



An
Bord
Pleanála

Inspector's Report ABP-303674-19

Development	Demolition of existing 29sqm bungalow and construction of replacement two-storey dwelling. All associated site development works, drainage, driveway access and landscaping to accommodate new replacement dwelling.
Location	'Brockagh', Kimberley Road, Greystones, Co. Wicklow, A63 X704.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	18/1195
Applicant(s)	David Speicher
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party v. Decision
Appellant(s)	Sheila Woods John Rafferty Eugene Davy

Observer(s)

None.

Date of Site Inspection

29th May, 2019

Inspector

Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located in Greystones town centre to the east of the railway line, where it occupies a position within the Greystones Harbour Architectural Conservation Area along the western side of Kimberley Road, in an area characterised by a variety of housing types which include a predominance of well-preserved 19th Century buildings of historic and architectural heritage interest as well as several examples of more recent and conventional construction. The site itself has a stated site area of 0.0149 hectares, is rectangular in shape, and is presently occupied by a low, single-storey, 'chalet'-type dwelling house with a small shed to the rear of same whilst the front of the property is used as a garden / parking area and also accommodates a further storage shed. It would appear that the site (likely in combination with the neighbouring property to the southeast) originally formed part of the rear garden area of the adjacent semi-detached residence ('Teevinore') to the immediate southwest which fronts onto La Touche Road and in this respect it is of relevance to note that a right of way extends from a pedestrian gateway serving the rear of 'Teevinore' through the application site onto Kimberley Road. The neighbouring properties to the north and south include a conventional dormer dwelling and a single storey bungalow similar in layout format to the subject site (albeit on larger plots).

2.0 Proposed Development

- 2.1. The proposed development involves the demolition of an existing single storey chalet-type dwelling (floor area: 29m²) with the subsequent construction of a replacement contemporary, two-storey, flat-roofed dwelling house with a stated floor area of 95m² and a ridge height of 5.96m over ground floor level. Given the site context, notable design features of the proposed construction include the use of high-level windows within the northern and southern elevations of the new dwelling (to be finished in obscure glazing), the recessing of the first-floor level by 1.2m from the northern site boundary, and the maintenance of an existing right of way through the site free from obstruction at ground floor level.
- 2.2. The existing site entrance onto Kimberley Road is to be maintained whilst water and sewerage services are available via existing connections to the public mains.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Following the receipt of a response to a request for further information, on 22nd January, 2019 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 6 No. conditions which can be summarised as follows:

Condition No. 1 - Refers to the submitted plans and particulars.

Condition No. 2 - Refers to surface water drainage.

Condition No. 3 – Refers to the finished floor level.

Condition No. 4 – Refers to external finishes.

Condition No. 5 – Refers to the undergrounding of services.

Condition No. 6 – Refers to the hours of construction.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

An initial report details the site context, planning history and applicable policy considerations before noting that the construction of a replacement dwelling at this location accords with the applicable land use zoning and is acceptable in principle. With regard to the site location with the Greystones Harbour Architectural Conservation Area and the potential impact of the proposal on architectural / built heritage considerations, it is stated that given the site location to the rear of La Touche Road and the limited architectural merit of the adjacent properties to the immediate north and south of the site, the development of a suitably designed contemporary dwelling on this restricted plot would be acceptable. The report subsequently states that the contemporary design is acceptable and has satisfactorily addressed those concerns deriving from the earlier refusal of a previous proposal on site (i.e. PA Ref. No. 08/1079 / ABP Ref. No. PL27.231539). It is further considered that the proposal has taken due cognisance of the need to avoid any undue overlooking or overshadowing of adjacent residential properties. The report

then concludes by recommending that further information be sought in respect of the applicant's legal interest to carry out the proposed works which may involve the alteration of an existing right of way through the site.

Following the receipt of a response to a request for further information, a final report was prepared which noted the applicant's assertion that the existing right of way would be unaffected by the development. It then recommended a grant of permission subject to conditions.

3.2.2. Other Technical Reports:

Water & Environmental Services: States that it has no comment on the application given that no new connections are proposed.

Municipal District Engineer: States that there is no public surface water sewer along Kimberley Road and that surface water should not be permitted to enter the foul water sewerage system as it tends to surcharge and flood Victoria Road at the harbour downstream of the application site.

3.3. **Prescribed Bodies**

3.3.1. *An Taisce:* Refers to the planning history of the site and states that an evaluation is required in order to ensure that all those issues which rendered previous development proposals unacceptable have been resolved.

3.4. **Third Party Observations:**

3.4.1. A total of 4 No. submissions were received from interested third parties and the principle grounds of objection contained therein can be summarised as follows:

- Detrimental impact on the residential amenity of neighbouring property by reason of overlooking, overshadowing, visually overbearing appearance etc.
- Interference with an existing right of way through the site.
- Failure to satisfactorily address the rationale for the previous refusal of PA Ref. No. 08/1079 / ABP Ref. No. PL27.231539.
- The proposal would be seriously injurious to the visual and residential amenities of the area.

- The proposed design is not in keeping with the surrounding pattern of development and will detract from the existing streetscape and the Harbour Architectural Conservation Area.
- Failure to comply with the development management standards set out in the County Development Plan as regards separation from site boundaries and the provision of adequate private open space.
- Overdevelopment of a restricted site.

4.0 Planning History

4.1. On Site:

PA Ref. No. 081079 / ABP Ref. No. PL27.231539. Was refused on appeal on 1st May, 2009 refusing Edward Nugent permission for the demolition of existing 29m² bungalow and erection of 125m² three bedroom, two-storey replacement dwelling, together with connection to drainage mains and all other ancillary works:

- Having regard to the pattern of development in the area and to the restricted size of the site, it is considered that the proposed development would be visually overbearing in relation to adjoining property and would seriously injure the visual and residential amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

PA Ref. No. 18672. Application by David Speicher for permission for the demolition of existing 29m² bungalow and construction of 99m² replacement two storey dwelling. All associated site works, drainage, driveway access and landscaping to accommodate new replacement dwelling. This application was withdrawn.

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 3 – Large Growth Town II: (2) Metropolitan Area: Greystones-Delgany

Chapter 4: Housing:

Section 4.3: Key Housing Principles

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.

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. Greystones-Delgany & Kilcoole Local Area Plan, 2013-2019:

Land Use Zoning:

The proposed development site is located in an area zoned as ‘*TC: Town Centre*’ with the stated land use zoning objective ‘*To protect, provide for, and improve the development of a mix of town centre uses including retail, commercial, office and civic use, and to provide for ‘Living Over the Shop’ residential accommodation, or other ancillary residential accommodation. To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and promote urban design concepts and linkages between town centre activity areas*’.

Other Relevant Policies / Sections:

Section 3: *Population and Housing:*

Section 3.3: *Settlement Strategy:*

Section 9: *Natural and Built Heritage:*

Section 9.1: *Heritage Strategy*

Section 9.2: *Objectives:*

HER1: Protect and enhance the character, setting and environmental quality of natural, architectural and archaeological heritage, and in particular those features of the natural landscape and built structures that contribute to its special interest. The natural, architectural and

archaeological heritage of the area shall be protected in accordance with the objectives set out in the Wicklow County Development Plan.

HER12: To preserve the character of Architectural Conservation Areas (ACAs), in accordance with Appendix B. The following objectives shall apply to ACAs:

- Development will be controlled in order to protect, safeguard and enhance the special character and environmental quality of ACAs.
- The buildings, spaces, archaeological sites, trees, views and other aspects of the environment that form an essential part of the character of an ACA will be protected.
- Proposals involving the demolition of buildings and other structures that contribute to the Special Interest of ACAs will not be permitted. The original structure of the La Touche Hotel contributes to the Special Interest of this ACA.
- The design of any development in an ACA, including any changes of use of an existing building, shall preserve and/or enhance the character and appearance of the ACA as a whole.
- Schemes for the conservation and enhancement of the character and appearance of an ACA will be promoted.
- The character and appearance of the urban public domain within an ACA shall be protected and enhanced. The Council will seek to work in partnership with local community and business groups to implement environmental improvements within ACAs.
- Within the Church Road ACA, alterations to the front boundaries to accommodate off-street car parking will not normally be permitted.
- Historic items of street furniture and paving within ACAs shall be retained, restored and repaired.

- All electricity, telephone and television cables within ACAs shall be placed underground where possible.
- The placing of satellite dishes, television aerials, solar panels, telecommunications antennae and alarm boxes on front elevations or above the ridge lines of buildings or structures will generally be discouraged within Architectural Conservation Areas, except where the character of the ACA is not compromised.

It should be noted that the designation of an Architectural Conservation Area does not prejudice innovative and contemporary design. The principle of a contemporary and minimalist design style will be encouraged within ACAs, provided it does not detract from the character of the area. It is considered that new buildings should be of their own time in appearance and should not replicate the style and detailing of heritage buildings. The replication of historic architectural styles is considered to be counter productive to heritage conservation in principle as it blurs the distinction between what is historic and what is contemporary and can lead to the emergence of poorly considered and inauthentic buildings.

N.B. The proposed development site is located within ‘*The Greystones Harbour Architectural Conservation Area*’ as identified on Map ‘B’ (Heritage Map).

5.3. Natural Heritage Designations

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

- The Bray Head Special Area of Conservation (Site Code: 000714), approximately 1.7km northwest of the application site.
- The Glen of the Downs Special Area of Conservation (Site Code: 000719), approximately 3.2km southwest of the application site.
- The Murrough Wetlands Special Area of Conservation (Site Code: 002249), approximately 3.7km south-southeast of the application site.

- The Murrough Special Protection Area (Site Code: 004186), approximately 4.6km south-southeast of the application site.

N.B. This list is not intended to be exhaustive as there are a number of other Natura 2000 sites in excess of the aforementioned distances yet within a 15km radius of the application site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the development proposed, the site location outside of any protected site and 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. Sheila Woods:

- By way of background, the Board is advised that permission was previously refused on appeal under ABP Ref. No. PL27.231539 for the demolition of the existing bungalow on site and the construction of a two-storey dwelling house for the following reason:

'Having regard to the pattern of development in the area and to the restricted size of the site, it is considered that the proposed development would be visually overbearing in relation to adjoining property and would seriously injure the visual and residential amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area'.

It is considered that the subject proposal does not adequately address the foregoing reason for refusal and thus it should similarly be refused permission

on the basis that it is visually overbearing and would seriously injure the visual and residential amenities of the area.

- The previous reporting inspector, in their assessment of ABP Ref. No. PL27.231539, suggested that a smaller dwelling in the form of a bungalow or dormer unit could be more appropriate on site, however, the subject proposal entails a full two-storey construction which is larger than the dwelling previously refused and incorporates similar elements.
- The proposed dwelling extends across almost the full width of the site and is just 3.6m from the boundary shared with the appellant's property ('Teevinore', La Touche Road). Furthermore, it is evident that the full height of the structure will immediately adjoin the site boundaries to the north and south with no visual buffer or screening proposed to reduce the impact of same.
- The proposed development will be visually overbearing when viewed from within adjacent properties and the Architectural Conservation Area and, therefore, will be seriously injurious to the visual and residential amenities of the area.
- There is a right of way through the application site from the appellant's property ('Teevinore') to Kimberley Road, the location of which is shown on the deeds of both properties. In this respect, it is evident from a review of the submitted drawings that the first floor of the proposed dwelling will oversail this right of way thereby impinging on the use of same.
- The appellant's right of way through the site is c. 1.2m wide, centred between the front of the existing dwelling house and the boundary wall, and is open to the sky. The subject proposal seeks to relocate the right of way up against the southern boundary wall with no space to either side and thus constitutes a considerable deterioration in the amenity value presently enjoyed by the appellant.
- The enclosure of the right of way will significantly reduce its overall usability and amenity value. It will limit accessibility to the rear of the appellant's property, will reduce the permeation of natural light, and will also reduce passive surveillance. Furthermore, the permanent height restriction to the right of way consequent on the proposed development could prevent the

movement of larger or bulky items from 'Teevinore' or limit access to the rear of that property for maintenance purposes.

- Issues regarding the obstruction of the existing right of way through the site were previously considered by the Council in its assessment of PA Ref. No. 18/672 (subsequently withdrawn) with the case planner noting that '*the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over lands: these are ultimately matters for resolution in the courts*' before concluding that '*Any re-design on this site should have due regard for existing rights of way*'. The subject proposal has not taken due cognisance of the existing right of way or its amenity value to the appellant.
- By failing to protect existing residential amenity and its non-compliance with prescribed development standards, the proposal contravenes the objectives of the Development Plan (with particular reference to Housing Objective: HD2).
- The rear garden area of 'Teevinore' is not particularly large and, therefore, the right of way to Kimberley Road opens up direct access to the coastline etc. thereby affording considerable amenity value to the appellant's property.
- The proposed development fails to comply with the requirements of Appendix 1: '*Development and Design Standards*' of the Wicklow County Development Plan, 2016-2022 with respect to infill housing as regards the need to achieve a minimum separation of 0.9m between the gable of any proposed house and the plot boundary. Accordingly, the proposal also contravenes Housing Objective HDS of the Development Plan.
- Whilst it is acknowledged that the applicant has attempted to reduce the potential for direct overlooking of neighbouring property by orientating the first-floor windows away from shared boundaries, it is submitted that the proposal, by virtue of its size, height and proximity to shared boundaries, will be visually overbearing relative to neighbouring housing thereby detracting from residential amenity and the wider amenity of the Architectural Conservation Area.

- The Board is advised that correspondence prepared by the appellant's legal advisor with regard to the right of way was submitted to the Planning Authority on 22nd January, 2019 only to be returned on the basis that the decision had already been made (contrary to an earlier understanding that the 'decision date' was 26th January, 2019). This correspondence is now appended to the grounds of appeal.
- The conditions attached to the notification of the decision to grant permission do not protect the interests of the appellant in that:
 - Whilst allowing the right of way to be built over, the condition makes no stipulation as to how the resulting tunnel will be illuminated to allow for safe access along same. In this respect, minimum conditions should ensure the following:
 - A clear unobstructed height of 3m along the right of way.
 - The provision of suitably controlled lighting to be powered from the application site.
 - A stipulation that the right of way must remain open and passable at all times during construction works.
 - Place a limitation on construction practices (e.g. working hours, noise & dust levels).
- The appellant has no desire to bring planning matters to the Courts when such issues can be adequately addressed by way of design and adherence to the development management standards.

6.1.2. Eugene Davy:

- The proposed development will be seriously injurious to the residential amenity of the appellant's property ('Carrigart House') by reason of overlooking. In this respect it is submitted that the proposal has been purposely designed to avail of the views east towards the sea with the result that it directly overlooks the rear of the appellant's dwelling house and its garden area.

- The applicant has failed to take due cognisance of the advice contained in the previous reporting inspector's assessment of ABP Ref. No. PL27.231539 wherein it was suggested that a smaller dwelling in the form of a bungalow or dormer unit would be more appropriate on site with an additional setback of 1m or more from the position of the replacement house as then proposed.
- 'Roselea / Teevinore House' is listed in the National Inventory of Architectural Heritage as being of 'Regional' importance by reason of its architectural qualities (Ref. No. 16304029) and is regarded as an increasingly rare example of a distinctive and well preserved Victorian semi-detached dwelling house. Given the separation distances involved, it is considered that the proposed development will have an overbearing and visually dominant impact on this important Victorian property.
- The overall design, layout, and open space provision of the proposed development is not in keeping with the settlement pattern of the Greystones Harbour Architectural Conservation Area.
- The contemporary design of the proposed development has nothing in common with the architectural characteristics of the surrounding area which is predominantly composed of Victorian housing. The modern flat-roofed design with a rendered finish and asymmetrical fenestration would be visually obtrusive and would set an undesirable precedent for further intrusive development within this historic and protected streetscape.
- The proposal is seriously deficient as regards the provision of private open space for the future occupants of the proposed dwelling house by reference to the requirements of the Development Plan and the '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities*'. In this respect it should also be noted that the right of way through the site serves to compromise the privacy of any such space.

6.1.3. John Rafferty:

- The proposed development would have a seriously detrimental impact on the residential amenity and valuation of the adjacent property to the immediate northeast ('Shinjuku') by reason of overshadowing and a loss of daylight /

sunlight / passive heat due to the overall scale and positioning of the new construction relative to same.

- Permission was previously refused on appeal under ABP Ref. No. PL27.231539 for the demolition of the existing bungalow on site and the construction of a two-storey dwelling house on the basis that the proposal would be visually overbearing and seriously injurious to the residential amenity of adjoining properties and the wider area.
- In their assessment of ABP Ref. No. PL27.231539 the reporting inspector specifically stated as follows:

‘On one hand it would be desirable to set back the dwelling a few meters from its present position but that would increase the visual impact on the house to the rear’.

Accordingly, it is clear that the previous inspector had serious concerns as regards the lack of a significant setback from Kimberley Road and was cognisant of the height and proximity of the proposed two-storey construction to the adjacent property (i.e. ‘Shinjuku’) and the gable end windows within same.

The reporting inspector subsequently proposed a series of measures in an effort to provide a solution to the development of the site and these are considered as follows:

- *A smaller proposal:*

The overall size, floorspace and building footprint of the proposed development is greater than that previously refused permission under ABP Ref. No. PL27.231539.

- *A bungalow or dormer proposal:*

The subject proposal consists of a larger two-storey, rectangularly-shaped, flat-roofed structure that includes a substantial overhanging area which extends in front of the first-floor gable end bedroom window of the appellant’s property thereby overshadowing same. It is neither a bungalow nor a dormer construction.

- *The proposal to increase the set back from Kimberley Road:*

Article 23 of the Planning and Development Regulations, 2001, as amended, requires site layout plans to indicate the distance of any proposed structure from the site boundaries.

With regard to the boundary onto Kimberley Road, the only measurement that satisfies the aforementioned requirement is to be found on the proposed site map (Drg. No. 18001-P-01) which refers to a distance of 5.045m.

A comparison of the subject proposal with that considered under PA Ref. No. 08/1079 / ABP Ref. No. PL27.231539 confirms that the proposed development has not addressed the need to increase the setback of the new dwelling house from Kimberley Road. Indeed, the setback distance has actually been significantly decreased in the subject application with the result that the proposal will further impact on the appellant's property by reason of a loss of sunlight / daylight.

- The applicant has failed to take due cognisance of the advice contained in the previous reporting inspector's assessment of ABP Ref. No. PL27.231539.
- The reduction in the overall height of the proposed dwelling by 0.31m (when compared to the development refused permission under PA Ref. No. 08/1079 / ABP Ref. No. PL27.231539) is insignificant given that the previous proposal was deemed to be overbearing.
- The 6m height of the proposed construction will extend to within c. 3m of the master bedroom window within the gable end of 'Shinjuku' thereby resulting in a considerable loss of sunlight / daylight.
- With regard to the proposal to recess the entire length of the first floor by 1.28m along the northern boundary, this only marginally exceeds the minimum requirement of the Development Plan which specifies a separation of 0.9m between new development and the site boundary. Moreover, the absence of any setback at ground floor level contravenes the requirements of the Plan.

- The height and positioning of the proposed construction relative to the appellant's property ('Shinjuku') will have a detrimental impact on the residential amenity of same by reason of overshadowing and a loss of light at both ground and first floor levels and within the side garden area.
- The shadow impact analysis submitted with the application is deficient and does not accurately detail the levels of sunlight / daylight presently received by the appellant's property.

6.2. Applicant's Response

- The proposed development accords national, regional and local planning policy, including the National Planning Framework, 'Quality Housing for Sustainable Communities, 2007', the 'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009', the 'Regional Planning Guidelines for the Greater Dublin Area, 2010-2022', the Wicklow County Development Plan, 2016, and the Greystones / Delgany & Kilcoole Local Area Plan, 2013.
- With regard to the assertion in the grounds of appeal that the proposed development would '*not improve or enhance the residential amenity of this locality*', it is submitted that the replacement of the existing substandard dwelling house with a modern residence would clearly serve to improve the levels of residential amenity enjoyed on site.
- The overall principle of a replacement dwelling house on this infill site has already been accepted by both the Planning Authority and the Board (please refer to PA Ref. No. 08/1079 / ABP Ref. No. PL27.231539). Accordingly, the Board is requested to affirm the acceptability of the subject proposal as a matter of principle and to focus its assessment on the issues of architectural detailing.
- The design of the proposed development has taken due cognisance of the comments of the previous reporting inspector in their assessment of PA Ref. No. 08/1079 / ABP Ref. No. PL27.231539 and in this regard it is considered that the subject proposal advances a suitable design given the on-site constraints.

- It is evident from a comparison with PA Ref. No. 08/1079 that the overall massing of the earlier proposal was significantly greater than the dwelling presently under consideration.
- It is acknowledged that the proposed development does not achieve the minimum 0.9m separation to the side boundary wall of the plot as required by Appendix 1: '*Development and Design Standards*' of the Development Plan, however, in light of the difficult on-site constraints, the fact that the existing dwelling house only satisfies this requirement to its southern boundary, and to the degree that the aforementioned stipulation is envisaged as only applying to 'new' dwellings, it is submitted that a relaxation from the required standard can be applied in the subject instance. Furthermore, this is not a case of an applicant seeking to depart from a statutory planning control simply in order to erect a larger house than the site can accommodate as the position of the dwelling is partly dictated by a requirement for part of the land to remain free from any built development (i.e. the necessity to preserve a third party right of way).
- Having regard to the site location within the Greystones Harbour Architectural Conservation Area, the variation in the surrounding pattern of development along Kimberley Road, the absence of any single unifying design or architectural theme which permeates throughout buildings in the immediate area, and the limited contribution of the existing dwelling house on site to the wider streetscape, it is submitted that the proposed development will make a modest contribution to the appearance of this part of Kimberley Road and will not be unduly prominent, especially when viewed against the backdrop of surrounding buildings.
- No clear evidence has ever been adduced in any of the planning files on site, current or historical, which would unequivocally support the assertion that '*the subject site was originally part of the rear garden of Teevinore which is a large period house which faces onto La Touche Road*'. Indeed, it would appear that the subject site, along with adjacent land which fronts onto Kimberley Road, always comprised an independent tract which did not form part of the curtilage of Teevinore.

- Notwithstanding that 'Roslea / Teevinore' is listed in the National Inventory of Architectural Heritage, these properties have not been designated as protected structures and, therefore, minimal weight should be attached to the suggestion in the grounds of appeal that *'the proposed development will clearly have an overbearing and dominant visual impact on the curtilage of this regionally important Victorian house'*, particularly as the merits of these adjacent houses would seem to stem from their contribution along La Touche Road rather than Kimberley Road.

- Contrary to the assertion in the grounds of appeal, Kimberley Road is not characterised by a Victorian streetscape and the Board is referred to the report of the case planner on the design merits of the submitted proposal as follows:

'Given the setting of the site to the rear of the La Touche Road and the character of the adjoining properties to the north and south along Kimberley Road which are of little architectural merit, I would consider that a contemporary designed dwelling would be acceptable on this restricted site.'

- For the purposes of clarity, it should be noted that no part of the reason for the refusal of PA Ref. No. 08/1079 / ABP Ref. No. PL27.231539 referred to the impact of the development then proposed on features of historic interest, including the Architectural Conservation Area. Therefore, the Board is invited to reaffirm its acceptance of the principle of a replacement dwelling on this site from an architectural conservation perspective.
- With regard to the concerns raised by an appellant that the proposed development will result in undue overlooking of the garden area within the curtilage of Carrigart House, it is submitted that landowners in urban / suburban settings should not expect the same level of privacy as individuals in rural locations, especially when their properties are zoned for 'Town Centre' purposes. In this regard, the applicant has no interest in overlooking the appellant's property and instead endorses the reference in the grounds of appeal to *'the large northeast and southeast facing windows again seem to be specifically designated to maximise sea views over our client's curtilage'*.

- In its determination of ABP Ref. No. PL27.231539, the Board did not refer to any potential for the overlooking of Carrigart House.
- Overshadowing, as distinct from daylight penetration, was not identified as an area of concern in the Board's previous determination of ABP Ref. No. PL27.231539. Furthermore, any loss of light to the first-floor window within the southern gable of the adjacent property known as 'Shinjuku' was not considered to be sufficiently problematic as to justify a refusal of permission.
- It is considered that the application site can satisfactorily accommodate a two-storey building of the size proposed. Moreover, it is respectfully submitted that a two-storey dwelling as proposed falls within a reasonable contemplation of the suggestion made by the previous reporting inspector in their assessment of ABP Ref. No. PL27.231539 wherein it was stated that '*A smaller proposal either in a bungalow or dormer form and set back a metre or more from the original location would eliminate any impact . . .*' It is not accepted that the inclusion of an upper level within the proposed construction should automatically result in a refusal of permission as has been suggested in the grounds of appeal.
- The previous reporting inspector envisaged a smaller house on site in terms of building height rather than floorspace and, therefore, the subject proposal achieves this objective with a reduction in the size of the structure from 6.6m to 5.95m. To the extent it has been suggested that '*. . . the applicant has chosen not to heed the advices of the Board to provide a . . . lower dwelling*', it is considered that any such statement is factually incorrect.
- Having regard to the on-site constraints, the fact that adjacent houses fail to incorporate sufficient garden areas to satisfy modern standards, and noting that private open space serving the existing dwelling house falls equally short of the Planning Authority's stipulations, it is considered unreasonable and unfair to require the subject proposal to comply with the current requirements of the Development Plan as regards the provision of private open space. Notably, the availability of private open space on site was not raised as a concern in the Board's previous determination of ABP Ref. No. PL27.231539.

- In reference to the existing right of way through the application site, the Board is referred to the correspondence prepared by G. O’Nuallain, Solicitors, on behalf of Mrs. S. Woods which states the following:

‘Our client acknowledges that the route of the right of way has not been affected but the narrowness and the restricted height of the proposed right of way is extreme. Our client would be happy if the clear height of the right of way was raised to 3m and if the passageway was provided with artificial light, powered from Brockagh . . .’

Whilst Mrs. Woods has expressed concerns that the first floor of the proposed dwelling will overhang the existing pathway from Teevinore, it is suggested that the appellant may have overstated the degree to which the Board expressed an opinion on landownership-related issues and in this regard it is noted that the previous reporting inspector concluded as follows:

‘The owners of the house to the southwest have concerns about the scale of the proposal and also a perceived interference with an established right of way. I do not accept that this right of way would be adversely affected by the proposed development’.

In response, the applicant would concur entirely with the approach set out in the report of the case planner in and the Board is requested to take cognisance of the Section 5.13 of the *‘Development Management, Guidelines for Planning Authorities’* and 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’.

By way of illustration, the Board is advised that ABP Ref. No. PL06.124611 was dismissed on the basis that the grounds of appeal related solely to land ownership issues.

6.3. Planning Authority’s Response

None.

6.4. Observations

None.

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
- 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 zoned as 'TC: Town Centre' with the stated land use zoning objective '*To protect, provide for, and improve the development of a mix of town centre uses including retail, commercial, office and civic use, and to provide for 'Living Over the Shop' residential accommodation, or other ancillary residential accommodation. To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and promote urban design concepts and linkages between town centre activity areas*'. Within these areas, 'residential development' is deemed to be generally appropriate as per Section 11 of the Local Area Plan.
- 7.2.2. In addition to the foregoing, it should also be noted that the surrounding area is primarily residential in character and that the prevailing pattern of development is dominated by a variety of housing construction. However, it is of particular

importance to note that the subject proposal involves the replacement of an existing, somewhat dilapidated, chalet-type dwelling house with a newly constructed modern residence on an infill site.

- 7.2.3. Therefore, in light of the foregoing, including the established use of the site for residential purposes, in my opinion, the proposed redevelopment of the subject site and the construction of a replacement dwelling house is acceptable in principle.

7.3. **Overall Design and Layout:**

- 7.3.1. The proposed development involves the demolition of an existing single storey, chalet-type dwelling (floor area: 29m²) and the subsequent replacement of same with a two-storey, 2-bedroom dwelling house (floor area: 95m²) on a particularly constrained site which would appear to have formed part of the rear garden area of the adjacent dwelling house to the southwest which fronts onto La Touche Road ('Teevinore'), although the applicant has suggested that the site actually formed part of a larger tract of land independent of the curtilage of 'Teevinore'. The site itself extends to only 0.0149 hectares in size and comprises a narrow-elongated plot whilst its developable area is further reduced by the need to maintain an existing right of way, which extends from a pedestrian gateway serving the rear of 'Teevinore' through the site onto Kimberley Road, free from obstruction. Further limitations to the development of the property arise due to the site context, including its relationship with neighbouring housing (noting the first-floor gable end window within the dormer dwelling, 'Shinjuku', to the north) and its location within the Greystones Harbour Architectural Conservation Area. Accordingly, given the site constraints, the existing chalet does not benefit from any significant or usable private open space behind the building line whilst the front of the property primarily serves as an off-street car parking space that is open to public view through the entrance gateway. Notably, the dormer residence to the immediate north of the application site and the bungalow to the south also occupy restricted plots and have very small rear garden areas which do not satisfy the minimum private open space requirement of 50m² for 1-2 No. bedroom dwellings as set out in Appendix 1: '*Development and Design Standards*' of the County Development Plan.
- 7.3.2. In an effort to provide for an improved level / standard of residential accommodation on site, whilst taking cognisance of the aforementioned developmental constraints,

the applicant has opted for a contemporary, two-storey, flat-roofed design which is somewhat comparable to that previously considered (and refused) under PA Ref. No. 081079 / ABP Ref. No. PL27.231539. In this respect whilst I would acknowledge that the submitted proposal is considerably more contemporary in appearance than the prevailing pattern of development and is located within the Greystones Harbour Architectural Conservation Area, it should be noted that the designation of an ACA does not prejudice innovative and contemporary design whilst Section 10.2.3 of the County Development Plan expressly states that *'design of a contemporary and minimalist style will be facilitated within ACA's provided it does not detract from the character of the area'*. Moreover, it was apparent during the course of a site inspection that whilst the wider ACA is characterised by its seaside location and a predominance of well-preserved 19th Century buildings, which include several fine semi-detached Victorian houses and the terraces at Bayswater Terrace, Simonton Place and Marine Terrace, there is considerable variation in the house types and building styles along Kimberley Road with several instances of the more recent additions to the streetscape somewhat lacking in architectural merit. Indeed, with the exception of the pair of semi-detached Victorian properties ('Carriglea' & 'Carrigart') along the eastern side of Kimberley Road at its junction with Marine Road, there is a notable absence of any buildings of architectural / built heritage interest along this particular stretch of roadway which is instead predominantly characterised by the rear boundary walls of those properties along La Touche Road and assorted 'infill' development.

7.3.3. Therefore, having regard to the site context, the surrounding pattern of development, the relationship of the site with adjacent properties, the partial screening offered by those properties to the immediate north and south of the site, and as the proposed development will not be overtly visible in a wider context, it is my opinion that the overall design proposed will not unduly detract from the established character or built heritage considerations of the wider area, including the Greystones Harbour Architectural Conservation Area.

7.3.4. By way of further comment, whilst I would have some reservations as regards the adequacy of the private open space proposed, given the established use of the property for residential purposes and the limited site area, I am amenable to a relaxation in the applicable standard (i.e. 50m² of private amenity space) on the

basis that the submitted proposal represents an improvement over the current situation on site.

7.4. **Impact on Residential Amenity:**

- 7.4.1. Concerns have been raised in the grounds of appeal 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. In support of the foregoing, I would draw the Board's attention to the designer's response to the confined nature of the application site and the limited separation distances available from adjacent housing, with particular reference to the absence of any first-floor fenestration within the rear elevation of the proposed dwelling house and the proposal to utilise high-level windows with obscure glazing in order to avoid undue overlooking of those properties to the immediate north and south (*N.B.* In the event of a grant of permission I would recommend that those windows serving the projecting first-floor window seat be similarly glazed in obscure glass).
- 7.4.2. In relation to the specific concerns raised in the grounds of appeal that the proposed development will be seriously injurious to the residential amenity of the property known as 'Carrigart House' primarily due to overlooking of its private garden area, whilst I would accept that the proposal has been purposively designed to maximise solar gain from the east and to avail of the views eastwards towards the sea (beyond the appellant's property), having regard to the site context and its location within a built-up urban area in the centre of Greystones, the separation distances involved, and the presence of an intervening public road between the respective properties, I am satisfied that the subject proposal will not give rise to such a loss of privacy / amenity within the appellant's garden area as to warrant a refusal of permission.

- 7.4.3. In terms of the potential for overshadowing of neighbouring property, I would draw the Board's attention to the positioning and proximity of the proposed two-storey construction relative to a first-floor bedroom window within the gable end of the adjacent dwelling house to the immediate north known as 'Shinjuku'. Notably, this matter was given particular consideration in the previous assessment of ABP Ref. No. PL27.231539 (PA Ref. No. 081079) wherein the reporting inspector raised concerns that the development as originally proposed would likely result in some diminution in the levels of daylight / sunlight received by the aforementioned window. Moreover, it was also noted that whilst a shadow impact analysis provided in support of an amended design (submitted in response to a request for further information) indicated that said revised proposal would not have a significant adverse impact on the dwelling house to the north, concerns remained that there would continue to be a perceived impact given the close proximity of the proposed structure. The reporting inspector subsequently suggested that a *'smaller proposal either in a bungalow or dormer form and set back a meter or more from the original location would eliminate any impact on the dwelling to the north while providing reasonable separation to the dwelling to the south'*.
- 7.4.4. Although the Board is not bound by the suggestions made by the previous inspector in their assessment of ABP Ref. No. PL27.231539, for the purposes of clarity, and contrary to the assertions contained in the unsolicited further information submitted in support of the subject application, the current proposal has not been set back 1.2m from the original location of the dwelling house proposed under PA Ref. No. 081079 / ABP Ref. No. PL27.231539, but is recessed behind the building line of the revised proposal submitted in response to a request for further information. In this respect I would advise the Board that the front building line of the subject proposal and the development originally proposed under PA Ref. No. 081079 are broadly similar.
- 7.4.5. Having reviewed the available information, including the shadow impact analysis provided with the subject application, in my opinion, the proposed development will give rise to some increase in overshadowing of the adjacent property ('Shinjuku') to the immediate north with an associated loss of amenity, although the magnitude of this impact is difficult to ascertain from the submitted details.

- 7.4.6. With regard to the 'perception' of being overshadowed by the proposed construction, I would suggest that this can be considered in tandem with the concerns raised that the proposed development will be visually overbearing when viewed from within, and in relation to, adjoining property. In this respect, specific reference has been made to the failure of the proposed development to provide for a minimum separation of 0.9m between the northern elevation of the proposed dwelling and the side wall of the plot in accordance with the requirements of Appendix 1: '*Development and Design Standards*' of the County Development Plan (i.e. Section 1: '*Mixed Use and Housing Developments in Urban Areas: Other Issues: Infill / backland development in existing housing areas*').
- 7.4.7. Given the narrow and elongated nature of the site and the applicant's desire to maximise the space available whilst providing for an internal room arrangement / configuration which achieves a reasonable level of amenity, it is proposed to build the ground floor level of the new construction immediately alongside the northern site boundary with the result that it will effectively serve to define (in part) the division between the application site and adjoining properties. Accordingly, the northern elevation of the proposed dwelling house at ground floor level will extend to an approximate height of 2.91m alongside much of the northern site boundary (as will be particularly evident when viewed from within the limited rear garden area of the adjacent dormer bungalow, 'Shinjuku'). However, in an attempt to reduce the overall massing of the structure, it is proposed to recess the first-floor level of the construction by 1.2m from the northern site boundary. Conversely, the proposed dwelling will be set back from the southern site boundary at ground floor level in order to preserve an existing right of way whilst the first floor will oversail same with the result that the full 5.95m height of the new construction will be readily apparent when viewed from within the adjacent property to the south ('Liseaux').
- 7.4.8. Whilst I would concede that the applicant has made a concerted effort to maximise the development potential of the site while seeking to preserve the amenity of adjacent residences, on balance, I am inclined to conclude that the proposal as submitted represents an unacceptable overdevelopment of the site. Although I am cognisant of the on-site constraints, in my opinion, the overall height and extent of the proposed development would be visually overbearing in relation to the adjoining properties to the immediate north & south and would seriously injure the visual and

residential amenities of the area in a manner comparable to that previously refused permission under ABP Ref. No. PL27.231539.

- 7.4.9. With respect to the right of way that extends from a pedestrian gateway serving the rear of 'Teevinore' through the application site onto Kimberley Road, it would appear that the subject proposal will ensure that this remains free from obstruction for use by pedestrians, although there will inevitably be a diminution in the levels of natural light received by same which may serve to discourage its use. Notwithstanding the foregoing, I would stress that it is not the function of the Board to adjudicate on property rights / disputes and, therefore, any alleged impairment of the right of attributable to the proposed development is essentially a civil matter for resolution between the parties concerned. 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*' and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property or established wayleaves etc.

7.5. **Appropriate Assessment:**

- 7.5.1. Having regard to the nature and scale of the proposed development, 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 overturned in this instance and that permission be refused for the proposed development for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. Having regard to the restricted nature of the site and the pattern of development in the area, it is considered that the proposed development, by reason of its overall scale, design, height and positioning on site relative to adjoining properties, would constitute an overbearing form of development and would seriously injure the visual and residential amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

12th June, 2019