



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312596-22

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<b>Development</b>	Retention of a septic tank.
<b>Location</b>	Ardoginna, Ardmore, County Waterford.
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	211016
<b>Applicant(s)</b>	Declan and Gemma Hallahan
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Declan and Gemma Hallahan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18 <sup>th</sup> of October 2022
<b>Inspector</b>	Angela Brereton

## 1.0 Site Location and Description

- 1.1. The site of the proposed development which has a stated area of 0.358 ha. is located c. 2.5 km west of the village of Ardmore. The site fronts onto the southern side of the carriageway of the L6036 – a secondary road that connects Ardmore Village with the coast at Whiting Bay and strand. The section of carriageway that runs to the front of the site falls away gently and then more dramatically in a westerly direction towards Whiting Bay. The access road is narrow too narrow for two cars to pass.
- 1.2. The site which contains a chalet and shed is relatively flat with drive and individual access to the public road. The chalet is unauthorised and looks to have been in situ for some time. There are views to the sea from the rear garden area. It is located between a row of detached dwellings (predominantly single storey) of differing styles. They are close to the coast and it would appear that the bulk of these properties are second homes/holiday homes. There are no services in the area and there are a number of private wastewater systems, serving the chalet and the adjoining house to the west on the site.

## 2.0 Proposed Development

- 2.1. This proposal seeks the indefinite retention of the existing septic tank, distribution chamber and percolation area serving the existing chalet on site.

## 3.0 Planning Authority Decision

### 3.1. Decision

On the 21<sup>st</sup> of December 2021, the Council refused permission for the retention development for the following reasons:

1. *Having regard to the planning history on site, and in particular the lack of any planning permission for the existing chalet type timber dwelling, it is the opinion of the Planning Authority that the retention of the existing septic tank and percolation area would facilitate the consolidation and intensification of this unauthorised use. Accordingly, it is considered that it would be*

*inappropriate for the Planning Authority to consider the grant of retention permission for the development in such circumstances. The proposed development would, therefore, be contrary to the proper planning and development of the area.*

2. *Based on the details provided with the planning application, it has not been demonstrated that the wastewater treatment system has been installed in accordance with the 'EPA Code of Practice Waste Water Treatment and Disposal Systems Serving Single Houses' 2009 and that the site is suitable to cater for the safe treatment and disposal of effluent, therefore it is considered the development would create a risk of contamination of groundwater and private water supplies, and result in an excessive concentration of development served by individual wastewater treatment systems and thus would be prejudicial to public health.*

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The Planner had regard to the locational context, planning history and policy and submissions made. Their Assessment includes the following:

- They note the previous reasons for refusal for retention of the chalet type dwelling with a new log cabin on this site –ABP-305545-19 Reg.Ref.19/555 – refers.
- They note the subject site is within an 'Area Under Urban Pressure'.
- They note the details submitted regarding the need for the replacement septic tank and provide that the issue remains that it is to serve the existing holiday chalet which is unauthorised development.
- They consider that based on the details provided, that it has not been demonstrated that the existing septic tank is in accordance with EPA CoP 2009.
- They note and provide details of ongoing Enforcement proceedings. They consider that the proposed retention of the septic tank to serve an

unauthorised chalet type structure would facilitate the consolidation of this unauthorised use. They recommend that retention permission be refused.

### **3.3. Other Technical Reports**

None noted on file.

### **3.4. Prescribed Bodies**

No referrals noted on file.

### **3.5. Third Party Observations**

Submissions made, in summary include the following:

- Non-compliance with previous planning decisions would make it inappropriate to grant this retention permission to further unauthorised development.
- Would result in an excessive concentration of development served by individual wastewater treatment systems and be prejudicial to public health.
- They query as to how the situation has changed so as to overturn the previous decision by the Board to refuse.

## **4.0 Planning History**

The Planner's Report refers to the Planning History of the site. This includes the following:

- Ref.ABP-305543-19 (Reg.Ref.19/555) – Permission refused for the Replacement of an existing chalet type timber dwelling with a new log cabin type dwelling. The Board's 3no. reasons for refusal in summary included lack of demonstrated local need to reside in this area under urban pressure; the proposal would not come within the scope of Section 7.5 of the Waterford CDP 2011-2017 (as extended) as it relates to replacement dwellings; and would result in the excessive concentration of wwts, would be prejudicial to public health.

- Reg.Ref. 20/714 – Permission refused to Declan and Gemma Hallahan by the Council for the retention of an existing septic tank, existing entrance and existing borewell serving the existing habitable structure on existing site.

This was refused for 2no. reasons that in summary included that the retention would facilitate the consolidation and intensification of this unauthorised structure and that it has not been demonstrated that the wastewater treatment system has been installed in accordance with the 'EPA CoP 2009 or would not create a risk to groundwater and private water supplies and would thus be prejudicial to public health.

Copies of the Board decision is included in the Appendix to this Report. It is noted that the most recent retention refusal by the Council was not the subject of an appeal to the Board.

## 5.0 Policy Context

### 5.1. Waterford City and County Development Plan 2022-2028

The new City and County Development Plan was adopted on 7<sup>th</sup> June 2022 and took effect on 19<sup>th</sup> July 2022. The application was considered under the previous County Development Plan 2011-2017 (as amended), which has now been superseded.

#### Ardmore

Table 2.2 presents the Settlement Hierarchy and Typology. Ardmore is included as a Class 4A Rural Town. This refers to rural towns and villages less than 1,500 pop and the wider rural region. While rural in scale these towns provide a range of employment along with commercial, cultural and community services.

The site is outside and to the west of Ardmore in the rural area.

#### Rural Areas

Section 2.10 refers and seeks in summary to avoid an over-spill urban generated development and protect environmental quality, to support sustainable development of rural areas, encourage growth and arrest the decline of rural towns and villages in a manner consistent with NPO 15-20.

Section 2.10.1 refers to Rural Areas under Strong Urban Influence. This supports compact development in villages and towns and to facilitate the provision of single houses in the countryside based on the core considerations of economic, social or local need to live in rural areas, siting and design criteria for rural housing, compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements in a manner consistent with NPO 19 of the NPF.

### Infrastructural issues

Section 6.1 refers to Water Supply and Quality. This includes that the protection of surface and groundwater sources is a key challenge facing Water as is ensuring that existing water services infrastructure and capacity is adequately managed.

Table 6.1 'Water and Wastewater Capacity Assessment – Settlements in Waterford County. This notes, limited capacity and further assessment ongoing in the Ardmore WWTP.

Section 6.3 has regard to Storm and Surface Water Management and has regard to the incorporation of SuDS.

Section 6.9 refers to Utility, Energy & Communication Policy Objectives.

Policy UTL 06 includes: *Where permitted, private wastewater treatment plants, are operated in compliance with: - 2021 Code of Practice for Domestic Wastewater Treatment Systems EPA, as may be amended.*

### Rural Housing

Section 7.11.2 refers to Housing in the Open Countryside and includes regard to *Rural Areas under Strong Urban Influence*. Policy H28 refers:

*We will facilitate the provision of single housing in the countryside, in rural areas under urban influence, based on the core consideration of demonstrable economic, social or local need to live in a rural area, as well as general siting and design criteria as set out in this plan and in relevant statutory planning guidelines, having regard to the viability of smaller towns and rural settlements.*

Section 7.12 refers to Refurbishment, Extensions and Replacement of Existing Structures in Rural Areas. Policies H31 – H33 apply. The latter provides:

*All proposals for refurbishment, extension or replacement of residential property in un-serviced areas will be required to demonstrate compliance with the EPA Code of Practice: Domestic Wastewater Treatment Systems (Population Equivalent ≤ 10) 2021 and any revisions thereof in addition to other policies and development management standards as set out in this plan.*

## Volume 2 – Development Management Standards

Section 9.4 relates to Wastewater Treatment Infrastructure. This includes relative to Rural Countryside/Un-serviced Areas:

*Where the development of a single house is proposed outside of a designated settlement the Planning Authority will require that the applicant provides an on-site waste water treatment system in accordance with the EPA Codes of Practice (Wastewater Treatment Systems for Single Houses) in force at the time of making the application. Applications for planning permission for every individual dwelling in un-serviced areas must conduct a site suitability assessment using the methodology set out in the EPA Code of Practice and the site assessment must fully comply with the required standards, as overseen by an appropriately trained, qualified and accountable assessor and designer.*

## **6.0 Planning Policy**

### **6.1. National Planning Framework**

National Policy Objective No. 19 states: *In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.*

### **6.2. Sustainable Rural Housing Planning Guidelines (2005)**

The site of the proposed development is located within an area designated as being under strong urban influence.

The Guidelines distinguish between 'Urban Generated' and 'Rural Generated' housing need. Examples of situations where rural generated housing need might apply as set out in the Guidelines include rural houses for 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

Section 3.3 is concerned that the consideration of individual sites will be subject to normal siting and design considerations. These include:

- That housing in un-serviced areas and any on site wastewater disposal systems are designed, located and maintained in a way, which protects water quality.

Section 4.5 is concerned with Protecting Water Quality and Site Suitability issues

### **6.3. EPA Code of Practice for Domestic Wastewater Treatment Systems 2021**

This Code of Practice (CoP) is published under Section 76 of the Environmental Protection Agency Act, 1992 (as amended).

Its purpose is to provide guidance on domestic wastewater treatment systems (DWWTSs) for single houses or equivalent developments with a population equivalent (PE) of less than or equal to 10. It sets out a methodology for site assessment and selection, installation and maintenance of an appropriate PWWTS.

This CoP replaces the previous Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.  $\leq 10$ ) issued in 2009. This CoP applies to site assessments and subsequent installations carried out on or after 7th June 2021. It provides that the 2009 CoP may continue to be used for site assessments and subsequent installations commenced before 7th June 2021 or where planning permission has been applied for before that date.

### **6.4. EU Water Framework Directive**

The purpose of the EU Water Framework Directive (WFD) 'is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater.



## 6.5. Natural Heritage Designations

Ardmore Head Special Area of Conservation (SAC) (Site Code 002123) is located c. 3 km east of the site.

The Blackwater River SAC (Site Code 2170) is located c. 3.5 km north-west of the site.

The Ballymacoda Bay SAC (Site Code 000070) is located c. 9.5 km south west of the site.

The Helvic and Ballyquin Special Protection Area (SPA) (Site Code 004192) is located c. 6km north-east of the subject site.

The Blackwater Estuary SPA (Site Code 004028) is located c. 3.8 km north west of the site.

The Ballymacoda SPA (Site Code 004023) is located c. 8 km south west of the site.

The Dungarvan Harbour SPA (Site Code 004032) is located c. 15 km north east of the site.

## 6.6. EIA Screening

Having regard to the nature and limited scale of the proposed development, to the character of the area and to the nature of the receiving environment it is considered that it would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

The Applicants Declan and Gemma Hallahan have submitted a First Party Appeal regarding the Council's decision to refuse retention permission. This includes the following:

- They request that the Board make a determination as if the application was made de novo. The original chalet which was constructed in 1987 was exempt from prosecution by the Planning Authority due to time limits and referred to by the ABP Inspector as such.
- The chalet was previously used as a permanent dwelling both prior to and subsequent to the seven year time limit after which it was immune from prosecution. Full details have been submitted in this regard as part of the previous application on the site. They note the current ongoing Enforcement action on the subject site.
- They refer the Board to a decision under Ref. 301388-18. Although this is an unconnected application, they contend that it would seem to indicate that a change of use in place for more than 40 years could have been registered as exempted development.

#### Reason for Refusal no.1

- The existing chalet on site has been in situ for 35 years and this was never considered to be an issue despite the fact that numerous permissions have since been granted by the Planning Authority for both permanent dwellings and sewage treatment systems in the immediate area.
- They include a map showing this and in particular they refer to a recent permission Reg.Ref. 1713 as shown and to condition no.5 relating to sewage treatment. They also refer to Reg.Ref.2117 Condition no.4 and Reg.Ref. 21/206. It appears that other than the subject site the Planning Authority have no issue with septic tank systems in the area.
- The groundwater vulnerability map submitted on foot of the application site assessment shows that most of the permission granted were located on sites with similar designation.
- To consider it as inappropriate to grant retention for a new septic tank system that after 35 years in which a cesspit was indeed contributing to possible pollution of groundwater is not correct.

- They note that the Objectors to this application are part of an extended family one of which has a cesspit within the application site and they submit that an internal family dispute should not influence any decision made.
- The proposed development should not be considered contrary to the proper planning and development of the area.

### Reason no.2

- They attach a document entitled 'Comments on Reason No.2 for Refusal' prepared and signed by J Mansfield B.E. They provide that he has appropriate expertise in this area and carried out the site assessment. That this reason should be disregarded.
- This provides details of the septic tanks/cesspits in the vicinity of the site.
- The submission made with the application in relation to retention of the existing septic tank is not considered to have been given sufficient weight in the assessment of the application.
- This states that there was no pre-existing septic tank on the site. There was only a cesspit which was contaminating the surrounding land and was posing a threat to both groundwater and private water supplies.
- They refer to the Planner's Report relative to the Site Assessment submitted and note the details therein. They note that it always remained open to the PA to request F.I and that no other septic tank in the general area has been refused permission.
- Details are given of boreholes in the area. Also, of J. Mansfield's B.E. long standing expertise relative to wastewater treatment issues.
- The existing septic tank (for retention) has been installed correctly and is in compliance with the EPA Code of Practice. A refusal of this appeal will create pollution. The points made are detailed further in the Assessment below.

## **7.2. Planning Authority Response**

There is no response on file.

### 7.3. **Observations**

None noted on file.

### 7.4. **Further Responses**

Note noted on file.

## 8.0 **Assessment**

### 8.1. **Retention Development and Planning History**

- 8.1.1. Regard is had to first principles and the issue with a retention application is whether the development proposed for retention would have been permitted in the first place had the works not been carried out (i.e being unauthorised) prior to obtaining a planning permission. Reference is had to the planning history in the First Party Grounds of Appeal. It is their understanding the Board will make a determination of this application as if it was made de novo. Therefore, they contend that the previous applications on the site and the site history are not relevant as the current application relates solely to the retention of the septic tank.
- 8.1.2. In this case the First Party provide that the existing chalet on site has been in situ since c.1987. The history of the site is referred to in the Planner's Report - ABP-305543-19, and in view of the time period (well in excess of 7 years), is exempt from enforcement proceedings, never obtained planning permission and is unauthorised. Therefore, I note the issue is, that this septic tank is to service an existing unauthorised development. So, in this case it is not a standalone application, in that it has to be asked why would, there be a need for a septic tank if the unauthorised chalet were not there in the first place.
- 8.1.3. It is noted that (as stated in Section 7.1.4 of the Inspector's Report relative to ABP - 305543-19) that the existing structure although unauthorised would appear to be immune from prosecution for the purposes of enforcement action by the planning authority. However, the septic tank (the subject of the current retention application) is described as a replacement in recent times (exact date not given) for a pre-existing

cesspit that was not working and thus has provided for an improvement for the disposal of effluent.

- 8.1.4. Chapter 10 of the Development Management Guidelines 2007 refers to Enforcement and includes in Section 10.1: *Under planning legislation any development which requires permission and does not have that permission is unauthorised development, as is a development which is proceeding in breach of conditions laid down in the planning permission. Enforcement of planning control is the responsibility of the planning authority and this is the case, of course, whether the planning decision, including conditions, was made by the planning authority or the Board.*

Section 10.3.9 provides: *The enforcement provisions of the planning code are designed not only to regularise the situation, i.e. to ensure that an unauthorised development obtains consent or is removed, but also to deter future unauthorised development.*

However, it is of note that Enforcement is under the remit of the Planning Authority and not under that of the Board.

- 8.1.5. Note has been had in this Report above to the Planning History of the site. In this case the most relevant is Ref. ABP-305543-19 (Reg.Ref.19/555) where permission was refused by the Council and subsequently by the Board for the 'Replacement of an existing chalet type timber dwelling with a new log cabin type dwelling'. At that time the drawings proposed a new log cabin to replace the unauthorised chalet already there. The existing septic tank was shown in the same location as that currently proposed for retention.
- 8.1.6. The Board's 3no.reasons for refusal relate in summary to lack of demonstrated local housing need in a rural area under urban influence; being contrary to planning policy and would not come within the scope of Section 7.5 (replacement house) of the Waterford CDP 2011-2017 (as extended). Reason no.3 is of particular relevance to the current application and this includes concerns that the applicants had not demonstrated that the site is suitable to cater for the safe treatment and disposal of effluent and that the proposal would result in an excessive concentration of development served by individual wastewater treatment systems and would therefore be prejudicial to public health.

A copy of the Board's decision is included as an Appendix to this report.

- 8.1.7. Also of relevance is the more recent Council decision Reg.Ref.20/714 where as noted in the Planning History Section above permission was refused to the applicants for the retention of an existing septic tank, existing entrance and existing borewell serving the existing habitable structure on the subject site. Therefore, the retention of subject septic tank has recently been refused, in the wider context as part of this previous application.

## 8.2. Retention of Septic Tank

- 8.2.1. The Site Layout Plan submitted shows the location of the 'Existing septic tank and percolation area to be retained in accordance with EPA standards'. This plan also shows the location of the 'Decommissioned Cesspit', the 'Neighbour's Cesspit' and the 'Existing borehole and notes that this services 2 houses to the East and three Houses to the West of the proposed development'. The latter is outside and to the east of the subject site. It is noted that these are in the same location as that shown in Ref. ABP-305543-19, previously refused by the Board. While on site I noted the locations of these cesspits and the septic tank in the rear garden area of the subject site.
- 8.2.2. Details submitted with the retention application provide that there is an existing 4,000 litre septic tank constructed to EPA Standards. The 'T' value of 17.69 is based on the percolation test carried out on the 9<sup>th</sup> of September 2021. That the percolation area in situ accords with this 'T' value. This notes that the existing septic tank was constructed at short notice as the previous tank on site was basically a cesspit and had effectively failed, creating smells, nuisance and pollution. They provide that the cesspit was constructed following construction of the chalet. This cesspit/tank is now diverted/decommissioned although still in situ.
- 8.2.3. Its location is shown on the layout plan and attached drone photos. There is also another cesspit within the boundaries of the site and this is connected to the existing dwelling immediately to the west of the current chalet on site. They provide that this cesspit is not functioning properly, its location is also shown on the site layout plan. That the drone photos are used as sketches for the trial holes. As stated in their previous application, they are willing to accommodate the effluent from the adjacent

dwelling to the west which has only a cesspit (located within the subject site boundaries) and is not functional.

- 8.2.4. The details submitted with the application note that the subject septic tank for retention is the only septic tank in the area that conformed to presently acceptable EPA standards at the time and is in fact reducing the pollution risks currently obtaining. That it is working satisfactorily since its construction. They also note that an additional septic tank has recently been constructed on the adjacent site serving the 2nd dwelling from their site to the west and that they are unaware of the planning status of this system. They provide that it can only be an improvement of what previously existed in terms of possible contamination of ground water or private water supplies. That they do not intend to cause any further pollution by redirecting sewage effluent to the old and failed cesspit, instead they are trying to regularise the situation by this application for retention of the existing septic tank, tank distribution chamber and percolation area.
- 8.2.5. They submit that the water table test results are based on the previous test carried out in the location of the existing septic tank on site. That this test was passed and approved by the Planning Authority. They contend that it was therefore not deemed necessary to carry out a new water table test as part of the present application. However, they are prepared to re-excavate this hole in a different location if deemed necessary.
- 8.2.6. A Site Characterisation Form has been submitted with the application. This notes that the dwelling is served by a private borehole. The Aquifer Category is described as 'Locally important' and the vulnerability as 'high' with an R1 groundwater protection response. It is provided that the only potential risk is groundwater. The existing septic tank system is downslope of any wells. There are cesspits closer to the existing well on site which is uncontaminated. The Form also provides that the existing septic tank system is functioning well since its installation and is not posing a threat to groundwater. It is noted that the beach is located some 150m to the south west of the site. That there is a borehole on the site to the north of the existing building and also on the adjacent site to the east. They reiterate that the existing septic tank system is functioning satisfactorily and until recently was the only septic tank in the immediate area that conformed to EPA Standards.

- 8.2.7. As noted in the Policy Section above the 2009 CoP document has now been replaced by the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Dwellings (2021). This includes: *The 2009 CoP may continue to be used for site assessments and subsequent installations commenced before 7th June 2021 or where planning permission has been applied for before that date.* It is noted that this application was made to the Council after this date however as noted in the documentation submitted the septic tank and percolation area was in situ prior to this date, so therefore the 2009 CoP still applies.
- 8.2.8. Table 6.2 of the 2009 EPA Code of Practice provides the minimum depth requirements for on-site systems discharging to ground i.e. 1.2m and at the base of polishing filter 0.9m. i.e. minimum depth of unsaturated subsoil to bedrock and the water table. Table 6.3 provides an interpretation of percolation test results and “in cases where  $3 < P < 75$  the site may be suitable for a secondary treatment system and polishing filter at ground surface or overground if the soil is classified as Clay...” The ‘T’ and ‘P’ test values given should be within this range.
- 8.2.9. Percolation test results provide that the average ‘T’ test result is 17.69. They note that the depth from ground surface to the water table is 1.4. That provided the invert level of the percolation pipes is kept 1.2m above the water table, that the site is suitable for a conventional septic tank system. While concerns about the proliferation of individual wwts and cesspits in the unserved rural area are noted, it appears that the site is suitable for the disposal of effluent.
- 8.2.10. However, this Site Characterisation Form does not take into account the impact of the development relative to other such systems, including in the immediate area. This area is some distance from the town of Ardmore, is unserved and lies over a locally important aquifer of high vulnerability. In view of the number of one-off houses in the area, there is a proliferation of such individual systems for the disposal of effluent in the area. While the septic tank system for retention offers an improvement relative to the previous cesspit, the situation remains that its purpose is to serve an unauthorised development, where permission has previously been refused – Ref. ABP-305543-19 refers.



### 8.3. The First Party Case

- 8.3.1. Details submitted with the application note that the present application varies from the previous refusal application in that the application is now for the retention of the existing septic tank system to service the existing holiday chalet on site, rather than the replacement log cabin as previously proposed. They provide that it will reduce the existing cesspits and individual 'treatment systems' as outlined and will prevent and overcome any concerns in relation to public health.
- 8.3.2. They note that the septic tank for retention replaces a cesspit that was contributing to possible pollution of groundwater for over 35years. They contend that this septic tank is a considerable environmental improvement and should not be considered contrary to the proper planning and sustainable development of the area.
- 8.3.3. They attach a document entitled 'Comments on Reason no. 2 for Refusal' prepared by a Consultant Engineer, who they provide has appropriate expertise in this area and who carried out the site assessment. They consider that reason no.2 of the Council's decision be disregarded.
- 8.3.4. Details submitted include the following:
- The cesspit on the site is now diverted/decommissioned although still in situ. Its location is shown on the layout map and in drone photos attached.
  - The retention of the existing septic tank formed part of the previous application for the replacement of the existing chalet. This was the only septic tank in the area that conformed to presently acceptable EPA standards at the time and is reducing pollution risks.
  - A recent septic tank has recently been constructed on the adjacent site serving the second dwelling from their site to the west.
  - The septic tank can only be an improvement on what previously existed in terms of possible contamination of groundwater or private water supplies.
  - They do not intend to cause any further pollution by redirecting sewage effluent to the old and failed cesspit. Instead, they are trying to regularise the situation by this application for retention of the existing septic tank distribution chamber and percolation area.

- They are willing to accommodate the effluent from the adjacent dwelling to the west which has only a cesspit that is not functional. The cesspit is located within their site as shown on the Site Layout Plan and attached sketch.
- The water table test results are based on the previous test carried out in the location of the existing septic tank on site. This test passed and was previously accepted by the Planning Authority. Therefore, it was not deemed necessary to carry out a new water table test as part of the present day application. However, they are prepared to re-excavate this hole in a different location if necessary.
- A previous application on site for the retention of structures which included the septic tank system under Reg.Ref.20/714 was refused. The present application varies from the previous refusal in that this is for the retention of the existing septic tank system to serve the existing holiday chalet on site.
- Fresh percolation tests have been carried out and it has been demonstrated that the existing system complies with the 'EPA Code of Practice Waste Water Treatment and Disposal Systems Serving Single Houses' 2009.
- They conclude that this septic tank system will reduce the concentration of existing cesspits and individual 'treatment systems' as outlined and will prevent and overcome any concerns in relation to public health.

#### 8.4. The issue of Precedent

- 8.4.1. The First Party refer to the issue of precedent and note cases. This includes Ref. ABP-301388-18. This related to a Referral where the Question was: *Whether the use of the first floor unit as residential and internal alterations above Spar, Main Street, Shankill, Co. Dublin is or is not, exempted development.* They note that while this was an unconnected application, it would seem to indicate that a change of use in place for more than 40 years could be regarded as exempted development. A copy of this decision is included with their appeal. This is a case that refers to issues such as change of use, abandonment of use and they consider it to be similar or relevant to the subject retention application.

- 8.4.2. They also refer to recent permissions in the area (locations relative to the subject site are shown on a copy of the planning register map included), and to conditions imposed by the Council relative to individual wastewater treatment systems. They note that in these in these applications the Planning Authority appeared to have no issues with septic tank systems in the area. That the groundwater vulnerability map submitted on foot of the planning application site assessment shows that most of the permissions granted were located on sites with a similar designation.
- 8.4.3. However, it must be noted that each case is dealt with on its merits. The current application differs in that rather than being an application for planning permission in the first instance it is for retention of a septic tank to serve an existing unauthorised development. Also, the aforementioned locally based applications serve to show that there is a proliferation of septic tanks/wastewater treatment systems to serve one off houses in the area.

## **8.5. Appropriate Assessment**

- 8.5.1. The application was screened by the planning authority and the need for a stage 2 appropriate assessment was screened out.
- 8.5.2. Having regard to the nature and scale of the proposed development, to the nature of the receiving environment and to the separation distance to the nearest European site no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on any European site, in light of the sites conservation objectives

## **9.0 Recommendation**

- 9.1. I recommend that retention permission be refused for the reasons and considerations below.

## 10.0 Reasons and Considerations

1. Having regard to the planning history of the site, including the previous Council and Board decisions to refuse, it is considered that this proposal for the indefinite retention of the existing septic tank system, distribution chamber and percolation area to serve the existing unauthorised chalet on site, would facilitate the consolidation and intensification of this unauthorised development. The proposed retention development would therefore set an undesirable precedent and be contrary to the proper planning and sustainable development of the area.
2. The proposed development would be served by an existing septic tank and by an existing well, neither of which have the benefit of planning permission and which are located within an area where there is already a high concentration of septic tanks and private wells. It is considered, on the basis of the submitted documentation, and in particular in the context of the fact that the area is located over a locally important aquifer of high vulnerability, that the applicants have not demonstrated that the site is suitable to cater for the safe treatment and disposal of effluent from the proposed development and, in the absence of any plans for the provision of public water or sewerage facilities to serve the area, the proposed development would result in an excessive concentration of development served by individual wastewater treatment systems and would, therefore, be prejudicial to public health.

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Angela Brereton  
Planning Inspector

9<sup>th</sup> of November 2022