



An  
Bord  
Pleanála

## Inspector's Report ABP-305954-19

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<b>Development</b>	Construction of a dwelling, together with proposed new entrance and driveway, together with connection to services, all together with associated site works.
<b>Location</b>	Newcourt Avenue, Bray, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	19526
<b>Applicant(s)</b>	Hannah Whelan & Ryan Davis
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	Third Party v. Decision
<b>Appellant(s)</b>	Gerry & Clare Dornan A. Evans
<b>Observer(s)</b>	Lucy & Fergal McGovern Stephen O'Kelly
<b>Date of Site Inspection</b>	11 <sup>th</sup> February, 2020
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

- 1.1. The proposed development site is located within an established residential area close to the foot of Bray Head on the south-eastern fringe of the built-up area of Bray, Co. Wicklow, approximately 1km southeast of the town centre, where it occupies an infill position between existing housing within Newcourt Avenue and Newcourt Road in an area characterised by conventional suburban development and a variety of house types / architectural styles. It is situated along the north-western side of Newcourt Avenue, which is predominantly composed of single-storey and dormer-style bungalows, and consists of a narrow plot of land formed from the amalgamation of parts of the side and rear garden areas of neighbouring properties. It primarily comprises the southern-eastern extent of the elongated split-level rear garden area of No. 87 Newcourt Road (to the northwest), although it also incorporates parts of the side garden areas of those properties to the southwest and northeast. It is bounded by a front-gabled, dormer-style property to the immediate southwest (No. 88 Newcourt Avenue) and a single-storey bungalow ('Pinefield') to the northeast.
- 1.2. The site has a stated site area of 0.03 hectares, is irregularly shaped, and is characterised by a gradual fall from Newcourt Avenue to the rear of the property with a significant level difference between it and the remainder of the rear garden area of No. 87 Newcourt Road which is situated at a lower level and is accessible from the appeal site via a series of steps.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a detached, two-storey, split-level dwelling house with a stated floor area of 124m<sup>2</sup> and a ridge height of 6.48m. The overall design of the proposed dwelling is of a contemporary nature with an asymmetrical composition that provides for an elongated construction through the site with a stepped floor arrangement given the site topography. The principle construction utilises a conventional pitched roof detail whilst the rear extent of the accommodation is housed by a flat roof set below the main ridge line. External finishes will include a zinc roof and rendered / zinc walls.

- 2.2. Access to the site will be obtained via a new entrance arrangement onto Newcourt Avenue with 2 No. car parking spaces to be provided to the front of the property. Water and sewerage services are available via connection to the public mains.
- 2.3. On 6<sup>th</sup> June, 2019, the Planning Authority issued a Certificate of Exemption pursuant to the provisions of Section 97 of the Planning and Development Act, 2000, as amended, with regard to the proposed development (Ref. No. SH 28/19).

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. Following the receipt of a response to a request for further information, on 30<sup>th</sup> October, 2019 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 7 No. conditions. These conditions are generally of a standardised format and relate to issues including external finishes, infrastructural works, construction management, and development contributions.

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

##### *3.2.1. Planning Reports:*

An initial report states that in light of the relevant land use zoning (RE: Existing Residential) and the infill nature of the site, the principle of the proposed development is acceptable, subject to good design and the protection of residential amenity. It subsequently analyses the proposal having regard to the refusal of PA Ref. No. 18140 / ABP Ref. No. ABP-302395-18 and concludes that the amended house design and site layout has adequately addressed the previous reasons for refusal and will not have a detrimental impact on the residential amenity of neighbouring properties. The report proceeds to recommend that further information be sought in respect of the proposed boundary treatment and surface water drainage arrangements.

Following the receipt of a response to a request for further information, a final report was prepared which recommended a grant of permission, subject to conditions.

3.2.2. *Other Technical Reports:*

*Roads:* No observations.

3.3. **Prescribed Bodies**

*Irish Water:* No objection, subject to conditions.

3.4. **Third Party Observations**

- 3.4.1. A total of 4 No. submissions were received from interested third parties, however, in the interests of conciseness, and in order to avoid unnecessary repetition, I would advise the Board that the principle grounds of objection / areas of concern raised therein are reiterated in the grounds of appeal and / or observations.

4.0 **Planning History**

4.1. *On Site:*

PA Ref. No. 18140 / ABP Ref. No. ABP-302395-18. Was refused on appeal on 17<sup>th</sup> December, 2018 refusing Ryan Davis permission for a new dwelling, upgrading of existing entrance, connection to all services, together with all ancillary site works:

- The proposed development is located on a constrained site, in close proximity to adjoining residential properties. It is considered that the proposed house, by reason of its scale, its height and its proximity to adjoining properties, would have an overbearing impact on these properties, would overlook the private open space of the adjoining properties and would, thereby, seriously injure the residential amenities of these adjoining properties. Furthermore, by reason of its scale, height and design, it is considered that the proposed development would be visually obtrusive in its surroundings, would be out of character with the established pattern of development in the vicinity, including breaching the established building lines of adjoining dwellings, and would represent overdevelopment of the site. The proposed development would, therefore, seriously injure the residential amenities of property in the vicinity, would be visually unacceptable and would be contrary to the proper planning and sustainable development of the area.

## 5.0 Policy and Context

### 5.1. National and Regional Policy

- 5.1.1. The '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' note that, in general, increased densities should be encouraged on residentially zoned lands and that the provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. Such developments can be provided either by infill or by sub-division. In respect of infill residential development potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and the privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.

### 5.2. Development Plan

- 5.2.1. ***Wicklow County Development Plan, 2016-2022:***

*Chapter 3: Settlement Strategy:*

*Section 3.2: County Wicklow Settlement Strategy:*

*Level 1 – Metropolitan Consolidation Town: Bray*

*Chapter 4: Housing:*

*Section 4.3: Key Housing Principles*

*Section 4.3.6: Design of New Developments*

*Section 4.4: Housing Objectives:*

*HD2:* New housing development, above all other criteria, shall enhance and improve the residential amenity of any location, shall provide for the highest possible standard of living of occupants and in particular, shall

not reduce to an unacceptable degree the level of amenity enjoyed by existing residents in the area.

**HD3:** All new housing developments (including single and rural houses) shall achieve the highest quality of layout and design, in accordance with the standards set out in the Development and Design Standards document appended to this plan, which includes a Wicklow Single Rural Houses Design Guide.

**HD9:** In areas zoned / designated 'existing residential', house improvements, alterations and extensions and appropriate infill residential development in accordance with principles of good design and protection of existing residential amenity will normally be permitted (other than on lands permitted or designated as open space, see Objective HD11 below). While new developments shall have regard to the protection of the residential and architectural amenities of houses in the immediate environs, alternative and contemporary designs shall be encouraged (including alternative materials, heights and building forms), to provide for visual diversity.

**HD10:** In existing residential areas, infill development shall generally be at a density that respects the established character of the area in which it is located, subject to the protection of the residential amenity of adjoining properties. However, where previously unserved, low density housing areas become served by mains water services, consideration will be given to densities above the prevailing density, subject to adherence to normal siting and design criteria.

*Appendix 1: Development and Design Standards*

**5.2.2. Bray Municipal District Local Area Plan, 2018 – 2024:**

*Land Use Zoning:*

The proposed development site is zoned as '*RE: Existing Residential*' with the stated land use zoning objective '*To protect, provide and improve residential amenities of existing residential areas*'.

*Description:* To provide for house improvements, alterations and extensions and appropriate infill residential development in accordance with principles of good design and protection of existing residential amenity. In existing residential areas, the areas of open space permitted, designated or dedicated solely to the use of the residents will normally be zoned 'RE' as they form an intrinsic part of the overall residential development; however new housing or other non-community related uses will not normally be permitted.

*Other Relevant Sections / Policies:*

*Chapter 2: Overall Vision & Development Strategy:*

*Section 2.2.3: Population and Housing: Residential Development Strategy for Bray MD (incl.):*

- To promote and facilitate in-fill housing developments, the use of under-utilised / vacant sites and vacant upper floors for residential use and facilitate higher residential densities at appropriate locations, subject to a high standard of design, layout and finish.

*Chapter 3: Residential Development:*

*Residential Development Objectives (General):*

*R1:* All new housing developments shall be required to accord with the housing objectives and standards set out in the Wicklow County Development Plan.

*R2:* In order to make best use of land resources and services, unless there are cogent reasons to the contrary, new residential development shall be expected to aim for the highest density indicated for the lands. The Council reserves the right to refuse permission for any development that is not consistent with this principle. Lands zoned Residential – High Density will be expected to achieve a density of not less than 50 units / hectare.

*R4:* To encourage in-fill housing developments, the use of under-utilised and vacant sites and vacant upper floors for accommodation purposes and facilitate higher residential densities at appropriate locations, subject to a high standard of design, layout and finish.

### 5.3. Natural Heritage Designations

5.3.1. The following Natura 2000 sites are located in the general vicinity of the proposed development site:

- The Bray Head Special Area of Conservation (Site Code: 000714), approximately 200m southeast of the site.
- The Ballyman Glen Special Area of Conservation (Site Code: 000713), approximately 3.2km west-northwest of the site.

### 5.4. EIA Screening

5.4.1. Having regard to the minor nature and scale of the development proposed, the site location in a built-up area outside of any protected site, the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. *Gerry & Clare Dornan:*

- The excessively overbearing nature of the proposed development by reason of its scale, height and proximity to neighbouring properties.
- Having regard to the overall design of the proposed development, including its height and the inclusion of a balcony area, and its elevated siting relative to neighbouring properties, the proposal will have a detrimental impact on the residential amenity of the appellants' dwelling house by reason of overlooking and a loss of privacy.

- The design and scale of proposed dwelling will be visually obtrusive and out of keeping with the surrounding pattern of development along Newcourt Avenue which is characterised by single-storey / dormer-style bungalows.
- The proposal will breach the established building line of adjacent development.
- The proposed development involves the construction of an additional dwelling on lands which previously formed part of the rear garden areas of Nos. 85-87 Newcourt Road and thus amounts to the overdevelopment of a restricted site.
- The application is contrary to the guidelines for housing development set out in the Bray Municipal District Local Area Plan, 2018 which states the following:

*‘To promote and facilitate infill housing developments, the use of under-utilised / vacant sites and vacant upper floors for residential use and facilitate higher residential densities at appropriate locations, subject to a high standard of design, layout and finish’.*

The subject site is neither an *‘under-utilised or a vacant site’* and instead comprises the rear garden area of a pair of existing bungalows. It is not an appropriate location for further development.

- Contrary to the provisions of Section 4.3.4 of the Bray Municipal District Local Area Plan, 2018, the proposed development will not protect the residential amenity or character of neighbouring properties or the area in general.

#### 6.1.2. A. Evans:

- The basis for the appellant’s objection to the development previously refused permission under ABP Ref. No. ABP-302395-18 remains valid and relevant to the assessment of the subject proposal.
- Contrary to the assertion by the case planner that *‘two bungalows have already been constructed in the back gardens of 85, 86 & 87 Newcourt Road so they are already infill’*, no infill development has taken place.
- The application documentation includes a number of claims which have not been substantively demonstrated.

- The house design has not been significantly revised from that previously refused permission. Instead, the size of the development has been increased with the construction moved forward to the front of the site.
- The building lines shown on the submitted plans and particulars have not been presented with genuine intent as follows:
  - The structure to the front is more than 2.5m higher than all of the dwellings on the approach from Raheen Lawn and is only slightly lower than the next applicant's family home.
  - The lowest part of the roof to the rear of the development will be almost 1m higher than all those dwellings on the approach from Raheen Lawn.
  - No sectional drawings have been submitted to show the proposed development (building height) relative to those properties on Newcourt Road.
  - The rear building lines shown on the submitted drawings are opportunistic (and are based on the recent extension of a property owned by one of the vested parties).
  - A one-dimensional view from above is not sufficient to allow for an assessment of the impact of the proposed development.
- The determination by the case planner as regards the principle of infill development on these zoned lands (*'RE: Existing Residential'*) is contested given that the site does not have an entrance and is not *'well-serviced'*.
- The prevailing pattern of development along Newcourt Avenue is dominated by single-storey bungalows with concerns having previously been raised as regards the extension of those properties by way of exempted development given their potential impact on neighbouring residences along Newcourt Road. None of the properties in the immediate vicinity that overlook Newcourt Road have living accommodation at a second-floor level.
- The proposed development will have a detrimental impact on the residential amenity of neighbouring properties.

- The proposal breaches the established building lines and fails to consider the effect of a double-height structure to the rear of those properties on Newcourt Road.
- There has been no material change to the development when compared to that previously refused permission under ABP Ref. No. ABP-302395-18. The rear of the first floor will continue to overlook those properties on Newcourt Road with the site topography giving rise to an overbearing / towering effect.
- The Planning Authority's assessment of the potential for the overlooking of neighbouring properties has not taken into consideration the imposing view from the proposed development given its siting on significantly elevated lands relative to Newcourt Road.
- The proposal is reliant on the use of out-dated information, including an engineer's report previously submitted in support of ABP Ref. No. ABP-302395-18.
- The design of the proposed dwelling is out of character with the surrounding pattern of development.
- Concerns arise as regards the disposal of surface water from the proposed development given its siting relative to lower-lying properties. Any building of mass on such a small infill site could potentially contribute to the substantial displacement and erosion of natural water flows.
- The response to the request for further information does not include the appropriate consents from all relevant parties as sought by the Planning Authority.
- In terms of environmental impact, the position adopted by the case planner is contested on the basis that insurance companies consider the area to be at risk of landslide and thus homeowners have loadings on their premiums for such events.
- It is not accepted that the subject proposal has overcome the reasons for the refusal of ABP Ref. No. ABP-302395-18.
- With respect to the applicants' response to the request for further information issued by the Planning Authority:

- In the absence of a report from a chartered engineer, there is no evidence that Item No. 1 of the request has been complied with.
  - It is unclear what undertakings have been provided as regards the construction of any retaining walls necessary to facilitate the proposed development and / or to ensure the stability of neighbouring lands.
  - Inadequate details have been provided of the boundary treatment at the site entrance and along Newcourt Avenue.
  - The response does not include the necessary consents from all the relevant parties.
  - There is no evidence to suggest that the requirements of the Planning Authority as regards the collection and disposal of surface water have been complied with. The submitted drawing provides no details of the volumes of water given the specific terrain, elevation, topography and rate of discharge from the site, or the potential impact of same on the residential amenity of those properties on Newcourt Road.
- There are concerns as regards the decision-making process followed by the Planning Authority and, more particularly, the speed with which the decision to grant permission was issued following receipt of the applicants' response to the request for further information.

## 6.2. Applicant Response

- The design of the proposed development has been informed by the refusal of PA Ref. No. 18/140 / ABP Ref. No. ABP-302395-18 and has methodically addressed the concerns raised in the assessment of that application.
- The application site is zoned as '*RE: Existing Residential*', which provides for appropriate infill residential development, whilst the previous reporting inspector in their assessment of ABP Ref. No. ABP-302395-18 concluded that the '*proposed development on the appeal site would be acceptable in principle*'. Given that the principle of a dwelling house on the subject lands has already been adjudicated on by both the Planning Authority and the Board, any appeal on such grounds can be considered vexatious.

- The separation distances between the proposed first floor windows and Nos. 85 & 86 Newcourt Road exceeds 46m which is considerably in excess of the 22m requirement set out in Appendix 1: '*Development and Design Standards*' of the County Development Plan.
- The rear building line of the proposed development corresponds with that of the adjacent dwelling house ('Pinefield') and Nos. 3, 4, & 5 Raheen Lawn to the east thereby maintaining an appropriate pattern of development and achieving a significant separation distance of over 46m from the opposing windows of Nos. 85 & 86 Newcourt Road (as has been demonstrated on the submitted site layout plan and sectional drawings etc.)
- An examination of the submitted particulars demonstrates the appropriate design of the proposed dwelling by reference to Appendix 1: '*Development and Design Standards*' of the County Development Plan. The following further points should also be noted:
  - The existing fenestration arrangement to the rear of those dwellings along Newcourt Avenue and Raheen Lawn is maintained by the proposed development. The 'back to back' separation distance from the opposing dwellings at Nos. 87 & 88 Newcourt Road is in excess of 30m.
  - The separation distance between the proposed dwelling and Nos. 85 & 86 Newcourt Road (located obliquely to the northeast) greatly exceeds the Development Plan requirement of 22m thereby ensuring the preservation of the residential amenity of those properties.
  - The design of the proposed development has taken direct reference from the existing built form / character of adjoining properties and the site topography. There is a notable mix of building styles in the area with the proposed design having been informed by pitched and flat roofs and incorporating contemporary influences. It serves to '*complement the area*' and provides an appropriate and interesting architectural solution.
  - The ridge heights of the proposed building have been conceived and stepped accordingly with reference to the site topography and adjacent

dwellings. The ground floor of the proposed house is lower than both the dwellings to each side of the site.

- The private open space provision and boundary treatment arrangements accord with the development standards set out in the Development Plan.
- An examination of the planning file will note that the proposed boundary treatment was accepted by the Planning Authority and that the necessary letters of consent from the relevant landowners were submitted as regards those works required to be undertaken along the site boundaries.
- All the proposed retaining walls will be designed, inspected and certified by an engineer.
- The Traffic Report received by the Planning Authority on 14<sup>th</sup> June, 2018 and Drg. No. PP/03-02 submitted on 16<sup>th</sup> October, 2019 clearly detail all of the proposed boundary treatments.
- The layout of the private open space to the rear of the site has been regularised to follow the built form. All boundaries and separation distances from neighbouring properties have been considered to ensure an appropriate level of protection is afforded to existing residential amenities.
- The extent of the site boundaries has been increased in agreement with adjacent landowners in order to ensure the suitable integration of the proposed dwelling on this infill site.
- The front and rear building lines of the proposed development substantially correspond with those of adjacent residences thereby maintaining an appropriate pattern of development.
- The fragmented nature of the rear building line and building footprints to the west of the site was noted and the footprint of the proposed dwelling was stepped back from the western site boundary so as to maintain an appropriate line of sight from the windows of No. 88 Newcourt Avenue thereby replicating the existing lines of sight from the adjacent 'Gonzalez Cottage'.
- This is an infill site situated between two existing dwellings and to the east of the applicant's family home. The relevant consents have been obtained,

which includes the transfer of lands from 2 No. adjacent dwellings, to enable the appropriate siting of the dwelling on site.

- The proposal has been designed to take account of the sloping site topography and the ground / floor levels of adjacent properties.
- The overall design of the proposed development has been carefully considered and due regard has been had to surrounding amenities.
- In terms of servicing, the proposed development has been designed with reference to the DoELHG's 'Urban Design Manual' which promotes the use of sustainable urban drainage systems (SUDS). Surface water from the site will be collected and disposed of as per the submitted details and in accordance with the requirements of Condition No. 6 as imposed by the Planning Authority. Foul water will be discharged to the existing public mains system.
- The site access and car parking arrangements are the same as those previously proposed under PA Ref. No. 18/140 / ABP Ref. No. ABP-302395-18 which were deemed acceptable by the Board (please refer to the report prepared by Bruton Consulting Engineers).

### 6.3. Planning Authority Response

None.

### 6.4. Observations

#### 6.4.1. Lucy & Fergal McGovern:

- The proposed development will have a detrimental impact on the residential amenity of the observer's property by reason of overlooking and a loss of privacy.
- The proposal does not respect the established building lines of adjacent properties in direct contravention of Section 4.3.4 of the Bray Development Plan, 2016-2022 which states that '*Generally, proposals will be required to maintain existing building lines and to respect existing roof pitches, fenestration and other details*'.

- Inadequate turning space has been provided on site with the result that future occupants of the proposed dwelling house will have to reverse blindly from a lower level onto the public road thereby potentially endangering public safety by reason of traffic hazard.
- Given the Planning Authority's concerns as regards surface water runoff and the increased excess on house insurance policies relating to the risk of landslide activity in the area, any construction on such a small site could result in the displacement of natural water flows. Moreover, there is no evidence to suggest that the details sought by the Planning Authority with regard to the collection and disposal of surface water runoff from within the site have been complied with (the drawing referred to does not provide the information requested).
- The applicants have not submitted a report from a chartered engineer as per the request for further information.
- The proposed dwelling house is of an increased size and has been moved forward towards the front of the site. Its design continues to be contrary to the preservation of residential amenity.
- The Planning Authority's assessment of the potential for the overlooking of neighbouring properties has not taken into consideration the towering effect of the proposed development given its siting on significantly elevated lands relative to Newcourt Road.

**6.4.2. Stephen O'Kelly:**

- The mass and bulk of the proposed development is injurious to the residential amenity of the observer's property by reason of overlooking.
- The proposed dwelling is not in keeping with the surrounding pattern of development which is dominated by single-storey / dormer-style bungalows.
- Given the site topography / slope, the proposed development will have an excessively overbearing appearance when viewed from neighbouring properties.
- The application site consists of lands derived from three separate parties, all of whom have a vested interest in the development and will not object to it.

- The proposal does not comply with the current development plan for the area, with particular reference to Sections 3.4.3 & 12.3.1.1.
- The parking area to the front of the dwelling house will endanger public safety.

## 6.5. Further Responses

None.

## 7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeals are:

- The principle of the proposed development
- Overall design and layout
- Impact on residential amenity
- Traffic implications
- Infrastructural / servicing arrangements
- Procedural issues
- Appropriate assessment

These are assessed as follows:

### 7.2. The Principle of the Proposed Development:

7.2.1. With regard to the overall principle of the proposed development, it is of relevance in the first instance to note that the subject site is located in an established residential area, which is zoned as '*RE: Existing Residential*' in the Bray Municipal District Local Area Plan, 2018 with the stated land use zoning objective '*To protect, provide and improve residential amenities of existing residential areas*', where '*appropriate infill residential development*' is considered permissible, subject to adherence to the principles of good design and the protection of existing residential amenity. Further support is lent to the proposal by reference to Section 2.2.3 and Residential Development Objective R4 of the Local Area Plan which encourages the

development of infill housing and the use of underutilised lands to facilitate higher residential densities at appropriate locations, subject to a high standard of design, layout and finish. Housing Objective HD9 of the Wicklow County Development Plan similarly allows for infill residential development in areas zoned as '*existing residential*', subject to certain criteria.

7.2.2. In this respect, I would suggest that the proposed development site can be considered to comprise a potential infill site situated within an established residential area where public services are available and that the development of appropriately designed infill housing would typically be encouraged in such areas provided it integrates successfully with the existing pattern of development and adequate consideration is given to the need to protect the amenities of existing properties. Indeed, the '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' acknowledge the potential for infill development within established residential areas provided that a balance is struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.

7.2.3. Therefore, on the basis of the foregoing, I am satisfied that the overall principle of the proposed development is acceptable, subject to the consideration of all other relevant planning issues, including the impact, if any, of the proposal on the amenities of neighbouring properties and the overall character of the wider area.

### 7.3. **Overall Design and Layout:**

7.3.1. The proposed development involves the construction of a contemporarily designed dwelling house on a narrow, elongated plot of land formed from the amalgamation of parts of the side and rear garden areas of neighbouring properties. It will be situated between an existing front-gabled, dormer-style property to the immediate southwest (No. 88 Newcourt Avenue) and a single-storey bungalow ('Pinefield') to the northeast with the wider area characterised by conventional suburban development and a variety of house types / architectural styles.

7.3.2. With respect to the concerns raised as regards the relationship of the proposal with neighbouring properties and whether it is in keeping with the character of the surrounding area, with particular reference to the overall design of the proposed dwelling house and its siting relative to the building lines of adjacent housing, whilst I

would acknowledge that the design of the proposed dwelling is more contemporary in appearance than the prevailing pattern of development, given the site context, I would refer the Board to Housing Objective HD9 of the County Development Plan which states that while new developments should have regard to the protection of the residential and architectural amenities of existing housing in the immediate environs, alternative and contemporary designs are to be encouraged in order to provide for visual diversity. In this regard, it is of relevance to note that although Newcourt Avenue is predominantly composed of single-storey and dormer-style bungalows, there is a considerable variation in building typology and house design in the area.

- 7.3.3. In considering the site context, with particular reference to the confined and narrow nature of this infill site and its relationship with adjacent properties, in my opinion, the construction of a more conventionally designed development could encounter difficulties and, therefore, I am generally amenable to the subject design which has sought to introduce a new contemporary form to the area whilst taking cognisance of the site topography and the need to avoid an overly intrusive feature. The use of a conventional pitched roof to the front of the construction is reminiscent of neighbouring housing in the area (unlike the flat-roofed design previously refused under ABP Ref. No. ABP-302395-18) whilst the ridge height and the finished (ground) floor level provide for a stepped transition between the existing housing to either side of the site.
- 7.3.4. With regard to the positioning of the proposed dwelling house and the assertion by interested parties that it will impinge on the established building lines, whilst I would accept that the new construction will not strictly follow the front or rear building lines of existing properties along Newcourt Avenue, I am inclined to suggest that it achieves a reasonable balance by providing for a suitably staggered arrangement between the properties to either side when viewed from the public road (in this respect, the subject proposal represents a considerable improvement over the development refused under ABP Ref. No. ABP-302395-18).
- 7.3.5. In relation to the rear building line, the siting of the proposed dwelling house is broadly in line with the extension constructed to the rear of the adjacent dwelling to the immediate northeast ('Pinefield') and is also comparable to that of several other houses located further southwest along Newcourt Avenue. Given that this aspect of

the development will not be readily visible from public view, and as notable variations in rear building lines are somewhat commonplace, I am satisfied that the deviation of the subject proposal from any discernible or established rear building line would not, in itself, warrant a refusal of permission.

- 7.3.6. On balance, having regard to the site location, the variation in the surrounding pattern of development, and the intent of Housing Objective HD9 of the County Development Plan, it is my opinion that the proposed development represents an appropriate design response to the site context and achieves a suitable balance between the need to respect the established character of the surrounding area and the desire to provide a visually distinctive contemporary design on this constrained infill site.

#### 7.4. **Impact on Residential Amenity:**

- 7.4.1. Concerns have been raised that the proposed development will have a detrimental impact on the residential amenity of neighbouring properties by reason of overlooking with an associated loss of privacy. In this respect, whilst I would acknowledge that the infill nature of the proposed development has the potential to give rise to overlooking with a consequential loss of residential amenity, having regard to the site context within a built-up urban area and the surrounding pattern of development, I am inclined to suggest that the overall design, positioning and orientation of the proposed dwelling house has taken sufficient cognisance of the need to preserve the residential amenity of neighbouring housing and will not give rise to any significant detrimental impact on same by reason of overlooking.
- 7.4.2. In support of the foregoing, whilst I would acknowledge the sloping nature of the application site and the significant difference in ground levels between it and the neighbouring properties to the northwest, I would draw the Board's attention to the considerable separation distances between the proposed dwelling house and the rear elevations of Nos. 87 & 88 Newcourt Road (as evident from Drg. Nos. PP/03-02: '*Site Layout*' & PP/03-04: '*Site Section*'). The proposed dwelling will be set back c. 31m from the closer rear elevation of No. 88 Newcourt Road with the equivalent separation distance increasing to c. 38m as regards No. 87 Newcourt Road. Indeed, the separation distances involved exceed those previously proposed under ABP Ref. No. ABP-302395-18 due to the re-positioning of the dwelling house forward (south-

eastwards) on site. Accordingly, the proposed dwelling will be set back considerably in excess of the 22m separation distance typically required in respect of directly opposing first floor rear bedroom windows.

- 7.4.3. The specific design of the proposed dwelling house has also sought to alleviate any concerns as regards the possible overlooking of the adjacent properties to the immediate northeast and southwest along Newcourt Avenue by limiting the nature and extent of the fenestration on the side / gable elevations of the new construction. For example, the majority of the windows serving the ground floor accommodation will be orientated away from the aforementioned properties whilst any fenestration within the north-eastern and south-western elevations will only serve a kitchen area and a stairwell and thus will not give rise to any significant overlooking concerns, particularly when combined with the separation distance from the neighbouring dwellings and as the kitchen window will be located at a height over ground floor level. Similarly, the first-floor gable end fenestration will be limited to a bathroom window finished in opaque glazing and a further high-level window with opaque glass which will provide lighting to a landing set back from same by a double-height void feature. The forward positioning of the proposed dwelling when compared to ABP Ref. No. ABP-302395-18 will also considerably reduce the potential for undue overlooking of the rear garden areas of the adjacent housing. In addition, the proposal no longer includes for any upper balcony area thereby obviating the concerns previously raised with regard to same in the assessment of ABP Ref. No. ABP-302395-18.
- 7.4.4. Therefore, in view of the foregoing, I am satisfied that the subject proposal will not give rise to any undue overlooking of neighbouring properties.
- 7.4.5. With respect to the overall scale, height and massing of the proposed development and the potential for a visually overbearing impact when viewed from within neighbouring housing, I am inclined to suggest that the subject proposal has adequately addressed the concerns previously raised by the Board in its determination of ABP Ref. No. ABP-302395-18. The proposed dwelling has been moved forward on site and thus does not project to the same extent beyond the rear building line of the adjacent properties to the immediate northeast and southwest. In addition, provision has been made for an increased separation distance between the gable ends of the respective dwellings whilst the use of a variety of eaves levels and

ridge heights serves to break up the overall massing of the structure. On balance, it is my opinion that the proposed development will not be unduly domineering or visually overbearing in relation to adjoining properties.

#### **7.5. Traffic Implications:**

- 7.5.1. Having reviewed the available information, I would advise the Board that the proposed access arrangement is comparable to that previously considered under PA Ref. No. 18140 / ABP Ref. No. ABP-302395-18 as it involves the provision of a new entrance onto Newcourt Avenue with 2 No. car parking spaces to the front of the property. Notably, in that instance the Board did not raise any concerns as regards the proposed car parking and associated access arrangements.
- 7.5.2. Furthermore, having conducted a site inspection, and following a review of the submitted particulars, including the engineer's report, it is my opinion that the subject proposal will not pose a risk to traffic / public safety and is acceptable in terms of its wider traffic impact.

#### **7.6. Infrastructural / Servicing Arrangements:**

- 7.6.1. Neither the Local Authority nor Irish Water have raised any objection to the proposed development by reference to any deficiency or lack of capacity in the existing public mains sewerage system to accommodate the additional loadings consequent on same. Accordingly, in the absence of any evidence to the contrary, it would appear that the proposed development can be satisfactorily serviced.
- 7.6.2. In specific reference to the proposed surface water drainage arrangements, I would advise the Board that in response to the request for further information the applicant has indicated that it is proposed to utilise sustainable urban drainage systems on site, such as permeable paving to hardstanding areas, in order to dispose of surface water and to reduce the amount of runoff to the public mains system. It also makes provision for a separate surface water connection to the existing mains sewer along Newcourt Avenue.
- 7.6.3. Accordingly, I would suggest that outstanding matters with regard to the surface water drainage arrangements can be satisfactorily addressed by way of condition in the event of a grant of permission.

## 7.7. Procedural Issues:

- 7.7.1. In reference to the concerns raised as regards the decision-making process followed by the Planning Authority and, more particularly, the speed with which the decision to grant permission was issued following receipt of the applicants' response to the request for further information, from a review of the available information, it would appear that the decision as issued by the Planning Authority was made in accordance with the requirements of the Planning and Development Regulations, 2001, as amended. Notably, the further information provided was not deemed 'significant' under Article 35 of the Regulations and thus did not necessitate the publication and display of new public notices with the effect that the Planning Authority could make a decision on the application following consideration of the details submitted. In any event, it is my opinion that the rights of interested third parties to appeal the decision of the Planning Authority have not been prejudiced in this instance.
- 7.7.2. With regard to the letters of consent provided in response to the request for further information as regards permission for certain works to be undertaken on third party lands and along the shared site boundaries, whilst I would accept that there are some discrepancies within the contents of same (likely attributable to the use of an identical format of letter), given that the application site is derived from an amalgam of lands within separate ownerships, and noting that each of the interested parties would appear to be amenable to the proposed development as evidenced from their signing of the consents submitted, I am satisfied that the applicants have sufficient interest in the appeal site to allow for the lodgement and consideration of the subject application. In any event, any grant of permission for the subject proposal would not in itself confer any right over private property and in this respect I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'.

## 7.8. Appropriate Assessment:

- 7.8.1. Having regard to the minor nature and scale of the proposed development, the site location in a built-up area outside of any protected site, the availability of public services, the nature of the receiving environment, and the proximity of the lands in

question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## **8.0 Recommendation**

8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

## **9.0 Reasons and Considerations**

9.1. Having regard to the land use zoning of the site in the current Bray Municipal District Local Area Plan, 2018-2024, to the infill nature of the site, to the design and scale of the proposed development, and to the nature and pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would represent an appropriate residential density, would comply with the provisions of the Local Area Plan and the Wicklow County Development Plan, 2016-2022, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 14<sup>th</sup> day of June, 2019 and the 16<sup>th</sup> day of October, 2019, 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. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

3. The applicant or developer shall enter into water and/or waste water connection agreement(s) with Irish Water, prior to commencement of development.

**Reason:** In the interest of public health.

4. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interest of visual and residential amenity.

5. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

6. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority, complete details of all proposed boundary treatment within and bounding the proposed development site.

**Reason:** In the interests of traffic safety and visual and residential amenity.

7. Gates at the entrance shall be designed so that they are not capable of being opened outwards.

**Reason:** In the interests of pedestrian and traffic safety.

8. Site development and building works shall be carried out only between the hours of 0800 and 1900 Mondays to Fridays inclusive, between the hours of

0800 and 1400 on Saturdays and not at all on Sundays or Public Holidays. Deviation from these times shall 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.

9. 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 Bord 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.

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Robert Speer  
Planning Inspector

20<sup>th</sup> February, 2020