



An
Bord
Pleanála

Inspector's Report

ABP-304341-19

Development	Permission for retention of foundations, concrete ground slab, walls, drains, foul and waste water sewers also permission is sought for the construction and completion of the dwelling.
Location	Monang, Dungarvan County Waterford
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	1979
Applicant(s)	Edward O'Brien
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Edward O'Brien.
Observer(s)	Frank O'Riordan
Date of Site Inspection	27th September, 2019.

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site comprises a backland area that is located to the rear of an existing house, No.2 Pinewood Lawn, that fronts onto the Old Hospital Road. The site is accessed via a narrow access between two existing dwellings that front the Old Hospital Road (Nos. 1 and 2 Pinewood Lawns).
- 1.2. The site is bounded to the north by the rear boundaries of houses (Nos. 6-8) Pinewood Lawn. To the west and south, the site adjoins other undeveloped backlands and the site of No.1 Pinewood Lawn. To the east, the site adjoins the rear boundary of No.2 Pinewood Lawn and also the site access laneway to the Old Hospital Road.
- 1.3. The site is located on the seaward side of the Old Hospital Road and in a location where the River Colligan Estuary comes in close proximity to the road. The layout of the site is such that the site boundary is within c.6 metres of the high water mark at the closest point which is at the south west corner of the site.
- 1.4. The site has been the subject of existing development in the form of the clearance of the site including removal of hedgerows along the line of the proposed new boundary wall to the north and east of the site.
- 1.5. Works on site include the part construction of a dwelling in the centre part of the site with the foundations built and concrete slab poured. Some blockwork has also been completed. Trenching has been undertaken which uncovered an existing service run. There is a low level hoarding erected between the appeal site and No.2 Pinewood Lawns.
- 1.6. The stated area of the appeal site is 0.0768 ha.

2.0 Proposed Development

- 2.1. The proposed development comprises the retention of the works undertaken on the site and as set out in the above site description and for the construction of a single storey two bedroom house in the central part of the site. The dwelling is proposed to be orientated approximately east – west across the site and to be c.6.31 metres in height to the roof ridge. Finishes are proposed to be brick with concrete roof tiles.

- 2.2. The dwelling is indicated as being located close to the northern and southern site boundaries with a separation of approximately 2 metres to the northern boundary and a tighter separation to the south with a separation of less than one metre to the boundary indicated.
- 2.3. The stated floor area of the proposed dwelling is 107.8 sq. metres.

3.0 Planning Authority Decision

3.1. Decision

The planning authority issued a Notification of Decision to refuse Permission for one reason which can be summarised as follows:

1. That the location of the site on a backland sensitive site which adjoins existing houses it is considered that the development carried out to date and the proposed completion would impact negatively on the residential amenities and privacy of adjoining properties. The development constitutes haphazard backland development which is contrary to the established pattern of development and the policies and objectives of the Dungarvan Town Plan.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer notes the planning history of the site and the original refusals of permission issued by the PA and decision of the Board to grant permission for a development of a similar form to the current proposal as per Ref. PL63.244140. The report notes discrepancies between the as constructed position of the floor slab and the dimensions / separation distances to No.2 Pinewood Lawn indicated on the submitted drawings. It is also noted that the works undertaken has resulted in significant alterations to existing boundaries with a loss of residential amenity and the development being c.5 metres closer to the house to the east (No.2 Pinewood Lawn). Considered that the development undertaken has negatively

impacted on residential amenity and that it is contrary to the residential zoning objective of the site. Concern expressed regarding the accuracy of the finished floor level of the dwelling and the impact of this on this visually vulnerable location.

3.3. Prescribed Bodies

Department of Culture Heritage and the Gaeltacht (Development Applications Unit) – No objection subject to there being no encroachment into the SPA site.

3.4. Third Party Observations

Five third party observations were received by the Planning Authority and the following is a summary of the main issues raised in these submissions:

- Failure to comply with conditions attached to Board decision.
- That the floor area has increased from previously permitted (93.8 to 107.8 sq. metres).
- That the separation to No.2 Pinewood is proposed to be reduced from the permitted 30 metres to 24.5 metres.
- That waste material from site clearance was pushed to the foreshore.
- That the site is backland and does not conform to the pattern of development in the area.
- The development will impact negatively on residential amenity.
- The development will impact negatively on views across the estuary.
- That the site access is dangerous.
- The site has been increased in area to include a disputed area of land.

4.0 Planning History

There is a significant planning history relating to the appeal site. The following is a summary of the valid planning applications received:

Waterford City and County Councils Ref. 17/832 – Application for the retention of foundations, concrete slab, drains and sewers and the construction and completion of a dwelling. Further information on a number of issues including clarifications from Irish Water was requested however no response was received and the application was deemed withdrawn.

Waterford City and County Councils Ref. 14/600168; ABP Ref. PL93.244140 – Permission refused by the planning authority but granted on appeal for the construction of a single storey dwelling on backland site that significantly matches the current appeal site. The permitted dwelling in this case was sited slightly further west on the site than the current proposal and the design and scale of dwelling was very similar to that in the current proposal.

Waterford City and County Councils Ref. 13/510006; ABP Ref. PL93.242098 – Permission refused by the planning authority and decision upheld on appeal to the Board for the construction of a dwelling and connections to services on a site that substantially matches the current appeal site. Permission was refused for a reason relating to the scale, mass and bulk of the proposed two storey dwelling being an incongruous feature in the landscape in close proximity to Dungarvan Harbour SPA and that the private amenity space associated with the development is unsatisfactory having particular regard to the topography of the site.

Waterford City and County Councils Ref. 12/510004; ABP Ref. PL93.241023 – Permission refused by the planning authority and decision upheld on appeal for the construction of a single storey dwelling on a site that substantially matches the extent of the current appeal site. The reason for refusal related to the proximity of the site to the foreshore and a lack of certainty by the Board that the proposed development would not affect the integrity of the Dungarvan Harbour SPA. The proposed development would therefore materially contravene policies NH2 and NH13 of the plan and be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

Under the provisions of the *Dungarvan Town Development Plan, 2012-2018* (as varied) the site is zoned residential Development – Medium Density with the stated objective *‘to protect the amenity of existing residential development and to provide for new residential development at medium density’*.

The site is located in an area that is identified as being visually vulnerable in the landscape assessment (1999).

Section 4.7 of the plan relates to building re use and brownfield site development. This states, inter alia, that *‘the council will encourage the utilisation and re development of obsolete and vacant sites by developers where possible in a sustainable manner in preference to greenfield development.’*

5.2. Natural Heritage Designations

The site is located outside of but adjacent to the Dungarvan Harbour SPA site (site code 004032).

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the first party grounds of appeal:

- That the appeal is accompanied by a revised site layout drawing that amends the separation distance to the rear of No.2 Pinewood Lawn.
- That the development was previously permitted by the Board and a precedent for the development of the site has therefore been set. The previous Board decision was also under the same development plan as remains in effect.

- That the need for retention arises from the extension of the site to include a small additional area to the east of the original site and the consequent re location of the building footprint c.5 metres to the east. A bay window element was also provided for. A drainage issue impacting siting also arose with a drain serving the Pinewood Lawns development crossing the site and running under the corner of the permitted house.
- That the additional 14 sq. metres taken up with the bay window would not be visible from surrounding properties and has no north facing windows.
- That the applicant eventually received confirmation from Irish Water that the sewer traversing the site could be re routed.
- That the proposed development complies with the policies and development management of the county development plan and the LAP. The windows (in No.2 Pinewood) would be 22.5 metres away. A 2 metre high wall and landscaping will provide privacy for houses to the north and west.
- The impact of the structure on views across the Colligan Estuary will not be significant and the house would not be visible from the public road.
- There is no objection to conditions regarding the type of finishes to be used on the house.
- Condition No.4 of the Board grant of permission related to boundary treatment and requirements in this areas could be addressed by condition.
- It should be noted that the site is larger (by c.0.01 ha.) than that on which the Board granted permission.
- That the first party is the owner of the whole site and the applicant submitted a registration map with the application documents. The boundary of the site with No.2 Pinewood Lawns are the same as that when permission was granted by the Board.
- That the appeal site was a left over area following the construction of the Pinewood Lawns development and used to provide a temporary septic tank for the development.

- Noted that the Board granted permission for an infill dwelling on an adjacent site under Ref. PL56.240866 despite the inspector recommending refusal on the basis that the density was too low.
- That the overall height of the house will be the same as that permitted previously by the Board.
- That the proposed development is consistent with all relevant development management standards set out in the plan.
- There was no objection from the council to the proposed access or issues regarding safety of the access raised.
- That the loss of established boundaries as referenced in the report of the Planning Officer is an inevitable consequence of the requirement to construct boundary walls for privacy.
- That the conclusions of the report of the planning officer regarding the impact of the development on residential amenity are not supported by reference to development plan or national standards.
- That the location of the house is correctly indicated on the plans submitted with the application, however the separation distance to No.2 Pinewood Lawns was incorrectly stated. This has been amended in a revised Site Plan submitted with the appeal.

6.2. Planning Authority Response

There is no record on file of a response from the Planning Authority to the first party grounds of appeal being received.

6.3. Observations

An observation on the appeal has been received from the resident of the residential property to the east of the appeal site, (No.2 Pinewood Lawn). The following is a summary of the main issues raised in this submission:

- That the site comprises backfill or infill from original development of the Pinewood lawns estate.
- Submitted that the decision to re zone the site would not have been made if its environmental sensitivity had been known. The site should be re zoned back to estuary.
- That the applicant has shown no indication of cooperating with the enforcement proceedings against him. The applicant has also shown disregard for the conditions attached to the previous decision of the Board.
- That the 22.5 metre separation distance to No.2 is not what was approved by the Board (30 metre separation).
- That previous applications for permission on the site (notably Ref. PL56.242098) was objected to by Inland Fisheries Ireland, An Taisce and by the Heritage Officer of the council. This permission was refused.
- That the site forms part of the amenity area under the original permission granted to the Pinewood estate which comprised folios 15512F and 635F. Submitted that the actions of the first party in 2015 in undertaking the works were unlawful.
- That the additional lands on the eastern side of the site incorporated into the current application site and which was the subject of works by the first party are not in his ownership.
- Photographs submitted showing the original nature of the site with trees and a home for wildlife.
- Excavated foundation material has been deposited on the foreshore. Additional topsoil was also brought onto site and deposited on the foreshore.
- The development will have a detrimental impact on visual amenity.

- That contrary to the statement in the appeal, the first party did not inform the council of the issue with the sewer line uncovered on site and poured foundations over the line.
- That the first party did not respond to the Planning Authority regarding the issues raised in the warning letter and has taken legal proceedings against Irish Water. This does not show a willingness to follow proper planning procedures.
- That the applicant has not submitted drainage design proposals to Irish Water, the council or the Board.

6.4. Further Responses

6.4.1. First Party Response to Observation

The following is a summary of the main issues raised in the first party response to the observation received:

- That the main content of the observers submission relates to non planning matters and issues that pre date the granting of permission on the site by An Bord Pleanála.
- That the site is an infill site in the planning sense and not in the context of infill materials. It is bound be development on three sides.
- That the first party has submitted correspondence as to the source of topsoil imported onto the site to facilitate the development.
- That a number of the conditions of the Boards decision (Conditions Nos. 1, 5, 6) could not be complied with due to the post commencement of construction of the sewer / drainage connection crossing the site. Understood that the first party is now seeking legal redress from Irish Water for the location of services crossing his lands.
- Correspondence from Irish Water dated December 2018 indicates that there is a diversion /technical option that would be acceptable to Irish Water.

- That the site is clearly brownfield and has been in use since the development of the Pinewood Lawns development to accommodate a septic tank and, on decommissioning of the septic tank, for other drainage infrastructure. Vegetation has been altered over the years and it has never been a nature reserve.
- That it appears that the observer (Mr O’Riordan) does not dispute the ownership details provided by the first party and does not provide any mapping to contradict the site boundary as submitted in the application.
- Noted from Landdirect.ie that No.2 is a freehold site and that the western boundary matches the application boundary and ownership documentation submitted by the first party.
- That contrary to the statement of the observer, the discovery of unknown / unrecorded services on brownfield lands is not an ‘unusual development’.
- That a back to back distance between the proposed development and No.2 of 22.5 metres will be retained which is in accordance with local and national planning policy.

6.4.2. Further Response from the Observer

In response to an invitation from An Bord Pleanála, the observer submitted further comments on the response submission received from the first party. The following is a summary of the main issues raised in this submission:

- That the applicant has failed to comply with Condition No.1 of the Boards decision to grant permission.
- The applicant has not complied with warning and enforcement notices issued.
- That contrary to the statement in the first party submission, the ground on site is infill material and this has been recognised by a number of state bodies in submissions on previous applications on the site.
- That if the dwelling foundations had been constructed as per the permission granted then all pipes would have been avoided.
- That site boundaries have been destroyed.

- That Irish Water should be afforded a right to respond to the issues raised.
- That there is evidence of the deposition of hazardous material on the site.
- That there is no evidence of the 3 inches of sand laid above the pipe as stated by the first party.
- That the developer has not received written approval from Irish Water regarding the location of pipes and connection to the drainage system. No information regarding where the pipes will be relocated to has been presented.
- The amenity of the sewerage system serving Pinewood Lawn has been compromised.

7.0 **Assessment**

7.1. The following are considered to be the main issues relevant to the assessment of the current appeal:

- Principle of development,
- Impact on visual and residential amenity,
- Site drainage and impact on existing services,
- Site access
- Appropriate assessment

7.2. **Principle of Development,**

7.2.1. The site is located on lands that are zoned Objective R1 Residential – Medium under the provisions of the Dungarvan Town Plan, 2012, with the stated objective ‘*to protect the amenity of existing residential development and to provide for new residential development at medium density*’. The provision of a house is therefore consistent in principle with the land use zoning of the site.

- 7.2.2. The submissions of the first party and the observers question whether the site is an infill site in the context of being surrounded by existing development as stated by the first party, or infill in the sense that the site has been artificially created by the importation of material onto the site as contended by the observer. While I note that permission was previously refused by the Board on the basis that material had been imported that impacted negatively on the adjoining NHA and that some top soil has previously been imported onto the site, it is not clear to me from the information presented that the site has been created by infilling. The historical information presented on file indicates that the site was a left over area from the development of the Pinewood Lawn residential development and was used to accommodate a septic tank that served the residential development prior to its connection to the public drainage network. Given the context of the site surrounded by existing residential development on three sides, in planning terms I would agree with the first party that the site is an infill backland site that is suitable in principle for residential development.
- 7.2.3. A significant part of the submissions made by the third party observer relates to the background planning history of the site and the way in which the first party has ignored planning enforcement and not complied with the conditions attached by the Board to the grant of permission issued for the development of a house on the site (ABP Ref. PL93.244140). It is, however, apparent that the reason for the current application derives from the enforcement proceedings brought by the council and that the nature of the development undertaken on the site, for which retention is sought as part of the current application, is such that a number of conditions attaching to the previous permission cannot be complied with. The purpose of the current application is to consider the planning merits of the revised proposal before the board and the fact that it is not consistent with the extant permission on the site is noted and accepted.
- 7.2.4. One change since the previous grant of permission by the Board relates to the extension of the site to the east with the incorporation of part of what was previously the rear garden of No. 2 Pinewood Lawn into the appeal site. The effect of this additional area has been that the site size has increased from 0.067 ha. to 0.0768 ha. There is significant information presented by both parties to the appeal regarding the manner in which the additional site area was incorporated into the

appeal site and the legal proceedings that have followed the actions of the first party in this regard. From my reading of the information presented, the first party has submitted documentary evidence in the form of land registry folio and map that indicates that they are the beneficial owners of the entirety of the appeal site as indicated in the current application. It would appear that this is being contested by the observer to the appeal and resident of No.2 Pinewood Lawn on the basis that they had adverse possession of the land in question. There is no indication from the information on file that this legal dispute has been resolved, however on the basis of the information presented the first party would appear to have sufficient legal interest in the site to enable him to make the application.

7.2.5. I note the fact that the report of the Planning Officer on file highlights potential discrepancies between the as constructed position of the floor slab and the dimensions / separation distances to No.2 Pinewood Lawn as indicated on the submitted drawings. I also note the fact that these separation distances have been amended on a revised Site Plan submitted with the first party appeal (Drg. No.2 dated 23 April, 2019). From my observations on site, the indicated c.15.2 and 22.5 metre separation distances between the footprint of the dwelling and the corner of the site and the rear elevation of No.2 Pinewood Lawn respectively are accurate and it is proposed to proceed with the assessment of the proposed development on the basis of this revised Site Layout Plan and associated dimensions.

7.3. Impact on Visual and Residential Amenity,

7.3.1. Permission was refused by the Planning Authority on the basis that the proposed development would be contrary to the residential zoning objective of the site as it would lead to a loss of amenity for surrounding properties due to the reduced separation to the dwelling to the east (No.2 Pinewood Lawn), and the alterations to and loss of existing boundary features. Firstly, while the scale of the proposed dwelling is increased from the previously permitted 93 sq. metres to 107 sq. metres, this increase is in the form of a triangular shaped element at the western side of the footprint. This additional accommodation comprises bedroom space that has windows that only face south and away from surrounding houses. With the exception of this additional space at the western end, the height, basic design and

materials of the proposed dwelling remain essentially the same as that previously permitted. Separation distances to the northern and southern site boundaries are also proposed to remain the same as previously permitted, and the design proposes the construction of a new 2.0 metre high block wall to run along the northern and eastern site boundaries that would prevent overlooking.

- 7.3.2. The reason for the alterations to the existing site boundaries referred to in the report of the Planning Officer is stated by the first party to be to facilitate the construction of the new 2.0 metre high wall located at these locations and required by Condition No.4 attaching to ABP Ref. PL93.244140. The current situation on site is clearly one where there is a loss of residential amenity as significant sections of the site boundary vegetation have been removed. The removal of these features is, however necessary to construct the conditioned boundary wall and I do not, therefore, consider that this could be considered likely to result in a permanent significant loss of residential amenity and such as to be the basis for refusal of permission. The construction of the required boundary features will result in a requirement for site landscaping and in the event of a grant of permission it is therefore recommended that the submission of a landscaping plan would be required by way of condition.
- 7.3.3. Private amenity space is proposed to be provided at the western end of the site and the area indicated is in excess of 100 sq. metres and therefore capable of supporting a dwelling of the scale proposed.
- 7.3.4. With regard to the separation between the proposed dwelling and the rear of No.2 Pinewood Lawn, the revised position of the house on the site is such that the separation distance between the east elevation of the proposed dwelling and the rear of No.2 Pinewood lawns would be c.22 metres and therefore consistent with normal separation distances between directly opposing windows. It should also be noted that the eastern boundary of the site is proposed to have a 2.0 metre high wall that would further limit potential overlooking and loss of amenity.
- 7.3.5. I note the reference in the observer's submission to the accuracy of the finished floor level of the dwelling and the impact of this on this visually vulnerable location. The FFL given in the application drawings is 100.0 AOD which is the same as what was indicated in the permitted application and c.1.0 metre lower than the FFL of No.2

Pinewood Lawn. It is difficult to get an accurate assessment of the FFL of the slab as constructed on site from on site observations, however the level is definitely lower than that of No.2 Pinewood Lawns. There is no evidence on site of the ground in the vicinity of the slab being significantly raised or the slab being excessively higher than the surrounding ground level. On the basis of the information presented therefore, I do not consider that there is a clear indication that the FFL cited in the application is not consistent with the floor slab as constructed or that the level of the proposed house would be such that it would have a significant impact on the relationship with surrounding residential properties or on the visual amenity of the area.

7.4. Site Drainage and Impact on Existing Services,

- 7.4.1. The development is proposed to be connected to the public water supply and drainage networks. One of the reasons cited by the first party for the revisions to the layout of the development from that previously permitted was the identification of a sewer connection that crossed the site. This sewer serves the Pinewood Lawn development to the north and it is stated that the exact location of the sewer was not available or known at the time of the previous application. The sewer is part of the Irish water network and it currently runs partially under the constructed floor slab on the site.
- 7.4.2. I note the comments of the first party with regard to the sewer line crossing the site, and also the comments of the observer to the appeal who question whether the sewer has been adequately protected in the current application. It would also appear that the presence of the sewer connection across the site has led to legal proceedings between the first party and Irish Water. From an inspection of the site it is not clear whether the construction of the existing slab has impacted on the integrity of the sewer line, and an assessment of this issue is also not helped by the lack of any drawing which identifies the line of the sewer connection across the site. From the information available, it would appear that the sewer could potentially have been avoided or less significantly impacted if the house had been constructed as permitted under Ref. PL93.244140 however in the absence of a detailed survey / drawing of the line of the sewer this is difficult to assess in detail. .

7.4.3. Notwithstanding the above issues, it is apparent from the correspondence on file from Irish Water that they are open to a technical solution to the issue that would involve the diversion of the existing Irish Water sewer around the building footprint. In this regard, a letter on file from Irish Water to the first party (dated 6th December, 2018) states that *'....existing Irish Water assets traverse the site and in order to accommodate the proposed development and a connection at the premises a diversion will be required. You will be required to enter into a diversion agreement with Irish Water including a Deed of Grant of Easement and to comply with the Irish Water Codes of Practice and Standard Details. However, if necessary, Irish Water would be willing to consider relaxing elements of a diversionto facilitate a diversion to relocate outside the footprint of the proposed structure and this to best protect Irish Water infrastructure.'* There is also reference in this correspondence to it not being possible to confirm that a gravity connection to the sewer is available and that a pumping station may be required. The correspondence also states at paragraph 4 that *'prior to submitting your planning application, you are required to submit these detailed design proposals to Irish Water for review.'*

7.4.4. The situation with regard to the foul drainage is therefore that Irish Water would appear to be open to some diversion of the main sewer line to facilitate the development, however issues regarding the presence of Irish Water infrastructure on the site are the subject of legal proceedings between Irish Water and the first party. The basis for an agreement of the diversion of the sewer and water and drainage connections for the development are therefore in place, however given the ongoing legal issues and the importance of agreement regarding the diversion of the sewer being resolved, it is recommended that any grant of permission would be made conditional on the relevant connection agreements being in place prior to the commencement of development. It is also recommended that such connection agreements would be submitted to the Planning Authority and it clarified that no further development shall be undertaken on site until such time as these agreements are in place and copies of same submitted to the Planning Authority.

7.5. Site Access

- 7.5.1. The existing means of accessing the site is via a recessed entrance and connection with the Old Hospital Road immediately to the east of the site. Visibility to the south is however severely restricted at this location by the boundary of No.1 Pinewood Lawn and for this reason it is my opinion that access via this route should not be permitted.
- 7.5.2. Access to the site is proposed to be via the existing access laneway at the eastern end of the site, and from there onto the Old Hospital Road via the existing estate roadway that is located to the north east of the site parallel with the Old Hospital Road and which serves Nos. 2-5 Pinewood Lawn. The junction with the Old Hospital Road would therefore be located to the north east of the site and at a location where there is adequate visibility available.
- 7.5.3. To facilitate the access arrangements via the Pinewood Estate road as proposed in the application documentation some alterations to the existing kerb line on the public road is required to be undertaken. There is no report from the Roads or area engineer on the appeal file and so it is not possible to confirm that the proposed layout is acceptable to the local authority or what financial contribution may be required to cover the cost of the proposed works. Condition No.7 attached to the previous Board decision (Ref. PL93.244140) required that the entrance to the site to be located in accordance with the detailed requirements of the Planning Authority and, in the event of a grant of permission in the current case, it is recommended that a similar condition be attached with the specification that all costs relating to works to the public road to facilitate the layout as proposed in the application shall be at the cost of the developer.
- 7.5.4. The submitted site layout indicates a total of 2 no. on site parking spaces with paved area that could accommodate additional parking if required. The parking provision on the site is considered to be acceptable.

7.6. Appropriate Assessment

- 7.6.1. The site is located such that it is in close proximity to the Dungarvan Harbour SPA site (site code 004032) which takes in the Colligan River estuary in the vicinity of the site. The exact boundary between the site and the boundary of the SPA is not indicated on the application documentation or other documentation on the file however, from the NPWS records I estimate that the site is approximately 15 metres from the boundary with the SPA at the closest point which is at the south west corner of the site.
- 7.6.2. From an inspection of the site, an examination of the relevant European sites in the general area and having regard to the nature of the proposed development which is for a single dwelling connected to the public water supply and drainage networks, I am satisfied that the only site that could be potentially affected by the proposed development is the Dungarvan Harbour SPA site.
- 7.6.3. I note the references on the appeal file to the historical importation of material onto the site and to the incidents recorded by the observer of material being deposited on the site and on the adjoining foreshore. The deposition of these materials was the subject of enforcement proceedings and from the information presented it would appear that the first party removed some material from the site on foot of these proceedings. While there is reference on file to the potential that material was deposited on the foreshore adjacent to the site, there is no clear indication that material was deposited within the SPA area or that there was a direct impact on the SPA. Similarly, from my inspection of the site I do not see evidence of recent infilling or deposition of material that would impact directly on the SPA site.
- 7.6.4. The features of interest of the Dungarvan Harbour SPA site are as follows:
- Great Crested Grebe
 - Light-bellied Brent Goose
 - Shelduck
 - Red-breasted Merganser
 - Oystercatcher
 - Golden Plover

- Grey Plover
- Lapwing
- Knot
- Dunlin
- Black-tailed Godwit
- Bar-tailed Godwit
- Curlew
- Redshank
- Turnstone
- Wetland and Waterbirds

7.6.5. The site is characterised by a river estuary that largely dries out at low tide and the area is identified in the site synopsis as having an assemblage of over 20,000 wintering birds. The site is identified as having high conservation importance for supporting internationally important populations of brent goose and black tailed godwit as well as nationally important populations of a further 13 no. species including golden plover and bar tailed godwit.

7.6.6. The appeal site is located outside of the SPA area and there is no indication that the site is of particular use as a foraging or roosting site for species of conservation interest for the site. The site is also now cleared and partially developed on foot of the previous grant of permission issued, albeit that the development undertaken does not comply with the permission issued, and the proposed development would not therefore further detract from the attractiveness of the site as a foraging or roosting site. In this regard it should also be noted that the site is located such that it is adjacent to a residential area and surrounded by existing residential development on three sides with the result that it would be the subject of significant levels of existing disturbance. While the proposed development and occupation of the site for residential use would potentially lead to some additional disturbance, this has to be seen in the context of the site located adjacent to existing residential area.

- 7.6.7. Having regard to the above, it is considered that the proposed development is not likely to have significant effects on the European site in the light of its conservation objectives.

8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that permission be granted based on the following reasons and considerations and subject to the attached conditions.

9.0 Reasons and Considerations

Having regard to the nature, scale and design of the proposed single storey house, the planning history including the extant permission for development of a dwelling on the site and the existing pattern of development in the area, and to the provisions of the *Dungarvan Town Development Plan, 2012-2018* including the residential zoning of the site, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area, would not be likely to have significant effects on a European site and would be acceptable in terms of traffic safety. 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 in accordance with the plans and particulars lodged with the application and received by the planning authority on the 13th of February 2019, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

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

Reason: In the interest of visual amenity.

- 3 The site shall be landscaped in accordance with an overall scheme of landscaping, details of which shall be submitted to the planning authority for written agreement prior to commencement of development.

Reason: In the interest of visual amenity.

4. In addition to the hedgerows and landscaping to be retained and provided on the site, the development shall provide for a solid screen boundary consisting of a block wall to a height of 2 metres along the northern boundary adjoining houses 6, 7 and 8 Pinewood Lawn and from the north eastern corner of the site around the rear garden area of No.2 Pinewood Lawn to a position in line with the rear building line of this dwelling. Details in relation to the proposed boundary treatment and a timescale for its implementation shall be submitted to and agreed in writing with the planning authority prior to the commencement of development works on the site.

Reason: In the interest of visual and residential amenity

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of orderly development.

6. The applicant or developer shall enter into water and waste water connection agreements with Irish Water, prior to commencement of development. No further development shall be undertaken on site until such time as these agreements are in place and copies of same submitted to the Planning Authority.

Reason: In the interest of public health.

7. All service cables associated with the proposed development 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 interests of visual and residential amenity.

8. The entrance to the site shall be located in accordance with the detailed requirements of the planning authority and any works to the public road or kerb line required to facilitate the revised access arrangements via the existing Pinewood Lawn estate road and access shall be undertaken at the expense of the developer. Surface water arising from the site shall not be permitted to drain onto the adjoining road.

Reason: In the interests of traffic safety.

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. The contribution shall be paid prior to the commencement of development or in such phased payments the planning authority may facilitate. 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 the Board to determine the proper application of the Scheme.

Reason: It is a requirement 48 of the Planning and Development Act 2000 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.

Stephen Kay
Planning Inspector

10th October, 2019