



An  
Coimisiún  
Pleanála

## Inspector's Report ACP-323480-25

<b>Development</b>	Construction of one bedroom wheelchair accessible building and associated site works
<b>Location</b>	Killahane, Furies, County Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	25/150
<b>Applicant</b>	Greenfield Management Company
<b>Type of Application</b>	Planning Permission
<b>Planning Authority Decision</b>	Refuse to grant
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Greenfield Management Company
<b>Observers</b>	<ol style="list-style-type: none"><li>1. Dominik Przyborski</li><li>2. Claire Whieldon &amp; Eh Htoo Hehreh</li><li>3. Breda Casey</li><li>4. Sarah &amp; Kevin O'Farrell</li><li>5. Leona Breen and Liz Breen</li><li>6. Tina Broderick</li></ol>
<b>Date of Site Inspection</b>	24 <sup>th</sup> November 2025
<b>Inspector</b>	Gary Farrelly

## 1.0 Site Location and Description

The subject site has a stated area of 0.19 hectares and is located within the village of Furies, County Kerry within an existing housing estate known as 'Greenfields'. The site comprises of a green space area at the junction of The Court/The Crescent. The estate comprises of a variety of two-storey detached, terraced and semi-detached dwellings with a range of hipped, dormer and gable roof forms. A number of green space areas are located throughout the estate.

## 2.0 Proposed Development

Permission is sought to construct a one-bedroom wheelchair accessible modular building with an accessible parking area. The development description does not specify whether the unit is for residential use. The floor area of the structure will be 27sqm and the internal layout comprises of a w.c. and a bedroom. The external finish of the unit is specified as green in colour, however, no details of the type of material is specified. The height of the proposed structure is 3.46 metres. It is proposed to connect to the public wastewater mains and group water scheme. Surface water will be treated via the public drain.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority (PA) decided to refuse to grant permission by Order dated the 28<sup>th</sup> day of July 2025 for the following four reasons:

- 1. The proposed development would comprise the construction of a residential modular unit on a section of useable public amenity open space, which was permitted as part of a residential scheme previously granted permission under Pl. reg. 05/1018. The proposed development would result in a loss of amenity open space which would seriously injure the residential amenities of properties within the overall housing scheme and would set an undesirable precedent for similar such development in urban housing estates. The proposed development*

*would therefore be contrary to the proper planning and sustainable development of the area.*

- 2. It is considered that the proposed development by virtue of its form and design would be out of character and would not integrate with the adjoining established development in the surrounding housing development. It would therefore be seriously injurious to the residential amenities and impact the value of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
- 3. Based on the information submitted and the extent of lands taken in charge by Kerry County Council, the planning department is not satisfied that the applicant has sufficient legal interest in the site to make an application. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*
- 4. Based on the lack of clarification of the use of the proposed development and on the plan design submitted, it is considered that the proposed development would set an unwelcome precedent for substandard development and would therefore be contrary to the proper planning and sustainable development of the area.*

### **3.2. Planning Authority Reports**

#### **Planning Report**

The executive planner (EP) report on file assessed the proposed development in terms of its principle, visual impact and impact on residential amenity. It noted that the development description was unclear with no mention of residential use and that there was no evidence submitted by the applicant confirming ownership of the site as the site was taken in charge by the local authority. The EP recommended a refusal of the application for four reasons which was endorsed by the Senior Executive Planner.

### **3.3. Prescribed Bodies**

None

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

There were a significant number of third party submissions from residents within the estate which raised concerns in relation to the loss of an open space recreational amenity area, the validity of the application in terms of the erection of the site notice, the traffic associated with the development, the design not being in keeping with the established layout and design of the estate and it was questioned whether the applicant had the legal right to develop the site as the space had been taken in charge by the council.

### **4.0 Relevant Planning History**

PA register reference 05/1018

Permission was granted in October 2005 for the construction of a residential estate and mixed use development. The residential element comprised of 10 no. 5-bed detached houses, 26 no. 3-bed semi-detached houses and 11 no. 3-bed terraced houses. The subject site was designated as green space area no. 3 within the submitted plans (drawing no. 237/04).

### **5.0 Policy Context**

#### **5.1. Kerry County Development Plan 2022-2028**

Volume 6, Appendix 1 Development Management Standards and Guidelines

Section 1.5 Residential Development

- Public open space should be provided at a minimum rate of 15% of total site area. Incidental pieces of unusable land shall not be considered to fulfil or partially fulfil the 15% requirement; for example, narrow tracts of open space, which are difficult to manage, will not be acceptable. (*Section 1.5.4.4*)
- The size of a dwelling is a key determinant of its liveability and its adaptability to new household requirements and needs and therefore fulfilling 'lifecycle' needs. Minimum Requirements for Apartment Floor Areas are set out per the Design Standards for New Apartments, Guidelines for Planning Authorities (2020). (*Section 1.5.5.1*)

- The sub-division of an existing house curtilage and/or an appropriately zoned brownfield site, to provide an additional dwelling(s) in existing built-up areas will be considered in line with size, design, layout, relationship with existing dwelling and adjoining properties; Impact on the amenities of adjacent properties and Development Plan standards for existing and proposed dwellings. (*Section 1.5.6.3*)

#### Volume 6, Appendix 2 Land-use Zoning

‘R2 Existing Residential’ zoning objective: provide for residential development and protect and improve residential amenity.

### **5.2. Killarney Municipal District Local Area Plan 2018-2024**

The subject site is zoned ‘R2.6 Existing Residential’ within the Faries Zoning Map.

### **5.3. National Guidelines**

- Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities (2024) (Department of Housing, Local Government and Heritage)
- Development Management, Guidelines for Planning Authorities (2007)  
*Section 5.13 – Issues relating to title of land*

### **5.4. Natural Heritage Designations**

The site is not located within any designated natural heritage site. The nearest designated site is Castlemaine Harbour Special Area of Conservation (SAC) (Site Code 000343) which is located approximately 4.5km south of the subject site, and Slieve Mish Mountains SAC (Site Code 002185) which is located approximately 6km north of the subject site. Castlemaine Harbour Special Protection Area (SPA) (Site Code 004029) is located approximately 10km west of the site. Additionally, Anna More Bog Natural Heritage Area (NHA) (Site Code 000333) is located approximately 8km east of the site.

## **5.5. Environmental Impact Assessment (EIA) Screening**

The proposed development has been subject to preliminary examination for environmental impact assessment (I refer the Commission to Appendix 1 regarding this preliminary examination). 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 Environmental Impact Assessment Report (EIAR) is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

A first party appeal was lodged to the Commission on the 25<sup>th</sup> day of August 2025. The grounds of appeal are summarised as follows:

- It is requested that permission is granted. The unit proposed has been designed and engineered specifically for the purpose of ease of accessibility for a disabled person. The availability of alternative housing within estates to meet the housing needs of older and disabled people is important in order to address the housing crisis.
- The site was never designated as an open space area and the estate already contains a substantial green area in excess of Government Guidelines which state a maximum of 15% of site area.
- The space is unsuitable as an open space as it has rear boundaries immediately adjoining on two sides and rear gardens of a number of houses directly opposite.
- The current zoning is 'existing residential' and not 'open space'.
- The design is of a very different type in order to ensure a highly engineered accessible use and the modular house type is the most effective way of achieving same. The estate is well capable of accommodating a variety of different built forms and the form of the building is attractive and elegant.

- It is refuted that the applicant does not have title to the property and proof can be made available to the Commission should it require it.
- The development is not a substandard design or development as the unit is highly engineered and an attractive solution to the needs of a disabled person.

## 6.2. Planning Authority Response

The PA did not issue a response to the grounds of appeal.

## 6.3. Observations

A total of 6 no. observations were received from residents within the estate all requesting the Commission to uphold the decision of the PA for the following reasons:

- The area is used regularly by residents and children as a recreational area and would be a detrimental loss for residents of the estate. A dangerous precedent would be set if permission was granted on the basis of housing need.
- The area was designated as a green space area under application 05/1018.
- The estate consists of two-storey family dwellings of consistent form and design and a single storey modular unit does not integrate with existing built form. This will impact on residential amenity and potentially affect property values. Accessible housing can still be provided that respects established architectural character.
- The development will contribute to increased traffic, congestion and parking issues within the area. Visibility will be obstructed leading to a traffic safety hazard.
- Legal entitlement was not provided by the applicant and at appeal stage no such proof was submitted. The council was correct on refusing permission on legal interest grounds.
- The use of the proposed development is unclear. Insufficient details have been provided regarding the long term use, management and tenure of the unit. The proposed building is substandard.
- The site notice was erected 26 days after the specified date of erection.

## **7.0 Assessment**

7.1. 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 and national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of the Development
- Design and Layout
- Legal Interest

### **Principle of the Development**

7.2. The Commission should note that the subject site is an area of green open space within the existing housing estate of 'Greenfields'. I note that the PA considered that the proposed development would result in the loss of amenity space that would be seriously injurious to the residential amenity of the estate. I note the applicant has stated in response that the area is not zoned for such use, was never designated for such use and that there is substantial provision within the estate above the maximum 15% rate which is well overlooked in contrast to the subject site which has rear boundaries adjoining on two sides. I also note the concerns of the observers including the impact of the development on their residential amenity.

7.3. Firstly, it should be noted that the description of the development does not specify the intended use of the building. I note that this lack of clarification formed part of the PA's reasons for refusal. The applicant has stated in the grounds of appeal that the proposal is to meet the particular housing needs of disabled and elderly people. If the Commission is minded to grant permission I consider that it would be appropriate to attach a condition that restricts the use of the building for long term residential use only.

7.4. The subject site is zoned 'R2.6 Existing Residential' within the Fieries land use zoning map under the Killarney Local Area Plan 2018-2024. The Kerry County Development Plan 2022-2028 (Volume 6, Appendix 2) outlines that the objective of this zoning is to provide for residential development and to protect and improve residential amenity.



- 7.5. Whilst the zoning of the site does allow for residential development this is subject to the protection and improvement of existing residential amenity. I note that the existing housing estate was granted permission under planning register reference 05/1018. I have had regard to the plans and particulars of this permitted development and it is clear that the subject site was designated as an area of green space, as illustrated on permitted drawing number 237/04. Therefore, I do not agree with the applicant's statement that the area in question was never designated for such use.
- 7.6. With regards to the quantity of existing open space in the estate, I note that Section 1.5.4.4 (Public Open Space) of Volume 6, Appendix 1 of the CDP, specifies a minimum (*my emphasis*) rate of 15% of the total site area. Whilst I acknowledge that policy and objective 5.1 (Public Open Space) of the 2024 Compact Settlement Guidelines specifies a requirement of not more than a minimum of 15% net site area for public open space, I note that this is in relation to new residential developments. Having reviewed the parent permission 05/1018 (drawing no. 237/04), I note that the estate measured 2.68 hectares with the total open space provision (not including incidental open space areas GS5 and GS7) outlined as c.7197sqm (0.719 hectares), equating to circa 27% of the total site area. Therefore, I acknowledge that the existing estate is well served by adequate open space provision above the rates outlined above. Notwithstanding this, I do not consider that this is a sufficient reason to permit development within an already approved and designated open space area.
- 7.7. I note that the quality of the open space has been questioned by the applicant. However, having inspected the site and the wider estate, I do not agree with the arguments put forward by the applicant. I consider the 0.19 hectare area of green space to be well sized and represents a functionable area of open space which is adequately overlooked by a number of properties to the north. Moreover, on the date of my inspection, I observed play equipment within the site showing that the area is used by the residents. I also consider that it provides an important visual break between the buildings within the estate.
- 7.8. Therefore, having regard to the above, I consider that the loss of such usable open space would result in an unacceptable material impact on the permitted residential scheme of ref. 05/1018 and would be seriously injurious to the residential amenity of the existing residents. Accordingly, I consider that the proposed development does not comply with the 'existing residential' zoning objective of the site as it does not protect

or improve existing residential amenity. I consider that a grant of permission would set an undesirable precedent for further development and further encroachment into open space areas within the estate. Therefore, it is my recommendation to the Commission that the PA's reason for refusal should be upheld.

### **Design and Layout**

- 7.9. The PA's other primary reason for refusal was due to the substandard internal layout of the building and the form and design of the building being out of character with the established housing development. I note that the applicant states that the modular type house design is the most effective way of ensuring a highly engineered accessible use and the estate can accommodate a variety of different built forms.
- 7.10. Having inspected the estate, I note that its character is defined by two storey type dwellings with hipped, gabled and dormer roof forms and which are externally finished in part render and part timber cladding. It is not clear from the submitted drawings the proposed external materials of the 'green' modular unit, however, I consider the introduction of such a unit into this established residential estate would be out of character with the architectural form and design of the area.
- 7.11. With regards to the internal layout, the submitted application form outlines a floor area of 27sqm, which for example, I note is below the 37sqm minimum standard for a studio apartment as set out in Section 1.5.5.1 of the CDP (Volume 6, Appendix 1). I do not consider that this would provide an acceptable standard of amenity for any future occupier. Furthermore, I note the internal layout does not include for any kitchen or living area and only comprises of a bedroom and w.c. I consider that this layout, together with the 27sqm floor area, to represent a substandard design which would be seriously detrimental to the amenity of future occupants.

### **Legal Interest**

- 7.12. The Commission should note that the applicant stated on the submitted application form that it was the owner of the subject site and the submitted plans includes the site within the blue line ownership boundary. However, the PA noted that the subject lands have been taken in charge by the local authority and no documentary evidence has been provided by the applicant showing a legal interest in the subject site. The PA refused permission on the basis of the submitted information and on the extent of lands

taken in charge by the local authority. I note the applicant's ownership claims are also refuted by the observers (estate property owners).

- 7.13. The applicant has responded within the grounds of appeal that it can make proof of title available to the Commission should it require it. I consider this response to be inadequate. Whilst I acknowledge that Section 5.13 of the Development Management Guidelines states that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land, and Section 34(13) of the Planning and Development Act 2000, as amended, states that a person is not be entitled solely by reason of a permission to carry out any development, questions have been raised regarding title which the applicant has not taken the opportunity to satisfactorily address. Therefore, whilst a grant of permission would not amount to a determination of title, the Commission may consider it appropriate to uphold the PA's reason for refusal on the basis of the information submitted and submissions received.

### **Other Issues**

- 7.14. The issue of traffic safety has also been raised by the observers in terms of increased traffic and loss of visibility. I note that the PA had no concerns in this regard. Having inspected the site, I observed adequate sightlines in both directions and together with the minor level of traffic associated with a development of this nature, I have no significant traffic safety concerns in this regard.
- 7.15. In terms of procedural matters and the alleged irregularities in terms of the timing of the erection of the site notice, I note that the matter was considered acceptable by the PA. I am satisfied that this did not prevent the concerned parties from making representations.

## **8.0 Appropriate Assessment (AA) Screening**

- 8.1. I have considered the project in light of the requirements Section 177U of the Planning and Development Act 2000, as amended. The subject site is located approximately 4.5km north of Castlemaine Harbour Special Area of Conservation (SAC) (Site Code 000343), approximately 6km south of Slieve Mish Mountains SAC (Site Code 002185) and approximately 10km east of Castlemaine Harbour Special Protection Area (SPA)

(Site Code 004029). No nature conservation concerns were raised in the planning application and appeal.

8.2. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site. The reason for this conclusion is as follows:

- The small scale and nature of the development within an urban area.
- The separation distance and intervening lands from the nearest European site and lack of hydrological connection.
- Taking into account the screening determination of the PA.

8.3. I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

## **9.0 Water Framework Directive (WFD) Screening**

9.1. No water deterioration concerns were raised in the planning application or appeal. I have assessed the project and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface and ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively. The reason for this conclusion is due to the small scale and nature of the development, the treatment of waste and surface water to the public mains and the location and distance of the site to the nearest waterbody and lack of hydrological connections.

9.2. I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or

permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

## 10.0 Recommendation

It is my recommendation to the Commission that permission should be **Refused** for the reasons and considerations set out below.

## 11.0 Reasons and Considerations

1. Having regard to the planning history of the site, in particular the use of this part of the estate as open space serving the overall development as permitted by planning register reference number 05/1018, it is considered that the proposed development would result in a material reduction in the quality of open space available within the estate, would set an undesirable precedent for other similar type development and, accordingly, would seriously injure the residential amenity of existing residents by reason of loss of open space. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the pattern of development in the area, which comprises of two storey residential units with dormer, hipped and gabled roof forms, all externally finished in part render and part timber cladding, it is considered that the form and design of the proposed development would be out of character with the existing residential properties in the vicinity. The proposed development would, therefore, seriously injure the visual amenities of the area, and would be contrary to the proper planning and sustainable development of the area.
3. Having regard to the size and internal layout of the proposed building, it is considered that the proposed development would result in a substandard residential unit that would provide an unsatisfactory standard of residential amenity for future occupants of the building. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

4. On the basis of the information submitted and submissions received as part of the application and appeal, it is considered that the applicant has not demonstrated sufficient legal interest or legal consent for the development of the subject site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
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#### Declaration

*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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Gary Farrelly  
Planning Inspector

27<sup>th</sup> November 2025

## Appendix 1

### (a) Form 1: EIA Pre-Screening

<b>An Coimisiún Pleanála</b> Case Reference	ABP-323480-25			
<b>Proposed Development Summary</b>	The construction of a one-bedroom wheelchair accessible modular building (dwellinghouse)			
<b>Development Address</b>	Killahane, Furies, County 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)			Yes	X
			<del>No</del>	<del>No further action required</del>
<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>				
Yes	X	Part 2, Class 10(b)(i): Construction of more than 500 dwelling units.	Proceed to Q.3	
<del>No</del>			<del>No further action required</del>	
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>				
<del>Yes</del>				<del>EIA Mandatory EIAR required</del>
No	X			Proceed to Q.4
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>				
Yes	X	<ul style="list-style-type: none"> <li>The development is for a single dwelling unit.</li> </ul>	Preliminary examination required (Form 2)	

4. Has Schedule 7A information been submitted?		
No	X	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		<del>Screening Determination required</del>

**(b) Form 2 - EIA Preliminary Examination**

<p>The Board carries 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. This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</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 site measures 0.19 hectares. The size of the development is not exceptional in the context of the existing environment. The development is for a single 27sqm modular building. Localised construction impacts expected, topsoil removal etc.</p> <p>There is no real likelihood of significant cumulative effects with existing and permitted projects in the area.</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 subject site is not located within any designated site and is located approximately 4.5km from the nearest European site. My appropriate assessment screening above concludes that the proposed development would not likely result in a significant effect on any European Site.</p> <p>The subject site is located outside Flood Zones A and B for coastal or fluvial flooding.</p>
<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).</p>	<p>Having regard to the scale of the proposed development and limited nature of construction works associated with the development, to its location removed from any environmentally sensitive sites, to the absence of any cumulative effects with existing or permitted projects in the area, there is no potential for significant effects on the environment.</p>



Conclusion		
Likelihood of Significant Effects	Conclusion in respect of EIA	
There is no real likelihood of significant effects on the environment.	EIA is not required.	X
<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>	