



An
Bord
Pleanála

Inspector's Addendum Report

ABP-320546-24

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| Development | Construction of dwellinghouse and detached domestic garage served by proprietary wastewater treatment system with associated ancillary works |
| Location | Ballynabuck, Ballydavid, Dingle, Co. Kerry. |
| Planning Authority | Kerry County Council. |
| Planning Authority Reg. Ref. | 2360161 |
| Applicant(s) | Dara Herlihy. |
| Type of Application | Permission |
| Planning Authority Decision | Grant |
| Type of Appeal | Third Party |
| Appellant(s) | Sinead Ní Shúileabháin and others. |
| Observer(s) | None. |
| Date of Site Inspection | 23 rd April 2025. |
| Inspector | Ann Bogan |

1.0 Introduction

- 1.1. This report is an addendum report to the Inspector's report in respect of ABP-320546-24 dated 15/05/2025.
- 1.2. A notice issued from the Commission under Section 131 to the appellant and the Planning authority on 30/06/2025 inviting submissions on the submission by applicant received on 10/09/2024.
- 1.3. Following a meeting held on 6/06/2025 the Board proposed to take account of the issue of whether the applicant satisfied the requirements of Objective KCDP5-15 of the Kerry County Development Plan 2022-2028 (the Development Plan) which require that in Rural Areas Under Urban Influence applicants must establish an exceptional rural generated housing need based on social or economic need by demonstrating compliance with one of the listed categories of housing need.
- 1.4. Furthermore, it noted that in a letter to the Board received on 10/09/2024, the applicant referred to an existing home which he had purchased at No.2 The Colony, Dingle, which he stated he ran as a music shop until 2020 and which has reverted to a small cottage, but that it does not fit the needs of his growing family and has no scope for expansion.
- 1.5. As this would constitute a new matter in the context of the appeal, the Board decided to defer consideration of the appeal and to issue a Section 137 notice to the parties inviting submissions from all parties regarding the issue.
- 1.6. A notice issued from the Commission on 23/07/2025 under Section 137, to all parties, inviting submissions on the new matter referred to in 1.3 and 1.4 above.
- 1.7. A further notice issued on 27/08/2025 under Section 131 to the Planning Authority and the applicant inviting them to make a submission on the appellants submission received on 12/08/2025.
- 1.8. This report considers the Commission's decision and the submissions made on foot of these notices.

2.0 Response of Relevant Parties to Section 131 notice of 30/06/2025

2.1. Planning Authority Response, dated 03/07/2025: Information received does not alter the decision reached by Planning Authority.

2.2. Appellant: No response received

3.0 Response of relevant parties to Section 137 notice dated 23/07/2025

3.1. Planning Authority: No response received.

3.2. Applicant: No response received.

3.3. Appellant's Response received 12/08/25:

- This case raises concerns about misrepresentation and undermining of planning conditions in the Gaeltacht
- Re the claim that applicant moved back to Dingle in 2011, Mr Herlihy lives in USA and owns a house there (address included)
- No 2 The Colony, Dingle is listed on AirBnB as 'entire home' available for rent on an ongoing basis
- Rhode Island Traffic Tribunal record dated 19/04/2025 shows applicant's presence in USA
- His children reside in USA and have only visited Ireland a few times
- Request Board to obtain flight records for him and his family over 5 years
- Addresses each category of need in rural housing needs policy
- A, B and C: Farm referred to will pass to owner's children not Mr Herlihy and he does not work in farming or marine
- E: Substantial local ties: Mr Herlihy has lived in USA for many years, his children's upbringing and schooling has been in USA; his Dingle property is run as a year-round AirBnB, is not a home
- F: He does not have life limiting condition; his mother lives 2hrs away and has not lived in Dingle for decades

- Planning preference is for renovation or extension, this application is for new build
- Would like any proposed house on this land to be repositioned
- Housing opportunities in the area should be preserved for those who genuinely live in and contribute to community

4.0 Further Submissions

4.1. The Commission issued a Notice under Section 131 inviting the Planning Authority and the applicant to respond to the appellants above submission. The Planning Authority did not make a further response. Applicant's response is summarised below.

4.2. Agent on behalf of applicant submitted response received 23/09/2025:

- Applicant reaffirms that he satisfies Kerry County Development Plan Objective KCDDP 5-15(d) as he spent more than 7 years in area, where he proposes to build first home, as permanent residence, on family owned land, in Ballynabuck, Ballydavid
- Above objective does not require compliance with other criteria listed by appellant, such as links to farming
- Notes appellants did not contradict applicants claims to have local ties to the area under section D, which permits those with local ties to build their first home in the area
- Planning search will show this is first time applicant has sought permission to construct family residence for permanent occupation. This plus local ties qualify him to construct his first home at this location
- Applicant travels between Kerry and his family in USA, given business interests in West Kerry and family and business interests in USA
- Confirms house purchase in US; this is his wife's home where she raises their children
- It was decided to purchase home in USA while deciding where they wish to live on fulltime basis

- Given time taken to obtain planning permission and construct house (36months+), decided to purchase house [in USA]
- Envisage house will be sold to finance construction of new family home
- If permission granted family will relocate and children will attend local school
- Confirms building known as 'An Siopa Ceoil' is currently listed as AirBnB and is not a permanent home; states the building benefits from commercial permission under planning ref. 12/688 and 17/103.
- This building is 64.75sqm in area and occupies entire footprint in applicant's ownership and has no private open space and therefore unsuitable for full-time dwelling
- Is located in Architectural Conservation Area and extending it to two storey dwelling would not be permitted due impact on character of historic laneway
- Owning a property does not preclude applicant from construction of a dwelling for fulltime residence under Development Plan Objective.
- Applicant believes he has submitted all information available to Kerry County Council to assess planning application on his merits, and County Council decided to grant permission
- Request Commission to uphold decision of Kerry County Council

5.0 **Assessment**

5.1. Having considered the matters raised as a consequence of the Commission's decision, the submissions received and having regard to the relevant local and national policies and guidance, I consider the main issues to be addressed are as follows:

- Status of Applicant's property in Dingle
- Compliance with Rural Housing Policy

5.2. **Status of applicant's property at No. 2 The Colony, Dingle**

5.2.1. There is some inconsistency in the documentation submitted at various stages in relation to the status of the above property and the place of residence of the

applicant. In a letter accompanying the planning application, the applicant indicated he lived in his father's apartment in Dingle, which was not adequate for his family's needs and he therefore needed to build a permanent home on the subject site, for his wife and family, who plan to relocate from the USA. Under further information, he subsequently elaborated to state that he returned to live in Dingle in 2011 and purchased a property at No 2 The Colony in Dingle Town and that he operated it as a music shop, An Siopa Ceoil, until 2020. In the response to the grounds of appeal (10/09/2024) it is stated "The applicant can confirm that the place of residence is No 2 The Colony Dingle (formerly Apt 6, Orchard Lane, Dingle)".

- 5.2.2. In the response to the appellant's submission under the Section 137 Notice (received 23/09/2025), it is confirmed that No 2 the Colony is rented out as an AirBnB and is not a permanent home for the applicant. He does not indicate if he has an alternative place of residence in Dingle at present. Based on the available documentation it seems likely that he is largely resident with his family in the USA, while having some business interests in Dingle/Ireland.
- 5.2.3. In my view ownership or otherwise of a house in the USA is not directly relevant to the key issue of demonstrating exceptional housing need in the rural area to which the application relates, (as required under Development Plan Objective 5-15), although it may suggest that options as regards a permanent place of residence for the family are still under consideration.
- 5.2.4. The question arises as to whether the property, stated to be in the applicant's ownership in Dingle at No 2 The Colony, constitutes a first home for permanent residence, which could have a bearing on whether the applicant can demonstrate an exceptional housing need to construct a new dwelling in the rural area. As outlined above it was purchased in 2011, operated as a traditional music shop until 2020 and it has been confirmed that it now operates as an AirBnB, with capacity for three people.
- 5.2.5. In the response to the Commission dated 23/09/2025, it was stated that the premises benefits from commercial permission. In that context, I note that planning permission was granted to Michael Herlihy (occupier) for retention of change of use of the premises from residential use to retail use, and retention of a flat roofed rear extension, also for retail use, under PI Ref 11/939. Permission for retention of a

coffee service area as part of the retail outlet, was granted to Michael Herlighy (occupier) under Pl. Ref 12/688. Permission for retention of a canopy was refused to Michael and Dara Herlihy (owners) under 17/103. It appears the permitted/established use of the premises is retail, but it has been reconverted for residential/ AirBnB purposes at some stage since 2020, when the music shop closed.

- 5.2.6. Setting aside the planning status of the use, or the ownership of the premises, I note the single storey property is stated to be 64.75sqm in area and lacks private open space, as there is close to 100% site coverage. It is located within an ACA and I accept that it is unlikely it could be expanded upwards, without impacting on the character of the area. In my opinion, therefore, the property does not or is not capable of providing accommodation, based on current standards, such as to constitute a first home for permanent residence. Therefore, I conclude that the option of building a home for permanent residence elsewhere is not ruled out by ownership of this property.

5.3. Compliance with Rural Housing Policy

- 5.3.1. In its Direction of 06/06/2025, the Board decided that, in determining the appeal, it proposes to take into account the issue of whether the applicant satisfies the Rural Housing Policies of the Kerry County Development Plan 2022-2028 and can demonstrate an exceptional rural housing need based on social or economic links to a particular area. On that basis I propose to review the documentation provided in relation to establishing compliance with rural housing policy.
- 5.3.2. The applicant did not respond to the Section 137 notice, but in the response to the appellant's submission he reaffirms "that he satisfies the criteria as set out under Kerry County Council Development Plan Objective 5-15(d) where he has spent more than 7 years of his life in the area that, and where he is proposing to build his first home, which will be his place of permanent residence, on family owned land in Ballynabuck, Ballydavid, Co Kerry". However, I note no additional information has been provided to support this statement, apart from the status of his property in Dingle.
- 5.3.3. The Planning Authority accepted that the applicant satisfied the rural housing policy on receipt of further information, including a folio and map showing the family home,

which is now in his aunt's ownership. He confirmed it was his grandparent's home where his mother grew up, and which had been in the family for generations. In the response to the appeal (10/09/2024) he provided further clarification stating: "we spent long periods with our grandparents in our family home in Ballynabuck". I note the applicant says his parents were teachers in Dingle, but does not say where they lived as a family. It's unclear if he is implying that his family lived with his grandparents or lived elsewhere and visited the grandparent's home. No time periods are specified for his time living in the local rural area, nor is there additional documentation provided, such as where he attended school or evidence of involvement in sports or other clubs in this rural area. He also states that his family moved to Ballylanders in 1995 and spent their holidays in Ballynabuck. He moved back to Dingle in 2011, but does not claim to have lived in the Ballynabuck/Ballydavid area from that period onwards.

- 5.3.4. There is no doubt that the applicant has family ties to the local area, through his grandparents, mother and other relatives, and that the land he proposes to build on was in family ownership. In addition, I note that while raising concerns that the proposed house may be intended as a holiday home rather than a permanent residence, the appellants have not questioned his claim to have local ties.
- 5.3.5. However, there is a level of vagueness in the documentation provided concerning when or whether he actually resided in the area, which is of concern. He has not provided details of what periods he lived in the local area, nor is any other supporting documentation relating to the time he lived there provided. On that basis it can be argued that the applicant has not clearly demonstrated that he complies with Objective KCDP5-15 category of housing need (d): "persons who have spent a substantial period of their lives (i.e. over seven years) living in the rural area in which they propose to build a first home for their permanent residence."
- 5.3.6. I note this area of the Corca Dhuibhne Gaeltacht is under considerable pressure from those seeking holiday/second homes and Figure 5.2 of the Development Plan indicates 40-50% of housing stock in this particular area are holiday homes. Development Plan policy KCDP5-23 seeks to ensure that such homes are located in existing towns and villages and not in rural areas. In this case the applicant has confirmed that the proposed dwelling is for use as a permanent home and not a holiday home. However, the issue reinforces the need to ensure that those seeking

to construct a dwelling in the rural area clearly show that they comply with the requirements of Objective KCDP and demonstrate an exceptional social or economic need to live in the local rural area. Having reviewed the documentation available, and noting the lack of any additional documentation provided to address the issue in the applicant's recent submission, I am not satisfied, on balance, that this has been adequately demonstrated in this case.

6.0 Recommendation

- 6.1. I refer to the previous Inspectors Report and recommendations 15th May 2025 which recommended that permission be granted. Having reviewed the documentation provided and the submissions received, while I am satisfied that all other aspects of the proposal are acceptable, I recommend that permission be refused on the basis that the applicant has not demonstrated compliance with rural housing policy, as outlined in the reason below.

7.0 Reasons and Considerations

Having regard to the location of the site within a 'Rural Area Under Urban Influence' the Commission is not satisfied on the basis of the documentation provided, that an exceptional rural housing need has been demonstrated by the applicant in accordance with the Rural Settlement Policy of the Kerry County Development Plan 2022-2028, as set out in Objective KCDP 5-15. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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

Ann Bogan
Planning Inspector

30th October 2025