



An
Bord
Pleanála

Inspector's Report

ABP-321894-25

Development

Construction of a house and garage served by a mechanical treatment tank and percolation area and all associated site works.

Location

Knockeenawaddra, Portmagee, Co. Kerry

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

2460778

Applicant(s)

Joseph O'Sullivan

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

Third Party

Appellant(s)

John Griffin

Observer(s)

None

Date of Site Inspection

25th April 2025

Inspector

Clare Clancy

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1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Knockeenawaddra approx. 4.4 km to the east of Portmagee (via the R565). Valentia Island is located to the north and Cahersiveen town is located approx. 12 km to the northeast. The site is in a rural area which is characterised by farm lands and the pattern of development is characterised by dispersed one-off housing along the local road network. There is an existing single storey dwelling located on the northern side of the laneway.
- 1.2. The appeal site is accessed via a narrow private laneway to the south of the lane. It forms part of a wider agricultural landholding field. The roadside boundary is defined by a sod ditch with post and wire fence. There is a drainage ditch on the southern side of the roadside boundary. The western boundary of the site is defined by a sod ditch, a post and wire fence with some native hedgerow interspersed, and a drainage ditch runs along the boundary. The southern and eastern boundaries are undefined. The levels of the site rise to the rear (south) from the adjoining lane with the site positioned above the level of the existing lane.

2.0 Proposed Development

- 2.1. Permission is sought to construct a dwelling, domestic garage, mechanical treatment plant and percolation area, and associated site works. The proposed development comprises of the following:
 - Site area – 0.270 ha.
 - Construction of double fronted dormer style dwelling, with a proposed gross floor area of dwelling 363.10 m², and max roof ridge height 7.0 m.
 - The proposed gross floor area of the shed is stated to be 78.1 m², and the max roof height will be 7.13 m.
 - Material finishes for both dwelling and shed will comprise of a plaster finish, blue / black slate.
 - Landscaping is proposed along the north, east and southern boundaries of the site.
 - Proposed source of water supply – connect to public mains.

- New vehicular access proposed off the adjoining private lane.
- Proposed tertiary treatment system and infiltration / treatment area and discharge to ground water.
- Supporting documents relating to local rural housing need submitted.

2.2. Unsolicited Further Information

- 2.2.1. Submitted by the applicant on 15th October 2024 providing details of the applicant's family home and on the 06th November 2024 in relation to consent provided by the applicant's father permitting access to walkers over their land following the Portmagee Loop Walk. Land folio details were also submitted.

2.3. Further Information (FI)

- 2.3.1. FI was sought in regard to the following:

1. Revised cross-section drawings to indicate any proposals for cut and fill that is required to be carried out.
2. Given the existing substandard bohreen, to clarify if the roadway will be upgraded and to submit proposals if it is.
3. To clarify the extent of the farm holding including details of existing farm buildings and to indicate the nature of farming that the applicant is engaged in.

- 2.3.2. The Planning Authority (PA) determined the FI response received on 19th December 2024 to be 'significant additional data'.

- 2.3.3. Revised details / proposals submitted on 19th December 2024 included the following:

1. Revised cross-section drawings submitted indicating proposals for cut and fill.
2. A proposal to upgrade the existing roadway by installing a lay-by to accommodate the traffic generated by the proposed development.
3. The applicant clarified that he is engaged in permanent pasture / sheep grazing and lamb production. The following was also provided:
 - Letter provided by the applicant's agricultural advisor.
 - Site location map submitted indicating the appeal site relative to the applicants family home.

- Landholding maps provided indicating the location of the farm landholding. The farms sheds are shown to be located at Oghermong and grazing lands are located at Knockeenawaddra where the appeal site forms part of the parcel of this land.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. By Order dated 31st January 2025, Kerry County Council decided to grant permission subject to 17 conditions.

3.1.2. The conditions are generally standard which include for a Section 48 development contribution, material finishes for the proposed dwelling, Uisce Éireann connection agreement, installation of the proposed wastewater treatment unit and on-going maintenance contract for same, surface water management, external lighting and landscaping. There are 3 no. specific conditions relating to the proposed garage regarding location, external finishes and restricting its use. The following conditions are relevant to note:

- Condition 3 – (a) The dwelling shall be first occupied by the applicant as a place of permanent residence for a period of 7 years.
- Condition 4
 - (a) The use of the dwelling shall be a primary permanent all year round private residence.
 - (b) The proposed dwelling shall not be used as a holiday home or second home.
- Condition 5 – (e) The finish floor level shall be in accordance with the site section drawing received on 19th December 2024.
- Condition 11 – (b) Vehicular access shall be located as per the site layout plan received on 10th October 2024.
- Condition 15 – The proposed garage shall be located and constructed in accordance with the drawings received on 10th October 2024.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Two planning reports form the basis of the assessment and recommendation.

First Planning Report 13th December 2024

- Notes the previous refusal relating to the applicant and the location of the subject development further to the west of the appeal site.
- Further details required in regard to the applicant's farm landholding and existing sheds, and details on the nature of farming being undertaken by the applicant.
- Concerns raised regarding the suitability and capacity of the existing bohren to accommodate the proposed development noting a previous refusal due to the inadequate standard of the track.
- Positive report received from the Site Assessment Unit in regard to wastewater disposal.
- FI was requested as set out in Section 2.3 above.

Second Planning Report (31st January 2025)

- The revised cross-sections indicated proposed cut and fill works which was considered not to result in significant scarring of the landscape. The proposed development was otherwise acceptable in terms of design and siting and no undue impact on visual or residential amenities was raised.
- A revised site layout plan indicated proposals to develop a lay-by approx. halfway along the laneway between the appeal site and the junction of the laneway with the public road to the east. This was considered sufficient to address the issue of the obstruction of road users on the laneway.
- Noted that the applicant is engaged in permanent pasture sheep grazing and lamb production and the landholding is in excess of 7 ha. It was concluded that this would support part-time farming and the applicant was deemed to comply with rural settlement policy.

- Noted that the submission from Transport Infrastructure Ireland which had not changed since the initial submission 16th October 2024.

3.2.2. Other Technical Reports

- Site Assessment Unit (27th November 2024) – Reviewed the FI response and having regard to the recommendations of the site assessor, no objections were raised and included conditions.

3.3. Prescribed Bodies

Transport Infrastructure Ireland (TII)

- First Submission (16th October 2025) – Requests the planning authority to have regard to the provisions of official policy for development proposals as follows:
 - Proposals impacting national roads, to the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities and relevant TII Publications and proposals impacting the existing light rail network, to TII’s “Code of engineering practice for works on, near, or adjacent the Luas light rail system”.
- Second Submission (10th January 2025) – In regard to FI response, the position of TII remains as per submission of 16th October 2025.

3.4. Third Party Observations

3.4.1. Two third party observations were received as follows:

- Michael J Healy-Rae T.D. representation on behalf of the applicant.
- John Griffin.

3.4.2. The issues raised in the third party observation received from John Griffin are largely covered in the ground of appeal.

4.0 Planning History

Appeal Site

- P.A. Ref. 24/60494 – Withdrawn. Permission for dwelling, septic tank and percolation area.

It is noted that the site characterisation assessment is the same as that submitted in relation to this appeal, however the proposed septic tank and percolation area were located to the west of the proposed dwelling (02nd October 2024).

Adjoining Site to West

- P.A. Ref. 05/3452 – Permission refused for dwelling, septic tank and percolation area. Grounds of refusal related to design and siting of dwelling and impact on visual amenities and character of landscape, and the substandard access traffic giving rise to endangerment of public safety by reason of traffic hazard (24th November 2005).

Family Landholding North of R565

- P.A. Ref. 97/881 – Michael O’Sullivan granted permission for dwelling house, septic tank and access road (10th September 1997).
- P.A. Ref. 01/2029 – Michael O’Sullivan granted outline permission for dwelling house (06th November 2011).
- P.A. Ref. 01/2027 – Michael O’Sullivan granted permission to revise house location and site boundaries in regard to outline planning permission (07th November 2001).
- P.A. Ref. 04/1796 – Kathleen O’Sullivan Permission Consequent granted in regard to outline permission P.A. Ref. 01/2027 (25th June 2004).
- P.A. Ref. 04/91835 – Michael O’Sullivan granted approval to erected dwelling in compliance with outline planning permission P.A. Ref. 01/2029 (01st July 2004).
- P.A. Ref. 06/493 – Kathleen O’Sullivan granted permission to construct revised road layout to serve 2 no. sites previously granted permission under P.A. Refs. 04/1796 and 04/1835 (06th June 2006).

5.0 Policy Context

5.1. Kerry County Development Plan 2022-2028

5.1.1. Volume 4 Maps

The following designations apply to the appeal site:

- Rural Type Area – the appeal site is located in a rural area designated as ‘Rural Area Under Urban Influence’.
- Visually Sensitive Areas and Views & Prospects – Map L – the appeal site is located in an area designated as ‘Rural General’.

5.1.2. Chapter 5 Rural Housing

➤ Section 5.5.1.2 Rural Areas Under Urban Influence

- This section notes that the key challenge in such 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.

Objective KCDP 5-15 – This sets out the criteria which applicants need to satisfy when seeking to build a house in a ‘Rural Area Under Urban Influence’ as follows:

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 life long 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.

Other Relevant Objectives:

KCDP 5-19

Ensure that the provision of rural housing will not affect the landscape, natural and built heritage, economic assets, and the environment of the county

KCDP 5-20

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

KCDP 5-21

Ensure that all developments are in compliance with normal planning criteria and environmental protection considerations.

KCDP 5-22

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

5.1.3. **Chapter 11 Environment**

➤ Section 11.6 Landscape

Section 11.6.3.2 Rural General – Rural landscapes within this designation generally have a higher capacity to absorb development than visually sensitive landscapes however it is important that proposals are designed to integrate into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development. Proposed developments should, in their designs, take account of the topography, vegetation, existing boundaries and features of the area. Permission will not be granted for development which cannot be integrated into its surroundings.

The following objectives are relevant:

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.

5.1.4. **Chapter 13 Water & Waste Management**

KCDP 13-18

Ensure that development proposals comply with the standards and requirements of the Irish Water: Code of Practice for Wastewater Infrastructure, (December 2016), and any updated version of this document during the lifetime of the Plan.

KCDP 13-19

Ensure that proposed wastewater treatment system for single rural dwellings are in accordance with the 'Code of Practice Wastewater Treatment and Disposal System Serving Single Houses, EPA 2021' and any updated version of this document during the lifetime of the Plan, and are maintained in accordance with approved

manufacturer's specifications and subject to compliance with the Water Framework Directive, the Habitats and Shellfish Waters Directives and relevant Pollution Reduction Programmes.

5.1.5. Volume 6 Development Management Standards & Guidelines

Section 1.5.10 Standards for Residential Development in Rural and Non-Serviced Sites

In summary, the following sections and points are relevant:

➤ **Section 1.5.10.5 Entrance**

- The application must demonstrate safe vehicular access to and from the proposed dwelling, in terms of visibility from the proposed entrance, but also in terms of the impact on traffic safety through the turning and stopping movement of vehicles entering or leaving the site. Should any remedial works be required on land outside the ownership of the applicant, letters of consent from the relevant.
- Entrance gates shall be recessed 4.5m. behind the line of roadside hedgerow, with side boundaries splayed at an angle of 45 degrees to the public road carriageway.
- The opening of an access shall not interfere with existing roadside drainage.

➤ **Section 1.5.10.6 Screening and Integration**

- The design and location of the dwelling shall be influenced by the existing screening on the site. Additional screening and planting may be required to integrate the dwelling into the site and to screen the development from the public road; this shall be clearly demonstrated on a landscaping plan.
- Regard shall be had to 'Building a House in Rural Kerry – Design Guidelines', Kerry County Council 2009'.

➤ **Section 1.5.10.7 Septic Tank and Proprietary Treatment Systems**

- Treatment systems shall be designed, installed and maintained in accordance with the Environmental Protection Agency's 2021 Code of Practice for Domestic Wastewater Treatment Systems or any amending or replacement Code of

Practice, standard or legislation. Only one dwelling unit shall be connected to a single septic tank.

5.2. Natural Heritage Designations

- SAC: 002262 - Valencia Harbour/Portmagee Channel SAC – approx. 515 m to the north.
- SPA: 004154 - Iveragh Peninsula SPA – approx. 4.9 km to the west.
- pNHA: 001373 - Puffin Sound-Horse Island Cliffs – approx. 4.9 km to the west.
- pNHA: 001382 - Valencia Island Cliffs – approx. 4.9 km to the west.
- pNHA: 001383 - Valencia River Estuary – approx. 5 km to the north.
- SAC: 000335 - Ballinskelligs Bay and Inny Estuary SAC – approx. 7.8 km to the south.
- pNHA: 000335 - Ballinskelligs Bay And Inny Estuary – approx. 7.8 km to the south.

6.0 EIA Screening

The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 appended to this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. One third party appeal submission was received from John Griffin whose property is located to the north of the appeal site. The grounds of the appeal can be summarised as follows:

Compliance with Development Plan Policy

- The applicant has not demonstrated a need or ties to the area covered in the development plan to live in the area.
- The land abutting the site and including the site comprises approx. 3 ha and could not be described as a farm. There is no farmyard complex in any of the land in the family landholding and the land is used for grazing.
- No evidence is provided of local employment and it is submitted that the applicant lives abroad.
- The family home is in Oghermong, Caherciveen approx. 7 mile from the site.
- The proposed dwelling may be used as a holiday home.

Visual Impact

- The site is located to the south of an area designated for 'View and Prospects' and the site fronts onto the Knockeenawaddra Loop public walkway and is adjacent to the highly visible Wild Atlantic Way R565 which links the Ring of Kerry, Caherciveen, Portmagee and Valenita Island. The proposed development does not preserve views and prospects.

Access

- The site is accessed off a private narrow unsurfaced bohreen and is unsuitable for additional traffic created by the proposed development.
- The laneway is not a public road and was not taken in charge by the council.

Siting & Topography

- The site is on elevated ground and the location of the dwelling is approx. 4.0 m higher than the level of the passageway at the entrance to the site resulting in the proposed dwelling being highly visible and obtrusive on the landscape.
- The proposed floor level is 4.0 m and the ridge height are 10.7 m and are almost above the adjoining laneway.

Devaluation of Property

- The proposed dwelling will be approx. 6.0 m above the appellants property which will be overlooked. Privacy would be diminished and property devalued.

Planning History

- Permission refused under P.A. 05/3452 which is located to the west of the appeal site is relevant. The appeal site is more elevated and exposed than the adjoining site. There are no other dwellings located on the southern side of the boheen and if permitted, this development would give rise to precedent.

Landownership

- It is stated in the application form that the land is in the ownership of the applicant. It is understood that the applicant's father is the owner of the lands.

7.2. Applicant Response

- 7.2.1. A response to the third party appeal was received from the applicant Joseph O'Sullivan which can be summarised as follows:

Compliance with Development Plan Policy

- The applicant is a full-time and year-round resident.
- The proposed development is a family residence and not for re-sale or investment.
- The applicant is a native of the area and farms the lands on which the proposed dwelling will be built.
- The family farm is located in Ohermong. The subject lands where the appeal site is taken are used for sheep grazing.
- Size of landholding – The data from the National Farm Survey and the Census of Agriculture (2020) indicates that farm holdings in south Kerry are generally small in scale and part-time farmed and medium farm size, and economic output units are appropriate indicators in assessing farming locally.
- Supporting documentation provided confirming the applicant is a registered farmer with DAFM.

Planning History

- Applicant sought to address issues raised by the appellant in relation to P.A. Ref. 24/60494 by relocating the proposed dwelling further to the west so that it

is not directly behind the appellant's dwelling, and by providing proposals for landscaping to minimise view to the appellant's house.

- The site entrance was relocated further to the west so that there would be no issue with lights shining on the appellant's property.

Landownership

- The applicant's father Michael O'Sullivan is the owner of the lands on the southern side of the laneway down to the proposed site and is part owner of the laneway. Other lands are identified to the north of the R565 (landholding maps and folio numbers are provided with application details which clarify that the applicant's father Michael Joseph O' Sullivan and Kathleen O'Sullivan are the landowners).
- The existing laneway is used by other residents to the east of the appeal site and by the appellant. The appellant and other residents to the west have made their own access onto the Portmagee / Cahersiveen road. The construction of these accesses obviates the aforementioned households requirement to use the existing laneway.

Siting / Topography

- The appeal site is less than 2.0 m higher than the entrance.
- Due to the high ground to the south of the site, the dwelling will not interfere with the skyline from either the laneway or the R565 or any other road or location.
- There is substantial forestry plantation to the south of the site (approx. 250).
- The closest house due east of the site is at a higher elevation of 35 m.
- The appeal site is not located directly opposite the appellant's entrance. The appellant's existing trees would inhibit views of the proposed dwelling, therefore no overlooking occurs.

Visual Impact

- The appeal site is not located in a visually sensitive area (Map L, Vol. 4, Kerry County Development Plan 2022-2028).

- The views from the nearest road R565 are in the direction of Portmagee Channel and Valentia Island to the north, not in the direction of the site (to the south).

Access

- The applicant's father has agricultural sheds for sheep for lambing season which are located in Oghermong close to the family home.
- Oghermong is on the N70 'Ring of Kerry' national secondary route. The proposed site is a preferable location for the dwelling having regard to national policy for national routes.

7.3. Planning Authority Response

None.

7.4. Observations

None.

8.0 Assessment

Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be as follows:

- Compliance with Rural Housing Strategy
- Siting & Impact on Visual Amenities
- Impact on Residential Amenities
- Access
- Landownership
- Wastewater Disposal – New Issue

8.1. Compliance with Rural Housing Strategy

- 8.1.1. The appellant contends that the applicant has not demonstrated a local housing need in accordance with development plan policies. It is submitted that the applicant lives abroad and that the proposed dwelling would be used as a holiday home.
- 8.1.2. The appeal site is located in a '*Rural Area Under Urban Influence*', as defined in the development plan. The key challenge for such 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 and Objective KCDP 5-15 of the development plan applies to these areas.
- 8.1.3. In order to comply with this objective, applicants must demonstrate that the proposed development constitutes an exceptional rural generated housing need based on their social 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.
- 8.1.4. Having regard to the provisions of Objective KCDP 5-15, categories of housing need which I consider to be most relevant to the applicant are as follows:
- 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.*
- 8.1.5. Based on the folio details submitted it is noted that the landholding comprises of two parcels and the appeal site is being taken off the family landholding. The other parcel of the landholding is located approx. 300 m to the north, on the northern side of the

R565. In the application details, it is noted that the applicant is working abroad and will take over the running of the family farm upon his return. The applicant was raised in the area and a supplementary document is provided indicating that he attended the local national school (Aghatubrid N.S). The family home is located approx. 6.2 km to the northeast of the appeal site (as the crow flies) in Oghermong. The applicant has therefore spent a substantial amount of time (i.e. over seven years) living in the local area. I note the details submitted in relation to the applicants farming background, and the landholding information in relation to the family farm also. I further note that a number of planning applications for dwellings were made by other family members on the landholding to the north of R565.

- 8.1.6. On the basis of the information submitted in support of the application and the appeal, I am satisfied that the applicant meets the criteria set out in Objective KCDP 5-15 (a), (b) and (c) in particular being son of the landowners and taking over the family farm and who has demonstrated his intrinsic links with the local area. On that basis, I consider that the applicant complies with Objective KCDP 5-15 of the development plan.
- 8.1.7. In regard to the use of the proposed dwelling as a holiday home, the planning authority had included in the final grant 2 conditions relating to the occupation of the proposed dwelling. In this regard condition no. 3 refers to an occupancy condition requiring the first occupation of the proposed dwelling to be occupied by the applicant as a permanent place of residence for a period of 7 years. Also, condition 4 restricts the use of the proposed dwelling as a primary permanent all year round private residence. I note that the provisions of objective KCDP 5-20 specifically refers to a 'first home for permanent residence'. In this regard should the Board decide to grant permission, I recommend the inclusion of similar occupancy conditions to control the future occupancy of the proposed dwelling which would be in accordance with Objective KCDP 5-20 of the development plan.

8.2. Siting & Impact on Visual Amenities

- 8.2.1. There is an existing stone ruin structure at the western side of the appeal site with a holding pin / cattle crush to the rear. It is proposed to locate the dwelling to the rear of this old ruin. No proposal are outlined in regard to the existing ruin.

- 8.2.2. The proposed dwelling will be setback from the adjoining laneway by approx. 35 m. approx. 7.5 from the western boundary of the site.
- 8.2.3. The ground levels of where it is proposed to locate the dwelling are higher relative to the adjoining laneway to the north. The PA requested the applicant to submit cross-sections to show any proposals to cut or fill the existing ground levels. The revised proposals received 19th December 2024 on DWG DS 001 'Fill and Cut – Proposed Site Section' show the extent of fill proposals to raise ground levels to the north of the dwelling and a reduction to the ground level at the rear of the site. In this regard, it is noted that the ground level at the laneway is 16.350 m and the levels rise from the laneway by c. 3.0 m (approx. 19.245 m) at elevation of 20 – 30 m OD (based on Discovery maps). The proposed dwelling will have a Finish Floor Level (FFL) of approx. 700 mm above the existing ground level and the overall ridge height of the dwelling will be 7.0 m. The PA accepted the proposals noting that it would not result in significant scarring of the landscape.
- 8.2.4. A domestic garage is proposed to be located to the rear of the dwelling and will have a max ridge height of 7.13 m.
- 8.2.5. The western boundary is defined by a sod ditch and a post and wire fence with yellow furze and hedgerow interspersed in parts. The remainder of the site boundaries are undefined and devoid of natural screening and the site is more open as a result.
- 8.2.6. The site is located outside of the most visually sensitive landscapes in the county and in an area which would be considered to have capacity to absorb some development. However there is a requirement that development proposals are adequately integrated into the surrounding environs.
- 8.2.7. The house is of dormer design with two double fronted projections and will have a gross floor area of 363.10 m². The external finishes comprise of blue / black slate for the roof and a plaster finish. The boundaries of the site will be landscaped with trees and fuchsia hedging.
- 8.2.8. In terms of the overall scale of the dwelling and height which is 7.0 m, and having regard to the levels on site and to the sites location in an elevated and open landscape setting, it is considered that the proposed dwelling would be highly visible from the R565 to the north, notwithstanding that the protected view from the scenic route is generally to the north. I note the landscaping proposals provided to address visual

impact, however I do not consider that this will sufficiently mitigate the impacts arising. Therefore I consider that the proposed dwelling would appear incongruous on the landscape and would unduly impact on surrounding visual amenities and I recommend refusal on this basis.

8.3. Impact on Residential Amenities

- 8.3.1. The appellant submits that the proposed development would be located approx. 6.0 above his property and would give rise to direct overlooking and diminish his residential amenities.
- 8.3.2. The appellant's property is located on the opposite side of the laneway to the north. The appeal site is to the southwest of the front boundary of the existing dwelling, and approx. 35 m back from the front boundary. Given its remove from the front boundary of the adjoining dwelling to the north, this would mitigate potential for overlooking. Therefore, I am satisfied that the proposed development will not give rise to undue impacts on existing residential amenities.

8.4. Access

- 8.4.1. Access to the site is via an existing private laneway / borheen. The appellant raised concerns about the substandard nature of the laneway to facilitate additional traffic.
- 8.4.2. The width of the lane measures approx. 2.3 m and has a poor hardcore surface. The PA had raised concerns that the lane was inadequate to accommodate additional traffic generated by the proposed development and sought the applicant to address this issue. In response, a lay-by was proposed to the east of the site on the southern side of the lane. This is noted to be outside of the application site boundaries but on the family landholding. I note that the PA was satisfied that this proposal would address issues in regard to the obstruction of other road users along the lightly trafficked lane.
- 8.4.3. Having driven down the lane, I noted that it is restricted in width, the surface is poor, and two cars would not be able to pass each other easily. Currently the lane serves 3 no. existing dwellings and 2 of which appear to have direct access onto the adjoining R565 to the north. It also serves agricultural traffic. Given the number of dwellings on the lane, and the likely low levels of traffic, I am satisfied that the carrying capacity can accommodate the proposed development and that sightlines from the proposed

entrance are sufficient for such a road. Accordingly, I consider the proposed access acceptable at this location and the level of traffic generated by the proposed development is not so significant to warrant as grounds for refusal in this case.

- 8.4.4. I note the submission from Transport Infrastructure Ireland (TII) in reference to proposals for developments that would impact the national road network and which is a strategic objective of the TII to protect. In this regard, I note that the appeal site proposes a new entrance onto a private lane. This lane accesses a public minor road to the east which then adjoins with the R565 regional road to the north. The nearest national secondary route to the appeal site is the N70 which is located approx. 6.5 km to the east. I am satisfied that the proposed development will not directly impact any adjoining national primary or secondary route in the vicinity and would not be at variance with TII national policies.

8.5. Landownership

- 8.5.1. In the grounds of appeal, it is raised that the applicant Joseph O'Sullivan is not the owner of the land relating to the planning application, and that it is his father Michael O'Sullivan who owns the lands in question.
- 8.5.2. I note that the applicant indicated on the planning application form that he is the owner of the appeal site. This was accepted by the PA, notwithstanding that the matter of landownership was raised in the third party submission to the planning application.
- 8.5.3. In the response to the third party grounds of appeal, it is stated that the applicant's father Michael Joseph O'Sullivan is the owner of the lands to the south of the existing lane, down to the proposed site, and that he also part owns the adjoining lane which bounds the appeal site and adjoining lands to the north. A folio reference is provided for two parcels of land, one of which contains the appeal site and confirms that Michael Joseph O'Sullivan and Kathleen O'Sullivan are the owners of the lands. I note that the other parcel is located on the northern side of the R565, as indicated on the maps provided and referenced in Section 4.0 above.
- 8.5.4. I note the provisions of Article 22(2)(g) of the Planning and Development Regulations 2001 (as amended) which states that where the applicant for permission is not the legal owner of the land or structure concerned, the application shall be accompanied by the written consent of the owner to make the application. In reviewing the planning

application details, it appears that no such letter of consent was provided by the relevant landowners in this case.

- 8.5.5. The Development Management Guidelines 2007 addresses the matter of questions of title and outlines that in circumstances where it is clear from the response that the applicant does not have sufficient legal interest, that permission should be refused on that basis.
- 8.5.6. Having regard to the foregoing, I do not consider the nature of the planning application to be frivolous or vexatious but rather, a possible oversight on the applicant's behalf and I note that the PA did not raise this as an issue at FI stage. I further note that there are no party disputes over ownership. On that basis I am satisfied that there is sufficient information to demonstrate that the application site is within a family landholding and in noting the provisions of the Development Management Guidelines for Planning Authorities (2007) I do not recommend that permission should be refused on this basis. As highlighted by the Guidelines Section 34(13) of the Planning and Development Act 2000 (as amended) states '*a person shall not be entitled solely by reason of a permission under this section to carry out any development*'. As such, should the Board be minded to grant permission for the development, the onus is on the applicant to ensure sufficient legal interest exists to implement the permission.

8.6. Wastewater Disposal – New Issue

- 8.6.1. It is proposed to dispose of foul effluent arising from the proposed dwelling by a tertiary treatment system and infiltration / tertiary treatment area and to discharge to ground water.
- 8.6.2. I note that the PA did not raise any concerns in relation to this issue and the matter was not raised in the grounds of appeal. However pursuant to site inspection and after a relatively dry period of weather, I observed that ground conditions on site were very wet under foot, ponding was evident in some parts of the site, and the drainage ditch along the western boundary of the site and the open road side drain had flowing water. There was profuse rushes evident throughout the subject site and the wider landholding area. In this regard, significant concern arises regarding the suitability of the site for the safe and adequate disposal of effluent.

- 8.6.3. Under the EPA Code of Practice 2021, the trial hole in locally important or poor aquifers, should be excavated to a depth of at least 2.1 m where possible. In this case, the appeal site overlies a 'Poor Aquifer' which has a 'Moderate' vulnerability classification, and the Ground Water Protection Response is (GWPR) is R1. The soil type of the area is 'AminPD – Mineral poorly drained' and the bedrock of the area is 'Valentia Slate Formation'.
- 8.6.4. The trail hole log indicates that it was dug on 02nd June 2024 to a depth of 2.0 m. The water table was encountered at 1.9 m, the dept of water ingress was recorded at 100mm and clay was recorded from 300mm to 600mm. The results of the subsurface percolation value = 14.583 (min/25 mm). The proposed effluent treatment system would satisfy the minimum separation distances set out in Table 6.2 of the EPA Code of Practice 2021. In table E1 of the EPA Code of Practice 2021, the GWPR of R1 would suggest that the site would be suitable subject to 'normal good practice'.
- 8.6.5. In reviewing the details, the on-site assessment did not note the evidence of profuse rushes throughout the site which would be an indicator of poor drainage. In addition it states that there are no watercourses or streams within 250 m of the site however, I note that there is watercourse located approx. 205 m to the west of the appeal site which discharges into the sea approx. 400 m to the north. Mottling was not recorded in the trail hole log in this case.
- 8.6.6. Having regard to my site inspection and based on the details presented on the file including the photos submitted, the following is noted:
- The images submitted of the open trial hole show mottled soils with clear evidence of mottling within the trail hole at 250-300 mm BGL which would be representative of a seasonal high water table.
 - The water ingress was recorded at 100mm (water coming into the trail hole at 100 mm BWL) which would also be representative of an elevated water table or saturated layers.
 - The excavated soil shown in the photos is also mottled grey in colour. This would further indicate seasonal saturation or impeded drainage.
 - It was observed that the water level in the open roadside drain to the north along the roadside boundary of the site was at a depth of c.500mm, relative to

the ground levels on site. This would be indicative of the water table level and would appear to correlate with the mottling evident in the soil profile shown in the photos.

- It is noted that there are inconsistencies in the ground levels as indicated on DWG 22/03 'Site Layout Plan' and DWG DS 001 'Fill and Cut – Proposed Site Section (19th December 2024)'.

8.6.7. I note that the Site Assessment Unit of Kerry County Council accepted the conclusions and recommendations of the site assessor and did not raise objection to the development subject to conditions, however it is not stated that a site inspection was carried out of the site. Notwithstanding, and having regard to the foregoing and to my site inspection, I am not satisfied that the Site Characterisation Assessment reflects the grounds conditions of the site. The water levels observed in the drainage ditch along the roadside boundary relative to the ground level of where it is proposed to locate the gravel distribution area on the site, would appear to correlate with the mottling evident in the soil profile shown in the photos, and therefore raises concerns about the suitability of the site to discharge to ground water. It would also appear that the soils are saturated to 250-300mm BGL which would be indicative of a high water table. It is also noted that the invert level of the tertiary filter is shown at the point of infiltration (ground level in this instance) allowing 615mm plus 300mm gravel distribution for the depth of unsaturated material, c.915mm. Given the fact that the trial hole log reports water ingress at 100mm BGL, this would suggest that the polishing filter and gravel distribution layer may be saturated at times throughout the year meaning that the required vertical separation of 900mm may not be achievable in this case.

8.6.8. In noting the R1 groundwater protection response for on-site treatment systems which states '*acceptable subject to normal good practice (i.e. system selection, construction, operation and maintenance in accordance with EPA CoP)*', based on the information submitted I am not satisfied that it has been adequately demonstrated that the site can safely and adequately treat and dispose effluent arising from the proposed development, in a manner which would not pose a risk to groundwater and would be prejudicial to public health. The proposed development would be contrary to Objective KCDP 13-19 of the development plan and I recommend refusal on this basis.

9.0 AA Screening

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 the European Site Valencia Harbour/Portmagee Channel SAC 002262 in view of the conservation objectives of this site and is therefore excluded from further consideration. Appropriate Assessment is not required.

This determination is based on:

- The small scale and nature of the development,
- Location-distance from nearest European Sites and lack of connections.
- Taking into account the AA Screening determination by the PA.

10.0 Recommendation

I recommend that permission is refused for the proposed development.

11.0 Reasons and Considerations

1. Notwithstanding the proposal to use a tertiary treatment system and infiltration area and having regard to ground conditions within the site, the Board is not satisfied that it has been adequately demonstrated that effluent arising from the subject development can be satisfactorily treated and disposed of on the site in accordance with the EPA's Code of Practice for Domestic Waste Water Treatment Systems (PE <10) (EPA 2021). Therefore, the proposed development would be at variance with Objective KCDP 13-19 of the Kerry County Development Plan 2022-2028, would be prejudicial to public health and would therefore, be contrary to the proper planning and sustainable development of the area.
2. Notwithstanding the location of the subject site which is approx. 200 m to the south of an area designated as a 'Visually Sensitive Area', and having regard to the elevated and open nature of the site relative to the nature of the adjoining

landscape, and to the scale and height of the proposed dwelling, it is considered that the proposed development would appear incongruous on the landscape, would seriously injure the visual amenities of the area and would be contrary to the proper planning and sustainable development of the area.

Note to the Board: A New Issue is raised in Section 8.6 of this report.

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.

Clare Clancy
Planning Inspector

26th May 2025

Form 1 – EIA Pre-Screening

Case Reference	ABP Ref. 321894-25
Proposed Development Summary	construct a dwelling, domestic garage, mechanical treatment plant and percolation area, and associated site works.
Development Address	Knockeenawaddra, Portmagee, Co. Kerry
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2. <input type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed	

<p>type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	
<p><input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	<p>Class 10(b) of Part 2, Infrastructure projects, construction of more than 500 dwelling units.</p>

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes <input type="checkbox"/>	
No <input checked="" type="checkbox"/>	

Inspector: _____ Date: _____

Form 2 – EIA Preliminary Examination

Case Reference	ABP Ref. 321894-25
Proposed Development Summary	construct a dwelling, domestic garage, mechanical treatment plant and percolation area, and associated site works.
Development Address	Knockeenawaddra, Portmagee, Co. Kerry
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
Characteristics of proposed development (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).	Development comprises a single dwelling in a rural area to serviced by a proprietary wastewater treatment system on a site with a stated area of 0.270 ha. It is considered that there are no environmental implications with regard to the size, design, cumulation with existing/proposed development, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health.
Location of development (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).	Briefly comment on the location of the development, having regard to the criteria listed The site is located in a rural area where there are a number of existing dwellings located in the immediate vicinity. The scale of the single dwelling proposed is not considered exceptional in the context of surrounding development.
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration,	Having regard to the limited nature of the proposed development and the nature of the works constituting a single dwelling unit, there is not likely to be significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation.

cumulative effects and opportunities for mitigation).	
Conclusion	
Likelihood of Significant Effects	Conclusion in respect of EIA
There is no real likelihood of significant effects on the environment.	EIA – Not required.
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	
There is a real likelihood of significant effects on the environment.	

Inspector: _____ Date: _____

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)

Screening for Appropriate Assessment				
Brief description of project		Construction of a house and garage served by a mechanical treatment tank and percolation area and all associated site works		
Brief description of development site characteristics and potential impact mechanisms		<p>The appeal site has a stated area of 0.270 ha, the proposed dwelling 363.10 m² and will be served by a tertiary treatment system and infiltration / treatment area and to discharge to ground water.</p> <p>Site conditions have shown to be problematic in terms of high water table and poor permeability in the soils.</p> <p>The appeal site is not located within a European designated site however the closest sites are the following:</p> <ul style="list-style-type: none">• SAC: 002262 - Valencia Harbour/Portmagee Channel SAC – approx. 515 m to the north.• SPA: 004154 - Iveragh Peninsula SPA – approx. 4.9 km to the west.• SAC: 000335 - Ballinskelligs Bay and Inny Estuary SAC –		
Screening report		No Kerry County Council screened out the need for AA.		
Natura Impact Statement		No		
Relevant submissions		No ecological issues were raised in the application details or in the third party appeal.		
Step 2. Identification of relevant European sites using the Source-pathway-receptor model				
European Site (code)	Qualifying interests ¹ Link to conservation objectives (NPWS, date)	Distance from proposed development (km)	Ecological connections ²	Consider further in screening ³ Y/N
SAC: 002262 - Valencia Harbour/Portmagee Channel	The qualifying interests (QI) of the SAC include mudflats and sandflats not covered by seawater at low tide (Code: 1140), large shallow inlets and bays	Approx. 515 metres to the north of the appeal site	Possible direct and indirect connections via discharge to groundwater	Yes

	<p>(Code: 1160), reefs (Code: 1170). (Annex 1 habitats).</p> <p>The conservation objectives for the above are in summary to conserve the favourable condition of all.</p>			
Iveragh Peninsula SPA Site Code 004154	<p>The qualifying interests (QI) of the SPA include</p> <ul style="list-style-type: none"> • Fulmar (<i>Fulmarus glacialis</i>) [A009] • Peregrine (<i>Falco peregrinus</i>) [A103] • Kittiwake (<i>Rissa tridactyla</i>) [A188] • Guillemot (<i>Uria aalge</i>) [A199] • Chough (<i>Pyrrhocorax pyrrhocorax</i>) [A346] 	Approx. 4.9 km to the west of the appeal site	No direct connection or indirect connection	No
SAC: 000335 - Ballinskelligs Bay and Inny Estuary SAC	<p>The qualifying interests (QI) of the SAC include</p> <ul style="list-style-type: none"> • Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) [1330] • Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] • <i>Petalophyllum ralfsii</i> (Petalwort) [1395]. <p>The conservation objectives for the</p>	Approx. 7.8 km to the south of appeal site.	No direct connection	No

	<p>above are in summary</p> <ul style="list-style-type: none"> • to maintain the favourable conservation condition of Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) in Ballinskelligs Bay and Inny Estuary SAC • To maintain the favourable conservation condition of Mediterranean salt meadows (<i>Juncetalia maritimi</i>) in Ballinskelligs Bay and Inny Estuary SAC • To restore the favourable conservation condition of Petalwort in Ballinskelligs Bay and Inny Estuary SAC, 			
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Step 3. Describe the likely effects of the project (if any, alone or in combination) on European Sites

Site name Qualifying interests		Possibility of significant effects (alone) in view of the conservation objectives of the site*	
Site	Impacts	Effects	
<p>SAC: 002262 - Valencia Harbour/Portmagee Channel</p> <p>Qualifying Interests</p> <ul style="list-style-type: none"> • Mudflats and sandflats not covered by seawater at low tide [1140] 	<p>It is noted that there is a watercourse located approx. 200 m to the west of the appeal site which flows north to the sea (approx. 400 m) and into the SAC. This provides a pathway to the SAC. There is an open roadside drain which runoff from the site likely discharges to. This would likely include groundwater having regard to the</p>	<p>Negative affect on quality/function which would undermine the conservation objectives related to water quality</p> <p>Identified affects would relate to water pollution via a hydrological connection between the appeal site and the SAC.</p>	

<ul style="list-style-type: none"> • Large shallow inlets and bays [1160] • Reefs [1170] 	<p>dept of the open drain relative to the adjoining lane to the north, and the ground levels of the site to the south.</p> <p>There is also a drainage ditch on the western boundary of the site which likely discharges to the same water course.</p>	<p>Construction Phase Temporary effects during ground clearance works and construction may include surface water run-off from the site that contains silt, sediment and/or other pollutants (released hydrocarbons) into the open roadside drain, thereby impacting on water quality downstream in the SAC site. It is not envisaged that direct habitat loss within the SAC would occur.</p> <p>The necessary measures to be employed at construction stage would be standard practices and would be required in order to protect local receiving waters, irrespective of any potential hydrological connections to the SAC site.</p> <p>Operational Phase Effects may include surface water run-off from the site including discharges to groundwater arising from the tertiary treatment system proposed to serve the dwelling thereby potentially impacting water quality downstream of the this SAC. Subject to the site being suitable to safely and adequately dispose of foul effluent arising from the proposed dwelling and the installation of the on-site wastewater treatment system in accordance with the EPA Code of Practice for Domestic Waste Water Treatment Systems (PE <10) (EPA 2021), this would be</p>
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		likely to safeguard water pollutants impacting water quality downstream in the European Site (Valentia Harbour/Portmagee Channell SAC)
	Likelihood of significant effects from proposed development (alone): Unlikely	
	If No, is there likelihood of significant effects occurring in combination with other plans or projects? Unlikely	
	Possibility of significant effects (alone) in view of the conservation objectives of the site* Unlikely	
Step 4 Conclude if the proposed development could result in likely significant effects on a European site		
Screening Determination I conclude that the proposed development (alone) would not result in likely significant effects on European Site SAC: 002262 - Valencia Harbour/Portmagee Channel. The proposed development would have no likely significant effect in combination with other plans and projects on any European site(s). No further assessment is required for the project. No mitigation measures are required to come to these conclusions.		