



An  
Bord  
Pleanála

## Inspector's Report 320546-24

<b>Development</b>	Construct dwellinghouse, detached domestic garage, and wastewater treatment system with ancillary works
<b>Location</b>	Ballynabuck, Ballydavid, Dingle, Co Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	2360161
<b>Applicant(s)</b>	Dara Herlihy.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Sinead Ní Shuilleabhain and others.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	23 <sup>rd</sup> April 2025
<b>Inspector</b>	Ann Bogan

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**Appendix 1** – Form 1: EIA Pre-Screening

**Appendix 2** Form 2 Preliminary Examination

**Appendix 3** AA Screening Determination

## **1.0 Site Location and Description**

- 1.1. The 0.56ha site (reduced to 0.49 via FI) is located on the R-549 regional road at Ballynabuck, Ballydavid, Co Kerry. The site is currently part of a field sloping away from the road, laid out in grass and adjoins other fields in use for grazing. A small stream/drain runs along the eastern boundary of the site.
- 1.2. There are views from the site towards the Brandon Mountain ridge to the east/south-east and towards Bally David Head and other elevated headlands to the north and west.
- 1.3. The site is at the edge of an existing historic cluster of dwellings and farm buildings, with one relatively recently constructed dwelling at the opposite end of the cluster. A number of the structures are sited at right angles to the road, which appears to be a traditional pattern in the area. There is a two-storey dwelling on the opposite side of the road from the site.

## **2.0 Proposed Development**

- 2.1. The proposed development consists of:
  - Construction of a single storey plus attic dwelling c. 245sqm in area, and a height of 7.96m, sited at right angles to the road to the north, with entrance to the house from west/south-west elevation
  - Detached garage 35sqm in area
  - Proprietary wastewater system
  - Front boundary setback for sightlines
  - Further information request resulted in dwelling being shifted approximately 12m eastwards, to better integrate with cluster, and site area was slightly reduced in to 0.49ha.

- FI also included folio and map of family home and details of applicant's connection to the area
- Application is accompanied by a Site Assessment Report

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. Planning authority decided to grant permission for the development, subject to 18 conditions, which include standard conditions relating to materials to be used and financial contribution.

Condition 3: includes an occupancy clause requiring house to be occupied by applicant and family for at least 7 years

Condition 4: dwelling to be used for permanent residence and not a holiday or second home

Condition 5: excluding normally exempt development

Condition 9, 10 and 11: relating to wastewater treatment system

Condition 12: requiring a 5m wide 'space for nature' buffer strip of naturally occurring vegetation and kept free of development along the eastern boundary with the site, adjacent to existing stream

Condition 13: requiring roadside boundary to be retained except where removal needed for entrance and sightlines. Regulating height and form of splayed entrance and requiring wing walls to be of sod and stone or native stone.

Condition 15 requiring landscaping with suitable indigenous trees, shrubs and hedges.

Condition 18. Garage to be used for domestic storage purposes only

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

Report of 6/11/23 sought further information in relation to:

- location and details of applicant's family home; as it was unknown where applicant was born and raised relative to the site and whether he complied with rural settlement policy
- Sight poles to be erected to assess visual impact of development and applicant advised to consider repositioning house eastwards to better integrate with cluster
- It was considered that AA is not required as 'having regard to the nature of development proposed, existing development in the area and the distance of the site from any SAC or SPA there is no potential for significant effects to Natura 2000 sites'
- EIA preliminary examination concluded the proposal is not one that requires EIA screening or EIA as there is no likelihood of significant effects on the environment arising from proposed development.
- Report of 16/05/24 following receipt of further information:

Following repositioning of site eastwards the planning officer stated 'the visual impact of the proposal is rated acceptable' and that as the applicant 'is applying on family-owned land where he was born and raised', he is considered to satisfy the rural housing policy, and a grant of permission was recommended subject to conditions.

### **3.2.2. Other Technical Reports**

- Environment Section: SAU no objection subject to conditions re wastewater treatment system

- Ecologist: Dingle Peninsula SPA is located to north of site and wetland area to south. Stream adjoining site to east links these areas of ecological interest. Proposal should only be granted if SAU satisfied with wastewater proposals
- Roads report: Proposal will not constitute a traffic hazard, sufficient site distance at entrances; conditions recommended
- County Archaeologist: Initially sought pre-development archaeological testing due to site size; archaeological report was submitted with FI and site size reduced to below 0.5ha, so no further mitigation required

### 3.3. **Prescribed Bodies**

None

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

None received

Representation from Cllr Brendan Fitzgerald supporting application.

## 4.0 **Planning History**

ABP-320142-24: Leave to appeal granted to resident adjacent to site, (Sinead Ni Shuilleabhain), for the following reasons and considerations:

'Having regard to the submissions and documents received in connection with the application for leave to appeal and the condition set out in the planning authority's decision, it is considered that it has been shown that:

- (i) The development, in respect of which a decision to grant permission has been made, will differ materially from the development as set out in the application for permission by reason of condition 1 imposed by the planning authority to which the grant is subject, and

- (ii) The imposition of condition number 1 will materially affect the applicant's enjoyment of the land adjoining the land in respect of which it has been decided to grant permission or reduce the value of the land.'

## 5.0 Policy Context

### 5.1. Development Plan

Kerry County Development Plan 2022-2028 adopted on 4<sup>th</sup> July 2022.

**Rural Housing policy** is addressed in Chapter 5

Key Objectives relating to housing in rural areas:

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.

Identifying Rural Area Types

The Development Plan identifies three rural area types in accordance with the Sustainable Rural Housing Guidelines 2005 and the subject site is located in an area 'Under Urban Influence'.

#### 5.5.1.2 Rural Areas Under Urban Influence

'In these areas, population levels are generally stable within a well-developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong rural/agricultural economic base. The key



challenge in these areas is to maintain a reasonable balance between development activity in the extensive network of smaller towns and villages and housing proposals in wider rural areas.'

#### Areas under Urban Influence

'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'.

## **Landscape**

Chapter 11 section 11.6 addresses landscape objectives

'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 designation for the County:

Visually Sensitive Area

Rural General

The site is located in 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 Development in Designated Areas

As outlined above and in accordance with Objective KCDP 11-76 and Objective KCDP 11-77 the protection of the landscape is a major factor in developing policies for rural areas. It should be noted that the landscapes and scenery are not just of amenity value but constitute an enormous economic asset. The protection of this asset is therefore of primary importance in developing the potential of the County.

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.'

### **Standards for Residential Development in Rural and Non-Serviced Sites**

Volume 6 of the Development Plan contains development standards for residential development on rural and non-serviced sites.

## **Views and Prospects**

In addition to being within a Visually Sensitive Area, views and prospects on both sides of the R6 which fronts the site are identified for preservation in the Development Plan (Volume Landscape Designations, Map D). Objectives to preserve these views and prospects are outlined below:

### **‘Section 11.6.5**

County Kerry contains views and prospects of outstanding natural beauty which are recognised internationally. There is a need to protect and conserve these adjoining public roads throughout the County. Any development which hinders or materially affects these views/prospects will not be permitted. The Wild Atlantic Way has a number of existing viewing points along its route. In order to maximise the potential of the Wild Atlantic Way these existing viewing points will be protected. The Council will work with Fáilte Ireland in the sustainable development of these viewing points, and the identification of additional viewing locations along the route.

It is an objective of the Council to:

KCDP 11-79 Preserve the views and prospects as defined on Maps contained in Volume 4.

KCDP 11-80 Facilitate the sustainable development of existing and the identification of new Viewing Points along the route of the Wild Atlantic Way in conjunction with Fáilte Ireland, while ensuring the protection of environmental attributes in the area through the implementation of environmental protection objectives, standards and guidelines of this Plan.

KCDP 11-81 Prohibit developments that have a material effect on views designated in this plan from the public road or greenways towards scenic features and/or public areas.’

## **5.2. Relevant National or Regional Policy / Ministerial Guidelines**

### **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. The Guidelines differentiate between urban generated rural housing and rural generated housing. The Guidelines state that areas under strong urban influence exhibit characteristics such as proximity to the immediate environs or close commuting catchment of large cities and towns, rapidly rising population, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network.

### **Project Ireland 2040 National Planning Framework First Revision 2025**

#### **National Policy Objective 28**

‘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.’

## **5.3. Natural Heritage Designations**

Dingle Bay SPA (004153) is 500m north of the site.

## **6.0 EIA Screening**

- 6.1. 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 impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. (See attached EIA Form 1 Pre-screening and Form 2 Preliminary Examination).

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

Appeal by Sinead Ní Shuilleabhain and others local residents, following grant of leave to appeal by the Board. Issues raised, in summary:

- Kerry County Council requested that dwelling be moved in easterly direction and situated house directly in front of O'Connor family home, sight poles were erected to show this
- Feels it's an unnecessary condition to move dwelling directly across from O'Connor home and close to road and river, as it's a big field
- It's the only new house in the parish directly across from existing house, there are other examples where new house are built further down from the road
- Proposed location of house disrupts view of parish from O'Connors house, which they have had since 1950s
- Loss of view will significantly decrease value of the property and of two neighbouring properties to east
- Location does not benefit applicant either, as his view to the north is obstructed by O'Connor family home

- Applicant living in Boston last 5 years, not living in father's apartment in Dingle as stated in application. He and his father have lease on pub, managers run it for them
- Applicant stated need for further house due to his mother gifting family home to her sister Eibhlin, in fact house was left to Eibhlin by her parents
- Concern that granting permission will result in another empty holiday home, while others who live in area have been refused permission for homes
- Conditions requiring house not to be used as Airbnb for 7 years are not being adequately enforced
- If proposed dwelling is to be built request that house be moved further west or further down the field
- Aside from the positioning of the house, if applicant is genuine about moving to the community with his family, appellant would be happy for him to do so
- But fears that planning system is being manipulated with untruths to legitimise housing need, while other Irish speakers living locally are refused permission

## 7.2. Applicant Response

Response by agent on behalf of applicant, in summary:

- Applicant acknowledges proposed siting of dwelling will have modest impact on dwellings in immediate vicinity, but it is necessary so that it becomes part of existing cluster of dwellings/structures
- If located more westerly, would be more visually obtrusive on landscape
- If located further south, would require long driveway creating visual scar on landscape



- Orientation of proposed dwelling running lengthways, north-south mirrors pattern of development in vicinity and reduces visibility in landscape
- Finished floor level is 4m below level of road, reducing ridge height and impact on neighbouring dwellings
- Dwelling is modest in size, one and a half storey, with ridge height of 7.957 and floor area of 244.67
- Materials used will be local stone to integrate building into landscape
- Proposed planting scheme of native trees will screen dwelling on landscape
- Photo in planner's report shows when viewed from afar current vista is visually occupied by existing house so additional building to south will not create additional visual impact
- Applicant confirms place of residence in Dingle, operates business out of west Kerry, travels to US to promote his tour company and visit family
- American wife and 3 children live in US, until they can relocate to west Kerry on permanent basis, hence why applicant wishes to build permanent residence in parish where he spent much of youth, on family lands given by uncle
- Applicant has lived in area for more than 7 years and wishes to build home on family land, in area where he has spent majority of his life, this satisfies planning policy KCDP5-15 (d)
- Applicant is seeking to build first home and primary residence, wants to immerse his children in culture he experienced growing up in area, and is satisfied to abide by residency clause and Irish oral exam if required
- Landscape designation of Visually Sensitive Landscape does not preclude development unless landscape cannot absorb the development. Contends

proposed dwelling integrates successfully due to its design and location in existing cluster

- Therefore, proposed development does not materially effect views from the road to scenic features and is in accordance with CDKP 11-8.
- Response is accompanied by letter from applicant setting out his background, stating he spent long periods in Baile na Bpoc growing up, family moved to Ballylanders in 1995, he moved back to Dingle full time in 2011, ran a music shop from what is his current residence, runs Neligans Bar, acquired in 2017, and has a Tour Company, Aisling tours. Travels back and forth to America where his wife and family live. Wants to rear his children where he spent his childhood, and look after his mother who is battling cancer.
- Response also accompanied by copy of letter from Revenue relating to his tax return, with his Dingle address, and letter from oncologist caring for his mother, supporting his application.

### **7.3. Planning Authority Response**

None

### **7.4. Observations**

None

### **7.5. Further Responses**

None

## **8.0 Assessment**

8.1. Having examined the application details and all other documentation on file, including the appeal documentation, the report of the local authority, having inspected the site, and having regard to the relevant local and national policies and guidance, I consider that the substantive issues to be considered in this appeal are as follows:

- Compliance with Rural Housing Policy
- Visual/Landscape Impact
- Residential Amenity Impact
- Wastewater Treatment System

### **8.2. Compliance with Rural Housing Policy**

- 8.2.1. The site is defined as a 'Rural Area Under Urban Influence' in the Kerry County Development Plan and Objective KCDP5-15 of the Plan requires that applicants in such areas '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 five categories of housing need.
- 8.2.2. In a submission on behalf of applicant in response to the planning appeal it is stated that the applicant satisfies category 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'; as he has lived in the area for more than 7 years and now proposes to build a permanent home for himself and family on land gifted by family.
- 8.2.3. I note the planning authority, by way of a further information, requested the applicant to submit 'land registry details for the applicant's family home in the area i.e. where the applicant was raised.' A map and folio were submitted showing the location of

the family home nearby, where his aunt now lives, further west along the R549 from the site. A letter from the applicant accompanying the FI stated he is 'the 6<sup>th</sup> generation of the family to come out of the family home' and he spent his youth there. The planning authority concluded: 'the applicant is considered to satisfy the rural housing policy for the area'. Details of the precise time period the applicant spent living in this rural area were not submitted. In the response to the appeal, the applicant states his parents worked as teachers in Dingle and says 'we spent long periods with our grandparents in our family home in Ballynabuck'. His mother and siblings moved to Ballylanders in 1995, after his parents separated, and they spent all their holidays in Ballynabuck. He moved back fulltime to Dingle in 2011.

- 8.2.4. The appellants raise concerns that the house will be a holiday home rather than a primary residence and contends that the applicant does not live in Dingle but has lived in Boston for the last 5 years. They are concerned that the Council is not adequately enforcing occupancy conditions. I note they do not suggest that he is not from the local area and say, apart from their concerns re position of the house, if he is genuine about living and moving his family into the community and local school, they say they would be happy for him to do so. They point out that the Irish language in the local school is under threat as there are not enough students to sustain it.
- 8.2.5. The applicant in response to the appeal confirms that he resides in Dingle and where he operates a bar since 2017 and runs also a tour company from Dingle, which he established in 2019. His wife currently lives in America, until they can secure permission build their home. The two-bedroom cottage he lives in is not suitable to accommodate his family. He travels back and forth to America to promote the tour company and spend time with his wife and children. He wants his children to be reared in the same place he spent his childhood, immersed in the Irish language, music and culture. He also expresses a wish to care for his mother who is ill.
- 8.2.6. The copy of the letter submitted from Revenue confirms that he is tax resident in Ireland (although I'm aware that does not necessarily mean that he lives in Ireland).

It is evident that he has business interests in Dingle and lives at least part of the time there, and that these businesses benefit the local economy (although this in itself would not demonstrate an economic need to live in the Ballynabuck rural area).

- 8.2.7. I accept that the applicant has strong social ties to the local rural area where he wishes to build his home on land gifted by family, and has provided evidence showing the location of the family home, where he states he spent much of his youth, although there is limited detail available on file on the precise periods he resided there. On balance, I accept that he satisfies the housing need requirement of the rural housing policy that applies in the area. An occupancy condition is recommended, as was included in the planning authority decision, requiring the house to be used as a permanent residence and not as a holiday or second home.

### **8.3. Visual/landscape impact**

- 8.3.1. Objective KCDP 11.78 seeks 'to protect the landscapes of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives', while KCDP 11.78 seeks to ensure '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'. The site is within an area designated as a visually sensitive landscape and in these areas 'development will only be considered subject to satisfactory integration into the landscape'. In addition, the views and prospects on both sides of the R549, where the site is located, are identified for preservation in the Development Plan under KCDP 11-79 which seeks to 'preserve the views and prospects as defined on Maps contained in Volume 4'.
- 8.3.2. The proposed dwelling is located close to an existing historic cluster of dwellings and structures, on both sides of the R549, some of which are oriented at right angles to the road. The proposed dwelling is on a sloping site south of the road and the finished floor level is approximately 4m below the level of the road, while the front elevation is sited approximately 25m from the edge of the road. The house is

oriented at right angles to the road and has a ridge height of close to 8m. I agree with the planning authority that moving the proposed location of the dwelling eastwards (by approximately 18m) helps to integrate it with the existing cluster. This reduces its visual impact on views to the north from the local road to the south, where it will appear as part of the cluster, with its roofline well below that of the existing two storey house on the north side of the R549.

- 8.3.3. The orientation to the dwelling, with its relatively narrow façade facing the road, and its proposed location at a significantly lower level than the road, will reduce its impact on the protected views to the south. The ground continues to fall southwards for a short distance beyond the proposed house, and then rises steadily and then steeply to the dramatic hill and mountain ridges which form the skyline. While the house will have a minor/narrow local impact on the view of road users towards the land below the house, the skyline, formed by the hill and mountain ridges, will be visible above the roofline of the proposed dwelling. Apart from the local impact, views from the road to right and left of the proposed dwelling will be unchanged.
- 8.3.4. I am satisfied that the proposed development, located as proposed in the further information documentation received on 16<sup>th</sup> May 2024, can be satisfactorily integrated into the existing historic housing cluster and the landscape of the area and as a result, will not have a significant impact on the character and scenic value and of the landscape and the protected views in the area. I would recommend a condition requiring submission of a detailed planting plan to be agreed with the planning authority before development commences.

#### **8.4. Impact on Residential Amenities**

- 8.4.1. The appellant raises concerns that the relocation eastwards of the proposed dwelling will interfere with views from the O'Connor house and also from two other houses to the east. The proposed house as relocated eastwards, is more or less in line with the nearest existing house, the two storey O'Connor house, but at a lower level due to

the fall in ground from the road to the house site and is approximately 40m south of it. The existing house has a floor level approximately 5m higher than the proposed house (road level is 4m higher and O'Connor house approx. 1m higher again). A person's viewing point would be typically 1.2m to 1.8m higher depending on whether seated or standing etc.

- 8.4.2. The full field of view of someone outside or in the front porch of the O'Connor house is approximately 180degrees. The proposed house will be in the field of view, but will take up only a narrow portion of it (approx. 20 degrees, due to the distance from the proposed house, its width and the respective levels of the two houses). While the house would hide the view in this narrow band for areas close by, the views of the skyline and ridges and the mountains will be visible above the proposed house, as the ground rises up steeply to the north. The views outside the relatively narrow band formed by the proposed house will remain as they are now. Therefore, in my opinion, the interference in the field of view from the adjacent house will be relatively limited. It is of note also, that regardless of whether the proposed house is located in the initial position or repositioned eastwards, it would be within the field of view of the existing dwelling.
- 8.4.3. The appeal also refers to impact on two other houses, both to the east of the site, one on the north side of the road and one on the south side of the road. These houses already have a more interrupted view of the surrounding area due to the presence of other nearby structures within the development cluster. The proposed house will be partially in their field of view but to a lesser degree, due to their position and greater distance from the site. Any impact will be confined in width and scope and I believe overall views will not be significantly obscured.
- 8.4.4. In conclusion, while I agree there will be an impact on the field of view from the existing houses from the proposed development, I am satisfied that the impact will be relatively limited and could not be considered as seriously injuring the occupants' residential amenities or enjoyment of their property.

## **8.5. Wastewater Treatment System**

- 8.5.1. I note that water supply is to be from the public mains. In that regard, I recommend ABP model condition re Uisce Eireann connection to water mains replace Planning Authority Condition No 7.
- 8.5.2. A proprietary wastewater treatment system is proposed. The Site Characterisation Form indicates the aquifer is Locally Important and of High Vulnerability. No bedrock was encountered in the trial hole at a depth of 2.45m. The soil is classified as deep, well drained mineral soil, with sub-soil of clay and silt, with an influence of sand. Ground conditions on inspection were firm and dry; vegetation consisted of grasses.
- 8.5.3. Table E1 of EPA CoP 2021 indicates the site falls within the R1 response category, where an on-site WWTS is acceptable subject to normal good practice. Sub-surface percolation (T-test) value was 53.5. The test appears to have been carried out in accordance the EPA CoP 2021. Separation distances from dwellings, road, stream, septic tanks etc appear to comply with Table 6.2 of EPA CoP 2021. The proposed treatment system, to serve 6 people, is a Tertiary Treatment System and Infiltration Area with discharge to ground water. The proposed infiltration area of 150sqm, corresponds to the area specified in table 10.1 of the CoP for the site percolation values (rate or 25sqm or greater per person).
- 8.5.4. Based on the available information I agree with the conclusion of the planning authority SAU Section that the proposed WWTS is acceptable, subject to conditions.
- 8.5.5. I recommend that that ABP model condition (No 8) for domestic WWTS replace planning authority conditions No 9 and 10, as it is more concise while addressing the necessary issues.



## 9.0 AA Screening

### 9.1. Screening Determination (see Appendix 3):

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in the AA screening detailed in Appendix 3, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on a European Site (Dingle Peninsula SPA) in view of the conservation objectives of this site, and is therefore excluded from further consideration. Appropriate Assessment is not required.

### 9.2. This determination is based on:

- The limited nature of the proposed works
- The distance from the nearest European site and the and the absence of any direct or meaningful indirect connection to said site.

## 10.0 Recommendation

### 10.1. Permission recommended subject to conditions.

## 11.0 Reasons and Considerations

Having regard to the provisions of the Kerry County Development Plan 2022-2028 and to the nature and scale of the development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenity and landscape of the area, or the amenities of

property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 12.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and the further information submitted on 16<sup>th</sup> of May 2024, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>(a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.</p> <p>(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.</p>

	<p>(c) This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.</p> <p>Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted in the interest of the proper planning and sustainable development of the area.</p>
3.	<p>The use of the dwelling shall be as a primary permanent all year-round private residence and shall not be used as a holiday home or second home.</p> <p>Reason: To ensure the proposed house is used to meet the applicant's stated housing needs and development in this rural area is appropriately restricted in order to comply with national and Development Plan rural housing policy.</p>
4.	<p>(a) The proposed dwelling shall be positioned in accordance with the revised Site Layout Plan submitted on 16th May 2024.</p> <p>(b) Finished floor level shall be in accordance with Site Section Drawing received on 16th May 2024.</p> <p>(c) The proposed dwellinghouse will be in accordance with the design drawing submitted with the application on 14th September 2023.</p> <p>(d) Roof shall be covered with slates or slate effect tiles which shall be either black, dark grey or blue-black. Colour of ridge tiles shall match the roof.</p> <p>(e) All external finishes shall be neutral in colour, tone and texture.</p> <p>(f) Stonework of external walls shall be constructed of natural stone, sourced locally.</p>

	Reason: To integrate the structure into the surrounding area in the interest of visual amenity
5.	<p>Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class1 of Schedule 2, Part 1, of these Regulations shall take place within the curtilage of the house, without a grant of planning permission.</p> <p>Reason: In the interest of the amenities of the area.</p>
6.	<p>Prior to the commencement of development, the developer shall enter into a Connection Agreement with Uisce Éireann (Irish Water) to provide for a service connection to the public water supply.</p> <p>Reason: In the interest of public health and to ensure adequate water/wastewater facilities.</p>
7.	<p>The developer shall not cut or otherwise interfere with the public road for the connection to public services, without a road opening licence.</p> <p>Reason: In order to protect the public road in the interest of public safety</p>
8.	<p>(a) The wastewater treatment system hereby permitted shall be installed in accordance with the recommendations included within the site characterisation report submitted with this application on 14<sup>th</sup> September 2023 and shall be in accordance with the standards set out in the document entitled “Code of Practice - Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)” – Environmental Protection Agency 2021.</p> <p>(b) Treated effluent from the wastewater treatment system shall be discharged to a percolation area/ polishing filter which shall be provided in accordance with the standards set out in the document entitled “Code of</p>

	<p>Practice - Domestic Waste Water Treatment Systems (Population Equivalent <math>\leq 10</math>)” – Environmental Protection Agency, 2021.</p> <p>(c) The wastewater treatment system shall incorporate a suitable alarm system (both audible and visible) which shall activate in the event of malfunction of the system.</p> <p>(d) Storm water drains, service pipes, soakaways, paved areas or land drains shall be not be located within or around the gravel distribution area. This restriction also applies to the cultivation crops of necessitating the use of machinery, likely to disturb the gravel distribution layer</p> <p>(e) Within three months of the first occupation of the dwelling, the developer shall submit a report to the planning authority from a suitably qualified person (with professional indemnity insurance), certifying that the wastewater treatment system and associated works is constructed and operating in accordance with the standards set out in the Environmental Protection Agency document referred to above. Photographs of all stages of the installations shall be submitted.</p> <p>Reason: In the interest of public health and to prevent water pollution</p>
9.	<p>The applicant and any subsequent owners of the development, shall undertake a maintenance or service contract for the on-going maintenance of the wastewater treatment unit and tertiary treatment system/infiltration area with the manufacturer or such suitably qualified person in perpetuity.</p> <p>A maintenance contract for the wastewater treatment system shall be entered into and paid in advance for a minimum period of five years from the date of the completion of installation and subsequent commissioning of the wastewater treatment system and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to and agreed with the planning authority, prior to commissioning of the system.</p>

	Reason: In the interest of public health and to prevent water pollution.
10.	<p>No development works or groundworks shall be undertaken within 5 m of the eastern site boundary. A 5m 'space for nature' buffer strip of native, naturally occurring vegetation shall be maintained for the length of the eastern site boundary. This buffer area may include native meadow, scrub or woodland riparian vegetation.</p> <p>Reason: In the interest of landscape and biodiversity protection.</p>
11.	<p>A landscaping plan shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This plan shall include the following:</p> <p>(a) Landscaping of the site with suitable indigenous trees, shrubs and hedges.</p> <p>(b) Site boundaries (save for the eastern boundary) shall be provided with thick native hedges to include such native species as holly, whitethorn and furze. The construction of boundary walls, save at the vehicular entrance, is not permitted.</p> <p>(c) Any trees or shrubs which die or become diseased shall be replaced with similar native species.</p> <p>(d) Include native species in the planting plan, such as native evergreens (Holly, Yew, Scots Pine) and native deciduous (such as Oak, Elm, Ash, Birch, Hazel, Alder, Willow, Whitethorn, Blackthorn, Irish Whitebeam, Rowan). Exotic species such as Cypress, Escallonia, Griselinia, Leylandii, Rhododendron shall not be used.</p> <p>Reason: In order to integrate the development into its setting and in the interests of biodiversity.</p>

12.	<p>(a) The existing roadside boundary shall be retained except where removal is necessary for the construction of an entrance with adequate sightlines. Where the boundary is removed it shall be reinstated as a sod and stone wall, at the set-back location.</p> <p>(b) Vehicular entrance shall be located as shown on Site Layout Plan submitted on 16<sup>th</sup> May 2024 and shall be recessed from the centre of existing front boundary.</p> <p>(c) The new wing walls shall be constructed in sod and stone and shall be erected to a height of not more than 1 metre over existing road level and shall be splayed at an angle of 45 degrees to the line of the front fence.</p> <p>Reason: In the interest of visual amenity and traffic safety</p>
13.	<p>All external lighting shall be cowled and directed away from the public roadway and shall not be visible from any point more than 100metres away from the light.</p> <p>Reason: In the interest of traffic safety and to control light pollution in the rural environment.</p>
14.	<p>Proposed garage shall be located in accordance with revised site layout plan submitted on 16<sup>th</sup> May 2024 and in accordance with drawings and details submitted on 14<sup>th</sup> September 2023; and all proposed external materials and finishes shall match the dwelling house.</p> <p>Reason: To integrate the structure into the surrounding area.</p>
15.	<p>The garage shall be used for domestic purposes only and not for any commercial, agricultural or habitation uses.</p> <p>Reason: To regulate the use of the site.</p>
16.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the</p>

	<p>area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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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> May 2025



## Appendix 1 - Form

### EIA Pre-Screening

<b>An Bord Pleanála Case Reference</b>	320546-24		
<b>Proposed Development Summary</b>	Construction of dwelling house, detached garage, served by proprietary wastewater treatment system		
<b>Development Address</b>	Ballinabuck, Ballydavid, Dingle, Co Kerry		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X
		<b>No</b>	
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>	X	Class 10 (b) (i)	Proceed to Q3.
<b>No</b>			Tick if relevant. No further action required
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	X		Proceed to Q4
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<b>Yes</b>	X	Threshold 500 dwellings. Proposed development 1 dwelling	Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	X	Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: Ann Bogan Date: 15/05/2025

## Appendix 2 Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference Number</b>	<b>ABP- 320546</b>
<b>Proposed Development Summary</b>	Construction of dwelling house, detached garage, served by proprietary wastewater treatment system
<b>Development Address</b>	Ballinabuck, Ballydavid, Dingle, Co Kerry
<p><b>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</b></p> <p><b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b></p>	
<p><b>Characteristics of proposed development</b> (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p>	<p>The development has a modest footprint, comes forward as a standalone project, does not require demolition works, does not require the use of substantial natural resources, or give rise to significant risk of pollution or nuisance. The development, by virtue of its type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change. It presents no risks to human health.</p>
<p><b>Location of development</b> (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	<p>The development is situated in a rural area on improved agricultural land which is abundant in the area. No designated areas adjoin the site. There is a drain bounding the site to the east which connects to a wetland area circa 100m to the south of the site. This in turn drains into a stream and ultimately to a river that discharges to the sea at Smerwick Harbour, 2km from the site. A European Site aimed at protection of three species of cliff nesting birds is 500m upslope to the north of the site and extends westwards along the coast.</p>

<b>Types and characteristics of potential impacts</b> (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).		Having regard to the modest nature of the proposed development, its location removed from sensitive habitats/features, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.
<b>Conclusion</b>		
<b>Likelihood of Significant Effects</b>	<b>Conclusion in respect of EIA</b>	<b>Yes or No</b>
There is no real likelihood of significant effects on the environment.	EIA is not required.	No
<del>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</del>	<del>Schedule 7A Information required to enable a Screening Determination to be carried out.</del>	
<del>There is a real likelihood of significant effects on the environment.</del>	<del>EIAR required.</del>	

Inspector: Ann Bogan

Date: 15<sup>th</sup> May 2025

DP/ADP: \_\_\_\_\_  
 (only where Schedule 7A information or EIAR required)

Date: \_\_\_\_\_

## Appendix 3

### Screening for Appropriate Assessment Test for likely significant effects

#### Step 1: Description of the project and local site characteristics

<b>Case file: ABP 320546-24</b> <b>Brief description of project</b>	Normal Planning appeal Dwelling house and wastewater treatment system at Ballinabuck, Balldavid Dingle, Co Kerry. See section 2 of inspectors report
<b>Brief description of development site characteristics and potential impact mechanisms</b>	<p>The proposed greenfield development site is c0.5ha in area and in a rural area. It is in use for agricultural purposes at present and surrounded by other fields in such use, and there is as a small cluster of houses to the north and east.</p> <p>The development will comprise of construction of a 245sq m dwelling house, domestic garage and proprietary wastewater treatment system. Water supply will be from the public mains. The tertiary wastewater treatment system and infiltration area will discharge to groundwater and is designed in accordance with requirements of EPA Code of Practice for Domestic Wastewater Systems 2021.</p> <p>There is a European site 500m to the north and well above the level of the site. There are no watercourses on the site that would connect the site directly to the European site. The European site extends along much of the western end of Dingle Peninsula above the high water mark to 300m inland, in this area, from the sea cliff nesting areas.</p> <p>The development site slopes southwards and a drain runs south along the eastern boundary. The drain joins a wetland area 100m south of the site. The wetland feeds into a stream which ultimately joins the Feohanagh River which discharges into the sea near Feohanagh village, c2km from the site, close to the European site, as it extends along the coast.</p>

<b>Screening report</b>	No Kerry County Council screened out the need for AA.
<b>Natura Impact Statement</b>	No
<b>Relevant submissions</b>	None

## Step 2. Identification of relevant European sites using the Source-pathway-receptor model

European Site (code)	Qualifying interests <sup>1</sup>	Distance from proposed development	Ecological connections <sup>2</sup>	Consider further in screening <sup>3</sup> Y/N
Dingle Peninsula SPA 004153	Three species of birds: Chough, Peregrine and Fulmar <a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004153.pdf">www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004153.pdf</a> NPWS, 2022	500m	No direct connection, possible indirect	Y

<sup>1</sup> summary description / **cross reference to npws website** is acceptable at this stage in the report

<sup>2</sup> Based on source-pathway-receptor: Direct/ indirect/ tentative/ none, via surface water/ ground water/ air/ use of habitats by mobile species

<sup>3</sup>if no connections: N

## Step 3. Describe the likely effects of the project (if any, alone or in combination) on European Sites

### AA Screening matrix

Site name	Possibility of significant effects (alone) in view of the conservation objectives of the site*	
	Impacts	Effects
<b>Site</b> <b>Dingle Peninsula SPA</b> <b>[004188]</b> A009 Fulmar <i>Fulmarus</i> A103 Peregrine Falco peregrinus A346 Chough <i>Pyrrhocorax pyrrhocorax</i>	Direct: none Indirect: localized, temporary, low magnitude impacts from construction related emissions to surface water during construction or to ground water from tertiary wastewater treatment system. The SPA in vicinity of site is made up mainly of sea cliffs where qualifying interest species may nest	Distance from receiving features connected to the SPA make it <b>highly unlikely</b> that the proposed development could generate impacts of a magnitude that could affect habitat quality within the SPA for the SCI listed. .

	and 300m buffer inland to provide feeding habitat. Weak indirect pathway to sea via drain, wetland, stream and river, very unlikely to have any real impact on the European site.	
	Likelihood of significant effects from proposed development (alone): <b>No</b>	
	If No, is there likelihood of significant effects occurring in combination with other plans or projects? <b>No</b>	
	Likelihood of significant effects from proposed development (alone): <b>No</b>	
	If No, is there likelihood of significant effects occurring in combination with other plans or projects? <b>No</b>	
<b>Step 4 Conclude if the proposed development could result in likely significant effects on a European site</b> I conclude that the proposed development (alone or in combination with other plans and projects) would not result in likely significant effects on a European Site. No mitigation measures are required to come to these conclusions.		
<b>Screening Determination</b>  <b>Finding of no likely significant effects</b> In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on Dingle Peninsula SPA or any other European site, in view of the sites Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.  This determination is based on: <ul style="list-style-type: none"><li>• The relatively minor scale of the development and lack of impact mechanisms that could significantly affect a European Site</li><li>• Distance from and weak indirect connections to the European site</li></ul>		

