



An
Bord
Pleanála

Inspector's Report ABP-321804-25

Development	Construction of a house and all associated site works
Location	Brackaharagh, Castlecove, Caherdaniel, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	2460705
Applicant(s)	Michael & Stephanie Cahill
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Pat & Frances Lynch
Observer(s)	Ciara & Sandra Lynch Cllr. Teddy O'Sullivan Casey
Date of Site Inspection	25 th 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 Brackaharagh, Co. Kerry. Access to the site is off the N70 'Ring of Kerry' route via the local public road L-11602. It is located to the southwest of Cove Harbour and approx. 3 km to the southeast of Caherdaniel village.
- 1.2. There is an existing dormer dwelling adjoining the public road. Access to the appeal site is off the public road via an existing gravel track that is located to the west of the dwelling. The site is setback from the public road by approx. 105 m on the slope of a hill and is elevated relative to its surrounds.
- 1.3. There is an existing dwelling and outbuildings that are in a poor state of disrepair, and a roofed shed with adjoining cattle crush located to the west of where the proposed dwelling will be sited. There are a number of existing dwellings located in the vicinity of the site, the closest being to the east and west of the site. The site is encompassed by dense trees and hedgerows.

2.0 Proposed Development

- 2.1. Permission is sought for a dwelling house, on-site wastewater treatment system, new access off the existing site entrance and associated site works.
 - The appeal site has a stated area of 0.290 ha. The site boundaries are irregular in shape due to landownership.
 - Construction of a 121 m² single storey dwelling, with a max roof height of 4.73 m.
 - Connect to public water mains.
 - On-site mechanical aeration unit, and intermittent filter, and polishing filter.
 - Access via existing entrance and gravel track off adjoining public road.
 - Details in relation to the condition of the existing track including a section through the road and details of how the road will be finished.
 - Supporting documents relating to local rural housing need submitted.
- 2.1.1. Further Information (FI) was sought in regard to the following:

1. A fence and trees cross the site at the approximate location of the proposed dwelling. A revised site layout plan to show same to be furnished, and the relocation of the proposed dwelling further to the north to avoid the fence and trees.
2. In relation to the existing open drain which runs along the fence line and down the side of the existing access track, a revised site layout to be submitted to show the existing drain, and proposals submitted to pipe / culvert the drain at the access to site to be provided.

2.2. The Planning Authority (PA) determined the FI response received on 26th November 2024 to be 'significant additional data' which was readvertised on the 11th December 2024 and again on the 18th December 2024 as the first notices did not contain the relevant statutory text.

2.2.1. Revised details included the following:

- Revised drawing DWG Ref. 184/MS-C-PADFI/101/2024 provided showing the proposed dwelling relocated to the south of the tree line.
- Proposals to pipe drain with 1050 mm corri-pipe to accommodate a pedestrian access up to the house from the parking area, along with the site entrance and a section of the driveway.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. By Order dated 22nd January 2025, Kerry County Council granted permission for the proposed development subject to 14 conditions.

3.1.2. The conditions are generally standard which include for a Section 48 development contribution, occupancy condition and a condition restricting the use of the dwelling to a primary permanent residence, and not be used as a holiday home. A condition is included in regard to material finishes, Uisce Éireann connection agreement, installation of the proposed wastewater treatment unit and on-going maintenance contract for same, landscaping and external lighting. The following conditions are relevant:

- Condition 7 – restricts the Finish Floor Level of the dwelling to 300 mm above existing ground level measured at the lowest point along the external walls of the dwelling.

3.2. Planning Authority Reports

3.2.1. Planning Reports

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

First Planning Report 11th November 2024

- The applicant complied with rural settlement policy.
- The proposed dwelling was acceptable in terms of design. Concerns were raised in regard to the siting of the dwelling noting that it should be moved to the north to avoid an open drain running along a fence line and down the side of the access track.
- In regard to traffic, it noted that the existing access track is to be upgraded and surface water would be disposed from the site via a soakpit.
- The suitability of the site to dispose of effluent was considered acceptable, having regard to the report of the Site Assessment Unit Environmental Section.
- Third party submissions were noted.
- Further Information (FI) was requested as set out in Section 2.1.1 above.

Second Planning Report (21st January 2025)

- The revised siting of the proposed dwelling to the south of the sod and stone fence which crosses the site, as opposed to the north, was deemed to be acceptable.
- Noted that the fence would be maintained, except for the gap provided to allow pedestrian access from the car parking area to the north of the fence.
- Proposals for screening considered acceptable and additional planting proposed along the southern boundary considered acceptable.

The issues raised were considered to be addressed and the planning officer recommended a grant.

3.2.2. Other Technical Reports

- Site Assessment Unit Environmental Section 11th November 2025 – Upon review of the Site Characterisation Report and the recommendation of the site assessor, no objection raised subject to 4 no. conditions.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

3.4.1. One third party observation was received from Pat and Frances Lynch in regard to the proposed development to the initial application and in response to the 'significant' FI response. The issues raised are largely covered by the grounds of appeal. However, the following is noted in regard to the response to the FI request:

- The proposed wastewater treatment system (wwts) will be located to the west across an existing access track. The access track is not in the control of the applicants.
- The third parties have a Right of Way over this property and have improved the access.
- The proposed wwts should be located directly north of the applicants property.

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

4.0 Planning History

Appeal Site

- P.A. Ref. 07/1357 – Permission sought for dwelling – withdrawn.
- P.A. Ref. 08/297 – Permission granted for dwelling house.
- P.A. Ref. 22/216 – Permission refused to renovate and extend existing dwelling including old stone shed, and install wastewater treatment system. The grounds for refusal related to public health and the suitability of the site to safely and adequately dispose of effluent (26th April 2022).

- P.A. Ref. 23/60070 – Permission refused to construct dwelling, wastewater treatment system. The grounds of refusal referred to the unsuitability and design constraints of the existing access track which would endanger public safety, traffic hazard, and design of the dwelling proposed would not comply with the design guidelines ‘Building a House in Rural Kerry’ (24th June 2024).

Adjoining the Appeal Site to the West

- P.A. Ref. 15/650 ABP Ref. 246539 – The Board granted permission the renovation and extension of the existing dwelling and wastewater treatment system. (12th August 2016). It is noted that an extension of duration was granted up to 12th August 2021 and the subject development has not been carried out.

5.0 Policy Context

5.1. Kerry County Development Plan 2022-2028

5.1.1. Volume 4 Maps

- Rural Type Area – the appeal site is located in a rural area designated as ‘Other Rural Areas’.
- Visually Sensitive Areas and Views & Prospects

Map T – the appeal site is located in a ‘Visually Sensitive Area’.

5.1.2. Chapter 5 Rural Housing

Section 5.5.1.3 Other Rural Areas

KCDP 5-14

In Other Rural Areas accommodate demand for permanent residential development as it arises subject to good sustainable planning practice in matters such as design, location, wastewater treatment and the protection of important landscapes and environmentally sensitive areas. Preference should be given to renovation /restoration/alteration/extension of existing dwellings on the landholding before consideration to the construction of a new house.

KCDP 5-17

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 5-18

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 5-19

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

KCDP 5-20

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**

The following objectives are relevant:

Section 11.6 Landscape

KCDP 11-70

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 11-71

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.

Section 11.6.2 Landscape Sensitivity

Landscape Sensitivity It is an objective of the Council to:

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.

Section 11.6.3.1 Visually Sensitive Areas

Visually sensitive landscape areas comprise the outstanding landscapes throughout the County which are sensitive to alteration. Rugged mountain ranges, spectacular coastal vistas and unspoilt wilderness areas are some of the features within this designation.

These areas are particularly sensitive to development. In these areas, development will only be considered subject to satisfactory integration into the landscape and compliance with the proper planning and sustainable development of the area.

The County enjoys both a national and international reputation for its scenic beauty. It is imperative in order to maintain the natural beauty and character of the County, that these areas be protected.

Section 11.6.4 Development in Designated Areas

Visually sensitive landscapes are particularly notable by virtue of their scenic and visual quality and offer significant opportunities for tourism development and rural recreational activities. The Council will seek to ensure that a balance is achieved between the protection of sensitive landscapes and the appropriate socio-economic development of these areas. Development is not precluded in visually sensitive landscapes however, development proposals will be required to demonstrate that they integrate and respect the visual quality of the landscape.

The following provisions shall apply to development in Visually sensitive landscapes areas:

- There is no alternative location for the proposed development in areas outside of the designation.
- Individual proposals shall be designed sympathetically to the landscape and the existing structures and shall be sited so as not to have an adverse impact on the character, integrity and distinctiveness of the landscape or natural environment.

- Any proposal must be designed and sited so as to ensure that it is not unduly obtrusive. The onus is, therefore, on the applicant to avoid obtrusive locations. Existing site features including trees and hedgerows should be retained to screen the development.
- Any proposal will be subject to the Development Management requirements set out in this plan in relation to design, site size, drainage etc.
- The new structure shall be located adjacent to, or a suitable location as close as possible to, the existing farm structure or family home. Individual residential home units shall be designed sympathetically to the landscape, the existing structures and sited so as not to have an adverse impact on the character of the landscape or natural environment. Existing site features including trees and hedgerows shall be retained to form a part of a comprehensive landscaping scheme. Consideration must also be given to alternative locations.
- Extending development into unspoilt coastal areas is to be avoided.
- Notwithstanding the landscape designation of a site, where infrastructure is proposed by the Local Authority or another prescribed body, these works will be considered on their own merits on a case-by-case basis in accordance with the proper planning and development of the area.

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

Section 13.2.2.4 Individual Private Wastewater Facilities in Rural Areas

The 2016 Census identified that 55% of private households in the county were served by a private individual septic tank or other type of individual treatment system. This rate was considerably higher than the State average of 28.8%. This is reflective of the rural settlement pattern and the lack of investment in public wastewater treatment plants in the rural villages of the county. The provision of on-site wastewater treatment systems to serve new one-off rural housing must be carefully considered as these systems place significant pressure on water quality.

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.

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

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.

All areas within 1km of a public drinking water source will be regarded as Nutrient Sensitive Areas and the effluent from any onsite wastewater treatment system proposed within these areas must comply with all the parameters listed in Table 5.1 of the EPA Code of Practice. The Water Services (Amendment) Act 2012 requires water services authorities to maintain a register of domestic wastewater treatment systems in their functional areas.

Section 1.5.10.10 Hardcore Surface and Surface Water Disposal

- Surface water be disposed of to soak pits or watercourse(s) adjoining the site and shall not be allowed to flow onto the public road or to adjoining properties. Details shall be submitted with the planning application.
- There is no minimum standard required for soft landscaping, however, the hard landscaping of areas around dwelling houses shall be limited.
- Where feasible nature-based solutions to manage water run-off should be considered.

5.2. Natural Heritage Designations

- SAC: 002158 - Kenmare River SAC – approx. 40 m to the south of site and approx. 100 m to the north.
- pNHA: 000363 - Kenmare River Islands – approx. 438 m to the southeast of site.
- SAC: 000365 - Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC – approx. 1.26 km to the northwest of site.
- pNHA: 000365 - Killarney National Park, Macgillicuddy's Reeks And Caragh River Catchment – approx. 1.26 km to the northwest of site.
- SPA: 004154 - Iveragh Peninsula SPA – approx. 3.3 km to the southwest of site.
- pNHA: 001346 - Darrynane Bay Islands And Marsh, Lamb's Head – approx. 3.3 km to the southwest of site.

5.3. 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.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A third party appeal submission was received from Pat and Frances Lynch whose property adjoins the appeal site to the west. The grounds of the appeal can be summarised as follows:

- The Board granted permission to renovate and extend the existing dwelling on the adjoining site to the west, and install a wastewater treatment system (wwts) and ancillary site works to facilitate the development.

- The wwts is proposed to be located in front of the existing dwelling and given the location and the wwts' proximity to their boundary and existing dwelling, concerns are raised in regard to the potential negative impact on their residential amenities, once the works to the dwelling are carried out.
- The wwts could be located to the front of the proposed dwelling where there is adequate space.
- The proposal requires the wwts to traverse the existing access track.
- There is no difference between the site topography to the west of the passage way versus the east side.
- The third parties carried out the works to upgrade the existing passageway to provide access to the dwelling.

6.2. Applicant Response

6.2.1. A response to the third party appeal was received from the applicants Michael and Stephanine Cahill which can be summarised as follows:

- The percolation test was reviewed by Kerry County Council who granted it.
- The minimum set back distance from the proposed dwelling have been met as per the EPA manual.
- The proposed location for the percolation area is to ensure the adequate distance from the proposed dwelling, and is in the location where the best results for the percolation are were received.

6.3. Planning Authority Response

A response to the appeal was received from Kerry County Council which notes the following:

- There are no minutes in relation to the pre-planning meeting other than the letter already uploaded.
- The PAs report of 11th November 2024 and 21st January 2025 are uploaded.

6.4. Observations

6.4.1. Two submissions were received as follows:

- i. Cllr. Teddy O'Sullivan Casey representation in support of the applicant.
- ii. Ciara and Sandra Lynch. The issues raised by observers may be summarised as follows:

Landownership

- The observers are the joint owners of the property in conjunction with the third party appellants.
- The observers property is located to the west of the appeal site and is landlocked due to a solicitor error. It contains an existing uninhabited dwelling within metres of the appeal site and ABP Ref. PL08.246539 refers.
- Access to the property depends solely on a Right of Way via the existing access track which is shared with the applicants.
- The error resulted in the existing dwelling, sheds and Right of Way being incorrectly included in the sale of 33 acres of agricultural land which is being addressed through legal proceedings.
- Planning permission granted under P.A. Ref. 15/650 ABP Ref. 246539 has not been implemented due to ongoing issues relating to access to the site.

Wastewater Treatment

- It is unclear why the wwts and drains include crossing underneath the Right of Way property. The location of the wwts and drains in front of their property will significantly impact on same.
- The proposed wwts will be located 20 metres from the adjoining property.
- The permission granted by the Board for the renovation of the existing dwelling including the layout of the proposed wastewater treatment system, should take precedence over the proposal wastewater treatment system associated with the subject application.

- No impact assessment was carried out by the planning authority in regard to how the 2 wastewater treatment systems would impact the soil quality and the pressure on the land.

Upgrade Existing Access Track

- The settlement of the Right of Way agreed in court 2024 is not indicated on the site map. Request that this is a central decision as law of the land regarding the site boundaries of the applicant and the easement through.
- The FI response indicated that the access track is not in the ownership of the applicant, but has the benefit of a Right of Way to use it, and that in time the road will come into the ownership of the applicant and until then no works are proposed to be carried out.
- The conclusion of the planner's report for the grant of permission is on the proviso that the access track is of a standard that can accommodate machinery and trucks.
- The applicant may not upgrade the existing access track. Therefore it is vital that the planning decision ensures the proposal to upgrade the existing track prior to planning permission being granted.

Bats

- Concerns raised regarding the presence of bats in the area, in particular in the existing old stone shed adjoining the appeal site to the west, which may be knocked. A bat survey should be carried out.

7.0 Assessment

7.1. Introduction

- 7.1.1. This is a third party appeal in relation to the Planning Authorities (PA) to grant permission for the proposed development.
- 7.1.2. The appeal site is located in the rural area and is designated as 'Other Rural Areas'. Objective KCDP 5-14 of the development plan seeks to accommodate demand for permanent residential development, subject to all other normal planning criteria and environmental protection considerations. The applicant, Stephanie Cahill, submitted

documentation to demonstrate compliance with objective KCDP 5-14 and I note that the PA was satisfied that the applicant complied with the relevant objective. Having regard to the provisions of objective KCDP 5-14 and to the details presented on the file, I am satisfied that the applicant complies with this development plan objective.

7.1.3. The site is located in a 'Visually Sensitive Area' on the downward slope of a hill. The development plan in Section 11.6.3.1 notes that development will only be considered subject to satisfactory integration into the landscape and compliance with the proper planning and sustainable development of the area. Given the modest scale and design of the dwelling and the proposed siting where there is screening on site and the existing field boundaries, I am satisfied that the proposed dwelling can be adequately integrated into the landscape, and would not be visually intrusive.

7.1.4. Therefore having established the principle of development and 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 considered are as follows:

- Site Suitability for Wastewater Disposal
- Other Matters

7.2. Site Suitability for Wastewater Disposal

7.2.1. Section 13.2.2.4 of the Kerry County Development Plan requires that where rural houses are to be served by a domestic wastewater treatment system, that they demonstrate compliance with the EPA Code of Practice: Wastewater Treatment and Disposal Systems serving Single Houses (2021).

7.2.2. The appeal site has a stated area of 0.290 ha. The site boundaries are irregular in shape due to landownership. The proposed dwelling will be located to the east of an existing farm outbuilding and cattle crush, behind an existing sod and stone ditch that is defined by trees and hedgerow. I note from the plans and drawings that it is proposed to retain this ditch and to provide a gap to allow for pedestrian access to the location of the proposed car parking area. The proposed wastewater treatment system

will be located to the northwest, on the opposite side of the existing access track. The contours on site and the adjoining area are steep, rising from the adjoining public road.

- 7.2.3. 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.
- 7.2.4. In this case, the appeal site overlies a 'Poor Aquifer' which has an 'Extreme' vulnerability classification, and the GPR is R2¹. In the site characterisation report, I note that 2 trial holes were dug on the same day however only result for the second trial hole were submitted.
- 7.2.5. The second trial hole was excavated on 23rd May 2023 at 09.54 to 1.5 m where bedrock was encountered and the water table was encountered at 1.2 m. The soil type for the area is identified as 'Till derived chiefly from Devonian sandstones' and the colour observed in the trial hole is indicated to be brown / grey. The images of the trial hole show grey soils with flecks of brown / orange. This is indicative of mottling which is not recorded in the trial hole log, and it would also be suggestive of impeded drainage conditions and/or elevated or perched water table. The GSI mapper would appear to support this with the subsoils in the area being mapped as surface and groundwater gleys, which are essentially waterlogged clays and would have a high clay content. This would also support the profuse rushes growth throughout the site and on surrounding lands.
- 7.2.6. The subsurface percolation test for subsoil was carried out on the 22nd May 2023. I note that Appendix D of EPA Code of Practice stipulates that the dimensions of each hole should be 300 mm x 300 mm x 400 mm deep. In this case the depth is recorded as 700 mm. The recorded T value = 46.75 (min/25 mm). The surface percolation test for soil was recorded on 22nd May 2023 and the recorded P value = 47.05 (min/ 25 mm).
- 7.2.7. Based on the test results it is proposed to install a tertiary treatment system and infiltration / treatment area and to discharge to ground water. This requires the installing on a mechanical pump unit on the eastern side of the site, traversing the existing gravel track to connect with 2 x 'puraflo' peat modules and 300 mm of (12-32 mm) washed distribution gravel. The tertiary treated effluent will be disposed into the ground through a gravel distribution layer required underneath the puraflo module. It is noted that a 'french' drain is to be constructed 11 m up-gradient of the proposed

wwts to take away surface water from uphill lands to existing drains on the landholding. It is unclear if the proposed drain connecting the dwelling to the tertiary treatment system will be culverted beneath the existing access track. Structural details do not appear to have been provided. In that regard, I would raise concerns in relation to the structural capacity of such a drain, given that traffic would be passing over.

- 7.2.8. At time of site inspection and after a relatively dry period of weather, I observed that ground conditions were very wet under foot and that the various drains running along the access track and other site boundaries were full with flowing water. Of note was the level of water in drains relative to ground levels which would likely be indicative of an elevated water table. I noted also that a gravel drain was installed in the site from the location of the proposed car park area, extending down through the site approximately along the route of the proposed driveway, and discharging into the drain running along the existing gravel track. This could be providing a significant preferential flowpath which may be evidence of drainage issues.
- 7.2.9. In regard to the issues raised in the grounds of appeal relating to the location of the wwts to the south of the appeal site, previously permitted by the Board under P.A. Ref. 15/650 ABP Ref. 246539. Having regard to my site inspection and to the planning register, I note that this permission has not been carried out and has expired. As there is no existing wwts in situ, this is not a material consideration in relation to the subject development.
- 7.2.10. I note the report of the Site Assessment Unit which reviewed the site characterisation report and raised no issues in relation to the recommendations of the site assessor. I note that a site inspection was not carried out by the Site Assessment Unit. Given that the site characterisation assessment was carried out May 2023, and having regard to my site inspection, I would have serious concerns regarding the suitability of the site adequately treat and dispose effluent.
- 7.2.11. In this regard, I noted at time of site inspection that there is extensive and proliferation of rushes throughout the site area and in the area where the site assessment was conducted. In addition, the observed level of water in drains relative to the existing ground level, is an indication of very poor drainage within the site and the overall area. The growth of rushes would be supported by water held in the soil. As a consequence of this it would be expected to observe mottling in the soil profile of the trail hole. No

mottling was recorded in either of the two trail hole logs. It is evident from the photos of the trial hole that the soil is grey. The water level in drains relative to ground levels would also indicate that the surface and subsurface soils are prone to saturation.

- 7.2.12. Notwithstanding that the recorded T and P values have indicated that the site would be suitable for a tertiary treatment system and infiltration / treatment area, concerns arise in regard to the information presented. Therefore, I am not satisfied that ground conditions within the site can safely and adequately attenuate & dispose of effluent to groundwater in a manner that would not be prejudicial to public health. Having regard to the foregoing, I conclude that the subject appeal site is unsuitable for the safe and adequate disposal of effluent arising from the proposed development and would pose a risk to groundwater pollution and would be prejudicial to public health, which would be contrary to Objective KCDP 1-19 of the development plan and I recommend refusal on this basis.

7.3. Other Matters

Existing Access Track

- 7.3.1. It has been highlighted in an observation to the appeal, that there are ongoing matters relating to the existing access track which will provide access to the proposed dwelling. In this regard, I note that the applicant has a shared Right of Way over the existing access track and the third party observation has confirmed that they too have the benefit of this existing Right of Way.
- 7.3.2. The substantive issues raised in the observation therefore relates to the upgrade of the existing access track, and what party will carry it out, and the requirement for the proposed wwts to traverse beneath the existing access track. Having regard to the applications details I note that it is the intention of the applicant to upgrade the access track and this is acknowledged in the planning report, however I note that no condition was included in the final grant .
- 7.3.3. I note that the applicant provided consent from the landowner to make the planning application on the subject lands, and that the PA did not raised concerns in regard to same. Therefore I am satisfied that the applicants have provided sufficient evidence of their legal intent to make an application which includes for the subject access track. As such, any further legal dispute or matters relating to the upgrade of the existing

access track, is considered a Civil matter, and outside of the scope of the planning appeal. In any case, this is a matter to be resolved between the parties, having regard to the provisions of s.34(13) of the 2000 Planning and Development Act.

Bats – New Issue

- 7.3.4. It has been raised in the observation to the appeal that bat fauna occurs in the area and in particular on the site of the existing dwelling. In particular the Lesser Horseshoe bat was previously recorded in the existing dwelling adjacent to the appeal site. I note from the planning history of the immediate area, in particular ABP Ref. 08.246539 a bat survey undertaken in October 2015 submitted confirmed this finding.
- 7.3.5. Of significance also is that the appeal site is located in very close proximity to the SAC: 002158 - Kenmare River SAC which lies approx. 40 metres to the south of the appeal site. The Lesser Horseshoe Bat species is a Qualifying Interest of the SAC.
- 7.3.6. I note from a review of the planning application details that this issue did not arise and I also note that no observations were made by the National Parks and Wildlife Services (NPWS) in this regard.
- 7.3.7. Notwithstanding, given the adjoining site context which comprises of an adjacent existing vacant disused dwelling which is in a state of disrepair, and an old stone farm building in an area with dense vegetation, hedgerows and trees, the presence of bats, bat roosts or hibernation places within the site cannot be ruled out. In that regard, as there is an absence of details in relation to the presence of bats in the area, a bat survey carried out by a suitably qualified ecologist would be required to be carried out, prior to a decision being made by the Board. In the event that bat roost /habitats are found to be present, a derogation licence would be required to be obtained from the National Parks and Wildlife Service. This is a new issue, and the Board may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal set out below, it may not be considered necessary to pursue the matter.

8.0 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 it is not possible to exclude that the proposed development alone or in

combination with other plans or projects would not be likely to give rise to significant effects on the Kenmare River Special Area of Conservation (Site Code 002158), in view of the sites conservation objectives. Possible impacts identified cannot be ruled out in terms of the site-specific conservation objectives for the Kenmare River Special Area of Conservation site and which could undermine the maintenance of favourable conservation status afforded to the Lesser Horseshoe Bat (1303). Appropriate Assessment is required.

8.1.1. This determination is based on:

- The scale and nature of the existing development and the required works to carry out site clearance works to facilitate the development.
- The close proximity of the site to the Kenmare River Special Area of Conservation (Site Code 002158) under which the Lesser Horseshoe Bat is a Qualifying Interest.
- Records of the presence of the Lesser Horseshoe Bat at / proximate to the site.

9.0 Recommendation

I recommend that permission is refused for the proposed development.

10.0 Reasons and Considerations

1. Notwithstanding the proposal to use a tertiary treatment system and infiltration area and having regard to grounds 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. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects

would not result in adverse effects on the integrity of SAC: 002158 Kenmare River Special Area Conservation in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting permission.

Note to the Board: A New Issue is raised in Section 7.3 of the 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

13th May 2025

Form 1 – EIA Pre-Screening

Case Reference	ABP-321804-25
Proposed Development Summary	Construction of a dwelling house, on-site wastewater treatment system, new access of the existing site entrance and associated site works.
Development Address	Brackagharagh, Castlecove, Caherdaniel, 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,	

<p>Schedule 5 or a prescribed 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)?	
<p>Yes <input type="checkbox"/></p>	
<p>No <input checked="" type="checkbox"/></p>	

Inspector: _____ Date: _____

Form 2 – EIA Preliminary Examination

Case Reference	ABP-321804-25
Proposed Development Summary	Construction of a dwelling house, on-site wastewater treatment system, new access of the existing site entrance and associated site works.
Development Address	Brackagharagh, Castlecove, Caherdaniel, 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).	<p>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 0.290 ha.</p> <p>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.</p>
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).	<p>The site is located in a rural area where there are existing dwellings located in the immediate vicinity.</p> <p>The scale of the single dwelling proposed is not considered exceptional in the context of surrounding development.</p> <p>It is identified that the appeal site is located in closed proximity of a European Site the Kenmare River Special Area of Conservation (Site Code 002158). The Lesser Horseshoe Bat species is a Qualifying Interest of the SAC.</p> <p>Otherwise, there are no environmental sensitivities in terms 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, densely populated areas, landscapes, sites of historic, cultural or archaeological significance.</p>
Types and characteristics of potential impacts	Having regard to the modest nature of the proposed development and the nature of the

(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	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.
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.	Schedule 7A Information – Not required.
There is a real likelihood of significant effects on the environment.	EIAR – Not required.

Inspector: _____ **Date:** _____

DP/ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)

Screening for Appropriate Assessment

Brief description of project	Construct single storey dwelling, wastewater treatment system, ancillary site works.
Brief description of development site characteristics and potential impact mechanisms	<p>The appeal site has a stated area of 0.290 ha, the proposed dwelling 121 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: 002158 - Kenmare River SAC – approx. 47 m to the south of site. • SAC: 000365 - Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC – approx. 1.26 km to the northwest of site. • SPA: 004154 - Iveragh Peninsula SPA – approx. 3.3 km to the southwest of site.
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 third party appeal however in the observations to the appeal it has been highlighted that bats and the Lesser Horseshoe Bat is present in the area.

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
Kenmare River SAC: Site Code 002158	<ul style="list-style-type: none"> • Large shallow inlets and bays [1160] • Reefs [1170] • Perennial vegetation of stony banks [1220] 	Approx. 40 metres to the south of the appeal site	Possible direct and indirect connections via removal of foraging grounds or disruption to habitat containing roosts for the Lesser Horseshoe Bat	Yes

	<ul style="list-style-type: none"> • Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] • Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] • Mediterranean salt meadows (Juncetalia maritimi) [1410] • Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120] • Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] • European dry heaths [4030] • Juniperus communis formations on heaths or calcareous grasslands [5130] • Calaminarian grasslands of the Violetalia calaminariae [6130] • Submerged or partially submerged sea caves [8330] 			
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	<ul style="list-style-type: none"> • <i>Vertigo angustior</i> (Narrow-mouthed Whorl Snail) [1014] • <i>Rhinolophus hipposideros</i> (Lesser Horseshoe Bat) [1303] • <i>Phocoena phocoena</i> (Harbour Porpoise) [1351] • <i>Lutra lutra</i> (Otter) [1355] • <i>Phoca vitulina</i> (Harbour Seal) [1365] 			
<ul style="list-style-type: none"> • Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC Site Code 000365 	<ul style="list-style-type: none"> • Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110] • Oligotrophic to mesotrophic standing waters with vegetation of the <i>Littorelletea uniflorae</i> and/or <i>Isoeto-Nanojuncetea</i> [3130] • Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation [3260] 	Approx. 1.26 km to the northwest of site.	No direct or indirect connections	No

	<ul style="list-style-type: none"> • Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010] • European dry heaths [4030] • Alpine and Boreal heaths [4060] • <i>Juniperus communis</i> formations on heaths or calcareous grasslands [5130] • Calaminarian grasslands of the <i>Violetalia calaminariae</i> [6130] • <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410] • Blanket bogs (* if active bog) [7130] • Depressions on peat substrates of the <i>Rhynchosporion</i> [7150] • Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0] • Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, 			
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	<p>Salicion albae) [91E0]</p> <ul style="list-style-type: none"> • Taxus baccata woods of the British Isles [91J0] • Geomalacus maculosus (Kerry Slug) [1024] • Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] • Euphydryas aurinia (Marsh Fritillary) [1065] • Petromyzon marinus (Sea Lamprey) [1095] • Lampetra planeri (Brook Lamprey) [1096] • Lampetra fluviatilis (River Lamprey) [1099] • Salmo salar (Salmon) [1106] • Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303] • Lutra lutra (Otter) [1355] • Trichomanes speciosum (Killarney Fern) [1421] • Najas flexilis (Slender Naiad) [1833] • Alosa fallax killarnensis 			
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	(Killarney Shad) [5046]			
Iveragh Peninsula SPA Site Code 004154	<ul style="list-style-type: none"> • Fulmar (Fulmarus glacialis) [A009] • Peregrine (Falco peregrinus) [A103] • Kittiwake (Rissa tridactyla) [A188] • Guillemot (Uria aalge) [A199] • Chough (Pyrrhocorax pyrrhocorax) [A346] 	approx. 3.3 km to the southwest of site.	No direct connection or indirect connection	No

Conservation Objective:

1303 To maintain the favourable conservation condition of Lesser Horseshoe Bat in Kenmare River SAC,

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	
Kenmare River Special Area of Conservation (Site Code 002158) <u>QI List</u> 1014 Marsh Snail Vertigo angustior 1160 Large shallow inlets and bays 1170 Reefs 1220 Perennial vegetation of stony banks 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts 1303 Lesser Horseshoe Bat Rhinolophus hipposideros 1330 Atlantic	Direct Impact - Yes Indirect: Low risk of surface water runoff from hard-standing areas.	Direct Impact: Effects Potential disturbance / displacement changes to habitat quality function, habitat loss or fragmentation and disruption to bat roost in particular the Lesserhorse Bat. Extent of potential foraging habitat - Lesser horseshoe bats normally forage in woodlands/scrub within 2.5km of their roosts. Linear features: This species follows commuting routes from its roost to its foraging	

<p>salt meadows (Glauco-Puccinellietalia maritimae) 1355 Otter Lutra lutra 1365 Harbour seal Phoca vitulina 1410 Mediterranean salt meadows (Juncetalia maritimi) 2120 Shifting dunes along the shoreline with Ammophila arenaria (white dunes) 2130 Fixed coastal dunes with herbaceous vegetation (grey dunes) 4030 European dry heaths 6130 Calaminarian grasslands of the Violetalia calaminariae 8330 Submerged or partially submerged sea caves]</p>		<p>grounds. Lesser horseshoe bats will not cross open ground. Consequently, linear features such as hedgerows, treelines and stone walls provide vital connectivity for this species within 2.5km around each roost</p> <p>Indirect Impact: Low risk of surface water borne pollutants reaching the SAC thereby diminishing water/water quality and undermining conservation objective related to water quality.</p>
	Likelihood of significant effects from proposed development (alone): Potentially - unknown	
	If No, is there likelihood of significant effects occurring in combination with other plans or projects? Unknown	
	Possibility of significant effects (alone) in view of the conservation objectives of the site* There is possibility of significant effects, alone, in view of the conservation objective for the SAC site.	
Step 4 Conclude if the proposed development could result in likely significant effects on a European site		
<p>In the absence of mitigation or detailed and scientific information to determine that the proposed development would not have effects on bat species in the area and in particular the Lesser Horseshoe Bat which is a protected species and one of the qualifying interests the Kenmare River Special Area of Conservation (Site Code 002158) it is not possible to exclude the possibility that the proposed development alone would result in significant effects on the Kenmare River Special Area of Conservation (Site Code 002158) from effects associated with potential disturbance / displacement changes to habitat quality function, habitat loss or fragmentation and disruption to bat roost in particular the Lesserhorse Bat.</p> <p>An appropriate assessment is required on the basis of the possible effects of the project ‘alone’. Further assessment in-combination with other plans and projects is not required at screening stage.</p>		
Screening Determination		

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 it is not possible to exclude that the proposed development alone or in combination with other plans or projects would not be likely to give rise to significant effects on the Kenmare River Special Area of Conservation (Site Code 002158), in view of the sites conservation objectives. Appropriate Assessment is required. Possible impacts identified cannot be ruled out in terms of the site-specific conservation objectives for the Kenmare River Special Area of Conservation site and which could undermine the maintenance of favourable conservation status afforded to the Lesser Horseshoe Bat (1303). Appropriate Assessment is required.

This determination is based on:

- The scale and nature of the existing development and the required works to carry out site clearance works to facilitate the development.
- The close proximity of the site to the Kenmare River Special Area of Conservation (Site Code 002158) under which the Lesser Horseshoe Bat is a Qualifying Interest.
- Records of the presence of the Lesser Horseshoe Bat at / proximate to the site.