape which is necessary to preserve in accordance with Objective KCDP11-78 of the development plan and would create a precedent for similar type development in the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area. I consider that a refusal of permission is warranted on these grounds.

7.4. Site drainage and flooding

- 7.4.1. It is contended in the appeals that the site is not suitable for the safe disposal of foul effluent from the site. Questions have been raised regarding the accuracy of the site suitability assessment submitted with the application and it is contended that the photographs attached to the assessment relate to a different site.
- 7.4.2. The applicants' response to the grounds of appeal includes a statement from the site assessor. The photographs are stated to have been inadvertently attached to the site assessment during file recovery issues. An updated Site Suitability Assessment report (dated 4/10/2023) is attached to the appeal.
- 7.4.3. The site is located in an area underlain by a 'Locally Important' aquifer with an 'Extreme' vulnerability rating. The site has a groundwater protection response of R2¹. A new trial hole was excavated on the site to a depth of 2.1m and the water table was encountered at 1.1m. No signs of mottling were observed. The subsoil was identified as a gravelly SILT, underlain by a sandy SILT. The percolation tests revealed that the soils has suitable percolation properties and that the site was suitable for development using a secondary/tertiary treatment system.
- 7.4.4. The proposal is to treat effluent from the house using a mechanical treatment unit with a polishing filter. Previous applications for similar drainage proposals have been refused by both the planning authority and the Board. The main difference between the current and previous proposals is that the open drains that cut through the site has been diverted outside the site and backfilled. The proposed effluent treatment system is in a similar location to that previously proposed. I note that the SAU recommended a grant of permission subject to conditions.

- 7.4.5. The Site Suitability Assessment has been carried out in accordance with the EPA's 'Code of Practice: Domestic Waste Water Treatment Systems' (2021). The proposed effluent treatment system is designed in accordance with the Code of Practice and satisfies the distance requirements set out in Table 6. On the basis that the suitability of the site for the proposed treatment system has been established and the minimum separation to boundaries, roads, dwelling and surface water features can be complied with, I consider that foul effluent from the house can be effectively treated and discharged to ground without posing a threat to surface water or ground water quality.
- 7.4.6. The appellants have expressed concerns regarding the potential for increased flooding associated with the proposed development and that the works carried out on the drains will increase the volume of water in the adjacent streams with the potential to flood properties bordering the site.
- 7.4.7. The site is part of a larger agricultural field which is bordered on all sides by streams/drains. The Baile Mor Stream adjacent to the southern and eastern boundary is identified as the most significant hydrological feature in the vicinity of the site. There is also an unnamed stream along the northern boundary.
- 7.4.8. A Site-Specific Flood Risk Assessment supports the application. It assesses the potential flood risk associated with, or, arising from the proposed development. There are no recorded, historical or anecdotal flood events within or adjacent to the site. The screening assessment indicates that the site is not potentially at risk of fluvial flooding based on the OPW, PFRA or NIFM flood maps.
- 7.4.9. Hydraulic modelling was used to assess the flood risk to and from the proposed development. It identifies a fluvial flood event in the Baile Mor Stream to the south as the primary flood risk to the proposed site. A secondary flood risk associated with a potential surcharge due to blockage of culverts on adjacent streams is also assessed. The site is noted not to be at risk of pluvial, coastal or groundwater flooding.
- 7.4.10. The assessment and analysis undertaken as part of the flood risk assessment indicates that an area within the southern portion of the site falls within a predictive 1% AEP (1 in 100 - Flood Zone 'A') and 0.1% AEP (1 in 1000 Year - Flood Zone B) fluvial flood zone associated with the Baile Mor Stream watercourse. A limited area

of the site at the north-eastern corner falls within a predictive 1% AEP (1 in 100 year – Flood Zone A) flood zone associated with the unnamed stream to the north. The remainder of the site included the development footprint falls within Flood Zone C.

- 7.4.11. It is recommended in the assessment that the floor level of the house be constructed to a minimum finished floor level of 9.3mOD, raising it above the predicted 1% AEP and 0.1% flood levels associated with the Baile Mor Stream. The secondary flood risk associated with a blockage of culverts is assessed as low.
- 7.4.12. Whilst there is a difference of opinion regarding the hydraulic significant of the drains that traversed the site and how long they were in place, the impact of redirecting the drains has been considered in the assessment. A channel capacity assessment indicates that the change in layout of the drains traversing the site has not caused any change to the existing hydrological regime of the catchment. The flow associated with these channels has been included in the peak flood calculations for the Baile Mor stream for the baseline scenario. The drains are stated to be man-made channels to provide localised drainage to agricultural fields, with no significant catchment associated with them. They are not important hydrological conveyance channels. No information to the contrary has been submitted in the appeals.
- 7.4.13. It is contended in the appeals that a Justification Test is required in respect of the development as part of the dwelling falls within Flood Zone A and B as shown in Figure 24 of the assessment. While I accept that the image indicates that the southern section of the house is proximate, if not within the flood zone, it is repeated numerous times in the assessment that the footprint of the entire development would be located within Flood Zone C. I accept that raising the floor level of the house above the predicted 0.1% AEP flood level will mitigate potential impacts.
- 7.4.14. The flood risk assessment has been carried out in accordance with 'The Planning System and Flood Risk Management-Guidelines for Planning Authorities' (2009) and is comprehensive and suitable for purpose. It has demonstrated that the proposed development will not contribute to or exacerbate flooding elsewhere. Irrespective of whether or not the proposed development proceeds, properties to the south and east will experience flooding during the 1% and 0.1% AEP flood events. However, the assessment confirms that the proposed development would not increase the flood depths or flood extends experienced at these properties, as contended in the appeal.

7.5. Road Safety

- 7.5.1. The site is located on a bend on the west side of the R330 and within the 80km/h speed limit, which changes to 50km/h at the entrance to the village to the north of the site. The roadway is narrow, with poor horizontal and vertical alignment in the vicinity of the site. The planning authority accepts that adequate sightlines would be provided at the proposed site entrance subject to the implementation of the measures shown on the submitted drawings.
- 7.5.2. The proposal is to relocate the site entrance to the north in order to achieve adequate visibility splays in both directions. This will require removal/reduction of vegetation to the north and south of the proposed entrance. The attainment of the required sightlines to the north will require encroachment onto third party property.
- 7.5.3. Issues have been raised in the appeals regarding the validity of the Road Safety Audit, timing of traffic survey, and accuracy of sightlines as displayed in the drawings. It is contended that the traffic survey which was conducted during Covid restrictions would not have represented normal traffic movements on the road in the vicinity of the site. It is also stated that the appropriate sightlines at the entrance (within a 80km/h zone) are 120m in each direction and there is no justification for a reduction to 110km/h based on a single car travelling at 65km/h during the 2 hour traffic survey.

Notwithstanding all of these matters, I consider that one of the most critical issues is that sightlines in a northern direction can only be achieved by measures extending into the adjoining property, which is in separate ownership. The application is supported by a letter of consent from the owner of the adjacent property (Seamus O'Neill). The letter was submitted in support of the initial application on the site (20/628) and has not been updated and does not reference the current application. It is unclear if the property is in single ownership, or if it remains in the same ownership. I note that the works which had commenced to renovate the property appears to have now ceased.

- 7.5.4. The sightlines in this direction cross lands which are not in the ownership of the applicant and cannot therefore be guaranteed in perpetuity. A change in the ownership of this property could alter this arrangement and any condition requiring

such splays to be maintained in an agreed manner would be unenforceable as it would fall outside the applicants control to implement.

- 7.5.5. I would conclude therefore that the Board cannot be satisfied that the applicant has control over sufficient land to achieve and retain the required sightlines in a northern direction from the proposed site access. The proposed development would, therefore, endanger public safety by reason of traffic hazard.
- 7.5.6. I accept that the site layout plan (Dwg No 22/079/002) is confusing in terms of the achievement of visibility splays to the south of the proposed entrance in accordance with T11 requirements and standards. I note that the Roads Section visited the site and accepted that sightlines of 110m sight lines are acceptable and achievable subject to the reduction in roadside vegetation.

7.6. Appropriate Assessment

- 7.6.1. It is proposed to treat foul effluent arising from the proposed using a treatment plant and polishing filter. The appellant has raised issues regarding the potential for effluent to enter surface water drains that discharge into the Mount Brandon SAC to the east.
- 7.6.2. A comprehensive site suitability assessment has been carried out and it has been determined that the site is suitable for the treatment and discharge of effluent to ground. The flood risk assessment confirms that there is no risk of the effluent treatment system being inundated during a flood event. There are no proposals to discharge effluent to surface water.
- 7.6.3. 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 concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. On the basis of the above assessment, I recommend that permission be refused for the proposed development for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. The site is located within an 'Rural Area Under Urban Influence' as set out in the Kerry County Development Plan 2022-2028, where under the provisions of Objective KCDP5-15 and National Policy Objective 19 of the National Planning Framework, it is policy to 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, having regard to the viability of smaller towns and rural settlements. Taking account of the documentation submitted with the application and the appeal, the Board is not satisfied that the applicant has adequately provided a genuine and demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicant does not come within the scope of the housing need criteria set out in the development plan and in national policy, for a house in this rural location. The proposed development would be contrary to the provisions of the development plan and to the overarching national policy and would be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed development due to its elevated position on this prominent and exposed site, necessitating an extended roadway to provide access and the removal of a significant length of roadside vegetation to achieve adequate sightlines at the site entrance, would constitute an obtrusive feature on the landscape in this location, which would seriously injure the visual amenities of the area. Furthermore, the proposed development would give rise to an extension of undesirable ribbon development in this rural area which would interfere with the character of the landscape which is necessary to preserve in accordance with Objective KCDP 11-78 of the Kerry County Development Plan 2022-2028. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. On the basis of the information lodged with the application and the appeal the Board is not satisfied that the applicant has control over sufficient land in order to achieve and retain in the future suitable visibility splays in a northern

direction from the proposed access point on the public road. The proposed development would therefore endanger public safety by reason of traffic hazard.

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.

Breda Gannon
Planning Inspector

10th, May 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP 318096-23		
Proposed Development Summary	Construction of a single-storey Dwelling served by a mechanical treatment unit and polishing filter, vehicular access road and all associated site services.		
Development Address	Lisnakealwee. Brandon. Co Kerry		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	YES
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No		No	Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No		N/A	No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____**Date:** _____