



Development

Permission consequent on the grant of outline permission reference ABP-315408-22 (22/371) for four dwellings with individual vehicular entrances.

Location

Cliff Road, Ballybunion, County Kerry.

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

25/60546

Applicants

Shane Conway, David Byrne, Mary Ann McMahon and Anthony Bennett

Type of Application

Permission Consequent on Grant of Outline Permission

Planning Authority Decision

Notification to Grant

Type of Appeal

Third Party

Appellants

Mark Sullivan and Patricia O'Connor

Observer(s)

None

Date of Site Inspection

24th November 2025

Inspector

Gary Farrelly

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.189 hectares and is located within the town of Ballybunion, County Kerry. The site represents an undeveloped plot of greenfield lands situated to the east of Cliff Road, approximately 30 metres south of Cliff House Hotel. The site overlooks Ballybunion beach which is located to the west of the site.
- 1.2. The site is bounded by a private laneway to the north which serves a number of properties including a derelict structure adjoining the northeast corner of the site. A pair of semi-detached properties fronting Cliff Road are located to the north of the private laneway including a three-storey flat roofed type dwelling. The properties to the south of the site are defined by two-storey dwellings with gable roof types. There are a total of two access points to the site, one along Cliff Road and the other to the south via an existing laneway taken off Sprymount Road.

2.0 Proposed Development

- 2.1. Permission consequent on the grant of outline permission is sought for four dwellings. The proposed development is summarised as follows:

- Site Number 1: The design proposed is for a three storey flat roof type 4-bedroom dwelling with an additional below ground basement level. It will be accessed off Cliff Road and is located along the southern boundary of the site. The building will measure 9.6 metres in height from ground level and will have a total floor area of 293.6sqm. It is sited approximately 13 metres east of Cliff Road and approximately 10.2 metres from its proposed rear boundary to the east.
- Site Number 2: The design proposed is similar to site number 1 and will comprise of a three-storey flat roof type 4-bedroom dwelling with an additional below ground basement level. It will be also accessed off Cliff Road and is located between Site Number 1 and Site Number 3. The building will measure 9.7 metres in height from ground level and will have a total floor area of 287.3sqm. It is sited approximately 16 metres east of Cliff Road and approximately 5.6 metres from its proposed rear boundary to the east.

- Site Number 3: The design proposed is for a three-storey flat roof type 4-bedroom dwelling. No below ground basement level is proposed. It will also be accessed off Cliff Road and is located along the northern boundary of the site. The building will measure 9.5 metres in height from ground level and will have a total floor area of 224.8sqm. It is sited approximately 15 metres east of Cliff Road (as measured from the drawings) and approximately 8.758 west of the adjoining derelict dwelling.
- Site Number 4: The design proposed is for a single storey flat roof type 3-bedroom dwelling. This will be accessed via the laneway taken off Spraymount Road and is located along the eastern boundary of the site. The dwelling will have a floor area of 142sqm and will be 3.45 metres in height from ground level.

2.2. External finishes proposed include part selected render and part selected cladding with glazing comprising primarily the front elevations of site numbers 1-3. It is proposed to connect to the public water and wastewater mains. Surface water is to be treated via onsite soakaways which have been designed in response to onsite permeability tests (provided as part of the application documentation).

3.0 Planning Authority Decision

3.1. Decision

The planning authority (PA) decided to grant permission by Order dated the 20th day of August 2025, subject to 11 no. conditions.

3.2. Planning Authority Reports

Planning Report

The planning officer's (PO) report on file assessed the proposed development in terms of visual impact, road safety and private amenity space. The PO report noted that the area is characterised by existing structures of varying heights, scale and design exhibiting both traditional and contemporary design features fronting onto the public road. It noted that the use of modern materials will help the dwelling fronting Cliff Road to integrate into the coastal landscape. No concerns were raised regarding impact on

residential amenity. A grant of permission was recommended which was endorsed by the Senior Executive Engineer.

Other Technical Reports

- Listowel Roads Office (*report dated 11th August 2025*) – It recommended a grant of permission subject to conditions.
- Housing Estates Unit (*memo dated 4th July 2025*) – It outlined no objection to the development subject to a number of conditions.

Conditions

- Condition No. 4 stipulated that the dwelling shall be used as primary permanent all year-round private residences and shall not be used as holiday homes or second homes.
- Condition No. 5 stipulated that the dwellings shall not be used for overnight commercial guest accommodation without a prior grant of permission, notwithstanding the exempted development regulations.
- Condition No. 7 required the submission of a boundary treatment plan to include heights and finishes prior to the commencement of development.
- Condition No. 11 required the submission of a landscaping scheme prior to the commencement of development.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

There was a single third party observation received from the subject appellants which raised concerns with the proposed development in terms of the housing circumstances of the applicants, the changes in separation distances from that of the outline permission, negative impact on daylight on the adjoining building and garden, devaluation of property, overlooking, traffic safety and design and layout.

4.0 Relevant Planning History

PA ref. 22/371 / ABP ref. 315408-22 (Outline Permission)

After a third party appeal, outline permission was granted to Ashker Ltd by the Commission for the construction of 4 no. dwellings. The Commission's Order is dated the 24th day of January 2024. Twelve conditions were attached including the following:

Condition No. 2

Plans and particulars to be lodged for permission consequent on this grant of outline permission shall include:

- (a) Full design details of the proposed development, including all proposed dwellings, which shall have regard to the design and character of the built environment in the vicinity.*
- (b) A detailed landscaping plan for the entire site including details of planting and boundary treatments.*

Condition No. 4

The proposed dwellings shall be used as places of permanent residence only and shall not be used for short-term tourist accommodation.

Condition No. 5

At permission consequent stage, the proposed development shall be designed to comply with the following requirements: The proposed two-storey duplex apartment block to the rear (east) of the site shall be omitted and a single storey dwellinghouse provided in its place.

Site approximately 13 metres north – PA ref. 20/1142

The PA granted permission to alter and extend an existing two storey dwellinghouse with ridge type roof to provide a three-storey property with a new flat roof. The flat roof height from ground level was illustrated as 9.53 metres on the front elevation.

5.0 Policy Context

5.1. Kerry County Development Plan 2022-2028

Volume 1 Written Statement

Ballybunion is designated as a Regional Town with an estimated 2022 population of 1,503.

It is an objective of the Council to:

KCDP 3-5 Strengthen the social and economic structure of rural towns and villages by supporting the re-use of existing buildings and the regeneration of under-utilised buildings and lands.

Volume 6, Appendix 1 Development Management Standards

Section 1.5.2 Density

In general, the number of units to be provided on a site should be determined with reference to the Guidelines for Planning Authorities on 'Sustainable Residential Development in Urban Areas' (2009) or any update thereof.

Section 1.5.4.4 Public Open Space

In brownfield sites or infill sites, a minimum of 10% may be provided as public open space. Residential developments of 5 units or less may be exempt from the 15% open space provision on greenfield sites. The Council will determine on a case-by-case basis where it is demonstrated that the function of the space is not viable.

Section 1.5.4.7 Privacy

Privacy is an essential factor in residential layout. Privacy can be ensured by attention to the alignment of new residential buildings and their relationship to each other. Good design in housing layouts, the configuration of houses and their relationship to each other, to open spaces and roads, should aim to provide layouts with adequate private open space and screening so as to achieve freedom from observation.

Section 1.5.4.10 Minimum Separation Distance

Between directly opposing above ground floor windows (first floor), a separation distance of 22 metres should generally be observed for new, reciprocal overlooking

housing, although this will also be informed by considerations such as typography, design, and housing type and mix. Innovative dwelling types, such as houses which have their main sleeping and living areas on one side, and circulation and bathrooms on the other, may allow for a reduction in this standard. A minimum of 2.2 meters shall be provided between the side walls of detached, semi-detached and end of terrace dwellings to ensure privacy and ease of access.

Volume 6, Appendix 2 Land Use Zoning

'R1 New/proposed Residential'. The objective is to provide for new residential development. The description of the objective is for new residential areas/town extensions to ensure the provision of high quality new residential environments. Provide an appropriate mix of house sizes, types and tenures in order to meet household needs and to promote balanced communities.

5.2. Listowel Municipal District Plan 2020-2026

The subject site is zoned 'R1 New/proposed residential' which is intended primarily for housing development.

Objective No. BD-01 - Require at least 30% of new housing development to be delivered within the existing built up areas on infill and or brownfield sites in Ballybunion.

Objective No. BN-GO-02 – Ensure that all development shall have regard to the scale and setting of the town in an attractive environmentally sensitive coastal landscape.

Objective No. BN-GO-03 – Prohibit holiday homes on lands zoned for R1 Proposed Residential. Residential development on lands zoned R1 shall be restricted to development proposed for permanent places of residences only.

Objective No. BN-GO-08 – Encourage the development of a compact and sustainable town structure by ensuring that new development is contiguous with existing development and makes effective use of backland and infill sites.

Objective No. BN-GO-11 – Encourage the development of streetscapes in new residential development particularly on frontages adjoining public roads.

5.3. National Policy

- Project Ireland 2040 – National Planning Framework (revised 2025) and National Development Plan 2021-2030
- Climate Action Plan (CAP) 2025 / CAP 2024

Climate Action Plan 2025 builds upon last year's Plan by refining and updating the measures and actions required to deliver the carbon budgets and sectoral emissions ceilings and it should be read in conjunction with Climate Action Plan 2024.

- National Biodiversity Action Plan (NBAP) 2023-2030

The NBAP includes five strategic objectives aimed at addressing existing challenges and new and emerging issues associated with biodiversity loss. Section 59B(1) of the Wildlife (Amendment) Act 2000 (as amended) requires the Commission, as a public body, to have regard to the objectives and targets of the NBAP in the performance of its functions, to the extent that they may affect or relate to the functions of the Commission. The impact of development on biodiversity, including species and habitats, can be assessed at a European, National and Local level and is taken into account in our decision-making having regard to the Habitats and Birds Directives, Environmental Impact Assessment Directive, Water Framework Directive and Marine Strategy Framework Directive, and other relevant legislation, strategy and policy where applicable.

5.4. National Guidelines

- Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities (2024) (Department of Housing, Local Government and Heritage)
- Regulation of Commercial Institutional Investment in Housing, Guidelines for Planning Authorities (2023) (Department of Housing, Local Government and Heritage)

5.5. Other Guidelines

- Site Layout Planning for Daylight and Sunlight, A guide to good practice (Second Edition)

5.6. Natural Heritage Designations

The site is located outside any designated natural heritage site, however, is located approximately 60 metres east of the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165). Additionally, Cashen River Estuary proposed Natural Heritage Area (pNHA) is located approximately 650 metres south of the site.

5.7. Environmental Impact Assessment (EIA) Preliminary Examination

The development subject to this application has been subject to preliminary examination for environmental impact assessment. I refer the Commission to Appendix 1 in this regard. Having regard to the characteristics and location of the 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 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 third-party appeal was lodged to the Commission on the 12th day of September 2025 by Mark Sullivan and Patricia O'Connor. They own the lands (including a derelict property) which adjoin the northeast/east boundary of the subject site. The grounds of appeal are summarised as follows:

- It is requested that the Commission refuses permission. The planning authority did not address the issues raised in the submitted planning report and a copy is enclosed.
- The design of the houses do not have regard to the design and character of the built environment in the vicinity as required by the terms of the outline permission. The three storey buildings with flat roofs and substantial frontages with glass incorporated is not in keeping with the character of the area or the

proper planning and sustainable development of the area. It is at variance with the current development in the area which comprise of pitched roofs. They are designed for sea views which do not consider the context and overall streetscape.

- The layout of the proposed dwelling on site no. 3 has been moved closer to what was depicted within the outline application. The outline permission showed this 12.825 metres from the appellant's property, however, the house has been moved 4 metres closer and within 6.9 metres of the corner section of the appellant's property.
- There are two 4-storey houses proposed as site numbers 1 and 2 include a basement plan. The heights of the proposed buildings are up to 9.7 metres and extend to a height of over 3 metres above the appellant's property.
- There will be a negative impact on the daylighting factor associated with the window on the southern elevation of the appellant's property, which was associated with a rear conservatory, as well as on the daylighting of the rear garden. This will affect the residential amenity value of the appellant's property.
- The single storey dwelling on site number 4 has reduced heights however overshadowing of the appellant's property is still relevant. Overdevelopment of site number 4 is occurring.
- The proposed dwellings are set back further into the site and will result in overlooking of the appellant's property which will have a negative impact on the privacy and residential amenity. On site number 3, there is a first-floor bathroom window and second floor bedroom window overlooking the appellant's property. Additionally, the second-floor windows on all sites will overlook said property as well as the dwellinghouse on site number 4. The rear elevation windows on site number 4 will overlook said property and rear garden.
- The scale, bulk, mass and size of the proposed development and its prominence on the skyline will result in a devaluation of the appellant's property.
- The houses are for four different applicants who were not included in the original outline application. It is questioned how a company can be the original application as part of the outline permission but 4 people as part of the

consequent permission. Clarification should be sought on whether these four applicants already own existing houses and which house is for which applicant.

There are concerns that the houses will be used as guest accommodation and not as permanent year round residences.

- The application is for 4 no. houses with no shared amenity space.
- The applicants do not have permission to interfere with/demolish any portion of the wall on the southern side of the laneway on the northern boundary of the site which is owned by the appellants.
- The submitted contiguous elevation site section drawing does not show the rear window of the appellant's property as well as a gateway access into the subject site (photographs are provided showing same). There is a right of way to carry out repair and maintenance to the rear wall of the appellant's dwelling and window, boundary wall and hedging from the gateway access which has existed for over 50 years.
- There is no photomontage provided from the northeast elevation of the proposed houses which was a request in the pre-planning consultation process
- Adequate sightlines onto Spraymount Road can only be achieved 2.4 metres from the edge of the carriageway which requires modifications to the boundary wall and hedging which requires written consent of the legal owner of the lane. This was a requirement under the outline permission.
- The 2009 Guidelines for Planning Authorities on Sustainable Residential Development in Urban areas have not been complied with.

6.2. Applicant Response

The applicant issued a response to the grounds of appeal which was received by the Commission on the 2nd day of October 2025. The response is summarised as follows:

- It is requested that the PA's grant of permission is upheld and the appellant's grounds should be dismissed where they repeat matters already considered at outline stage.

- An overview of the planning history associated with the subject site as well as the matters raised in preplanning is provided within section 2 of the submitted response. The northeast elevation photomontage which was submitted as part of the application documentation is provided.
- The proposed development aligns directly with the objectives of the 'R1' zoning and will be for permanent residential use. The original applicant was never intended to be the occupier of the proposed dwellings and all individual plots were always going to be sold to private purchasers subject to a permanent residency condition.
- The design approach represents a modern architectural approach designed around the physical conditions of the subject site. A nearby property has recently been refurbished with a modern contemporary elevation demonstrating a clear precedent for contemporary design. The proposed scheme will integrate into the evolving character of the area.
- The modern design was also chosen to reflect present day priorities such as energy efficiency, spatial flexibility and the ability to integrate renewable technologies. The design approach is fully consistent with the outline permission which included indicative 3D photomontages, and which was deemed suitable by the planning authority and the Commission. The appellants raised objections to the design at outline stage which were dismissed and therefore the principle of the contemporary design is established.
- The proposed heights are in line to what was illustrated in the outline permission. The footprint was reviewed by the planning authority at preplanning stage.
- The applicant incorporated angled louvers and frosted glass (as illustrated in the elevation legend) to ensure no overlooking or loss of privacy for residents.
- Whilst the appellant has claimed rights to light over a small window facing onto the subject site on the boundary wall, the historical and physical evidence cast serious doubts on the lawful origin of the opening. The openings in question once formed part of a boundary wall between the appellant's property and the demolished building which once stood on the subject site. No window could

have existed in such a configuration and therefore the present window is more likely a post-demolition insertion with no planning approval.

- A prescriptive right to light requires at least 12 years of continuous, beneficial enjoyment under the Land and Conveyancing Law Reform Act 2009. The property has been derelict for many years. The opening could not receive any meaningful natural light sufficient for ordinary or beneficial use due to it being surrounded on three sides by high boundary walls.
- A solar shadow analysis is provided and confirms that the proposed development will not give rise to any material overshadowing of the appellant's property at any time of the year. There will be some effect on the winter solstice at 15:00, however, this is due to the 2 metre high boundary wall as required by the Council to safeguard amenity.
- The door for access that the appellant refers to being directly on the boundary wall facing the subject site (site number 3) is not a right presently enjoyed and any use to access the site would constitute trespass.
- The applicants do not propose to do any work to the boundary wall on the southern side of the laneway which is in a state of semi-demolished state. The remaining semi-demolished walls and rubble will be addressed up to the boundary in the interest of safety.
- Sightlines from site number 4 is not an issue as the site has been purchased by the owner of the site to the south and therefore written agreement is not a requirement. Sightlines were addressed within the outline permission which also required the omission of the duplex apartments and replacement with a single dwelling.
- Claims of property devaluation are not a material planning consideration and in any case the appellant's derelict property is contributing little to the community. In contrast the proposed development will deliver high quality permanent homes for local families.

6.3. Planning Authority Response

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

7.0 Assessment

7.1. Having examined the details of the application for permission consequent on the grant of outline permission 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:

- Zoning
- Visual Amenity
- Residential Amenity

7.2. The Commission should note that the subject permission consequent application was lodged to the planning authority (PA) on the 26th day of June 2025. The decision of the Commission to grant outline permission under appeal reference ABP-315408-22 (*herein referred to as the “outline permission”*) was by Order dated the 24th day of January 2024. Therefore, the subject application complies with Section 36(3)(a) of the Planning and Development Act 2000, as amended.

Zoning

7.3. I note that the appellants raise concern regarding the change in applicants since the granting of the outline permission as well as the existing housing circumstances of the applicants. The Commission should note that the subject site is located within the urban settlement boundary of Ballybunion on lands zoned ‘R1 New/proposed Residential’ within the Listowel Municipal District Local Area Plan 2020-2026. I note that the zoning matrix set out in the Kerry County Development Plan 2022-2028 (Volume 6, Appendix 2) states that the objective of this zoning is to provide for new residential development.

7.4. The Commission should note that there is no requirement within the CDP for any applicant to provide personal details of their housing circumstances for housing on zoned lands in an urban settlement. This is in contrast to a proposed residential development being located in a designated rural area where a rural housing need would have to be demonstrated. Therefore, I consider the housing circumstances of the prospective occupiers to be immaterial to this assessment due to the zoned urban

nature of the subject lands. Additionally, the Commission should note that I have no concerns with the change of applicants between that of the outline application and this permission consequent application and consider it a normal procedure for a multi-residential development of this nature. Moreover, there is also no requirement to condition any of the sites/plots to a certain applicant, again due to the zoned urban nature of the lands.

- 7.5. I do agree with the appellant's concerns regarding permanent occupancy of the proposed dwellings. It should be noted that this is a requirement under the land use zoning pertaining to the site as stipulated by Objective No. BN-GO-03 of the Listowel Municipal District Local Area Plan 2020-2026. This was also conditioned previously by the Commission within its grant of outline permission. However, in the interest of clarity, it is my recommendation that this condition is reattached, if the Commission is minded to grant permission.
- 7.6. Furthermore, the Commission should note that the PA also attached a condition within its decision to grant that prohibits any room within any proposed dwelling from being used for overnight paid guest accommodation notwithstanding the exempted development regulations. I note that the applicant has not challenged said condition and if the Commission is minded to grant permission I recommend that this condition is also attached.

Visual Amenity

- 7.7. The appellants consider that the design, scale, height and bulk of the proposed development fronting Cliff Road (i.e. Site Numbers 1-3) is out of character with the surrounding area and will be prominent on the skyline. I note the response from the applicant in terms of its selection of a contemporary design including the incorporation of a flat roof design, the stepped approach arrangement to the streetscape and it being fully consistent with the proposals submitted as part of the outline application.
- 7.8. I have reviewed the proposals submitted as part of the outline application and note that submitted drawing no. 402 illustrated a 'contemporary mansard roof concept only' visual showing 3 no. three storey buildings with mansard type roofs fronting Cliff Road, however, the 'schematic section through site 2 and duplex' illustrated a ridge type roof design. I also note the inspector outlined in his report that "*they would have pitched roofs with ridge heights akin to the development facing Cliff Road and their*

contemporary design, as suggested by the concept images, in keeping with the three storey extension/remodelling of St. Annes' to the north of the site". Having regard to the indicative details submitted as part of the outline application, I am satisfied that the grounds raised by the appellant in relation to visual impact should not be dismissed as they have not been decided as part of the outline permission. They is clearly illustrated by condition no. 2(a) of the outline permission.

- 7.9. With this in mind, the Commission should note that the three-storey design of site numbers 1-3 (*with additional basement level to site numbers 1-2*) will provide a maximum height of 9.7 metres from ground level. Having inspected the site, I noted that the principle of a flat roof type three storey contemporary type dwelling has already been established approximately 13 metres north of proposed site number 3 (PA ref. 20/1142). I note that this was previously referenced in the inspector's report for the outline permission as the St. Anne's property. Therefore, I consider that the principle of this design has already been accepted and incorporated into the streetscape of Cliff Road.
- 7.10. The submitted section drawing illustrates that the proposed flat roof height (ranging from 36.20 metres on site number 3 to 35.80 metres on site number 1) does not substantially exceed the existing ridge height of the neighbouring dwellings to the south of the site (36.10 metres). Additionally, whilst the height of site number 1 does exceed the neighbouring ridge height of the two storey property to the north (35.60 metres) it is well below the height of the three storey property approximately 13 metres to the north of the site (height of 37.55 metres).
- 7.11. In terms of the use of materials, I consider the incorporation of primarily glazing on the front elevation to be a complementary high quality addition to the more traditional type properties to the south of the site. I have no significant concerns with the additional use of coloured render and cladding as external finishes. I also note that the site or adjoining area are not located within a designated architectural conservation area (ACA) nor are there any protected structures or buildings within the national inventory of architectural heritage (NIAH) within proximity to the site.

Overall, it is my view that the proposed design, height and form of the properties fronting Cliff Road will not result in a detrimental visual impact on the streetscape of Cliff Road and will not be out of character with the area. The proposed development

will make effective use of a vacant infill site and will result in the enhancement to the streetscape in accordance with objective KCDP 3-5 of the Kerry County Development Plan 2022-2028 and objectives BN-GO-02, BN-GO-08 and BN-GO-11 of the Listowel Municipal District Plan 2020-2026. Additionally, I have no concerns with the visual impact of the single storey dwelling on site number 4 due to the design, siting, scale and height of same.

Residential Amenity

7.12. I note the concerns of the appellants regarding the impact of the proposed development on the residential amenity of their property, which bounds the northeast corner of the site, in terms of overlooking, loss of daylight/sunlight and devaluation of property. I noted on the date of my site inspection that the said property is in a derelict state. The Commission should note that the submitted drawings illustrate a separation distance of 8.758 metres between the rear elevation of the proposed dwelling on site number 3 and the appellant's derelict property. However, as part of the outline application this separation distance was illustrated as 12.825 metres. Therefore, I consider this to represent a material change to what was approved in principle.

Overlooking

7.13. Having reviewed the submitted plans and site layout, the Commission should note that I have concerns regarding overlooking from site numbers 1-3 on the appellant's property, as well as on the single storey dwelling proposed on site number 4. My concerns arise from a second-floor window on the rear/east elevation of all the properties which will serve a bedroom, as well as a window proposed to serve a stairwell between the first floor and second floor of site numbers 1 and 2 and a proposed first floor window proposed to serve a kitchen on site number 2. There is a first-floor window proposed to serve a w.c. on site number 3, however, this is proposed to be finished in frosted glass.

7.14. I note that on site number 3 the second floor bedroom window will be 8.758 metres from the appellant's property. The same second floor window on site number 2, as well as the stairwell and kitchen windows, will be approximately 10 metres from the ground floor window of site number 4 which will serve a proposed living room area. Additionally, on site number 1 the same windows will be 10.2 metres from the ground floor window serving the living room on site number 4.

7.15. I note that Section 1.5.4.10 (Minimum Separation Distance) of the CDP (Volume 6, Appendix 1) states that a separation distance of 22 metres should generally be observed for new, reciprocal overlooking housing. A reduction in standard may be allowed for innovative dwelling types. Additionally, I note that Specific Planning Policy Requirement (SPPR) 1 (Separation Distances) of the 2024 Compact Settlement Guidelines for Planning Authorities states that development plans shall not include an objective in relation to minimum separation distances that exceed 16 metres between opposing windows serving habitable rooms. Separation distances of 16 metres between opposing windows serving habitable rooms shall be maintained, however, separation distances below 16 metres may be considered acceptable in circumstances where there are no opposing windows serving habitable rooms and where suitable privacy measures have been designed into the scheme to prevent undue overlooking of habitable rooms and private amenity spaces.

7.16. Having regard to the proposed separation distances, to the location of the windows on the first/second floor of site numbers 1-3, it is my view that the design as proposed will result in undue overlooking of the appellant's property as well as the proposed dwelling on site number 4. I note that the design of the development includes for frosted glass screening on some elevations. Having regard to the infill nature of the scheme and associated site constraints and to the benefits of the development of this vacant site, my concerns can be alleviated by the incorporation of permanent frosted/opaque glass to the second floor bedroom windows on site numbers 1-3, the first floor kitchen window on site number 2 as well as the first/second floor staircase windows on site numbers 1 and 2. This would be consistent with the first floor window serving the w.c and will ensure no undue overlooking occurs. This would also alleviate my concerns regarding the closer proximity of site number 3 to the appellant's property to what was shown in the outline application.

7.17. I also note that the appellants raise concerns regarding overlooking from the rear windows of the single storey property on site number 4. However, having regard to the single storey nature of the building, I have no significant concerns with same.

Daylight / Sunlight

7.18. With regards to the potential loss of daylight from site number 3, I note that Section 2.3 of the 2022 Site Layout Planning for Daylight and Sunlight Guide (Second Edition)

outlines that if an angle of less than 43 degrees exist (1.6 metres above the boundary) between the proposed new development and the existing boundary then there will normally still be the potential for good daylighting on the adjoining site. I have measured this angle on drawing no. 106 (Proposed Section) as approximately 42 degrees at the appellant's boundary (1.6 metres above ground level). Therefore, I am satisfied that the siting of the proposed dwelling on site number 3 together with site numbers 1 and 2 will not materially impact access to daylight from the appellant's property or site number 4. Moreover, with regards to the appellant's comments over a right to light, as the issue of determining rights to light is a matter for the Courts, I do not consider that the Commission is in a position to draw any conclusions in relation to the matters raised.

- 7.19. With regards to sunlight/overshadowing, I note that Section 3.1 of the 2022 Guide states that a room will appear reasonable sunlit if at least one main window wall faces within 90 degree of due south and a habitable room can receive a total of at least 1.5 hours of sunlight on 21st March. I note that the inspector of the outline application did not consider that adverse overshadowing impacts would occur on the appellant's property between the then proposed duplex apartment due to its southerly orientation. Having regard to the replacement of this apartment with a single storey dwelling to a height of 3.45 metres I am satisfied that no adverse overshadowing impact will occur.
- 7.20. Having regard to the orientation of the three storey element of the proposed development to the appellant's property and to the results of the applicant's submitted solar shadow analysis, I am satisfied that the proposed development would not result in an adverse impact on adjoining residential amenity in terms of overshadowing / loss of sunlight.

Devaluation of Property

- 7.21. I note the concerns raised in the grounds of appeal in respect of the devaluation of neighbouring property. However, having regard to the assessment and conclusion set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.

Other Issues

Access and Traffic Safety

7.22. The appellants have also raised concerns regarding sightlines onto Spraymount Road from the existing access road that will serve site number 4. I note that the inspector of the outline permission considered that sightlines could be achieved via the removal of a hedge on the inside of a boundary wall to the east of the junction and considered the omission of the duplex apartment block with a single storey dwelling would ensure the pinch point on the lane would not be compromised. I note the applicants' response to the grounds of appeal stating that the owner of site number 4 has full ownership over the boundary and hedging. I also note the PA's internal report from the municipal district roads office which raised no concerns regarding traffic movements or sightlines.

7.23. Having regard to the omission of the duplex apartment and replacement with a single dwelling and the associated reduction in traffic with same, to the established nature of the lane and junction which already serves a number of properties, to the nature of Spraymount Road being a one-way vehicular route and not heavily trafficked (as observed on the date of my site inspection) and to the report of the Listowel Roads Office, I have no significant concerns with the proposed development in terms of traffic safety.

2009 Guidelines for Planning Authorities on Sustainable Residential Development in Urban areas

7.24. I note that the appellants state that the development does not comply with the 2009 Guidelines for Planning Authorities on Sustainable Residential Development in Urban areas. I note that these have been replaced with the 2024 Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities.

7.25. I have already determined above that subject to privacy measures that the proposed development can comply with SPPR 1 (Separation Distances) of said Guidelines. In terms of SPPR 2 (Minimum Private Open Space Standards for Houses) I am satisfied that the 3 no. 4-bed houses and 1 no. 3-bed single storey house comply with the minimum standards stipulated. In terms of public open space, I note that policy and objective 5.1 of the 2024 Guidelines states that in some cases planning authorities might decide to set aside the public open space requirement where it considers it

unfeasible due to site constraints or other factors. I note that Section 1.5.4.4 (Public Open Space) of the CDP (Volume 6, Appendix 1) states that for residential developments of 5 units or less they may be exempt from the 15% open space provision on greenfield sites. Having regard to the infill nature of the scheme, to the proposed private open space provision and to the close proximity of the site to substantial amenity areas, being directly opposite Ballybunion beach and approximately 170 metres north of a community playground, I am satisfied that the proposed development can be exempt from any open space provision in accordance with Section 1.5.4.4 of the Plan.

7.26. With regards to density, Table 3.6 outlines that it is a policy and objective of the Guidelines that the scale of new development in the central areas of small to medium sized towns should respond positively to the scale, form and character of existing development, and to the capacity of services and infrastructure the site area. I note that the proposal for 4 no. residential units on a site area that measures 0.189 hectares amounts to 21 units per hectare. Having regard to the infill nature of the site and to the 4 no. units previously considered acceptable as per the outline permission, I am satisfied with the density proposed. I also have no significant concerns regarding the housing mix due to the small-scale nature of the development.

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 60 metres east of the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165). No nature conservation concerns in relation to European sites 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 location, scale and nature of the development within a built-up urban area and to the built-up nature of the surrounding area.

- The separation distance and intervening lands from the nearest European site and lack of hydrological connection.
- To the proposed surface water treatment via onsite soakaways designed in response to onsite permeability tests as submitted as part of the application.
- To the proposed treatment of wastewater to the public mains.
- Taking into account the screening determination of the PA as part of this application and the Inspector of appeal ref. 315408-22.

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. The site is underlain by the Abbeyfeale groundwater waterbody (Site Code IE_SH_G_001) which is classed as good ecological and chemical status, and not at risk, for the 2019-2024 monitoring period. Whilst there is no hydrological connection to Ballybunion Bay located to the west of the site, this forms part of the Mouth of the Shannon coastal waterbody (Code: IE_SH_060_0000) which is also classed as good status and not at risk for the 2019-2024 monitoring period.

9.2. 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 scale and nature of the development, the treatment of wastewater to the public mains, the treatment of surface water via onsite

soakaways designed in response to onsite permeability tests and the location and distance of the site to the nearest waterbody and lack of hydrological connections.

9.3. 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 consequent on the grant of outline permission should be **Granted**, subject to conditions, for the reasons and considerations set out below.

11.0 Reasons and Considerations

Having regard to the planning history associated with the site and in particular the grant of outline permission under appeal reference ABP-315408-22, to the provisions of the Kerry County Development Plan 2022-2028, to the location of the site within the settlement boundary of Ballybunion on lands zoned 'R1 New/Proposed Residential' within the Listowel Municipal District Plan 2020-2026, to the pattern of development in the vicinity and to the design, height and form of the proposed development, it is considered that, subject to compliance with the conditions set out below, that the proposed development would not result in an adverse impact on the visual amenity of the area, would not have an adverse impact on residential amenity of property in the vicinity and would be acceptable in terms of traffic safety and convenience. Accordingly, the proposed development would be in accordance with objective KCDP 3-5 of the Kerry County Development Plan 2022-2028 and objectives BN-GO-02, BN-GO-08 and BN-GO-11 of the Listowel Municipal District Plan 2020-2026, and would therefore be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed second floor windows on the east (rear) elevation of the proposed dwellings on site numbers 1-3 (all serving bedrooms), the proposed first floor window serving a kitchen on the east (rear) elevation of site number 2 and the proposed first/second floor windows serving a staircase on the east (rear) elevation of site numbers 1 and 2 shall be manufactured opaque or frosted glass and shall be permanently maintained. The application of film to the surface of clear glass is not acceptable. Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development.

Reason: In the interest of residential amenity to prevent undue overlooking.

3. The proposed dwellings shall be used as places of permanent residence only and shall not be used for short-term tourist accommodation.

Reason: To comply with Objective No. BN-GO-03 of the Listowel Municipal District Plan 2020-2026.

4. Notwithstanding the provisions of Article 10(4) of the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, no room in the proposed dwellings shall be used for the

purpose of providing overnight paying guest accommodation without a prior grant of planning permission.

Reason: In order to prevent overdevelopment of the site in the interest of residential amenity and traffic safety and convenience.

5. Prior to commencement of development, a boundary treatment plan showing the height and finishes of all boundaries shall be submitted to the planning authority for its written approval.

Reason: In the interest of residential and visual amenity.

6. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

7. Drainage arrangements shall comply with the requirements of the planning authority for such works and services. All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or to adjoining properties. Only clean, uncontaminated storm water shall be discharged to the onsite soakaways.

Reason: In the interest of public health and surface water management.

8. Prior to the commencement of development the developer shall enter into a Connection Agreement with Uisce Éireann (Irish Water) to provide for a service

connections to the public water supply and/or wastewater collection network.

Reason: In the interest of public health and to ensure adequate water/wastewater facilities.

9. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Friday inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

10. (a) Prior to the commencement of any house in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all relevant houses to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified house for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the

planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Coimisiún Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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.

Gary Farrelly
Planning Inspector

6th January 2026

Appendix 1: EIA Preliminary Examination

Form 1 - EIA Pre-Screening

Case Reference	ACP-323645-25
Development Summary	4 no. dwellings
Development Address	Cliff Road, Ballybunion, County 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.	
<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 type of proposed road development under Article 8 of the Roads Regulations, 1994.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.	

<input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.	Part 2, Class 10(b)(i): Construction of more than 500 dwelling units.
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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"/>	Screening Determination required (Complete Form 3)
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)

Form 2 - EIA Preliminary Examination

This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.

Characteristics of 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).	The development site measures 0.189 hectares. The size of the development is not exceptional in the context of the existing environment. Localised construction impacts are expected, soil removal etc. There is no real likelihood of significant cumulative effects with existing and permitted projects in the area.
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).	The site is located approximately 60 metres east of the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165). My appropriate assessment screening above concludes that the development would not likely result in a significant effect on any designated site. The site is located outside Flood Zones A and B for coastal or fluvial flooding. There are no known archaeological or cultural constraints associated with the site.
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	Having regard to the 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.

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.

Inspector: _____
Gary Farrelly

Date: 6th January 2026